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James Tyrrell, John Locke, and Robert Filmer: Ideas on Property in Late Seventeenth Century England

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Ideas on Property in Late Seventeenth Century England

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Abstract

In this thesis, I examine the political theories of Sir Robert Filmer, John Locke, and James Tyrrell and, in turn, compare their respective conceptions of property which are at the foundation of their political theories. This political debate about property must be set amongst the political circumstances of the exclusion crisis. Arising from the Whig-Tory division, which arose in part from the Popish Plot, Filmer, Locke, and Tyrrell reveal the ideas of the parties they represented. Locke and Tyrrell, as Whig representatives, refuted the patriarchal theory of Filmer's Patriarcha, representative of the Tory party. In refuting Filmer, Locke and Tyrrell reveal the Whig movement from arguments focusing on history to their acceptance of natural law political theory. As natural law theorists, there are many similarities between the property theories of Locke and Tyrrell as presented in the Two Treatises and Patriarcha non Monarcha. However, in contrast to Locke, Tyrrell presents a definition of property which focuses on economic (and not ideological) rights and claims that occupancy is a right to property. In addition, he presents an argument in which an absolute monarchy can be accepted as legitimate, which Locke would never accept. I conclude that the work of James Tyrrell is most representative of the period's political debates and explain why.

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Introduction: The Exclusion Crisis, the Formation
of Political Party Ideologies, and Seventeenth-Century
Liberties

In October of 1678, the Cavalier Parliament investigated a claim by Titus Oates that there was a Popish Plot to assassinate the king, Charles II. In the case of the king's death, his Catholic brother, James, Duke of York, would succeed to the throne. The already strong English fear of Catholicism ran rampant throughout the country in a period which would come to be known as the Exclusion Crisis.

The Exclusion Crisis covered a period from 1678 to 1681, in which three Parliaments were called and convened. All three of these parliaments were linked by exclusion bills which, if they were passed, would have kept James from succeeding to the throne. Although exclusion had been considered since at least the mid-1670s, an exclusion bill was introduced in the first exclusion Parliament.¹ After a Parliament was dissolved on January 24, 1679, a new Parliament met for the first time on March 6, 1679, introducing an exclusion bill in May. Between these two parliaments, the Duke of York was forced into exile, in part because the Commons declared that Catholicism gave encouragement to the plotters and insinuated that the Duke

1. Tim Harris, Politics Under the Later Stuarts: Party Conflict in a Divided Society, 1660-1715 (New York, New York: Longman, 1993), 83.

may have been involved in the plot himself. The first exclusion parliament was prorogued before the bill of exclusion could go very far. Parliament met once again on October 21, 1680. During this second exclusion parliament, a similar exclusion bill reached the House of Lords, where it was rejected in November. A third exclusion parliament, also known as the Oxford Parliament, met in 1681. During the Oxford Parliament, a third exclusion bill was read. Once again, the bill failed. From 1678 to 1681, a period known as the Exclusion crisis, three parliaments met, each introducing a bill of exclusion, all of which failed.

Despite the controversy over excluding the Duke of York from succession to the throne, the period did not just revolve around ideas of succession. In Politics and Opinion in Crisis, 1678-1681, Mark Knights argues that exclusion implies the crisis was only parliamentary and would best be reserved for the time from November 1680 to the dissolution of the Oxford Parliament in 1681. Indeed, he notes "the depth and complexity of what was the critical period in Charles II's reign, when politics and opinion were in crisis."² During the entire time span, contemporaries perceived a crisis while the nation "drifted slowly towards violent unrest."³ Disorder was looming on the nation,

2. Mark Knights, Politics and Opinion in Crisis, 1678-1681 (Cambridge, Massachusetts: Cambridge University Press, 1994), 4-5.

3. Ibid., 3.

centering on issues of dissent, the factioning of political parties, and a fierce battle between notions of liberty and tyranny.

During the exclusion crisis, modern political parties were beginning to take shape. While much attention has been devoted to this period as a focal point for the arising of political parties, especially the Whig party, Knights claims that this attention has diverted scholars from the real issues of the time.⁴ Rather than devoting so much attention to the growth of political parties, historians should pay more attention to the issues of conflict in England during the late seventeenth century. Tim Harris, for instance, maintains a study of the period must emphasize what is new to the time of the exclusion crisis, the depth of the constitutional crisis and fears of arbitrary government.⁵ Despite these comments, many historians believe the beginnings of modern political parties can be observed. There was "a polarisation between two fairly-well identified sides, both of which had distinct political ideologies and possessed a rudimentary degree of organization," signalling the emergence of political society during the exclusion crisis.⁶ The Whig party and the Tory party emerged from the

4. Ibid., 5.

5. Harris, "'Lives, Liberties, and Estates': Rhetorics of Liberty in the Reign of Charles II," The Politics of Religion in Restoration England, ed. Tim Harris, Paul Seaward, Mark Goldie (Cambridge, Massachusetts: Basil Blackwell, 1990), 218.

6. Harris, Politics Under the Later Stuarts, 82.

exclusion crisis.

In addition to the anti-Catholicism of the supposed Popish Plot, and the attempt to exclude a Catholic successor from the throne, attitudes towards protestant dissent can be seen as a strong issue between the two parties. Like succession and arbitrary government, however, dissent was just one issue that

helped to divide the nation during the period and held different sway at different times . . . all distorted by local and personal factors, and . . . not very useful to try to prioritize them in sweeping generalizations.⁷

Concerns of the Popish Plot and fears of arbitrary government led the Whigs to a heightened fear of popery.

The Whigs equated Catholicism with the reign of Mary Tudor, England's last Catholic ruler, who had heretics burned at the stake, and came to believe that a Catholic ruler would necessarily be absolute, like Louis XIV of France.⁸ The Whigs believed a Catholic ruler would be absolute because the only way he would be able to force his subjects to follow Rome would be to end the rule of law by keeping a standing army. The Whigs appeared constitutionally conservative because they feared a Catholic monarch would ruin a balance of power between king and parliament.

Among the leaders of the constitutionally conservative

7. Knights, 365.

8. Harris, Politics Under the Later Stuarts, 86.

Whigs was the Earl of Shaftesbury. Although Shaftesbury, a proponent of exclusion, was not the leader of the Whigs, he did hold several Whig clubs.⁹ By holding these clubs, the Earl revealed his power of organization--a hallmark of modern political parties. He also had briefly been part of the republican regimes of the 1650s, an indication that leading constitutionally conservative Whigs must be judged with wariness, for "it would have been a tactical mistake for the exclusionists to admit that their real aim was a fundamental restructuring of the powers of the monarchy."¹⁰ As a supporter of the regimes of the Interregnum, Shaftesbury revealed his belief in Parliament as the representative of the people, whose acts were based upon consent given by the people able to vote.¹¹ Other than his representation of the Whigs as believers in the authority of Parliament and as an organized party, Shaftesbury was very active in encouraging pope-burnings, riots, and petitioning. By encouraging these actions, he demonstrated his leadership within the Whig party as a populist party; a party which stood for the rights of the English people against popery and arbitrary government.

The Tory party stood in opposition to the Whig party. Essentially an anti-populist party, more elitist than the

9. Ibid., 84.

10. Ibid., 87.

11. Ibid., 89.

Whigs, the Tories opposed exclusion in opposition to the Whigs, but were not as well organized as their rivals.¹² Unlike the Whigs in another respect, the Tories did not have anyone who stood out as a leader of their party and did not see themselves as a party but as people fulfilling the loyalty they owed to the Crown.¹³ Like the Whigs, who posed as a party dedicated to the constitution, the Tories also possessed a distinctive identity. The Tory identity "centered around an attachment to Church and State as by law established."¹⁴ Making conditional statements about absolute monarchy, the Tories wanted the English people to obey the legal government of England, even if that meant obeying a Catholic ruler.

Although both the Whigs and Tories had distinct issues which they supported, it is best not to look at the conflict between these two parties during the Exclusion Crisis as one between liberty and tyranny. Although, as Knights suggests, this distinction may be best "for those who espoused polarized ideological positions," most members of either party were not strictly Whiggish or Tory.¹⁵ In fact, exclusion was not the dividing issue because a Whig-Tory division, while describing the outcome of the crisis, was not the dividing line, but a dividing line.¹⁶ They were not

12. Ibid., 94, 101.

13. Ibid., 95.

14. Ibid., 96.

15. Knights, 358.

16. Ibid., 356.

in direct conflict because both parties believed in the established Church and State. The problem arose between the two parties because, at a time when the line of succession to the throne was being threatened, they could not reach a consensus on as to what was the established Church and State. Although the Whigs made some concessions, including the belief that the established church should be expanded to include the moderate protestant dissenters, this was a limited expansion. Neither party was all-inclusive; they remained at odds. Generally speaking, the Whigs believed in the constitution and the authority of Parliament, fearing the results of a possible Catholic ruler, while the Tories believed in the obedience the English owed to their monarch, whether that monarch was catholic or not. Historically, the Whigs have since been seen as defenders of the propertied class against a threat posed by arbitrary government and the Tories have been seen as enemies of liberty, defenders of divine right and succession.

It would be misleading to argue that the Whigs only took a stance as defenders of liberty against the Tory interest in defending an absolute monarchy. As Tim Harris explains, liberty was a concept which did not hold the same meaning for all sectors of the population. Both the Whigs and the Tories held views of liberty: conflicting views. As Harris writes,

we cannot see the conflict of the 1680s in terms of a simple struggle between liberty and tyranny, between legal and arbitrary government. What we have are competing conceptions of liberty, discrete visions of how 'lives, liberties, and estates' were best secured. These visions were inevitably worked out and defended in terms of an appeal to the law, the ancient constitution and Magna Carta and natural justice.¹⁷

By the late seventeenth century, both parties generally agreed that Englishmen had rights which should be protected by the government. These rights included life, liberty, and the protection of their property.

Property may have been the most important of the rights which Englishmen felt the government needed to protect. Property rights were important enough that everyone in politics wanted to see them secured.¹⁸ Protection of property rights would serve as a bridge to the security of other rights; by the time of the exclusion crisis, all liberties were considered part of a person's property.

John Cowell's definition of the word property, given in the law dictionary The Interpreter, first appeared in 1607. Cowell, Regius Professor of Civil Law in the University of Cambridge, made an important contribution to political science with his legal definition of property because it was the "earliest explicit definition" of the word.¹⁹ His

17. Harris, "'Lives, Liberties, and Estates,'" 236.

18. Ibid., 220.

19. G. E. Aylmer, "The Meaning and Definition of 'Property' in Seventeenth-Century England," Past and Present 86 (Feb. 1980): 87.

definition was debated by Members of Parliament in 1610, the first Parliament of James I. G. E. Aylmer, in "The Meaning and Definition of 'Property' in Seventeenth-Century England," quotes Cowell's definition:

Propertie signifieth the highest right that a man hath or can have to any thing; which is in no way depending upon any other man's courtesie. And this none in our kingdom can be said to have in any lands or tenements, but only the king in the right of his crowne.²⁰

After providing this explanation of the concept of property, Cowell proceeded to explain in The Interpreter that the king possessed the only property rights because lands of the realm were held in fee. Nevertheless, property was included as a part of common law, used for "that right in lands and tenements that common persons have."²¹ The start which Cowell gave to the definition of property began the seventeenth century debate of the concept.

Cowell's definition of property established him as both "the originator of the definition of absolute individual ownership" and "a would-be absolutist."²² His stance as an absolutist can be seen when considering that Parliament debated this definition during the reign of James I, England's theorizer of divine right. Despite the debate in Parliament, in the early seventeenth century, there seemed to be little anxiety "over the legitimization of private

20. Quoted in Ibid., 88.

21. Quoted in Ibid., 88.

22. Ibid., 97.

property."²³ By the time of the Glorious Revolution, however, when Locke presented his property theory, definitions of property changed into a justification of personal liberties.

As property theory changed during the seventeenth century from supporting the power of the sovereign into a justification of personal liberties, historians have come to regard it as a revelation of what and why Englishmen were fighting. In a period of English history which experienced dramatic changes, moving from the Civil Wars to the Commonwealth to the Exclusion Crisis to the Glorious Revolution, property theory "appear[s] to explain so much."²⁴ During this time period, the preservation of political liberty was associated with the security of properties.

In her presentation "'Property' in Seventeenth-Century English Political Thought," Margaret Sampson argues that the concept of property during the period served as a bridge between economics and ideology. She contends that by the end of the seventeenth century property referred to "rights in or over things" rather than to the things themselves, but was increasingly becoming an economic term.²⁵ If property

23. Margaret Sampson, "'Property' in Seventeenth-Century English Political Thought," Proceedings of the Folger Institute, Volume 3 (The Folger Shakespeare Library, 1990), 263.

24. Ibid., 259.

25. Ibid., 260.

refers to "rights in or over things" rather than to the things themselves, it is a word denoting liberty because it signifies that people have a right to something. In addition, a right in some thing signifies that a person has an economic interest in that thing because they have a right to the produce of it.

Property theory as a defense of individual liberties arose from legal definitions of property given during the seventeenth century, which reveal a dramatic break from the earliest legal definition of property. Legal definitions of property after Cowell's first started to appear in the 1620s and became commonplace by the 1650s. One lawyer, William Style, published collections of law reports during this period, using recent legal decisions in his definition. In Style's A Practical Register (1670), the work of a judge from 1648 is referenced in deciding that

the king is thought of simply as another potential owner, competing for title with other individual owners, one who indeed has a right to make a way for his subjects to go across someone else's land but has no more title in that land as a whole than anyone else.²⁶

Style's decision reveals a dramatic break from the definition of property given by Cowell. Cowell argued that the king was the only person entitled to property rights; sixty years later, Style argues that the king is not entitled to more property rights than any other "potential

26. Quoted in Aylmer, 94.

owner." The difference between Cowell's definition of property and Style's decision regarding the king's status as a property owner is similar to the much larger shift taking place in legal decisions during the seventeenth century.

The break between Cowell and Style represents the much larger ideological split between common law and feudal law. While common law supported the endowment of individuals with a "Romanized form of private property or dominion," feudal law recognized ownership of goods but not in "the concept of a right in land good against the world."²⁷ The distinction of property rights found in feudal and common law reveals a paradox of English legal tradition because common law emerged from feudal origins. While feudal law stressed the importance of the crown, common law was becoming more and more important as the seventeenth century progressed because it could be used as a justification of personal liberties.

The confusion between common law and feudal law was highlighted by English political changes during the seventeenth century. Strikingly, the Interregnum saw the wide acceptance of the extinction of sociability in a state of nature and natural property by the Fall, leaving Hobbesian man.²⁸ In contrast, by the 1680s, natural right to private property replaced the civil right of private property present during the Interregnum. This replacement

27. Sampson, 263.

28. Ibid., 272.

occurred as a fulfillment of the need for "a revolutionary political theory which could oust a papist successor or king without upsetting the existing laws and rights of property."²⁹ In essence, the change in property theory during the 1680s towards a justification of personal liberties was a result of the Exclusion Crisis. Drawn from contemporary language and moral principles based on natural law, it was hard to ignore property theories which justified individual liberties because the theories were based on a foundation which had wide credibility.³⁰ Nevertheless, as Aylmer points out, "the word was not given legal definition until remarkably late."³¹ By the time of the exclusion crisis, natural law theorists were able to draw upon accepted principles of natural and common law to justify their property theory. By the end of the seventeenth century, the confusion between common and feudal law was overshadowed by the popular acceptance of common law.

The Whigs used the language of a defense of property rights extensively during the exclusion crisis. Including this language in the rhetoric of the time, the Whigs helped to increase its use during the late 1670s and early 1680s as a reason for defense against arbitrary government. The party used a rhetoric involving property rights because they

29. Ibid.

30. Ibid.

31. Aylmer, 87.

perceived the Popish Plot as a threat to the landed class under a popish successor, who would necessarily be absolute.³² The Whigs did not just represent the propertied, however. By including an argument that property was more than just the possession of goods, Whigs appealed to all social groups. For example, nonconformists adopted the Whig party because of the religious persecution of the Restoration.³³ Just the presence of an absolute monarch, Catholic or not, would pose a threat to individual political liberties. By defending property rights, the Whigs felt they were presenting an argument which should be accepted against a Catholic successor.

In opposition, while the Tories also felt they were "true defenders of English liberties guaranteed by law," they felt the Whigs were the real threat to property rights.³⁴ Assuming they were defending men of property against the threat of the masses, the Tories argued their opposition was "laying a snare for people of liberty and property."³⁵ The Tories feared the actions and the language of the Whigs because they felt that party would eliminate the true English government in an arbitrary, unconstitutional way.

In order to express their political stance to the

32. Harris, "Lives, Liberties, and Estates," 221.

33. Ibid., 223.

34. Ibid., 219.

35. Ibid., 231.

public, the Tory party published Sir Robert Filmer's Patriarcha in 1680.³⁶ Filmer, "an uncompromising absolutist," most fully expressed his ideas in Patriarcha, easily his most famous work.³⁷ Resembling the ideas of the higher clergy before the Civil War, he argued that God gave the king an absolute power over the state, which can be viewed as the king's family. By claiming the king has an absolute power over the state, just as a father has an absolute power over his family, Filmer presented the patriarchal view of society within Patriarcha. In fact, "Filmerism was above all things the exaltation of the family: it made the rules of domestic society into

36. Notice, however, that most sources just accept that Filmer was published as a representative spokesman for the Tory party by members of that party. See, for example, Gordon J. Schochet's Patriarchalism and Political Thought (New York, New York: Basic Books, 1975), where Schochet writes "in 1679, a number of people recognized that the issue behind the debates in the Exclusion crisis were similar to the conflicts of the 1640s, and a great many tracts and pamphlets from the earlier crisis were reprinted . . . In 1680 Patriarcha was finally published" (119). A specific mention of publishers can be found in James Daly's Sir Robert Filmer and English Political Thought (Toronto, Canada: Toronto University Press, 1979), where Daly tells us that the Patriarcha published in 1680 was brought out by Richard Chiswell, although his "identification with royalism was not so strong; he leaned heavily towards theological publication" (145). In 1684, Daly relates, Patriarcha was published again by Richard Royston, who was a royalist "'publisher to three kings' and had been denounced in 1645 as a 'constant factor for all scandalous books and papers against the proceedings of parliament'" (145).

37. Johann P. Sommerville, "Introduction," Patriarcha and Other Writings (Cambridge, Massachusetts: Cambridge University Press, 1996), xi, xiv.

principles of political science."³⁸ By arguing that the king was the absolute father over his country, Filmer attempted to show that power did not reside in the people and the government did not arise from their consent. To present a contrary argument, Filmer believed, was to present an argument as "absurd as any ever uttered."³⁹ Filmer used patriarchal theory to present his belief that without strong fatherly and royal power, manifest in the king, man's love of liberty would lead to anarchy.⁴⁰ Any inroads to monarchical power he feared would lead to mob rule, as did the Tories at the time of the exclusion crisis.

Patriarchal theory had become popular in early seventeenth century England where works like James VI and I's True Law of Free Monarchies used it against claims which said that power came from the subject.⁴¹ Filmer's work, a major part of the patriarchal tradition and created by the most famous and popular of the patriarchal theorists, could be used by the Tory party to counter the arguments of the Whigs, who did believe that the king was subject to common law.⁴² In writing Patriarcha, Filmer intended to dispel the

38. Peter Laslett, "Sir Robert Filmer: The Man Versus the Whig Myth," The William and Mary Quarterly 5, 3 (1948), 544.

39. George H. Sabine, A History of Political Theory, (New York, New York: Henry Holt and Company, 1949), 513.

40. Sommerville, xxii.

41. Ibid., xviii.

42. However, it must be noted that Filmer became the most famous patriarchalist after his death, when Patriarcha was published.

"common opinion" that

'Mankind is naturally endowed and born with freedom from all subjection, and at liberty to choose what form of government it please, and that the power which any one man hath over others was at the first by human right bestowed according to the discretion of the multitude.'⁴³

Filmer opposed this opinion because

it is not to be found in the ancient Fathers and doctors of the primitive church. It contradicts the doctrine and history of the Holy Scriptures, the constant practice of all ancient monarchies and the very principles of the law of nature. It is hard to say whether it be more erroneous in divinity or dangerous in policy.⁴⁴

This "common opinion" became the standard Whig position by the time of the exclusion crisis, thirty years after Filmer stated it.

