

A Brief History of Post-Lockean Unilateralism: Barbeyrac, Carmichael, and Hutcheson on Property

KIYOSHI SHIMOKAWA

Introduction

There are two distinct lines of thought which we can find in the early modern, European discourse on the origin and justification of property. One is a conventionalist line. In the seventeenth century, such conventionalists as Grotius, Hobbes, and Pufendorf sought the origin of property in a preceding compact. Grotius used the Latin term ‘pactum’ for this compact. Grotius made it clear in *De Jure Belli ac Pacis* that a compact of some kind, whether express or tacit, is always needed for the emergence and justification of property. A compact is necessary because ‘one could not possibly guess what others designed to appropriate to themselves’ and ‘besides, several might have had a Mind to the same Thing’ (DJBP 2.2.2.5).¹⁾ It is an inter-subjective device whereby people mutually express what they have internally in their minds. Hobbes used the term ‘pactum’ in *De Cive* and ‘covenant’ in *Leviathan*, and developed an indirect version of conventionalism to explain the origin of property. According to Hobbes, ‘propriety [i.e. property]’ arises from the act of a sovereign that has been created by a preceding covenant of everyone with everyone else. Pufendorf used the terms ‘pactum’ and ‘conventio’ interchangeably in his account of the origin of property in *De Jure Naturae et Gentium* (DJNG 4.4; especially 4.4.4-6). A physical seizure of an object, according to Pufendorf,

1) The English translation quoted here is from Hugo Grotius, *The Rights of War and Peace*, ed. Richard Tuck, [trans. John Morrice], book I-book III (Indianapolis: Liberty Fund, 2005). Grotius’s Latin text is found in *De Jure Belli ac Pacis in Libri Tres* [abbreviated as DJBP], vol. 1 Reproduction of the edition of 1646 (repr., Buffalo, New York: William S. Hein, 1995).

is insufficient for the rise of property, and at least one compact, whether express or tacit, is necessary for the emergence of property. For the compact alone can produce the 'moral' effect that accompanies property, that is, the 'obligation on the part of others to refrain from a thing already seized by some one else' (DJNG 4.4.9).²⁾ Rights, including property rights, are seen as the kind of moral qualities which are 'imposed' or 'superadded' to natural objects by the convergence of the wills of the intelligent beings involved (DJNG 1.1.4). Although Grotius, Hobbes and Pufendorf offered different versions of conventionalism to explain the origin of property, they were conventionalists in that they made an inter-subjective compact, and hence the consent of others it involves, a necessary condition for the emergence and justification of property.

Sharply opposed to this is the other line of thought which figured prominently in the early modern discourse. It may be called 'unilateralism'. Unilateralists claimed that without the consent of others, an acquisition of natural resources under certain favourable circumstances could sufficiently explain and justify the rise of property. They rejected conventionalism, and dispensed with the consent or approval of others as its normative basis. In the seventeenth century, unilateralism was hinted at and adopted by some Puritan colonists in America. One of the Puritans who took this position was John Winthrop, the leading figure in the founding of the Massachusetts Bay Colony.³⁾ A clear theoretical formulation of unilateralism, however, had to await John Locke. In Chap. V of the *Second Treatise*, Locke famously claimed that each man could legitimately begin to acquire a property in external things by his own labour, without the

2) *De Jure Naturae et Gentium Libri Octo* [abbreviated as DJNG], 2 vols, vol. 1 Reproduction of the edition of 1688, and vol. 2 English translation by C. H. Oldfather & W. A. Oldfather (repr., Buffalo, New York: Williams S. Hein, 1995). All quotations from Pufendorf in this paragraph are taken from vol. 2.

3) For Winthrop's unilateralism, see his 'Reasons to be considered for justifying the undertakers of the intended plantation in New England and for encouraging such whose hearts God shall move to join with them in it', in Alden T. Vaughan (ed.), *The Puritan Tradition in America, 1620-1730* (Hanover and London: University Press of New England, 1997), pp. 26-33; especially, pp. 26, 28-29.

consent of others, in the original God-given world of abundant natural resources. As I have explained elsewhere,⁴ Locke made several theoretical adjustments to propose his unilateralist theory as an alternative to the older conventionalism of Grotius, Hobbes, and Pufendorf. First of all, Locke appealed to God's intention to preserve mankind in order to reject the claim that a compact or consent is necessary for every legitimate act of appropriation. 'If such a consent as this was necessary, Man had starved, notwithstanding the Plenty God had given him' (TT II.28).⁵ That would be contrary to God's intention, or 'his design' that 'Man should live and abide for some time upon the Face of the Earth' (TT I.86). Without relying on a mutual compact of men, Locke started from the premise that 'every Man has a *Property* in his own *Person*' (TT II.27), and proceeded to show how each man could extend and join his prior property to a particular part of the external world. In so doing Locke used the famous 'joining' and 'mixing' metaphor (*ibid.*), while also appealing to God's injunction 'subdue the Earth' (TT II.32) and evoking the notion that labour, which involves pains and efforts, should not be without its reward (TT II.34). Another important adjustment concerns the clause that appropriators should avoid injuring others. In speaking of 'enough, and as good' to be 'left in common for others' (TT II.27), Locke actually adopted the non-injury clause and thought of the situation of abundance which would satisfy it. He also stipulated the 'non-spoilage and productive use' requirement that one could legitimately acquire only '[a]s much as one [could] make use of to any advantage of life before it spoils' (TT II.31). Finally, Locke appealed to a consequentialist justification of the labour-based, injury-free unilateral appropriation of land by arguing that it could increase productivity and

-
- 4) For details of what I write in this paragraph about Locke's theoretical adjustments and his relationship to colonialism, see my chapter entitled 'The Origin and Development of Property: Conventionalism, Unilateralism, Colonialism', in Peter Anstey (ed.), *The Oxford Handbook of British Philosophy in the Seventeenth Century* (Oxford: Oxford University Press, forthcoming).
 - 5) All quotations from Locke that appear below are taken from *Two Treatises of Government* [abbreviated as TT], 2nd edition, edited by Peter Laslett (Cambridge: Cambridge University Press, 1970).

bring mankind a number of useful goods and commodities (TT II.40-43). Thus his unilateralist justification of property employed diverse strategies. However, Locke failed to take the non-injury clause seriously, and allowed appropriators to interpret it arbitrarily. As a result, his unilateralism functioned as a theory of dispossession for the Native Americans while it also served liberal purposes in England.

