I Introduction

James Tully and others have argued recently that the theory of property Locke defends in the Second Treatise was designed to justify European settlement on the lands of North American Natives. If this view becomes generally accepted, and Tuck suggests it will be, doubts may arise about the impartiality of Lockean property theories. Locke, as is well established and documented again by Tully, had huge vested interests in the European settlement of North America and possibly in the enslavement of Native Peoples. Doubts about Locke may reflect on all rights theories of property and thus bring into question 'one of the major political philosophies of the modern world' (Tully, 'Rediscovering America,' 165). Raising these doubts is part of Tully's declared intention (Tully, 'Rediscovering America,' 166). His article tries to show that the Native systems of property and government which Locke defines away as


illegitimate are in fact interesting and potentially beneficial alternatives to Lockeian individual rights theories.

In this paper I will accept Tully's scholarship on the purposes of Locke's property views and Tully's claims about the benefits of considering Native alternatives. There is, however, a philosophical issue which arises out of this which Tully does not systematically consider. Neither biased origins nor unpleasant consequences proves a theory of rights incorrect. The question is this: when 'Locke defines property in such a way that Amerindian customary land use is not a legitimate type of property,'\(^3\) does he have good arguments to establish his case? In other words, given our improved understanding of Native systems of property,\(^4\) it is time to reassess the philosophical underpinnings of Lockeian rights theory to see if Locke has successfully refuted Native rights claims to land ownership. If not, then Native property rights may not only be an alternative to Lockeian property theories; they may be justified by Locke's own principles. Did Locke get his theory of property rights wrong, and/or did he apply it incorrectly to the European settlement of North America? There may be a need to adjust Lockeian-style property rights theory to eliminate Eurocentric and unjustified assumptions. The purpose of this paper is to look at this issue.

The aim, of course, is to identify unjustified assumptions; Eurocentrism is a good reason for suspicion but is not in itself grounds for rejection. The technique used in this paper to assess the possible Lockeian basis of Native property claims will be to ignore Locke's views on the 'proper' use of land and return to what Tully calls the 'background premise[s]' of Locke's argument (Tully, 'Rediscovering America,' 173). The result of this exercise will be to show that Native property claims can be justified on Lockean grounds unless Eurocentric assumptions, including an assumption in favor of certain farming techniques, are built into the argument as background premises. The implication of this result for current rights theories of property are briefly indicated.

Central to this reassessment will be, of course, Locke's theory of original appropriation and the 'right of settlement' that derives from it.\(^5\) In particular, this paper is an analysis of the issues that are raised if a

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3 Tully, 'Rediscovering America,' 167; cf. also Arneil, 609.

4 By 'our,' I mean Euro-American philosophers; Native Americans have not lost the understanding they always had.

5 Much of the debate between European and Native property claims depends on other theories of rights and property such as treaty rights, aboriginal rights, or the right of conquest; this paper deals only with the Lockeian theory of property.
Locke’s Theory of Original Appropriation  

Lockean theory of original appropriation is applied to the land claims of the first European farmers who settled in the parts of North America then inhabited by the Iroquois Confederacy and other Iroquoian peoples. The nature of the Iroquoian economy, a mixture of farming and hunting, makes this a useful test case.

The next section of this paper sketches the theory of original appropriation and the Lockean proviso. Locke’s own account in the Two Treatises of Government is used, especially, of course, the Second Treatise, Chapter 5. Emphasis will be placed on identifying the background premises and how they are used in Locke’s argument. This section also uses Locke’s theory of original appropriation based on labor to define a ‘right of settlement’ which might apply to homesteading farmers moving into Iroquoian territory.

Section III of the paper discusses Iroquoian land used for agriculture and how a Lockean-style theory of property might view claims to ownership based on a radically different type of farming than that which Locke was familiar with. This attempt to apply Locke’s theory of property to a culture with a non-European economy and legal system of ownership brings into sharp focus some assumptions that Locke appears not to have been aware of. Locke assumed that before the establishment of civil society enclosure was likely to be physical, that property must be owned by individual people, and that effort invested in land must aim at permanent improvement. The effect on Locke’s argument of varying each of these assumptions is considered.

Section IV uses Locke’s property theory to compare the ownership claims of the settlers and Iroquoians to land the Iroquoians used for hunting rather than agriculture. This task will necessitate a careful look at the meaning of the Lockean proviso and the assumptions that underlie it.

The last section re-examines the status of labor-based original appropriation theories assuming the lessons of the Iroquoian case can be

6 I will follow Trigger’s usage in which ‘Iroquoian’ refers to the Hurons, the peoples of the Five (later Six) Nation Confederacy, and other peoples speaking languages of the same group. ‘Iroquis’ will refer only to the peoples of the Five (or Six) Nation Confederacy. Trigger points out that the Iroquois and Hurons, despite their on-going warfare with each other, had similar economies in the immediate pre-contact period (12). I am not aware of any differences in their economies which affect the arguments of this paper. See Bruce Trigger, The Huron: Farmers of the North (Fort Worth: Holt, Rinehart and Winston 1990).

7 The Second Treatise will be referred to as II followed by the paragraph number from J.W. Gough’s edition (Oxford: Basil Blackwell 1942).
applied more generally. All large land masses on earth have been occupied by indigenous people for many thousands of years. Suppose, as is asserted by Alasdair MacIntyre,\(^8\) that as a matter of historical fact there was no labor-based original appropriation by the forbearers of the current owners of land anywhere; what are the implications of this for Lockean theories of property rights? Original appropriation has certainly been claimed as historical fact for settlers in North America and elsewhere; this was claimed by Locke,\(^9\) and more recently by other philosophers, especially libertarians.\(^10\) But if these historical claims have no basis, is there some non-historical interpretation of original appropriation which is useful? The issues are somewhat similar to some well-known aspects of the social contract debate.

I conclude that, based on Lockean type property theories, Iroquoian peoples had a natural right to the land they occupied at the time of contact. In showing this, I hope that the limits of property theories based on original appropriation and the Lockean proviso have been clarified. The implications of this conclusion for Iroquoian land claims based on other theories of property are not considered.

II The Lockean Theory of Property

In the beginning, God gave all of nature to humankind in common (II, 25); all people had an equal right to gather natural resources for their own use. Once gathered (or ‘appropriated,’ II, 26), an item belonged to the person who made the effort to gather it, but nature itself remained common property. One owned the apples one picked (II, 28), but not the apple tree; the deer one hunted (II, 30), but not the forest. Ownership was conferred by the effort expended to make an item available for personal use; an object became personal property when someone ‘hath mixed his labour with’ it (II, 27). Once acquired, owners of objects were entitled to dispose of them in any fashion they chose except letting them spoil unused.

