

**Private Property Rights:
An Indispensable Moral Foundation
of Society**

**by
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Author's Declaration

I hereby declare that I am the sole author of this thesis. This is a true copy of the thesis, including any required final revisions, as accepted by my examiners.

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Abstract

The philosophic justifications of private property reach back to the ancient world. Aristotle regarded secure possessions as necessary for successful social functioning, and Cicero understood government's function to be the protection of private property. Renaissance and Enlightenment thinkers Hugo Grotius, Samuel Pufendorf, and John Locke argued vigorously for the importance of private property rights in human life. The work of late twentieth-century analytical philosophers John Rawls and Robert Nozick brought property rights to the fore of philosophical discussion.

In the field of global development, private property rights have come under critical re-examination in recent decades. It is increasingly understood that institutions guaranteeing the security of private property are a necessary ingredient for economic growth and social well-being in underdeveloped nations. Institutions are being established in accordance with consequentialist justifications of private property. In this thesis, after defining general moral rights and briefly discussing this current trend in favour of consequentialist understandings of private property, I will examine the two dominant schools of private property justification in philosophy: the consequentialist and the deontological, with an especial focus on consequentialist John Stuart Mill and deontologist John Locke. I end the thesis by examining, and simultaneously arguing for the power and enduring relevance of, the oldest philosophical justification of private property: the eudaimonist school led by Aristotle.

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CHAPTER ONE - INTRODUCTION

1. Defining Rights and Property Rights; and Discussing the Recent Trend Regarding Consequentialist Understandings of Private Property Rights.

With the prevalence of “rights terminology” in modern life, it is very difficult to imagine a reality in which rights did not serve a crucial role in structuring society. Today, property rights in particular are a topic of much discussion amongst economists and global-development professionals. In the 1990s, after the fall of the Berlin Wall, it was believed that social development and economic growth in the former Soviet Bloc and much of the then-Marxist “Third World” were inevitable (*Walker, 2009*). Such optimism rested mainly on the thinking that the implementation (or restoration) of rights to free speech and to the practice of “democratic politics”¹ would be sufficient for robust development. The optimism turned out to be misplaced.

The former Soviet-bloc countries did loosen speech restrictions and begin holding popular elections. In addition, their economies were populated by a large number of highly-trained scientists and engineers. They also were rich in mineral resources. Yet their productivity mainly stagnated in the immediate post-Soviet period (*Sowell, 1998*). By contrast, over the next twenty years, the world witnessed the sharp rise of the economies of non-democratic countries like China, Dubai, and Singapore. These countries ranged from mildly-repressive to draconian in their suppression of civil rights but were notable for their protection of private property rights. Economists and economic historians began to revisit the function of property rights in economic

¹ “Democratic” politics here refers to the complex of practices and institutions surrounding state-run elections which, in principle, have the power to unseat the serving officials of the government of that state.

development and socio-political stability (*Przeworski & Limongi, 1993; Nelson & Singh, 1998; Barro, 1999*). I believe that philosophers should do the same.

Many of us first encounter the term “rights” watching a police detective on a popular television show arresting a suspect: “You have the right to remain silent...you have the right to an attorney...anything you say or do may be used against you in a court of law.” Later, in school or in our private reading, we might learn about the struggles of various groups for rights in North America – rights for blacks, for women, for same-sex couples, for workers, etc. We might also become informed about the legal rights artists and musicians have to their art, or inventors to the products of their creativity. We might become familiar with rights for car- and house-owners. We might learn about other applications of rights: for example, the right-of-way driving rules that are important for traffic safety.

Some rights recognize an individual’s exclusive possession of earned items. An employee’s right to her monthly salary is an instance of a right to one’s earnings. Other rights permit a person use of an item based on certain conditions, such as the legal right some exercise to receive welfare payments from the government. The concept of “rights” then, is applicable to a wide variety of important social situations. The basic category of “right” I will be discussing throughout this thesis is “general moral right” (*Smith, 1995, p. 15; Orend, p. 28*). General moral rights are rights held by all human beings regardless of particular existential or social conditions. General moral rights have two defining aspects: their generality; and their morality. The generality of a general moral right refers to the condition that the right is held by all human beings. The morality of a general moral right refers to the fact that the right is independent of whichever institutional arrangement is necessary to implement the right. A right dependent on institutional arrangements is a special (as opposed to general) right. Legal rights are examples of

special rights: for instance, the codified and enforced rights of Canadian citizens in Canada (Smith, 1995, p. 16). My philosophical discussion of private property rights will treat property rights as they apply to all persons—as a human right, we might say—not as they apply to particular legal or personal situations. I will analyze property rights as general moral rights, not as special rights.

It seems fair to claim that the two best known justifications of private property rights, at least recently, are the consequentialist and deontological approaches. I am of the view, however, that we can profit from revisiting the perhaps oldest approach, the eudaemonist approach, which has suffered some neglect in recent times. Despite the connection of Aristotelian eudaimonia to controversial concepts like “natural slavery,” (Miller, 1995, p. 108) it is my view that there is a valid and powerful linkage of human entelechy to private property.

In this thesis, I will examine three prominent schools of private property rights justification.² In this introductory, first chapter, I will provide a definition of rights, then a definition of property rights, after which I will argue for the privacy of (at least some) property rights. After making the general moral case for private property, I will briefly discuss the current trend, in economic and global-development fields, of consequentialist justifications for private property.

In Chapter 2, I will switch tracks to focus intensively on philosophy, and philosophers. First, I shall discuss the *Consequentialist* school of private property, initially describing the

² Why only three? Well, there may be dozens of strategies for justifying rights claims. Importantly, there’s no claim here that there is *only* three. At the same time, focus must be placed somewhere, and it’s clear that these three approaches—virtue ethics, deontology, consequentialism—have had enormous impact on contemporary moral and political theory in general. As such, focusing on them is not unreasonable, and provides a fruitful way in which to explore some of the most important issues relating to the having and claiming of property rights, and the issues at stake with making such claims.

ethical background of the school through one of its dominant figures, John Stuart Mill, before proceeding to examine the school's justification of private property. In Chapter 3, I will use the same organizing framework for the *Deontological* approach to private property rights, taking John Locke as the major point of reference. Finally, in Chapter 4, I will examine the *Virtue Ethics* (or *Eudaimonist*) justification of private property rights. Aristotle will be presented as the defining figure of this school. Some of the pros and cons of each prominent strand of justification will be enumerated and discussed in these chapters, arriving by the end at a demonstration of two forceful propositions, the very points of this thesis: i) that private property rights play an important moral role, both individually and socially; and ii) that in spite of the recent popularity of deontological and (especially) consequentialist justifications of such rights, there remains much to be said in favour of an older eudaimonistic justification, which stresses how individual persons require secure personal access to property in order to actualize their utmost potentials.

1.1 What is a Right?

What precisely is a right? Here, we are concerned not with the epistemologically right (i.e. questions of correctness vs. error) or the ethically right (i.e. questions of good vs. evil) but with the right in a particular moral-political sense. We do not mean the right of “right-wing groups” but the right referred to in statements such as “this is mine, not yours; it is mine by right”; and “I have a right to my opinion.” “Right” in this sense refers to a forceful moral claim. Tara Smith expands on the nature of this claim: “To acknowledge that a person has a right to x is not merely to assert that it is desirable that she have x. Rather, when we recognize rights, we are

affirming that the rightholder would be wronged if the object of her right were denied her. The fulfilment of rights is neither optional nor supererogatory, but morally mandatory” (Smith, 1995, p. 17).

1.1.1 A Brief History of the Concept

Although the precise origin of “right” is not known, it is reasonable to assume that organized societies in even primeval times had devised some means of recognizing an individual’s or group’s firm and abiding claim to some object. The earliest integrated accounts we have of anything resembling the modern concept come from the ancient Greeks and Romans (Wenar, 2011):

Right” in its older, objective sense means “what is just” or “what is fair.” ... Aristotle uses *dikaion*, for example, to indicate that a society is “rightly ordered”: that it displays the correct structure of human relationships. “Right” in this objective sense can also be attributed to individuals. The Roman jurist Ulpian, for instance, held that justice means rendering each his right (*ius*). In this sense, a person’s “right” is what is due to him given his role or status. This objective sense of “right” is not the same as our modern idea of “a right.” For instance, Ulpian noted that the *ius* of a parricide was to be sewn into a sack of snakes and tossed into the Tiber.

So, a right was conceived as a valid or justified “due” or claim, which has the power of an entitlement. But, what is it a claim to? Is it a claim to an object, to a set of objects, to a mode of behaviour, to a way of life, to thoughts, to gifts? Historically, a right has been a specially-binding entitlement to take a wide spectrum of actions. This has been true whether the right was a “privilege-right” granted by kings to lords under feudalism, or whether it was a divine right to rule “granted” to a king by the king-makers in his kingdom. The conception of a right as a claim to actions was also recognized by the Founding Fathers of the United States who, under the

influence of John Locke, famously wrote of the right to take actions in respect of life, liberty, and the pursuit of happiness (*Wenar, 2011*).

Locke was, in turn, influenced by Richard Hooker. Both men were members of a “line” of private-property thinkers, events, and movements that included Aristotle, Cicero, the Roman Stoics, Thomas Aquinas, the English Magna Carta, Hugo Grotius, and Samuel Pufendorf (*Sabine, 1937; Rosenberg & Birdzell, pp. 119-120; Barlow, 2012*). For Locke, the right to take, and choose between, a spectrum of actions is inextricably tied to the right to exercise ownership powers over property (*Ferguson, pp. 108-109*). In order for any human being – whether king, lord, or “ordinary” citizen - to act meaningfully, she required a right to property. We could say that in Locke’s modern conception of right, the power- and privilege rights of the feudal and pre-feudal periods were universalized. What had been the province of elites – i.e., what had been unevenly distributed among individuals -- became now an endowment of all individuals. This extension or “expansion” of rights from a privileged few to everyone, based on a common individuality, was a revolution in political thought and is one of the linchpins of modernity (*Sabine, pp. 523-528*).

1.1.2 More Recent Thinkers

Scholars have not come to an immutable agreement on the definition of “right.” In recent scholarship, though, considerable concord has been attained in respect of the formulation that a right is “a justified claim or entitlement” (*Orend, p. 17*). H. J. McCloskey has offered that rights are “valid claims” or “entitlements.” For Ronald Dworkin, a right is a trump: i.e., a claim that outranks other moral claims (*Smith, 1995, p.17*). In a contest between a right and another moral

claim, the right takes priority. For Dworkin, however, a trump is a conditional and not an absolute. On his view, social-, environmental-, or other conditions may alter, or even eliminate, the power of the trump. W. N. Hohfeld held what he termed “claim-rights” to be “rights in the strict sense.” For Hohfeld, a [moral] actor’s right is primarily a claim whose existence establishes and prescribes a non-negotiable mode of action for other actors, whether such actors be individuals or groups. Claim-rights necessitate moral obligation (*Orend*, p. 21). (Hohfeld defined a helpful typology of rights which I will describe in some detail in the next section.)

Tara Smith defines a right as an individual’s “moral claim to freedom of action” (*Smith*, 1995, p. 18). For Smith, rights are protective devices, mechanisms intended to shield the right-holder from harm. Rights, on this view, preserve boundaries of freedom which enable reasoned action across a right-holder’s lifetime. Such boundaries even allow the right-holder to “do wrong,” so to speak, within her sphere of control (*Smith*, 1995, p. 21). (Importantly: not “do wrong” in the sense of violating another person’s rights; rather, potentially “do wrong” in the sense of choosing to do something within her field of action which others may think is less-than-ideal, such as making a “bad” career choice or having “poor” taste in music.) Rights impose an obligation on others to refrain from intruding upon the right-holder’s boundaries. Brian Orend defines a right as “a high-priority claim, or authoritative entitlement, justified by sufficient reasons, to a set of objects that are owed to each human person as a matter of minimally decent treatment” (*Orend*, p. 17). For Orend, the objects in questions are vital needs which come in material and non-material forms. Material vital needs are physical goods and the physical protections required to keep them. Non-material needs include personal freedoms such as freedom of speech, freedom of association, etc. (*Orend*, p. 29).

One crucial way in which Orend's conception differs from Smith's is in its specification that some objects be provided – by some individual or group - to the right-holding person, presumably from the start of the person's life. Smith's position is that any objects required for action must be earned primarily – and, wholly, in most cases - by the right-holder. For Smith, objects are acquired in the course of action, so no particular set of objects is specified under a general moral right (*Smith*, 1995; p. 26, pp. 189-195). On her view, the general moral right is to free action which, in its pursuit, necessitates the acquisition and usage of objects (*Smith*, 1995, pp. 18-19).

1.1.3 Hohfeld's Typology of Rights

Influential 20th century scholar W. N. Hohfeld held there to be four types of rights. A right could be a power-right, a liberty-right, an immunity-right, or, most crucially, a claim-right (*Orend*, p. 21). For Hohfeld, a power-right is a right that rests on the power an agent has to execute an action. A power can be “natural”: i.e., owing to one or more attributes inhering in some entity. A power can also be bestowed or granted: i.e., owing to some authority (such as the family, church or government) which confers one or more attributes on a given entity. So, one example of a power-right would be a right of the type held by mothers (by “nature”) over their very young children – or by elected or appointed government officials over citizens in a constitutional government (*Orend*, p. 22).

A liberty-right is a right (to action) that exists in a context in which a duty-claim on the agent is not a co-existing condition. That is, the actor cannot be bound by a duty in respect of the action(s) covered by the right. An example of a liberty-right would be the sort of right exercised

by a property-owner who, in carrying out some action, does not violate another person's claim. So, a rancher who grazes his cows on land he certainly owns may be said to be exercising his liberty-right, since he is not in violation of anyone's claims in respect of his land. Since no one has a claim on him otherwise, we say that the property-owner has the liberty to do what he wants on his land (*Orend*, p. 21).

An immunity-right is a right that exempts its holder from a duty-claim by another actor within the context of the right's application. For instance, the "divine right" of kings during the medieval period exempted many actions of kings from scrutiny by their subjects. Another example is "diplomatic immunity," a category of international law used to designate a species of immunity-rights held by ambassadors and consuls in their host countries³. The right-holder is held to be immune from someone else's power or influence (*Orend*, p. 22).

Lastly, a claim-right is a right that imposes a duty -- a right that obligates other actors to some action. So, a claim-right is a duty-claim on other actors, be they people or institutions. We could say that the duty-claim is the moral kernel of a claim-right. A rancher's property protected by claim-rights cannot be trespassed because the claim-rights impose a duty-claim upon others that they not trespass on his property. Orend writes that the pre-eminence Hohfeld gives to claim-rights may be interpreted in one of two ways. One method is to view claim-rights as distinct from, and more real than, other rights types. The other method, preferred by Orend, is to recognize that some sort of claim is present in each type of Hohfeld-ian right (*Orend*, p. 23). On this second view, claim-rights are identified as the crucial element in all rights-relevant

³ Diplomatic immunity. (2014). In *Encyclopædia Britannica*. Retrieved from <http://www.britannica.com/EBchecked/topic/931495/diplomatic-immunity>

situations. So, any given exercise of right would be – or proceed from - a composite of all rights-types, and Hohfeld would seem to have abstracted four coherent aspects from the whole that is the exercised composite. *But the core of the composite is the claim on others to respect one's entitlement.*

I find the latter view of the rights types more plausible.

1.1.4. Negative vs. Positive Rights

The question of whether material goods are due to a right-holder as a matter of (general moral) right, falls under the topic of negative versus positive rights. As we have seen, rights, being claims or entitlements, impose an obligation on those who have to observe or regard those rights. But, what is the nature of such obligation? Orend writes that a negative right is “one which imposes a correlative duty which calls only for inaction on the part of the duty-bearer, be it a person or institution” (*Orend*, p. 31). The duty-bearer is the person who has to observe or regard the right-holder's rights; that is, the duty-bearer is anyone upon whom the right-holder's right exerts a claim or imposes an obligation. On Orend's explication, a negative right does not stipulate any positive action from others toward the right-holder. “All the duty-bearer need do is “[refrain] from acting” (p. 31). If a person is walking through a mall and causing no trouble, all the other mall-goers need do -- in order to respect her rights -- is refrain from impeding her actions. They do not have to do anything to, or for, her. Positive rights, on the other hand, require that the duty-bearer perform some action in respect of the right-holder. Such action could be as far-reaching as paying taxes to support social-security and welfare benefits for the right-holder (*Orend*, p. 32).

It is important to note here that both categories of general moral right impose a correlative duty or obligation. Rights always correlate to moral obligation, the obligation pressed by a justified claim (*Smith*, 1995, p. 24).

1.1.5. Are Rights Reasons or Properties?

There exists a “natural law” tradition of “rights” that is traceable to Aristotle (*McGrade*, 1996; *Miller*, 1995; *Tierney*, 1997). This tradition came into its greatest prominence during the English Enlightenment and the consequent founding of the United States when the “natural rights” of the individual to “life, liberty, and the pursuit of happiness” were placed front and center in political discourse. On this development, general moral rights were said to “inhere” in human nature and to be, as a consequence, “inalienable” from the individual (*Morsink*, p. 20; *Engle*, 2014). But, this metaphysical binding of moral right to human nature came under increased scrutiny after natural law doctrine was challenged by David Hume (amongst others). Hume argued that there is no necessary connection between physical events, only temporal sequences conjoined by the mind. Hence, the ideas we form as a result of observing events are conventional and not tied to the deep “nature” of the events. The idea of natural law, for Hume therefore, is conventionally derived and not naturally necessitated (*Sabine*, pp. 598-601).

In subsequent years, thinkers sought new means of justifying or validating claims hitherto based on natural law. So, Locke’s attribution of right to the individual human nature, following

Hugo Grotius⁴, fell under suspicion. John Locke held rights to be properties of the individual. But if the person is the entity subtending the right, where is “right:” metaphysically inside the person? (*Orend*, p.18) These Lockean properties were invisible yet real, in the way one might say aspects of consciousness are real yet unseen (p. 18). Orend points out three problems with construing rights in this old-style manner: (i) the problem of controversial metaphysical premises; (ii) the problem of rights forfeiture; and (iii) the problem of fact-value conflation (*Orend*, pp. 18-19).

“[L]ikening rights to souls,” is controversial, Orend writes. Such grounding of “non-visible properties” would require the acceptance of a “necessarily speculative” metaphysics (*Orend*, p. 18). If we accept the view that rights are non-physical attachments of the individual, why not accept other speculated invisibles from religion and mysticism, such as ghosts, auras, spirit-worlds, and so on? The second problem of rights forfeiture is most clearly discernible when we are confronted with the need to punish an offender. How are we to punish a wrongdoer if his rights are a very part of him? If his right to be free from harm by others is “hardwired” into his body or consciousness, we would be violating his rights in the act of punishment since punishment necessarily entails harm (p. 19). The third problem with arguing that rights are metaphysical, non-visible properties is that we would be confusing fact and value. Metaphysical rights would then be facts which we describe, not moral values which we prescribe (p. 19). We need values to regulate our behaviour, to guide our treatment of ourselves and others. Rights are values in this sense, since they are guidelines for action towards others (and guidelines for what actions we are obligated to allow to others); they are not facts (*Orend*, p. 19). Smith agrees that

⁴ Cf. *Windelband*, p. 481. Thinkers had sought to secularly ground Natural Right on the aggregated “Nature” conception but were unsuccessful, as that was too broad. Success was found when human nature was used as ground.

rights are non-ontological, writing that “[r]ights do not exist prior to our appreciating the usefulness of such a concept; they are not independent entities awaiting our discovery.” For Smith, rights are conditions with a metaphysical basis, but rights are not themselves metaphysical (*Smith*, 1995, p. 31).

Orend offers that better grounding for rights can be found in “moral reasoning” (*Orend*, p. 18). Such reasoning might still meet challenge but is more cogent. Rights, for Orend, “are reasons to treat persons in certain respectful ways” (p. 19). Such reasoning is what justifies the moral power of a rights claim. Rights are, at core, “a set of especially powerful reasons informing us how we should treat each other and how we should shape our shared social institutions” (*Orend*, p. 19). Smith, too, holds that rights are reasoned: “[C]ertain unalterable facts about human beings joined with the objective of maintaining our lives warrant the recognition of rights” (*Smith*, 1995, p. 31). Rights are concepts formed by the mind – they are human-made, mental entities. Contra Hume, however, rights are not conventional or “contingent constructs.” They are not based solely on “social agreement” or “a community’s prevailing practices” (*Smith*, 1995, p. 32). For Smith, rights are a non-optional necessity of human survival. Such necessity exists whether or not it is grasped by any human mind (*Smith*, 1995, p. 32).

Both Orend and Smith agree that rights are reasons derived from facts about human life and human needs. Smith is more forceful in presenting a natural necessity as an ineluctable basis for the epistemological formulation of the condition that is a right. For Orend as for Smith, the protection of the individual’s survival or vital needs requires the legal definition and physical enforcement of her general moral rights by her government. Rights, therefore, belong to the individual. Each individual fights for his/her rights. You are advised to know your rights, as I to know mine. So, rights are a life-preserving attribute, feature, or belonging of the individual’s life,

much like her acquired property. It is plausible to conclude, therefore, that *rights are reasoned properties of the individual*. But, a right is not a natural property in the Lockean sense. It is instead a reasoned property based on facts about human life and the existential conditions necessary for the satisfaction of vital human needs.

1.2 Property Rights

In order to live, every human being needs to acquire, possess, use, and dispose of material resources. Human beings are a unity of mind and body, or of mind and matter. Whatever the number of immaterial ideas any person generates, she has to live and act in the physical, material world. To live, human beings must eat food and drink water, and both food and water are material resources. To live, human beings must wear clothes to keep warm, and clothes are material resources. So too with accommodation, transportation, production, and other human necessities and exertions: the process of living requires material resources at every step. There is no way to exist without material resources, whether these resources are owned, borrowed, leased, or gifted (*Smith*, 1995; pp. 33-34, 191).

When a resource, or set of resources, is exclusively and justifiably claimed by an agent - whether individual, group, or institution - the agent is said to have a *property* in, and concomitant right to, that particular resource or set of resources. The agent with the most encompassing or well-grounded claim to the resource is the *owner* of the property (*Smith*, 1995, pp. 189-190).

A resource *originally* becomes property by acquisition.⁵ Prior to acquisition, a resource is merely a metaphysical entity of no particular significance. To become identifiable as property, that resource has to be valued and acquired by some action on the part of an individual or group of individuals. Property is a function of acquisition: i.e., of ownership. That is to say, if a resource is not owned, it is not a property (*Smith*, 1995, p. 189). Leading property-rights economist Hernando de Soto clarifies this concept (*De Soto* 2000, p. 50):

The proof that property is pure concept comes when a house changes hands; nothing physically changes. Looking at a house will not tell you who owns it. A house that is yours today looks exactly like it did yesterday when it was mine. It looks the same whether I own it, rent it, or sell it to you. Property is not the house itself but an economic concept about the house, embodied in a legal representation. This means that a formal property representation is something separate from the asset it represents. [...]

[A formal property representation, such as a title] represents the nonvisible qualities that have potential for producing value. These are not physical qualities of the house itself but rather economically and socially meaningful qualities we humans have attributed to the house. (Addition mine.)

As a matter of general moral right, each person, by the fact of being human, has a general moral right to property. Such a property right is not limited to a particular set of resources but to any property as such earned by, or gifted to, the person. A property right for a human person, therefore, may be described as the general moral right to acquire, possess, use, and/or dispose of material resources (*Smith*, 1995, p. 190). “Earn[ing]” is also a form of acquisition. Earning includes the creation, by some individual mind, of a new resource from an existing resource, whether such creation is innovative (as in the creation of the light-bulb) or merely transformative (as in the work done by an assembly-line worker every day). Such earning requires mental – intellectual - effort. Understood this way, whenever a material resource is made useful to human

⁵ Following Grotius and Paulus the Lawyer, I intend “acquisition” here to include the innovation (“ingenuity of art”) or work (“exertions of labor”) capable of transforming a resource so as to bring a new and/or useful resource into being (*Grotius*, p. 103). Innovation would consist of some new and productive idea or process; labor would be productive but not necessarily innovative. Ernest Mack also presents evidence that Robert Nozick, too, approached the concept of “initial acquisition” in this way (*Mack*, p. 146).

beings – i.e., whenever a resource is made into a material valued for human consumption – an intellectual act has been performed. So, one might say that material values are, fundamentally, intellectual products (*Smith*, 1995, p. 192; *Grotius*, p. 103).