In this paper, I shall continue to offer a narrative of early modern unilateralism by tracing its post-Lockean development. First, I shall look at Jean Barbeyrac's account of the origin of property. Secondly, I shall turn to Gershom Carmichael's account. What I intend to do in the first two sections below is to present textual evidence to show that both Barbeyrac and Carmichael inherited the basic principles of Locke's unilateralism while adding one or two claims of their own. Thirdly and finally, I shall discuss Francis Hutcheson's unilateralism in detail, and show that he had a modified version which combined some of Locke's insights with his own functionalist and humanitarian views. The following narrative contains an analysis of each version of post-Lockean unilateralism. But it is primarily intended to show that there is a significant line of continuity from Locke to Hutcheson, which shows a development of diverse unilateralist strategies. Unlike Locke's, the three versions of unilateralism to be discussed are not directly relevant to the issue of colonial expansion. But they adopted and developed Locke's original ideas about God, labour, and productivity, supplementing them with their own arguments. Consequently, they formed a distinct, early modern tradition of thought about unilateral appropriation, serving as an alternative to the tradition of conventionalism.

1. Barbeyrac's Unilateralism

Barbeyrac endorsed Locke's account of the origin of property in some of the lengthy notes he appended to his French translation (1706) of Pufendorf's *De Jure Naturae et Gentium*. Let us first see what Pufendorf says about the origin of property. In DJNG 4.4.4, Pufendorf claims:

[T]he *Property* of things flow'd immediately from the compact of Men, whether *tacit*, or *express*. For although after the Donation of God nothing was wanting but for Men to take possession; yet that one Man's seizing on a thing should be understood to exclude the Right of all others to the same thing, could not proceed but from mutual Agreement.⁶⁾

Barbeyrac adds a note, and states that there is a significant objection to Pufendorf's view. He says:

No, in no wise. It is certain on the contrary, that the immediate Foundation of all particular Right, which any Man has to a thing which was before common, is the first Possession. This was the most antient way of Acquirement. And indeed, when several things are given in general to a number of Men which exist not at the same time, and who neither can nor will possess all things in common, and such are Men of all Times and Places, the Intention of the Donor doubtless is, That those who come first shall gain a personal Right to those things that they have gotten, exclusive of the Pretensions of all others, without any Consent of theirs needful to be given. All taking possession, according to the Will of the Donor, hath in it an effectual Virtue to make the first Occupant appropriate to himself lawfully any thing before held in common, provided he takes no more than he needs, and leaves enough for others. (DJNG 4.4.4 n. 4.)⁷⁾

Barbeyrac claims here that 'the first Possession', i.e., occupation, is both the immediate foundation of property and the most ancient way of acquiring

6) *Of the Law of Nature and Nations*, trans. Basil Kennett (London: Printed for Walthoe *et al.*, 1729), p. 365. All quotations from Pufendorf and Barbeyrac that appear below are taken from this work. It is an English translation of the 4th edition of *De Jure Naturae et Gentium Libri Octo* with Barbeyrac's extensive notes.

7) *Ibid.*, p. 365 n. 4.

it. He also says that this way of attributing property conforms to God's intention, provided an appropriator stays within the limits of his needs and leaves enough for others. This set of claims is essentially Lockean, and we find in the same note that Barbeyrac goes on to offer a summary of Locke's account of the origin of property. He starts off by saying that Locke 'searched to the Bottom with much Curiosity and Solidity into the manner how the Property of Goods is acquired', and repeats Locke's point that if the consent of all others were required, 'we might perish a thousand times with Hunger in the midst of Plenty' (*ibid.*), in spite of God's intention to donate plenty of natural resources for the preservation, use and comfort of mankind. Barbeyrac also notes Locke's point about the practicality of a unilateral acquisition of one's property in the God-given world of common things: it is like the case of leaving each child within a family to cut his own portion of the meat that his father provided (*ibid.*; also, TT II.29). Barbeyrac then presents Locke's argument from labour in the following way:

Seeing every one is the only Master of his Person and Actions, the Labour of his Body and Work of his Hands entirely and solely belong to him, as his own proper Goods. So that all that he has derived from the state of Nature by his Labour and Industry, what he has gotten by his Pains, belongs to him only, and others can't pretend to them, unless there does not remain enough of the same things, or as good, among those that are common. (DJNG 4.4.4, note 4.)⁸⁾

In his summary of Locke's account, Barbeyrac faithfully reproduces his view that there is a limit to the acquisition of property through labour. The acquisition is limited by 'the good Usage which may be made of them [sc. goods] for the Necessity and Convenience of Life' (*ibid.*).⁹⁾

8) *Ibid.*

9) *Ibid.*

Pufendorf claims that a compact or agreement is always required for the emergence of property, even under the initial circumstances where ‘things could afford no Service to Men’ unless we were allowed to ‘lay hands at least on Fruits and Products of them [sc. those things which lie in common]’ (DJNG 4.4.5).¹⁰ Granted that it would be pointless if ‘others might lawfully take from us what we had before actually mark’d out for our Use’, Pufendorf infers that there must have been ‘the first Agreement’ that ‘what any Person seiz’d out of the common store of things, or out of the Fruits of them, with design to apply to his private Occasions, none else should rob him of’ (*ibid.*).¹¹ Barbeyrac adds a footnote to this, and states that according to the Roman lawyers, it is not necessary to have the original agreement to establish property, or the one which prohibits any interference with the goods already taken. He refers to relevant parts of *Digesta* and the *Institutes*, and claims that ‘according to the notion of the Roman lawyers, Possession is all that transfers Property by virtue of the Intention of him who gives any thing to many in common’ (DJNG 4.4.5 n. 1).¹²

