Giving It All Away?
Thomas Reid’s Retreat from a Natural Rights Justification of Private Property
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Property must exist wherever men exist, and...the right to such property is the necessary consequence of the natural right of men to life and liberty.

Thomas Reid 1788

I proceed therefore to consider in what State or Order of Society there is the least temptation to ill conduct, and I confess that to me the Utopian System of Sir Thomas More seems to have the advantage of all others in this respect. In that System, it is well known there is no private Property. All that which we call Property is under the Administration of the State for the common benefit of the whole political Family.

Thomas Reid 1794

The few remarks on property that are found in the Essays on the Active Powers of the Human Mind of the eighteenth century Scottish “Common Sense” philosopher, Thomas Reid, have led at least one commentator to treat him as a fairly traditional advocate of the natural right to (private) property, albeit one with a concern for the very poor. In an article on William Paley and the rights of the poor, Thomas Horne remarks in passing that Reid’s (and Adam Ferguson’s)

major concern was to justify natural rights to property and that their interest in the poor was so little that a reader who accidentally skipped a paragraph or a page would miss all they had to say on the topic.

While there is some truth in what Horne says about the brevity of treatment of the poor in the Active Powers, it is only fair to point out that justifying natural rights to property is relegated by Reid to a few pages of the book, and that the picture gained from an examination of Reid’s unpublished materials is a rather more complex one, as the quotations above suggest.

It may seem strange to devote any time to a writer whose views on property appear to swing within a matter of some six years from an endorsement of private property as both a necessity and a natural right to a call for its abolition. However Reid’s position is not as contradictory as it first sounds, and the attempt to reconcile the tensions within it brings to the surface a theory of property rights sufficiently

2. Thomas Reid, “Some Thoughts on the Utopian System” MS 3061/6, Aberdeen University Library.
   This manuscript and several others in the Birkwood Collection, Aberdeen University Library have recently been meticulously edited and annotated by Knud Haakonsen, and published as Thomas Reid, Practical Ethics, Knud Haakonsen, ed., (Princeton: Princeton University Press, 1990). The above quotation is from page 283. Reid’s manuscripts will hereinafter be cited by their Aberdeen University Library MS number followed, where applicable, by the page number in Practical Ethics [PE].
4. Ibid. at 68.
coherent to stand in revealing contrast to those of his fellow thinkers of the Scottish Enlightenment, and to make some contribution to recent discussions of the nature of property rights. In the first part of this paper the natural rights justification of property that Reid expounds is located in his overall ethical theory and in its wider setting as a response to David Hume’s account of property. The next two parts set out Reid’s analysis of property and his justification of private property. I then trace the development of that justification, through Reid’s own qualifications and conditions, into his rejection of private property. Finally, some comments are offered on the implications and value of Reid’s account.

Hume and Reid on justice and property

It is as part of his response to David Hume’s account of justice as an artificial virtue that Reid presents his case for private property as a natural right. It is not my intention to give a full account of Reid’s theory of justice here, but it is necessary to provide an outline. Reid believes that Hume’s conception of justice is fundamentally flawed because its scope is virtually restricted to existing conventional rules of property. Reid argues, firstly, that justice extends to encompass respect for a variety of rights—rights to life, to liberty and to reputation amongst them. His second point is that these are natural rights, not the creation of law or convention. If it is conceded that, for example, to imprison an innocent person is naturally unjust, then Reid feels that he has made his point that it makes sense to talk of justice as a natural virtue, alongside such virtues as benevolence, and prior to the man-made laws of civil society.

Dalgarno points out the issue for Reid here:

Hume’s argument that the obligations of justice are artificial is an argument about what Hume (and not Reid) understands as an obligation of justice. Thus, if Reid is to force Hume to retract his view of the artificiality of justice, he must find an instance which Hume understands as an obligation of justice and show that it is a natural obligation. But if Hume is to escape Reid’s objection...by pleading that Reid is guilty of ignoratio elenchi, the cost is indeed high since he has been driven to take refuge in a highly technical, theory-laden notion of justice and injustice which is at variance with common language reflecting common sense conceptions.