There is some scholarly debate as to whether Filmer's ideas really did represent the standard Tory political position. Peter Laslett, for instance, writes

It is well known that in republishing Filmer, the Tories, champions of the Monarchy against Shaftesbury and the Whig Exclusionists, scored a notable propaganda victory.⁴⁵

He continues by claiming that the exclusion crisis can be referred to as "the Filmer controversy of 1679-81," because after Patriarcha was published in January of 1680, there was

43. Robert Filmer, Patriarcha and Other Writings, ed. Johann P. Sommerville (Cambridge, Massachusetts: Cambridge University Press, 1996), 2.

44. Ibid., 2.

45. Laslett, "Introduction," Two Treatises of Government, (Cambridge, Massachusetts: Cambridge University Press, 1963), 64.

"an enormous growth of Filmer's influence which went on during the rest of that year."⁴⁶ Knights, who has spent some time studying the pamphlet wars of the Exclusion crisis, agrees with Laslett. He explains that, while the publishing of Patriarcha was part of a larger trend of loyalist reliance on works from between 1640 and 1660, "It is easy to see how Filmer's Patriarcha was published as part, or indeed, as the embodiment, of this loyalist attack in the autumn and winter of 1679-1680."⁴⁷ A strong case can be made that Filmer's ideas represented the Tory views at the time when Patriarcha was published.⁴⁸

In contrast to Laslett and Knight's ideas of Filmer's influence rests the opinion of James Daly, who denies that Filmer's work was representative of the Tory party. Daly believes the parliamentary debates over exclusion "show no evidence of Tory use of Filmerian ideas, and could hardly do so."⁴⁹ In fact, "In view of the traditional story, it may

46. Ibid., 67, 72-3.

47. Knights, 249.

48. There is some debate as to the dates of Filmer's composition of Patriarcha. In "Sir Robert Filmer: The Man Versus the Whig Myth," Laslett claims that it was written in the late 1630s and early 1640s. An alternative dating is provided by Sommerville in his "Introduction" to Patriarcha and Other Writings. In his introduction, Sommerville presents his idea that "Perhaps the first two chapters of Patriarcha were composed in the 1620s and the third chapter about 1630" (xxxiv). John M. Wallace, James Daly, and Richard Tuck have also provided different dates for the work's composition.

49. James Daly, Sir Robert Filmer and English Political Thought (Toronto, Canada: University of Toronto Press, 1979), 146.

be surprising that Filmer made so little impact on the exclusion debates."⁵⁰ Nevertheless, even Daly admits that Filmer must have some basis as a Tory spokesman because Patriarcha appeared twice during the exclusion parliaments.⁵¹

Whether Filmer represented the standard Tory position or not, it is certain that he became famous because he was refuted in detail by John Locke, Algernon Sidney, and James Tyrrell. Filmer tried to keep Patriarcha (originally written in several stages in the late 1630s or early 1640s) from being published within his lifetime.⁵² He intended to circulate the manuscript by having friends pass it to their friends.⁵³ Because of its method of circulation and Filmer's pains to keep it from being published, it is not known why Patriarcha was written, who read it, or what the audience was supposed to think, although it must have labeled Filmer as an "extreme conservative."⁵⁴ Filmer was considered so conservative that he suffered because of his royalist beliefs during the Interregnum; he spent over eighteen months in prison, lost over 1500 pounds of personal wealth, experienced damage to his home, and felt exactions

50. Ibid.

51. Ibid., 145-146. Daly contends that most purchasers of Patriarcha were Whigs, rather than Tories. This contention only makes sense because the Whigs had to argue against the Tory stance, Tories did not have to defend themselves within their own party.

52. Laslett, "Sir Robert Filmer," 524.

53. Ibid., 532.

54. Ibid.

of military and fiscal authorities during the Civil Wars.⁵⁵ Filmer died on May 30, 1653, nearly thirty years before Patriarcha was published.

When Filmer's work was published during the exclusion crisis his ideas were not "associated with an unpopular and even persecuted minority."⁵⁶ Because his work did not represent the minority during the exclusion crisis, and because, according to Laslett's astonishing claim, Filmer may be the "only one even reasonably effective theoretical conservative in the political history of the English speaking peoples," his work was open for attack to provide a foundation for the opposition.⁵⁷ By writing in refutation of Filmer, while representing the Whigs, Locke, Sidney, and Tyrrell helped establish a foundation for their party's political argument and their own reputations as political theorists.

Of these three men, Sidney was the only republican. In his major work, Discourses Concerning Government, he reveals both his republican interests and his step-by-step refutation of Filmer.⁵⁸ As a republican member of parliament, Sidney fought for the "good

55. Ibid., 540.

56. Ibid., 523.

57. Ibid.

58. For a more detailed discussion of Sidney during this period, see Jonathon Scott's Algernon Sidney and the Restoration Crisis, 1677-1683 (Cambridge, Massachusetts: Cambridge University Press, 1991). Although this work has been criticized for overemphasizing a republican interest

old cause," believing that religion was not important to political man's motivation but only "a pretext for the recovery of their liberty and ancient privileges."⁵⁹ For Sidney, religion was his own and should be removed from the realm of politics, although he perceived Patriarcha as a threat because it argued for a popish successor.⁶⁰ In the sense that he did not believe religion to be important in the realm of politics, Sidney was not a typical Whig. Unlike other Whigs, he did not see religion as the central issue of the exclusion crisis. He differed enough from other Whigs that he opposed Shaftesbury and cannot really be classified as either exclusionist or anti-exclusionist.⁶¹ As a republican, Sidney was not a mainstream Whig.⁶²

While an established republican and member of Parliament, Sidney's political writing was not influential

among the Whig party, and an "exclusion of exclusion," it has been praised for Scott's contribution to historiography because it reveals Sidney acted independently of Shaftesbury and was an "old-cause" man rather than a Whig. Scott devotes two chapters of the book to discussing the arguments present in Sidney's Discourses Concerning Government and focuses on issues of popery and arbitrary government.

59. Knights, 137, 142.

60. Blair Worden, "The Commonwealth Kidney of Algernon Sidney," Journal of British Studies 24, 1 (1985), 22. Also see J.G.A. Pocock, "England's Cato: The Virtues and Fortunes of Algernon Sidney," Historical Journal 37, 4 (1994), 926.

61. Harris, Politics Under the Later Stuarts, 284. Knights, 217.

62. See Worden, 27-28, who claims Sidney was not championed until after his death and then by radical Whigs who downplayed his republicanism.

enough before the eighteenth century to be considered for its statements about the exclusion crisis. Because Sidney's thesis rests on a "one-sided bargain that leaves kings permanently subject to the will of the sovereign people," at a time when the monarchy would not be eliminated, his contemporaries could not accept his writings.⁶³

Indeed, his main claim to fame is not his work but his trial and execution for an alleged role in the Rye House Plot of 1683: an alleged attempt to assassinate Charles II as he passed the Rye House from his castle to London.⁶⁴ His death turned him into a martyr for the Whig cause, which was perpetuated by the posthumous publication of Discourses Concerning Government in 1698. Although he offers something as a republican, Sidney is otherwise ineffectual as a political theorist.⁶⁵

Sidney's Discourses, "a rather rambling and ill constructed book," has been criticized because it does not add "any significant addition to political ideas generally familiar in the seventeenth century."⁶⁶ Even republicanism, the issue closest to Sidney's heart, could not establish him as a vital political theorist among his contemporaries because his idealization of an aristocratic republic was never practical. As a republican, Sidney was less original

63. Pocock, 925. Worden, 16.

64. See Worden for Sidney's role in the Rye House Plot.

65. Pocock, 915.

66. Sabine, 508.

and less important than James Harrington and, by the end of the Glorious Revolution, became part of a tradition which was eliminated as a serious political system outside of the United States. Republicanism was dead at the end of the Glorious Revolution because "no one worth mentioning wished to try the sad experiment of the Commonwealth."⁶⁷ As an author and as a republican, Sidney was not an effective political theorizer for the issues of liberty at the time of the exclusion crisis.

Partly because of the strength of his myth as a martyr for the Whig cause, and as a political theorist of rebellion in late seventeenth century England, Sidney is worth studying because he reveals the relationship between politics and ideas at his time.⁶⁸ In fact, it has been said that Sidney's importance was as a "political actor."⁶⁹

Like Sidney's Discourses Concerning Government, John Locke's Two Treatises of Government was written in refutation of Filmer's Patriarcha. Unlike Sidney, however, the alternative political theory which Locke provides is effective as a representation of the Whig position and as a useful replacement for Filmer's patriarchal theory. Writing as a spokesman for the Earl of Shaftesbury, Locke's Two Treatises expose him as a defender of revolution and a

67. Ibid., 517.

68. This is an argument that Worden develops in further detail.

69. Pocock, 916.

contributor to the Whig-Tory battle of the exclusion crisis.⁷⁰

Until the twentieth century, it was assumed that Locke wrote the Two Treatises to justify the Glorious Revolution. After all, the book was not published until 1690, and Locke writes in his preface that he hopes his work is

sufficient to establish the Throne of our Great Restorer, Our present King William; to make good his Title, in the Consent of the People . . . And to justifie to the World, the People of England, whose love of their Just and Natural Rights, with their Resolution to preserve them, saved the Nation when it was on the very brink of Slavery and Ruine.⁷¹

Despite Locke's statement, Laslett argued in his introduction to an edition of the work that the "Two Treatises is an Exclusion Tract, not a Revolution pamphlet."⁷² Through his research, Laslett determined that Locke drafted most of the Two Treatises in the autumn and winter of 1679-1680.

Despite what has been called "unrefuted bibliographical arguments" made by Laslett, at least one other dating has been provided for Locke's drafting of the Two Treatises.⁷³ Richard Ashcraft argues that Locke composed the work after

70. For a more detailed explanation of Locke's relationship with Shaftesbury, see Richard Ashcraft's Revolutionary Politics and Locke's "Two Treatises of Government" (Princeton, New Jersey: Princeton University Press, 1986).

71. John Locke, Two Treatises of Government, revised edition, ed. and intr. Peter Laslett, (Cambridge, Massachusetts: Cambridge University Press, 1963), preface.

72. Laslett, "Introduction," 75.

73. Knights, 255.

the dissolution of the Oxford Parliament in 1681, as a justification for a planned revolution.⁷⁴ Although Ashcraft's dating has been criticized as being reached too hastily, it is important because it casts Locke in a revolutionary role, as spokesman for the Earl of Shaftesbury.⁷⁵ Rather than lending credence to the Two Treatises as an abstract book of political philosophy, Ashcraft's dating shows that Locke's work cannot be removed from the political circumstances (the Exclusion crisis and the falling of Whigs in Parliament) in which it was written.

No matter what date is accepted for when Locke wrote the Two Treatises (and there seems to be no way to say which of the earlier two datings is correct) it was written in partial refutation of Filmer around the time of the exclusion crisis. Varied statements have been given to explain why Locke wrote against Filmer. For example, Sabine claims that Locke's political theory was "superficially simple" and took advantage of "poor Filmer, who had the merit of being absurd and of appearing more absurd than he was"; whereas Laslett credits Filmer as

the man of the moment, a formidable and growing force with those whose political positions mattered, and representing in himself the ipissima verba of the established order. It was because this was so that Locke found himself impelled to write on this subject, and for that reason Filmer's thinking lies directly behind his political doctrines.⁷⁶

74. See Ashcraft's Revolutionary Politics, especially Chapter 7.

75. Knights, 255.

76. Sabine, 524. Laslett, "Introduction," 50.

Accepting Daly's moderate argument that there is no smoke without fire, so that Filmer must have represented the Tory position to a degree, Locke wrote in refutation of Filmer because he was accessible and presented political ideas in disagreement with his own ideas. Probably written during the pamphlet wars of 1679-1680, Locke's thesis "answered almost every point raised by loyalist pamphleteers," including "the ideas of the equality of man, the formation of government by popular consent."⁷⁷ Because he wrote against Filmer, Locke can be seen as a champion of the Whig cause.

The First Treatise or, "In the Former, The False Principles and Foundation of Sir Robert Filmer, And His Followers, Are Discredited and Overthrown" was devoted to countering Filmer's argument, as presented in Patriarcha, nearly step-by-step. Locke begins the First Treatise by explaining that he is writing against Filmer because his book is

a Book, which was to provide Chains for all Mankind, I should find nothing but a Rope of Sand, useful perhaps to such, whose Skill and Business it is to raise a Dust, and would blind the People, the better to mislead them, but in truth not of any force to draw those into Bondage.⁷⁸

Although attacked as having "no permanent importance," the First Treatise serves as a direct connection between Locke

77. Knights, 251.

78. Locke, First Treatise, 1. The number in all references to Locke will indicate the paragraph number.

and his political philosophy with the time of the exclusion crisis.⁷⁹ While he does not mention parliamentary issues of exclusion in his Second Treatise, which Knights claims he uses to expand his attack to include writers other than Filmer, the major issue of the treatise--man's creation of government for the protection of private property--can be credited to Filmer.⁸⁰ If Locke had not refuted Filmer in the First Treatise, his attention may not have been directed towards property issues. It has even been said that Locke held "no sign of interest in the theory of property" before writing against his nemesis.⁸¹

Nevertheless, Locke became an innovator in property theory. Many of the major interpretations of his work devote themselves exclusively to his property theory, including those interpretations by C. B. Macpherson and James Tully, and no major work on Locke neglects this aspect of his thought.⁸² Although the Second Treatise, and the more abstract political philosophy it contains, has overshadowed the First Treatise, Locke's writing became "intellectually and historically important" because it

80. Knights, 251. Note, however, in the last chapter of the Second Treatise, Locke seems to be most concerned with the right of summoning and dissolving Parliament. In his "Introduction" to the Two Treatises, Laslett claims that this right was an issue between 1678 (or 1675) and 1681 (68).

81. Laslett, "Introduction," 81.

82. See my appendix (below) for a discussion of different interpretations of Locke's property theory, which will be helpful in reading my second and third chapters.

started as "a deliberate and polemically effective refutation of the writings of Sir Robert Filmer."⁸³

Like his friend Locke, James Tyrrell also wrote a political tract at the time of the exclusion crisis in refutation of Filmer. His book, Patriarcha non Monarcha (1681), was much more of a dialectic between his own arguments and those of Filmer than the Two Treatises. Tyrrell felt impelled to refute the divine right of kings and Filmer, whom he saw as dangerous because he upheld royal absolutism by hereditary right and did not believe in the antiquity of the House of Commons. As soon as Tyrrell read Filmer's Patriarcha, he felt it was a book which he should devote his energies against. As he revealed to his antiquarian lawyer friend, William Petyt,

There is lately come the this town a new treatise of Sir Robert Filmer's called Patriarcha, which I am considering of . . . for the 3rd chapter contains . . . dangerous errors.⁸⁴

In the preface to Patriarcha non Monarcha, Tyrrell would elaborate on why he took the pains to write the book:

I write these Observations for no other end than for the Truth, and in defence of the Government as it is establisht, and the just Rights and Liberties of all true English-men. All which, I pray God preserve as long as the Sun and Moon endure.⁸⁵

83. Laslett, 89.

84. Quoted in J.W. Gough, "James Tyrrell, Whig Historian and Friend of John Locke," Historical Journal 19, 3 (1976): 584.

85. James Tyrrell, Patriarcha non Monarcha. The patriarch unmonarch'd: being observations on a late treatise and divers other miscellanies, published under the

He stated his purpose after declaring that Filmer, among others, was "a wooden Idol of their own making."⁸⁶ When Tyrrell states "of their making" he is referring to the Tories; he recognizes Filmer as the spokesman for the opposition and works to discredit his position.

As his writing reveals, Tyrrell was a member of the Whig party and openly became one after the Glorious Revolution. Although his father, Sir Timothy Tyrrell, had been a knight in royal service, James devoted himself to "attacking the principles for which the royalists had stood," though he does provide a defense for the established monarchy.⁸⁷ After marrying into an estate at Oakley in 1670, and refusing to practice law, he served as a Justice of the Peace and deputy lieutenant for his county of Buckinghamshire.⁸⁸ Tyrrell remained a loyal Whig until his death in 1718, when one person remarked that

"He was a good scholar and well versed in his history, but tied to a Party, and writ to serve a turn . . . He had not great judgement, but was to be esteemed for the great pains he took."⁸⁹

Although this commentator criticized Tyrrell for his

name of Sir Robert Filmer, baronet. In which the falseness of those opinions that would make monarchy jure divino are laid open: and the true principles of government and property (especially in our kingdom) asserted. By a lover of truth and his country (London, England: Printed for Richard Janeway, 1681), preface.

86. Ibid.

87. Gough, 581.

88. Ibid., 581-582.

89. Quoted in Ibid., 605.

attachment to the Whig party, this attachment was a bond that connects Patriarcha non Monarcha to the political circumstances of the exclusion crisis. Writing to "serve a turn," Tyrrell's interests in writing his book lay in rejecting the Tory position, fronted by Filmer, in order to advance the position of the Whigs. He even said as much about the two parties when he remarked about groups in Britain in 1713, claiming that non-jurors and Whigs were the only honest men in the kingdom, while Torys and High-Church men "are men of no principles, but go backwards and forwards without any regard to conscience."⁹⁰ Tyrrell championed the Whig cause, disliking what he knew of the Tory political philosophy.

Unfortunately for historians of late seventeenth century England, little attention has been paid to the thought of Tyrrell. There is only one secondary source devoted to Tyrrell. Many works about Locke's political philosophy refer to his friend. Even J.W. Gough's "James Tyrrell, Whig Historian and Friend of John Locke," bears in its title a reminder that Tyrrell is famous for his relationship with Locke. Gough does write that

It has been said of James Tyrrell that his "main claim to distinction was perhaps his friendship with John Locke," but his elaborate monument at Oakley Church . . . although it records a number of his qualities and achievements, does not mention this.⁹¹

90. Quoted in Ibid., 609.

91. Gough, 581.

Tyrrell, as Gough's statement hints, is worthy of study on his own merits. Tyrrell did write another work against the Filmerian position in defense of the Whigs in 1694, Bibliotheca Politica, which is considerably longer than Patriarcha non Monarcha, and has had some recent historical attention devoted to it.

In his "Introduction" to the Two Treatises, Laslett recognizes that Tyrrell was more convincing to his contemporaries in some ways and, unlike Locke, realized "Filmer's needling effectiveness."⁹² Laslett does not expand on these points, though, and does not give an indication of where these points can be researched. Despite a lack of secondary sources, both Locke and Tyrrell were important because of their refutation of Filmer's Patriarcha, their reliance on natural law arguments, and their inclusion of property in their political philosophy, as well as their demonstrated relationship to the Whig-Tory debate centering around the exclusion crisis. In the final analysis, however, Tyrrell's Patriarcha non Monarcha is the most important piece to consider in context of the times in which it was written. Tyrrell's work, more than Locke's Two Treatises, reflects the political circumstances of the exclusion crisis.

To show the importance of Tyrrell's work it must be

92. Laslett, "Introduction," 92-3.

compared and contrasted with Locke's political philosophy. Both men took pains to refute Filmer's patriarchal position and, in doing so, adopted property theory which reveals the Whig movement from historical arguments to natural law arguments. Based on natural law restrictions, both Locke and Tyrrell incorporate property theory into their work. Relating man's acquisition of private property from common property given by God, they both accept the labor theory of value and its restrictions. Despite their acceptance of the labor theory of value, the definitions of property which Locke and Tyrrell accept are drastically different. On the one hand, Locke defines property in a way that he attempts to for his definition to bridge economic and ideological rights. Tyrrell, on the other hand, presents a property definition where the term is only employed in reference to economic rights and occupancy is accepted as a right to property. In addition, while Locke will not accept any absolute monarchy as legitimate, Tyrrell presents an argument in which absolute monarchy can be considered legitimate in some circumstances. Claiming occupancy as a right to property, which Locke does not, Tyrrell's possible acceptance of absolute monarchy and his purely economic definition of property reveals him as a supporter of the status quo under the political circumstances in which he was writing.