Pufendorf also discusses the view of Velthuysen, the author of *De Principiis Justi et Decori*. It is in this context that he advances the claim (which we have seen earlier) that ‘we cannot apprehend how a bare corporal Act, such as Seizure is, should be able to prejudice the Right and Power of others, unless a Covenant intervene’ (DJNG 4.4.5).¹³ Barbeyrac adds a footnote, and rejects Pufendorf’s claim once again by bringing in God’s intention. According to Barbeyrac, a corporal act could legitimately result in excluding the right of others because of ‘the Intention of the Creator, who has given Men this common Right, that they may make use of it’ (4.4.5 n. 7).¹⁴ Barbeyrac also appeals to the idea that the equal opportunity is available to all. God gave everyone the common right to use

10) *Ibid.*, p. 366.

11) *Ibid.*

12) *Ibid.*, p. 366 n. 1.

13) *Ibid.*, p. 367.

14) *Ibid.*, p. 367 n. 7.

an indefinite portion of nature, so that any other human being can equally 'plead the privilege of the first Occupant' (*ibid.*).¹⁵⁾ Hence, no problem arises.

Finally, Pufendorf states in DJNG 4.4.6 that the introduction of property needs to be confirmed 'at least by tacit Compact'.¹⁶⁾ In a footnote appended to this section, Barbeyrac forcefully claims that 'there is no need of any Renunciation, either express or tacit', adding that the objections he already stated in the preceding notes would 'suffice to rectify the attentive Reader in understanding all that our Author in the following part of this Work builds upon that false Principle [i.e. the necessity of a compact]' (4.4.6 n. 1).¹⁷⁾

What emerges from all this is that Barbeyrac wholeheartedly endorsed Locke's unilateralist theory of appropriation. Above all, he followed Locke in appealing to God's intention in an attempt to counter the claim of conventionalism. We may additionally note that Barbeyrac's assimilation of Locke's labour theory to the occupation theory, together with his appeal to the authority of the Roman lawyers, is very much of his own making, and Locke himself does not make a special mention of the Roman law notion of occupation or first possession.

2. Carmichael's Unilateralism

Let us move on to Gershom Carmichael. He was appointed in 1727 as the first Professor of Moral Philosophy at the University of Glasgow, and he introduced the tradition of natural jurisprudence we find in Grotius, Pufendorf and Locke to the universities of Scotland. However, Carmichael was critical of Pufendorf's natural jurisprudence. He wrote and elaborated a critical commentary on Pufendorf's *De Officio Homini et Civis*. This commentary is known as 'Supplements and Observations upon Samuel Pufendorf's *On the Duty of Man and Citizen according to the Law of Nature*, composed for the Use of Students in the Universities'. Hutcheson later

15) *Ibid.*

16) *Ibid.*, p. 367.

17) *Ibid.*, p. 367 n. 1.

called Carmichael 'by far the best commentator' on Pufendorf's *De Officio*, and went so far as to suggest that his commentary was 'of more value than the text [of Pufendorf's work]'.¹⁸⁾ It has been translated into English by Michael Silverthorne, edited by James Moore and Michael Silverthorne, and published along with his other writings.¹⁹⁾ What concerns us here is the fact that Carmichael agreed with Barbeyrac that Locke's labour theory of the origin of property was superior to Pufendorf's conventionalist account.

Carmichael's criticism of Pufendorf's account of the origin of property is different from Barbeyrac's in that it stresses a conceptual point. Carmichael draws attention to Pufendorf's view that the original community of things is not a 'positive' community where things are owned by more than one person without division, but a 'negative' one where 'things ... are publicly available to anybody' (p. 92). Carmichael holds that this view *implies* that anyone in the negative community may take from the common store 'what he can use for himself and apply them to his own purposes, provided only that in so doing he does not prevent the rest from enjoying the use of the things that they need' (*ibid.*). This implication significantly presupposes that 'the consent of the rest' is not required for the introduction of property. If such a consent were necessary, the 'negative community would be no different from positive community' (*ibid.*). This is Carmichael's own conceptual point, which is distinct from what Barbeyrac said. Having stated that agreements or compacts are required only if the original community is a positive one, Carmichael claims that Pufendorf is 'scarcely consistent, when he denies that the primitive community was

18) Francis Hutcheson, *A Short Introduction to Moral Philosophy, Collected Works of Francis Hutcheson*, vol. IV (Hildesheim: Georg Olms, 1969), p. i. See also Francis Hutcheson, *Philosophiae Moralis Institutio Compendiaria*, with *A Short Introduction to Moral Philosophy*, edited and with an Introduction by Luigi Turco [henceforth to be abbreviated as T ed.], (Indianapolis: Liberty Fund, 2007), p. 3.

19) James Moore and Michael Silverthorne (eds), *Natural Rights on the Threshold of the Scottish Enlightenment: The Writings of Gershom Carmichael* (Indianapolis: Liberty Fund, 2002). All quotations from Carmichael that appear below are taken from this work, and its page numbers are indicated parenthetically.

positive, while contending that separate ownership of things could not be established without agreements' (p. 93).