Armen Alchian defines a property right as “the exclusive authority to determine how a resource is used, whether that resource is owned by government or by individuals” (*Alchian*, 2008). Alchian’s formulation recognizes and references property right in all its forms, whether private, public, individual, institutional, moral or legal, general or special. His wide formulation therefore cuts across different types of social systems. Private property rights are the form of property rights implemented in capitalist social systems, but not all social systems implement private property rights. Thomas Sowell explains (*Sowell*, 1996, p. 123):

Property rights in general must be distinguished from the particular form of property rights in so-called “capitalist” countries. A socialist government also owns property. If socialism meant literally an abolition of property rights, rather than their reassignment, then any individual citizen would be able to build a house, ride a horse, or play baseball on land that the government had set aside for growing food, and life would become impossible in such a society.

We are, in the present discussion, chiefly concerned with property rights as general moral rights, and with their status as justified, high-priority moral claims which are reasoned properties of the individual. Since human life is a constant process of action, much of which is physical, the human being requires some property to live in the physical world, i.e., she requires property to exist (*Smith*, 1995, p. 190-193).

1.2.1 Why Private?

Why do we need *private* property rights? If a good or material resource is already *in* an individual's possession, why should she require a *private property right* to the resource? Why can't resources be held in common, or by government, for the use of all? On the face of things, there seems to be no reason why, if an individual A is using a resource to his own benefit and another individual B comes along and says he also wishes to use the resource, individual A cannot simply share the resource with - or give up the resource for - B, and then B the same with C, and C for D, and D for K, etc. On closer inspection, however, we see that while a few goods can be shared quickly and easily - a public bathroom, for instance - very many other goods cannot. Food is perishable; so if I consume all the food I have, or if I consume some of my food and the remainder spoils, you can't have any of the food. And even if I had some means of preserving and storing more food than I immediately needed to consume, I might have to save that food for later since a future emergency would require me to rely on my savings. So, the sharing of property is basically problematic. If I need accommodation for my wife and/or children to live and grow old in, there is no reasonable scenario in which anyone can think to hurry me to use the property and leave because he's waiting to use it.

Also, biological constraints to sharing, such as individual variation in size, appetite, and taste -- as well as specialized problems like communicable diseases -- would have to be resolved. Daunting as these factors may seem, however, they would not make property- or need-sharing impossible in every instance. But they would make sharing quite difficult. Life would become unwieldy were individuals unable to *secure* their possessions: i.e., their vital needs and survival goods. Property rights, therefore, are private, in order to perform the function of securing the survival resources or vital needs of an individual person or an individual group of individual persons. In other words, it's not enough merely to have or possess such vital resources: one

needs to be able *to count on having access to such needed resources over time*. Tara Smith explains (Smith, 1995, p. 191; emphases original):

The goods that individuals produce *need* to be protected by rights for the simple reason that individuals differ about how to use goods. Just as disputes arise over how a given person ought to act (in choosing a school, career, reading material, or political party, for example), so disputes arise over who shall determine how goods are used.

The goods that individuals produce *warrant* the protection of rights because secure control of these goods is essential to a person's life. Such goods are a tangible manifestation of that for the sake of which we protect freedom of action. The achievement of *eudaimonia* is what we are seeking in recognizing rights to freedom, in the first place.

As the excerpt indicates, Smith's position is eudaemonist, so her view of the end of human action differs from non-eudaimonist views. But the need for secure control of vital goods is the essential to draw here. There are various ethical approaches to justifying private property rights, but these approaches share the feature that each private individual (whether person or group) requires a secure claim to the resources necessary for meeting whatever ends the ethical system holds to be the case.

1.3 On the Recent Trend Regarding Consequentialist Justifications of Property Rights

As noted at the outset of this chapter, the past twenty years have witnessed a marked increase in discussion of property rights as an indispensable causal factor in economic growth, national development, and consequent social well-being (Przeworski & Limongi, 1993; Nelson & Singh, 1998; Barro, 1999; Acemoglu, Johnson & Robinson, 2001). A number of developing countries have, in as many years, implemented (or expanded) private property rights (Galiani &

Schargrodsky, 2009; *De Soto*, 2011). In this section, I will discuss some of the intellectual and political developments leading up to those measures.

In the 1980s, work by researchers like Mancur Olson (*Olson*, 1982) and Douglass North (*North*, 1982) sought to understand the role of *institutions* in national development, but because these works were produced while the Cold War raged, the role of private property as a fundamental ingredient of these institutions remained in academic doubt. It wasn't until the fall of the Berlin Wall in 1989 that economists and sociologists began to study more deeply, and discern more clearly, the variables involved in the social enhancement of human well-being (*DeLong & Shleifer*, 1993; *Acemoglu, Johnson, & Robinson*, 2001; *Johnson, McMillan & Woodruff*, 2002; *Clague, Keefer, Knack & Olson*, 1996).

As the Wall came down, the decrepit social and economic conditions of the communist Eastern Bloc nations sharply contrasted with the quality of life of the mixed-economy Western Bloc nations. In Europe, the sharpest contrast to be found lay in the unavoidable comparison between West and East Germany. Both societies shared a common lingual and “ethnic” background (German), comparable population and natural resource endowment, and, discounting the years since World War II, virtually the same history. Yet, East Germany was deeply mired in poverty while West Germany pulsed with life, wealth, and prosperity. One indication of West German prosperity was its unimpeded production of Porsche, Mercedes Benz, Volkswagen, and BMW cars for export around the world (*Siebert & Stolpe*, 2002). This phenomenon was not limited to Europe. In Asia, while the indicators of well-being for communist North Korea languished (and continue to do so 24 years later) (*BBC News*, 1999; *Manyin & Nikitin*, 2014), mixed-economy South Korea had successful companies like Daewoo, LG, and Hyundai exporting new and exciting products all over the world (*Yip*, 1998, pp. 65-69).

Post-communist Russia had skilled citizens and a huge raw-materials base. With the political sea change, it came to be widely believed that wealth and well-being were right around the corner. But these were not to be the case. Russia continued to suffer economically because she lacked certain key cultural institutions, which included property rights institutions. The freedoms of democratic election and speech – as represented in a significantly freer press -- were insufficient. Sowell describes the period (*Sowell*, 1998, p. 342):

Without ... cultural frameworks, neither abundant natural resources nor the skills required to develop them are guarantees of prosperity, as the severe economic problems of post-Communist Russia demonstrate. One of the most richly endowed nations of the world, with such resources as petroleum, uranium, iron ore, gold, and manganese, for example, Russia had also by this time trained vast numbers of scientists and engineers, perfectly capable of developing those resources. All that was lacking was a legal, political, and financial system providing both the incentives and the protections required for an efficiently functioning market economy. Secure private property rights could have attracted foreign investors from around the world, were there a higher likelihood that what was invested could be retained and the profits repatriated. Yet, the Russian people suffered economically from the lack of these intangibles, despite having all the tangible things associated with prosperity.

Also, communist China, which disallowed democratic freedoms and maintained press restrictions, had begun to prosper marginally in the mid-80s. China had been making changes to its economic institutions (*Wang*, 2008). Singapore, too, was not known for democratic politics or free speech, but her economy had experienced outstanding growth since the 1970s (*Abeyasinghe*, 2007). Recognizing that societal well-being was not simply a matter of getting totalitarians out of power and restoring free speech, a steady stream of researchers began to publish on the importance of property-rights institutions. This has been called the “institutional turn” in developmental economics (*Evans*, 2008). Some of the more prominent writers in this area include Stephen Knack (*Knack* 2003), Phillip Keefer (*Knack & Keefer* 1995), Paolo Mauro (*Mauro* 1995), and Alberto Alesina (*Alesina* 1998).

It had become evident that the Asian and South American economies were prospering—or, least, doing much better than previously—based on private property rights. But what about the African continent, which had tended to defy polite explanation? Were there any recent property-rights successes in Africa? In 2001, work by researchers Darren Acemoglu, Simon Johnson, and James A. Robinson investigated the role of “effective property rights” in the African success story of Botswana. By that year, Botswana had “had the highest rate of per-capita growth of any country in the world in the last 35 years.” Acemoglu *et al* concluded that (Acemoglu, Johnson & Robinson, 2001):

The success of Botswana is most plausibly due to its adoption of good policies. These have promoted rapid accumulation, investment and the socially efficient exploitation of resource rents. Consistent with our previous cross-country empirical work (Acemoglu, Johnson and Robinson, 2000, 2001), these policies resulted from an underlying set of institutions -- *institutions of private property* -- that encouraged investment and economic development.

1.3.1. Contemporary Hypotheses Regarding Property Rights.

At the end of the 1990s, a book published by a Peruvian economist sought to explain why “democracy,” free speech, globalization, and improved money management, had not effected - and could not by themselves bring about - the widely-expected growth in a post-communist world (De Soto 2000, pp. 1-5). Hernando de Soto’s *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, met with critical recognition and popular interest (Thomas, p. 998).

De Soto hypothesized that the inadequate codification of property rights in Third World and formerly communist countries was stifling these countries’ prosperity. Since these societies had not titled – with a sufficiently modern method - the land (or landed property) owned by the majority of their citizens, those citizens were unable to tap into those properties as capital (De

Soto 2000, pp. 15-37). Several countries, including de Soto's native Peru, have since implemented structural reforms based on his recommendations (*De Soto*, 2011), and governments continue to seek his expertise.⁶ The measure of the influence of his recommendations on the growth of these implementing countries remains unclear. What is known is that his native Peru, which implemented his property-rights ideas, averaged the highest economic growth rates among Latin American and Caribbean countries in the decade after his book was published (*Tegel*, 2012). At least one serious study of the Peruvian property-rights reforms has been undertaken; in it, de Soto's work scores high marks (*Tiwari*, 2012).

In 2011, following decades of sharp economic growth in South Korea, Singapore, and China, Harvard historian Niall Ferguson published a very readable hypothesis about the rise of these – and other - countries titled, *Civilization: The West and the Rest*. In his book, Ferguson argues that Western Civilization achieved economic and political dominance over the rest of the world from the 17th century to the present because her inhabitants had developed and implemented six very powerful ideas. He claims that a number of non-Western countries are now using these very ideas to catch up with – and even perhaps surpass – the West - at least economically. These ideas he lists as: Competition, Science, *Property Rights*, Medicine, The Consumer Society, and The Work Ethic (*Ferguson*, pp. 9-17; emphasis mine).

In the book's discussion of Property (Rights), Ferguson provides a history of the European colonization of the Americas -- in the North, by intellectual descendants of John Locke and the British property-rights tradition; in the South, by the descendants of non-ideological Spanish adventurers. He contrasts the effects of property-rights ideology and institutions in the

⁶ De Soto has even twice visited this writer's native Nigeria (*Akinsanmi*, 2013).

United States (of the likes of Jefferson and Washington) with the planter-elite power politics of South American Simon Bolivar (p. 96). Both settler groups had the same problem: how to make successful countries while simultaneously managing relations with an indigenous people unfamiliar with Western practices (p. 99; p. 103)? There were also common initial problems of race relations (p. 125), plantation slavery (p. 129), and violence (p. 131; p. 133). While the North Americans were able to inaugurate a single federal constitution in the United States, amendable but largely constant for almost two hundred and fifty years, the South American planter elite had to rely on authoritarianism and brute force to keep land from being “expropriated” from them. The countries that emerged in South America were unable to maintain political stability, and between them went through scores of constitutions (p. 128).

Although both continents were able to end slavery as an institution in the 19th century, most of the great social gains of the 20th and 21st centuries -- in improved race relations, decreased violence, and the economic and political well-being of the citizenry – came, Ferguson argues and implies, as a result of the expanded implementation of property rights (p. 17). In the North, where property rights had been more widespread from the beginning, even descendants of brutalized African slaves had begun to enter the middle-class socially (and the upper-middle class economically) as early as the late 19th century (*Sowell*, 2011; *Campbell*, 2012; *History Engine*, 2014). Land in immediately post-independence Venezuela⁷ was owned by just 10,000 people – 1.1 percent of the population. Compared to the United States, this was stunning (*Ferguson*, p. 124):

⁷ The First Republic was declared in 1811, and the Venezuelan War of Independence lasted till 1821 (*Kohn*, p. 594).

After the North American Revolution, it became even easier for settlers to acquire land, whether as a result of government credits (under various acts from 1787 to 1804) or of laws like the General Pre-emption Act of 1841, which granted legal title to squatters, and the Homestead Act of 1861, which essentially made smallholder-sized plots of land free in frontier areas. Nothing of this sort was done in Latin America because of the opposition of groups with an interest in preserving large estates in the countryside and cheap labour in crowded coastal cities. In Mexico between 1878 and 1908, for example, more than a tenth of the entire national territory was transferred in large plots to land-development companies. In 1910 – on the eve of the Mexican Revolution – only 2.4 percent of household heads in rural areas owned any land at all. Ownership rates in Argentina were higher – ranging from 10 percent in the province of La Pampa to 35 percent in Chubut – but nowhere close to those in North America. The rural property-ownership rate in the United States in 1900 was just under 75 percent.

To underscore the importance of widespread private property rights in the formation of successful societies, it is important to note here that the rural property-ownership rate in Canada was even higher than in the United States “– 87% - and similar results were achieved in Australia, New Zealand and even parts of British Africa” (*Ferguson*, p. 125). Ferguson introduces this statistic to highlight the British origins of the property-rights practice, but I am using it here to support the wider point of property-rights’ indispensability to the stability and success of social arrangements.

We see that private property rights have been hypothesized as fundamental to solving the problems of economic growth. Property rights have also, perhaps surprisingly, been hypothesized as instrumental in hobbling modern terrorism. Consider that Hernando de Soto himself became a target of the terrorist group Shining Path in the 1990s because his reform strategies made it difficult for the group to operate (*Cleft*, 2003). In his book, *The Other Path: The Economic Answer to Terrorism*, de Soto:

describes the forces that keep people dependent on underground economies: the bureaucratic barriers to legal property ownership and the lack of legal structures that recognize and encourage ownership of assets. It is exactly these forces, de Soto argues, that prevent houses, land, and machines from functioning as capital does in the West - as assets that can be leveraged to create more capital. Under the Fujimori government, de Soto’s Institute for Liberty and Democracy wrote dozens of laws to promote property rights and bring people out of the informal economy and into the legitimate one. The result was not only an economic boon for Peru but also the defeat of the Shining Path, the terrorist movement and black-market force that was then threatening to take over the Peruvian government. (*De Soto*, 2002)

While I recognize and agree with all these positive, and quite impressive, consequences of recent private property rights implementation, my main interest in this thesis is the ethical justification of property rights in the philosophical literature, and, in particular, the untapped value of the eudaemonist approach, which I will cover in the final, fourth chapter. I will begin the next chapter by examining the moral philosophy undergirding the consequentialist justification of private property.

CHAPTER TWO

2. The Consequentialist Approach to Private Property Rights

2.1 What is Consequentialism?

I ended the previous chapter discussing the institutional changes made in order to actualize private property rights protections in various countries the world over, in our time and in the past. In recent development theory, the revision of political and economic institutions (for property rights) has occurred because of the desirable *consequences* of such revision. In philosophy, there is a growing school of consequentialism in respect of rights theory. Rights, for the consequentialist, are desirable for the consequences of their recognition and implementation. This is contrasted with the deontologists, who hold moral truths (including rights) to be morally justifiable because of some inherent feature of moral action. Consequentialism is the ethical position that wholly estimates the value of an action by its consequences. On consequentialism, if the consequence of observing a right is good, then observing the right is good. If the consequence is not good, then we should not recognize the right. The deontologist would insist that the right be recognized whether or not the consequences are good.

The close association of rights with their consequences dates back to, at least, John Stuart Mill. The deontological approach to rights has tended to be the dominant position historically (*Smith, 1995, p. 91*). Tara Smith explains that “endorsement of rights and acceptance of consequentialism usually have been viewed as mutually exclusive possibilities (Mill notwithstanding)” (p. 91). This division came under review in the final years of the 20th century. Latter-day consequentialists sought to reconcile the unbending, legalistic absolutism of rights with the conditional “compromises” of good-seeking action. Smith writes that “the guiding

motivation behind these attempts to marry rights and consequentialism is that if we have sound reason to recognize rights, it must be because respect for rights provides some tangible benefit” (Smith, 1995, p. 92). Respecting rights would, on this view, be powerfully motivated since there would be reason to respect them. Consequentialist rights would serve an ultimate end, an end whose desirability is the motive for right action.

So, I now turn to the theory of consequentialism, taking John Stuart Mill’s utilitarianism as the foundational moral perspective in this regard. We will look at utilitarianism’s view of *human nature*, its *ultimate end*, its conception of *right action*, its *state of nature* speculations, its position on the *original acquisition of property*, its perspective on the *establishment of property right*⁸, and its *justifications of private property rights*. Finally, I will discuss some *major objections* to consequentialism. As mentioned in Chapter 1, I will consistently adhere to this format of questions to analyze the two other private-property approaches in Chapters 3 and 4.

2.2 Mill’s View of Human Nature

Mill’s views on human nature are stated most clearly in his essay *On Nature*, which is one of his *Three Essays on Religion*. In that essay, Mill examines the influential “natural law” position (Mill, 1874, p. 10) which holds that human action should conform to moral law which, in turn, ought to be based on natural law or the “Law of Nature” (p. 10). By this examination, Mill hoped, we would then be able to determine the proper grounds and objectives of human

⁸ ‘Original acquisition of property’ here refers to the initial, historical establishment of property by human beings. ‘Establishment of property right’ refers to the technical establishment of property by a given human being. The first answers the question, “How did men first come to acquire property?” The second answers the question, “How do men now come to acquire and keep property on a proper and justified method?” The first is chronological; the second, methodological.

action. Mill's investigation is concerned with "the truth of the doctrines which make Nature a test of right and wrong, good and evil, or which in any mode or degree attach merit or approval to following, imitating, or obeying Nature" (*Mill*, 1874, p. 11). Nature, at the time of his writing, still had a teleological association, such that "Nature" could be taken to mean the behaviour of all existents in the universe regarded as the behaviour of some Grand Universal Agent resembling – if not equivalent to – the Christian God. Nevertheless, Nature could be taken more plausibly to mean the sum-total of the behaviours of all the particular existents. Another dichotomic application of the term "Nature" was in its use to differentiate the human-made from the ontologically-primary: i.e., to distinguish the artificial from the "natural" (pp. 8-9).

In light of these distinctions, Mill concludes that the word "Nature" could be taken to have two "principal meanings": (i) everything that is the case; and (ii) everything that is the case which does not involve human action. On this distinction, there is "Nature" as in all of Nature, and "Nature" as referring to that part of "Nature" which human beings did not bring into existence. Mill considers the close connection of the concept "law" to the concept "nature" and argues that prescriptive law (as used in legal documents and legal theory) is responsible for the injunctions to adhere to "the Law of Nature." Prescriptive law, he held, had tried to strengthen the force of its conclusions by employing the power and reputation of the descriptive laws of science (pp. 9-10).

Mill asks whether it makes sense for human action to follow or imitate the "Law of Nature" (*Mill*, 1874, p. 13). If Nature means everything that is the case, then such imitation of Nature would be destructive since it would mean the adoption of Nature's destructive ends along with its creative ends; which means that no coherently constructive action-guidance would be provided. If Nature means everything except human action, we face a contradiction since human

action is part of Nature. Mill argues that since Nature, unaltered by human action, can be destructive of human life -- tsunamis, tornados, hurricanes, droughts, diseases, etc., exist alongside the “overaw[ing]” (*Mill*, 1874, p. 17) beauty of clouds and oceans -- it is up to human beings to improve Nature. All that is good about Nature for human life has been brought about by human action (“Art”): i.e., by some sort of human improvement of Nature. So, it follows that human nature, too, should be improved by art. Morality, therefore, for humans should consist not in imitating Nature but in improving human nature (p. 19).

For Mill, the idea that Nature is “God’s work, and as such, perfect” (p. 15) does not stand up to close scrutiny since life has been made more abundant by human art:

Let us, then, consider whether we can attach any meaning to the supposed practical maxim of following Nature... [W]hile human action cannot help conforming to Nature in the one meaning of the term, the very aim and object of action is to alter and improve Nature in the other meaning. If the natural course of things were perfectly right and satisfactory, to act at all would be a gratuitous meddling, which, as it could not make things better, must make them worse. Or if action at all could be justified, it would only be when in direct obedience to instincts, since these might perhaps be accounted part of the spontaneous order of Nature; but to do anything with forethought and purpose would be a violation of that perfect order. If the artificial is not better than the natural, to what end are all the arts of life? To dig, to plough, to build, to wear clothes, are direct infringements of the injunction to follow nature. (pp. 13-14)

So, the conception of moral human action as prudential and purposively-directed towards some object of desire is a conception which seeks an improvement of human nature from its “instinct[ual]” givens. “Spontaneous” human action is cultivated by forethought in order to attain the aims of noble conceptions. Nature, as ontologically given, is too fraught with pain, sorrow, and grief – too laden with evil – and therefore cannot provide guidance (p. 19).

In fact, says Mill, “the only admissible moral theory” would be one which held there to be so much evil in the world that the “Principle of Good” could not overcome it (*Mill*, 1874, p. 21). Such a theory would make the duty of the human being not self-interestedness in

accordance with God's implacable Will (such Will being the natural law) but service as worthy assistant to a God of "perfect beneficence" (p. 22). A good God could not have made this Nature; a mixed God of both Good and Evil might have made it and, if so, He could not have intended it to be imitated, only amended (pp. 22-23).

So, humans must reject the view, popular with the natural theologians in Mill's day, that instinct is somehow superior to reason since instinct is the handiwork of God unaltered by human reason. Humans must seek "victory over instinct" which only "art" delivers, since the notion of a natural goodness must have come from the observation of the results of the long habituation of humans in the proper sentiments. All excellence, therefore, comes from tutoring and the appropriate discipline. For instance, writes Mill, courage—one of Bentham's "self-regarding in virtues," (p. 26)—is commonly associated with instinct, but it is in fact courage that is needed to overcome fear, which comes to human beings more easily as an "instinctive" sentiment. So, courage must be learned, cultivated – it must be a product of art, as is cleanliness. Selfishness and sympathy, too, are widely understood to be natural, only that sympathy is to be the foundation of "goodness and nobleness" (p. 26). Moral "ascendancy" (p. 26) is to rest on the fact that sympathy is part of human nature and thus can be further cultivated to ennoble that nature. It is also clear that Mill considers selfishness repulsive: even those individuals who possess strong sympathetic sentiments but who, in a selfish way, love their friends and family are, in Mill's eyes, only less repulsive than those "colder natures" whose selfishness is more "solitary" (p. 26). Rational self-control, too, cannot be natural, since it is so hard to cultivate. Mill considers a few other concepts, namely "veracity" and "natural justice," but finds these also to be unnatural. Veracity cannot be spontaneous since "savages" lack it and are untruthful. "Natural justice" is artificial and derived from the long legal tradition of the human race (p. 27).

So, given this examination of the natural sentiments, what is the moral height humans should seek? What is the true nature that should be imitated? For Mill, this nature would consist of:

the most elevated sentiments of which humanity is capable...the general sentiment of mankind as delivered through books, and from the contemplation of exalted characters, real or ideal...This artificially created or at least artificially perfected, nature of the best and noblest human beings is the only nature which it is ever commendable to follow. (p. 28)

So, to be moral, the human being must amend his spontaneous nature to reach the heights of humanity's sentimental best.