Chapter One
The Refutation of Filmer: A Turn From Historical
Arguments to Natural Law Theories

In writing Patriarcha, Filmer was presenting the patriarchal justification of political authority. The work was important enough that Locke, Sidney, and Tyrrell attacked it, and so, as Gordon Schochet claims, "it is necessary to examine patriarchalism on its merits as a meaningful justification of political obligation."¹ In seventeenth-century Stuart England, patriarchal theory was accepted and pervasive because its appeal to history and the Bible was accepted.²

1. Gordon J. Schochet, Patriarchalism in Political Thought: The Authoritarian Family and Political Speculation and Attitudes Especially in Seventeenth-Century England (New York: New York, Basic Books, Inc., 1975), 4.

2. For a revisionist approach, see James Daly's Sir Robert Filmer and English Political Thought, where the author claims that designating Filmer as a patriarchalist can be deceptive because it does not distinguish his theories, where the political sovereign is dominant and not the family, from anyone else's theories (151-152). In addition, patriarchalism "does not really express the central characteristic of Filmerism" (151). Daly also argues that, despite the merits that patriarchalism was a defense of the Stuarts, Filmer himself was nothing but the perfect "straw man" for the Whigs (160). He avowed principles which the Stuarts feared, but his ideas did not move Whig enemies, rather being "an isolated group of ideas," which presented his attackers with "all the glory of combatting Goliath with none of the dangers David had faced" (161, 163). This being said, Daly must be praised for his critical and interesting work. Unfortunately, the book reads as if Daly set out to argue with any and every standard work on the subject. This reading both limits the forcefulness of his argument and constantly tells the reader to beware that the author may have written to create a reputation for himself. An example of an attempt to establish a reputation is given when Daly claims that Filmer became "something of an intellectual revolutionary" because

It seems that there was "no patriarchal theory of obligation prior to 1603."³ Appealing to both men who lacked education and the gentry, both groups which could accept a theory which supported their dominance within their own families and followed the great chain of being notion, when an absolutist doctrine appeared in Scotland and England under James I, patriarchalism could take hold.⁴ Patriarchal political theory

found a living social reinforcement in the very strong position contemporary society afforded to a father . . . While patriarchalism was by no means universally used or used in the same way when it was, it was able to provide material for a wide range of use before Filmer published anything on political theory.⁵

For patriarchalists of this period, government was not a human construct but part of the natural and god-given order. According to David Foster, who studies Locke's relationship with patriarchal theory, patriarchalists believed government did not just preserve property but served to provide a "comprehensive paternal care of citizens."⁶ James I even used fatherly analogies to describe his kingly powers.⁷

he ignored antiquity and Christian wisdom (154). Although Filmer was an important intellectual, even a cursory reading of Patriarcha reveals that he relied on both Aristotle and the bible for his arguments, in direct conflict with Daly's claim.

3. Schochet, 16.

4. Ibid., 85-87.

5. Daly, 59.

6. David Foster, "Taming the Father: John Locke's Critique of Patriarchal Fatherhood," Review of Politics 56, 4 (1994): 644.

7. Schochet, 87.

During his reign, tracts were published which stressed the importance of the Fifth Commandment as a basis for fatherly authority and court rulings were given based on the Fifth Commandment.⁸ Seventeenth-century England experienced a growing acceptance of patriarchal theory as the explanation for government's origin.

When the theory reached Filmer, he came to believe that patriarchalism provided the natural basis of order in the family and in government, arguing that kingly power and fatherly power are one and the same thing. He expresses this belief in his writing: "If we compare the natural duties of a father with those of a king, we find them to be all one, without any difference at all but only in the latitude or extent of them."⁹ Furthermore, Filmer contends, "all the duties of a king are summed up in an universal fatherly care of his people."¹⁰ According to Filmer, the king was the father of his subjects; as the father, his subjects should be willing to follow his commands and accept his government.

Patriarcha established Filmer as a critic of populism, which he felt went against the tying of men to institutions. He felt men should be tied to institutions, for tying men to institutions was the same thing as admitting "the superior ____

8. Ibid., 89-91.

9. Filmer, 12.

10. Ibid.

powers and rights of fathers" who had established these institutions.¹¹ Thus, populism could not be reconciled with deriving obligations from the ancestral contracts which originally established these institutions. After all, it is "unnatural for men to have to choose their governors, or to govern or to partake in the government."¹² When patriarchalism became a political doctrine of serious debate during the exclusion crisis, it became so because it was the main opposition to populist writers.¹³ If it were not for the Whig-Tory battle during the 1680s, Filmer--as an opponent of populism--may never have become well known.¹⁴

Anti-populist, Filmer was against the state of nature, contractual government, and the source and character of private property away from the king. Because the historical accuracy of the Bible was widely accepted in the seventeenth century, Filmer was able to employ biblical history from Adam to demonstrate a direct line from Adam to monarchs. This line of succession allowed for private property, which had originally been given from God exclusively to Adam, to now be under the sole guidance of the king. Much of

12. Filmer, 32.

13. Schochet, 120.

14. Again, see Daly for a revisionist account. He claims that Filmer's now accepted position as a representative royalist is a designation his contemporaries denied him (159). Rather than English royalism, Daly argues, Filmer's ideas were of legal reductionism, but the Whig triumph inflated his reputation at a cost of distorting his ideas as a royalist.

Filmer's originality as a patriarchalist arises from his Genesis argument. He makes Genesis "the only source for genetic, patriarchal, and any other principles of political obligation."¹⁵ All of Filmer's theory arises from what he thought was God's grant to Adam of absolute power, which has descended to contemporary monarchs. He thinks that

This lordship which Adam by creation had over the whole world, and by right descending from him the patriarchs did enjoy, was as large and ample as the absolutest domain of any monarch which hath been since the creation.¹⁶

His reliance on the Genesis argument has been praised as making "sovereignty so all-inclusive, so radically simple, that problems of definition could hardly appear."¹⁷

Filmer did not accept the contractual theory of government. In direct conflict with contractual thinkers, Filmer's

chief point was the moral and logical impossibility of deriving government, private property, and the hierarchial arrangements that exist in society from the conditions of original natural freedom and equality.¹⁸

According to Filmer, if there had truly been natural freedom in a state of nature, people would not have progressed towards instituting government, but towards anarchy. After all, if all men are equal, a contract constructed by one generation could not be used to govern the next. Filmer's

15. Daly, 61.

16. Filmer, 4.

17. Daly, 61.

18. Schochet, 122.

patriarchal theory

opened the prospect of a free-for-all where he himself was looking for a practical explanation for the orderly construction of new sovereignties consistent with his own theories.¹⁹

For order, people needed the obligation to their sovereign, the same obligation they owed their father. After all, Filmer contends,

this subjection of children is the only fountain of all regal authority, by the ordination of God himself. It follows that civil power not only in general is by divine institution . . . but power respective in regard of the special form of government.²⁰

In other words, because the people owe their sovereign the same obedience they owe their father, as God ordains, order can be maintained.

As a result of his rejection of the idea of contractual government, Filmer also denied the possibility that private property, outside of the monarch's guidance, exists. Any property that exists outside of the monarch only does so because of the king's graces. The king holds a "lordship . . . over the world" which had descended from Adam and was a "large and ample" absolute domain.²¹ The king could, however, grant subjects rights to his property. Otherwise, for private property to exist, Filmer reasoned, everyone must have come together at some point to agree to its institution and he cannot find any instances of people doing

19. Daly, 86.

20. Filmer, 7.

21. Ibid., 4.

this. In Patriarcha, he asks his readers for "but one example out of the history of the whole world" where everyone had come together to make a decision.²² Even if everyone had decided to a contract for private property, Filmer thought, the contract would not be binding from one generation to the next because natural law theorists would not accept patriarchalism.

Instead of contracts instituting government and private property, Filmer believed that every government had a sovereign whose power was arbitrary and above the power of positive law. The sovereign was above positive law because kings must stand as judges over laws, which are by nature confusing.²³ The sovereign's authority was arbitrary because making law according to law is both circular and originally impossible.²⁴ Arguing against individual equality in a state of nature, contractual government, and the source and character of private property, Filmer was trenchantly anti-populist.

Filmer's patriarchal theory had an anti-populist nature because Filmer used it to link the divine right of kings to patriarchal authority and the "direct derivation of all political authority from the power of Adam."²⁵ He is the only patriarchalist that denies a father's authority changes

22. Ibid., 6.

23. Ibid., 47.

24. Schochet, 132.

25. Ibid., 139.

as his child matures.²⁶ Rather than reason, the final test of truth for Filmer was the Bible, which he felt justifies only patriarchal monarchy. As he writes in Patriarcha, "God . . . [has] taught us by natural instinct, signified to us by the creation and confirmed by His own example, the excellency of monarchy," for "There is not in all Scripture mention and approbation of any other form of government."²⁷ This was a solid, if not original, justification. Whether or not his theory was the standard Tory position at the time of the Exclusion crisis, it was the most popular patriarchal position and justified anti-populist political beliefs.²⁸

One of the reasons for the success of Filmer's theory is that it gives order to the world which God created. As a part of this order, monarchical and fatherly power are identical and not merely similar. By equating fatherly and monarchical power, Filmer concluded that political power is natural, divine, absolute, and unlimited, just as familial authority is in its pristine form.²⁹ Filmer tells his readers that

as kingly power is by the law of God, so it hath no inferior law to limit it. The father of a family governs by no other law than by his own will, not by the laws or wills of his sons or servants.³⁰

As this passage illustrates, the sovereign stands supreme

26. Foster, 648.

27. Filmer, 12.

28. Schochet, 139.

29. Ibid., 269.

30. Filmer, 35.

within society because, just like a father has no authority above him in the family, the king has no power over him in the government.

Contemporary monarchy could be justified by the derivation of its power from Adam. This derivation, which could secure the fundamentally political interpretation of fatherhood and provide a basis on which that interpretation could become an explanation for the derivation of states,

leads to an implicit assumption of primogeniture.³¹ As shown through his linking of both the power of fathers and kings to primogeniture, Filmer depicts fatherhood as holding an abstract and political nature. However, while fatherhood is political, he does not discuss the English succession in Patriarcha because it was not an issue during his lifetime, which became a major political issue of the exclusion crisis.

In ordering the world according to patriarchalism, Filmer placed a tremendous importance on property. During early and mid-seventeenth century England, Filmer believed that property was the main principle of government and justice; at the time no one else believed the same thing.³² By the time of the exclusion crisis, Filmer's belief gained wide acceptance, but until then his contemporaries thought property indicated belongingness and might apply to

31. Daly, 74.

32. See Daly, 158.

political rights.³³ Englishmen considered property as their highest ranking liberty, but Filmer believed that only the sovereign (as Adam's descendant) could create property rights.

If only the sovereign could make property rights, then sovereignty and liberty are incompatible. Sovereignty and liberty would be incompatible because the monarch's subjects would not be at liberty to enjoy property rights which were not subject to the monarch's power. Filmer believed that he could show liberty was a concept which was irrelevant to political circumstances. He writes,

these and many more absurdities are easily removed, if on the contrary we maintain the natural and private dominion of Adam to be the foundation of all government and propriety.³⁴

Not only was liberty irrelevant, it was not natural. As Filmer explains,

For if the liberty were natural it would give power to the multitude to assemble themselves when and where they please, to bestow sovereignty and by factions to limit and direct the exercise of it.³⁵

People do not have the right to assemble themselves when and where they want, though, because the organization which represents them (Parliament) is under the king. Members of Parliament "are only members and a part of that body, whereof the king is the head and ruler."³⁶

³³. See the discussion of property in the introduction (above).

³⁴. Filmer, 6.

³⁵. Ibid., 55.

³⁶. Ibid., 57.

Filmer's reliance on Adam's original and absolute proprietary rights led him to a rejection of any notion that men once enjoyed goods in common but had grown to the point where individuals had acquired private property by natural law. Because Adam owned everything, so must every monarch. Even the individual's own person is owned so long as the monarch has granted it to that individual; the monarch can revoke this ownership right at anytime. In writing Patriarcha, Filmer reveals the purpose he had in mind when writing:

My task is chiefly to enquire from whom these [liberties] first came, not to dispute what of how many they are, but whether they are derived from the law of natural liberty or from the grace and bounty of princes.³⁷

After telling his readers his purpose for writing, Filmer proceeds to explain,

My desire and hope is that the people of England may and do enjoy as ample privileges as any nation under heaven. The greatest liberty in the world (if it be duly considered) is for people to live under a monarch. It is the Magna Carta of this kingdom. All other shows or pretexts of liberty are but several degrees of slavery, and a liberty only to destroy to them.³⁸

As this passage reveals, to live under a monarch is to live under the monarch's guidance of a person's political rights. Unfortunately, because the monarch granted these rights, they were subject to his will. Like every other political right, even property in one's own person was a "thoroughly

37. Ibid., 4.

38. Ibid.

insecure and retractable emanation of a sovereign will, a will which by right could acknowledge no limits whatsoever."³⁹

As well as serving Filmer's argument for absolute monarchy, property also serves his argument against government by consent. Filmer reasoned that private property, like government, could not have been formed by consent. If private property had been formed by consent, it would mean that at one time every man must have given his decision that private property should be instituted. If any man later decided that he did not want any other man to enjoy private property, every man must lose the right to his individual property. Absolute consent is impossible in the first place, though. As Filmer asks,

Can they show or prove that ever the whole multitude met and divided this power, which God gave them in gross, by breaking it into parcels and by appointing a distinct power to each several commonwealth?⁴⁰

Filmer does not believe that anyone can prove what he asks. As a result, there is "neither reason nor proof for so thinking" that absolute consent to private property was ever given.⁴¹ Likewise, Filmer believes, no one can prove that absolute consent was ever given to the institution of government. If, at any time, there was at least one man who wanted government to be eradicated, no man could live in a

39. Daly, 54.

40. Filmer, 20.

state of political society.

Filmer's opponents were forced to pay serious attention to the relationship between a state's origin and property because he used a theory of property, originating from Adam's absolute ownership of goods, which demonstrated that monarchs had absolute property rights over all of their subjects. Although Filmer could explain his patriarchal political theory in Patriarcha, it was sufficiently weak on a number of points to allow for a successful attack by Locke and Tyrrell. "Far more successful in the critical task than in setting forth his own theory of politics," Filmer's attack against state of nature political theories "was unanswerable while simultaneously proclaiming the uniqueness and absurdity of his patriarchal doctrine."⁴² Filmer was easily attacked for his own theory through his Genesis argument, which is described as "intellectually suicidal."⁴³ Neither Tyrrell nor Locke agreed with Filmer's interpretation of Genesis so that a step-by-step refutation of his theory fell into place; if one did not agree with Filmer's interpretation of Genesis, the foundation of his theory collapses. In addition to his Genesis argument, Filmer had a weak point in his reading of the Fifth Commandment. According to Filmer, this commandment should not include "thy mother," while it should strengthen the

41. Ibid.

42. Schochet, 115.

43. Daly, 156.

meaning of "honour" to "obey the sovereign in all things."⁴⁴
Filmer states his belief in the importance of the Fifth
Commandment in Patriarcha:

To confirm this natural right of regal power, we find
in the decalogue that the law which enjoins obedience
to kings is delivered in the terms of 'honour thy
father' [Exodus, xx, 12] as if all power were
originally in the father.⁴⁵

According to Filmer's patriarchal theory, there is a logical
connection that extends the Fifth Commandment to reflect the
power of a king over his subject. Most importantly,
Filmer's attackers, including Locke and Tyrrell, could agree
that the state had patriarchal origins, but did not have to
agree these origins led to inevitable and necessary absolute
monarchy.

Locke and Tyrrell both deny Filmer's thesis that Adam
was originally granted absolute monarchial power by God.
Instead, they argue, God originally gave the world to
society in common. For example, Locke writes, in direct
reference to Filmer, that although Filmer claims "as soon as
Adam was Created he was de facto Monarch, because by Right
of Nature it was due to Adam, to be Governor of his
Posterity," in actuality,

he could not de facto be by Providence Constituted the
Governor of the World at a time when there was actually
no Government, no Subjects to be governed, which our
A-- here confesses.⁴⁶

44. Ibid., 63.

45. Filmer, 11-12.

46. Locke, First Treatise, 16.

Locke then proceeds to claim, using "3 Gen. 16," that, even if Adam was granted monarchial power, as Filmer claims, it could not have been until after the introduction of Eve and the Fall.⁴⁷ By this time, however, Adam was so far removed "in condition from his Creation" that it is impossible to say "by God's Appointment, as soon as Adam was created he was Monarch of the World."⁴⁸ Locke reason that by Filmer's logic, in relation to Adam, that Filmer could be

an Author before he writ his Book, not in Act 'tis true, but in Habit, for when he had once Publish'd it, it was due to him by the Right of Nature, to be an Author.⁴⁹

Instead, Locke will argue that the state of nature in Genesis is peaceful to deduce that God gave the world to society in common.⁵⁰

Locke questions how Filmer can use his interpretation of Genesis to claim that people owe political obedience to their sovereign, because there is no clear indication to whom obedience is owed. He refutes an argument for primogeniture, implicit in Filmer's theory, explaining,

47. Ibid.

48. Ibid.

49. Ibid., 18.

50. In the Fifth Chapter of his Second Treatise, "Of Property," Locke explains that he "shall endeavour to shew, how Men might come to have a property in several parts of that which God gave to Mankind in common, and that without any express Compact of all the Commoners" (25). Chapter 2 (below) explores Locke's state of nature/natural law arguments.

Adam's Sovereignty, if by vertue of being Proprietor of the whole world, he had any Authority over Men, could not have been inherited by any of his Children over the rest, because they had the same Title to divide the Inheritance . . . So neither could Adam's Sovereignty by Right of Fatherhood, if any such he had, descend to any one of his Children.⁵¹

Even if Locke could accept that Adam had monarchial power, he could not accept that any of Adam's descendants are owed his obedience, because he denies primogeniture.

Tyrrell, like Locke, denies that Adam was granted original absolute monarchial power and ownership of the goods of the earth. Instead, he insists, God gave the world to society in common. In Patriarcha non Monarcha, Tyrrell writes that "Adams absolute dominion over the lives and persons of his Children is not to be deduced from that place of Genesis," for dominion was "given unto them both [Adam and Eve] joyntly" and "it does not appear that this Dominion was personal to Adam and Eve alone."⁵² All mankind created enjoyed the goods of the world God created, for it would not be rational or

consonant to scripture, that God gave Adam such a despotick power over all things; for since all the Children of Adam had as much right to their lives as Adam had himself, it must likewise follow, that they had as good a right to the fruits of the earth, which were then the only means to maintain it.⁵³

In addition to denying that God gave Adam ownership rights to the earth, neither Tyrrell nor Locke will accept

51. Locke, First Treatise, 98.

52. Tyrrell, 101-102, 2nd pagination.

53. Tyrrell, 102-103, 2nd pagination.

Filmer's idea that Adam was ever absolute monarch. By disagreeing with Filmer's interpretation of Genesis, Locke and Tyrrell destroyed the foundation which Filmer uses to construct his patriarchal theory. If Adam was never absolute monarch, then there must be some other explanation for man's early organization on earth. From this starting point, Locke and Tyrrell develop state of nature political theories.

Another sticking point in Filmer's theory is his use of the Fifth Commandment. Filmer uses the Fifth Commandment to give fathers and kings absolute power (and to receive absolute obedience from) their families and subjects. Locke particularly attacked Filmer's analysis of the commandment. While Filmer used the Fifth Commandment to prove that fatherly and kingly power are the same, Locke will not accept that it has any connection to political power. In his First Treatise, Locke lets his readers know that Filmer's use of the Fifth Commandment is remarkable. He wonders

how our A. infers from the 5th Commandment, that all Power was originally in the Father. How he finds Monarchial Power of Government, settled and fixed by the Commandment, Honour thy Father and thy Mother.⁵⁴

because he does not grant the mother power, although "God afterwards all along joyn the Mother with him, to share in this Honour."⁵⁵ Locke is saying that Filmer is contorting

54. Locke, First Treatise, 62.

55. Ibid.

scripture to suit his purpose. If Filmer's reading of the Fifth Commandment can be discredited, then his argument that monarchical power is seated in one absolute sovereign, the father of his country, can also be discredited. If both husband and wife share power over their children, they must both be accepted as holding family power and a line cannot be drawn from father to king as absolute rulers. While he does deny that fathers and kings are absolute rulers, Locke does not deny that children should honor their parents; he believes children owe "a perpetual obligation of honouring their Parents" with "an inward esteem and reverence to be shewn by all outward Expressions."⁵⁶ For Locke, the Fifth Commandment links filial obedience with obedience to God, understood to be essential for the good order of society.⁵⁷ The commandment links obedience to parents with obedience to God because it is a bridge between the first four commandments (to God) and the last five commandments (to other people).⁵⁸ If a reader accepts Locke's criticism of Filmer's reading of the Fifth Commandment, Filmer's patriarchal theory is put in jeopardy. If the father has to share parental power with his wife, no line of patriarchy can be drawn from the father to sovereign.