Carmichael goes on to provide a positive account of the origin of property, which is basically Lockean and serves to show the superiority of Locke's account to Pufendorf's. Carmichael first speaks of God's intention of granting the world to mankind for 'the security and benefit of the whole human race' (pp. 93-94). He notes that 'most earthly things which are useful to man can provide little or no use to several men at the same time' (p. 93). As we recall, Locke stated in the *Second Treatise* that since natural resources had been 'given for the use of Men', 'there must of necessity to be a means *to appropriate* them some way or other before they can be of any use, or at all beneficial to any particular Man' (TT II.26). In making this statement Locke primarily had the acquisition of food in mind. Carmichael similarly stresses that in order for earthly things to be 'of service to men in the use for which they are granted, they need to be specially appropriated and adapted to the purposes of the appropriator' (p. 94). This appropriation, he adds, should be protected 'by a valid right against other men' (*ibid.*). If they attempt to take away 'a thing so occupied from the occupier', this would amount to a wrongful act of depriving him of 'the fruit of his labor' (*ibid.*). Moreover, if others were allowed to take it away, it would be 'pointless' for any particular man to appropriate particular things for his own purposes in the first place. Indeed, it would be 'frustrating' the purpose for which God originally gave things to mankind, i.e. the security and benefit of mankind. So it is essential, says Carmichael, that 'the occupation of such things' should confer 'on the occupier' (*ibid.*)²⁰ a set of property rights, involving the rights of use, exclusion, and transfer. Thus he claims that 'in certain things at least', the acquisition of property 'consists in an act of the acquirer alone, and should not therefore be made dependent, as the author [sc. Pufendorf] contends, on a general human

20) As Moore and Silverthorne have pointed out in one of their editorial footnotes (pp. 94-95 n. 3), Carmichael assimilates the labour theory of property to an occupation theory.

agreement' (p. 94).

There seems to be a gap in Carmichael's argument here, which he goes on to fill. He is making use of the Lockean idea that in order for certain things to be useful or beneficial to any particular man at all, they need to be appropriated in the first place and be made his exclusive property. But this does not have much force *unless* it is shown what specific things are of that nature. So Carmichael considers this question, and discusses the specific types of things for which the unilateral mode of acquisition is required. He develops and presents his ideas along the lines Locke suggested. First, there are 'things which give man immediate, present use', e.g. food, clothes, and housing. These are the 'things that we cannot use properly unless we appropriate them for our purposes' (p. 95). Secondly, man needs to provide for the future, so the right of acquiring goods extends to the 'things related to a man's likely purposes in the future', with the proviso that he does not allow any good to perish, or that he does not injure others (i.e. 'frustrate the opportunity for others to acquire goods' (*ibid.*)). Thirdly, the unilateral mode of acquisition applies not only to the moveable things which are 'directly useful to men in themselves', but also to the moveable and immoveable things which 'serve human purposes with their fruits or services' (*ibid.*). Land is obviously included in this category. Thus the 'labor' which is spent in 'subduing it, cultivating it, or making it better suited to serve human purposes' is the ground of landed property. Fourthly and finally, 'the further expenditure of labor and industry which the interest of human society requires in the way of competition' is likely to produce more goods than we can use personally, and we have a property in this surplus. 'This further fruit of our labor should not be taken from us, provided we got it without fraudulent and unfair oppression of others [i.e. without injuring others]' (*ibid.*). Thus in return for the surplus we have unilaterally acquired, we can further acquire other useful goods from others by the use of agreements.

Carmichael concludes that 'in all the cases mentioned, private ownership of things which have limited use can be acquired solely by the expenditure of labor in appropriating them or in preparing them for

use, with the intention of keeping them for oneself; we need not ask or await the suffrages of others' (p. 96). The word 'suffrages' here should be understood as instances of the consent or approval of others. Carmichael may not have succeeded in convincing us why property rights, as distinct from the right of use, are really needed for the things he discussed. But it is clear that he is indebted to Locke in making human labour the foundation of property. Locke's influence is undeniable though Carmichael tends to stress human purposes a little more explicitly than Locke does. Carmichael actually acknowledges his indebtedness to Locke when he says, 'For a more thorough discussion of this matter, read the celebrated Locke, *Second Treatise of Government*, chapter 5' (p. 96).

3. Hutcheson's Modified Unilateralism: Functionalist and Humanitarian Views

In considering Hutcheson's account of the origin and justification of property, I shall first consider what he says about property in *An Inquiry into the Original of our Ideas of Beauty and Virtue* (1st edition, 1725; 2nd edition, 1726). I shall later consider *A Short Introduction to Moral Philosophy* (1747), which is an English translation of *Philosophiae Moralis Institutio Compendiaria* (1st edition, 1742). Unlike the *Inquiry*, the *Short Introduction* or its Latin original is primarily a pedagogical work. As a teaching manual for students, the *Short Introduction* seems to lack originality. Nevertheless, it contains a far greater amount of exposition on the law of nature, natural rights and obligations, and the origins of the family and civil society, than the *Inquiry*. Of course, we should not assume that Hutcheson continued to hold, in any of his later works, the same views that he had originally expressed in the *Inquiry*. But we can clarify some of the views expressed in it and learn about his additional views, if we make use of the *Short Introduction* and other later works.

3.1 Hutcheson's Functionalist Unilateralism in the *Inquiry*

Before discussing Hutcheson's account of property, we should take a look at his account of the nature of rights in general. In the *Inquiry*,

Hutcheson says that we derive our ideas of rights from our ‘moral sense’, and he offers an account of what it is to have a right together with a classification of rights. First, he explains what it is to have a right:

Whenever it appears to us, that a Faculty of doing, demanding, or possessing any thing, universally allow’d in certain Circumstances, would in the whole tend to the general Good, we say that any Person in such Circumstances, has a Right to do, possess, or demand that Thing. And according as this Tendency to the publick Good is greater or less, the Right is greater or less (p. 183).²¹⁾

The precise relationship between Hutcheson’s moral sense theory and his theory of natural law and rights is too large a subject to be discussed here.²²⁾ Here we should note that Hutcheson’s explication of the general idea of a right in the passage above shows a trace of Grotius’s notion of a right as a faculty on the one hand, while on the other, he adds his own view that a right to do X is the faculty of doing X which, if universally allowed, would tend to the general good. Hutcheson’s claim about the relationship between the public good and the right seems to suggest that the right is an entity whose existence ultimately depends on its tendency to the general good. In other words, he seems to be claiming that the right ceases to be granted if it no longer exhibits a tendency to the public good. If this is really Hutcheson’s claim, then he is offering a kind of utilitarian defence which justifies, on the grounds of the public good, the state of affairs in which individuals have rights.