\(^8\) Alasdair MacIntyre, *After Virtue* (Notre Dame, IN: University of Notre Dame Press 1984), 251


\(^10\) For example, it was claimed by Jan Narveson at the 1994 Learned in Calgary in response to an explicit question.
When applied to land, the theory holds that all land was originally owned in common, but that anyone who chose could acquire a rightful property claim to a specific piece of land by laboring to make it more productive. One could, and this example is appropriate for the woodlands of North America, clear the forest, plough the soil, and cultivate crops.\(^1\) This would entitle a person to own not only the crops but also the land that had been cleared.

The portion of the Lockean theory outlined so far refers to the original appropriation of property — that is, how a piece of land goes from being part of the common property of all people to being the private property of a particular individual. Once a piece of land is private property, the owner, while alive, can choose to transfer ownership to any other person and, upon dying, can designate anyone as heir (subject to the owner’s moral responsibility to dependents). These new owners and all subsequent owners need not invest their labor in the land; the labor requirement applies only to original appropriation.

This theory of appropriation has an implied limit in that a person is not entitled to acquire more land that they can productively cultivate. Locke also places two constraints on appropriation of land.\(^1\) First, a person cannot claim so much land that it produces more than the owner can consume before the produce goes bad. The other constraint is the famous Lockean proviso; a person is only entitled to transfer property from common to private ownership if ‘enough and as good is left for others.’ The interpretation of this proviso is much discussed,\(^1\) and later in this paper it will be discussed with reference to the settlers on Iroquoian territory. For various reasons which will not be gone into here, Locke applies these constraints only to the original appropriation and not to subsequent owners of land.\(^1\) Thus neither the labor requirement nor the constraints apply to subsequent owners.

\(^1\) That Locke had precisely this in mind is argued by Arneil, 602-3; and by James Tully, ‘Aboriginal Property and Western Theory: Rediscovery of a Middle Ground,’ in Ellen Frankel Paul, Fred D. Miller, and Jeffrey Paul, eds., Property Rights (Cambridge: Cambridge University Press 1994), 160. Locke’s phrase is ‘tills, plants, improves, cultivates...’ (II. 32).

\(^1\) Tully refers to these as the internal or spoilage limit, and the external or sufficiency limit; see James Tully, ‘Property, Self-Government and Consent,’ Canadian Journal of Political Science 28 (1995), 120.

\(^1\) See, for example, Robert Nozick, Anarchy, State and Utopia (New York: Basic Books 1974); and Jan Narveson, ‘Property Rights: Original Acquisition and Lockean Provisos’ (Unpublished manuscript, University of Waterloo 1995).

\(^1\) For a discussion of how Locke applies the constraints only to original acquisition,
Interpreters of Locke have argued variously for labor, merit, efficiency, and desert as the basis of Locke's theory of original appropriation (cf. Shrader-Frechette, 201-19). However, underlying any or all of these is Locke's theory of natural rights and natural law. In a state of nature, people can be aware of and are morally bound by the Law of Nature. Ashcraft usefully distinguishes natural law as the moral foundation of Locke's theory from empirical claims which Locke uses to apply natural law to specific historical situations, like seventeenth century North America (Ashcraft, ch. 2, esp. 50-6). In these terms, what the present paper is doing is returning to the moral or natural law foundations of original appropriation and reassessing the application of this to North America using recent empirical information unavailable to Locke.15

The Law of Nature, among other things, imposes on all people a duty to undertake actions which tend to preserve the human species.16 Because certain forms of labor increase the likelihood of preservation, we have a duty to perform those kinds of labor. Since original appropriation of property encourages and makes possible those kinds of labor, original appropriation of private property becomes a right.17 This is related to efficiency in that more efficient use of land also tends towards human preservation. However, Locke nowhere argues that efficiency overrides private property once ownership is established: his theory is obviously not a utilitarian theory in which land must always be reassigned to the most efficient use. Thus efficiency is only relevant at the time of original appropriation and only in so far as it helps Locke derive property rights

see Macpherson 203-20. Shrader-Frechette argues against Macpherson and others on this point (206-19); I will take the view that Natural Law continues to apply after original acquisition, but that the specific constraints do not apply unless they are entailed by Natural Law in particular situations, which they are generally not for Locke in commercial society. This position may be consistent with Shrader-Frechette's discussion. See C.B. Macpherson, The Political Theory of Possessive Individualism (Oxford: Oxford University Press 1962); and Kristin Shrader-Frechette, 'Locke and the Limits on Land Ownership,' Journal of the History of Ideas (1993).

15 Locke had in fact read extensively the writings about North American Natives that were available in his day; cf. Tully, 'Rediscovering America,' 168. He obviously considered empirical information relevant.


17 For a discussion of the debate surrounding this interpretation of Locke, see Tully, 'Property, Self-Government and Consent,' 113-8.
from natural law. The duty to preserve humanity is the primary background premise used in the current paper.

This sketch of original appropriation, when applied to the arrival of Europeans in North America, can define what might be called a right of settlement. On this theory, an individual European would acquire ownership of a particular piece of North American land if all of the following conditions were met:

a) The Europeans invested their labor in making the land more productive, we will assume by clearing and cultivating it.

b) The land was common property prior to the Europeans' arrival either because there were no indigenous people in the area or because the indigenous people had never transferred the land from common ownership to private ownership by original appropriation.

c) The European settlers did not claim too much land, either by claiming more than they could cultivate, or by claiming land that produced more than they could consume.

d) The settlers left 'enough and as good' for others.

If all these conditions were met, the Lockean theory of original appropriation would justify the right the settlement and the piece of land that was cleared would be transferred from common to private property. Once it became private property, ownership could be transferred to other people by consent or inheritance but the above conditions would not apply to subsequent owners.

Although Locke nowhere has a sustained discussion of the right of settlement, he repeatedly refers to the natives of North America as an example of people living either in a state of nature or under the 'youngest' forms of civil society (II, 49; II, 108).18 Gathering these references together, we can sketch Locke's image of Native Americans. In the chapter on property it is clear that Locke thought most of America was still owned in common by mankind (II, 26) — meaning all of mankind, not just Native Americans. He also seemed to think that most of America was vacant (II, 36). Native Americans wandered wherever they wanted in a vast, empty continent; Locke seemed quite concerned that they might get lost (II, 36). He did not seem to think that they had identifiable territories, cultivated farm land, or assigned hunting grounds. Economi-

18 See also James Tully, 'Rediscovering America,' 169.
cally, they hunted and gathered; nowhere does Locke acknowledge agriculture outside the civilizations of Meso and South America.