Even as a different reading of Genesis and the Fifth

56. Locke, Second Treatise, 66.

57. Foster, 665.

58. Ibid.

Commandment can weaken the position Filmer has given to fathers and monarchs, Locke and Tyrrell can accept patriarchal origins of society without arriving at the same conclusions that Filmer reaches. In Locke's Second Treatise, Chapter Six is devoted to paternal power. "Of Paternal Power" argues that the major problem with patriarchalism is its equating of paternal and political power. Locke writes, describing the exclusion of mothers from power, that patriarchalists are only writing to reach the conclusions they want:

running into those gross mistakes they have made, about this Power of Parents: which, however it might, without any great harshness, bear the name of Absolute Dominion, and Regal Authority, when under the Title of Parental Power it seem'd appropriated to the Father . . . it belong'd to the Mother too; for it will but very ill serve the turn of those Men who contend so much for the Absolute Power and Authority of the Fatherhood . . . would have but ill supported the Monarchy they contend for.⁵⁹

As this important passage demonstrates, when patriarchalists equate paternal power seated in the husband and the king, a gross mistake is being made because families arose under a joint power of mothers and fathers. Although Locke may be going against the practical experience of male-dominated Stuart households, where the father has the power, he can argue that the father only has power in this case because the wife has entrusted her power to him.⁶⁰

Society arose from patriarchal origins, but not in the

59. Locke, Second Treatise, 53.

60. Ibid., 82-83.

manner argued by patriarchalists. For Locke, the family is "a profoundly problematic institution that cannot, as the patriarchalists contend, supply a foundation or model for political order."⁶¹ Locke distanced himself from patriarchal theory, denying even an analogous relationship between organized states and families. David Foster maintains the "separation of paternal from political power may be fundamental separation of powers in Locke."⁶² In addition, Locke's critique of patriarchalism is "a critical reflection on the natural and divine context of human life."⁶³

One's life, Locke argues, is only guided by the parents until the child reaches an age of maturity and is only guided during this time for preservation, nourishment, and education. In the Second Treatise, Locke explains his belief that

the Father's Power of commanding extends no farther than the Minority of his Children, and to a degree only fit for the Discipline and Government of that Age.⁶⁴

As the passage indicates, it must be understood that for Locke, paternal power is not natural power. Paternal power is more in reference to guardianship than to control or ownership: "Only as he is Guardian of his children, that when he loses his care of them, he loses his power over

61. Foster, 662.

62. Ibid., 643.

63. Ibid., 643-644.

64. Locke, Second Treatise, 74.

them."⁶⁵ In a passage described as "one of the most dramatic and compelling passages in the Two Treatises," Locke elaborates this point.⁶⁶ Demonstrating that parents do not own their children because they begat them, any more than monarchs own their subjects, Locke claims that God gave people being, not parents. His passage reads:

They who say the Father gives Life to his Children, are so dazzled with the thoughts of Monarchy, that they do not, as they ought, remember God, who is the Author and Giver of Life: 'Tis in him alone we live, move, and have our Being. How can he be thought to give life to another, that knows not wherein his own Life consists?⁶⁷

By arguing that fathers did not own the lives of their children, Locke shows by analogy that monarchs do not own the lives of their subjects. Not only is human life divine, and parental power unnatural, but equating political society and families is impossible. According to Locke, it is ridiculous for any person to derive political power from a fatherly power which is unnatural and inequitable.

Like Locke, Tyrrell does not accept that families are the foundation for government. While believing organized states and the family are analogous, a position Daly describes as the general royalist and non-Filmerian position, he does not need historical connections for contemporary government in the way that Filmer does.⁶⁸

65. Ibid., 65.

66. Foster, 634.

67. Locke, First Treatise, 52.

68. Daly, 69.

Tyrrell does not need this connection because he relies on natural law for his vision of contemporary government, in which man has evolved from a state of nature; an evolution which does not depend on historical examples.⁶⁹ In contrast, Filmer, who does believe the family and state are equal, and not merely analogous, needs historical connections for his patriarchal theory (which is where the importance of his Genesis argument lays). Against Filmer's use of history, in Patriarcha non Monarcha, Tyrrell writes

I will not deny that the Heads of separate Families, being out of Commonwealths, have many things analogous to them, though they are not Commonwealths themselves.⁷⁰

Among the things which Tyrrell mentions as being similar are the "power of Life and Death in great Offences, and also of making War and Peace."⁷¹ In the end, however, "the ends of a Family and a Commonwealth are divers: and so many parts of a Monarchial Empire are not to be found in Families."⁷²

Tyrrell also denies Filmer's insistence that the power of fathers and, thus, monarchs, is unlimited. For the sovereign to be absolute in Filmer's theory, fathers must be absolute because their power is the basis for the sovereign's power. According to one scholar, "Among the most startling of Filmerian contentions was that of the

69. Chapter Three (below) explores Tyrrell's reliance on natural law in his political theory.

70. Tyrrell, 25.

71. Ibid.

72. Ibid.

father's right of life and death over his children."⁷³ To Tyrrell, though, power is necessarily limited by its ends. He explains a son will have grounds to protect himself from arbitrary life and death actions of his father:

So that if a Son have any Right to defend himself in what belongs to him from unjust violence of his father, he doth not act as his Superior; but in this case as his Equal, as his is indeed in all the Rights of Nature, considered Equal, as he is indeed in all the Rights of Nature, considered only as a Man; Such as are a Right to live, and to preserve himself, and to use all lawful means for that end.⁷⁴

By analogy, Tyrrell provides the argument that if a father does not have life and death powers over his children, then a king will not have life and death powers over his subjects. Using this argument, fatherly and kingly power cannot be as absolute as Filmer claims.

In rejection of Filmer's patriarchal society, "Tyrrell put forward a quite different model" where

the people were not just a mass of theoretically equal political units but an organic and articulated whole composed of parts which were related to each other through different types of subordination sanctioned by natural laws of association.⁷⁵

Answering patriarchal arguments with natural law arguments, Tyrrell was changing the foundation of battle between himself and Filmer. In a larger sense, Filmer had changed the battle between the Whigs and Tories.

More realistic than Filmer's society, Tyrrell's model

73. Daly, 169.

74. Tyrrell, 26.

75. Daly, 92.

relied on natural law, arising from a peaceful state of nature, where property was a major concern. The Whigs were moving away from arguments focusing on history to natural law arguments and Patriarcha non Monarcha reveals this movement by centering around relevant issues of liberty associated with the exclusion crisis. By refuting Filmer with natural law arguments, Tyrrell should have become a major political theorist. Outdistancing Locke in specific mention of historical arguments used by Filmer, Tyrrell's arguments against patriarchalism probably seemed more vital to their contemporaries.⁷⁶

Locke's Two Treatises is the supreme example of the Whig movement from historical argument to natural law argument. In the First Treatise, he explains that past behavior is not appropriate for what ought to be. He conceded to patriarchalists that

the natural Father of Families, by an insensible change, became the politick Monarchs of them too . . . they chanced to live long, and leave able, and worthy heirs . . . they laid the foundations of Hereditary, or Elective Kingdoms, under several constitutions and Manners, according as Chance, Contrivance, or Occasions happen'd to mould them.⁷⁷

Despite conceding that governments had patriarchal origins, Locke would not accept history as a guide to what is reasonable. He remarks that

76. Tyrrell, 226ff.

77. Locke, First Treatise, 76.

if the Example of what hath been done, be the Role of what ought to be, History would have furnished our A---[Filmer] with instances of this Absolute Fatherly Power in its height and perfection.⁷⁸

Locke decided that historical instances can be used to provide the opposite. History can provide opposite examples, such as Peruvians who had children just "to Fatten and Eat them."⁷⁹ The Peruvians in this supposed historical example did not act reasonably. Reason alone, Locke feels, should be man's guide. Based on reason, his political theory provides a refutation of Filmer's patriarchalism and puts the family "on a footing of property affection, and anticipated equality between parent and child, rather than on mutual duties, fear or reverence, and permanent hierarchy."⁸⁰

Seemingly, after Locke's Two Treatises were published, the issue of patriarchalism as a valid political theory was eliminated. Nevertheless, Schochet believes that it was not Locke that defeated patriarchalism. Instead, patriarchalism was defeated because it became irrelevant as a political symbol as the seventeenth century progressed into the eighteenth.⁸¹ During this time, the rational outlook which Locke championed replaced the scriptural authority which Filmer believed in. In addition, there was an emphasis placed on the distinction between state and society, which

78. Ibid., 57.

79. Ibid.

80. Foster, 669.

81. Schochet, 274.

Filmer considered as the same through his linking of kings and fathers. Because Filmer relied on "a genetic conception of history and the denial of the possibility of fundamental change," his theory is a show of what would be the "new conception of political obligation:" logical and rational validity rather than historical and legal validity.⁸²

As a defense of state of nature theories, and the rejection of genetic theories, Locke and Tyrrell agreed that no matter what the argument, political absolutism was not feasible. In doing so, Locke and Tyrrell revealed that the perception of political practice affected its realities.⁸³ In other words, if people wanted to believe in state of nature political theories rather than Filmer's biblical patriarchalism, they had every right to believe they were responsible for the institution of government. In essence, "patriarchalism would no longer suffice as a theory of political obligation because it did not conform to the way of viewing the world that Locke himself did so much to establish."⁸⁴ Tyrrell's role is not to be forgotten, either, for he may have seen the problems with Filmer's patriarchalism even more clearly than Locke. By rejecting Filmer's patriarchalism, Locke and Tyrrell turned towards political theories which had the state of nature as their

82. Ibid., 135.

83. Ibid., 272.

84. Ibid., 268.

foundation rather than a historical approach to politics.

Largely because of Filmer's Patriarcha, and other royalist works like it, the Whigs adopted a political position which stressed that government must be judged by how its subjects rights are protected and served, rather than by its history. When Filmer gained notice as a political theorist, during the exclusion crisis, he

played a major role in establishing that Tory ideology--based almost for the first time on an unhesitating assertion of the crown's sovereignty--to which the theorists of the opposition had to find an answer.⁸⁵

Because of Filmer's role, the Whigs had to show that common law, the basis for property rights, had existed from the beginning of English history or admit that it was created by, or originated under, a sovereign.⁸⁶ For the English people, the sovereign would have been the monarch. If common law did originate under the king, the king would be supreme over the law and absolute in the country. On the other hand, if a date or origin for common law could not be discovered, personal liberties, such as property, secured under that law would be safe and valid. For the Tory party, custom, "the historical limitation of right," could not be binding unless an authority can make it law, which would make the sovereign superior over custom and demonstrate that

85. J.G.A. Pocock, The Ancient Constitution and the Feudal Law: A Study of Historical Thought in the Seventeenth Century (Cambridge, Massachusetts: Cambridge University Press, 1957), 187.

86. Ibid., 190.

every law must have a beginning.⁸⁷

Filmer devotes some attention to describing beliefs which would later become the crux of Tory beliefs in custom and common law in Patriarcha. He describes common law:

The common law is called unwritten not for that it is not written at all, but because it was not written by the first devisers or makers of it. The common law . . . is the 'common custom of the realm.'⁸⁸

Needing to define custom to develop his definition of common law, Filmer writes,

Custom at first became lawful only by some superior power which did either command or consent unto their beginning. And, the first power which we find (as is confessed by all men) is kingly power, which was both in this nation and in all other nations of the world long before any laws or any other kind of government was thought of.⁸⁹

By incorporating definitions of common law and custom in his work, Filmer attempts to prove that the king is supreme over all law that his opponents feel is the true guide of man. According to Filmer, the king is supreme over common law because the king made common law lawful. In essence, common law owes its existence to the power of the king.

Party ideas about custom and common law, as expressed in Patriarcha, gave the Tories "a vested interest in historical research" and the Whigs a vested interest in refuting their history. That is, Tories looked to view origins, which they rightly suspected to be found in kingly

87. Ibid., 163.

88. Filmer, 45.

89. Ibid.

acts, while Whigs hoped to keep constitutional origins shrouded in mist. Thus, largely because of Filmer, the Tory-Whig debates included a concentration on English history.

J.G.A. Pocock supports the argument that the parties focused on history, by admirably demonstrating in The Ancient Constitution and Feudal Law, writing "nearly every thinker noted for his contribution to political theory . . . devoted part of his pages to discussing the antiquity of the constitution."⁹⁰ However, Pocock claims, Locke is an exception because he was "exceptional . . . in omitting any discussion of English legal or constitutional history."⁹¹ Richard Ashcraft disagrees. Ashcraft explains his belief that Locke's omission of history and the constitution "in relation to the political debate of the 1680s" was of "very little significance."⁹² Locke's omission is of little importance because the debate was not "structured around a historical approach to the political problems of exclusion and the limits of political obligation."⁹³ According to Ashcraft, "Locke was not an exceptional political writer in his rejection of a legalistic approach."⁹⁴ Although Ashcraft's Revolutionary Politics and Locke's "Two

90. Pocock, 46.

91. Ibid., 188.

92. Ashcraft, 189.

93. Ibid.

94. Ibid., 190.

Treatises" is an exceptional addition to Lockean scholarship, his argument is flawed. Pocock may place too much stress on the importance of a Whig-Tory argument of historical evolution, but, by not giving it any importance, Ashcraft is seriously undermining the range of issues during the 1680s.⁹⁵

Though history was not the focal point, it was a way for the Tories to assert the superiority of their political position.⁹⁶ When Filmer uses patriarchal theory to demonstrate a line of succession from Adam to the present monarch, he is using history as his guide. Admittedly, Filmer weakened his own argument because his "absolutism caused him to ignore the complexities of the medieval structure and diminished the extent to which his thought was genuinely historical," leading him to exclude historical evolution.⁹⁷ On the other hand, both Locke and Tyrrell adopted a natural law justification for individual liberties because they were led to that position to force a contrast with Filmer's insistence on the historical allegiances by

95. See Knights especially.

96. By history, I am adopting the definition given by The American College Dictionary (New York, New York: Random House, 1966): "a continuous, systematic written narrative, in order of time, of past events as relating to a particular people, country, period, person, etc." (574). This definition of history, relating past event that actually occurred, often leads to a legal basis for custom and common law. I am not referring to history as an assumed evolution, which both Locke and Tyrrell accept as an outgrowth of their natural law theories.

97. Pocock, 155.

which people owe their loyalty and liberties to the king. For those writers that do not believe the king enjoys an absolute power over his subjects, he merely remarks that "[l]ater writers have taken up too much upon trust."⁹⁸ Filmer suggests that writers should "trust experience before speculations philosophical."⁹⁹

On the other hands, the Whigs present natural law arguments. These natural law arguments most strongly reveal the radicalism of the Whigs.¹⁰⁰ Nevertheless, history is still included in the Whig argument because leading theorists, including Tyrrell and Petyt, argue that Parliament predates the Norman Conquest and trace liberties to the Anglo-Saxons.¹⁰¹ In opposition, the Tories rejected the theory of the ancient constitution, partly because of the Brady Controversy. In the Brady Controversy, Dr. Robert Brady showed that Parliament was created by the crown in the late-medieval period, which means that Parliament is subordinate to its creator, the King. With the support of the Brady Controversy, the Tories could adopt a position where the use of historical references was their way to prove that the king should be absolute.

Ashcraft misleadingly claims that Filmer said there was not any point in appealing to historical law precedents, as

98. Filmer, 5.

99. Ibid., 29.

100. Harris, Politics Under the Later Stuarts, 90.

101. Ibid., 89.

was done in the Brady Controversy, so that Locke and Tyrrell "were compelled to counter a natural law argument with one of their own in order to defend the 'fundamentals of government.'"102 Although Locke and Tyrrell adopted a natural law approach, they did not accept this approach because Filmer had already adopted that position. In fact, Filmer writes, the populist position is false because "it is not to be found in the ancient Fathers and doctors of the primitive church. It contradicts the history of the Holy Scriptures, the constant practice of all ancient monarchies."103 Based on biblical and monarchial history, Filmer's political theory could be used to deflate the political stance of the Whigs.

Tyrrell made historical references in Patriarcha non Monarcha and found history to be very important. As shown by his plans for a three volume History of England (1697,1700,1704), he regarded history

not as a search for answers, perhaps only tentative, to questions about the past, but as interpretations, either right or wrong, of a definite body of facts, or truths, recorded and known.104

Even Tyrrell's method of writing is important because it "reveals his whole conception of the meaning of history."105 Tyrrell's historical references and method serve as a backdrop and a justification for his considerations of

102. Ashcraft, 189.

103. Filmer, 3.

104. Gough, 505.

105. Ibid.

natural law. In Patriarcha non Monarcha he plans to show his readers "Since then all the Laws of Nature, or reason, are intended for one end or effect, viz., the common good and preservation of Mankind" that the history of marriage--important for refuting Filmer--is a result of natural law.¹⁰⁶ While Tyrrell incorporates historical references into his work, his method of writing serves to make these references a backdrop to his natural law arguments.

Despite his own historical studies, Tyrrell considered Petyt his superior in the subject. He asked Petyt to provide a discussion of historical interests particular to the 1680s, which resulted in The Ancient Constitution of the Commons of England Asserted, a book which Tyrrell refers to his readers.¹⁰⁷ In his book, Petyt argues that parliament and the law are immemorial and known to be so in 49 H.3, the year the Tories believe is when the Commons started to meet regularly.¹⁰⁸ While the Tories may have been correct in their dating, and the claim that there was a time when the King's council met without the Commons, Petyt insists that people knew the rights they were entitled to, even though they did not practice those rights. In addition, Petyt could argue that English history was not continuous (because William ruled as a conqueror) so that any claim to dating is

106. Tyrrell, 15.

107. Pocock, 188.

108. Ibid., 191.

nothing but a broken record.

Although historical references were not important to his political theory, which was presented in the abstract, Locke was willing to explain nature by looking into the past, though not accepting historical examples as producing values. As Gordon Schochet explains, for Locke, "origins . . . led to government in a prudential rather than necessary sense," meaning that historical references were fine as long as they did not overstep their purpose and become absolute.¹⁰⁹ Locke writes in the Second Treatise that even though "Contenders for Paternal Empire" may be granted that governments may have originally been founded on paternal rights,

they would do well not to search too much into the Original of Governments, as they have begun de facto, lest they should find at the foundation of most of them, something very little favourable to the design they promote, and such a power as they contend for.¹¹⁰

The problem Locke foresees is "Reason being plain on our side, that Men are naturally free."¹¹¹ In other words, no matter what historical references the Tories can find to argue that the king should be absolute, reason will always prevail in showing that history should not be man's political guide.

Because the Whigs would lose a historical debate with

109. Schochet, 260.

110. Locke, Second Treatise, 103.

111. Ibid.

the Tories they owe their focus on a natural law argument to their opposition.¹¹² The fact that Locke makes only one reference to constitutional and legal history in the Second Treatise, where he merely refers his readers to other works on the subject, reveals his indifference to historical fact.¹¹³ He was an exceptional Whig in this respect. It may have been because Petyt shifted his argument from Filmer to immemorial common law that Locke shifted the debate away from history.¹¹⁴ Whatever the reason, Locke "understood that the security of political liberty in the seventeenth century did not really depend on the interpretation of what happened in the eleventh."¹¹⁵ Perhaps as a response to Petyt, and certainly as a contrast to Filmer, Locke did not appeal to history.