It is not clear, however, whether Hutcheson could defend a cancellation

21) All quotations from Hutcheson’s *Inquiry* are from *An Inquiry into the Original of Our Ideas of Beauty and Virtue*, revised edition, ed. Wolfgang Leidhold (Indianapolis: Liberty Fund, 2008). Its page numbers are indicated parenthetically. This volume is based on the text of the second edition (1726).

22) This subject was taken up, for instance, in Stephen Buckle, *Natural Law and the Theory of Property* (Oxford: Oxford University Press, 1991), chap. 4, but I believe that it deserves a more careful treatment.

of perfect rights (such as labour-based property rights) by appealing to the public good. For Hutcheson seems to hold that perfect rights are *constitutive* of the public good, which implies that those rights cannot be constituted or created by it. Like Grotius and Pufendorf, Hutcheson distinguishes ‘perfect’ rights from ‘imperfect’ ones. Perfect rights, he says, are absolutely necessary for the public good since ‘the universal Violation of them would make human Life intolerable; and it makes those miserable, whose Rights are thus violated’, and ‘to fulfil these Rights in every Instance, tends to the publick Good, either directly, or by promoting the innocent Advantage of a Part’ (p. 183). So the universal use of force to protect them ‘seems exceedingly advantageous to the Whole’ (pp. 183-184). Included among the perfect rights are ‘those to our Lives; to the Fruits of our Labours; to demand Performance of Contracts upon valuable Considerations, from Men capable of performing them’ and the like (p. 184).²³⁾ These remarks suggest that the perfect rights including labour-based property rights are prerequisites of the public good.

Perhaps, Hutcheson may still be able to argue that the perfects rights could be *adjusted* or *regulated* by the ideal of the public good. Indeed, we seem to be able to adjust or regulate the *degree* to which particular holders of perfect rights can control their lives, possessions, etc. Or we may be able to limit the *range* of those objects in which people have perfect rights. We cannot go into this issue any further, but it is fairly clear that in the *Inquiry* he leaves unsolved the question as to what exact connection holds between rights and the public good. As we shall see below, however, Hutcheson does show in his account of the foundation of property that one particular

23) Something should also be said about the status of ‘imperfect rights’ here. They are the kind of rights which ‘when universally violated, would not necessarily make Men miserable’; the violation of these rights ‘only disappoints Men of the Happiness expected from the Humanity or Gratitude of others’ (*Inquiry*, p. 184). To use force for the protection of imperfect rights would ‘occasion greater Evil than the Violation of them’; moreover, it would ‘deprive Men of the greatest Pleasure in Actions of Kindness, Humanity, Gratitude’. Included among the imperfect rights are ‘those which the *Poor* have to the Charity of the Wealthy; which all Men have to Offices of no trouble or expence to the Performer; which Benefactors have to returns of Gratitude’ (*ibid.*, p. 184).

species of perfect rights, i.e. the property rights of individuals, can be justified by their contribution to the public good.

Let us see how Hutcheson explains the foundation of property in the *Inquiry*. He begins by putting forth the Lockean claim that ‘probably nine Tenths, at least, of the things which are useful to Mankind, are owing to their Labour and Industry’ (p. 187). He introduces this statement in order to claim that with a growth of population, the natural product of the earth ceases to be ‘sufficient for their Support, or Ease, or innocent Pleasure’. He then advances another claim that ‘a necessity’ arises for ‘the increasing system, that such a Tenour of Conduct be observ’d, as shall most effectually promote Industry; and that Men abstain from all Actions which would have the contrary effect’ (*ibid.*). Given the necessity to have a system which promotes industry, Hutcheson goes on to analyse various motives to industry. After observing that ‘general Benevolence alone, is not a Motive strong enough to Industry, to bear Labour and Toil, and many other Difficultys [sic] which we are averse to from Self-love’ (*ibid.*), Hutcheson argues that we need some stronger motives to industry, such as attractions of blood, friendship, gratitude, motives of honour and even of external interest. ‘Self-love’, he says, ‘is really as necessary to the Good of the Whole, as Benevolence’ (*ibid.*). Hutcheson’s stress on the role of self-love seems to have received little attention from commentators on his moral philosophy, but he actually justifies the right of property by reference to the function of self-love as an intermediary for the good of the whole society. If we deprive any person of the fruit of his labour, says Hutcheson, it takes away ‘all Motives to Industry from Self-love, or the nearer Ties; and leaves us no other Motive than general Benevolence’ (p. 188), but as we have seen, the general benevolence is too weak a motive for industry and labour. Moreover, taking away the fruit of one’s labour ‘exposes the Industrious as a constant Prey to the Slothful, and sets Self-love against Industry’ (*ibid.*). In short, the labour-based property serves as an effective motive to industry, and this is ‘the Ground of our Right of

Dominion and Property in the Fruits of our Labours' (*ibid.*).²⁴⁾ Thus property rights in the fruits of our labours are justified since they stimulate self-love and encourage labour and industry, which in turn contribute to the good of the whole society. Hutcheson's account is functionalist or utilitarian in the sense that it stresses the effectiveness of a system of property for the general increase of industry. This can now be seen as an instance of Hutcheson's attempt to justify one species of perfect rights on the grounds of the public good. What he did was to seize upon the consequentialist part of Locke's unilateralism, and he recast it in terms of self-love and motives to industry.²⁵⁾

3.2 Hutcheson's Mixed Unilateralism in the *Short Introduction*

In the *Short Introduction*, Hutcheson adds some remarks which seem to clarify the relationship of rights to the public good, which was left obscure in the *Inquiry*. The 'primary notion of right', says Hutcheson, 'is prior to that of a law, nor does it always include a reference to the most extensive interest of the whole of mankind'.²⁶⁾ The reason for this is that 'by our natural sense of right and wrong, and our sympathy with others, we immediately approve any persons procuring to himself or his friends any advantages which are not hurtful to others, without any thought either about a law or the general interest of all'.²⁷⁾ Thus Hutcheson proposes a bottom-up method of calculating the general interest of all, and links it to

24) *Ibid.*, pp. 186-187.