Trade, according to Locke, was in the form of barter and was limited because Native Americans had no money (II, 49). For the most part, they had not entered civil society because they had no regular government (II, 108).\(^{19}\) When necessary, decisions would be made by 'the people' or their representatives in a council. Locke’s image is of free and independent individuals living in the state of nature coming together to make decisions with no individual claiming power or authority over any other (ibid.). Only when fighting a war would they elect as temporary commander the bravest or strongest man present.

How accurate is this picture as applied to the Iroquoian of the seventeenth and eighteenth centuries? Not very.\(^{20}\) The issue of mostly vacant land held in common will be discussed later in this paper. The Iroquoian economy was based on agriculture, with hunting and gathering important supplements to the three cultivated staples — corn (i.e. maize), squash, and beans. Money of various sorts played some role in the economy, more as a medium of exchange than as stored value; Locke was right in thinking that the Iroquoian did not have an insatiable desire to acquire endless amounts of gold or to accumulate unlimited possessions of any sort (Trigger, 48, 95). The Iroquoian did have extensive trade connections throughout North America before the European arrival. And long before attempts were made to settle the lands, the fur trade with the French, Dutch, and British had become a significant part of their economy.

On government, Locke was completely wrong. The Iroquois had formed the Five (later Six) Nation Confederacy as a sophisticated, complex, and well-defined system of governance, and the Huron were a confederacy of four peoples (Trigger, ch. 6). The Iroquois confederacy had been formed in the fifteenth century (prior to Columbus); it was functioning throughout Locke’s lifetime and throughout the eighteenth century when settlers were moving onto Iroquoian lands. Indeed, the confederacy governance system still exists and partially functions to this

\(^{19}\) Also Tully, 'Rediscovering America,' 169. In 'Aboriginal Property and Western Theory' 164, Tully argues that Locke gave three reasons for not recognizing that Native Americans had government. These are: the war chief could not 'declare war or peace,' 'the councils often appointed ad hoc arbitrators of justice,' and there was a 'lack of crime, property disputes, and litigation.'

\(^{20}\) Tully discusses the inaccuracy of Locke's views of the property and government systems of Native Americans, including the Iroquois, in 'Aboriginal Property and Western Theory,' 163.
day; see, for example, the claims made to sovereign nation status during the 1990 Oka crisis (Tully, 'Aboriginal Property and Western Theory,' 176-7). However, Iroquoian government had neither the sort of authority to enact laws nor the executive power and control that European governments were used to.  

III Right of Settlement and Iroquoian Agriculture

Iroquoian agriculture of the seventeenth and eighteenth centuries was organized in a very different manner than that in England at the same time. It was subsistent in the sense that crops were not normally produced for market and were not sold for money. Local exchange of produce would, of course, be common, though not necessarily on a system of item by item bartering. Reciprocal gift-giving, tradition, and distribution rituals played more important roles than barter (Trigger, 46-8). The Huron, for example, refused to haggle when trading (Trigger, 47). Sharing within extended families and communities established and maintained a substantial degree of economic equality (Trigger, 141, 144-5). Foodstuffs were not part of the extended trading patterns though the Huron traded agricultural products for furs and meat with the Algonkians to the north (Trigger, 1).

Women were responsible for planting, tending, and harvesting crops. Since crop tending was a communal activity based on clan segments or extended families, land was not owned by individuals, but by communities, and assigned by tradition to clan segments (Trigger, 31; Carlson, 69). The absence of draft animals meant limited preparation of the soil, and the absence of metal axes made clearing the forests very difficult (Trigger, 30, 34). A moral value system based on harmony with nature, rather than the belief Locke held that it was a moral duty to subdue nature, may also have limited forest clearing. The fact that the Iroquoians did not pasture animals (Trigger, 39) had two implications: land did not have to be physically enclosed in cow-proof fences; and the lack of manure meant cultivated land would have to be abandoned after

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ten to thirty plantings (Trigger, 30). For these technical reasons, the Iroquoian did not accept the seventeenth-century English idea that a piece of farmland could be continually improved and made more productive.

This brief sketch reveals that even for agriculture, Iroquoian land usage violated several assumptions Locke made. The following issues need to be discussed:

a) Must enclosure be physical?

b) Can land be owned by groups of people, or can property only be owned by individuals?

c) Must the labor which confers original ownership be aimed at permanent improvement of the land, or is temporary improvement of the land sufficient?

a. Enclosure.

Locke explicitly claims that land in North America was not enclosed, and connects this with his claim that such land was still common property. For example, he talks of ‘the wild Indian, who knows no enclosure, and is still a tenant in common’ (II, 26). Locke’s image of enclosure probably entailed physical barriers such as fences, hedges, ha-has, or dykes; these were normal in the England of his time. The need to contain pastured animals (sheep, horses, cows, etc.), and possibly the nature of English trespass laws, made physical barriers a necessary part of farming. Iroquoian farm land was generally not physically enclosed in this sense. This physical difference may have contributed to Locke’s and other Europeans’ failure to perceive Native land ownership systems,23 however, its relevance to Locke’s discussion of whether land in North America was still in common ownership is less clear. The problem is that once civil society is established, physical enclosure is clearly not relevant for Locke. People consent to the formation or continuance of government if the government provides effective recourse when their property rights are violated; what is essential to enclosure is that the boundaries of a

23 Cf., for example, Flanagan’s discussion (591-2) of John Winthrop’s ‘General Considerations for the Plantation in New-England’ (1629). It is clear from the quotation Flanagan gives that for Winthrop, it was the lack of physical enclosure (and the lack of ‘manurance’) that meant Indian lands were unowned and available for settlement. Thomas Flanagan, ‘The Agricultural Argument and Original Appropriation: Indian Lands and Political Philosophy,’ Canadian Journal of Political Science 22, 3 (1989) 589-602.
person's property be established in an agreed way, that trespass be defined, and that the landowner has access to a recognized impartial judge to enforce property claims. 24 None of this necessarily involves physical enclosure; Locke claims that laws are the 'fences to properties of all members of the society' (II, 222), and elsewhere says that 'the people hav[e] reserved to themselves the choice of their representatives as the fence to their properties' (II, 108). Laws, however, can only be fences once government is established. Locke quite clearly saw North America as being still in a state of nature (II, 49). In a state of nature land can be private property, but it is not fenced by laws and government since these do not exist. Enforcement of property claims is by the owner or anyone who sees a violation (Tully, 'Rediscovering America,' 169).