Linking this thought to his earlier considerations of Nature's purpose, Mill considers the hypothetical that if the "Creator" is omnipotent, then all of his Creation - Nature - is intended by him, good and bad alike. And if so, human action is determined. But if the Creator is not omnipotent yet has the intention to enact good, it is then the created human being's duty to assist in the actualization of that good; that is, to deliberate what "tends to promote the general good" (p. 28). The general good, as we have seen, cannot be the "natural inclination" (p. 28) of the human being. In fact, the Creator's intent might have been to create a human being who is better than the natural inclinations He did endow the human being with. As such, it might be that the standard human beings should strive for is one outside of those inclinations or sentiments that actually exist in human beings. Human beings must not conform to nature but rather conform to "a high[er] standard of justice and goodness" (*Mill*, 1874, p. 33).

2.3 Ultimate End and Standard of Value

What is the character of the general good the human being should work to bring about, and what method should she employ? We know Mill's position: a higher standard of goodness and nobleness largely contrary to, but certainly improving upon, the natural inclination is to be sought. But there are two (related) issues to consider in principle-based action of the type Mill advocates. First, what is the ultimate end of action? That is to say, to what end precisely would a human being be striving for on Mill's higher standard? Second, to what standard should any (striving) action refer?

In the section titled, *Of the Logic or Practice of Art: Including Morality and Policy*, contained in a chapter in his *System of Logic*, Mill sets out the methodology behind his ethics. Ethics is a type of art since it "speaks in rules or precepts, not in assertions respecting matters of fact," unlike science which is "indicative" of the facts of nature. Ethics "corresponds to" the study of society and human nature, and expresses itself in the "imperative mood" (Mill, 1861, p. 89). In other words, science is descriptive; morality imperative. For Mill, any art – any creative activity - uses the sciences to accomplish a pre-determined end. Science defines the means – the actions - by which the end or objective may be met. Art examines the means -- as stated in scientific propositions reached by inductive and deductive processes -- and decides whether to proceed on the knowledge. If the means are possible and advisable, art formulates the percept or rule of action based on the propositions (Mill, 1861, p. 90).

Mill rejects any art which deduces actions from "universal practical maxims."⁹ Such deduction fails to take into consideration the need to employ the principles of the science which

⁹ In this respect, Mill seems to be addressing idealism (whether Platonic or Kantian), the imperatives of which have the character of deduction from universal maxims.

provides the means by which to fulfill ends (*Mill*, 1861, p. 90). Deduction from very abstract principle - from thirty thousand feet if you will - might obscure the actor's vision, causing her to lose sight of concrete contingencies and possibilities which she would otherwise have accounted for. Art, therefore, is inductive as well as deductive. It is through art, of which morality is a type or part, that the necessary conditions of human life are produced in order to serve human life. Art, as we have noted, defines the ends of action – the “ought to be” of action – based on the “is” of fact as discovered by science. Therefore, art specifies the principles of action – the “general principles of teleology” (*Mill*, 1861, pp. 91-92).

As with the study of knowledge, which requires first principles, so too ethics. Ethics requires, among its first principles, a standard of value by which to formulate further principles as well as judge the ends of action or “objects of desire.” Such a standard of value would be the “ultimate principle of morality” and would also guide “prudence, policy, or taste” (*Mill*, 1861, p. 93). Mill defines this standard (p. 94):

[T]he general principle to which all rules of practice ought to conform and the test by which they should be tried is that of conduciveness to the happiness of mankind, or, rather, of all sentient beings; in other words, that the promotion of happiness is the ultimate principle of teleology.

Yet, Mill is quick to clarify that this standard of value is distinct from the ultimate end of action. Mill believes that “more happiness [would] exist in the world if feelings are cultivated which will make people, in certain cases, regardless of happiness,” happiness here meaning pleasure absent any pain (p. 95). So, sometimes, unhappiness or displeasure is necessary to increase the overall pleasure in the world, e.g., as when short-term pain can motivate long-term self-improvement. So, the ultimate end cannot be happiness, rather, it is the “cultivation of an

ideal nobleness of will” (p. 94) – a will which might even sacrifice its personal happiness, or the happiness of others, for its own attainment:

The character itself should be, to the individual, a paramount end, simply because the existence of this ideal nobleness of character or a near approach to it, in any abundance, would go farther than all things else toward making human life happy, both in the comparatively humble sense of pleasure and freedom from pain, and in the higher meaning of rendering life not what it now is almost universally, puerile and insignificant, but such as human beings with highly developed faculties can care to have. (p. 94)

It would be pertinent to note here the coherence of Mill’s ultimate end with his view of human nature as discussed in section 2.2. The ultimate end of the human being is the artistic cultivation of an unselfish, sympathetic moral character.

2.4 Right Action

We are now acquainted with the ultimate end of Mill’s utilitarianism, as well as its standard of value. The question we are concerned with in this section is what constitutes right action for Mill. Mill’s version of utilitarianism is a divergence from Bentham’s utilitarianism in certain significant ways, but its mathematics of utility remains the same. For both men, utilitarianism is the moral philosophy founded upon the principle of utility: i.e., the principle of action which promotes the “greatest good of the greatest number” (*Windelband*, p. 64). The greatest good is, for utilitarianism, the same thing as the greatest happiness, where happiness is reducible to pleasure and the absence of pain. Given that its dominant principle – its standard of value - is the promotion of pleasure, utilitarianism is generally considered a hedonistic philosophy (*Driver*, 2009).

For Bentham, utility is “that property in any object” which causes it to generate happiness or unhappiness to “the party whose interest is considered,” whether the interested party be an individual or a community. That is, the utility of an object is the *value* in the object. Community, for Bentham, is “a fictitious body” comprised of individuals who brought it into existence (*Bentham*, 1969, p. 8). The interest of the community is only knowable through the interests of the individuals who make up the community. The individual’s interest resides in whatever increases his happiness or pleasure (*Bentham*, 1969, p. 8). Bentham’s philosophy has been understood as trivially resembling “extreme individualism” while being in fact an affirmation of “individual rights” – an affirmation “based upon fairness rather than upon a purely hedonistic standpoint.” Bentham was noted for another maxim: “everybody to count for one, nobody for more than one.” This maxim, it is argued, accurately reflects his intent and action as a social and legal reformer (*Windelband*, p. 664).

2.4.1 Utility Principle as basis for moral quantification and calculation

The use of pleasure and pain as measures of moral value led to the development of a mathematics – a calculus referred to as “hedonistic” – that understood these measures as “instruments” of “the legislator” (*Bentham*, p. 14). The legislator is the person concerned to apply the calculus in a given social context. The quantitative value of a pleasure or pain for a given party would depend on the following factors of the experience giving rise to the pleasure or pain: (i) “intensity”; (ii) “duration”; (iii) “certainty or uncertainty”; (iv) “propinquity or remoteness”; (v) “fecundity”; and/or (vi) “purity.” Such pain-pleasure value, for a community (or “number of persons”) would include, in addition to the just listed, its (vii) “extent” (*Bentham*, p.

15). Strictly considered, fecundity and purity do not apply to a pain or pleasure value by itself but to the estimate of that pleasure or pain value in connection to the sensation that follows it as well as to the action that produces it. So, fecundity and purity may be labelled corollary evaluative factors. The extent of a pleasure-pain value is the “number of persons...affected by it” (*Bentham*, p. 15).

How do we estimate the “tendency” of an action to produce the good: i.e., pleasure or pain in the community? According to Bentham, we would take an individual immediately affected by the action and

- a. calculate the initial, identifiable pleasure-value produced by the action
- b. calculate the initial, identifiable pain-value produced by the action
- c. calculate the pleasure-value produced after the initial pleasure
- d. calculate the pain-value produced after the initial pain
- e. create an account balance of the pleasure and pain values, with pleasures and pains summed in two, distinct columns
- f. if the pleasures outweigh the pains, then the act can be judged good (or as having a “tendency” to be good) in respect of “the interests of that individual person.” If the pains outweigh the pleasures, the act can be judged bad (or as having a “tendency” to be bad) , in respect of that person
- g. repeat the above process for each person affected by the action, to get an overall sum for the community. (*Bentham*, pp. 15-16)

Mill's divergence from "Benthamism" was influenced by several factors: the philosophy of his friend Auguste Comte; the anti-utilitarian (often referred to as "Romantic") criticisms of Samuel Coleridge and Thomas Carlyle; and then his own, early-formed sense of duty towards the welfare of other individuals and finally, as above explained, his later-in-life appreciation for well-developed nobility, which might even be seen as something approaching an Aristotelian eudaimonism. (*Windelband*, pp. 664-665).

Comte, founder of positivism and philosopher of "altruism," devised a secular religion which raises the sum-total of the human population to the utmost object of attention (the "Religion of Humanity"): this religion is intended to provide moral direction for human beings. For Comte, human beings are to learn how to live for others. To do this effectively, humans have to stop looking to the immediate, biologically-given sentiments of the personality as foundations of moral guidance. Instead, the way forward - the way to properly live - is to find the source of moral guidance in the things outside of the individual, that is, in the "exterior." In this "exterior," Comte sees a fixed reality that can serve as a basis for ethics. His fixed reality includes the enduring co-operation between human beings: i.e., the interaction of Humanity. Our thoughts are to be used in the service of others therefore. We are to hone our thoughts to serve our affections for our fellows, hence the altruistic Religion of Humanity (*Bourdeau*, 2014; *Windelband*, p. 665).

Coleridge wrote that prudential considerations of pleasure and pain are performable by human beings in their capacity as animals, but that humans' higher selves – their rational faculties – give them the ability to consider the "higher appeals" of true morality: i.e., a morality of duty. Carlyle, for his part, is against Bentham's pleasure-pain calculations. Rather than compute for the "greatest happiness," maintains Carlyle, humans should seek the "greatest

nobleness.” The human being should not seek fulfilment in pleasure but rather in the heroic ideal (*Windelband*, p. 665; *Carlyle*, p. 154). We can clearly see how this impacted Mill, and forced an amendment in his thinking, away from Bentham’s pure utilitarianism (*Mill*, 1861, p. 41). Carlyle considers the hedonism of Bentham’s philosophy subhuman because of its egalitarianism of pleasures. There is, in Bentham, no distinction between the mere sensations of physical pleasure which all animals share and the higher aesthetic pleasures unique to humans. A pleasure is a pleasure is a pleasure, so to speak; and obviously such an assertion came to create doubts in Mill’s mind, as his life and writing career proceeded.

Mill’s revisions to utilitarianism incorporated all these idealistic concerns, ultimately resulting in a kind of transcendentalist utilitarianism that places the nobility of community-mindedness over the quantifiable pleasures of the personality (*Mill*, 1861, pp. 56-57; *Windelband*, p. 666). We shall come to see some of the details of this incorporation as I walk through the other categories subsumed under Mill’s conception of right action.

2.4.2 Bentham’s Strict Pleasure-Pain Standard Rejected for Hedonistic Paradox

Mill was raised in the associational psychology movement to which his father, James, belonged. That school held the neo-Aristotelian position that human action is calculated response to objects of desire (*Windelband*, pp. 665-666). On this view, the ultimate desired object – the end or *final cause* of all desire - is the individual’s happiness (pleasure), to which other desirable objects may be associated in order to motivate the individual’s pursuit of these other desirable objects. The role of ethics, therefore, was to cultivate a desire for the community’s good in the human being by associating the communal good with her private

happiness (p. 666). In this way, the private interest of each person would become tied to the public interest, thereby securing the happiness of all. But the younger Mill was not convinced that the public interest could be motivated from the selfish sentiment (*Mill*, 1874, pp. 31-33; *Windelband*, p. 666). So, Comte's development of a Religion of Humanity, which Mill initially described as a "despotism of society over the individual" (*Mill*, 1859, p. 84), came to seem convincing (*Mill*, 1861, pp. 59-60). Comte's Humanity provided the kind of idealized grounding Mill thought was required to motivate the individual's concern for the public good (*Mill*, 1861, p. 60; *Mill*, 1865). This grounding was the social feeling – the desired happiness - of the community.

Mill was firmly convinced that human beings should not conform to nature, since it was ontologically wanting (*Mill*, 1874). Rejecting naturally-given, pleasure-pain calibres as a source of morality, Mill formulated the view that nobility of character (in pursuing the happiness of the community) rather than pleasure should be the ultimate end of action. One would – or should - find such nobility pleasurable. Such pleasure would be a humble pleasure and would make life more significant. Self-sacrifice should not be an end in itself but a means to the happiness of others (*Mill*, 1861, p. 44; pp. 64-67). Self-sacrifice is "the highest virtue which can be found in man" (p. 44). This is the "hedonistic paradox" (*Windelband*, p. 666) – holding that, in sacrificing one's personal pleasure for the pleasure of all, one could find pleasure: i.e., that pleasure lay in not seeking it. In Mill's autobiographical words (*Mill*, 1873, Ch. V):

"The experiences of this period ... led me to adopt a theory of life... having much in common with ... the anti-self-consciousness theory of Carlyle. I never, indeed, wavered in the conviction that happiness is the test of all rules of conduct, and the end of life. But I now thought that this end was only to be attained by not making it the direct end. Those only are happy (I thought) who have their minds fixed on some object other than their own happiness; on the happiness of others, on the improvement of mankind, even on some art or pursuit, followed not as a means, but as itself an ideal end. Aiming thus at something else, they find happiness by the way. The enjoyments of life (such was now my theory) are sufficient to make it a pleasant thing, when they are taken en passant, without being made a principal object.

Once make them so, and they are immediately felt to be insufficient. They will not bear a scrutinizing examination. Ask yourself whether you are happy, and you cease to be so. The only chance is to treat, not happiness, but some end external to it, as the purpose of life.

2.4.3 Theory of Motives to Moral Action

Although sympathetic to the religious spirit, Mill did not incline toward organized religion or notions of an omnipotent deity. But he was not averse to incorporating Christian or other neo-Platonic idealism into his philosophy. He was a fervent advocate of a disinterested, duty-driven transcendent utilitarianism. For him, the “impartial” and “benevolent” character of a god-like being was to be emulated by human beings as the end of action. She who was so characterized would be able to act for the good of the public, “in the interest of the whole” (*Mill*, 1861, p. 45). Such a dutiful servant of the common good would act such that “not only [she] may be unable to conceive the possibility of happiness to [herself], consistently with conduct opposed to the general good, but also that a direct impulse to promote the general good may be” in her, “one of the habitual motives of action, and the sentiments connected therewith may fill a large and prominent place in [her] sentient existence” (*Mill*, 1861, p. 46).

Mill counters objectors who claim that his requirement of a duty motive to action is tantamount to requiring a duty standard of action, finding such a requirement too stringent. He points out that the charge is baseless since no ethical system can require that the “*feeling of duty*” be “the sole motive of” every action; it can only require that the duty rule be behind every action of the actor since the duty rule can accommodate that the feeling of duty exist alongside other feelings, in the performance of any action (*Mill*, 1861, p. 46; emphasis added). Mill adds that “the motive has nothing to do with the morality of the action, though much to do with the worth

of the agent” (p. 46). So, Mill can be here taken as saying that the motive is both a feeling and a premise, and that so long as the feeling is dutiful, even if the other reasons for the action include the profit, friendship, or other interested motive, the actor is a moral actor. To sum, an action is moral if it promotes the general happiness; the actor is moral if he is motivated by duty, even if any given action of his is not *solely* motivated by duty.

2.4.4 Internal Sanctions of Duty as Stronger Motive than External Associations

For utilitarianism, a sanction is a reason which firmly compels an actor to action. That is, if there is an action “that is to be done,” a sanction is that “by which a man can ultimately be made to do it” (*Bentham*, p. 11). A sanction is therefore an efficient cause, not an object of desire (or final cause). Bentham proposed four types of sanction: physical, religious, moral, and political. For him, just as pleasure and [the absence of] pain were final causes for the individual and the community, pleasure and pain were also efficient causes which give “binding force” to moral principles. Physical sanctions are sanctions in which pleasures and pains occur naturally and ordinarily, unaltered by human or other volitional agency. Political sanctions are sanctions in which a human judge (or group of judges) is responsible for effecting pleasures and pains. Moral (or popular) sanctions are sanctions in which unplanned, conventional, and “random” interactions are responsible for effecting pleasures and pains. Finally, religious sanctions are sanctions in which pleasures and pains are effected by a “superior invisible being” (*Bentham*, pp. 11-12).

Mill classifies sanctions into internal versus external sanctions. In a section in his *Utilitarianism*, he addresses the question of whence sanctions derive. For Mill, the external

sanctions are "the hope of favour and the fear of displeasure, from our fellow creatures or from the Ruler of the Universe, along with whatever we may have of sympathy or affection for them, or of love and awe of Him, inclining us to do his will independently of selfish consequences" (*Mill*, 1861, p. 55). That is, the external sanctions are the feelings of all consciousness - divine or secular - external to the individual. The internal sanction is duty (p. 55). Mill believes the external sanction to be a powerful motivational aid in the cultivation and enforcement of the morality of utilitarianism. Yet he considers the internal sanction of duty more powerful. It is "a feeling in [the individual's] own mind" (p. 55), a pain of great severity whenever she violates her own moral code. This feeling could be cultivated into a "connecti[on]" with the "pure idea of duty." Such connection is the "essence of conscience" (p. 55). This "subjective feeling" (p. 56) in the human mind is "the ultimate sanction...of all morality" (p. 56) and might be "analyzed away" (p. 58) by educational cultivation, were such feeling not grounded ineluctably in "the social feelings of mankind – the desire to be in unity with our fellow creatures" (p. 58).

Mill argues for this position at length, raising the welfare of the community of others to a prime concern. He writes that the utilitarian (*Mill*, 1861, p. 59)

comes, as though instinctively, to be conscious of himself as a being who of course pays regard to others. The good of others becomes to him a thing naturally and necessarily to be attended to, like any of the physical conditions of our existence. Now, whatever amount of this feeling a person has, he is urged by the strongest motives both of interest and of sympathy to demonstrate it, and to the utmost of his power encourage it in others; and even if he has none of it himself, he is as greatly interested as anyone else that others should have it. Consequently the smallest germs of the feeling are laid hold of and nourished by the contagion of sympathy and the influences of education; and a complete web of corroborative association is woven round it, by the powerful agency of the external sanctions.

Mill asks us to suppose a religion founded on this social feeling, and even goes so far as recommending Comte's Religion of Humanity as a means of facilitating the "realization" of this supposed conception (p. 60). Sympathy [for others] is thus transformed into the foremost sentiment of action (*Windelband*, p. 666). Most important to note for the purposes of this thesis

is that Mill saw the socio-political progress of civilization as deriving directly from this cultivation of a social sensibility. For him, peace for humankind lay in a socially-responsible future which would “[level] those inequalities of legal privilege between individuals or classes, owing to which there are large portions of mankind whose happiness it is still practicable to disregard” (*Mill*, 1861, p. 59). As we shall see, the roots of consequentialist property rights are visible in these utilitarian statements.

2.4.5 Duty to the General Happiness as Standard of Pleasure.

Mill’s responded to Carlyle’s contempt for the egalitarianism of pleasures by breaking with Bentham’s quantification-only approach to value. Pleasures were now separable by quality (*Mill*, 1861, p. 37). Mental pleasures differed quantitatively and qualitatively from physical pleasures. Mental pleasures, since afforded only to a conceptual being, were higher than physical pleasures (p. 37). Whereas Bentham had placed joy in mere “push-pin” (*Windelband*, p. 664), that sort of idle pleasure is not celebrated by Mill, who holds mental pleasures to be “intrinsic[ally] superior” (p. 39). Mill maintains that “inferior” creatures need less to make them happy, and suffer less than “being[s] of higher faculties” (p. 38). He believes that those who are acquainted with the different pleasures are the best judges of precisely which pleasures are higher on the scale (p. 40), but he draws a sharp line between the pleasures and pains available to the experience of the conceptual beings and those in the experience of lower animals. Among conceptual beings, Mill draws a further line between what he considers the highly-developed humans and the vulgar humans, as encapsulated in his famous statement: “It is better to be a

human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied” (*Mill*, 1861, p. 39).

So, pleasures were subjectively experienced but could be objectively judged and ranked by a majority of those “competently acquainted” with them (p. 37). To these competent judges who would forsake lower pleasures for higher ones, Mill ascribed the finest moral character: they were beings of “pride” and independence” who had a “love of liberty... power [and] excitement” (p. 38). Above all, they were beings who possessed “a sense of dignity” (p. 38). Such dignity he believed to be the most dominant trait of this type of character. This aspect of his break with the Benthamite pleasure-quantification standard into a more Aristotelian, duty-and-dignity utilitarianism has been interpreted as “transcend[ing]” the use of utilitarian hedonism as an evaluative standard. The good utilitarian is not to take “pleasure as standard” but rather to cultivate the “standard for pleasure” (*Windelband*, p. 667). Virtue, therefore, becomes, not a means to an end but an end in itself (*Mill*, 1861, p. 62).

2.4.6 Justice as Moral Right and Duty of Perfect Obligation

In his treatment of the concept of justice, Mill first considers the conventional modes in which the concept is used: in the legal sense; in the traditional moral sense of granting an individual his desert; in the sense of moral right trumping legal but immoral imposition; in the sense of keeping one’s word; and in the sense of being an impartial observer (*Mill*, 1861, pp. 69-70). Second, he examines the history of the concept, concluding that its essential quality lies in its location in “legal constraint” (pp. 72-73). Third, he seeks to differentiate justice from other forms of moral obligation, noting that “wrong[ness]” implies punishment, whether approbation

be legal, social, or internal (i.e., by and of oneself) (p. 73). Moral obligation, or Duty, continues Mill, is something that is exacted from someone (p. 73). Yet not all cases of moral obligation demand that just deserts be sought even if it might be desirable that just deserts be sought (p. 74). The cases which mandate just deserts are akin to legal duties of perfect obligation, and the cases which do not mandate just deserts are akin to legal duties of imperfect obligation. "[D]uties of perfect obligation are those duties in virtue of which a correlative *right* resides in some person or persons; duties of imperfect obligation are those moral obligations which do not give birth to any right" (p. 74; emphasis original). And so, utilitarianism finds the essence of its conception of justice: the "right in some person, correlative to moral obligation. [...] Justice implies something which it is not only right to do, and wrong not to do, but which some individual person can claim from us as his moral right" (*Mill*, 1861, p. 75). Such a conception, or abstract definition, of right, is entirely in keeping with our modern sense, as previously explained [in Chapter 1], for instance in connection with Hohfeld.

Ending my survey of the utilitarian ethics on the question of justice as the obligation to respect the moral right(s) of the individual, I now turn to the matter of the utilitarian-consequentialist conception of property rights. In this move from moral principles to political principles, I begin with the initial conditions of property ownership in human society.

2.5 State of Nature Conditions

For Mill, human beings, owing to long habituation in community, find the sociality of being – the "social state" - natural. The individual usually has to perform an act of "voluntary abstraction" to regard himself as an individual, and the development of social consciousness is a

mark of spiritual advancement from the “state of savage independence” (*Mill*, 1861, p. 58). In the basic social state, the interests of every individual [who is not a slave] are to be brought into consideration in Mill’s re-done, qualitatively-altered utilitarian calculation, if the state is to be enduring and peaceful (pp. 58-59). Nature is to be improved upon by art and science, and, in ethics, humans are not to conform to nature but rather to abandon the egoistic motives immediately given in personal psychology and to cultivate the nobleness of character required to be the dutiful servant of one’s community (*Mill*, 1861, pp. 59-60; *Mill*, 1874).

Political considerations of state-of-nature conditions, therefore, cannot be strictly historical. We know from more brutish historical periods in European history (*Mill*, 1848, p. 201) and from underdeveloped, poorer societies today, that property rights did not arise from cultivated ethical concerns with the greatest happiness. Early property claims were established by characteristically unjust uses of force. Government by men - through “tribunals” – preceded government by laws (p. 201). As a result, certain expedient but enduring legal principles – such as “first occupancy” - came to be established (p. 201). For Mill, therefore, examination of the institution of property cannot involve its origins in European history. We must arrive at the proper principles by voluntary abstraction not by merely examining historical circumstances.