Without an appeal to history, no new findings could prove Locke incorrect. Locke's Two Treatises were

at once a response to a particular political situation and a statement of universal principle, made as such and still read as such . . . [making] the discussion of politics so completely independent of historical example, so entirely autonomous an area of discourse.¹¹⁶

Locke, the supreme example of a Whig political theorist resting on an argument of natural law, reveals his party's

112. The Whigs did not just concede the Tories their historical argument, although this is what Ashcraft claims in his Revolutionary Politics (214).

113. Pocok, 239.

114. Ibid., 237.

115. Gough, 588.

116. Laslett, "Introduction," 91.

movement as a contrast to Tory historical arguments.

In their refutation of Filmer, there were some issues that Locke and Tyrrell attempted to demolish and other issues that they attempted to avoid. In attempting to demolish Filmer's patriarchal theory, Locke and Tyrrell revealed that if a reader did not agree with Filmer's interpretation of Genesis or of the Fifth Commandment, a lot of his theory fell apart. Genesis and the Fifth Commandment served as a foundation for Filmer's insistence that the king was both absolute and a father to his subjects; if Filmer's interpretations were rejected, then the foundation of his theory was pushed over. In addition, Locke and Tyrrell were able to show that the acceptance of patriarchal origins of society did not have to lead to inevitable absolute monarchy. While accepting patriarchal origins, Locke does not even consider society and the family to be analogous and Tyrrell will only accept that they are analogous to some extent; neither man will accept that society and the family are the same. While attempting to demolish Filmer's interpretations of Genesis and the Fifth Commandment, as well as the outcome of patriarchal origins of society, Locke and Tyrrell attempted to avoid historical arguments. Both men did agree that history was an important area of study, but Tyrrell relied on historical examples only to a limited degree and Locke omitted mention of history altogether. For both men, history was a supplement

to their natural law theories, and certainly not anything more.

Chapter Two
John Locke's Political Theory: Natural Law and Property

Locke helped to establish the law of nature as a binding law within political society during the seventeenth century because of Whig problems with historical arguments arising from the Exclusion Crisis. Described as "the law of God in fact and knowledge," natural law led seventeenth century political theorists, including Locke, to believe that man acted morally because he understood that to do so would be to follow God's law.¹ Natural law entitles man to the natural right of self-preservation and to the duty to fulfill this right.² It was Locke's nemesis, Filmer, who directed Locke towards an argument based on natural law which men must obey. According to James Tully, author of A Discourse on Property: John Locke and His Adversaries, in Locke's political theory,

the presence and widespread awareness of Filmer's critique renders a consistent natural law theory of property a necessary precondition.³

By moving towards an argument based on natural law, Locke responded to Filmer's patriarchal arguments without having to respond to his historical arguments.

Locke believed the law of nature is most fully realized in a state of nature. This state is "the condition in which

1. Leo Strauss, Natural Right and History (Chicago, Illinois: The University of Chicago Press, 1953), 203.

2. James Tully, A Discourse on Property: John Locke and His Adversaries (Cambridge, Massachusetts: Cambridge University Press, 1980), 62-63.

3. Ibid., 54-55.

the executive power of the law of nature remains exclusively in the hands of individuals and has not been made communal."4 It is "a State of perfect Freedom . . . without . . . depending upon the Will of any other man" and "a State also of Equality, wherein all the power and Jurisdiction is reciprocal, no one having more than another."5 In his state of nature, natural law was binding, but unwritten, so that no man was a competent judge of what actions taken by another man are right or wrong.6

Even without an established judge, in the state of nature all men are free and equal and live together peacefully. As W. Von Leyden argues, the law of nature sets bounds within this state as to what each man is allowed to appropriate and keep.7 These bounds keep man within his own circle of interests, without conflict between him and others. Furthermore, because all men are willing to act morally, according to God's law, there will not be any conflict over what each man will appropriate. A way to avoid conflict in appropriation is the limitation that each man must leave enough goods so that other men will be able to appropriate enough to survive. If each man is able to collect enough goods for his own needs, there is no reason

4. Laslett, "Introduction," 111.

5. Locke, Second Treatise, 4.

6. Ibid., 136.

7. W. Von Leyden, "John Locke and Natural Law," Life, Liberty, and Property: Essays on Locke's Political Ideas, ed. Gordon J. Schochet (Belmont, California: Wadsworth Publishing Company, 1971), 15.

men cannot live together peacefully in a state of nature.

Despite the peacefulness of the state of nature, the continued appropriation of goods provides a reason for man to move towards the formation of political society.

According to Locke, when man eventually and inevitably makes his move from a state of nature into political society, he does so for the preservation of his personal property.

Despite this move, the obligations of natural law remain in political society, providing the justification for municipal laws.⁸ Natural law is important in Locke's political theory because it remains during and after man's movement from a state of nature to a state of political society, remaining the overriding force of man's motivation in both states. As Leo Strauss explains, "Locke's political teaching stands or falls by his natural law teaching concerning the beginning of political society."⁹ In fact, Locke's entire "political teaching" rests on his assumptions about a state of nature.

Locke's faith in a state of nature is open to attack. For example, George Sabine criticizes the state of nature as a fiction which must be laid aside to see the real meaning of Locke's work, which is that moral rules are broader than positive laws and that morality makes law, rather than law

8. Ibid., 15.

9. Strauss, 215.

making morality.¹⁰ Sabine implies that Locke uses a construct which is not real to base the rights of man upon. If a state of nature never existed, there is no actual justification for man's rights, including the right to private property, which is Locke's model for all other natural rights, including consent, freedom, and reason. In truth, Locke's concept of natural law is an assertion that man, above all, should act morally in political society. Despite Sabine's criticism, it is imperative to treat the state of nature during a reading of the Second Treatise, as a valid theoretical construct, even if fictitious, of early man because Locke used it for that purpose; he was able to use the state of nature for the basis of the law of nature. He does not argue that morality makes law, in spite of Sabine's interpretation. The state of nature is Locke's basis for man's appropriation of private property, as well as his other rights, and his evolution towards political society.

Other criticisms of Locke are fair. For instance, one commentator writes that, according to Locke, natural law was

at one and the same time a command of God, a rule of reason, and a law in the very nature of things as they are, by which they work and we work too,

but must admit that Locke never analyzes natural law as a term.¹¹ In his clearest definition of natural law, Locke

10. Sabine, 526.

11. Laslett, "Introduction," 95, 97.

merely claims that it is "Reason, which is that Law."¹² Reason, he continues, serves as a teacher to "All Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions."¹³ Particularly unrevealing, Locke's definitions of reason and natural law are not expanded on more than these two quotes. In fact, although most Lockean scholars admit that "the notion of natural law can be seen to be of central importance in his treatise on Civil Government," they also accept that Locke never tries to give an elaborate description to the concepts of reason, the state of nature, and natural law.¹⁴

Perhaps Locke never elaborates on natural law because he realizes that it was in conflict with theology. In the Second Treatise, Locke expresses this realization when he writes,

But though this be a State of Liberty, yet it is not a State of Licence, though Man is in that State have an uncontrollable liberty, to dispose of his Person or Possessions, yet he has not Liberty to destroy himself.¹⁵

In other words, man's natural right to himself as property cannot conflict with the moral obedience he owes to God not to destroy himself. Locke reveals the conflict between natural law and theology in another instance, writing that

12. Locke, Second Treatise, 6.

13. Ibid.

14. Von Leyden, 12.

15. Locke, Second Treatise, 6.

man must choose between

Whether we consider natural Reason, which tells us that Men, being once born, have a right to their Preservation . . . Or Revelation, which gives us an account of those Grants God made of the World to Adam, and to Noah, and his Sons.¹⁶

As this passage suggests, Locke believes there is a clear distinction between what Reason tells man and what Revelation reveals to man.

Although Locke's state of nature has been criticized as nothing but a state of fiction, he blends his ideas of natural law with the growing late-seventeenth century concept of property as a justification of personal liberties. Through this blend, Locke is able to develop a radical theory of property. While his work helped to develop the contours of the late seventeenth century concept of property as a preservation of political liberties with a foundation in natural law, Locke was able to explain how man in the state of nature moved towards political society for the preservation of personal property. In a sense, private property is an extension of natural law. While natural law provides man freedom for what is another's, it does not define what belongs to other men. Private property, as an extension of natural law, does explain what is another's.¹⁷ In addition, because Locke did not present an historical argument, for his political theory "to appear at all

16. Ibid., 25.

17. Tully, 83.

plausible to his immediate audience, he had to show that property, and equality, could be explained in a way consistent with natural law."¹⁸ Locke had to show that his theory was consistent with natural law because he rejected historical arguments, which was the accepted method for developing a political theory.

Although Locke's property definition is not specific, there is a dual conception within his definition: both material goods and ideal benefits, "Lives, Liberties, and Estates, which I call by the general Name, Property."¹⁹ The ideal benefits of this definition relate to the lives and liberties of man, suggesting that property is more than just tangible goods, but part of a person's being. On the other hand, material goods are also a component of Locke's definition, the estates, suggesting that property is also composed of tangible products, such as land.

Locke's dual conception of property reflects the seventeenth century trend of moving towards definitions of property which bridge the ideological (lives and liberties) and the economic (estates). Attempting to put Locke's definition into historical perspective, Sibyl Schwarzenbach argues that it arose from the controversy surrounding the Exclusion Crisis because Locke needed a way to justify legitimate political authority and "justification for the

18. Ibid., 54-55.

19. Locke, Second Treatise, 123.

rights and property of individuals prior to and independent of government."²⁰ According to this argument, Locke wrote his property theory as a defense of individual rights and goods arising out of the constructs of political society. Moving away from historical arguments, his focus was shifted to defending property through natural law.

Locke's political theory was radical. He implies that man, though living in peace within the state of nature, created political society for the preservation and protection of private property. Private property, which originated in the state of nature, antedates the creation of government. As Locke writes,

I shall endeavour to shew, how Men might come to have a property in several parts of that which God gave to Mankind in common, and that without any express Compact of all the Commoners.²¹

By arguing that private property antedates civil society Locke is claiming that property is independent of, and not created by, society because private property antedates civil society. Chapter Five of the Second Treatise explains this claim.

Chapter Five of the Second Treatise also provides Locke's belief in the labor theory of property. The labor theory of property states that people appropriate private property by joining their labor with goods or an object.

20. Sibyl Schwarzenbach, "Locke's Two Conceptions of Property," Social Theory and Practice 14, 2 (1988): 142.

21. Locke, Second Treatise, 25.

This theory is considered among "the most influential statements he ever made."²² Locke's labor theory of property is:

Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joyned to it something that is his own, and thereby makes it his Property.²³

Man's labor puts a value on property. By joining his labor with an object, man gives that object value. In Locke's words, "'tis Labour indeed that puts the difference of value on every thing."²⁴ The labor theory of value was revolutionary because it means that man's own effort, his labor, is responsible for what he has that is valuable.²⁵ The theory of property found in "Of Property" was radical because it argued that property antedates the formation of government, which is established to preserve it, and is given value when man mixes his labor with goods or an object. Before Locke, few political theorists had given any prominence to property in considerations of political origins.²⁶

The state of nature is essential to Locke's theory of property for it is in that state where man begins to appropriate private property. For Locke, the state of nature was not just a "hypothetical assumption," but an

22. Laslett, "Introduction," 114.

23. Locke, Second Treatise, 27.

24. Ibid., 40.

25. Strauss, 248.

26. Laslett, "Introduction," 114.

actual early state of people. Locke devoted the entire second chapter of the Second Treatise to "Of the State of Nature." Quite simply, the state of nature was a state without government where the laws of nature conduct a person's actions. Although Locke did not recognize any law of nature "in the proper sense of the term," he conceded that nature set limits on what man may appropriate.²⁷ Natural law in a state of nature and with regard to property is directed towards preventing waste, with each man appropriating what he can for his immediate needs.²⁸

There is no real demonstration of proof within the Second Treatise that preservation of waste is what actually occurs in a state of nature, but Locke proceeds in a step-by-step description to explain how man moves from this state towards political society. Because of Locke's method, he has been attacked as holding a "sentimental trust in nature" which had "no logical ground" other than the "vague assumption" that harmony would be found in nature.²⁹ On the other hand, because Locke did give man's step-by-step movement from a state of nature to political society, following the law of nature, one commentator praises him for raising the study of natural law to a demonstrative science.³⁰ Most scholars accept that Locke equated lawful

27. Strauss, 220.

28. Ibid., 237.

29. Sabine, 529.

30. Strauss, 202.

property rights with natural property rights, as a link between natural and political societies.³¹ In Locke's opinion, morality as the outcome of natural law is not distinct from what is legally actionable; the law of nature is a law. Natural law remains the foundation of both the state of nature and political society, despite man's shift in organization. Property is vital to this shift.

Laslett states,

it is through the theory of property that men can proceed from the abstract world of liberty and equality based on their relationship with God and natural law, to the concrete world of political liberty guaranteed by political arrangements.³²

Man's appropriation of property is the bridge between a state of nature and political society, both states ruled by natural law, explained step-by-step by Locke in the Second Treatise.

It is important to understand Locke's step-by-step explanation of man's movement from a state of nature to a state of political society because that movement is the central focus of his Second Treatise. Robert A. Goldwin provides an insight as to why Locke proceeds in this way by stating "the central theme of Locke's whole political teaching: [is] increase."³³ By proceeding from a state of

31. For example, see Sabine (536-537) and Strauss (202).

32. Laslett, "Introduction," 117.

33. Robert A. Goldwin, "John Locke, 1632-1704," History of Political Philosophy, ed. Leo Strauss and Joseph Cropsey (Chicago, Illinois: Rand McNally and Company, 1963), 250.

nature where the major limitation of private property and accumulation is the spoiling of products, to possessing money in a state of nature to be used for the enlargement of possessions beyond immediate needs, to the creation of government for the protection of private property, Locke's political man is moving from a state of penury to a state of plenty. Thus, Locke provides a detailed analysis of man's evolution from a state of nature to a state of political society.

In the beginning of man's social evolution, no one owned anything other than that each man owned himself. According to Locke,

Though the Earth, and all inferior Creatures by common to all Men, yet every man has a Property in his own Person. This no Body has any right to but himself.³⁴

All other property is derivative from the condition that man has property in himself. By adding his labour to other goods, man makes those goods his own.³⁵ The only limitation on man's creating his own goods are that he must leave enough for others' needs, taking only what he can use before it spoils. Locke presents the spoilage limitation as follows:

As much as any one can make use of to any advantage of life before it spoils; so much he may by his labour fix a Property in. Whatever is beyond this, is more than his share, and belongs to others.³⁶

34. Locke, Second Treatise, 27.

35. Ibid.

36. Ibid., 31.

Land, in addition to other goods, can be gained as private property by joining it with labor. As Locke contends,

I think it is plain, that Property in that too [land] is acquired as the former. As much land as a Man Tills, Plants, Improves, Cultivates, and can use the Product of, so much is his Property. He by his labour does, as it were, inclose it from the common.³⁷

Man's labor gives him title to the land and other goods because it instills those things with value. Value or price is determined by "quantity or vent," similar to supply and demand.³⁸ Because man produces a quantity of goods through his labor, the goods are given value because they have been appropriated. Likewise, because land has been made productive by man's labor it has been given value. At first, appropriated goods and productive land will be scarce so that they are valuable. By the time that there are appropriated goods and productive land, it is obvious that private property has come into existence, arising from man's property in himself.

Locke has been attacked for accepting spoiling as a limitation of man's appropriation of property.³⁹ Indeed, there does not seem to be a reason why any type of limitation would be needed in the overabundance found in a state of nature. However, if there was a scarcity of possible property, labor cannot establish a title to

37. Ibid., 32.

38. Goldwin, 445.

39. Ibid., 447.

property because everyone would be competing for something that could not go around. Goods and land were not scarce, so that waste was inevitable. The waste found in a state of nature is worth nothing. For instance,

Land that is left wholly to Nature, that hath no improvement of Pasturage, Tillage, or Planting, is called, as indeed it is, wast; and we shall find the benefit of it amount to little more than nothing.⁴⁰

By accepting waste within the state of nature, Locke provides a way to justify his property theory as a liberation for man from this waste; from a state of nature.

When man finally began to cultivate land and produce more than just what his family needed, money was invented for incentive. Locke writes,

And thus came in the use of Money, some lasting thing that Men might keep without spoiling, and that by mutual consent Men would take in exchange for the truly useful, but perishable supports of Life.⁴¹

With the invention of money, "men solved the basic economic problems of the state of nature."⁴² Although the state of nature experienced an overabundance of goods, money eliminated this to some degree because it allowed men to accumulate more goods than they immediately needed. Furthermore, Locke was able to justify inequality in property among men because labor produced more money. The more someone worked, the more property they would

40. Locke, Second Treatise, 42.

41. Ibid., 47.

42. Goldwin, 449.

accumulate, and, thus, the more money they would earn by selling their excess property. By agreeing to make gold and silver valuable (money), men promoted inequality within the state of nature:

Men have agreed to disproportionate and unequal Possession of the Earth . . . by receiving in exchange for the overplus, Gold and Silver . . . This partage of things, in an inequality of private possessions, men have made practicable out of the bounds of Societie . . . by putting a value on gold and silver.⁴³

Thus, cultivation of land and money were combined in the evolution of Locke's political man.

Locke placed great importance on the combination of labor of land and money. This combination makes increase possible, which Goldwin accepts as the "central theme of Locke's political theory." Without man's cultivation of the land combined with money, nature would not be able to provide the conditions in which the increase of mankind would be fulfilled.⁴⁴ Farmers increase what is available to other men by producing crops through the cultivation of land. In order to protect the private property of individuals, now able to accumulate more than their immediate needs, men institute government.

Government, considered the "final step in the long process of the liberation of man's powers of increase from the restraints of nature," provides three things necessary

43. Locke, Second Treatise, 50.

44. Goldwin, 451.

to preserve property: an established law, a judge to determine differences according to the law, and the power to support and execute the decisions of a judge.⁴⁵ The established law will be accepted as "allowed by common interest to be the Standard of Right and Wrong, and the common measure to decide all controversies between them."⁴⁶ The judge will reverse the possibility within the state of nature that "Men being partial to themselves, Passion and Revenge is very apt to carry them too far, and with too much hear, in their own Cases . . . to make them too remiss."⁴⁷ Once men enter into political society, they consent that government will have the power to enforce the rulings of the judges. Locke explains man's consent:

For being now in a new State, wherein he is to enjoy many Conveniences, from the labour, assistance, and society of others in the same Community, as well as protection from its whole strength; he is to part also with as much of his natural liberty in providing for himself, as the good, prosperity, and safety of the Society shall require; which is not only necessary, but just; since the other members of the society do the like.⁴⁸

These three things are accepted by all men who agree to make a compact to enter into political society in order to better "preserve himself his Liberty and Property."⁴⁹

When the compact is made, and government created, a distinct break from the state of nature is established. Men

46. Locke, Second Treatise, 124.

47. Ibid., 125.

48. Ibid., 130.

49. Ibid., 131.

enter into civil or political society when the break is made. For Locke, political society occurs

Wherever therefore any number of Men are so united into one Society, as to quit every one his Executive Power of the Law of Nature, and to resign it to the publick . . . he authorizes the Society . . . the Legislative thereof to make Laws for him . . . the Execution whereof, his own assistance.⁵⁰

When men have reached the point in the state of nature where they can accumulate more property than fulfills their immediate needs, through the use of money, government is created and instituted. Established for the protection of private property, government includes an established and accepted law, a judge to decide cases concerning the law, and the power to enforce the decisions of the judge.

By putting Locke's property theory into the language of contemporaries and ascertaining the intentions of past authors, Locke's property theory is given a foundation.⁵¹ Locke's theory arises from his belief in natural law and a state of nature and the seventeenth century movement of the concept of property towards the justification of personal liberties. Because property is the motivating factor in Locke's movement from a state of nature to a state of political society, it is a defining feature of man. In fact, property "seems to give the political quality to personality."⁵² While man can separate himself from his

50. Ibid., 89.

51. This method is supported by Sampson.

52. Laslett, "Introduction," 116.

property, he associates his freedom, equality, power to execute the law of nature, and consent to negotiations with other men to his personal goods.⁵³ As a result, man can alienate his personal property which he associates with natural rights although he cannot alienate himself. When man alienates his personal property by consenting to a government which will limit some of his natural liberties, he gives birth to political society.