I want to argue that in a society where land has been removed from common ownership but government not yet formed, what constitutes enclosure is any system of recognizing land boundaries; government enforcement is not the issue since government does not exist at this stage. When Locke claims Indians have no way of enforcing property claims, this, on his own theory, only shows that Indians are in a state of nature; it does not show land is not enclosed as private property. For their land to be enclosed, the Iroquoian peoples need only have a system of recognizing, not necessarily enforcing, property claims. The Iroquoian peoples clearly did recognize 'enclosure' in this sense for both hunting and farmed land, even though physical enclosure may not have been usual. Hunting grounds and agricultural land were assigned to particular clan segments or families. These assignments lasted over many generations and hence became part of tradition; inheritance was not an issue since the land rights belonged to families not individuals. 25 Boundary and trespass disputes, if minor, were handled by local chiefs. Disputes between different nations of the Iroquois Confederacy would be settled through council meetings called and supervised by the Onondaga chiefs. Locke was probably right in suggesting Native leaders had only limited


power to make laws concerning land ownership and limited powers of enforcement. But these are not needed; only a system of recognizing land ownership is necessary for enclosure in a state of nature, and this they clearly had. Locke's image of North American natives running 'wild' (II, 26) in a huge forest without boundaries reflects only his failure to perceive non-physical enclosure; a non-Lockean discourse had recognized the nature of the Iroquoian government and property system as early as the seventeenth century.26

It can be concluded that, whatever Locke's image of enclosure may have been, physical enclosure is not necessary for establishing property rights on Locke's theory. Further, it is clear that Iroquoian land, whether used for agricultural or hunting, was 'enclosed' in the required sense that ownership was recognized by defined social structures.

b. Group Ownership.

Locke never questioned the assumption of English culture that property, including land, would be owned by individuals. In most cultures native to North America, agricultural land was owned by the clan segment or community (Roback, 17; Trigger, 32; Tully, 'Aboriginal Property and Western Theory,' 164-5). This difference has been analyzed from the perspective of economic efficiency (and hence from a utilitarian moral perspective) with the conclusion that 'property rights theory makes no particular claim that individual ownership is the only way or even the least costly way of internalizing externalities.... Resourses should be privatized over the group size that can best internalize the relevant externalities.'27 Roback argues that ownership of land by (extended) families and tribes was much more productive than the ownership by individuals which the Dawes Act forced onto Native Americans in the United States in 1887.

However, in this paper I am not interested in utilitarian (and hence economic) approaches to property. The question here is whether a Lockean labor justification of property rights must accept the individual as the correct or only property owning unit or whether families, clans, communities, or nations are possible.


27 Roback, 9, also see C. Leigh Anderson and E. Swimmer, 'Some Empirical Evidence on Property Rights of First Peoples' (unpublished manuscript from School of Administrative Studies, Carleton University, 1998).
Both Locke (II, 35) and English law recognize that institutions and groups of individuals in the form of partnerships or companies could own land; the institution or company is simply viewed as though it were an individual. However, institutional ownership is subsequent to private ownership by individuals in that institutional ownership is governed by laws, and hence is subsequent to the formation of civil society and is dependent on governments. Locke was trying to show that individual ownership was prior to and independent of the formation of government; in the state of nature there could be ownership of property, but Locke assumes it is individuals who are the owners. Group or institutional ownership did not arise in the state of nature prior to the contracts that established government and positive property law. We will return shortly to the question of whether it is possible to view Iroquoian clan ownership as independent of government and civil society in the Lockean sense.

In assuming that land can be owned by individuals prior to the establishment of government, Locke is assuming (or trying to show) that the ownership of private property is consistent with the moral obligations of natural law and that it does not require the consent of any person (II, 25). If the consent of other people is not required for original appropriation, then it does not require a contract as does the formation of government. Since there is no contract, appropriation of property from the commons does not create any moral or social obligations which do not already exist in natural law. The problem that group ownership presents is that the ownership of property by the group necessarily entails social obligations among group members; dividing the required labor and the resulting produce would have to involve social obligations. Thus Locke would want to make group ownership of property subsequent to contracts; viewing group ownership as fundamental is not consistent with Locke's belief that owning justly acquired property is a right independent of and prior to social obligations other than those entailed by the Law of Nature.

Locke does recognize that the Law of Nature imposes some moral obligations that impinge on the rights of individuals who own land; he thinks sons have at least a prima facie claim on inheriting their fathers' land, and if a man forfeits through aggression his right to his estate, the claims of his wife and dependent children are prior to any claims against him as an aggressor (II, 182). These are moral or rights claims and are prior to the formation of government and the creation of laws; this is clear from Locke's discussion of these claims in the context of foreign conquest in just wars. Locke, however, never seems to recognize the implications of these claims for the ownership of property. They seem to imply that the unit of ownership should be the family, not an individual. The problem, of course, is that Locke failed in this instance to see
beyond the patriarchal assumptions of his culture; it is men who own land, and wives and children who are the dependents. Locke’s failure to recognize the equal claim of wives to property is curious because he argues at great length in the first Treatise that mothers have equal rights with fathers to the respect and obedience of their children. Two hundred years after Locke, this assumption of patriarchy had disastrous results when the Dawes Act in the United States assigned land ownership to men, leaving Native women and children landless (Roback, 23). Many North American Native cultures are traditionally matrilinear and agriculture was often the responsibility of women. However, it might be possible to remove the patriarchal assumption from Locke’s property theory without moving from individual to family or community ownership. The question of individual ownership needs to be looked at separately.

Locke’s arguments for property are based on consumption (II, 28) and labor (II, 27). The consumption argument is that the bounty that was given to humanity in common does no person any good until someone appropriates a specific portion and makes it theirs by using it to the exclusion of others. The example is apples and acorns, which are literally consumed when eaten and become part of a person, and hence theirs, in a physical sense. There are severe problems with this argument, and it may only be meant to establish a general right to property rather than support specific property claims. In any case it is not applicable to specific land claims. Land is not consumed by use, nor does it become part of the user in any physical sense. An apple (or at least a specific bit of it) cannot be profitably used by more than one person, but bounty from the land can be made usable by a group of people and, in fact, generally is. The argument for property from consumption, if it can be applied to land at all, would work as well or better if groups of people are recognized as owner.