We might consider

a community unhampered by any previous possession; a body of colonists, occupying for the first time an uninhabited country; bringing nothing with them but what belonged to them in common, and having a clear field for the adoption of the institutions and polity which they judged most expedient; required, therefore, to choose whether they would conduct the work of production on the principle of private property, or on some system of common ownership and collective agency. (*Mill*, 1848, p. 201)

Mill supposes a society at its inception, choosing which system of property to implement from scratch. Such fresh implementation would, in his eyes, be free of the “initial inequalities and injustice” (p. 201) that make it difficult to implement the system in a long-established

society. Here, although Mill argues largely for a private property system, he believes that “nature” (p. 201) has already emplaced some unfair inequalities of condition, over and above the inequalities accruing from early savagery or cruelty of one human towards another. He counsels that one-time adjustments be made to account for these inequalities before private property is implemented (p. 201). If the society chooses to implement a common or collective property system, then elected officials to manage the property would be required. The society might choose “complete equality” or a proportional system based on individual need or “desert,” all dependent on the “ideas of justice or policy prevailing in the community” (p. 202).

2.6 Original Acquisition of Property

Mill’s view is that the argument from First Occupancy was used to settle quarrels and quell violence in pre-modern societies so as to establish the public peace, such peace being the “original” end of civil government. The labour justification of property rights (or what Mill calls the "fruit of personal exertion" justification) is a later philosophical development (*Mill*, 1848, p. 201). This view has been used, by later property-rights thinkers, to frame what Lawrence Becker calls the First Occupancy Argument from Utility, which holds of natural necessity that if people are not allowed to maintain an ownership relationship with items they are the first to occupy, social instability results (*Becker*, p. 30).

2.7 Establishment of the Property Right

For Mill, property rights are established and regulated in accordance with the "laws and customs" prevailing in society (*Mill*, 1848, p. 200). While human creativity is ultimately bound by "ultimate" laws to which we must conform, the "Distribution of Wealth" in society is wholly conventional (p. 199). The organization and recognition of property is "a matter of human *institution* solely" (p. 199; emphasis added). In accordance with the utilitarian commitment to the "social feelings" of humanity, Mill advocated a collective permission as trumping the property right (p. 200). The moral right of the individual to his property is dependent on the society, whose thoughts and emotions constitute the grounds and *raison d'être* of utility. But these thoughts and emotions are not arbitrary factors – they derive from the operation of human nature, the accumulated and prevailing social wisdom, and present socio-cultural conditions.

2.8 Justifications of Private Property Rights

Contemporary property-rights theorist Lawrence Becker classifies the utilitarian-consequentialist arguments for property rights into two main categories: the *traditional* and the *economic* (*Becker*, p. 57). Although both types of arguments hold property rights to be necessitated by the ultimate object of human happiness, traditional arguments are based on the entire spectrum of human values -- romantic love, friendship, financial success, career fulfilment, etc. – while economic arguments deal mainly with economic values: i.e., values strictly measurable in economic terms of money (p. 57). Since the economic arguments do not have direct bearing on the purpose of this thesis, I will describe only the traditional argument.

Becker offers three types of traditional argument: the general, the specific, and the particular; but I will only describe here the general argument. Becker presents the general

argument as a syllogism. Rather than present the formal syllogism, I will present, in brief, the gist of the argument.

2.8.1 General Traditional Argument for Utility

- (i) “The Need for Institutions”: - The first premise of the general argument is that human beings require “rule-governed social institutions” in order for happiness. This is clearly the case for Mill, as we’ve seen. This premise assumes that happiness is an intrinsic, utmost and/or “fundamental” need, and as such, a good. Society is formed so as to make happiness attainable. The need for these institutions is a need arising from human nature. Human nature thus requires these institutions. A properly-structured, well-established society can formulate and enforce laws which forbid initiated force and mitigate retaliatory force, amongst its members (pp. 59-60).

- (ii) “The Necessity for Some Institutions”: - Based on the need of humans for social institutions, the second premise states, there is the necessity of *certain* institutions for the attainment of happiness. So, if the first premise was focused on the general human need, the second premise highlights the institutions’ particular necessity. In order to formulate and enforce laws which forbid initiated violence and mitigate retaliatory violence between its members, it is necessary that a society possess at least one law-making institution and one law-enforcement institution. So, some sort of legislature must exist, and some sort of police force. Among the other institutions that a society sets up, some

may be useful to the necessary institutions; some irrelevant to the necessary institutions; and some damaging to the necessary institutions (*Becker*, pp. 60-61).

- (ii) “Identification of the Necessary Institutions”: The third premise of the general argument states the method by which to discover the institutions we need. That method consists of considering the social institutions which would be necessary to support or make possible the social conditions of human happiness (p. 61).

- (iv) “Definition of the Necessary Institutions”: This fourth premise concerns how we may define the necessary social institutions, and this is by how the institutions meet – when applied to particular instances - the human need which gave rise to the institutions’ necessity. Their definitions would consist of their principles, practices, policies, rules, and other institutional items (p. 61).

- (v) “The Need to Acquire, Possess, Use, and Consume”: The fifth premise of the general traditional argument from utility states that human beings as individuals must acquire, possess, consume, and use things in order for happiness. One sub-argument for this is that items which are held in common belong to no-one in particular and are thus left unkempt and untended, leading to waste and decay. This is the “tragedy of the commons” (*Waldron*, 2012). Another sub-argument for this premise is that unused or “unconsumable” (p. 61) items are of no value since value presupposes a valuer who consumes and uses. Such consumption and usage cannot remain at the subsistence level. This is clear from, first, the fact that human life implies purpose, and many purposes

require that things be acquired, kept, consumed, and used (p. 62). Second, the individual acquisition and disposal of property is creative of a stable and harmonious society of interests (pp. 62-63). Third, as a claim by Hegel contends, the human desire or need to acquire and dispose of things is a “necessary expression of the human personality” (Becker, p. 63). Human productivity is a hard-wired potential that is necessary for self-esteem and therefore must be actualized, the claim goes (pp. 63-64).

- (v) Security of Possession Requiring Enforcement: The sixth premise of the general argument holds that coercive social institutions are required not only to enforce laws securing individuals’ possessions but to control and re-distribute wealth where necessary. This premise is presented by Becker as a rejection of any unworkable notions of anarchic or communal society (*Becker*, p. 64). A communal society, since usually small in size, is sometimes promoted as being conducive to a lack of institutions. Some political systems, such as Marxism, hold a society without institutions to be the result of those systems. But, the notion of a society without need of violence-suppressing institutions is unrealistic. There has never been a time or place in history where at least one person did not desire to break with convention in such a significant degree as to involve, or at least threaten, violence. Because of this historical fact, coupled with the demands of complex, non-communal societies, it is necessary that coercive social institutions exist (p. 64).

Others argue that these coercive institutions are also necessary for the re-distribution of wealth since many human beings lack sufficient sympathy for altruism.

Without force, they claim, some people will not choose to act altruistically for the happiness of the community (p. 64). This seems true of Mill as we've discussed.

- (vi) “Insecurity” and “Uncontrolled Acquisition” of Property Negate Happiness: If possession of property is necessary to satisfy the human need for, and to enable the human actions toward, happiness, and security of that possession is necessary for happiness, then insecurity of property negates or jeopardizes happiness (p. 65). Since the need for happiness-enabling possessions is as temporally open-ended as the human lifespan, the security sought here must be long-term. Yet, the nature of the need or purpose will also serve to condition the type of property rights granted (*Becker*, p. 65). Property rights are conditional on the utilitarian-consequentialist view, the condition being the social consequences of implementing the rights. If society benefits, the right should exist.

For the utilitarian-consequentialist, the feelings of the people about their possessions – the sense of violation at being “disrespected” or “trespassed” - counts as justification for the securing of possession and the control of acquisition. The accumulated social feelings or desired happiness, we will recall from our discussion of Mill, serves as the standard of utilitarian value.

- (vii) Private Property Rights are Necessary: The conclusion of the general argument from utility follows from the preceding premises. Secure possessions and their managed acquisition are necessary to satisfy the human need for happiness; the absence of the necessary property rights institutions would negate that happiness; therefore property

rights are necessary (p. 65). Mill thought this was generally true, though wavered on the specific degree to which social convention—in the name of enhancing other-regarding development and the noble spirit of self-sacrifice—might interfere with, or over-ride, or otherwise “benevolently channel,” individual property rights claims and the resulting use of one’s private property.

2.9 Objections to the Utilitarian-Consequentialist Justification of Property Rights.

We’ve thus seen how a Millsian utilitarian, and contemporary utilitarians inspired by John Stuart Mill, can justify private property rights: rights to private property conduce to the qualitative happiness of both society (economic growth and overall well-being) and the individual (both pleasure and the enablement of the performance of one’s duty). Objections to the utilitarian-consequentialist approach to general moral rights (which include the right to private property) may be classed under two main headings: (i) objections to the hedonistic aspects of utilitarianism: i.e., the pleasure-pain valuation; and (ii) objections to the overall theory of utilitarianism, i.e., the theoretical, non-hedonistic aspects of utilitarianism. In my discussion of these two categories of objections, I will highlight only the objections most relevant to consequentialist rights.

2.9.1 Contra Hedonism

The first criticism of hedonism concerns the utilitarian end of achieving the maximum pleasure of the greatest number. The criticism is that *pleasure is not the only human good*

(Orend, 2014) but merely one of several goods, and thereby cannot serve as a standard of value, or end of action, for a community. Wealth, virtue, good health, self-esteem, children, and honors are among the other goods people desire; so, what people desire most is not necessarily what gives them the most pleasure. Drugs can induce great pleasure, but the majority of (adult) people do not want to achieve a life of pleasure through drugs. Aristotle observed that human beings tend to think pleasure is the “chief good” because happiness is pleasant (*Nicomachean Ethics* VII, 13:1153b8-12). John Locke, too, noted the difficulties with differentiating happiness – the ultimate end in his ethics - from pleasure as the measure of right action (*Locke*, 1689, pp. 260-263). So, some people pursue pleasure, confusing it with happiness. But this does not mean that people necessarily seek what will give them maximum long-term pleasure.

The confusion of desire, pleasure, and happiness might stem from the problem of distinguishing happiness from pleasure. Happiness is pleasurable but not all pleasure makes for happiness, and many people come to realize that at some point. Maximizing the general happiness does not mean maximizing the pleasure of the greatest number. So, this is a fundamental difficulty in hedonistic utilitarianism: that something which would give people maximum pleasure (e.g., drug highs which are never allowed to abate) might not be something people would desire. That is to say, pleasure is not the main or only human good. Utility – what people value – is therefore not equivalent to what maximizes their pleasure. The aggregate of social desires seems then unable to serve as standard of value or end of action.

One way to respond to this objection is to say that the felicific calculus is not concerned with pleasures which allow for pain in other areas (such as drug addiction would). The hedonistic pleasure being sought is not the self-indulgence of Aristippus, which might have painful side-effects (such as hangovers), but rather the hedonism of Epicurus, which is focused

on “simple, higher” painless pleasures like reading and walking. Surely the maximization of this sort of pleasure would be without pain and advantageous to life? This Epicurean scenario would, however, confront the same utilitarian problem of being a pleasure not necessarily desired by all the people. There is, to my knowledge, no means of prescribing a given activity as uniformly pleasurable for all persons. Applied to rights theory, the *objection to utilitarian-consequentialist rights* that would arise here, Tara Smith writes, is (Smith, 1995, p. 94):

What if all people do not embrace the posited end? In order to justify a universally binding obligation to respect rights, we must suppose that all people are driven to achieve that end, that all regard its value as overriding other concerns whose pursuit might require actions inconsistent with respecting rights. If some people do not view rights’ objective in that way, such an argument for rights has no basis for holding that such persons are obligated by others’ rights. This seems a significant limitation of the scope and usefulness of consequentialist rights.

Another objection to hedonism is its inability to distinguish between pleasures which may arise from harm done to others and pleasures which don’t involve the harm of others. That is to say, its inability to *distinguish benevolent from malevolent preferences* (Montgomerie, 2000). A sadist may gain pleasure from seeing other people killed, and this pleasure gain may, in theory, maximize overall utility. An example here is Robert Nozick’s famous “utility monster” who “get[s] enormously greater gains in utility from any sacrifice of others than these others lose” (Nozick, p. 41). James Bailey expands on utility monsters, adding that “[p]erhaps the utility information we could gather from a single sadist might not be plausible enough to outweigh the sufferings of the victim; but even if millions of people have only minor sadistic leanings, the televised torture of a single victim might reasonably lead to a case in which utilitarianism would seem to require that torture” (Bailey, pp. 144-145).

Shifting our focus from improper pleasures to proper pains, it should be noted that some pains are early warning signs of disease and can be good for the actor because they prompt her to action which would eliminate the disease. Toothache is a signal that we need to see a dentist. Putting off that dentist visit indefinitely could lead to eventually requiring extensive and invasive surgery, which would not be in our long-term interests. So, pain can have its benefits.

Another main objection to hedonism is from *objective good* (Montgomerie, 2000). On this objection, achieving maximum pleasure and painlessness is not a goal to seek since humans are much more likely to prefer that inner pleasure states be ontologically harmonious with objective reality. Pleasure is not by itself satisfactory since, much of the time, what heightens a pleasure is the reality of struggle to achieve an end other than pleasure. The delayed gratification and demonstration of personal efficacy during productive activity can be responsible for a heightened sense of achievement which is a higher-order pleasure. Besides, actuality cannot be faked. Experience is experience of *something*, of objective reality and its objective values/goods. Robert Nozick's experience machine is often raised in this connection. Nozick argues that if human beings are given the option of being placed in an "experience machine" where only sensory pleasures could be programmed and experienced, many humans would reject this because the actuality of reality is desirable, even with its varying emotions and sensations. As Nozick presents the case (Nozick, pp. 43-44):

[W]e want to *do* certain things, and not just have the experience of doing them...we want to *be* a certain way, to be a certain sort of person. Someone floating in a tank is an indeterminate blob. There is no answer to the question of what a person is like who has long been in the tank. Is he courageous, kind, witty, loving? It's not merely that it's difficult to tell; there's no way he is. Plugging into the machine is a kind of suicide. [...]

Plugging into an experience machine limits us to a man-made reality, to a world no deeper or more important than that which people can construct. [...] We can continue to imagine a sequence of machines each designed to fill lacks suggested for the earlier machines...a transformation machine which transforms us into whatever sort of person we'd like to be... [or a] result machine, which produces in the world any result you would produce...What is most disturbing about [these machines] is their living of our lives for us. [Bracketed additions mine.]

The importance of living our lives ourselves in the real world is a foundational aspect of the eudaemonist approach, as we shall come to see in Chapter 4.

2.9.2 Contra Theoretical Utilitarianism

A primary objection to utilitarian theory is that, in placing the desires of the many over all else, inevitably we are left with a policy whereby *the ends justify the means*. Utilitarianism is often accused of prioritizing practicality over justice. Even if it were possible to know the desires and pleasures of all the individuals in a community, there could still be damaging consequences to a minority (a minority being a group or an individual). A famous example is John Rawls' "torture" thought experiment. Torture is "an *institution*...such that the officials set up by it have authority to arrange a trial for the condemnation of an innocent man whenever they are of the opinion that doing so would be in the best interests of society" (Rawls, p. 11; emphasis added). Torture is clearly a violation of individual rights, and a danger to the rights (to life, liberty, and security) of individuals in the society. If utilitarianism can justify such an unjust, deadly act, what good is it as a moral code?

Other examples usually raised in utilitarian, ends-justifying-means discussions are the trolley problem and organ-sacrifice case. In the organ-sacrifice case, a doctor must determine whether saving five sick lives merits taking one healthy life. Bailey argues that there are two “good utilitarian arguments” for not making the organ sacrifice an institutional or “general practice.” First, a “moral hazard” would be established if the doctor sacrificed the healthy life because “potentially exploitative agents” would now feel entitled to let their organs atrophy irresponsibly, knowing that other individuals would be forced to sacrifice for the exploiters in future. Second, a “subsidiary principle of *self-ownership*” which Bailey derives on utilitarian methods “would clearly rule out any such sacrifice” (*Bailey*, p. 144; emphasis added). He believes that the self-ownership principle holds in this instance and helps uphold utilitarianism’s support for individual rights. But this is not the usual interpretation, which is more along the lines of how the core values of utilitarianism can be in tension with individual rights in these specific, contrived thought experiment cases.

In the trolley case, a train agent must choose whether to throw a switch to redirect a train which is headed for five workers. The problem is, his doing so would mean the certain death of one other worker. Bailey argues that utilitarianism would advise that the agent throw the switch since no moral hazard holds here – someone is going to die no matter what, and if the agent doesn’t throw the switch, four more people will die. In spite of Bailey’s confident solutions, the organ- and trolley cases still seem problematic. His utilitarianism is only able to stop the organ sacrifice being instituted as a “general practice,” not in isolated instances, and the trolley case

does not consider the personal life and interests of the unfortunate worker who will be sacrificed to the supposedly more deserving five.

The conflict between ends and means in utilitarianism is greatly relevant to consequentialist rights theory. There is a serious tension between individuals' rights and consequentialist ends (*Smith, 1995, pp. 94-95*). Since consequentialism requires that the greatest happiness or consequences for the community be actualized, what is to be done if these consequences come into conflict with the right of the individual? Which would hold priority: achieving the utilitarian-consequentialist end, or securing the individual's right? If the end is chosen over the right, then consequentialism is unable to protect rights. If the right is chosen over the consequentialist end, then rights trump consequences and consequentialism is insufficient justification for the general moral right (whether to private property or otherwise).

Smith argues that perhaps an "indirect strategy" might resolve this tension. If we view "rights' service to ends as indirect," we might be able to come to a robust establishment of rights such that we will "hesitate before overriding" them (*Smith, 1995, p. 95*). She provides the example of a government refusing to censor a critical, heated opinion because not censoring will make for a more stable society since citizens will feel comfortable expressing themselves. Consequentialism might be sufficient to justify this government policy, Smith argues. Instead of directly justifying free speech rights on deontological or eudaimonistic grounds (where we would argue for rights directly from human nature and life requirements), we could say: we need a stable society, and in order for a stable society, we need free speech rights. But this indirect justification will not resolve the tension, Smith argues, since "the central objective determines all moral prescriptions, including when the use of some means will be replaced by others" (p. 95). The chosen goal directs what means we take to achieve it. If censorship, by contrast, were to

make for the more stable society than respecting free speech rights, then censorship would have to be endorsed. If the goal necessitates overriding rights, consequentialism will permit the overriding. Smith concludes: “[I]f rights may be infringed for the sake of consequences, they are no longer trumps. Rights’ authority is no longer final” (p. 96).

The second objection to theoretical utilitarianism concerns the *excessive sacrifice* demanded by the utilitarian (Orend, 2014). Does the individual’s own life belong to her, or is she a slave to the desires and passions of the world? How much of one’s life is it legitimate for society to claim? After all, the human lifespan is limited. There is only so much time, many of us would agree, to act on and fulfil one’s most personal desires, meet life’s many personal responsibilities, and accomplish one’s full potential. To achieve these positions in any significant measure -- much less help one’s family, friends, and loved ones -- is no mean feat. So, utilitarianism’s demand for the individual to seek the happiness of all (even if we assumed that the felicific calculus had a realizable and quick method of calculation) is a demand for self-sacrifice. One’s own life is subordinated to the needs of the many, and we saw shades of this quite clearly in Mill. A related point is the possibility of decline in the emotional motivation of the utilitarian moral actor. The nobleness of the dignity-, duty-, and sympathy-driven ethics would be very difficult to sustain since her psychological state would require the denial of some of the “selfish” emotions involved in moral motivation. Integrity might be very difficult to maintain if many aspects (wants, drives, etc.) of the personality are being suppressed for the greater good.

We have seen that there are a number of familiar objections to utilitarianism in general. These tend to focus around the difficulties with the hedonistic/felicific calculus and whether pleasure is the ultimate end of action. But we've also seen that, for Mill, the calculus is revised, with a qualitative ranking of pleasures, so he is in agreement with Nozick and Aristotle regarding pleasure: i.e., pleasure is not the chief good for all persons. Also, there's a range of contemporary utilitarian arguments in favour of property rights, which I have called attention to and developed. But, in spite of the utilitarian moral theory's general, or sweeping, support for some kind of private property rights regime, two big problems seem to remain: (i) whether, when push comes to shove, consequentialism and rights theory are importantly at odds (as we saw in the objections raised by Tara Smith); and (ii) relatedly, whether utilitarian concerns with overall social happiness might demand that individuals sacrifice their own life plans and goals in favour of contributing to overall social welfare. For all his greatness as a modern liberal theorist, we see the clear potential for such tensions in the work of Mill, as he wrestled with how to square his earliest utilitarian training with his later concerns with rights (especially to free expression¹⁰) and with excellence of character.

¹⁰ In his renowned essay, *On Liberty* (Mill, 1859).

CHAPTER THREE

3. The Deontological Approach to Private Property Rights

In the preceding chapter, I examined the consequentialist approach to property rights. I demonstrated that property rights – and the institutions which secure them - are of special and current interest in the academic and development communities. I reviewed the ethical base of consequentialist politics, taking John Stuart Mill’s post-Bentham strain of utilitarian moral philosophy as the *locus classicus* of the approach. I showed that Mill broke with the associational psychology school of his father James Mill; parted significantly with the purely-quantitative calculus of Jeremy Bentham; and re-directed the utilitarian actor’s end of action (or object of desire) away from his own greatest pleasure towards the greatest pleasure of his community. Rather than accept the overwhelming psychological demands of the personality and seek his own pleasure in tandem with the pleasure of those around him, Mill’s moral actor is to renounce his own pleasure and dutifully cultivate the highest nobility and dignity required for the selfless service of his community’s greatest pleasure. Even in the security of property rights, Mill took a very flexible line: there was ample room for the “Distribution of Wealth,” both in principle and practice (*Mill*, 1848, p. 199).

In this chapter, I will discuss the second of the three major schools of contemporary property rights justification: the deontological approach. In contemporary academic philosophy, this is perhaps the dominant rights theory, even though consequentialism prevails in empirical development research and policy practice. In the late 20th century, the leading deontologists were John Rawls and Robert Nozick, who became canonical figures for the egalitarian and libertarian political movements respectively (*Feser*, 2014). Another historically important deontologist is

Samuel Pufendorf, who authored *On the Duty of Man and Citizen* (1673). Nevertheless, no other deontologist approaches the historical prominence of the rights theorist who will be the focus of this chapter, the great English philosopher and physician, John Locke.

Locke's *Second Treatise of Civil Government* transformed the world by providing a radically-improved conception of rights. It was Locke's work that the Founding Fathers of the United States relied most heavily upon in designing the constitution of that country. The Founders, especially Thomas Jefferson, were serious students of Locke's theory about the individual's right to his "life, liberty, [...] estate" (Locke, 1690, p. 141) and also his "pursuit of happiness" (Locke, 1689, p. 248). It was Locke's work which enabled them to formulate that country's foundational purpose in the Declaration of Independence: protecting the individual's "life, liberty, and pursuit of happiness." Jane Ajzenstat argues that Locke was also influential in the founding of Canada (Ajzenstat, 2007). British historian Paul Johnson recounts Locke's influence (Johnson, p. 104):

Jefferson relied heavily on Chapter Five of John Locke's *Second Treatise on Government*, which set out the virtues of a meritocracy, in which men rise by virtue, talent, and industry. Locke argued that the acquisition of wealth, even on a large scale, was neither unjust nor morally wrong, provided it was fairly acquired. So, he said, society is necessarily stratified, but by merit, not by birth. This doctrine of industry as opposed to idleness as the determining factor in a just society militated strongly against kings, against governments of nobles and their placemen, and in favor of representative republicanism.

This emphasis on the "ethic of industriousness" (Huylar, p. 36) and the government as strictly the legal protector of the individual's industry set the moral tone for political activity in the United States. Owing to the enormous success of that country, Locke eventually became known as perhaps the most influential writer on individual (property) rights in Western thought (Uzgalis, 2014). For him, the individual did not have the possibility of a full life if she did not have the right to use her property as she saw fit (assuming she violated no one else's right to do the same).