25) We should also note that in sharp contrast with this account of the foundation of property, Hutcheson has an independent account of the *moral* evaluation of the actions which respect the perfect rights of others. The fulfilling of 'the perfect Rights of others', hence, of the property rights of others, 'has little Virtue in it' (*ibid.*, p. 191). For it produces no more positive good than there was before.

26) Francis Hutcheson, *A Short Introduction to Moral Philosophy, Collected Works of Francis Hutcheson*, vol. IV (Hildesheim: Georg Olms, 1969), p. 120; T ed., p. 111. For T ed., see note 18. The page numbers of this edition will be indicated below, along with those of the Georg Olms reprint edition.

27) *Ibid.*; T ed., pp. 111-112.

God's design: 'the general happiness is the result of the happiness of individuals', and God has 'for the benefit of each individual, and of families, implanted in each one his private appetites and desires, with some tender natural affections in these narrower systems'. Consequently, actions following from these private desires and affections are 'naturally approved', 'unless they should appear hurtful to others, or opposite to some nobler affection'.²⁸⁾ On the other hand, however, Hutcheson does not forget to add the following:

And yet this we must still maintain, that no private right can hold against the general interest of all. For a regard to the most extensive advantage of the whole system ought to control and limit all the rights of individuals or of particular societies.²⁹⁾

This insistence on the general interest, however, is vacuous if he genuinely defines (as he does) the very notion of the general interest in terms of the interest of all individuals. So once again we are left in a state of uncertainty as to how to understand Hutcheson's method of controlling and limiting the rights of individuals by the general interest or the public good. But we should pass over this general question, and move on to Hutcheson's classification of the rights of individuals and his account of the foundation of property.

Hutcheson classifies the rights of men 'according as they immediately and principally regard either the benefit of some *individual*, or that of some *society* or body of people, or of *mankind* in general as a great community', and divide the rights into three kinds, '*private, publick, and common to all*'.³⁰⁾ To discover the 'private rights' of individuals, we should first look at 'their senses and natural appetites, recommending and pursuing such things as tend to their happiness', and then turn our views 'toward the general

28) *Ibid.*; T ed., p. 112.

29) *Ibid.*; T ed., *ibid.*

30) *Ibid.* p. 141; T ed., p. 128.

interests of society, and of all around them'. If we find 'no obstruction to the happiness of others, or to the common good', then we see that it is 'the right of each individual to do, possess, or demand and obtain from others, whatever may tend to his own innocent advantage or pleasure'.³¹⁾ He goes on to classify these private rights into *natural* and *adventitious* rights, and then divides the private natural rights into *perfect* and *imperfect* rights, giving specific examples of the two categories of rights.³²⁾

The account of the grounds of property Hutcheson offers in the *Short Introduction* highlights the lack of *humanity* shown in the act of intercepting the product of someone's honest labour, while it occasionally evokes the notion of equitableness and justice. 'Our desire of self-preservation and our tender affections', says Hutcheson, 'excite us to occupy or acquire things necessary or useful for ourselves and those we love'.³³⁾ 'Our sense of right and wrong also shews, that it must be inhuman and ill-natured, for one who can otherways subsist by his own industry, to take by violence from another what he has acquired or improved by his innocent labours'.³⁴⁾ Now a general diligence and labour are required for maintaining mankind, but 'no man would employ his labours unless he were assured of having the fruits of them at his own disposal', i.e. unless he had a property in the fruits of his labours.³⁵⁾ Hutcheson discusses several methods of acquiring property, stating first that the 'original property', as distinct from a derived one, 'arises from the first occupation of things formerly common'.³⁶⁾ Anyone may first occupy particular portions of the spontaneous fruits of the earth 'either by first discovering them with intention immediately to seize them, or by any act or labour of his catching or enclosing them'. That first occupant is to be regarded as the legitimate 'proprietor' because 'if

31) *Ibid.*; T ed., pp. 128-129.

32) *Ibid.*, pp. 141-145; T ed., pp. 129-132.

33) *Ibid.*, p. 150; T ed., p. 135.

34) *Ibid.*; T ed., *ibid.*

35) *Ibid.*; T ed., p. 136.

36) *Ibid.*, p. 152; T ed., p. 137.

any other person, capable of subsisting otherways, would wrest from him what he had thus acquired, and defeat and disappoint his labours, he would plainly act inhumanly, break off all friendly society, and occasion perpetual contention'.³⁷⁾ This appeal to the sense of humanity may be seen as Hutcheson's attempt to unpack what is involved in Locke's 'joining' and 'mixing' metaphor.

Hutcheson also makes a critical observation on Locke's account of the foundation of property. He says that it is 'trifling to imagine that property is any physical quality or bond between a man and certain goods, and thence to dispute that there's no such force or virtue in first espying, touching, striking, or inclosing anything, as to constitute a sacred right of property'.³⁸⁾ The real question we should be addressing, in Hutcheson's view, is this: 'what causes or circumstances shew, that it is human and equitable toward individuals, and requisite also to the maintenance of amicable society, that a certain person should be allowed the full use and disposal of certain goods; and all others excluded from it'.³⁹⁾ Hutcheson claims that it is 'inhuman and unjust, without the most urgent necessity, to obstruct the innocent labours others have begun and persist in, or by any speedier attempt of ours to intercept their natural profits'.⁴⁰⁾ He also discusses how to settle disputable cases of occupation, where several individuals make conflicting claims. According to Hutcheson, we should consider 'reasons of humanity' and make a decision. But what should concern us 'chiefly' is that 'the natural fruits of no man's honourable or innocent labours should be intercepted; or any honest industrious attempts defeated'. If this consideration applies to all parties involved, Hutcheson adds, the goods in question should probably be regarded as the 'joint property of all'.⁴¹⁾ But if this is impossible, then we should follow our laws

37) *Ibid.*; T ed., *ibid.*

38) *Ibid.*, pp. 152-153; T ed., pp. 137-138.