Hume chose as a paradigm of justice the returning of borrowed property to its owner, but found no natural motive for such an action. The natural motives, including benevolence, self-interest, and the immediate public good, did not cover every act justice requires. To suggest that a sense of duty is the basis of justice was felt

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6. It is interesting to note that while John Locke asserts that “Where there is no Property ["Propriety" in early editions], there is no Injustice” (John Locke, Essay Concerning the Human Understanding (London: Dent, 1961) at iv.3.18), he holds a wider conception of property which includes (natural) rights to life, liberty, etc., and hence for him, as for Reid, the scope justice is wider than rights to the ownership or possession of things.
to be circular. He concluded that the motive must be sympathy with the institution of property. Furthermore, against Locke's familiar claim that there is a natural right to acquire and retain (private) property, David Hume argued that property is entirely a conventional—and to that extent non-natural—institution. Rules of property (and justice) only exist where certain conditions obtain (e.g. where there is a moderate scarcity of goods and where individuals are only moderately altruistic: hence one does not think of the ownership of the air one breathes, nor of property rights being invoked between parent and child in a family where altruism reigns). In conditions where neither goods nor altruism are unlimited, suitable rules of property allocation and use are "invented" for the sake of convenience or long-term utility. Hume added that to say they are invented is not to claim that the rules are totally arbitrary: on the contrary many are in fact based on "natural" associations which the human mind makes between individuals and objects (for instance, the attributing of some rights to a current possessor). His point is that there is no independent moral connection between them outside the imagination or social or institutional convention. Property is thus a fiction, albeit a particularly useful one.

Some of the rules of property that are adopted may evolve or be chosen for their individual utility; others arise through the association of ideas in the mind. However, Hume argued, all are justified ultimately rather because of the utility of having a settled, rule-governed institution of property than because of their specific content. The value in a fixed and therefore certain and inflexible set of rules of property lies not in some resultant maximisation of happiness but simply in the fact that such stability is a precondition for social life and its possible improvement.

However, even in Hume's formalism, the content of the rules is not completely irrelevant. He considered schemes of property rights based on a single principle, first merit or virtue, then equality. Admitting that each has some utility, Hume dismissed the former on the grounds of its uncertainty and the latter because of its impracticability and the damage it would do to the social structure. The overall utility possessed by the stable rules of property which happen to exist outweighs any specific utility that one of these less stable principles might have.

For Hume, then, any right to property does not arise prior to the establishment of those contingent and conventional rules which, in that particular society, constitute (and not just regulate) it, and which identify what is to count as property, how it is to be acquired, used and disposed of. The rules so established are to be adhered to not for their intrinsic merit but for the utility which the practice of law and order produces.

Reid, in contrast, believes that justice extends to cover various rights including property rights and that these (and justice) do exist prior to the establishment of conventional rules: they arise out of

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a general Relation which every Man bears to every Man, as a reasonable & social Creature of the same Nature and origin with himself. And the Rights arising from this Relation are called the natural Rights of Mankind.11

Reid comes to the concept of a right somewhat circuitously. He starts by affirming that everyone has a natural understanding of a favour, which evokes a sense of gratitude, on the one hand, and of an injury, which arouses resentment, on the other. Everyone can use common sense judgments to identify favours and injuries. But, he argues, these concepts presuppose the idea of something due, a favour being beyond what is due and an injury being a failure to respect what is due. The “something due” to an individual, which occupies the middle ground between these natural concepts of favour and injury, is a set of natural rights.12 For Reid, the judgment that there is a duty to respect these rights, that justice is obligatory, is a self-evident (“common sense”) one.