Despite his great political influence, Locke is not famous for his ethics. He seems to have concentrated his efforts mainly on metaphysics, epistemology and politics. According to one commentator, “many scholars of Locke’s thought” found his moral philosophy “too obscure and confusing” for sustained treatment (*Sheridan, 2014*). I nevertheless attempt, in what follows, to isolate the most essential aspects of Locke’s ethics – in the context of this thesis.

3.1 Locke’s View of Human Nature

Locke was famously Christian. He was part of the toleration movement in Enlightenment Christianity. Such Christianity was intended as a “true Christianity” abstracted from the existing Christian narratives. This true Christianity was to be a “religion of reason” (or “natural religion”) which would follow the example set centuries earlier by Thomas Aquinas and Albertus Magnus, and which would “harmon[ise]” revealed Christianity with reason and its products (*Windelband, p. 487*). In this metaphysical collegiality, the divinity possessed the final say and was the “necessary,” higher “supplement” to rationality. “That is revealed which the reason cannot find out of itself, but can understand as in harmony with itself after the revelation has taken place” (p. 487).

For Locke, therefore, it is important that the presence of God be justified by reason. Locke attributes the “art and regularity of the world” to God, and such art includes the human being who cannot be “its own cause” (*Huyler, p. 84*). There is a “law of nature” (*Leyden, p. 111*) and human beings are rational animals: i.e., animals possessing a “faculty of the understanding,” which is the “reason” (p. 111). God created the human being so that he may live in accordance with his reason. Locke is thus in some agreement with Aristotle, an agreement

reaching all the way into a natural “teleolog[y]” (p.49). But, Locke is also Christian. God has “designed the world for some end and has prescribed to everything a ... rule appropriate to its nature” (*Leyden*, p. 49). The human being has “special functions” by his nature, and these include his secular “duties to himself” as well as the “worship [of] God,” “[the] contemplat[ion of] His works,” and social co-existence with his fellows. Natural law is discovered or “acquired by man’s natural faculties: i.e., sensation and reason” which together give rise to “the light of nature” (p. 49).

Locke also rejects the doctrine of innate ideas. The human mind performs three essential roles: apprehending the data of the world outside the mind; apprehending the data and information inside the mind; and evaluating the data and information from both sources. That is to say, the mind performs cognition and evaluation of external facts and internal states (*Huyler*, p. 85). Pleasure and pain are the evaluative feelings (being inner sensations or emotions), and humans acquire knowledge of these feelings by reflection (*Huyler*, pp. 85-86).

For Locke, pleasure and pain are the states corresponding to good and evil respectively. Whatever may “cause or increase pleasure, or diminish pain” is the good, and its opposite is the evil (*Huyler*, p. 86). So, there is the pleasure-pain mechanism in Locke that we find both in Aristotle and Mill. But Locke is closer to Mill in the psychologistic attribution of principled value-judgments directly to pleasure-pain states. Locke, too, recognizes the object of *desire* as causing the “uneasiness a man finds in himself” by its “absence” because the object’s “enjoyment carries the idea of delight in [that object]” (*Locke*, 1689, p. 215). Locke believed this to be the universal nature of the human being. We have “a desire of happiness and an aversion to misery; these indeed are innate practical principles which ... constantly operate and influence all our actions” (*Locke*, 1689, p. 48). Huyler points out that Locke does not consider

the desire and aversion “absolute and controlling”; for they are only “inclinations of the appetite to good, not impressions of truth on the understanding” (*Huyler*, p. 87).

Beyond the pleasure-pain mechanism, Locke holds that human beings possess volition. The “Will” or “free-will” is that power which “command[s]” us to act or not to act, whether in the physical world or in the mentality. The Will is itself the source of the “Liberty” to “suspend the prosecution of this or that desire” (*Huyler*, p. 88). In this also, Locke resembles Aristotle. But his remarks on “Liberty” place greater emphasis on volition’s significance than is present in Aristotle or Mill.¹¹

3.2 Ultimate End or Value

For Locke, the ultimate end of human action – i.e., the purpose of each human being – is happiness. This happiness comes in two parts of one whole. One aspect of this human fulfilment is the secular pursuit of long-term happiness, which is an “extended and enlarged” (*Locke*, 1676, p. 241) conception of pleasure. Locke sees a fuller, larger pleasure as the “true” happiness:

As therefore the highest perfection of intellectual nature lies in a careful and constant pursuit of true and solid happiness, so the care of ourselves, that we mistake not imaginary for real happiness is the necessary foundation of our liberty. (*Huyler*, p. 89; *Locke*, 1689, p. 249)

¹¹ Cf. Grotius’ *The Rights of War and Peace*, p. 19, where, discussing various significations of “right,” he mentions “the power, that we have over ourselves, which is called liberty” (*Grotius*, 1901). This would seem evidence that Grotius regarded volition (and related metaphysical responsibility) as tied to liberty.

So we do not, like the utilitarian, take happiness to be basic pleasure, or take unhappiness to be basic pain. Locke, in a fragment titled, *Thus, I Think*, writes:

'Tis a man's proper business to seek happiness and avoid misery. Happiness consists in what delights and contents the mind, misery in what disturbs, discomposes or torments it. I will therefore make it my business to seek satisfaction and delight and avoid uneasiness and disquiet and to have as much of the one and as little of the other as may be. But here I must have a care I mistake not, for if I prefer a short pleasure to a lasting one, 'tis plain I cross my own happiness. (Mack, p. 36)

In *Of Ethick in General*, Locke writes that happiness is the end at which all humans aim (Colman, p. 179; Locke, 1676, p. 298):

Happynesse & misery are the two grat springs of humane actions & through the different ways we finde men soe busy in the world they all aime at happynesse & designe to avoid misery as it appears to them in different places & shapes.

In the *Essay Concerning Human Understanding*, he mentions the role of “uneasiness” in the stirring of the will to act. In Mill, we saw the role of the object of desire in the neo-Aristotelian associational psychology, specifically in its stimulation of the actor to calculated pursuit of that object. For Locke, desire is the “uneasiness a man finds in himself upon the absence of anything whose present enjoyment carries the idea of delight with it...” (Locke, 1689, p. 215). Happiness, in Locke, is the ultimate object of desire all men aim at, for they are made uneasy by its absence:

Because the removal of uneasiness is the first step to happiness. If we inquire into the reason of what experience makes so evident in fact, and examine, why it is uneasiness alone operates on the will, and determines it in its choice, we shall find that, we being capable but of one determination of the will to one action at once, the present uneasiness that we are under does naturally determine the will, in order to that happiness which *we all aim at in all our actions*. (Locke, 1689, p. 238; emphases added.)

A corroborating fragment “from the late 1670s” is titled *Morality* (Mack, p. 36):

Morality is the rule of man's actions for the attaining happiness. For the end and aim of all men being happiness alone, nothing could be a rule or a law to them whose observation did not lead to happiness and whose breach did [not] draw misery after it.

The other aspect of human fulfillment is the pursuit of “true happiness” in non-secular, Christian terms (*Locke*, 1689, pp. 112-113):

Another end. Beyond all this, we may find another reason why God hath scattered up and down several degrees of pleasure and pain, in all the things that environ and affect us; and blended them together in almost all that our thoughts and senses have to do with;—that we, finding imperfection, dissatisfaction, and want of complete happiness, in all the enjoyments which the creatures can afford us, might be led to seek it in the enjoyment of Him with whom there is fullness of joy, and at whose right hand are pleasures for evermore.

So, for Locke, happiness is this-worldly and “very imperfect” on the one (secular) hand; otherworldly and perfect on the (religious) other (*Mack*, p. 36). A complete happiness would seem to comprise both aspects. Locke held that human beings sought secular happiness in different things – happiness was not a one-size-fits-all affair. Based on the pleasure each individual found in a pursuit, that individual made his happiness there. For any person, “the greatest happiness consists in the having those things which produce the greatest pleasure, and in the absence of those which cause any disturbance, any pain” (*Locke*, 1689, p. 252). Some people chose pleasures of the mind, others “hunting”; others “debauchery”; and so on (pp. 251-252). It is for this reason that Locke’s account of secular happiness is thought to be hedonistic (*Sheridan*, 2014). His conception of happiness, while obviously tied to the life process, did not specify a particular condition [such as eudaimonia, for instance] uniform to all humans as its end, except perhaps for the aforementioned “enjoyment of” God at the end of our lives. It’s almost as if, in secular terms, Locke’s ethic is nearly identical to Bentham’s, but then Locke’s strident religious conviction—in contrast to Bentham’s militant atheism—in the end forces Locke into a different, more deontological, direction.

3.3 Standard of Value

A moral standard of value is a measure, abstract or concrete, by which the goodness and badness of actions are to be determined. A standard of value is a means of guiding the evaluation of moral actions. Huyler reports that Locke places his standard in the human being's "relation" to the divine will, as expressed in the moral law. Locke calls this moral law the "divine law" (*Locke*, 1689, p. 336) and writes that (p. 336):

Moral good and evil, then, is only the conformity or disagreement of our voluntary actions to some law, whereby good or evil is drawn on us, from the will and power of the lawmaker; which good and evil, pleasure or pain, attending our observance or breach of the law by the decree of the lawmaker, is that we call reward and punishment.

The lawmaker is the arbiter of the moral law, and this lawmaker is God. But, in the hierarchy of moral law, there are three levels: the "law of God"; "the law of politic societies"; and "the law of fashion, or private censure" (p. 340). Human beings gauge their "moral rectitude" by the degree of their "conformity" to these legal rules (p. 340). The first level, the divine law of God, is used to gauge the core good ("duty") and core evil ("sin"); the second level, the civil law of society, is used to gauge legal good (innocence) and legal evil (criminality); the third level, the conventional law of opinion and fashion, is used to gauge vice and virtue. As Locke writes (p. 336):

By the relation they bear to the first of these, men judge whether their actions are sins or duties; by the second, whether they be criminal or innocent; and by the third, whether they be virtues or vices.

God, being the superior and maker of the human being, has "the right" to promulgate the laws that humans must obey (*Huyler*, p. 90). Human beings must discover the moral law using their faculties of reason because the moral law is planted in us such that "anyone can understand it who is willing to apply diligent study and to direct his mind to the knowledge of it" (p. 91).

The moral law is the “decree of the divine will” and discoverable by the “light of nature” implanted in us (p. 91). So, although Locke rejects innate ideas in terms of epistemology, he apparently has no problem positing an intrinsic “natural law” in moral terms (pp. 92-93) which is discoverable through the exercise of reason, such exercise producing the light of nature [see also Section 3.1 above].

3.4 Right Action

Since moral good and evil depends on an obedient relation to the divine law, moral knowledge, therefore, is demonstrative (*Windelband*, p. 503). That is to say, we can be intuitively certain of right and wrong through our discernment of the “natural light” (*Uzgalis*, 2001). Duty – or the “imperative character” – is thus the overarching ethical norm (*Windelband*, p. 503). Duty is to the natural law, as defined by the legal hierarchy outlined previously in Section 3.3. Locke restates the hierarchy as constituted of “the divine law... [t]he civil law [, and] [t]he law of opinion or reputation” (*Locke*, 1689, p. 336). All these are to be discerned and observed dutifully by the rational creature that is the human being. Discernment is deductive; morality is a deductive science. First, the complex ideas of dutiful conduct are formed by induction from the simple ideas given in sense experience; then, from those moral rules, we are able to deduce our duties:

From this deduction regarding divine purpose and authority, humans can conclude that they are obligated to render “praise, honour, and glory” to God. [...] Thus, by a series of steps from perception to reasoning about that perceptual experience, we are, Locke concludes, able to define our moral duties and regulate our conduct accordingly (*Sheridan*, 2014).

God's ordering of existence determines which actions injure or are useful to the human being. The useful actions are mandated; the injurious actions forbidden. Obedience begets reward while disobedience meets with punishment. Pleasure and pain are the regulative feelings, indicating God's reward and punishment. "Action is ethically the more pleasing in proportion as it produces more happiness, and in proportion as the number of men who can share this happiness becomes greater" (*Windelband*, p. 513). And this attitude (*Leyden*, p. 207; p. 215) was a precursor of utilitarianism, where utility widened from the personal to the social. For Locke, however, the social utility was neatly bound to the personal. The "peace and preservation of all mankind" is accomplished when individuals are barred by the boundaries of right from initiating force (*Mack*, p. 43).

Though in general concurrence with Aristotle's conception of the good as the object of desire, for Locke, morally right actions were, contra Aristotle, "good in that they are a means to the non-moral good of pleasure or happiness" (*Colman*, p. 69). Goodness is conformance with the law. But obedience to the law is not guided by prudence. "Utility is not the basis of the law... but the consequence of obedience to it" (*Leyden*, p. 215). Locke's is ultimately an ethic of duty. There is a "true intrinsic good or ill" in "things" and our duty is to "form appetites" for those good things by due consideration of their worth (*Locke*, 1689, p. 251). In this way, we come to take pleasure in the good, and pain in the evil, as we pursue our true end, happiness.

Yet, it must be added that, in the realm of prudence that the Aristotelian in Locke did allow, Locke made various statements about how the will is used to direct the understanding to make judgments towards the pursuit of happiness. Indeed, many of these statements are contained in his *An Essay Concerning Human Understanding*, which suggests that Locke was extremely mindful of the crucial role that epistemological judgment played in moral conduct. A

good number of his propositions concern the direction of the operations of the mind – the faculty of reason – towards the forming of judgments, in order for right action. Locke seems to understand the will or volition as being pressured by multiple desires, with the most pressing desire usually winning out, causing the will to direct the “understanding” (i.e. the reason) to satisfy that desire (“uneasiness”) by thinking through the actions necessary to actualize the desire. Locke writes that a person can choose to suspend the pressing desire in order to intelligently examine the object of desire and come to a solid judgment about whether the satisfaction of the desire will contribute to her happiness and therefore whether to proceed to act on the desire (*Locke*, 1689, pp. 246-247):

There being in us a great many uneasinesses, always soliciting and ready to determine the will, it is natural...that the greatest and most pressing should determine the will to the next action; and so it does for the most part, but not always. For, the mind having in most cases, as is evident in experience, a power to SUSPEND the execution and satisfaction of any of its desires; and so all, one after another; is at liberty to consider the objects of them, examine them on all sides, and weigh them with others. In this lies the liberty man has; and from the not using of it right comes all that variety of mistakes, errors, and faults which we run into in the conduct of our lives, and our endeavours after happiness; whilst we precipitate the determination of our wills, and engage too soon, before due examination. To prevent this, we have a power to suspend the prosecution of this or that desire; as every one daily may experiment in himself. This seems to me the source of all liberty; in this seems to consist that which is...called FREE-WILL. For, during this suspension of any desire, before the will be determined to action, and the action (which follows that determination) done, we have opportunity to examine, view, and judge of the good or evil of what we are going to do; and when, upon due examination, we have judged, we have done our duty, all that we can, or ought to do, in pursuit of our happiness; and it is not a fault, but a perfection of our nature, to desire, will, and act according to the last result of a fair examination.

So, morality is, for human beings, necessitated by their capacity as “intelligent being[s]” (p. 247). Part of this morality is the exercise of self-control (“government of our passions”), which is the “right improvement” of the will (p. 250). The suspension of desires is made possible by God in order that we may properly consider the goodness or badness of our desired objects, and direct our “appetites” and “conduct” towards “true happiness.” Since “all aim at being happy,” (p. 254) why then do people err in their judgment? Locke lists reasons: (i) “bodily pain” can impact the will, and some of these pains are “not in our power” (p. 254); and (ii)

“Wrong desires arising from wrong judgments” can feed each other (p. 254). We make a bad judgment and act on it, causing a bad desire, which then increases the likelihood of another bad judgment. Or vice-versa. This is, clearly, in our power (p. 254).

What is wrong judgment? One aspect is not recognizing what makes a necessary part of one’s happiness. And this is made possible by not steering one’s appetites to “desire of the greatest absent good,” which for Locke is the afterlife (p. 255). If a person begins to experience uneasiness at the absence of a part of her happiness, then she will aim for that part of her happiness. Such happiness would be “joys of a future state” not “nearer satisfactions” (p. 255). Locke recommends that the moral actor recognize that “virtue and religion are necessary to his happiness” (p. 255). Are all Locke’s recommendations as idealized as this? No, he provides “[a] more particular account of wrong judgments” (p. 255). He leads with the psychologistic premise, already mentioned, that pleasure and pain represent, respectively, good and evil. Next: “[m]en may err in comparing present and future” (p. 257). That is, human beings can compare a pleasant present and a future pain and come to a false conclusion of their worth. A night of drinking looks pleasant and good in the present but masks the pain of the future hangover. Specifically, the present, being nearer, has the advantage of greater “dimensions” while the future, being farther, has the disadvantage of lesser dimensions. If the hangover sensations occurred while drinking, no-one would drink wine, writes Locke. So, we must bring the future near to us by recall, in order that the present “take its true dimensions” (p. 258).

What is the cause of this comparison problem? The “weak and narrow constitution of our minds” is the “cause of our judging amiss,” Locke offers (p. 258). Owing to the mind’s narrowness, the present pleasure fills the mind, disallowing thoughts of future (or “absent”) things. Or, it might be that we have several present pleasures, none overpowering, but these

pleasures co-exist with a desire to enjoy a near present pleasure – a desire so compelling it has become a great pain that “extinguishes all our pleasures” (p. 259). For pain can be such that we cannot do anything until we have removed it. In other words, the pain of abstinence can be such as to diminish “in our thoughts what is future” and press us “into its embraces” (p. 259).

Our pressing pain - a desire or uneasiness - is not attenuated by the hope for the future good/pleasure. The future good being out of the reach of present experience (especially if in the afterlife), it fails to possess the imagination of the actor, especially since the future pleasure can be unreliable. For instance, a meal which tasted wonderful two months ago might not be as delicious next month. Only the afterlife in God’s company has the consistent pleasantness to satisfy everyone and every form of uneasiness always (p. 260).

Wrong judgments are also made in respect of “considering consequences of actions” (p. 260). We misjudge the future good or evil of present actions when we (i) discount the capacity of our actions to cause evil. We might think that this “minor” action of ours would not result in some major evil. And (ii) we see that our action would cause the great evil, but then adopt the belief that our action might not do so much harm; and then begin to believe that the harm can be avoided, by remedy, atonement, or modification, etc. This is irrational, and the general error behind it, Locke argues, is that we often risk a “greater good” for a “less[er]” good “upon uncertain guesses,” without taking the trouble to consider the matter to a degree proportionate to its import. This recklessness, Locke adds, owes to (i) “[i]gnorance” i.e. judgment without taking the necessary steps to acquire sufficient information to the best of one’s ability; and (ii) “[i]nadvertency:” i.e., a kind of irrational evasion of one’s own knowledge (p. 260).

Judgment, for Locke, is akin to accounting work, lining up the credits and debits, in order to come to an understanding of the “odds” for or against (p. 261). (This is, of course, more than a little suggestive of what Bentham will later do with the hedonistic calculus: but here, for Locke, we are squarely within the realm of the figuring of risk.) So, one cannot be too careful, and any rashness, any foolhardiness, results in judgments as poor as a lack of knowledge would necessitate. So, the purpose of the volition and the reason is to “search and see, and then judge” (p. 261). The volition is to direct the reason, so that the actor can choose the road to happiness. The free-will or volition should be exercised for self-control, which is mastery of any tendencies to rashness, in order that a clear and serious judgment can be made.

Locke has one final category of wrong judgment, and it concerns not seeing “what is necessary to our happiness.” The error here is complacency: resting easy with present pleasures – whether such pleasures be customary or commonplace. So, people are rarely moved by “apparent greater good unless it be judged necessary to our happiness” (p. 262). As a result of this error, the good we do choose and the means to that good, are usually mistaken. Locke believes this error to be caused partially by the difficulty of pursuing the necessary good – “the unpleasantness of the actions which are the way to this end” (p. 262). That the road to happiness should consist of some pain inhibits most people and, ironically, can ultimately result in their failing to achieve the very thing at which they most profess to aim.

3.5 State of Nature Conditions

For Locke, the state of nature is - contra Hobbes’ “Time of War” - a social existence of “peace, good will, mutual assistance and preservation” (*Sabine*, p. 526). It is not a place and

time in which everyone has a right to everything, but a sociality in which demarcated rights and obligations are already in existence. What differentiates this state of affairs from an established, governed society is the absence of legal institutions – courts, police, legislature, etc. - necessary to secure rights and obligations through enforcement. In this sociality, individuals co-exist “without common superior” on the basis of natural reason and law, not human-made law (*Tuckness*, 2012). Under these social conditions, human beings have “perfect freedom to order their actions, and dispose of their possessions, and person, as they think fit, within the bounds of the law of nature, without asking leave or depending upon the will of any other man” (*Mack*, p. 25; *Locke*, 1690, p. 106).

Locke’s conception is a descendant of Aquinas’ medieval-era position on the natural law. Locke received the Thomist position from Richard Hooker, whose church had been influential at the time of the writing of the *Second Treatise on Human Nature* (*Sabine*, p. 526). One conclusion stands out in Locke’s own conception of this pre-governmental state: morality is wider than legality, since rights, duties, and wrongs are eternal in this social condition. Locke does not specify precisely the grounds of right -- whether “divine will” or self-evidence or teleological “natural community” (in the Aristotelian sense) -- but he is firm on the point that the ethical antedates the legal (*Sabine*, p. 526).

In this pre-governmental condition, property was commonly held at birth – each individual came into existence with the right to make use of nature’s resources (*Sabine*, p. 527). Different interpreters have sought to classify Locke’s state of nature as being a “hypothetical” or “actual” contract theory. Notably, Locke himself did not consider his account strictly a hypothetical construction. Locke “argued that there are and have been people in the state of

nature. [...] It seems important to him that at least some governments have actually been formed in the way he suggests” (*Tuckness*, 2012).

3.6 Original Acquisition of Property

How was property acquired originally in the state of nature? For Locke, the origin of property is given at birth to human beings to use lower animals. “Property, whose original is from the right a man has to use any of the inferior creatures, for the subsistence and comfort of his life, is for the benefit and sole advantage of the proprietor, so that he may even destroy the thing, that he has property in by his use of it, where need requires...” (*Locke*, 1690, p. 62). This right to acquire property was itself founded on “the right a man has to subsist and enjoy...life” – the right to self-preservation. Although God-given natural property -- in not only animals but the “earth and all that is therein” (p. 115) -- was commonly held at birth by human beings, each person “has a ‘property’ in his own ‘person’” (p. 116). So, there are two properties in the original acquisition: that which is given by God to all in common - the earth - and that which is given by God to the particular individual – that individual’s person.

3.7 Establishment of Property Right

In order to differentiate, from the commons, property for particular individuals so they enjoy secure possession of it for “the best advantage of life and convenience,” (*Locke*, 1690, p. 115) human beings have to enter into relationship with objects. Locke saw the relationship between the person and the property as establishing the property right. *Self-ownership* is a

metaphysical given – such ownership being the original natural right of a human being to her person – her person comprising her mind (which hosts her reasoning faculty) and her body, which hosts the mind (p. 116). Property right in a natural object which is not the self is established by the transformation of the object by the energy of hands and body into a purposefully-chosen, human-created state (p. 116). Such modification establishes the exclusivity of possession which sanctifies *ownership*. In what has become perhaps the most famous phrase in property rights theory, Locke writes (*Locke*, 1690, p. 116):

The “labour” of his body and the “work” of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labour with it, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state Nature placed it in, it hath by this labour something annexed to it that excludes the common right of other men. For this “labour” being the unquestionable property of the labourer, no man but he can have a right what that is once joined to, at least where there is enough, and as good left in common for others.

Erick Mack argues that Locke’s use of the term “labor” is to be interpreted to mean the “energies, time, natural capacities, acquired skills, and insights” (*Mack*, p. 59) that are brought to the transformative action. On this interpretation, the listed factors constitute the “industriousness” of the person. Labor encompasses “invention and arts” (*Mack*, p. 60; *Locke*, 1690, p. 123). So, “labor” is not intended to be merely physical. Entitlement to property comes from mental and/or physical production. Becker explains that labor theory, in essence, is the entitlement to that which is the product of one’s own “initiative, intelligence, and industry” (*Becker*, p. 32). Thus, Locke’s establishment of property is in the same tradition as Grotius and the Roman law that preceded him (*Grotius*, p. 103; emphasis added):

Among the means of acquiring property, Paulus the Lawyer reckons one, which seems most natural, and that is, if by the *ingenuity of art, or the exertions of labour we have given to any production its existence among the works of man*. Now as nothing can naturally be produced, except from some materials before in existence, it follows that, if those materials were our own, the possession of them under any new shape, or commodity is only a CONTINUATION of our former property; if they belonged to no one, our possession comes under the class of title by occupancy: but if they were another’s, no improvement of ours can by the law of nature give us a right of property therein.