The labor theory of property appropriation equally does not require the unit of ownership to be the individual. Labor can be a spousal, family, or community activity. For the Iroquoians, farming was generally a clan effort of the women, although individual plots were permitted (Trigger, 30-4). In fact, European settlement was also almost always based on spousal or family effort; clearing the forest and cultivating the land was simply too large a task for a single individual. Locke’s entire argument about the natural right of people to ensure their own preservation, and the natural right to own the product of their labor which he derives from it, actually works better with the family as the unit of ownership rather than the individual, at least for the ownership of agricultural land. Farming is usually a joint effort.

Locke did not explicitly argue for the individual as the proper land owning unit, and it does not seem entailed in his arguments. Could he
have accepted spousal or clan ownership as basic forms of private property in land? It is useful in this context to review what Locke was arguing against; what role did his theory of property play in his wider political philosophy?

Chapter V of the second Treatise is part of Locke's refutation of Filmer and others who were trying to argue that claims to property rights are dependent on government, in particular, on kings. Filmer had argued that the earth had not been given to humanity in common, but to Adam and his heirs to the exclusion of all others. Kings, therefore, who were supposedly Adam's heirs, owned their kingdoms, and their subjects' private ownership of land was dependent on the King establishing and recognizing a system of private property. Locke wanted to show that government was dependent on the subjects consenting to a social contract, and that private property was not dependent on that contract. He wanted to show that property was prior to all social contracts, prior to government and kings, and that land could be legitimately appropriated without the agreement or consent of other people.

If Locke wants to show that property is prior to the social contract which forms government, then clan ownership of land could be consistent with his argument. Native governments tended to have no or weak legislative powers (Roback, 13-16; Trigger, ch. 6; Benson, 28), and it is unlikely any level of Iroquoian government had the authority or power to change land tenure systems. Clan ownership of land was in this sense not dependent on government, and hence not derived from the social contract that formed government.

However, Locke might also be taken as arguing that property is prior to all contracted social commitments, not just to those which formed government. We have already seen that he did not think property rights prior to some non-contracted moral commitments, such as those of parents towards their children. Clan ownership entailed commitment to sharing labor and produce within the clan; did these commitments have a contractual or moral nature?

Modern economists have tried to view such commitments as the exchange of goods and services by rational individuals within an on-going, long-term relationship (e.g. Roback); this would make the commitments contractual in the Lockean sense that they are based on consent given in the hope of mutual benefit. However, it is also possible to view these commitments within the clan as having a moral basis in natural law independent of any consent or contract in the same way that Locke recognized parents' duty to dependent children as prior to all social contracts. Locke thought the duty to look after dependent children derived from the natural duty of humans to preserve the human race combined with the empirical fact that human children require support throughout a prolonged childhood. The Iroquoian could equally have
argued that communal labor and sharing, and hence clan ownership of land, was essential to their preservation, given the empirical facts about the level of technology and the resources available. Evidence from contemporary native communities about the way members of clans come to feel clan commitments seems to indicate that words like consent, exchange, and rational self-interest are entirely inappropriate. Clan members recognize moral commitments in a way not analyzable in terms of contract.

The implications of this are that clan ownership seems entirely consistent with Locke’s arguments that private property is prior to any social contracts and not dependent on consent or on government. If this is true, we can conclude that on Locke’s own theory, group ownership of property is as legitimate as private property ownership by individuals.

c. Land Improvement.

Locke’s England was in the middle of an agricultural revolution which would continue into the next century and which allowed Locke to claim that an English day laborer was far better off than an Indian ‘King’ (II, 41). English agricultural improvements were financed and contrived by land owners, and Locke drew the conclusion that private ownership of land made the land vastly more productive. This increased productivity plays a role in his argument for the original appropriation of property based on labor.

No doubt English farming was more productive per acre than Iroquoian; English access to draft animals and manure ensured that. But this, on Locke’s property theory, would be irrelevant to the right of

29 Simmons reaches a similar conclusion: ‘Joint property is certainly possible on Lockean view’ (181-2). He also discusses the impact of group ownership on rectification of injustices (179). See A. John Simmons, ‘Historical Rights and Fair Shares,’ Law and Philosophy 14 (1995) 149-84.
30 Locke could not decide whether land in England was a hundred times (II, 41) or a thousand times (II, 43) more productive than land in America.
31 Shrader-Frechette (204) refers to this as the ‘efficiency argument.’
32 John Winthrop, in 1629, had used enclosure, probably meaning physical enclosure, and manuring as criteria for land ownership; cf. Flanagan, 591-2. Winthrop explicitly applied these criteria to North American Natives, claiming that since they did neither, their land could be appropriated by Europeans.
settlement if Iroquoian land had already been removed from the commons by the Iroquoians. Locke’s theory was not a utilitarian theory in which property rights are always assigned and re-assigned to the most productive use; utilitarianism was the basis of neither original appropriation nor of the continuing private ownership of land. If a utilitarian theory was used to justify the periodic reassignment of property to those who would use it most productively, this might possibly entail re-assigning Iroquoian lands to settlers with more productive farming techniques. However, this obviously is not consistent with Locke’s theory of property, which is a rights, not a utilitarian theory.33 For Locke, the issue of productivity only arises at the time of original appropriation, and even then the issue is not which use is the most productive, but rather who is the first to improve a piece of land.

For Locke, land is removed from common ownership and becomes private property when an individual invests their labor in improving the productivity of the land. People have a natural right to do this (subject to the constraints mentioned earlier) because they have a right and a duty to preserve humanity, and improved productivity contributes to preservation. This is a rights, not a utilitarian argument; nevertheless, the concept of improving a piece of land is pivotal and needs comment.

Labor which merely uses land is not sufficient to establish a property right. If a person picks an apple they own the apple, not the tree or the piece of land the tree is on. Clearing or draining the land and planting an apple tree would seem to establish ownership of the land. However, the exact nature of the criterion of improvement is not clear and needs to be distinguished from mere use.