39) *Ibid.*, p. 153; T ed., p. 138.

40) *Ibid.*; T ed., *ibid.*

41) *Ibid.*, p. 154; T ed., p. 139.

or customs and settle disputes for 'common utility' and 'peace'.⁴²⁾

As for the original community of things, Hutcheson affirms the view of Pufendorf and Carmichael that 'all things were left by God to men in that community called *negative*, not *positive*',⁴³⁾ and claims that we have no need to bring in 'any old conventions of all men, to explain the introduction of property'.⁴⁴⁾ This clearly shows that Hutcheson is a unilateralist about the origin of property. As we have seen above, his positive account about the grounds of property in the *Short Introduction* is a mixed account. It primarily stresses the sense of inhumanity involved in taking away the fruits of anyone's honest labour, and it even evokes the sense of inequity or injustice. And additionally, it refers to common utility and peace. In the *Inquiry* Hutcheson's view is predominantly functionalist or utilitarian, whereas in the *Short Introduction* he stresses the sense of humanity first, and additionally takes into account common utility and peace.

It should be added that this interpretation of the *Short Introduction* is in accord with what Hume said about its Latin original. In his letter to Hutcheson, dated 10 January 1743, Hume thanked him for sending a copy of *Institutio Compendiaria*, and made some critical observations. With reference to book 2, chap. 6, entitled 'De Domini Acquirendi Rationibus' ('The Methods of Acquiring Property'), Hume remarks that in explaining the origin of property, Hutcheson sometimes appealed to 'private Benevolence towards the Possessors of the Goods', and at other times to 'public Benevolence'.⁴⁵⁾ Hume says, 'neither of which seem[s] to me satisfactory. You know my Opinion on this head'.⁴⁶⁾ He has in mind that Hutcheson already knew Hume's own conventionalist account of the origin of property, one which he presented in *A Treatise of Human Nature*

42) *Ibid.*, p. 155; T ed., pp. 139.

43) *Ibid.*, pp. 158-159; T ed., pp. 141-142.

44) *Ibid.*, p. 159; T ed., p. 142.

45) J. Y. T. Greig (ed.), *The Letters of David Hume* (London: Oxford University Press, 1932), vol. 1, p. 47.

46) *Ibid.*

3.2.2. Hume clearly took Hutcheson's claim that it is inhuman to defeat and disappoint a man's labour as an appeal to 'private Benevolence', while he saw Hutcheson's references to 'common utility' and 'peace' as a resort to 'public Benevolence'. Hume treated Hutcheson's account of property as a mixed one, and he was right in doing so.

Before we leave behind Hutcheson's unilateralism, a brief mention should be made of the fact that it is also found in *A System of Moral Philosophy* (posthumously published in 1755). This work deserves our attention here since it sheds further light on what is involved in Hutcheson's notion of humanity, as well as how he combined it with his appeal to common utility or the public good. Despite its posthumous publication, the work seems to have been written earlier than the *Institutio Compendiaria*. According to William Robert Scott, Hutcheson's letters suggest that its manuscript was nearly finished by September 1737, or February 1738.⁴⁷⁾ For our purpose, it is sufficient to note the main points that he presented in the *System*. First, a right arises not only when a human action tends to the good of society, but when it tends to 'the interest of the individual consistently with the rights of others and the general good of society'.⁴⁸⁾ Secondly, the origin of property should not be sought in any preceding compact of the kind which Grotius or Pufendorf proposed.⁴⁹⁾ Thirdly and finally, property rights are grounded on two foundations, i.e. 'the right of the first occupant' and 'labour'. The right of the first occupant is based on the sense of humanity (which we have discussed above), while the 'labour' is linked further to 'both the immediate feelings of our hearts, and the consideration of the general interest'.⁵⁰⁾

Hutcheson further describes the 'immediate feelings of our hearts'.

47) William Robert Scott, *Francis Hutcheson: His Life, Teaching and Position in the History of Philosophy* (New York: Augustus M. Kelley, 1966; first published in 1900), p. 113.

48) *A System of Moral Philosophy* (1755), vol. I, in *Collected Works of Francis Hutcheson* (Hildesheim: Georg Olms, 1969), vol. V, p. 253.

49) *Ibid.*, p. 331.

50) *Ibid.*, p. 322.

There are 'strong feelings in our hearts' that pertain to the acquisition of goods by labour. We feel 'a sense of liberty within us, a strong desire of acting according to our own inclinations, and to gratify our own affections, whether selfish, or generous'; we have 'a deep resentment of any obstruction given to these natural desires and endeavours'; and we feel that we disapprove of any such obstruction as 'unkind and cruel, where no important publick interest requires it'.⁵¹⁾ On the other hand, Hutcheson explains 'the general interest' in the following terms: the most effective way of exciting men to 'constant patience and diligence in all sorts of useful industry' is to give every one of them the right of property, and to secure 'to everyone the fruits of his labour'. By this method, they can engage in labour, while entertaining 'the hopes of future wealth, ease, and pleasure to themselves, their offspring, and all who are dear to them'.⁵²⁾ Thus *A System of Moral Philosophy* confirms that in justifying property rights, Hutcheson appeals to the sense of humanity as well as the general interest of all. He also clarifies what is involved in the 'strong feelings in our hearts' which are connected with the labour-based acquisition of goods.