3.8 Justifications of Private Property Rights

Locke justifies private property on what Gary Becker terms “The Labor Theory of Property Acquisition” (*Becker*, p. 32). This is the theory, broadly discussed in previous sections, by which it is understood that an individual’s labor entitles her to the labored-upon property. For Becker, this idea has two subcategories. The first subcategory may be summarized as the view that the property right the individual has in her person is the condition which makes it such that her body’s labor and work “mixing” with extraneous property P vests her property right in P. This subcategory is premised on a “derivation from prior property rights” (*Becker*, p. 33). Here, her ownership of her body and her body’s energy – her self-ownership - is transferred to P, so she now owns P. The second subcategory may be summarized as the view that since an individual’s labor in P is creative of value and demanding of effort, her valuable effort must be *justly* recompensed by entitlement in P (p. 36). Here, her creativity is what *earns* P for her. Her creative energy spent on P is what necessitates and justifies a demand for payment, which is P.

Becker walks through a number of long-running issues concerning the essential idea uniting these two categories. The first issue is what precisely “labor” means, and how the terms “mixing,” “joining,” and “annexing” have been interpreted in relationship to “labor.” Becker argues that “labor” can be identified by differentiating it from “intent, declaration, or occupation”; from “play and accidental improvement” (p. 33); and from non-purposive action (p. 34). We then arrive at a workable conception of labor useful even in contexts in which the

conception isn't clearly applicable: e.g., how to "mix" or annex" for rights to "airspace over ... land" (p. 34).¹²

Another issue is Robert Nozick's observation that the mixing of labor implies energy lost, not property gained:

If I own a can of tomato juice and spill it in the sea so that its molecules ... mingle evenly throughout the sea, do I thereby come to own the sea, or have I foolishly dissipated my tomato juice? (*Nozick*, pp. 174-175)

Becker believes Locke sensed this lack – this weakness of the "mixing" metaphor - and tried to account for it in his *Second Treatise*. For Becker, Locke's elaboration that, labor "add[s] something to [the object] more than nature...had...done" (*Locke*, 1690, p. 116), is significant because it indicates that "value" is added by the labor. Labor takes that which is, in Locke's words, "of no use" (p. 116) and adds value to it. It is this created value that entitles the labourer to the property¹³. It might be objected that labor entitles one to the extra value created but *not* to the property per se – for instance, to the crops farmed not to the farmland – but Becker believes Locke would have considered the value added to be the bulk of the property value¹⁴, and would also have considered the value added and the property "inseparable" in some instances (*Becker*, p. 34).

¹² In this case, the strategy is not obvious, but we now know that one's right to the land cannot, by itself, secure one rights to (all of) the airspace above the land. Other considerations -- the social and technological necessity of air travel, the noise level of planes, acceptability levels of smoke pollution, etc. -- are pertinent. But, by a chain of right claims, technological advancement, and object-differentiation (airspace property is differentiated from landed property, etc.), even airspace rights can be well defined, as they are generally are today.

¹³ A possibility also suggested by Nozick (*Nozick*, p. 175).

¹⁴ Becker refers to Locke's own "nine-tenths" estimate of the value added (*Locke*, 1690, p. 122).

Is Locke justified in thinking that the relationship formed by valuable labouring makes the value and the property inseparable? Is his “of no use” consideration powerful enough to ground the property right? Becker presents an explanation adduced by defenders of Locke’s position. On this explanation, it is made clear that “[s]ince things are of no use until appropriated . . . , and appropriation in most cases involves labor which would not be undertaken except for the expected benefits, to let others have the ‘benefits of another’s pains’ . . . would clearly be unjust” (*Becker*, p. 35). So, injustice to the labourer becomes the ground of the property right. In this way, the property right is no longer stipulated as intrinsic to the person and metaphysically extensible to the object, but is now founded on a “positive requirement” (p. 35) of justice, of moral desert. The relation is more accurately and defensibly specified.

3.9 Major Objections to Locke and the Deontological Approach

We now look at two levels of criticism of Locke’s representative account of deontological rights. One level consists of Proudhon’s objections to Locke’s labor theory in particular, and the other level comprises objections to deontological rights in general.

3.9.1 Proudhon’s Objections to the Labor Theory

Pierre Joseph-Proudhon has two main objections to Locke’s labor theory. The first objection is to the idea that the individual has property rights in her body. The second objection is to the idea that the individual is entitled to the products of her labor. The second objection is countered by John Stuart Mill.

Proudhon argues that Locke's use of the word "property" is an equivocation which moves from the word's meaning as "the quality which makes a thing what it is" to its meaning as "the right of absolute control over a thing" (pp. 36-37). On this view, a move from a proposition stating, say

My finger is a property or natural part of my human body and therefore mine.

to another proposition that

This land is a property of mine because my "finger property" made state-changing contact with the land.

would be an equivocation on the concept "property."¹⁵ The first proposition says that the finger is a natural part – a metaphysical property - of the body. The second proposition says that the land becomes an *economic property* of the person because a *metaphysical property* of the body made transformational contact with the land. Two different meanings of property are being used, unwarrantably, in the same context, argues Proudhon. One meaning is physical, or metaphysical; the other social and economic. Becker, in reply, defends Locke, pointing out that the argument – even as presented in Locke - does not rely on equivocation. In Becker's view, we can conceptualize an individual's bodily property rights as "the correlative of other people's duties" to refrain from initiating bodily violations towards her. Granting that Locke did not specify the

¹⁵ Both propositions are my own, and not Proudhon's, examples.

origin of bodily property right, Becker suggests that it may be “wisest” to consider them “summations of the relevant aspects of one’s rights to liberty and property” (*Becker*, p. 37).

The reason we have to ground property rights in prior rights to life and liberty is that if we accept Locke’s premises as stated, a parent would be entitled to the property of her children, since the children are products of her labor. Therefore, the child would be slave to the parent, which is contrary to Locke’s intent. If we argue that labor in some activities justifies a property claim but not in all activities, we encounter difficulties in drawing a line. As Becker ably states it, “it seems unlikely that anything will be found in the nature of the labor involved in conception, gestation, birth, and nurturing which will distinguish it sufficiently from the labor involved in cultivating a garden...” (*Becker*, p. 38). Production and creativity are involved in both types of activity. So, we must consider the position that the individual always has rights to her body’s labor but that some claims override those rights. Such claims would be rights other than those to the labor of one’s body: for example, a human being’s rights to life and liberty. Becker offers that a parent would have a duty to respect her children’s rights to life and liberty, and therefore, this duty would override the right to the products of her bodily labor (p. 39).

But we would then have to explain why life and liberty rights trump property rights. Becker points out that, even without going into that explanation, if we take the “property right in one’s body” formulation to be shorthand for the individual’s right to life, liberty, and property, we won’t then have to specify in detail the root of the property right to the fruits of bodily labor. It would be sufficient to understand that property rights “derive from rights to life and liberty” (*Becker*, p. 39) -- and then that such places limits on what legitimate title to objects might be. I might add here that Becker’s solution could be seen as a form of “working from the answer.” That is, we living in the late 20th and early 21st centuries have long been familiar with the

hierarchy of rights – i.e., that the right to life is fundamental to rights to liberty, property, and the pursuit of happiness. So, it would seem convenient for Becker to introduce life and liberty rights as solution to the parent-child case above. A robust justification of the right to life (and therefore liberty and property) premised on the life process as such, is still required. We shall see more in this direction when we get to eudaimonism in Chapter 4. In other words, the eudaimonistic approach may add insights and foundations lacking, or at least unstated, within the deontological conception of rights.

The second objection raised by Proudhon concerns Locke's "tak[ing] pains" (*Locke*, 1690 p. 117) argument for entitlement to the property. On this premise, if the individual has taken pains to labor on the object and has changed the state of the object from that in which Nature had left it, then the object therefore becomes the property of the individual¹⁶ (*Becker*, p. 41). Proudhon argues that when the rich claim a right to X owing to their taking time or trouble to create X and thereby earning X, why must others who did not assign them the task of creating X recognize their right to X? (p. 41) How, the argument goes, can a creator charge his fellows money for oil he discovered in a field when no-one asked him to find the oil? After all, his creative pains were of his own choosing. What then grants him rights to charge others for the use of the oil? John Stuart Mill responds by saying that the recognition of a creator's right to X imposes no "hardship" (*Becker*, p. 41; *Mill*, 1848, p. 230) on the persons excluded from using X. This is the case because there was no contract that the creator make X for the non-creators, so the non-creators lose nothing by being excluded from X. Since the oil discovery was not the consequence of a contract between the creator and his fellows, those fellows should not feel

¹⁶ Becker himself does not believe that ownership of the property can be established strictly from the individual's labor (p. 40); only "the reasonability (in some cases) of saying that labor grounds a *recipient claim right* to the thing" (*Becker*, p. 41; emphasis original).

wronged if they have to pay for the oil. The oil did not exist, from their point of view, before it was discovered by the creator, so the fellows do not lose anything by recognizing the exclusive rights of the creator to charge for (and thereby exclude others from) his oil.

Mill argues that X was not something that the creator owed to the non-creator. If there is no prior binding claim on the creator to create X, why then should she not be able to exclude others from X? After all, X would not have existed at all if the creator did not bring it into existence. In addition, Mill says, the creation of X – and the exclusion of others from X - does not cause a loss of “existing goods” (p. 42) to the non-creators of X.

What is interpreted as a loss of “existing goods” can range widely. In one case, it could mean the loss of the opportunity to acquire land -- and/or the minerals in the land -- that was held in common, because such land has been acquired by someone else. This is one reason, it is argued, for Locke’s stipulation – also known as the “sufficiency restriction” -- that the individual’s property right is absolute only “where there is enough, and as good left in common for others” (*Locke*, 1690, p. 116; *Becker*, p. 43; *Tuckness*, 2012). Loss of existing goods could also mean a drop in the value of farmland by a neighbour Y (of X’s) whose land is adversely affected by a subterranean technology invented and tested by the creator of X. Loss of existing goods could also mean the “deterioration of one’s competitive position” in “competitive situations,” (*Becker*, p. 43) a notion which is the basis of current anti-trust laws. The conflict in these competitive situations arises because loss of existing goods would seem to occur in competitive business transactions – even completely straightforward ones - which leave one or more parties at a disadvantage. If Z competes against X for B’s business, and B chooses to go with X, Z could be said to have suffered a loss, especially if Z had taken a bank loan in the expectation that a deal with B would be reached.

One way to respond to the “existing goods” objection (which subsumes the “enough and as good” stipulation) is to maintain that the “loss of existing goods” requirement cannot be applied so broadly as to include the loss of goods through voluntary business transactions. Loss of existing goods can only be an issue if force or fraud is *initiated* against the person who already has property rights to those goods. If there is no initiation of physical force or fraud (i.e., if there is no violation of property right), the loss of existing goods by another party is a perfectly legitimate effect of property acquisition or appropriation. Only the initiation of force or fraud could serve to violate the property (and liberty) right of other persons.

A counter-objection to this response could isolate Locke’s “enough and as good” stipulation and maintain any original appropriation of land from the commons to be a violation of property rights if the portion taken was so large and so select as to not leave anything useful for other individuals. But, this counter-objection, I think, errs. It proceeds from the premise that property (especially in the case of scarce land which Locke dealt with concretely) has to be divided equally in order for [a society of] human beings to benefit from private property rights. It is not merely the holding of the property that makes private property rights valuable but rather the industry one brings to the property, as well as the security of the property right. That is to say, any profit from property-holding still requires the holder to know what to do with the property (e.g., farmers or builders on land) to make it useful; and then the society must ensure the property right is respected and secured. The right to freely trade the land with other parties also has to be fully recognized.¹⁷ The property right is a condition, not a cause, of economic value, which is probably one reason why Locke holds that appropriation of land requires a

¹⁷ Some economists hold that redistribution of land in “backward countries” is never required for economic growth and social prosperity, only “the establishment of a fully free market in land.” The “division of labor” principle will take care of the rest (*Reisman*, p. 321).

transformation of the land from its metaphysically-given state. So, equality of property right is to be distinguished from equality of property. A landowner might own a piece of land so large that she has to hire 60% of the people in her town to work the land. If one of those workers saves enough to buy some of the land from her, the town sheriff should be ready to uphold the worker's right in the transaction with the same powers he would the landowner's even though the worker is poorer than the landowner.

Yet, there is one aspect of the "existing goods" criticism which is cogent, an aspect best illustrated by imagining this scenario. A man arrives a previously undiscovered island by boat. He builds a small hut on the island, cultivates a small farm, and claims the entire island for his own. Three months later, a passing ship is wrecked in a storm, and its sole survivor is swept by the ocean onto the island's shores. As the survivor wakes, he is told by the islander that he (the survivor) cannot remain on the island because he is trespassing on private property! Of course, such an injunction seems absurd for good reason. Private property is not an out-of-context absolute. Locke probably meant to use the sufficiency restriction to cover such cases, to indicate that the property right is a right within the wider context of self-preservation, a point made by Sreenivasan (*Tuckness*, 2012).

3.9.2 Smith's Objections to Deontological Rights

Whereas Becker allows that a statement of the individual's existing property right in her body can serve as a "summation" of property rights' rootedness in more fundamental rights to

life and liberty (*Becker*, p. 39), Smith insists that the lack of a full and accurate account of the source of rights is a serious weakness of deontological rights. By deontological rights, she means rights which are “often expressed by the claim that the right is prior to the good” (*Smith*, 1995, p. 85). That is to say, a view on which “the moral rightness of an action is independent” of a “sought state of affairs” (p. 85). Doing what’s right is not bound to – or justified by - the outcome of the right action. As we have seen, although Locke believes that recognition of property rights will serve the purpose of happiness, he doesn’t justify property rights on the outcome of their recognition. So, his conception of rights is deontological, or on first-principles, as opposed to an appeal to consequences or results. On his ownership principle, rights are already given to the person – she has a right in her body in the state of nature, which is determined by the divine will (*Locke*, 1690).

For Smith, deontology has three main defects. The first is that it claims to be “self-justifying” (*Smith*, 1995, p. 87). The second is that it rests strictly or mainly on moral obligation, rather than being motivated by an end (p. 88). The third is its inadequate justification of rights (pp. 88-89).

The first problem is the lack of grounding of deontological rights. If grounding is not provided, such rights are arbitrary or faith-based assertions. Rights cannot be offered as unreasoned abstractions – there is an epistemological hierarchy fundamental to their support, and it is the responsibility of the rights-theorist to supply that hierarchy. The deontologist cannot appeal to a “self-justifying” definition, nor to a creator outside the scope of testable experience (p. 88). Locke’s “property right in one’s person” would fall in this category since he does not define a right, nor does he provide the link between the right to subsist (*Locke*, 1690, pp. 59, 60, 62, 64) and the right to property in the person. Another, more modern example would be Robert

Nozick, who famously opens his landmark work, *Anarchy, State and Utopia* (1974), with the memorable sentence: “Individuals have rights” (*Nozick*, ix). This might make for catchy, pithy writing, but it does leave one wondering where exactly these rights come from: deontologists like Locke and Nozick simply “plonk them down” as starting points, and the rest of their theories move from such Archimedean beginnings—the beginnings themselves being un-argued for (*Orend*, 2014).

A related criticism (to the lack-of-grounding charge) is that deontology in general is too binary, simple, and legalistic. In deontology, individuals have individual rights, and it seems as simple as that. Rights are granted by God or the Creator or Society, and as such are inviolable. There are no grey areas in deontological rights – the morality of an action cannot be in question, neither the inviolability of a right. This causes problems when one tries to apply rights theory to, for example, periods in which rights theory had not yet been articulated. If God grants rights, or rights are inherent in the individual, how do we properly handle land claims by settlers on huge swathes of land which weren’t really settled but only used largely for hunting by nomads or roving clans? Thus, deontologists have trouble managing conflicts between duties and rights because of the imperative attached to those duties and rights (*Alexander & Moore*, 2012).

The second difficulty is the lack of “motivation” (*Smith*, 1995, p. 88). Rights, for the deontologist, are, writes Smith, “void of practical incentives” (p. 88). We are to respect rights because we *must*, not because they serve or generate a practical benefit. Smith considers this the central problem of deontological rights. If there is no “tangible benefit” (p. 88) driving our regard for rights, for what good reason should we respect them? Obligation for its own sake is not a sufficient substitute for a goal. “[D]efinition, intuition, God, [and] nature” are not sufficient appeals. Reasons are required – motivating reasons (*Smith*, 1995, p. 88). In place of

this deficiency, Smith argues for a motivating consequence for rights. Not the *consequence-bound* motivation of consequentialism, which, as we saw, introduces a perhaps fatal tension into the ends-means relationship between consequences and rights; but the *consequence-based* motivation of eudaimonism, which recognizes, like deontology, that rights are moral obligations that must be observed, but also recognizes that the desirable consequences of well-being and prosperity are not guaranteed by rights (p. 103). Rights are a necessary condition of well-being, so they must always be respected, even if well-being is not achieved in any given individual's life (p. 103). Rights give each person a chance at well-being but provide no guarantees of well-being. We shall see more of this view in Chapter 4.

The third defect of deontological rights is the problem of insufficient justification. Smith points out that some deontological accounts might even provide a good description of the results of rights-respectfulness in a society, but they do not provide a sufficient explanation of why rights are required. We saw this in Locke who -- though powerfully describing the higher living standards of the poorest Englishman relative to the wealthiest native American (*Locke*, 1690, p. 122) -- neither sufficiently demonstrated the grounds for the right to subsist, nor the link between the right to subsist and the right to property in the person. If that connection had been made explicit, Becker and other writers on Locke would not have had to infer it (*Becker*, pp. 88-89). This objection to deontological rights is related to another criticism about the standards of deontology not being high enough. If duty is the sole arbiter of morality, this implies that no explanation is required (beyond that) for why one makes a given decision. Contrast this with Aristotle's eudaimonistic ethic, which requires that the moral actor consider the facts in the context, relative to her person, and then make a decision which will lead to her own further development as a person.

CHAPTER FOUR

4. The Eudaimonistic Approach to Property Rights

In this chapter, I will treat eudaimonism directly. I will examine the eudaimonistic justification of property rights, taking the Aristotelian virtue ethics as *locus classicus*. I will range over the same categories I used in the first chapter, moving from the metaphysics of human nature to the norms of ethics and then to the existential and epistemological conditions of property rights. Although Aristotle's support of private property is not controversial (*Waldron*, 2012), whether he had any conception of "rights" is disputed, as some scholars contend that it is only by the time of the Romans that a modern-looking notion of rights became discernable (*Brown*, 2001). I will rely largely on acclaimed Aristotle scholar Fred Miller's research, which makes the strong case that Aristotle did have a concept of rights (*Miller*, 1995, p. 17).

4.1 Aristotle's View of Human Nature

With the possible exception of Plato, no individual has had as much influence on the historical use of the concept "nature" (*physis*) (*Randall*, p. 63) in philosophy as Aristotle (*Tanzella-Nitti*, 1997). "Nature," for Aristotle, has two applications. In reference to a single, specific entity, nature refers to the structure and associated behaviour of an entity. In this sense, "the 'nature' of a thing is its power of acting in a specific determinate way" (*Randall*, p. 174). The other sense of "Nature" [i.e., with an upper-case "N"] refers to the aggregation of all specific natures. If the nature of a single entity is its constitutive powers of being and functioning, Nature in the aggregate, then, is the

sum of the determinate powers possessed by things, what everything has the power to do, the concrete order or pattern of the processes that are taking place “by themselves.” Nature is thus an intelligible, teleological, or functional order of motions, a system of natural laws in terms of which all natural motions or processes are to be understood. (p. 174)

For Aristotle, there are four factors or “causes” discoverable in any (specific) natural process. These four causes – the final, formal, efficient, and material – are key elements in Aristotle’s framework for analyzing phenomena. The formal cause is the “What” or structural definition of a phenomenon; the material cause is the “From What” or constitutive stuff of the phenomenon; the efficient cause is the “By What” or the thing-bringing-about the phenomenon; and the final cause is the “For What” or the end-result/goal of the phenomenon (*Randall*, pp. 181-182). For living phenomena, the final cause - in a given scenario - is the “uniting” or directive cause of all the other causes. Being the *end* of a life, it is the “aim” of the life, and is therefore closely linked with the formal cause, since the end goals of a living thing’s actions are inextricably linked to its survival in its form: i.e., to its preservation of its own structural integrity. A dog eats in order to remain alive as a/that dog. A fish swims in order to remain alive as a/that fish. “Life is the end of living bodies, since they exist for the sake of living” (p. 70).

Living beings are distinguished from non-living beings by the possession of “life” (*psyche*¹⁸) as their nature (p. 62). While all living things strive for ends, the ends for which they strive depend on the nature of the particular living thing. Aristotle’s biology was closely linked to his philosophy (*Gotthelf*, 1976; *Boylan*, 2014), so it is unsurprising to find passages which unite his causal framework with his biology. In *De Anima*, Aristotle writes that, in animals, any

¹⁸ Randall writes: “Hence for Aristotle *psyche* meant two things: 1) the power or *arche* of living, “life”; and 2) the power or *arche* of what he calls “discriminating,” *to kritikon*: the power of selective response, which includes both sensing and knowing. Since traditionally *psyche* has been turned into Latin as *anima*, and into English as “soul,” it is important to realize at the outset that Aristotle is *not* talking about the “soul” as centuries of Christian supernaturalism, to say nothing of Cartesian dualism, have led us to conceive it. That conception of a “soul” quite independent of any body, as he encountered it in the Pythagoreans, he could not take seriously. He calls the notion “absurd”...” (*Randall*, p. 63; emphases original)

motion presupposes a mover, the thing being moved, and a means of movement. About the mover, two truths can be noted: there is something external to the animal which does not move but is a “practical good” desired by the animal, and there is something within the animal which is moved by the practical good and which thereby moves the animal, namely the animal’s desire. So, the “unmoved” mover (the final cause) is the desired object, and the desire is the immediate mover (the efficient cause) (*Randall*, p. 70; *De Anima* III, Ch. 10: 433b 13-19).

The nature of a human being is the nature of a “rational animal,” that is, an animal possessing a faculty of reason (*Bradshaw*, 1997). The possession of this faculty differentiates humans from all other animals. Human action, like animal action,

likewise proceeds from desire (*orexis*), and is likewise a response to the stimulus of some object of desire. But man, possessing the power of nous as well as the power of sense, is able to respond to the desired “intelligently.” Being, because of his possession of this power of nous, “aware of the future,” and not being, like other animals, limited to an immediate and present stimulus, man can respond to what will be: he can desire a future good. And nous, knowing the structure of things and events, can use that structure in its practical deliberation to achieve the object of desire (*to orekton*). (*Randall*, p. 72)

So, human nature is marked by the use of reason, and human action is “intelligent response to the object of desire” (*Randall*, p. 72).¹⁹ This close association of the nature of a thing with its final cause has been called the “principle of teleology” in Aristotle (*Miller*, 2012).