Iroquoian technology limited the ability of farmers to improve constantly the output of particular pieces of land. Without metal axes, clearing forests was difficult; it took several years to clear new land well enough to sow crops on mounds between the stumps. Without draft animals and metal ploughs, deep ploughing was not possible; and without manure, soil fertility tended to decline rapidly. As a result of this technical situation, instead of seeking constant improvement of a single piece of land like an English farmer, Iroquoian farmers abandoned exhausted fields (at least for agricultural purposes) after ten to thirty years. No attempt was made to return to land that had been farmed before (Trigger, 30-2). Does this use of land transfer land from common to private property under Locke’s theory of original appropriation?

Labor was invested to improve the land, but the improvement was temporary and the land later abandoned, at least for agricultural purposes.34

Locke’s notion of subduing nature seems to imply permanent clearing of the forest, and English settlers intended this result when they cleared the land. But the requirement of improving the land applies only to the removal of land from common ownership; it does not apply to subsequent owners. By this criterion, Iroquoian land became private property when cleared and remained private property even when agricultural use of it ceased. To see that this conclusion is correct, consider the reasons based in natural law requiring investment of labor for original appropriation. Locke argues that such labor improves the chances of humanity’s survival (II, 32) and that such labor will not be undertaken unless the laborer acquires title to the land she is working on (II, 35). Since both these points obviously apply to Iroquoian farm land, it seems clear that their clearing and farming the land constituted original appropriation. The purposes of Locke’s overall theory of property also show that this land did not revert to the commons when allowed to revert to forest. If private ownership was lost in such a case, it would imply that the requirement on owners to improve land is permanent and applies to all subsequent owners, not only the original acquirer. Nor does Locke argue anywhere that subsequent owners have to maintain the productivity of land; Locke places few if any requirements or constraints on subsequent owners. Since a requirement on subsequent owners to improve or maintain productivity would represent a fundamental change in Locke’s view of property rights, it follows that temporary improvement of land is sufficient for permanent removal from common ownership.35

Locke’s theory of original appropriation seems, therefore, to clearly recognize Iroquoian agricultural land as the private property of Iroquoian clans or communities. This is true despite communal ownership, the lack of physical fences, and the non-permanent nature of improvements which removed the land from common ownership.

34 This question is briefly raised by Flanagan, 600-1.

35 On actual abandonment of property, see Simmons, ‘Historical Rights and Fair Shares,’ 171.
IV Hunting Grounds

Iroquoian hunting grounds were, of course, much more extensive than their agricultural lands, and it was primarily the hunting grounds that Europeans saw as the wilderness that they had a right of settling. As Williams points out: ‘Locke’s discourse ... legitimated the appropriation of the American wilderness as a right, and even as an imperative, under natural law’ (Williams, 248). That this discourse referred primarily to hunting grounds has long been recognized; as Richard Tuck says:

the English ... claimed their territory by what one might call the right of farmers over hunters, presumably one of the oldest justifications for the occupation of territory in human history. Again and again, the colonists and their supporters, including most strikingly John Locke (something James Tully has recently emphasized), insisted that hunting was not a legitimate use of land where it could be used for agriculture, and that hunters who denied farmers were guilty of a breach of the laws of nature. (Tuck, 15)

Does Locke’s theory of original appropriation really justify settlement on Iroquoian hunting grounds?

Traditionally, hunting was a necessary part of the Iroquoian economy; it provided protein year round and was a sustaining source of food at certain times of year. Hunting parties were formed of small groups of men, usually with a kinship relation to each other, who hunted in assigned territories. Hunting territories were associated with particular clans and assigned to families within the clan by tradition. There were recognized procedures for solving disputes within bands and nations; inter-band trespassing on hunting territories could result in war, except within the Five (later Six) Nation Confederacy and their client bands; the Confederacy would become involved in settling disputes if the Onondaga chiefs were convinced it was serious enough. Thus we see there were clearly defined concepts of hunting rights to particular territories based on tradition, with recognized methods of dealing with violations and resolving disputes.

Within assigned territories, families would hunt certain species in certain areas some years and times of years. Other years and times of years, they would refrain from hunting. The purpose of these hunting patterns was conservation. 36 The patterns were set by a combination of

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36 The extent to which the Iroquoians and other Native peoples practised care of hunting grounds by restraint is greatly debated; see Claudia Nutzke, Aboriginal Peoples and Natural Resources in Canada (Toronto: Captus 1994), 145-9, for recent comments on and references to this debate. For purposes of my argument, the extent
tradition and close observation of the fluctuations of animal numbers and their migration patterns. Decisions were based on the principles of respect for tradition and respect for nature and living things. Religion instilled a belief in the sanctity of people living in spiritual harmony with the rest of nature (Tully, 'Rediscovering America,' 190), but the economics of family survival lay behind caring for hunted species by sometimes refraining from hunting at certain times and places. When the English and French fur traders started to provide the Iroquoian with access to insatiable European markets and to European made goods, the economics of survival changed. Both the ethic of respecting hunting rights in specific areas and the ethic of care were sorely stressed; bear and beaver (especially beaver) stocks declined rapidly in the eighteenth century.

On a Lockean theory of property, the ownership of Iroquoian hunting grounds is not clear. Iroquoian hunters had never invested their labor in improving the output of the land; they had not cleared or cultivated it, nor had they attempted to subdue nature. Those claiming a right of settlement could and did claim that this failure to subdue nature meant that property rights had not been established in the land and that, therefore, the land was still the common property of mankind. 37

A proponent of a Lockean theory of property could hold various views regarding Iroquoian hunting lands and the right of settlement. It could be argued that the Iroquoians had established an ownership claim and hence settlers intruded on private property; or that the hunting lands were still commons but the Lockean proviso disallowed the right of settlement. Only if it is shown both that the lands were still commons and that the proviso was not violated can it be claimed that the right of settlement was legitimate from a Lockean point of view. Let us look at each of these claims in turn.

Although the Iroquoians could not claim a labor investment in subduing the land, they could claim 'enclosure' of their hunting grounds. This was not, of course, physical enclosure, which would not have been consistent with land use since the animals they hunted need to wander. But we have established above that Locke was not committed to physical enclosure, only to a social procedure for recognizing ownership. Iro-

37 For examples of such claims from the sixteenth, seventeenth, eighteenth, and twentieth centuries, see Flanagan.
quoian hunting territories were clearly ‘enclosed’ in this sense (Trigger, 86-9). It was also argued above that group ownership satisfied Locke’s argument just as well as individual ownership; thus clan or community ownership of hunting lands would not prevent them from being private property on a Lockean theory.

What is crucial about hunting grounds is that labor was not invested in improving the land, even temporarily; labor was only invested in capturing the animals. However, I want to argue that the care the Iroquoians took of their hunting lands by restraining hunting in certain seasons or years actually satisfies Locke’s argument in the same way laboring to improve the land does.