It follows that the various natural ways in which the individual may be injured can be used to identify the individual’s corresponding natural rights:

A man may be injured, 1st, in his person, by wounding, maiming, or killing him; 2ndly, in his family, by robbing him of his children, or any way injuring those he is bound to protect; 3rdly, in his liberty, by confinement; 4thly, in his reputation; 5thly, in his goods or property; and, lastly, in the violation of contracts or engagements made with him. This enumeration, whether complete or not, is sufficient for the present purpose.13

There are, thus, as a minimum, natural rights to life and personal integrity, to family, liberty, reputation, property and contractual fidelity. If an individual has such a right, an interference with it would be (naturally) judged to be injurious and unjust, and would be resented, though not every detrimental action by another will be judged to amount to an injury.

In this way, using “common sense” (natural) judgments, it is possible to identify a set of natural rights, without recourse to conventions or human laws.14 Ironically, once Reid has demonstrated that at least some of the rights which justice encompasses are natural, his prime goal of showing that some acts of justice are naturally required (and consequently that justice is not an artificial virtue, not the product of positive law or convention), could have been achieved without spending time arguing that the particular right on which Hume focused—property—is a natural right. Nevertheless, in both the eighteenth and twentieth centuries, property and its distribution have been at the core of debates over justice. It was inevitable then that in his chapter on justice, Reid would tackle—at least in outline—the nature

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11. MS 2131/y/v/A, PE, supra, note 2 at 113. As well as natural rights, there are economical rights arising out of family relations and political rights arising out of relations within the state or political society.
12. AP, supra, note 1, at 406-13. Joan McGregor points out that this operation of identifying justice is at two levels: the rational judgment situates the concept between favours and injuries; the sentimental reaction finds the sense of justice between the sense of gratitude and the feeling of resentment. (Joan McGregor, “Reid on Justice as a Natural Virtue” (1987) 70 The Monist 483). Adam Smith used a similar approach but is criticised by Reid for ignoring the need for judgment and relying purely on conventional sentiments (of the impartial spectator); see my “Adam Smith on Delictual Liability” in Robin Paul Malloy & Jerry Evensky, eds, Adam Smith and the Philosophy of Law and Economics (Dordrecht: Kluwer, forthcoming).
13. AP, supra, note 1 at 415.
14. For Reid’s account of the role of positive law, see text accompanying notes 64-67 infra.
of property. Both there and in further amplification of his ideas on property in several of his unpublished manuscripts, Reid provides a very different analysis from that of Hume.

An analysis of property—its nature and its origins

Reid notes that the rights corresponding to the six ways of being injured which he lists are of two types, innate and acquired, both, at times, coming under the heading of “natural”.15 Thus in the case of the right to life what is protected is inborn, whereas goods, protected by the right to property, are acquired by “some previous act or deed of man”, and it is only that act or deed which brings into being the right-duty relationship between the owner and others. Property is thus an acquired right.

In fact, Reid is not consistent in his use of the innate-acquired distinction: it could be argued that rights in one’s children are acquired and not, as he indicates, innate. Indeed, even in the clearest case of acquired rights, property rights themselves, he is not sufficiently precise. In stating that

[1]he right of property is not innate, but acquired. It is not grounded upon the constitution of man, but upon his actions,16

Reid fails to take account of what he elsewhere makes clear, namely, that the right of property is not a single right but a collection or “bundle” of rights. The general right to acquire property is a right of liberty and as such is, in Reid’s terminology, innate: it exists without the need for prior actions. Using Hohfeldian analysis, it is also a power, a legal ability to change a legal relation.17 While this power to acquire can be thought of as a natural (innate) right, it is true that once a particular individual has appropriated a specific object, then the other rights of property concerning that object may be termed “acquired” though, being pre-conventional, they are still referred to by Reid as natural. Furthermore Reid’s insistence that an individual may in certain circumstances have an innate natural right to be provided with some objects without doing anything at all himself or herself underscores the point that the classification of rights into innate and acquired is an oversimplification unlikely to aid the elucidation of the nature of property rights. Nevertheless it may be that property rights could usefully be grouped into what I shall tentatively call “rights of acquisition” and the subsequent “rights of control”.