4.2 Ultimate End or Value

¹⁹ It might be appropriate at this point to underline utilitarianism’s link to Aristotelian eudaimonism. You may recall that we last saw the “object of desire” terminology in James Mill’s associational psychology in Chapter 2. See also *Mill*, 1812. Another quote worthy of mention is J.S Mill’s homage to Socrates, whom he names the “source equally of the lofty inspiration of Plato and the judicious utilitarianism of Aristotle, “i maestri di color che sanno,” the two headsprings of ethical as of all other philosophy” (*Mill*, 1859, pp. 93-94)

Aristotle's famous statement in his *Metaphysics* that "[a]ll men possess by nature the desire to know" (*Metaphysics* I, Ch. 1: 980a) is an indication of how much store he put in the rational faculty as the director of human action. This is a manifestation of what Fred Miller calls the "[p]rinciple of the rule of reason" (*Miller*, 2012). On this principle, the defining element of which Aristotle received from Plato, "whenever a system contains a rational element, it is appropriate for it to rule over the nonrational part, because the rational element alone knows what is best for the whole" (*Miller*, 2012). Aristotle also writes that "man is by nature a political animal" (*Politics* I, 1253a) and this aspect of human nature is purportedly responsible for his need to live in community. So, there are multiple objects of desire, multiple human ends to be sought. As we saw, the end of action for the living being is its own life, so one could infer that life is also the ultimate end for human beings.

This inference would be correct but incomplete. What is the good for a living thing depends on its specific nature. The human life is the life of conceptual knowing, since reason is the distinctive human faculty; that is to say, the use of reason is the distinctive function of the human individual. But knowing is not for its own sake – it is, as we have seen, for the sake of living. Practical deliberation using the knowledge one acquires is necessary for right action. Good deliberation makes for good action (*Cooper*, p. 111). For Aristotle, the good of human living consists in "Acting Well (*eu praxein*)" (*Randall*, p. 251). So, the ultimate end of human action is this state of living well, which is *eudaimonia* (p. 251). *Eudaimonia* has also been interpreted as "flourishing" or "happiness" (*Cooper*, p. 89). This state is the earthly, non-transcendental fulfilment of one's nature as a rational animal. *Eudaimonia* is not an unrealizable ideal but an earthly one. *Eudaimonia* consists in virtuous activity relative to the individual human being's situation.

What might bring eudaimonia for one person may not produce it for another. There are aspects of living well common to all human beings, but there is also an optional or personal component to eudaimonia (*Randall*, p. 251). Eudaimonia consists in activity sometimes accompanied by the experience of pleasure but, moreover, in (i) the possession of certain “internal goods”: the virtues or “excellences” of action (p. 253) and (ii) certain external goods: good family background, good friends, honors, membership in a good polity; health; sufficient financial means; political influence; good fortune; and a measure of beauty (*Cooper*, p. 122; *Eudemian Ethics* VIII.3: 1248b28-29 and 1249b16-18; *Rhetoric* 1360b19; *Nicomachean Ethics* 1099b). Readings of Aristotle’s work support the view that most or all of these elements are necessary conditions for - if not necessary parts of - eudaimonia (*Cooper*, pp. 122-123; *Miller*, p. 313). Although Aristotle considered the achievement of external goods a matter of “good fortune,” he held that “*eudaimonia* must be...attained...by a person’s own efforts” (*Cooper*, p. 123; emphasis original).

4.3 Right Action

4.3.1 Moral Knowledge as Applied not Theoretical

Aristotle’s philosophy was very closely linked to his biology (*Gottself*, 1976). Whichever of the two fields was more basic in his intellectual pursuits, it is highly probable that Aristotle regarded human knowledge as being not an end in itself but ultimately for the sake of living a successful human life. It is true that human beings can acquire knowledge for pleasurable and non-immediate purposes, but in the vitally-important field of ethics (which concerns practical

action), philosophic and scientific knowledge *have* to be applied to the life of the human being. For him, it is our nature as rational beings that makes our acquisition of conceptual knowledge necessary for maintaining our lives, so our actions are necessarily guided by knowledge. As Randall puts it: “Man can act from forethought, from intelligent choice of means...intelligence in the service of desire [...]. Theoretical knowledge of the structure of things supplies the means for attaining the object of desire...[I]ntelligence applies this scientific knowledge of means in particular cases, in particular problems and situations” (*Randall*, p. 73). Ethics, therefore, is not a theoretical discipline but an applied science or “art” (pp. 252-253):

Aristotle holds that deliberation about the good – in our language, inquiry into “questions of value” – is not a theoretical science like mathematics or physics, but is what we would call an “applied science,” and what he himself distinguishes as an “art,” like medicine or architecture or engineering. Ethics is an art which applies scientific knowledge to particular cases.

Ethics’ place in human life is biologically-necessitated: i.e., rooted in the way human beings typically function. A human being’s functioning lies in its capacity to reason and act well – to act intelligently - based on the knowledge acquired by that reason (p. 253). Successful life – eudaimonia – lies in the full realization of one’s powers of functioning, of acting. Acting well consists in good deliberation using one’s reason, and such good deliberation is only made possible by developing one’s moral character through intelligence choices and actions. For Aristotle, the human soul has two levels: the intelligence (*logos*) - or rational part - which chooses and gains knowledge; and the “non-rational” level of desires and impulses which can be trained to respond to the intelligence. The development of one’s moral character requires bringing these two levels into harmony (*Randall*, pp. 267-268).

In accordance with his stress on practicality in ethics, Aristotle writes that successful deliberation in a given situation would be as the intelligent or prudent man [*ho phronimos*] would determine it (p. 268). One can see here that Aristotle is not content to have his moral actor *say* that he is deliberating in accordance with principles of right action. If the Aristotelian is not succeeding in the world - if he is not meeting his goals *in fact* – he is not acting prudently, no matter how “principled” he might claim he’s being (*Engstrom & Whiting, 1998, p. 11*). The moral actor must continuously practice right action in order to develop the character which would enable him to regularly act rightly.

4.3.2 Intelligence as the Means to Virtue

Intelligent choices, when automatized as habits into a “second nature,” become the intellectual and moral “excellences” that we call virtues. Whatever becomes second nature to the individual is character-forming for that individual. A virtue, therefore, is a characteristic mode of action - a characteristic human power (*Randall, p. 267*). Eudaimonia is reached by, and consists in, virtuous action (p. 268). The need for virtue derives from the life process -- from the characteristically human response to objects of desire, as earlier noted:

Man can thus act from desire, as he always must, even when he is acting from that “desire to know” which all men possess by nature; but he can act from desire modified by reflection and deliberation on the best way to attain the object of his desire. Man can act from an intelligent response to the object of his desire. Man can act from forethought, from the intelligent choice of means: he can act from *proairesis*, intelligence in the service of desire. This power of *proairesis*, so fundamental in Aristotle’s analysis of human conduct, of literally, “forechoice,” the intelligent choice of means, when it has grown into a settled habit, a *hexis*, and become a second nature, becomes that excellence or intellectual virtue we call *phronesis, providentia*, “prudence” – foresight and intelligence. (*Randall, pp. 72-73; emphases original*)

Prudence – or “practical intelligence” – is the highest of the five intellectual “excellences” (virtues) and could be considered the guide of the moral virtues (*Randall, pp. 73, 76, 267*).

4.3.3 Virtues as Intellectual and Moral

Human virtues are of two kinds, intellectual and moral. Intellectual virtues are the virtues of the intelligence, the knowing part of the soul. Moral virtues are the virtues of character, which are formed by bringing the excellences of the non-rational part of the soul (impulses, desires, and habits) under the intelligent command of the rational faculty (*Randall*, p. 267). The intellectual virtues are formed when the human being has mastered the intelligent choice of means (“forechoice”) (p. 267, pp.76-77). When this intelligent choosing becomes a “settled habit,”²⁰ the guiding intellectual virtue – prudence or *phronesis* - is formed as part of the character (p. 73, p. 267). This guiding virtue is a “power” or attribute of mind (p. 267).

Other intellectual virtues are *theoretical wisdom*, *art* (craft-making), *science*, and *intuitive understanding* (*Kraut*, 2014). A good way of differentiating prudence from art is to recognize that whereas art deals with “making things,” prudence deals with conduct or behaviour. So, art aims at some external good while prudence aims at the *right action*. Prudence is “a rational habit of mind that attains truth about action in relation to things that are good and bad for man” (*Randall*, p. 78).

Moral virtues, too, are habits of choice, habits which track the mean of behaviour. This is not the mean of a fixed external thing or object, not a strict arithmetic mean, but rather a mean “relative to ourselves” – a mean of proper action as “determined by reason” (*Randall*, p. 268) appraising all the known circumstances in the context of action. This mean is best determined by

²⁰ This use of “habit” (from the Latin *habitus*) in the translation of the Greek *hexis* has been disputed by Joe Sachs (*Sachs*, 2014).

a man possessing foresight, for such a man possesses the right habits from the right training. These habits of choice are not laws or rules which can be easily applied across a spectrum. In order to act rightly, the deliberating individual will always require a detailed understanding of the particular facts of the context. This is how intellectual virtue impacts moral virtue. There is no room for dutiful and effort-free adherence to rules and imperatives here (*Randall*, p. 269). The virtuous character necessary for right action can only be attained through reasoning about objective facts, since right deliberation requires the mind interacting with ontological reality. Right deliberation is personal, individual, and contextual, but not “subjective” (p. 269).

Aristotle’s view of vice is also reflected in his emphasis on intellectual excellence. For instance, brutishness is the “lack of intelligence to know how to choose the good.” And vice is failure to find and follow the mean (*Randall*, p. 269). Also, virtue is not a passive state of habituation but an “active condition.” Virtue is maintained by activity (*Sachs*, 2014).

For Aristotle, moral virtues are desire-harmonizing character traits which lie between extremes of deficiency and excess. Right action--i.e., assessing a situation and making the “right” call-- involves knowing not to say or do too little or too much, but to hit the right “mean,” somewhere in a kind of “middle.” But, this “middle” is not a strict mathematical mean. “Mean” here signifies something more like “appropriate to the context.” So, achieving the mean requires the kind of technique skilled workers bring to their occupation (*Kraut*, 2014). Take the example of fear, which is a painful emotion whose effects must be brought under control. Fear can make us react in ways that may disadvantage us. To overcome the sharpness of fear, one requires courage, which is a virtue. If too much courage is developed and brought to bear on the situation, then we have the excessive extreme of rashness, which is a vice. If too little courage is brought to bear, we have the deficient extreme of cowardice, which is also a vice. The

courageous person is she who “experiences fear to a degree that is appropriate to [her] circumstances” (*Kraut*, 2014, 5.1). Another way of approaching this, I think, is to say that the courageous person is she who develops the right degree of fear-overcoming courage necessary for successful action in her context.

For Aristotle, “liberality” is the mean between “illiberality” and “prodigality.” And “temperance” is the mean between “insensibility” and “intemperance.” And so on for other virtues.

In some situations, a greater degree of a virtue - e.g., courage - is required; in others, a lesser degree. There is no arithmetic mean of courage that is right in all situations, just as there is no arithmetic mean of courage that is right for all individuals. This applies to the other virtues, too. The right, appropriate measure is unique to the person and her present action context, and has to be arrived at by a judgment. Since emotions engender automatic reactions, to be prepared for these reactions, virtuous action consisting in right judgment has to be practiced by the moral actor in order to make such virtue second nature. While there can be no specification of rules and imperatives to serve as procedural guidelines in right action, there are clear moral boundaries in Aristotle. “He makes it clear that certain emotions (spite, shamelessness, envy) and actions (adultery, theft, murder) are always wrong, regardless of the circumstances (1107a8-12)” (*Kraut*, 2014, 5.2).

4.3.4 Harmonious Pleasure and Self-love as Reflecting Attained Virtue

For Aristotle, the virtuous state of soul is (*Homiak*, 2011):

neither a feeling nor a capacity nor a mere tendency to behave in specific ways. Rather it is the settled condition we are in when we are well off in relation to feelings and actions. We are well off in relation to our feelings and actions when we are in a mean or intermediate state in regard to them. If, on the other hand, we have a vicious character, we are badly off in relation to feelings and actions, and we fail to hit the mean in regard to them.

So, an enduring harmony between feelings and actions is the state of a virtuous character. It means that the moral education of the soul is to enable one to track the mean that is right choice and right action. Pleasure and pain are not merely harmonious with thought and with each other, but the type of pleasure one delights in will be the right kind of pleasure – it will not be vulgar. Such a virtuous individual, provided he has sufficient external goods, is living well. He is living the eudaimonic, happy life. Hence Aristotle’s famous formulation of happiness as “activity in accordance with virtue” (*Nicomachean Ethics*, 1177a).

Eudaimonia is not a life of physical or vulgar pleasure, but it is also not a life absent, or in renunciation, of pleasure. On the contrary, Aristotle disagreed with those—such as some Stoics—who thought pleasure was bad in itself. Since pleasure is that which completes activity (*Nicomachean Ethics* X, 1174b33), and since eudaimonia is activity, it follows that eudaimonia is accompanied by pleasure. Eudaimonia is, therefore, a pleasant state. Eudaimonic activity does not consist in duty to others in the hope of attaining eventual pleasure, but consists rather in defining and pursuing one’s own ends in accordance with virtue. Since she is virtuous in thought and action, the prudent actor experiences self-love and enjoyment. She becomes a true self-lover, happy to take right action since she is confident in her abilities (*Homiak*, 2011).

Interestingly, Aristotle believed that virtue could only be practiced properly within a polis, which is a very specific conception of political community (*Miller*, 1995, pp. 28-29; *Politics*, Ch. 1: 1253a2-30). We shall see why shortly.

4.4 State of Nature Conditions

The idea, developed and used by later “modern” philosophers, of a state-of-nature preceding the formal constitution of an ordered society, does not appear in Aristotle. For him, the organized community is a naturally-occurring entity, arising naturally out of the prior formations of family and clan, formations which themselves spring from the natural human capacity for social relations. Every individual is thus born into some kind of society, so the natural state – the state of nature - in Aristotle, *is* the governed state. Only a “beast” or a “god” would be without society, he famously held (*Politics* 1.2.1253a28-30). Fred Miller has characterized Aristotle’s view as Political Naturalism:

[T]he polis or political community exists by nature, a view closely connected with the thesis that human beings are by nature political animals. Like other naturally existing things, a polis possesses a form, its constitution. To the extent that this constitution is in a natural condition (*kata phusin*), it is correct or just, and to the extent that it is in an unnatural condition (*para phusin*), it is deviant or unjust. Aristotle further claims that the polis is by nature prior to the individuals which constitute it. (*Miller*, p. 28)

What is not clear, Miller observes, is whether Aristotle’s use of “natural” to characterize the polis can be interpreted precisely in the manner water is said to be “natural.” But we are certain of his view that the polis is a necessary condition for eudaimonia and that the political life is important for the citizen.

4.5 Original Acquisition of Property

In Aristotle, property, for human beings, refers to the possessions or “instruments” necessary for “maintaining life.” They are the “necessaries” each individual must have for self-preservation. Property can be naturally acquired and unnaturally acquired. The natural

acquisition of property, Aristotle considered just (*Miller*, p. 317; *Politics* I: 1253b23). Some naturally acquired property, he held, is given by nature (i.e., at birth and throughout life) to all human beings. This type of property included plants, animals (as mentioned earlier), and slaves, unfortunate men whom Aristotle controversially believed to be slaves “by nature” (*Politics* I: 1255b5). Other naturally-acquired property is acquired through household management, which he considered a natural outgrowth of the family in the same way that the polis was naturally occurring. The household must find “ready to hand, or itself provide, such things necessary to life, and useful for the community of the family or state, as can be stored.” (*Politics* I: 1256b34-39).

In the original condition, human beings are entitled to claim other living things as property (*Politics* I: 1256a-1256b39). Plants are the natural property of animals; analogously, animals are “for the sake of” human beings. Since, for him, some human beings are slaves by nature, and slaves are acquired through war; war, too, becomes a natural means of acquiring property (*Politics* I: 1256b20-26):

[I]f nature makes nothing incomplete, and nothing in vain, the inference must be that she has made all animals for the sake of man. And so, in one point of view, the art of war is a natural art of acquisition, for the art of acquisition includes hunting, an art which we ought to practice against wild beasts, and against men who, though intended by nature to be governed, will not submit; for war of such a kind is naturally just.

4.6 Establishment of Property Right

For Aristotle, ownership and usage of a property are the conditions for the right to that property (*Miller*, p. 312). Aristotle discusses this condition within a short passage in the *Rhetoric* whose topic is the nature of wealth. Owned properties are those which are “secure, gentlemanly, and useful” (*Rhetoric* I, 5:1361a15). Useful properties are income-generating

while gentlemanly properties are for “enjoyment” (*Rhetoric* I, 5:1361a16). “Security,” however, seems to be the essential element of ownership since its criterion is “the ownership of property in such places and under such Conditions that the use of it is in our power” (*Rhetoric* I, 5:1361a19-20).

Of ownership, Aristotle writes that a property “is 'our own' if it is in our own power to dispose of it or keep it. By 'disposing of it' I mean giving it away or selling it” (*Rhetoric* I, 5:1361a20-22). Fred Miller translates “disposing of it” (*apallotriosis*) as “alienation” and points out the significance of the concept of alienation to property rights, a significance which remained through the Anglo-American tradition initiated in the Enlightenment²¹. He then formalizes the condition, stating (*Miller*, p. 312):

X has a property right in P if, and only if, X possesses P in such a way that the use of P is up to X, and the alienation of P (giving P away or selling P) is up to X.

4.7 Justifications of Private Property Rights

We have seen how, in Aristotle, security of property is established, as well as the historical origin of such establishment. But why do we need property rights? There are three broad categories of justification to consider: (i) Eudaimonistic justification (ii) Instrumentalist justification and (iii) Moral Character justification. In this discussion, I will follow Miller in treating Aristotle’s technical and problematic approval of slavery (or other “natural” political

²¹ One ready recollection is of the U.S. Declaration of Independence (1776) which proclaims that all humans possess “inherent and inalienable rights,” among which “are life, liberty, and the pursuit of happiness...”

inequality) as non-basic to his overall moral-political thesis (*Miller*, pp. 240-245). I am presenting his view of the free Greek individual as the template for all individuals, as I have no wish to endorse any form of slavery.

4.7.1 Eudaimonistic Justification

Fred Miller argues that Aristotle's case may be stated as follows: since secure ownership of possessions is necessary for eudaimonia, and since eudaimonia is the ultimate end to be sought, therefore property rights are necessary (*Miller*, p. 314). Aristotle had, in the *Rhetoric*, advised that "one ought to do" (1360b12) what is productive of happiness and desist from doing the things which "destroy or hinder" (1360b12) happiness. Happiness, as we saw earlier, he defines as the end of action for the individual as well as for the community (1360b4-7). Both state and individual were to seek the happiness of the individual. On his formulation of happiness, property is a "part" of eudaimonia (*Rhetoric I, 5: 1360b14-18*):

We may define happiness as prosperity combined with virtue; or as independence of life; or as the secure enjoyment of the maximum of pleasure; or as a good condition of property and body, together with the power of guarding one's property and body and making use of them. That happiness is one or more of these things, pretty well everybody agrees."

As noted in Section 4.6, wealth must be secure, enjoyed, useful, and used; that is to say, it must be *rightfully* owned. Since wealth is a part of happiness, and happiness should be sought; therefore, eudaimonia requires rightful ownership of property. Eudaimonia requires property rights. Miller is quick to warn that this justification rests partly on a passage which is not considered a strict part of Aristotle's ethics, especially as it contradicts the admonition in the

Nicomachean Ethics that a condition of X must not be considered a part of X (*Miller*, p. 314). So, since wealth has been shown to be a condition of happiness (being one of the “external goods”) in the *Nicomachean Ethics*, it is important to point out that it is not a part of happiness but rather a condition. That wealth (whose essence is property) is a necessary condition for happiness strengthens the eudaimonistic justification of private property (*Miller*, p. 315).

4.7.2 Moral Character Justification

There are three arguments for the moral-character justification of private property rights. The claims are these: (i) Property is to be owned by those who will use it properly (*Becker*, p. 81); (ii) Property is to be owned by good "manager" (p. 83); and (iii) Property is a necessary condition “for the development of moral character” (p. 86).

The first claim holds that ownership is only appreciated by a certain kind of individual. The example provided by Becker is art-buyers who do not appreciate the value of the art they purchase. Such art could be taken as an example of a “scarce good” (p. 82) which might be “wasted” on the art-buyer (p. 81). So, property rights to the art should be granted only to art-buyers who properly appreciate the art. What is the case for this conclusion? Property rights are generally justified, the argument begins, because we require them in order to “secure” the execution of our “purposes for or with the thing” (p. 81). But, the argument continues, a wasteful execution of purpose, in regard to “scarce goods,” would be immoral. Some people are moral, non-wasteful executors of purpose. These moral executors would use scarce goods to the greatest personal advantage. Therefore, only these moral executors should be granted property rights (*Becker*, pp. 81-82). The moral executor is considered “property-worthy” (p. 81). The

argument is similar in some respects to the argument from utility, but it is not based on need. (You will recall that the argument from utility proceeds from the premise that human life needs property-rights [institutions] in order for such life to maximize happiness.) The argument from moral-executor, however, rests on least-waste and best-use premises (p. 82). It is one of the weaker arguments for property rights because it does not hold unless “no competing justifications for property rights produce a different conclusion” (p. 82). It is weak because wastefulness is a poor reason to advance for the denial of property rights – even the most productive users of private property have been known to take huge “wasteful” losses on the road to lasting success. Yet there is strength in the proposition that (at least some types of) property cannot be left unused indefinitely – hence the stipulation in land law that land left unused for too long might be returned to the market²². So, waste is definitely a supporting consideration in other successful justifications of property rights. It is not a primary consideration.

The second claim shifts the justification to one’s ability to “run things rather than wring personal advantage from them” (*Becker*, p. 83). The argument looks very similar to the previous one. It proceeds from the premise that property rights are justified because we require them in order to “secure” the execution of our “purposes for or with the thing” (p. 83). But a wasteful execution of purpose, in regard to “scarce goods,” would be immoral. Some people are moral, non-wasteful executors of purpose, being *good managers*. These moral executors would use scarce goods to the greatest personal advantage, being good managers. Therefore, where good management is necessary to moral execution, only these moral executors should be granted

²² This is also part of trademark law in intellectual property: if you don’t use it, you lose it. More properly: someone else can apply to have you “kicked off” your trade-mark if they can show that they have plans to use it productively, whereas you’ve been doing nothing with it (*Orend*, 2014).

property rights (*Becker*, pp. 81-82). This argument, according to Becker, helps, in an ownership context, to differentiate the rights of management from the rights of use. “Clearly, for a given thing X, and two individuals A and B, if A can manage X but not use it to advantage, and B can use X but not manage it, then the ownership rights to X ought to be divided,” provided that a sound contrary argument is lacking (p. 83).

The third claim, unlike the previous two which are based on property-worthiness, so to speak, is from Aristotle, who holds that property-possession is necessary “for developing self-control and liberality” (*Becker*, p. 86). For Aristotle, liberality is the moral virtue which is a mean between prodigality and meanness in respect of wealth. So, liberality suggests a willingness to be generous with money. This has been used by some to argue that property rights are a necessary condition of moral character development. Becker rejects this argument as resting on “contestable premises” since use of property and consumption of property are sufficient to establish those virtues (p. 86). All that is required, he counters, is the “protected possession” of the property by its user not ownership (p. 86). But Becker does not mention who (or what) would need to ultimately own what would be used and consumed by the student of virtue – nor what that person or organization would think of its property being used and consumed, particularly if such consumption cannot be replenished.

4.7.3 Instrumentalist Justification

The instrumentalist justification of private property rights is encapsulated in the view that property is a necessary means to the daily functioning of the "household" (p. 316). This view arises from what Miller describes as “Aristotle’s teleological view of nature” (*Miller*, p. 315).

Aristotle posits the development of the polity (specifically the Greek polis) as a “natural” development from the “communities” of “master and slave, husband and wife, and parent and child” (Miller, p. 315). Together, these elements constitute the household. For him, these natural groupings are (were) a result of natural generation. The human being is a social animal, and these are the types of social groups which develop of necessity among human beings. The household is a unit of the polis in this communal schema.

The argument justifying private property for the household is as follows: Craft-making requires instruments in order to function by making things; analogously, the householder requires instruments in order to function by maintaining life. A possession is a necessary life instrument “separable from the possessor,” (p. 316) and property is a collection of possessions. Life, regular or eudemonic, is impossible without necessary life instruments. Therefore, the householder needs property for his life-maintaining function (p. 316).