Concluding Remarks

On the whole, Hutcheson's works clearly show that there are diverse strategies and arguments that one could develop within the framework of unilateralism. They may even make us feel uncertain whether they form a single coherent system. For the purpose of giving a narrative of post-Lockean unilateralism, it is not necessary to show that Hutcheson or any other thinker really had a coherent system. All I want to claim is that there is a significant line of continuity from Locke onwards, while Barbeyrac, Carmichael, and Hutcheson developed various unilateralist strategies and arguments in explaining the origin and justification of property. As my narrative has shown, Barbeyrac and Carmichael adopted Locke's main

51) *Ibid.*, pp. 319-320.

52) *Ibid.*, p. 321.

ideas and supplemented them with one or two ideas of their own, while Hutcheson mixed his functionalist and humanitarian views with Locke's insights. At times, Hutcheson developed his own ideas and arguments in new directions. So we are entitled to say that Hutcheson modified Locke's unilateralism while the other two virtually inherited it. But this should not be taken to mean that Hutcheson had only tenuous connections with Locke's unilateralism. His account in the *Inquiry*, as we have seen, was inspired by the consequentialist part of Locke's justification of unilateral appropriation, i.e. what Locke had said about the 'value'-enhancing capacity of human labour. The accounts offered in the *Short Introduction* and *A System of Moral Philosophy* also appealed to the general interest of all, but they focused more sharply on the special relationship holding between a labourer and a laboured-on object, and a spectator's reaction to a hypothetical interception of the object. As such, it was an attempt to clarify a set of ideas involved in Locke's 'joining' and 'mixing' metaphor. Given these connections between Locke and Hutcheson, we can clearly see that Barbeyrac, Carmichael, and Hutcheson were united in defending the unilateral mode of appropriation, and rejecting the claim that legitimate appropriation requires the consent or approval of others. In short, they form a post-Lockean tradition of unilateralism.

To conclude this narrative, I should like to indicate what happened to this tradition at an early stage. It actually came to be attacked by Hume in book 3 of *A Treatise of Human Nature* (1st edition, 1740) and *An Enquiry concerning the Principles of Morals* (1st edition, 1751). Of course, there are many thinkers who have tried to revive unilateralism since Hume's time. Robert Nozick⁵³ is one of the recent examples. But the fact remains that Hume was one of the first philosophers who explicitly criticized Locke's unilateralism and rejected Hutcheson's version as well. Hume's own account of the origin of property is a conventionalist one, so it is only natural that he rejected any version of unilateralism. Indeed, Hume's is a

53) See Robert Nozick, *Anarchy, State and Utopia* (Boston: Basic Books, 1974), chap. 7, sec. I.

far more refined version of conventionalism than Grotius's, Hobbes's, or Pufendorf's.⁵⁴ But what we should note here is that besides providing his conventionalist account in the *Treatise* 3.2.2, Hume launched specific criticisms against Locke's unilateralism (THN 3.2.3.6 n. 72).⁵⁵ In the *Enquiry*, Hume rejected Hutcheson's version while incorporating part of his insights into his own system (EPM Appx. 3.10 n. 65).⁵⁶ It goes beyond the scope of this paper to discuss Hume's criticisms against Locke, or to explore his relationship to Hutcheson's account. But Hume did try to put an end to the early modern tradition of unilateralism. This fact provides a clue as to where we should end the present narrative, as well as where we should begin. We have started with Locke, and traced the development of post-Lockean unilateralism through the works of Barbeyrac and Carmichael, and the early and later works of Hutcheson. Since this tradition came to an end with Hume's attack, at least temporarily, it is appropriate that we close our narrative at this point.

54) A careful comparison is needed for Hume's conventionalism and his predecessors'. For a comparison of Hume and Grotius, see my Japanese article entitled 'Grotius no Shizenhogaku kara Hume no Rieki Hogaku e [From Grotius's Natural Jurisprudence to Hume's Interest Jurisprudence]', in *Shiso*, no. 1052 (Tokyo: Iwanami Shoten, December 2011), pp. 105-126.

55) David Hume, *A Treatise of Human Nature* [abbreviated as THN], A Critical Edition, vol. 1, edited by David Fate Norton and Mary J. Norton (Oxford: Oxford University Press, 2007).

56) David Hume, *An Enquiry Concerning the Principles of Morals* [abbreviated as EPM], A Critical Edition, edited by Tom L. Beachamp (Oxford: Oxford University Press, 1998).

Abstract

There are two distinct lines of thought which we can find in the early modern European discourse on the origin and justification of property. One is a conventionalist line represented by Grotius, Hobbes and Pufendorf. The other is a unilateralist one, which was hinted at by some Puritan colonists in America and came to be clearly formulated in the language of Locke. The former makes a mutual compact of human beings a necessary condition for the emergence and justification of property. The latter dispenses with the compact altogether, and claims that a unilateral acquisition of natural resources under certain favourable circumstances sufficiently explains and justifies property. It is Locke who proposed his unilateralist theory of appropriation as an alternative to the earlier conventionalism of Grotius, Hobbes, and Pufendorf.

The purpose of this paper is to give a narrative of the development of post-Lockean unilateralism. It considers the works of Jean Barbeyrac, Gershom Carmichael, and Francis Hutcheson. It seeks to provide textual evidence to show that there is a significant line of continuity from Locke to Hutcheson, while it also involves the use of diverse strategies and arguments. Barbeyrac and Carmichael inherited Locke's basic principles though they added one or two claims of their own. Hutcheson modified Locke's unilateralism by combining his functionalist and humanitarian views with Locke's insights. In the *Inquiry* Hutcheson seized upon the consequentialist part of Locke's unilateralism, and recast it in terms of self-love and motives to industry. In the *Short Introduction*, he appealed to the general interest of all, but he focused more sharply on the sense of humanity or the lack of it by discussing the case where one intercepts the product of another's honest labour. And in *A System of Moral Philosophy*, Hutcheson linked human labour to 'the immediate feelings of our hearts' as well as 'the consideration of the general interest'. Despite the diverse views found in Hutcheson's early and later works, it is possible to see that Barbeyrac, Carmichael, and Hutcheson are united in defending the unilateral mode of appropriation, and rejecting the claim of conventionalism.