53. Ibid.

Chapter Three
Tyrrell and Locke as Natural Law Theorists:
Similarities and Differences

Writing at almost the same time as Locke (and about the same issues of property) James Tyrrell expounded his ideas in Patriarcha non Monarcha. Tyrrell's work is similar to Locke's because he wrote it to refute Filmer, incorporated ideas of natural law, and based it around the origins and institution of private property. Patriarcha non Monarcha was a significant political work of the exclusion crisis. Although he does not mention his name, Locke refers to Tyrrell in his First Treatise by writing of "the Ingenious and Learned Author of Patriarcha non Monarcha."¹ Locke makes this reference after stating that ideas of succession and primogeniture in relation to property need not be detailed because they had been "fully related" in Tyrrell's book. Laslett explains that even though the above is the only direct reference to Tyrrell made by Locke, "the parallel passages between it and Locke's noted in this edition show how close the two men were."²

David Wootton places a great deal of emphasis on his conviction that Locke wrote with Tyrrell in mind. He explains it is a "fact that every single one of the central themes of the Second Treatise would arise naturally out of a

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1. Locke, First Treatise, 124.
 2. Laslett, "Introduction," 70.

consideration of Tyrrell's Patriarcha non Monarcha."³ Basing his argument on the idea that Locke "almost certainly" wrote the Second Treatise after Patriarcha non Monarcha was published in 1681, and that there is no evidence that Locke influenced Tyrrell's work, Wootton claims that "almost all the principles that we think of as being distinctly Lockean are in fact borrowed by Locke from Tyrrell."⁴ Partly based on his date for the authorship of the Second Treatise, Wootton presents the most forceful secondary argument for a direct connection between Locke and Tyrrell.

Laslett, who first dated the Two Treatises as an exclusion tract, written long before the Revolution which it was assumed to justify, Laslett disagrees with Wootton's dating of Locke's work. According to Laslett, Tyrrell and Locke wrote their works at the same time: "Exactly the same decision was taken at exactly the same time, with very similar results on his final text in refutation of Filmer, by his friend James Tyrrell."⁵ Following this argument, Locke and Tyrrell wrote independently of each other with similar results concerning natural law and property theory. Even though Laslett argues for the independence of the two men, he gives credit to Tyrrell for being the innovator of

3. David Wootton, "Introduction," Political Writings of John Locke (New York, New York: Penguin Group, 1993), 77.

4. Ibid., 83.

5. Laslett, "Introduction," 73.

the labor theory of value.⁶ Tyrrell's claim for originating this theory, which helps to explain Lockean man's transition from a state of common property to private property, must be considered when anybody argues for any originality in the Two Treatises. Even if Patriarcha non Monarcha did not predate the Two Treatises, any claim to originality which Locke's work provokes must take into consideration the very similar dating and ideas presented by Tyrrell. Even if Patriarcha non Monarcha did not influence the political theory found in the Two Treatises, both Locke and Tyrrell were natural-law theorists who argued that men were born with a right to their freedom, that the state of nature was peaceful, that property is a major reason for man's evolution towards political society, and governmental powers are granted by individuals.

Tyrrell and Locke both incorporated into their arguments that men were born with a right to their freedom. For Locke, this argument was the basis for his entire conception of the state of nature. In this state, men enjoyed stewardship of their natural rights, given by God. Tyrrell also advances the idea that men are born with and retain a right to individual freedom. He explains,

5. Laslett, "Introduction," 73.

6. Ibid., 74.

If they do not like the Government they live under, the world is wide enough, and they may remove themselves elsewhere: for I cannot think that the positive Laws of any Government do oblige any man in Conscience . . . And if one man may do this, why not more, and so on to an indefinite number?⁷

Tyrrell argues that all men are entitled to change the conditions under which they live, as dictated by their consciences. Men should not defer from their consciences past the point where they are "convinced the thing commanded is more than indifferent in its own nature, and conduces to the good of Mankind in general, or of the whole Commonwealth in particular."⁸ In other words, if a man is commanded to extremes of action (such as taking another man's life by order of his sovereign) the right to his freedom entitles him to disregard this order if it is not beneficial to his fellow men or to his country. Whether presented from a state of nature viewpoint (Locke) or a viewpoint that accepts existing conditions (Tyrrell), both men argued that men were born with the right to their freedom.

Unlike Locke, Tyrrell depends upon historical references for examples of the argument that men are born naturally free. Tyrrell refers to the historical example that

7. Tyrrell, 87.

8. Ibid.

this notion of a native Allegiance [was not] known to our Saxon Ancestors, since they counted no man an absolute subject until he was sworn in the Tourn or Court of Frankpledge, and was entered into a decanary or Tything.⁹

According to Tyrrell, man is guided by his personal freedom until the institution of government, after which he consents to accept the government's authority. However, even after man temporarily forfeits his freedom to the authority of the government, he can retain that freedom by moving to another country to change unsuitable living conditions imposed by the government.

Tyrrell pushes his belief that men are born with the right to freedom to its natural conclusion. He accepts the premiss that men only need obey their patriarchs until the age of nonage (twenty-five years old) when they will be able to take care of themselves. Upon the acceptance of this premiss, Tyrrell declares

that those that first instituted Government in any Country, have no necessity expressly to promise or engage for the Subjection and Obedience of their Children, or those who should succeed them.¹⁰

Even though men have a natural right to their freedom, once people enter into society they should follow the contracts of their ancestors and not destroy or alter their government without very good cause.¹¹ In the final analysis, Tyrrell believes, no man is "obliged to the Acts or Agreements of

9. Ibid., 87-88.

10. Ibid., 77.

11. Ibid.

their Ancestors in the state of Nature farther than it conduces to their benefit or preservation."¹²

Tyrrell accepts that all men are born with a natural right to their freedom, start to enjoy this freedom when they reach nonage, and cannot lose this right. According to Wootton, Tyrrell was the first natural law theorist to argue for all of these conditions. Locke agrees with Tyrrell in all of these respects:

A man, as has been proved, cannot subject himself to the Arbitrary Power of another; and having in the State of Nature no Arbitrary Power over the Life, Liberty, or Possession of another, but only so much as the Law of Nature gave him for the preservation of himself, and the rest of Mankind; this is all he doth, or can give up to the Common-wealth.¹³

This passage reveals Locke's belief that man cannot lose his right to freedom once given by nature to government. Man cannot lose his natural freedom to government because he can only consent to a government that does not enroach upon his right to self-preservation.

As late seventeenth century natural law theorists, Locke and Tyrrell also believed that men were born into a state of nature which was essentially peaceful. That it was peaceful is shown by man's ability to "establish and identify private property rights."¹⁴ As Locke shows, individual men can appropriate private property from

12. Ibid., 75.

13. Locke, Second Treatise, 135.

14. Wootton, 81.

property given in common by God through the addition of their labor. Tyrrell's Patriarcha non Monarcha reveals the same labor theory of value. Accompanying the labor theory of value in each man's political theory are the natural law limitations of need and spoilage on appropriation.

Property was originally given by God in common to all of mankind. Man then appropriated this common property into private property because of their interest in self-preservation. As Tyrrell explains, "all things being exposed to all men . . . they did not belong to this person more than to another."¹⁵ Men were able to use property for their needs. However, man's use of property was limited by what Tyrrell terms the "first natural law . . . this Pinnacle of Reason." Locke describes the first natural law as the natural law limitation of immediate need. Tyrrell describes the first natural law (a sort of Golden Rule): "Not to do to another that which I would not have done to myself in the same Circumstances."¹⁶ Tyrrell proceeds to derive an argument from this law that no other man should attempt to deny any other man their interest in property because every man is interested in his own self-preservation.¹⁷ The natural law limitation of immediate need is only reasonable, "For he that leaves as much as

15. Tyrrell, 109, 2nd pagination.

16. Ibid.

17. Ibid., 109-110, 2nd pagination.

another can make use of, does as good as take nothing at all."¹⁸ Thus, for Tyrrell and for Locke, the beginning of man's appropriation of private property was stirred by his interest in his own self-preservation.

After man began to appropriate property for his self-preservation, property became subject to natural law limitations of spoilage and of immediate need. Property became subject to spoilage limitations because excess property any man appropriates will only become a burden to him and deplete the available resources of other men.

Tyrrell explains the reason for a spoilage limitation:

that the people do neither need nor desire those superfluous things that others do, there is no need of enclosing or appropriating any more Land than they really make use of, more being but a burthen to them.¹⁹

The limitations of immediate need and spoilage which Tyrrell and Locke endorse restrain man from an unlimited appropriation of property in a state of nature.

Despite the impossibility of unlimited appropriation in a state of nature, man is able to appropriate his private property because he mixed his labor with what was originally common property. When man produces private property by mixing his labor with common property he is producing the labor theory of value. Described in Patriarcha non Monarcha, the labor theory of value is as follows:

18. Locke, Second Treatise, 33.

19. Tyrrell, 113, 2nd pagination.

since the owner hath possessed himself of this land, and bestowed his Labour and Industry upon it, and that the other hath no right to any more of the products of the earth than that may serve for the subsistence of himself and his Family, and that there is more around but where he may procure himself the like necessaries if he please, he hath no right to take away this land from the owner without his consent, since he hath the same right to this Field as the other hath to his Cottage or Garden.²⁰

As this passage shows, the labor theory of value establishes the laborer as the undisputed owner of the property he mixes with his labor. In the work of Locke and Tyrrell, the labor theory of value acts within the confines of natural law limitations to provide a foundation for man's appropriation of property from the property given by God in common.

Locke argues that men institute government as a protector of private property once they have appropriated property through the labor theory of value. Although Tyrrell is in conflict with Locke because he argues that government is instituted by men as an answer to regulating an expanding population, he does accept that government is instituted by men. Men are responsible for the powers government possesses because they are responsible for the institution of government. In fact, "the powers of government are based entirely on powers transferred to them by individuals, and governments have no rights that are particular to them."²¹ Locke believes all men are born with

20. Ibid., 112, 2nd pagination.

21. Wootton, 80.

the right to defend their freedom because they are born entitled to their freedom. To defend their natural freedom, men must "judge of, and punish the breaches of that Law in others."²² To judge and punish others, men establish government and instill it with the power to make and execute laws "as the publick good of the Society shall require."²³

Although Locke presented the argument that men transfer powers to the government, it may have been Tyrrell who

was the first to grasp the possibility of treating governments as having rights no different in kind from those of individuals in a state of nature, while insisting those rights were not . . . unlimited.²⁴

According to Tyrrell, the power the people possess in their ability to punish the king is evidence that they instill the government with its power. Tyrrell describe this belief:

the Power of the people to resist and punish kings, in which I shall say no more, than that a Prince who is subject to be so punished, is not really a king, in the sense that the word king ought to be understood, since a king is properly one that hath no Superior, and consequently is not capable of Punishments; all punishments as I said before, being properly the effects of a Superior, over an Inferior.²⁵

Because people have instituted government and instilled it with its powers, they are superior to the agents of the government.²⁶

22. Locke, Second Treatise, 88.

23. Ibid., 89.

24. Wootton, 80.

25. Tyrrell, 116, 2nd pagination.

26. Tyrrell's insistence that the people are over the government reveals that he is not an absolute monarchist.

In essence, people in a state of government are living within both a state of nature and political society. Locke explains that the Executive Power is what "might be most subservient to the publick good."²⁷ Tyrrell agrees with Locke and argues that people have the choice of following the government or not following the government. He writes,

we should allow this way of compulsion to the People, it will follow that both the King and the People do still live in a natural liberty, or meer state of nature.²⁸

When people have the option of following the government which they instituted and granted powers to, they are ultimately only bound by natural law. Once men agree to institute government, they grant government the responsibility to act as a judge between men. Government is granted this power because men need a judge to replace the freedom from and equality to everyone else that men enjoyed in a state of nature. Nevertheless, even under government people remain their own final judge, as natural law dictates.

Both Locke and Tyrrell believe that property predates government. For Locke, the reason that property is created is the protection of private property. If property must be protected, and government is instituted to be that protector, then property must predate government. Tyrrell

27. Locke, Second Treatise, 167.

28. Tyrrell, 132, 2nd pagination.

is more blatant in his statements meant to clear up "this great difficulty which hath puzzled some Divines, which is prior in nature, Propriety or civil government."²⁹ He simply explains

it is apparent, Propriety, understood either as the application of natural things to the uses of particular Men, or else as the general agreement of many men in the division of a Territory, or kingdom, must be before Government, one main end of which is to maintain the Dominion of Property before agreed on.³⁰

On the surface of their political theories, Locke and Tyrrell appear to be mirrors of each other. Each man incorporates into his writing the ideas that men are born with a right to freedom, are originated in a state of nature which is essentially peaceful, are able to appropriate property because of the labor theory of value, and are able to grant government its powers after the creation of property. In all of these ideas, the two political philosophers reveal their stance as natural-law theorists of late seventeenth century England. Locke and Tyrrell refuted Filmer and his historical arguments while including issues of liberty vital to the time when they were writing.

Yet profound differences remain between the political theories of Locke and Tyrrell. While both men agree that man is born with a right to freedom and to consent to the institution of government, they disagree as to what

29. Ibid., 16, 2nd pagination.

30. Ibid.

constitutes membership into government. Tyrrell ultimately takes a more realistic stance about the basis of membership in a polity.

While Macpherson would have us believe that there was a major break between Locke's state of nature and state of political society, Locke clearly sees the law of nature as binding in both states.³¹ However, Locke does not accept that government replaces the state of nature or is automatically inclusive of all men. Instead, he believes that government is bound by the law of nature and is accepted only when people reach an age of majority.³² In contrast to Tyrrell, Locke believes a return to the state of nature is always an option. He writes,

For a Man, not haveing the Power of his own Life, cannot, by Compact or his own Consent, enslave himself to anyone, nor put himself under the Absolute, Arbitrary Power of another, to take away his Life, when he pleases. Nobody can give more Power than he has himself; and he that cannot take away his own Life, cannot give another power over it.³³

As this passage illustrates, because men do not have unlimited natural rights, they do not have the power to grant government power to supersede natural law. People cannot be subject to a government which supersedes the

31. See the appendix (below) for Macpherson's interpretation.

32. See the appendix (below) for Tully and Shader-Frechette's interpretations of Locke's work, which reveal that government is guided by man's foundation of rights in natural law.

33. Locke, Second Treatise, 23.

rights they enjoy in a state of nature:

the Conquered, or their Children, have no Court, no Arbitrator on Earth to appeal to. They then may appeal . . . to Heaven, and repeat their Appeal, till they have recovered the native Right of their Ancestors, which was to have such a Legislature over them, as the Majority should approve, and freely acquiesce in.³⁴

Unlike Locke, Tyrrell accepts the existing government as replacing the state of nature and as a very inclusive institution. Also unlike Locke, Tyrrell would accept absolute governments as legitimate because men can be compelled to give up their personal rights under some circumstances. The strongest example he provides is of a captor and slave, similar to Locke's conqueror and conquered:

Thus a Slave and Argiers though it is the occesion of his servitude his being taken Prisoner, yet the true Cause of his becoming a lawful Servant to his taker, does not proceed from his conquering him, that he shall be dismiss'd of his Fetters, or Imprisonment, upon Condition he will serve faithfully and not run away.³⁷

Thus, Tyrrell will accept a contract for slavery within the confines of government. If this type of contract is accepted, then the natural law limitation of someone not being able to surrender their right to freedom is rejected. If this right is rejected, then the road to absolute government is open as a possible and much larger extension of an individual contract for slavery.³⁶

34. Ibid., 176.

35. Tyrrell, 122, 2nd pagination.

36. Notice, however, that even in slavery a person has a contract. Ultimately, it is the individual's choice, although limited by circumstance, to become a slave. After all, slavery is usually considered to be better than death.

While Tyrrell accepts government as a replacement for a state of nature, necessarily inclusive of every man who owns property, Locke will not consider government as inclusive of anyone who has not made that choice after coming of age. While Locke and Tyrrell concur the legitimate authority of any government is founded upon consent, they do not agree if government accepts men as born subjects. If men have to consent to the authority of government, everyone has to accept that individual freedom must predate the institution of government. If individual freedom predates government, as a corollary, men cannot be born as subjects of the government.

Locke expresses this corollary in his Second Treatise, where he states that while people "conclude they are naturally Subjects as they are Men," governments "understand it otherwise."³⁷ Government does not accept a child as a born subject because it does not want to admit the child to privileges of that country.³⁸ Presenting an argument of nonage, Locke explains that each man is under his father's guidance, and not his government's, until "he comes to Age of Discretion" when he is at liberty to choose "what Government he will put himself under; what Body Politick he will unite himself to."³⁹ According to Locke, because men

37. Locke, Second Treatise, 117, 118.

38. Ibid., 118.

39. Ibid.

are more a subject of their parents than of their government's until the "Age of Discretion," they are not born as subjects of their government.

In contrast, Tyrrell does not believe that government does not accept men as born subjects. Instead, he believes that laws consider men to be born as subjects. Tyrrell explains, by positive laws "there is a native Allegiance due by the Laws of divers Countries precedent to any Oath."⁴⁰ Unlike Locke, Tyrrell believes that government accepts men as born subjects.

Locke and Tyrrell also disagree as to what entitles membership to political society. On one hand, Tyrrell believes that all goods carry membership to society with them. He states that any man who holds land or goods is "bound to obey" and "likewise to maintain" government because

it is just and reasonable that those that claim under such first possessors, should, if they like to enjoy the Lands or Goods, perform the Conditions annexed to them

once the institutors of government tied the possession of goods to the maintenance of the government.⁴¹ According to Tyrrell, possession of land or goods is not the only thing that entitles membership to society. Even people who do not own land or goods should accept the responsibilities of

40. Tyrrell, 87.

41. Ibid., 86.

membership to society because they also "enjoy the common benefits of the government."⁴² Tyrrell accepts both proprietors and non-proprietors as members of society, which includes their responsibility to maintain the government.

Locke disagrees with Tyrrell because he will not accept that proprietors of land or goods are bound to maintain their government. This disagreement reveals that Locke is more radical than Tyrrell. Locke would accept that proprietors of the land have given their tacit consent to be members of society because they enjoy governmental protection of their land and liberties.⁴³ However, Locke makes a distinction between tacit consent and express consent. Express consent puts beyond any doubt that man is "a perfect Member of that Society, a Subject of the Government."⁴⁴ Tacit consent does not involve any express statement of membership in a government but reveals an agreement to maintain that government while the person enjoys its privileges. Locke explains,

The Obligation any one is under, by Virtue of such Enjoyment, to submit to the Government, begins and ends with the Enjoyment; so that whenever the Owner, who has given nothing but such a tacit Consent to the Government, will, by Donation, Sale, or otherwise, quit the said Possession, he is at liberty to go and incorporate himself into any other Commonwealth, or to agree with others to begin a new one.⁴⁵

42. Ibid., 87.

43. Locke, Second Treatise, 119-120.

44. Ibid., 119.

45. Ibid., 121.

In addition, people who do not own property, even though they enjoy the "Priviledges and Protection" of a government's laws are not "a Member of that Society" unless they have given their express consent to be members.⁴⁶ Locke does not include proprietors or non-proprietors as members of society, unless they have given their express consent to be so, which means they do not have a continuing responsibility to maintain government. Locke's exclusion is radical because he does not portray government as an institution which men must obey.

While Tyrrell accepts anyone enjoying the priviledges of government to be members of that government, Locke establishes a criteria of the need for express consent for someone to become members of society. Locke's criteria accepts landholders as members of society who have given tacit consent which will end when they no longer enjoy governmental privileges over that land when that land no longer belongs to them. For both Locke and Tyrrell, men will no longer be members of society only when the government violates their right to self-preservation, whether they are landholders or not.

The express consent criteria which Locke presents in the Second Treatise will keep individuals from giving as much of their liberty to government as Tyrrell will allow.