The argument doesn’t end there. Miller seeks to strengthen it by introducing more premises. He continues with a metaphysical claim. “A part is not only a part of something else but wholly belongs to it, and this is true of a possession” (p. 316). Then, “[t]he part belongs by nature to the whole.” It then follows analogously that “property belongs by nature to the household,” the household being the whole. If the part of an entity belongs to the entity naturally, it thus belongs justly. We can then conclude that property justly belongs to the household (p. 316). Private property rights are thus justified.

So, this argument rests on the *ergon* or function of an entity (or a process considered as an entity) (p. 316). It differs from the eudaimonistic justification in its focus on the functional [virtuous] living that is necessary for eudaimonia, not the fact of the possible attainment of

eudaimonia itself. Miller notes that the argument does not try to argue from the nature of the individual as human being (as later writers on property – e.g. Locke - would) – rather, it is an argument from the nature of the individual as householder (p. 316). Miller also is careful to note the logical frailty of the premises which lead to the claim that the household’s property is a part of the household (p. 316). Even if one were to grant that the property of the household is a natural or “metaphysical” part of the teleologically-occurring human household, there is still the problematic move -- contradicting Aristotle himself writing elsewhere -- of arguing that since A [the property] is a necessary condition of B [the household], A is then a part of B. A part is not identical to a necessary condition. In order to have a household, there must be some property; but it is difficult to make the case that the property is now thereby a part of the household. A kitchen utensil is not indispensable in the way that a child or a house is.

The conclusion of the instrumentalist justification rests on the premise -- provided by Aristotle as an objection to his claims about slavery – that, “human relationships which are by nature or according to nature are just and those which are against nature are unjust” (*Miller*, p. 317; *Politics* 3: 1253b20-23). If we accept this principle, Miller argues, the question to ask is whether one can say *all* the property of the household has been justly acquired. Miller raises the slaves of Aristotle’s writing, but we could pose similar questions about, for instance, the purchase of clothing made under communist rule today. I offer that one way to respond to this criticism is to modify Miller’s reconstruction of Aristotle’s argument with the requirement that everything in the household be justly acquired. We would thereby conclude that everything the household justly acquires justly belongs to it by nature. So, slaves or stolen property would not belong to the household by nature.

4.8 Major Objections to the Eudaimonistic Approach

The Aristotelian virtue ethics, perhaps the oldest comprehensive system of ethics in Western philosophy²³, is a tremendously robust intellectual achievement. Its account of human life-processes and the end-goal of happiness has many strengths. One of these strengths is that it has been tested over many centuries, and is considered as having much to be said in its favour²⁴. Much in Western psychology and biology, at least historically, rests on the account of human entelechy provided by Aristotle, who himself was proceeding from a scientific, biological foundation (*Balme*, 1987; *Kenny*, 2014; *Randall*, p. 229).

Another strength of the account is its emphasis on moral development as an active process of practice through trial and error. The conception of eudaimonia laid out by Aristotle is of a rich, fulfilled individualism, not merely an atomistic, or nasty, or narcissistic solipsism (*Smith*, 1995, p. 64). The individual thrives in healthy social relationships, where her faculties are nurtured. As such, a wide variety of human pleasures are experienced in the right way. In accordance with such thriving, the human being comes to enjoy living and to be optimistic about her future. And having secure possession of the material means to experience such a process of fulfilment -- a process occurring over the lengthy course of a full life -- is vital; thus it stands that a eudaimonistic approach is going to approve of private property rights (*Smith*, 1995, pp. 68-69, p. 189).

²³ Kraut (2014) writes that, "No one had written ethical treatises before Aristotle." Cf. *Russell*, 2013, p. 1.

²⁴ Athanassoulis writes that, "Most virtue ethics theories take their inspiration from Aristotle..." (*Athanassoulis*, 2014)

The eudaimonistic account also has its share of criticisms. Objections include its *unabashed elitism* (Orend, 2014). The ethics is non-egalitarian in conception. The reliance on a teleology of nature, and its hierarchy of natural kinds which also includes other human beings – whether male and female slaves, or wives in the household – is a way of looking at the world that has long been jettisoned in Western thought (Miller, p. 318). There are also moral stipulations by birth or family, which may have been suited to the times in which he lived (*Rhetoric* I, 5:1360b25-1361a15). Besides his prerequisites for studying ethics, there is also an in-built technical reliance on *moral experts* (to find the right mean in a situation). So, there are two aspects of the elitism: the difficulty of universalizing the ethics without modification, given the broad and sometimes invalid use of “nature”; and the perhaps question-begging reliance on experts to master unspecified aspects of a theory that the experts themselves may or may not have relied on. In the latter case, one can defend Aristotle by saying that he might have meant that the student of ethics should seek out those who have accomplished what it is the student is trying to master. Remember, Aristotle specifically says that ethics is not a theoretical discipline like mathematics or science – it is an applied art. Perhaps this condition of practicability imposed by the nature of ethics necessitates the imitation of the accomplished since they fully possess the form of the art in the right way (Lear, p. 34).

Aristotle’s emphasis on *perfectibility of character* has also come under fire for being naive (Nussbaum, 1994; Hauptli, 2013; Orend, 2014). Aristotle is criticized here for assuming that introspection by the generic moral actor will yield conclusions similar to what he has outlined. Such assumption rests on the belief that the generic moral actor has received sufficient epistemological training, and sufficient moral conditioning by the surrounding society, to perform the self-examination the eudemonic life requires. But this objection is easily met. If we

are in a society in which Aristotle's ethics are being taught, then such a society is almost certain also to possess the tools which Aristotle was able to develop for self-examination, such as they are. For instance, Aristotle does not merely mention the virtues (courage, temperance, pride, etc) and vices (brutality, incontinence, adultery, etc.), he also provides insightful means by which to systematize the virtues and combat the vices. Means to systematize the virtues include continuing practice, and the need to follow the example of someone who has already accomplished the desired objective; means to combat the vices include his offering that *akrasia* [weakness of will] is a result of confused thinking, specifically the failure to grasp the minor premise of the practical syllogism. Aristotle's epistemological guidance (i) reinforces our knowledge that the will and subconscious are tied to thought and (ii) provides us with the means to fix the problem (*Pakaluk*, p. 256; *Randall*, p. 270).

The search for an objective "right way" is seen by some as indicative of "illiberal, oppressive overtones" (*Orend*, 2014; emphasis mine). The conception of a right way implies a wrong way, and there is no grey area of "forgiveness" (a concept which receives little if any treatment in Aristotle). Combine this sense of objective morality with the defence of "natural" slavery, and the modern reader is left with the impression that Aristotle's world was not a cheerful period in which a modern person would wish to live. But the criticism that Aristotelian objectivity is a harsh, unfeeling judge needs to be more closely examined. Let us consider undisputed forms of injustice: rape, murder, genocide, etc. If the perpetrators are allowed to go unpunished in the name of mercy, whom do we betray and whom do we encourage? While we might find particular cases (of lesser crimes) in which leniency is warranted, the general principle of encouraging the good and punishing the bad seems to me a recipe for a healthy society. There have been cases of murderous terrorists who were released from detention only to

enact even more terrible acts of violence against (the rights of) humans (*Howell*, 2014). Besides, Aristotle's virtue of "liberality" seems to demonstrate that he views the good man to be a financially generous man. For he comes out against "meanness," which he considers even worse than "prodigality." He writes that prodigality can be overcome with "care" but that nothing can cure meanness (*Nicomachean Ethics* IV, 1:1119b20-1122a17). I think such a view towards money could serve as evidence that Aristotle did not lack a generous spirit.

His inclusion of slavery and the prejudices of "good birth" in his teleological ethics are likely to have been errors stemming from an attempt to systematize the conventions of Greek culture (*Mayhew*, 2004). It might be helpful to note that the respectability and tenability of those views and practices, which predated Aristotle, yielded to the powers of Enlightenment philosophy and modern technology -- powers Aristotle's efforts in science and logic were crucial in bringing about (*Kenny*, 2014; *Randall*, 1960). The countries that emerged from the Enlightenment and Industrial Revolution -- Canada, the United States, Australia, Britain, Sweden, France, Japan, Italy, Germany, South Korea, etc. -- are famous precisely for making Aristotle's view of the happy life an attainable object for a majority of citizens. Wealth, freedom, better health outcomes, glamorousness, longevity, etc. -- virtually all the items on the list of parts of happiness in the *Rhetoric* -- are now possible to human beings (no matter their gender, ethnicity, or sexuality) living in those countries - no matter their beginnings or origins (*Ferguson*, 2011). So, it could be argued that some of his views were tainted with some of the worse conventions of his day (*Mayhew*, 2004). But we can abstract away those divisive, group- and status-conscious conventions and isolate the individual human being, defined by her faculty of reason, in the way modern eudaimonists like Tara Smith have done. Eudaimonia can be rescued from what we might call errors of convention and unexamined custom (*Smith*, 1995).

Then there are those who hold the morality to be *too selfish* (Orend, 2014) – too self-regarding in its emphasis on the life, pleasure, wealth, and prosperity of the agent. Why, they ask, must personal wealth and enjoyment be so celebrated? Is the emphasis on “thriving possessions” and “many friends” and “good children” too salutatory towards the acquisitive mental set? (Hursthouse, 2014) How would romantic love fit into this scheme if the emphasis is on achieving “self-love”? (Hauptli, 2013) The objection here seems to assume that there is something wrong with acquiring (at least some) wealth, experiencing pleasures, and enjoying life. The view seems to be that there is another anti- or non-acquisitive type of life that is worth living. The view seems to overlook the fact that life is painful and tortuous if one is not enjoying it (at least most of the time). If life is torture, why should one live? What’s it all for? In one crucial sense, life can be reduced to what we experience, and our acquired possessions are a serious factor in that experience. The fact that a person can only experience her own emotions, feelings, and pleasures, seems to indicate that the needs of the biological personality must serve as the ultimate, inescapable ground of ethical inquiry.

“Transcending” personal wants and needs to a non-acquisitive mode of action – in order to live for others – seems to pose ontological difficulties. There is no concrete way of experiencing what makes another person happy (as human consciousness is ontologically private) – we can only infer other individuals’ feelings from their words and actions, juxtaposed against our experiences. Also, living one’s life in such a way to affect as many others as possible (as Auguste Comte’s Religion of Humanity counsels) does not seem a universalizable ethics. The vast majority of people who will ever live, will not become wealthy, powerful, or influential enough to affect beyond a very few lives. Those few lives are likely to be family, friends, and loved ones: i.e., those one “selfishly” cares about. Since it is impossible to know what precisely

makes other people happy, and since it is impossible [for most people] to affect the wellbeing of more than a few others, it would seem that there is a strong case for a “selfish” ethics which makes one’s primary concern one’s own well-being. One’s well-being is inextricably tied to the well-being of those one loves and cares about, and with the pressures of altruism off the shoulders of everyone, we might actually see a world in which a network of self-interested well-being maximizes the general happiness. Such a “selfish” ethics would not be hedonistic, solipsistic, materialistic, or subjectivist.

Furthermore, life energy spent trying to “unselfishly” gain a high position in order to affect more than a few lives (whose deepest needs one has no means of accurately verifying) would very probably lead to an unhappy, unfulfilled life of impoverished, non-eudaimonistic experiences, as personal needs and interests remain unmet and unexplored. The human lifespan is short, and the time any individual has to pursue goals in the face of existential difficulties is very limited. This is, in fact, one crucial argument for private rights – to help minimize life’s existential difficulties by securing one’s possessions and liberties. In a rights-respecting society, each individual is provided the freedom to manage her own life and also perhaps positively affect her family, friends, and loved ones. As most of us would agree, even managing to do this well is not at all easy, much less living for the sake of others to whom we have no peculiar connection.

Another objection to the ethics is that the *virtues are too vague* (Orend, 2014). The use of the mean is not exact enough, it is culturally-“charged”, and a *standard of value* remains undefined for much of the choice-making required for the eudemonic life. J.L. Mackie writes: “We learn the names of the pairs of contrary vices that contrast with each of the virtues, but very little about where or how to draw the dividing lines, where or how to fix the mean” (*Hauptli*,

2013). This objection is indeed a problem for Aristotle's ethics, and one which other teleological systems seem to have wrestled with since his time.²⁵ A eudaimonistic ethics rooted in Aristotelian objectivity and ends-means final-causation is being championed today by philosopher Tara Smith (*Smith, 2006*). On this ethical system, although Aristotle's doctrine of the mean is jettisoned, it is recognized that the eudaimonistic actor does require firm principles in order to flourish. "Serving one's interest requires action guided by the recognition of certain constant, fundamental facts. These facts are the basis of moral principles. [...] Moral principles identify the relationships between the most basic kinds of choices that human beings can make and the impact of those choices on human survival" (*Smith, 2006, p. 33*). For instance, the virtue of *justice* is "the application of rationality to the evaluation and treatment of other individuals" (p. 135). Justice is basic to countless acts of morality. The virtue of *independence* is "one's acceptance of the responsibility of forming one's own judgments and of living by the work of one's own mind" (*Smith, 2006, p. 107, Rand, p. 28*). Independence is indubitably necessary to so many instances of action. A virtue is "the act by which one gains and/or keeps an objective value" (*Smith, 2006, p. 48, Rand, p. 27*). The act is a demonstration of a commitment to a moral principle. The moral principle is a broad statement covering the facts which ultimately necessitate such action. The virtue, when fully automatized in the character, is demonstrated in action; but the principle by which the virtue comes to be known is an item of knowledge that has to be discovered and learned. Hence, recognizing this cognitive, epistemological aspect of virtues, we can say that virtues are moral principles which guide action: i.e., action in the pursuit and keeping of values (*Smith, 2006, p. 50*).

²⁵ Normative Ethics. (2014). In *Encyclopædia Britannica*. Retrieved from <http://www.britannica.com/EBchecked/topic/418412/normative-ethics>

Principles are truths which serve as fundamentals for other truths (in a hierarchy of abstractions), thereby enabling human beings make big and small decisions about an ocean of facts in a consistent, long-term-oriented, and co-ordinated manner (*Smith, 2006, p. 34*). Because the human mind has to make sense of many facts over a lifetime, the mind has to form abstractions to handle those facts. Possessing the fullest knowledge, as principles, of the effects of one's actions on the flourishing one seeks, is indispensable. "Principles integrate a vast quantity of data culled from a variety of circumstances into the most fully informed, rationally considered judgments we could have" (*Smith, 2006, p. 35*). So, "knowledge gleaned from many situations" (p. 35) is placed within our grasp. This is how principles, the broadest abstractions, aid long-term action. For instance, the principle of *honesty* is operative in very many contexts, those contexts requiring case-by-case examination by the actor. The mind would be unable (due to ontological limits on cognitive and memory capacity) to assess the impact of one's actions in the many different contexts, except by the aid of principle. A question like "Would it be in my interest to cheat on this exam, now that the proctor has left the room?" (p. 35) would raise further questions which could only be answered by using principles to evaluate the relevant facts. The principles of honesty, justice, rationality, pride, etc., are brought into play. If the actor were trapped in a dictatorship which had prohibited reading but threatened the students in its schools with an ultimatum to pass exams with flying colors or get kicked out of the healthcare system, it might be in the student's interest to cheat. Of course, the answer would differ in a freer country like Canada or the United States, where there is no excuse to cheat today. So, as in Aristotle, the context counts in making the judgment. "All principles require intelligent application to a person's particular situation" (p. 36).

Because human life is complex, and because action in one sphere might have unintended effects in another sphere, the human mind must co-ordinate its actions by understanding how those spheres are related. Principles aid this co-ordination by informing the moral actor “of the fundamental conditions of human value-achievement” (p. 34). Thus, an actor who holds clearly defined conceptions of the principles of honesty and justice would know how to apply them in the different contexts they arise, and would also understand that they usually operate as parts of a composite in most action contexts. The need for principled, co-ordinated action arises from the fact that humans, as conceptual, long-range beings, cannot survive on instinct, impulse, or “range-of-the-moment” thinking (p. 35).

There is also the objection of the *cultural relativity of virtues* (Orend, 2014) which is closely related to the previous objection of virtue-vagueness. On this objection, what courage consists of in one society A might not hold in another society B. If courage is understood as facing up to your socially-mandated duty in one society but understood as choosing the mean (which is the right action) to defy the socially-mandated duty in another society, this poses a problem for the ethics. This objection to Aristotle’s ethics is more easily answered than the other objections since his ethics partly addresses the issue. For Aristotle, since moral choice and right action are relative to the context, the choice of virtues – and the degree or “volume” of demonstrated virtue - can be modulated to suit the context. The actor would have to keep the virtue context that enables him to preserve his life and act successfully in that society. For Aristotle, there is no moral imperative to be followed blindly.

One might counter this response by naming the vices – e.g. murder and adultery – Aristotle lists as always wrong. On this counter, it would seem that Aristotle does have moral imperatives. In addition, we might ask what “successful” action would consist of in this different society?

What if society A made killers its top citizens while society B made creative people its top citizens? Well, to both counters I would argue that Aristotle names life in a decent polis a necessary condition for eudaimonia. So his ethics requires basically pro-flourishing conditions. Successful action consists in self-preservation in order to acquire values and flourish. In the ethical system championed by Smith, the self-preservation stipulation is developed into an explicit standard of value. This enables much clearer action on the part of the actor. For instance, if the actor were living in a dictatorship, the standard of value (being life) would motivate her to escape to a freer society.

Finally, some ask plainly whether *virtues are ethically sufficient* (Orend, 2014). Virtuous action presupposes the development of a virtuous moral character “beforehand” in the agent. The *hexis* must first be reached by moral practice in order for the agent to be able to determine the mean reliably. But, what if the moral character cannot be developed sufficiently? Would it not be more compelling to develop moral rules and laws that the agent simply obeys dutifully? This objection asks whether a virtuous actor is necessary for virtuous action. Why not simply specify the moral actions and then have even people who do not feel well about acting rightly have some means of “effortlessly” acting rightly? There are two possible approaches to this objection (within the context of our present discussion). One could presuppose that the objection assumes an ethics of duty to be the proper ethics. The other approach presupposes that an ethics of duty is not the proper ethics. On the duty premise, virtues would certainly not be enough since a person would be required to *do her duty no matter the circumstances*. On this approach, contextual consideration of the facts is not an option. The moral imperative is non-negotiable. Because of the moral law or rule specification, a virtuous person could fail to do her duty in a particular instance but would know what exactly was required to restore her to complete

“virtue.” For example, K may not want to buy her brother a birthday present, but if the moral imperative says to never make their mother unhappy, and making her mother happy entails buying the present, K buys the present all the same. K is, by a duty-bound moral code, perfectly moral. She did not have to like giving her virtuous brother a gift, and her interests – psychological or material - may not be served by such a gift, but she is able to remain moral because she did supply the gift in accordance with the duty morality.

On the non-duty approach, virtues would seem not to be enough since the actor is supposed to perfect his character in order to be virtuous. Character can be a difficult concept to master since it relies heavily on knowledge of psychological states, introspection techniques, etc. Why not get rid of this necessity and simply come up with a calculative matrix for right action? There is, on a non-duty virtue ethics such as Aristotle’s, no moral imperative by which to judge all actions right or wrong. Part of the case here is that a non-duty virtue ethics requires consideration of the existential circumstances in each case. There is no one-size-fits-all premise. But should there be? If eudaimonia is the goal, should there be a means by which the actor can measure success and failure? Tara Smith argues that there is a means, and this is the standard of value for one’s actions, an issue which we saw raised in our discussion of the virtue-vagueness objection:

What is the standard of value...? Because it is the struggle to survive that gives rise to the phenomenon of values and that mandates the achievement of values, life is the yardstick by which to determine what is good or bad for a person. Ends and actions are to be assessed on the basis of their contribution to an individual’s survival. It is not always easy to ascertain these effects, since actions and events can vary greatly in the directness, immediacy, and scope of their impact. Regardless of how readily known the effects of a given course of action, however, the basic principle is: That which aids a person’s life is good; that which endangers or damages it is bad...’The standard of value...is man’s life, or that which is required for man’s survival qua man’” (Smith, 2006, p. 28; Rand, p. 25).

But the goal of such survival is not the mere “preservation of a physical hulk” but the “terms, methods, conditions, and goals required for the survival of a rational being through the whole of his lifespan,” wherever he is able to exercise his free-will (*Smith*, 2006, p. 28, *Rand*, p. 26). *Smith* explains that the goal is “not simply breathing, but thriving”; not “subsistence” but “flourishing.” Flourishing is “living in such a manner that one is fit to continue to live, long term” (*Smith*, 2006, p. 28). It is long-range sustenance of human action by achieving values, and the resulting, co-existent happiness is “the state of consciousness which proceeds from the achievement of one’s values” (*Smith*, 2006, p. 31, *Rand*, p. 31).

So, we see here in this eudaimonistic ethics much that is explicit and implicit in Aristotle. The explicit focus on *eudaimonia* (happiness/flourishing) as the goal state of thriving. The explicit focus on virtue as the means to eudaimonia. The explicit stipulation that virtue requires the consideration of facts in any given context relative to the individual. The implicit view of self-preservation as the good; as Aristotle wrote in the *Rhetoric*:

Doing good refers either to the preservation of life and the means of life, or to wealth, or to some other of the good things which it is hard to get either always or at that particular place or time... (*Rhetoric* I, 5:1361a30-33)

The updated eudaimonism supplies the principles, which were missing in Aristotle, by clarifying the virtues as not just states to be attained, monitored, and maintained, but as items of *knowledge*. Virtues are principles. As cognitive content, they are knowledge items; when practiced, they become states of character. The ethical insufficiency of virtues in Aristotle is updated with a clear, principled standard of value: the life of human beings qua human beings. Life as a human being involves the long-term pursuit and acquisition of values, including material values. And secure long-term possession of material values requires private property rights.

It is now evident that Aristotle's eudaimonism, when properly reconsidered, provides serious and robust justification for private property rights. It is a theory which has at least one powerful argument for private property rights within a conception which favours a limited conception of teleology: that our natural purposes, and pursuit of a fulfilled human life, require secure possession of the vital material means of such pursuit. I submit that this has, recently, been an over-looked justification of private property rights and deserves re-discovery.

Conclusion

Private property rights are an indispensable, foundational feature of a properly functioning society. Their importance has long been recognized by thinkers such as Aristotle and Cicero in the ancient world; Thomas Aquinas in the medieval period; Hugo Grotius in the Renaissance; and Samuel Pufendorf and John Locke in the Enlightenment. Their importance is upheld and debated by writers Robert Nozick, John Rawls, Ayn Rand, Brian Orend, and Tara Smith, among many others, in our day. Property rights, universalized and legally instituted, have served as the engine of growth for societies on all continents, and have been important for the establishment of material conditions necessary for eliminating old-world notions of tribalism, racism, sexism, and religious intolerance. A plethora of anti-human and anti-happiness movements have been nipped in the bud in private-property societies because an overwhelming majority of individuals in those societies have found the life-enabling freedom and practical benefits of property-rights-enabled productivity far more compelling and rewarding than the losses arising from the deadly poverty induced by collectivist property arrangements, themselves very often associated with - and enforced by - undemocratic political orders utterly at odds with human freedom.

In this thesis, I investigated three main schools of private property rights justification. I began by saying what rights are, what property rights consist in, and then arguing for the privacy of property rights in light of the background of the recent global rise in consequentialist interpretations of private property. I then discussed, in turn, the consequentialist, deontological, and eudaemonist ways of thinking about private property, initially describing the ethical background of each school through the views of a representative philosophic figure, and then

proceeding to the philosopher's justification of private property. The three figures were John Stuart Mill for consequentialism, John Locke for deontology, and Aristotle for virtue ethics. But, being self-critical, this thesis admitted that each of these strategies of justification is imperfect, with strengths being offset somewhat by some weaknesses. This doesn't mean that private property rights are unjustified—indeed, many reasons in favour of such have been given, and defended, and explicated, throughout this thesis. And, finally, a particular claim was made that, in light of the recent popularity of consequentialist and deontological justifications, we should not forget the enduring wisdom of the oldest such approach, the eudaimonistic view--which understands property as an essential ingredient in the pursuit of the natural fulfilment of human potential and purpose.

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