For Locke, investing labor in improving common land conveys private ownership of the land because of a combination of two factors: first, such labor improves productivity and hence people’s chances of survival; and second, it would not be undertaken unless private ownership of the resulting benefits, which requires private ownership of the land, is assured. Care by restraint fulfills both these requirements every bit as well as land improvement; restraint would not be undertaken unless those who restrained their hunting reaped the benefit, and given the technical level of Iroquoian society, restraint that prevented over-hunting of particular species in particular areas at certain times would increase the chances of human survival.

This argument can be rephrased in more modern terms by considering the ‘tragedy of the commons.’ Ownership of hunting grounds, even ownership by a community or group, would permit self-interest to motivate restraint when low species numbers warranted. Both Locke’s argument for original appropriation and the modern arguments that show the failure of the ‘commons’ work as well for care by restraint as for improvement by investing labor. We can conclude, therefore, that care by restraint confers ownership of land according to Locke’s theory of original appropriation.

The extent to which this changes the labor theory of appropriation needs to be noted. If this conclusion is correct, labor does not allow appropriation because the activity somehow ‘mixes’ something of mine with the land, but because labor in some situations is required by natural law. Natural law in other situations may require other types of behavior, such as restraint. Any behavior required by natural law confers property

38 This argument could, I think, be restated in terms of any of the other three basis for Lockean appropriation identified by Shrader-Frechette; to wit, need, efficiency, or merit.
rights in a fashion similar to labor if the property rights permit or encourage the behavior required.39

Since this conclusion rests on historical claims about Iroquoian hunting practices which might be disputed, I want to look at the second possible Lockean approach to hunting grounds.

The second approach would be to insist that these lands were still the common property of humanity at the time of contact and that there was, therefore, a right of settlement for anyone who wanted to subdue the forest and improve productivity. But in this case, the right of settlement would be subject to the Lockean proviso; each settler must leave 'enough and as good' for others. There have been many interpretations of the Lockean proviso;40 the two that need to be examined in the current context are: (a) that the Iroquoian were left as well off as they were before the settlement; or (b) that there was suitable land left for the Iroquoian to settle on and farm in the same way as European settlers.

If the first of these interpretations is assigned to the proviso, then the proviso was clearly violated by the settlement of Iroquoian hunting grounds. That the Iroquoian hunters were less well off after settlement is clear from their bitter complaints throughout the eighteenth and nineteenth centuries that settlers were interfering with hunting (Williams, 235). The effect of settlement on hunting is clearer when it is realized that any particular settlement would be in the hunting territory of a particular clan or community, and thus the burden would fall not imperceptibly on the Iroquoian people as a whole, but very perceptibly on specific groups of individuals. Notwithstanding that, the Iroquoian were often tolerant of some settlement because they viewed limited settlement as consistent with hunting. Such limited settlement would have to stop when interference with hunting began to make the hunters worse off. Presumably only the hunters would have the information about when this happened. Such a situation could not be a right of settlement, but only settlement by permission of those affected. Historically, such permission was often granted or sold for trading reasons.

39 This conclusion resembles but is more constrained than Simmons' contention that 'property can be acquired by incorporation into our purposive activities' ('Historical Rights and Fair Shares,' 183, 162). The conclusion of the present paper is constrained to activities required by natural law. Tully discusses Sunnions' view of purposive activity in 'Aboriginal Property and Western Thought,' 116-17; he points out the implication (argued for in the present paper) that Native Americans owned North America at the time of contact (118).

40 For a survey of interpretations of the proviso, see Narveson, 'Property Rights.'
The other interpretation of the phrase ‘enough and as good’ would imply that there was as much land left for each Iroquoian as each settler had acquired, and that the Iroquoian portion could be made as productive as the settlers’ lands. In other words, there was enough land left to allow the Iroquoian to give up hunting and become European-style farmers. Accepting this argument implies that farmers everywhere have a natural right to force hunters to become farmers since the farmers are entitled to settle on hunting grounds until the hunters have only enough land left to live if they adopt farming.41 A couple of things need to be said about this version of the proviso. First, if the settlers are within their rights to enforce their right of settlement, this version of the theory of original appropriation collapses into a right of conquest whenever the hunters object to giving up their hunting grounds. And the Iroquois plainly did object. Locke was keen to establish that original appropriation does not require the permission of the rest of humanity, and in the event of interference in ‘justified’ appropriation he thought a state of war would be justified (Tully, ‘Rediscovering America,’ 170-1). However, he did not view his theory of original appropriation as a justification of war, and did not give serious thought to the possibility that as a matter of actual fact that might be the normal result.42 Locke repeatedly uses phrases such as ‘there could be little room for quarrels or contentions’ (II, 31); there was not ‘any prejudice to any other man’ (II, 33); or the ‘rest of

41 Besides scholarship on Locke such as Tully’s, this question has provoked philosophical debate; cf. Michael McDonald, ‘Aboriginal Rights,’ in William Shea and J. King-Farlow, eds., Contemporary Issues in Political Philosophy (New York: Science History Publications 1976); David Gauthier, untitled review of William Shea and J. King-Farlow, eds., Contemporary Issues in Political Philosophy, Dialogue 18 (1979) 432-40; Nichola Griffin, ‘Aboriginal Rights. Gauthier’s Arguments for Despoliation,’ Dialogue 20 (1981) 690-6; Thomas Flanagan, ‘The Agricultural Argument and Original Appropriation: Indian Lands and Political Philosophy,’ Canadian Journal of Political Science 22, 3 (1989) 589-602; Nichola Griffin, ‘Reply to Professor Flanagan,’ Canadian Journal of Political Science 22, 3 (1989) 603-6; and Thomas Flanagan, ‘Reply to Professor Griffin,’ Canadian Journal of Political Science 22, 3 (1989) 607. The discussion in the current paper is more restricted, dealing only with the issue in the context of Locke’s theory. If these papers are debating about a Lockean type proviso (and it is not clear that this is the context of all of the debate) then they presuppose that Indian hunting grounds are common property and can be appropriated subject to the proviso. It might be more appropriate, as Griffin points out (‘Reply to Professor Flanagan,’ 604), to view this debate as about expropriation.