46. Ibid., 122.

This criteria limits what actions man may be held accountable for, so that he can never be held accountable for accepting an absolute government. If man has limits for what he can be held accountable for, his actions are necessarily limited. Locke explains the need for self-preservation will always precede man's responsibility to government:

the first and fundamental positive Law of all Commonwealths is the establishing of the Legislative Power; as the first and fundamental natural Law, which is to govern even the Legislature it self, is the preservation of the Society, and (as far as will consist with the publick good) of every person in it.⁴⁷

In contrast, Tyrrell believes man must fulfill the responsibility he is assigned by government. Tyrrell's idea that man is held responsible to government echoes Tully's socialist interpretation of Locke's work.⁴⁸ However, Tully's critique undermines man's individual rights under government, especially to property, and as such, can be used to highlight Tyrrell's rather than Locke's position. Like Tyrrell's argument, Tully's interpretation revolves around a necessity of governmental regulation over men. In Tyrrell's writing, government is portrayed as an institution which men must obey.

Even more vital to the political theories than the distinction of whether man is ultimately responsible to

47. Locke, Second Treatise, 134.

48. See the appendix (below) for Tully's interpretation.

government, is the contrast between Locke and Tyrrell's breadth and definition of property. Because each man holds a different opinion why government was created, Locke places a greater importance upon property.

While Locke sees the creation of government as necessary for the protection of property, Tyrrell sees the creation of government as a result of an expanding population. As land is appropriated and utilized to its fullest extent, Tyrrell explains,

there will presently arise a necessity of division of lands in the first place; and of Trade abroad, in the next; or else the People must either discharge themselves into their neighbours territories, or live by robbing, or playing the Pyrates upon their neighbours.⁴⁹

The stress that a large population puts upon a limited amount of available land creates the need for a government to keep order. Tyrrell contends that government must make "laws to maintain this Propriety and punishments ordained for them, that disturb it."⁵⁰

In contrast, Locke argues people do not necessarily overpopulate the land that is available for their appropriation. None of the three main interpretations of Locke consider overpopulation as the reason for the institution of government and Locke explicitly denies this reason in the Second Treatise. He explains,

49. Tyrrell, 113, 2nd pagination.

50. Ibid., 114.

Labour, in the Beginning, gave a Right of Property,
where ever any one was pleased to imploy it, upon what
was common, which remained, a long while, the far
greater part, and is yet more than Mankind makes use
of.⁵¹

Although he accepts that land was appropriated to a great extent, Locke will not accept that the land is overpopulated because common property still exists. In agreement with Macpherson's analysis of his work, Locke claims government came into existence to protect property after men consented to the use of money, which allowed them to appropriate property beyond their immediate needs.⁵²

The distinctions between Locke and Tyrrell's beliefs in the natural right to freedom and their breadth of property is highlighted by Tyrrell's assumption that the creation of political society eliminates all previous property rights. Wootton interprets Tyrrell's work to mean that personal relationships are replaced with legal relationships once man institutes government.⁵³ On the other hand, Locke's Two Treatises revolve around the idea that political society is created to protect natural property rights rather than eliminating them for rights determined by the government.

Following this distinction, the possessive individualist critique of Locke's work, which states that there is a major break between a state of nature and a state of political society, seems more appropriate for Tyrrell's

51. Locke, Second Treatise, 45.

52. Ibid., 45.

53. Wootton, 85.

work. Locke's definition of property, which includes both property in one's self and one's rights, holds in both a state of nature and in political society. In contrast, when Tyrrell refers to property, his discussion considers property as a right of ownership, which is guided by governmentally determined laws rather than by laws of nature. Tyrrell's discussion of property relies on a break between a state of nature and political society; Locke's discussion needs a smooth transition from a state of nature to political society. Tim Harris illustrates the difference between Tyrrell's and Locke's definitions of property in a seventeenth century context:

property in the late seventeenth-century was a complex concept, possessing various layers of meaning. The term could be used in a narrow sense meaning goods and possessions, as it was . . . by the Whig James Tyrrell . . . Yet property could also refer to anything which might be peculiar or proper to one person, to anything which might be said to enjoy the possession of by private right. Thus, John Locke could argue that men enjoyed a property in their life and liberty, as well as estates.⁵⁴

While Locke's definition bridged the economic and the ideological, reflecting material goods and ideal benefits, following the continuing seventeenth century trend, Tyrrell's discussion of property does not.⁵⁵ As Harris explains, Tyrrell regards property as material goods, and

54. Harris, "Lives, Liberties, and Estates," 220.

55. See the introduction for its discussion of the evolution of the concept of property in seventeenth-century England.

does not extend it to ideal benefits. Thus, the possessive individualist critique might be more to analyze Tyrrell because he insists that governmental laws replace a man's natural law limitations, which are fundamental in Locke's property theory.

Furthermore, while both Tyrrell and Locke accept the labor theory of value, only Tyrrell accepts occupancy as a right to property. Tyrrell has even been criticized for being confusing in mixing arguments of labor with occupancy.⁵⁶ Ashcraft suggests that Tyrrell may have taken this approach because he took the defensive in the nature of property rights and did not want the Whigs to appear as Levellers. As a result, his argument from occupancy makes his theory appear as "a wholesale endorsement of existing property relations, whatever their form or social utility."⁵⁷ On the other hand, Locke relies solely on the mixture of a man's labor with property to create ownership. Therefore, Locke's political theory appears more consistent and without possibilities of conflict.

Both Locke and Tyrrell accept that property had originally been held in common as a gift from God. The Whigs had been pushed to this position by their acceptance of natural law arguments, needing to demonstrate that men were entitled to their property rights because they had

56. Ashcraft, 251.

57. Ibid., 282.

originated in a state of nature. In Patriarcha non Monarcha, Tyrrell explains that occupancy "confers a Right in the state of Nature to such things as are meerly necessary for a mans subsistence."⁵⁸ Like labor, occupancy is subject to natural law limitations (such as need, subsistence) in a state of nature, laying a foundation for property rights. Unfortunately, through his historical references, an argument for property rights from occupancy only confuses the issue. Tyrrell's historical references and analogies justify Ashcraft's statement that he attempted to justify existing property relations. For example, Tyrrell claims that

the Ancient Germans, from whom our Saxon Ancestors descended, and of which nation they were a part, never knew what belonged to an absolute despotick power in their Princes. And after the Saxons coming in, and the Heptarchy having been erected in this Island, the Ancient form of Government was not allowed.⁵⁹

As this passage reveals, Tyrrell is far from denying the legitimacy of an absolutist government. Instead, Tyrrell simply insists the English never experienced an unlimited government. He writes,

the government of the West-Saxons which was that on which our Monarchy is grafted was not despotical, but limited by Laws, that the king could not seise mens lands or goods without Process . . . [in addition] as there is no man that is but moderately versed in the history, and Laws of his Country, but very well knows; and that this opinion of Englands being a limited Monarchy is no new one, but owned to be so by our kings themselves.⁶⁰

58. Tyrrell, 65.

59. Ibid., 149.

60. Ibid., 150.

Because Tyrrell differs from Locke in accepting an argument from occupancy as a foundation for property rights, he can be presented as a defender of absolutist governments; at the very least, he does not deny that these governments can legitimately exist, though they have not historically existed in England.

Tyrrell attempts to redress how private property originated from common property in Patriarcha non Monarcha. Tyrrell, while trying to support existing property relations, takes some aims to distance himself from the people, "the rabble or the disordered multitude."⁶¹ For example, he argues that only individual adult males have to consent to political authority for the authority to be accepted:

it be esteemed a perfect Democracy . . . where only free men, or at their own dispose, and such who were supposed first to have by their meeting together instituted this Government . . . I see no reason why there should not be looked upon as representing the whole promiscuous body of the people.⁶²

Tyrrell offers the historical example of Athens, "which all must grant to be so," as a democracy which only needed the consent of males who had the opportunity to hold property to assume its political authority.⁶³ Using historical arguments to justify his theory, Tyrrell attempts to move away from representing the people as a whole. By doing so,

61. Ashcraft, 305.

62. Tyrrell, 74.

63. Ibid.

while Tyrrell believes private property arose from the common, he has to neglect the role of original common property because he stresses the importance and role of property holders instead of every man's ability to appropriate property for himself.

At the opposite extreme, Locke devoted his Second Treatise to the evolution of mankind as a whole from a state of nature towards the institution of government as a protector of every individual's natural property rights. As the interpretation given by Shader-Frechette demonstrates, Locke's work is dependent on the division of the original common into private property. The Two Treatises is not an attempt to defend existing property relations, as Tyrrell's work is, but an explanation of why every man has natural property rights, both economic and ideological, that must be protected. Locke links his political theory to every man's individual rights, not just the landholder's rights. In contrast, Tyrrell argues that property in common means as much as what a man can use.⁶⁴ In essence, common property as the original form of property is Tyrrell's justification that no man can take the natural right to sustenance from another man because all men originally had the right to take their own property from the common. Nevertheless, Tyrrell's acceptance of the original common is nothing more than a

64. Daly, 90. Also, Tully's interpretation of what the English common meant to Locke can be applied to Tyrrell.

negative consent which men follow in a state of nature. This negative consent changes when men agree to governmentally determined laws, replacing the laws of nature. He explains his acceptance in Patriarcha non Monarcha, involving the argument that occupancy leads from common to private property:

a Property of occupancy or the personal possession of and applying it to the use of one or more men while they have need of it, may very well consist with community, and is absolutely necessary to the preservation of mankind.⁶⁵

As this passage shows, Tyrrell advocates that when common property is divided into private property by rights of occupancy (giving theater seats as his example), men necessarily agree that their right to preservation has been served. As a result, men will not debate the other man's right to the property that man occupies. By giving a negative consent, man believes his own right of occupancy will not be challenged. The original common property did not provide "an absolute positive, or unalterable communion of every man pro indiviso" because, if it did, "the Products of the earth could have contributed nothing to the ends for which they were designed by God viz: the preservation and Propagation of the species of Mankind."⁶⁶ In Tyrrell's opinion, if man was originally in a primitive state of communism, holding all property in common, their best

65. Tyrrell, 99, 2nd pagination.

66. Tyrrell, 109-110, 2nd pagination.

interests of self-preservation would not be served.⁶⁷

On the other hand, Locke--and all major interpretations of his work--accepts that there was a primitive stage of communism within the state of nature. Predating the institution of government, Locke's stage of communism enjoyed common property. This common property would be appropriated through the labor theory of value into private property. The men who appropriated from the English common enjoyed the natural right to self and were limited by natural law restrictions of spoilage. While Tyrrell agrees that men in a state of nature are entitled to self-preservation and limited by natural law restrictions in their attempts at appropriation, he will not accept that man ever lived in a primitive stage of communism. In providing a critique of the progression of property rights in defense of existing property relations, Tyrrell accepted arguments from history. These historical arguments advanced the idea that the English knew a history of monarchy limited by the consent of the people, rather than a background of communism. Tyrrell does not adequately explain what form of social organization man experienced while holding property in common, if they did not experience communism. On the other hand, Locke did embrace man's existence in a state of

67. Although Tyrrell agrees with Tully's interpretation of Locke in many respects, he does not in arguing that there could not have been an original primitive form of communism.

nature (a theoretical construct), where he enjoys property in common. Locke's critique of man's evolution of property rights is not as realistic as Tyrrell's because he was much more systematic in explaining a state of nature which never existed. Locke's theory is more abstract; Tyrrell's more historical.

Locke's insistence that government exists to defend property rights controlled by natural law and to guarantee man his freedom is a radical break from Tyrrell's arguments in Patriarcha non Monarcha. Despite their similarities in arguing that man is born with a natural right to freedom, grants government its powers, and arises from a peaceful state of nature which experiences the labor theory of value, their striking contrasts lead to profound differences in property theory. While Wootton may claim that "Tyrrell's Patriarcha non Monarcha was the immediate cause of the Second Treatise" upon a sound argument, and Tyrrell himself would state that "whoever writ it [the Two Treatises] . . . agreed perfectly with my conceptions in Patriarcha non Monarcha," the two political works contain drastic differences because Tyrrell was more realistic.⁶⁸

In an attempt to distance himself from the people as a whole while defending existing property relations, Tyrrell presented a more real world approach than Locke. In contrast, Locke's more abstract, systematic approach was very revolutionary in nature. Although both men accept

patriarchal origins of the state, Locke is the only one that would not entertain any ideas for justification of unlimited monarchy. Tyrrell provides a sharp example, that of slave and captor, which might produce an unlimited monarch. Tyrrell attempted a more practical explanation of political theory than Locke, relying upon both arguments from history and arguments based on natural law. On the other hand, Locke used only natural law arguments to provide justification for man's right to freedom and appropriation of property as a means of self-preservation. Locke was eventually accepted as the master innovator by relying solely on arguments from natural law, but Tyrrell's work was more relevant to the time in which it was written.

68. Wootton, 60. Quoted in Gough, 597.

Conclusion

John Locke and James Tyrrell were political theorists who reflected the issues of the exclusion crisis, when modern political parties were starting to form. The Two Treatises and Patriarcha non Monarcha were distinctly Whiggish. Locke and Tyrrell wrote against the assumed Tory spokesperson, Sir Robert Filmer.

Filmer's Patriarcha, published at least forty years after it was written, suited the Whig-Tory debates perfectly because it presented an argument for absolute monarchy. Filmer derived the necessity of absolute monarchy from an interpretation of Genesis which stressed that the world's goods were originally given by God to Adam and that these absolute property rights had descended to the present monarch. Filmer's interpretation of the Bible, centering on the Fifth Commandment, also allowed for an innovative patriarchal theory, where fatherly and kingly power were the same, and not just analogous. Using examples of biblical history, Filmer's Patriarcha was representative of the standard Tory position of supporting absolute monarchy as a way of providing order to late-seventeenth century England.

Locke and Tyrrell went to great pains to refute Filmer. Property issues, which had first been taken up by Filmer because he believed Englishmen considered them as their greatest liberty, became a major focus of each response. During the seventeenth century, which experienced the first

legal definition of property in print and an evolution of the term to denote both economic and ideological rights, property became the major focus of political debate. After each side presented its political stance, the Whigs have since been viewed as defenders of property rights against a Tory party which defended absolute monarchy. However, the writings of Locke, Tyrrell, and Filmer defend the position that each party felt it was attempting to defend the established Church and State.

In attempting to refute Filmer, Locke and Tyrrell moved from relying on historical examples to natural law. Rather than offering an historical interpretation of the Bible, which Filmer did in Patriarcha, Locke and Tyrrell used natural law as a basis for their political theories. Their political theories stress that man is born with the natural right to freedom, evolving from a peaceful state of nature towards instituting government for the protection of property. By not centering on historical examples, the natural law theories of Locke and Tyrrell could not be proved incorrect. Although they may not have admitted it at the time, they helped to establish the validity of abstract political theories while avoiding historical debates they would lose.

Ultimately, despite the many similarities between The Two Treatises and Patriarcha non Monarcha, Tyrrell revealed himself as a more practical political theorist than Locke.

Although both men agree that private property is appropriated from the original common, Tyrrell also accepts occupancy as a right to private property. By accepting occupancy as a right to private property, Tyrrell defends existing property conditions, including the fact that he does not deny the possibility of a legitimate absolute government. In contrast, Locke denies that absolute government is ever legitimate and proposes a positive community of property where every man is entitled to property rights. On the other hand, Tyrrell does not present a positive community of property rights but rather a negative community where individuals have their rights because other men do not protest against what that man holds as private property. Also, Tyrrell considers all men, whether they hold property or not, as members of society; Locke only accepts property members as having given a tacit consent to fulfill the responsibilities of government, but this responsibility is only lasting with an express consent. In several respects, Tyrrell and Locke differ in terms of their property theory.

While Tyrrell's property theory is not now considered as the equal of Locke's, it probably seemed more convincing to his contemporaries. When his contemporaries, both Whig and Tory, feared possible results of the succession controversy, Tyrrell defended existing property conditions. Although he would not accept that every absolute government

was illegitimate, he attempted to show that proprietors and non-proprietors alike hold responsibilities to government. Although he believed that all Englishmen hold responsibility to their government, which replaced the state of nature, Tyrrell also advanced the idea that only men who had the opportunity to hold property need consent to a government for its authority to be valid. In advancing this idea, Tyrrell distances himself from the people as a whole, speaking particularly for men of property. His conception of property, in fact, reveals who he speaks for because it does not follow the view which would become common in the late eighteenth century of property as both an economic and ideological conception, but rather a purely economic one. Most importantly, he used historical examples to support his arguments. Although an importance has been placed on the Whig movement from historical arguments to natural law, Tyrrell incorporates them both into his work. This incorporation suggests that he bridged historical political realities with abstract political philosophy. A political theory which defended existing property relations, not extending property rights to ideological rights for everyone, while bridging historical political realities with abstract political philosophy would have been convincing to Tyrrell's contemporaries; an audience of Tory and Whig parties which were still elitist. That theory is exactly what Tyrrell presented in Patriarcha non Monarcha.

Locke, on the other hand, whether Laslett or Ashcraft's dating of the Two Treatises is accepted, wrote with a more universal purpose in mind. While Tyrrell was a spokesman for the Whig party at the time of the Exclusion Crisis, making his writing more historically important for that period, Locke's purpose extended beyond that of his friend; he acted as Whig spokesman for a radical, though not republican, wing of the party which was writing for posterity as well as their own cause. Locke's purpose has since drawn attention as a Whig spokesman for future generations. His political theory, although based around terms that he does not adequately explain (natural law, state of nature, government by consent, etc.), leaves out historical examples completely. His elimination of historical examples, coupled with his dual conception of property, establishes Locke as a Whig natural law theorist that extended beyond the exclusion crisis. His property theory reflected the seventeenth century trend of turning property into a concept which covered both economic and ideological liberties, as the varied interpretations of his work reveals. Locke wrote for a universal audience; Tyrrell wrote for his contemporaries.

Appendix
Major Interpretations of Locke's Theory of Property:
Possessive Individualism, Justification of the English
Common, State-Welfare Capitalism

Although it is clear that Locke's theory of property focuses on man's movement from a state of nature to political society, certain ambiguities can be found in the Second Treatise. The major ambiguity which can be found with Locke's property theory is that he gives two ambiguous definitions of property, neither of which is very specific. This ambiguity has led to differing interpretations of which economic system Locke supports: the "possessive individualism" described by C.B. Macpherson, the socialism of the English common argued for by James Tully, and a type of land-use planning detailed by Kirstin Shader-Frechette. Spanning the extremes from Tully to Macpherson, Locke can be found to support most property theories because, as Laslett suggests, if historical texts are treated how the authors want, "we can prove just what we like from them."¹ In addition, the presence of "two distinct conceptions of ownership in his [Locke's] thought," which "are, in many cases, conflictory," allows for different possibilities in interpretation.²

Locke's property theory can support the idea of possessive individualism. This idea was presented by C.B. Macpherson in his now-classic The Political Theory of

1. Laslett, "Introduction," 91.

2. Schwarzenbach, 141.

Possessive Individualism, Hobbes to Locke. Possessive individualism is a concept based on the assumptions "that man is free and human by virtue of his sole proprietorship of his own person, and that human society is essentially a series of market relations."³ In short, possessive individualism describes men as greedy in nature, who have a goal of unlimited appropriation of capital. Macpherson admits the concept "has a large, if ambiguous, place in Locke's political theory."⁴ This admittance lends credence to the belief that his theory can be proven if an author specifically looks for justification of it within Locke's writing. In fact, Macpherson expands, justification for possessive individualism "appear in the theories as uncertain mixtures of assumptions about fact and assumptions about right" which "tend to be beneath or beyond the notice of both philosophical and historical critics."⁵ After all, assumptions are sometimes more important than explicit statements; if someone can be fairly sure that Locke intended to support something, it is more risky to avoid the attempt than to make it. The warnings given in the introduction to The Political Theory of Possessive Individualism are ample evidence that no one should read any interpretations of what Locke's theory supports without

3. C.B. MacPherson, The Political Theory of Possessive Individualism: Hobbes to Locke (London, England: Oxford University Press, 1962), 270.

4. Ibid., 2.

5. Ibid., 4.

reservations.

In a study of possessive individualism, Locke's theory of property must be understood before his theory of political government can be understood. This condition is essential because possessive individualism is constructed around an argument that in a state of nature individuals were created in the form of market man, predating political government.⁶ Once given life as a market man, each individual is free from any relationship he does not enter into with his own interest in mind. As a result of only acting on their own behalf, individuals make society "a series of relations between proprietors" where political society is nothing but a "contractual device for the protection of these people and their relationships."⁷

The theory of possessive individualism accepts natural law as man's guide in a state of nature, conceding that man's appropriation of property is limited by immediate need, spoilage, and the use of man's own labor only.⁸ Other than these three limitations, individual appropriation is justified by man's natural right to self-preservation and the use of his own labour. Because each man is entitled to appropriation within the state of nature, what was originally given to mankind in common is divided among men as personal property.⁹ This division leads to possessive

6. Ibid., 269.

7. Ibid.

8. Ibid., 201.

9. Ibid.

individualism's disregard of communal ownership. Before man has entered into political society, according to the theory of possessive individualism, natural law has led to the individual appropriation of the common into personal property.

Although natural law is a guiding force in a state of nature, when man eventually enters into political society, natural law will no longer be binding on man's actions. According to the theory of possessive individualism, Chapter Five of the Second Treatise must be read as removing the "'bounds of the Law of Nature' from the natural property right of the individual."¹⁰ After a reader accepts this condition, Locke's work can be read as an argument for a right of unlimited appropriation, which surpasses the three limitations placed on man within a state of nature.

Natural law is binding within a state of nature only until the introduction of money. After man has put a value on money, a commercial society without civil society becomes possible. Money signals both the end of unappropriated land and the removal of the limitations of natural law. The signals of money's influence are found in the Second Treatise:

10. Ibid., 199.

This I dare boldly affirm, That the same Rule of Propriety (viz.), that every Man should have as much as he could make use of, would hold still . . . had not the Invention of Money, and the tacit Agreement of Men to put a value on it, introduced (by consent) larger Possessions, and a Right to them.¹¹

This passage shows that money signals the end of natural law because once money is introduced, man is able to purchase more goods than what he immediately needs.

In addition to eliminating the natural law limitation of appropriation to immediate needs, the use of money eliminates the natural law limitations of spoilage and the use of man's labor only. According to the theory of possessive individualism, appropriation beyond the limits of natural law takes on a positive virtue because it assumes that an increase by one person (signalling an increase in the whole) will either benefit or not make anyone's position any worse.¹² Furthermore, a new relationship is created by appropriation beyond the limits of natural law; a wage relationship. A wage relationship is created because a man will be able to purchase another man's labor through the use of money. This relationship eliminates the limitation of the use of man's labor only because one man can buy another man's labor. For the theory of possessive individualism, "a commercial economy in which all the land is appropriated implied the existence of wage-labour."¹³ Following this

11. Locke, Second Treatise, 36.

12. Macpherson, 212-214.

13. Ibid., 217.

theory, a commercial economy, even without the existence of political society, indicated the end of natural law limitations because of the use of money.

Although Macpherson believes that his discussion of Locke's property theories restored to them the meaning they "must have had for Locke and his contemporaries," the theory of possessive individualism is not without its faults.¹⁴ The theory insists that natural law limitations do not extend past the introduction of money into political society, that men are greedy, and that governmental property regulation should be ignored. The insistence that natural law limitations do not extend into political society is misleading because, after claiming that the Fifth Chapter of the Second Treatise is a justification that the laws of nature do not extend into political society, Macpherson writes "the whole theory of property is a justification of the natural right not only to unequal property but to unlimited individual appropriation."¹⁵ So, even though natural law limitations may not extend into political society, natural rights arising from natural law are the justification for individual appropriation after the institution of money. In other words, natural law and natural rights do bridge the state of nature and the state of political society. In a reading of Locke's Two

14. Ibid., 220.

15. Ibid., 221.

Treatises, natural law must be seen as essential to Locke's property theory because it shifted the argument away from history and to man's obligation to natural law. Any author who does not clarify Locke's reliance on natural law is neglecting something vital to Locke's writing. One of Macpherson's problems is that, although he makes this point, he does not clarify it, leaving the role of natural law in political society uncertain in the theory of possessive individualism.

Despite problems in the theory of possessive individualism, Macpherson's work does provide many strong points. One of the theory's strengths is that it attempts to put Locke's property theory within the framework of the time it was written. For Macpherson, Locke's property theory reveals the seventeenth century movement of property definition from the ideological to the economic. While stressing the importance of property for economic theory, Locke is also providing a vital ideological tool in describing the evolution of political society and the expanse of property, based on natural law.

Another strength of Macpherson's work is the drawing of a division between those who own property and those who do not, although this division is not explicitly stated in Locke's work. This division implies that people who own land are the only individuals who can become full members of society because they are the people most interested in the

protection of property, the chief end of government. This idea reveals a deeper division of political society between those who have a marked interest in government and those who do not, which supports the strongest point of possessive individualism; property theory must be understood, and is essential, to understand Locke's political theory.

Although Locke may be considered as a supporter of possessive individualism, James Tully contends that his work stresses the justification of the English common instead. Tully's A Discourse on Property: John Locke and His Adversaries responds to Macpherson. Tully focuses his study on the argument that Chapter Five of the Second Treatise was not written as a discussion regarding the origin of property. Rather, the chapter was written as a way "of showing that his [Locke's] alternative to Filmer's Adamite theory is practicable, chapter five is directed against Filmer."¹⁶ Tully believes the origin of property was described in the First Treatise where Locke attempts to overthrow Filmer's "theological premiss" and establish "natural law and man's obligation to it" so that private dominion cannot be seen as absolutist.¹⁷ In his attempt, Locke discovers that "property is right in common" and "equivalent to dominion in common," in contrast to Filmer's idea of the "'exclusive' private dominion" of Adam and his

16. Tully, 96.

17. Ibid., 53.

heirs. Upon Locke's discovery, Tully develops a thesis which argues that Locke's work is a justification of property derivation from the English common.

Rather than an argument for unlimited appropriation of property, Locke's work is a justification that everyone is able to use different goods from the English common, but not determine their use as part of their private property. According to Tully, all men were granted "the common right to use, not the common right to use".¹⁸ In addition, although all men were granted this right, they were not granted that right over all things, but only in those things necessary to preservation. Locke's "property or right in common" is a "subjective use right" which means that a person has "a right or moral power to something" but not to ownership in that thing.¹⁹

To accept Locke's work as a justification of the English common, a reader must assume that private property was established after the institution of political society. As Locke explains in the Second Treatise,

it was commonly without any fixed property in the ground they made use of, till they incorporated, settled themselves together, and built Cities, and then, by consent, they came in time . . . by Laws within themselves, settled the Properties of those of the same Society.²⁰

18. Ibid., 97. Notice in this quote that use is written twice. Use can be both a verb and a noun. In this quote, the first time that use is written is as a verb and the second time it is written is as a noun.

19. Ibid., 60.

20. Locke, Second Treatise, 38.

According to this passage, people consented to private property after they incorporated themselves into political units. Further into the Second Treatise, Locke writes:

the several Communities settled the bounds of their distinct Territories, and by Laws within themselves, regulated the Properties of the private Men of their society, and so, by Compact and Agreement, settled the Property which labour and Industry began.²¹

By presenting this second passage, Locke explains that governments became regulators of property for the common good.

Because individuals created private property after instituting government, private property could not be natural. As Locke writes,

by the Labour that removes it out of that common state Nature left it in, made his Property who takes that pains about it.²²

Although what goods would eventually become property existed in nature, they did not become property until man interfered by claiming them as his own. After government is created, the rights of property come into existence through regulatory laws and "positive constitutions."²³

According to Tully, the role of government in regulating property is the focus of Locke's fifth chapter of the Second Treatise. Through governmental regulation, "particularization of the natural common is possible."²⁴

21. Ibid., 45.

22. Ibid., 30.

23. Ibid., 50.

24. Tully, 100.

When the natural common is particularized, its property divided for different uses, each man is able to acquire the means necessary for support and comfort by using the property assigned for particular uses. Because the common consists of much more than just land, a reader must not read "'property' as a term comprising unconditional rights over land and so equate it with 'private property.'"²⁵ Instead, all goods in common must be considered as property, linking them as objects which can be used for the good of all but will not become private property. Ultimately,

The fundamental and undifferentiated form of property is the natural right and duty to make use of the world to achieve God's purpose of preserving all his workmanship. A commonwealth which arranges men's actions accordingly is the complementary kind of society.²⁶

Property and political society, both creations of man, are necessary in directing man's life. Government, as the regulatory agent of the common, is important because it provides men with the property necessary for preservation.

One of the major weaknesses of Tully's interpretation is that he is inconsistent in detailing any connection between property and natural law in the Two Treatises. In fact, no connection at all is stressed. Tully only briefly refers to the very strong connection between natural law and property. He alludes to the connection by describing Locke's property theory "as a natural right to exercise

25. Ibid., 124.

26. Ibid., 173.

sovereignty over what is legally one's own."²⁷ His allusion is negated, however, when he claims that property is not natural. Although Tully emphasizes the fact that Locke had to rely upon an explanation of property and equality consistent with natural law, it seems highly improbable that he would be able to do this if property did not exist in a state of nature, his origin of political man. One of the major weaknesses of Tully's interpretation is that he is inconsistent in detailing any connection between property and natural law in the Two Treatises.

Tully's contention that political society predates private property is another weakness which can be found in his work. This weakness eliminates the reason that man has for entering into government; the protection of private property. Tully provides no other reason for the institution of government as a replacement for a peaceful life within a state of nature. He merely argues that man created government and then created the institution of property which was regulated by the government. Essentially, this is the same thing as saying that government was created to preserve property which was going to be instituted because the government would be able to regulate it. There is little difference in saying that government is created for the protection of private property

27. Ibid., 172.

rather than the regulation of property. Either way, according to Locke, government was created with property in mind, and not as an institution separated from man's interest in property.

Even if someone can accept Tully's conclusion that government predates private property, this conclusion is based on a misreading of the Second Treatise. Tully's major support for an argument that government predates private property never states that government had been created.²⁸ Instead, the passage suggests only that the people collected themselves into "distinct Territories" and made "Laws within themselves." These laws were possibly laws of custom rather than laws of government. Also, collecting a group of people into a territory does not constitute government. Locke tells us that a government needs an established law, a judge, and the power to enforce the decisions of the judge. At most, the passage Tully uses only contains an established law of the three conditions. The passage he uses most likely argues that society, not government, was in place when men first started to recognize property. George Sabine explains that English society and English government are two different things, the second existing for the well-being of the first.²⁹ Perhaps in Tully's argument, individuals entered into society, instituted property, and then created

28. Locke, Second Treatise, 38.

29. Sabine, 535.

government. According to Sabine, Locke "is nowhere clear as to what precisely does arise by the 'original compact,'" questioning whether society arises or government.³⁰ In Tully's argument there was a compact and it may have led only to society.

Resting between readings of Locke's Two Treatises that contend he either justifies unlimited accumulation of property or the English common, is an interpretation that stresses his endorsement of welfare-state capitalism. This interpretation can be found in Kirstin Shader-Frechette's article, "Locke and Limits on Land Ownership." Shader-Frechette writes, although "Locke ought not be interpreted in any doctrinaire, ideological way," his writings may justify a "welfare-state capitalism that includes land-use planning."³¹ In essence, this interpretation opts for a middle ground between a traditional capitalist analysis and a socialist analysis.

A middle interpretation is more solid than either unlimited appropriation or socialist interpretations because it emphasizes the role of natural law in Locke's theory in both a state of nature and political society. It is unlike the analysis of unlimited appropriation, which does not "account for the moral demands of Locke's 'Law of Nature'

30. Ibid., 532.

31. Kristin Shader-Frechetter, "Locke and Limits on Land Ownership," Journal of the History of Ideas 54 (April 1993): 201.

and its eternal, rather than historical, character."³² In contrast, a reading which supports welfare-state capitalism insists that the law of nature does not end historically with the transition from a state of nature to political society.

A welfare-state interpretation of the Second Treatise also differs from a socialist interpretation because of the role of natural law in each. In a socialist interpretation, there is not a natural right to property in civil society. In contrast, a welfare-state capitalist interpretation, where natural law is found as a guiding factor in both a state of nature and political society, stresses that people are entitled to property because of their natural rights.

In a welfare-state capitalist interpretation, private property evolves from common property originally given by God to mankind. Because property was originally held in common by all men, the state of nature was a form of primitive communism. Unfortunately, Locke does not define the state of nature very clearly, leading many commentators to miss the need to explain a transition from common property to private property. Locke does write,

I shall endeavour to shew, how Men might come to have a property in several parts of that which God gave to Mankind in common, and that without any express Compact of all the Commoners.³³

32. Ibid., 202.

33. Locke, Second Treatise, 25.

A welfare-state capitalist interpretation of Locke's writing accepts that private property, created before the institution of government, arose from common property.

The basic justification for private property, arising from common property, is the labour theory of value. Accepted as virtually unchallengeable, this theory entitles people to whatever they produce by their own labor.³⁴ Rather than losing one's labor, mixing one's labor entitles ownership for several reasons. These reasons include that it is efficient for appropriation to be based on labor, people who labor are industrious and rational and deserve the results of their labor, and that labor is often responsible for a thing's value.³⁵ Despite these reasons, some portion of land value is not created by human labor. As Locke explains,

if we will rightly estimate things as they come to our use, and cast up the several Expenses about them, what in them is purely owing to Nature, and what to labour, we shall find, that in most of them 99/100 are wholly to be put on the account of labour.³⁶

Although 99/100 is a very high percentage of value owed to labor, it is not an absolute debt. When there is any land that has some value not created by human labor, that land cannot be appropriated and must remain in the common.³⁷ Any land left in the common will be subject to land-use-planning

34. Shader-Frechette, 202.

35. Ibid., 205.

36. Locke, Second Treatise, 40.

37. Shader-Frechette, 215.

for the common good.

Even property that owes all of its value to labor has restrictions placed upon it regarding possible appropriation because of natural law. Land and other property can only be appropriated if there is enough remaining for others and if it is put to productive use. The only way that these restrictions can be enforced is if property is regulated by the government.³⁸ Locke writes, "in Governments the Laws regulate the right of property, and the possession of land is determined by positive constitutions."³⁹

According to the welfare-state capitalist interpretation of Locke's writing, justification for governmental regulation of property is natural law. This interpretation endorses the belief that the law of nature continues into political society because the latter is implemented to enforce the law of nature. The power of government cannot exceed the power of natural law,

For it being but the joynt power of every Member of the Society given up to that Person or Assembly, which is Legislator, it can be no more than those persons had in a State of Nature before they enter'd into Society, and gave up to the Community. For no Body can transfer to another more power than he has in himself.⁴⁰

Because governmental power cannot supersede the power of natural law, the restrictions of natural law hold for all time, even with governmental regulation of property.

38. Ibid., 202.

39. Locke, Second Treatise, 50.

40. Ibid., 135.

Natural law restrictions upon property act to counter the economic and political power of the people who injure others through their accumulation of property. Unlike the traditional capitalist interpretation, a welfare-state capitalist interpretation of Locke's writing claims that "Locke never denied the right to preservation or subsistence as a consequence of the consent to money."⁴¹ According to both theories, money allows for an inequality in property among men and aids in the transition to political society as a means of protecting those with property. However, in a welfare-state capitalist interpretation, unlike the traditional capitalist interpretation, natural law is eternal so that there is not an overemphasis upon change from a state of nature to a state of political society. On the other hand, natural law is not considered as a guiding force in political society under the traditional capitalist interpretation. As a result, in the traditional analysis, an unlimited appropriation of goods under the protection of government suggests that there is a marked difference between a state of nature and political society.

In addition, under the traditional capitalist interpretation no details are given considering that extensive accumulation can only be justified if it benefits others.⁴² According to Locke, "the great Law of Nature,"

41. Shader-Frechette, 40.

42. Ibid., 217.

which holds in both the state of nature and political society, is "Who so sheddeth Mans Blood, by Man shall his Blood be shed."⁴³ Applying this rule to the appropriation of property, no man will be able to appropriate property if it hurts someone else because they will then have the law of nature--revealed in established law--turned against them for a redress of grievances. Under governmental regulation, the appropriation of property will be limited to only what will maximize production and improve the conditions of mankind.⁴⁴ Locke describes these regulations:

Yet this could not be much, nor to the Prejudice of others, where the same plenty was still left, to those who would use the same Industry. To which let me add, that he who appropriates land to himself by his labour, does not lessen but increase the common stock of mankind.⁴⁵

Supported by this passage, men cannot have access to unlimited appropriation of property unless their appropriation both improves and maximizes production while not being detrimental to the conditions of other men.

These interpretations of Locke's Second Treatise, which differ largely in their consideration of natural law and the role of property in society. Of the three, Macpherson's possessive individualism, Tully's justification of the English common, and Shader-Frechette's state-welfare capitalism, Shader-Frechette's state-welfare capitalism is

43. Locke, Second Treatise, 11.

44. Shader-Frechette, 217.

45. Locke, Second Treatise, 37.

most accurate because it considers the role of natural law most fully in man's evolution from a state of nature to political society. Only in a state-welfare capitalist interpretation is natural law a binding force in both a state of nature and political society. According to the theory of possessive individualism, there is a major transition from a state of nature to political society where the bind of natural law is broken. On the other hand, according to a reading of the Second Treatise which stresses a justification of the English common, a natural right to property does not exist in political society.

The three given interpretations of Locke's Second Treatise also differ in regard to his property definition, which contains a dual conception of material goods and ideal benefits (also categorized as stewardship and private property).⁴⁶ These descriptions are connected because men are put in stewardship of their ideal benefits and can consider their material goods as private property.

Stewardship, one of the dual conceptions, is linked with ownership, where men possess something originally obtained as a gift. Examples of things that man is steward to are his life, liberty, and natural freedom.⁴⁷ All of these gifts are given by God and man must act responsibly with these gifts to show he is grateful to God for them.

46. Schwarzenbach suggests this alternate terminology.

47. Ibid., 146.

The conception of stewardship suggests that property is part of a person's being which must be guarded. Government becomes the conditional guardian of these gifts, which can be considered man's natural rights, when man enters into political society. Because stewardship explains an easier transition towards the establishment of government, it reveals a problem in any attempt to reconcile possessive individualism with Locke's writing. While Macpherson's theory stresses that there is a marked difference between a state of nature and political society, the concept of stewardship found in Locke's work reveals there is not a marked difference between these two states because man is steward of his natural rights in both. Thus, stewardship destroys one of Macpherson's major foundations in his interpretation of Locke. Stewardship, arising from man's possession of his natural rights, helps lead to the transition towards government as the protector of property.

Private property, the second of the dual conceptions, describes something earned by one's own efforts and is similar to the tangible goods portion of Locke's property definition, which can include land. Unlike property held in stewardship, people can dispose of their private property at will, without alienating part of their personal being.⁴⁸ Private property is similar to the tangible goods portion of

48. Ibid., 148.

Locke's property definition and can include land. The conception of private property within his work reveals that Locke "intends to argue for a more extensive private ownership" than Tully claims he does.⁴⁹ People are entitled to private property under government, destroying Tully's argument that in political society people do not have a natural right to property. While destroying Tully's argument, the conception of private property as a dual conception of ownership highlights the economic portion of Locke's definition of property.

Although contrasts between the three interpretations of Locke's work can be drawn, especially regarding their consideration of natural law and property, it is important not to put too much emphasis on these distinctions. The importance of the differing interpretations hinges on the fact that Locke's work can be demonstrated to support any of them, because he was not specific in defining property, natural law, a state of nature, or government. Strikingly, he provided a dual conception of property which leads to confusion about what property theory he does support. In part because of the confusion surrounding Locke's dual conception, in the final analysis only Locke's own judgement can stand on what property theory he meant to justify. As there is no truly accurate way to interpret his theory, it

49. Ibid., 153-4.

has been criticized as "incomplete, not a little confused and inadequate to the problem as it has been analyzed since his day."⁵⁰

Despite the confusion, Locke has much to offer as a political theorist. Just the fact that his work has been able to support so many interpretations reveals that his work has a universal applicability. More importantly, the several interpretations of Locke's property theory demonstrates that there is a deep interest in what Locke has to say because his political theories are appealing to a wide audience; from a socialist that interprets his work as an endorsement for unlimited accumulation of property to a scholar who interprets his work as an endorsement of a socialist system.

50. Laslett, "Introduction," 120.

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