42 See Ashcraft, ch. 8, for Locke’s views on a state of war (which was not the same as the state of nature as it was for Hobbes); see Williams, ch. 5, 6, and 7, for the history of the idea that Europeans had a right to wage war against Natives if the Natives in the slightest way interfered with settlement.
mankind’ would have no ‘reason to complain or think themselves injured’ (II, 36). The problem with this second interpretation of the proviso is that hunters clearly did see themselves as injured, and saw themselves as thinking they had good grounds for thinking so. It was empirically not true that there was ‘no room for quarrel’ (II, 38).

Second, this interpretation of the proviso does not deal with the historic fact that North American Natives (such as the Cherokee43) who cleared land for European style farming simply made the land more attractive to Europeans and lost it anyway. This may have played a role in the reduction of the Six Nation Reserve at Grand River to its current size. And it must be remembered that the argument applies only to Iroquoian hunting grounds, not to the land they used for agriculture.44 The impact of this second interpretation of the proviso is that no value at all is placed on lifestyles that use the commons as commons, even if those lifestyles (having avoided the tragedy of the commons somehow) have existed for centuries.45 But it seems that this is the only interpretation of original appropriation and the proviso which can justify the right of settlement on Iroquois hunting grounds. The justice of this interpretation in the context of aboriginal rights has been explored elsewhere (see note 41, above).

We can conclude that the right of settlement on Iroquoian hunting lands can be upheld only if specific interpretations are put on the theory of original appropriation and the Lockean proviso; it must be shown both that the hunting grounds were still owned in common and that the proviso was not violated. To establish that the hunting grounds were still the common property of all humanity, it needs to be assumed either that enclosure must be physical (a poor assumption) or that invested labor must ‘improve’ the land by ‘subduing’ nature. Care of the land by restraint must not count. Further, the proviso must be interpreted in a specific fashion; ‘enough and as good’ must be judged based on the assumption that the Iroquoian should give up hunting and their way of

43 Ronald Wright, Stolen Continents: The ‘New World’ through Indian Eyes (Toronto: Penguin 1993) ch. 9, also see Flanagan, 601.

44 It is now recognized that the extent of Native agriculture was far greater at the time of European contact than was realized at the time. The discourse of the right of settlement may explain why Europeans, including Locke who nowhere acknowledges Native agriculture in North America, did not see this.

45 As Tully expresses a somewhat similar conclusion: ‘This is the flaw in almost all the purported solutions to appropriation without consent: they presuppose agreement on the values and goods of the commercial system’ (‘Property, Self-Government and Consent,’ 127).
life and adopt European farming techniques and social structure. To accept this is to accept that Locke’s theory of original appropriation has built into it assumptions about the proper usage of land; it is to accept that farmers have a right to their farm land but hunters have no right to their hunting grounds. This interpretation of the proviso not only confers value (in the form of rights) on certain types of land usage, it also judges the accompanying ways of life. It assumes that people have the right to be farmers and that farmers have the right to stop people from being hunters. Tully argues forcibly that this attitude is unjust (Tully, ‘Rediscovering America,’ esp. 188-96).

V Conclusion

The application of Locke’s labor theory of original appropriation to Iroquoian land at the time of contact makes clear that Locke’s concept of property rights was more narrow and Eurocentric than his own premises and arguments allow. Accepting Locke’s background premises, we can conclude the following:

(a) Enclosure need not be physical, but can be legal even prior to the establishment of government.

(b) Private property ownership need not be by individuals. Family or group ownership should be recognized.

(c) Investment of labor for improvement need not mean permanent improvement.

(d) Care of the land and its resources by restraint establishes private property in the same fashion as labor for improvement.

Accepting these conclusions would change the nature of property rights that are established by Lockean style arguments of original appropriation. There is, however, a further major implication for contemporary uses of original appropriation arguments such as Nozick’s or Narveson’s. By resorting to Locke’s background premises, we have been able to conclude that the Iroquoian at the time of contact already owned both the land they used for agriculture and their hunting grounds. To overturn this conclusion, it would have to be argued both that these lands were still the common property of humanity (i.e. that the Iroquoians had not established private property rights by original appropriation) and that the Lockean proviso was not violated by European settlement. To do the latter, the proviso must be interpreted in such a way as to establish that farming has rights over hunting.
It has not been shown in this paper that similar arguments apply to other indigenous peoples and their claims to owning territory, but it is worth examining the status of original appropriation arguments based on this assumption. Since humans have occupied all significant land areas of the planet earth for at least the last ten thousand years, if the property claims of indigenous peoples are recognized as having a Locke-ean basis, it follows that there has been no significant original appropriation for many thousands of years. European ideas of settling vast 'empty' and 'wasted' continents was based on a failure to see, or a dismissal of, the land uses of indigenous peoples. Original appropriation in not a historical fact.

What then is it? The onus clearly is on those who use it to explain; here I will only indicate three possibilities compatible with the conclusions of this paper.

First, original appropriation might be a hypothetical case elucidating certain logical aspects of the nature of property rights. Locke's use of the argument has been interpreted in this fashion. 46 Locke, on this interpretation, was trying to show that property rights are prior to, and not based on, the contracts that created civil society and government. A hypothetical theory of original appropriation would show that such a view of property was coherent; this would help establish this theory of property, even if the hypothetical nature of original appropriation would mean that no specific property claim could be based on it.

Second, even if original appropriation has no historical basis, it could be used to clarify or help define property rights. It is generally recognized 47 that property rights are actually a cluster of rights which can be defined in various ways. A non-historical theory of original appropriation could be viewed as an attempt to show that any acceptable definition of the right to property must recognize a certain relationship between laboring to improve a piece of land and owning it. On this interpretation, actual historic processes are irrelevant; the theory only says that we ought to treat current property owners as though they acquired the property in a line of succession from people who settled the land by investing their labor in improving it.

Finally, we can transfer to original appropriation Waldron's theory 48 of the social contract as a template that allows normative judgment to be

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46 Cf. Ashcraft, 97-8, for arguments against this as an interpretation of Locke. His note 1 on page 98 lists authors who have defended this interpretation.

passed on actual historical processes. On this interpretation, original appropriation establishes a normative relationship between labor and land ownership which can be used to judge the actual treatment of property in specific historical situations. This would allow us to judge, for example, the European settlement of North America, and pass normative judgment on the process by judging how far the process departed from the ideal version of original appropriation.

How a non-historical theory of original appropriation is interpreted would have to depend on the use it is put to. But any use needs to be consistent with the failure of Lockean arguments to establish a right of settlement by European farmers on lands used by Native Peoples at the time of contact.

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