15. The term “adventitious rights” sometimes appears in the literature of the Scottish Enlightenment as equivalent to “acquired rights” (for example in Francis Hutcheson, A System of Moral Philosophy, Vol. 1 (London and Glasgow: Foulis 1755) at 293 and 324) and Reid uses the term himself in the manuscripts in the same way (e.g., in MSS 2131/1/vii/1e, 2131/8/fv/6). However in MS 2131/1/vii/11 (PE, supra, note 2 at 208), he distinguishes between acquired and adventitious rights:

Rights may be divided 3 Ways. According to their Origin Natural 2 Acquired 3 Adventitious. 2 According to their Nature Perfect. Imperfect External. 3 According to their Objects Real Personal. Acquired Rights are Original or derived. Acquired Original Real Rights are got by Occupation. Acquired Rights are those which are consequent upon some deed of ours. Adventitious those that are consequent upon some Adventitious State as of a Master. However he does not use this distinction consistently.

16. AP, supra, note 1 at 419.

On the other hand, there is no doubt that Reid's rather modern use of "rights talk" in relation to property is perceptive and useful:

Property is no Physical Quality in the thing nor any association between it and the Proprieter in the Imagination but a relation between the thing and the Actions of the Proprietor and other moral Agents.\textsuperscript{18}

Much of the remainder of his analysis is fairly standard. He distinguishes moveables from immovableables, real from personal, and original forms of acquisition from derived (that is, where property has been transferred by the original or subsequent owners). Perhaps surprisingly, given the importance placed on it by his friend and correspondent, Lord Kames,\textsuperscript{19} there is little discussion by Reid of the mental element of ownership—the "animus". Almost all there is is the cryptic remark

Rights by the Law of Nature may depend even upon the intentions of Men civil Rights must therefore often be different and determined by different Rules.\textsuperscript{20}

This I interpret, a little differently from Haakonssen,\textsuperscript{21} to mean that although there may be occasions when intention to occupy would be sufficient, according to natural law, to ground a property right, positive law cannot take account of mere intention and will rely primarily on external signs of occupation when granting title.

Occupation is the key means of original acquisition, whereby some specific thing which was previously unowned ("res nullius") is made the subject of property rights.

When therefore I help my self out of the common Store. This is occupation. If any man should pretend to take from me what I have thus helped my self to he injures me and is guilty of a trespass against me against the Master of the feast and against the Company. This is the invasion of My property.\textsuperscript{22}

By the Law of Nature & Right Reason occupation then onely founds a valid Right when it is made without any injurious intention towards our fellow men and when in reality it neither hurts them nor deprives them of any advantage ease or Security which they formerly enjoyed. Our moral faculty here approves of the Occupier, it disapproves of the person or State by whom he is molested or disturbed in an acquisition which hurts no body.\textsuperscript{23}

While labouring entitles one to the fruits of that labour, there is no suggestion of any Lockeian mixing of the individual and the objects, partly of course because property consists of relations between people and not between people and things. Reid does identify (an incomplete list of the) various component rights (the "legal incidents") which the law can distinguish within—and on occasion separate

\textsuperscript{18} MS 2131/7/vii/1c, \textit{PE, supra}, note 2 at 205.
\textsuperscript{20} MS 2131/8/fv/1, \textit{PE, supra}, note 2 at 149.
\textsuperscript{21} \textit{PE, supra}, note 2 at 328.
\textsuperscript{22} MS 2131/7/vii/1c, \textit{PE, supra}, note 2 at 204, where Haakonssen has rendered as "lowness", I think mistakenly, what I read as "trespass".
\textsuperscript{23} MS 2131/8/fv/1, \textit{PE, supra}, note 2 at 148-49.
from— the property right of full ownership:

Fatultas possedendi, utendi, alios arcendi, alienandi or, more fully,

A full Right in a thing implies 1 that I may without transgression of the Law possess the thing and exclude others from the possession of it. 2 That I may take any use of it I please that is not contrary to the law of Nature nor hurtfull to my fellow creatures. 3 That I may give it away or sell it upon any condition that is not contrary to the law of Nature or hurtfull to my fellow creatures. 4 That no other person without injury can interrupt or hinder me from this Exercise of my Right. A Partial Right in a thing implies some one branch or part of the full right in it.

Finally, Reid makes a further distinction between necessities or necessaries and riches, a distinction which will be shown to have great significance when the justification of property is discussed in the next section:

The first is what must presently be consumed to sustain life; the second, which is more permanent, is what may be laid up and stored for the supply of future wants.

Clearly these two kinds of property (immediate necessities and more permanent goods) run into one another: what was yesterday stored for today becomes today’s means of life. But we can also categorise as riches those things which will never become needs because they are owned as luxuries. In notes for his lectures, Reid outlines a partial and speculative history of property which continues this pattern:

The steps by which property is introduced. Hoarding of necessaries, providing Shelter, Arms, Cattle, Water Land Naming an Heir. A succession of Heirs.

Although there is mention elsewhere of the “Extension of Property in Different Periods of Society”, Reid does not pursue a wholehearted adoption of the historical approach to the origins of property which is found in the writings of his Scottish contemporaries such as Kames, Smith and Millar who realised that the scope of property rights might change with changes in the economic stages (or modes of production) of societies. This is perhaps unfortunate since, taken as a whole, his writings seem to suggest that even the justification of the private form of property

24. MS 2131/8/iiv/5 and MS 2131/8/iiv/2, PE, supra, note 2 at 149-54. Reid includes here discussion of possession, succession, mortgages, servitudes and transfer.
26. MS 2131/7/iiv/1c, PE, supra, note 2 at 197.
27. AP, supra, note 1 at 420.
28. MS 2131/7/iiv/1c, PE, supra, note 2 at 205.
29. MS 2131/8/iiv/1, PE, supra, note 2 at 148.
may be different in an early decentralised society from one in which there is the possibility of a state apparatus to administer, and perhaps redistribute, resources.

There is, then, little that is immediately striking in Reid's description of property rights. The next task for Reid is to justify the acquisition and exercise of private property rights, especially since to appropriate something

is to alter the rights of others. For one person to appropriate something is for others to cease to have a right to use it.\textsuperscript{32}

The justification of property rights

Reid uses two analogies, neither of which is original to him, to explain how property rights are acquired through occupation.

This common right of every man to what the earth produces, before it be occupied and appropriated by others was, by ancient moralists, very properly compared to the right which every citizen had to the public theatre, where every man that came might occupy an empty seat, and thereby acquire a right to it while the entertainment lasted; but no man had a right to dispossess another.\textsuperscript{33}

The second metaphor is that of a feast at which guests are free to help themselves to what they choose so long as they do not interfere with the other guests' equal right. Its effectiveness is increased by the fact that, as an instance of the right not only to take something but to consume or destroy it, it emphasises the exclusive nature of property: it highlights the issue of whether causing harm to others encompasses reducing their opportunities.\textsuperscript{33}

We may conceive the goods and Accommodations wherewith the Globe of this Earth is stored by the bounty of heaven as an Entertainment provided by the Author of Nature for his Creatures who are the Guests. ... Hitherto every thing is common. It cannot be said that this man has a right to be served out of this dish that Man out of that. Every man may be Served where he likes best, and is guilty of No ill manners by being so, provided he be not troublesom to others. ... When therefore I help my self out of the common Store. This is occupation. If any man should pretend to take from me what I have thus helped my self to he injures me and is guilty of a trespass against me against the Master of the feast and against the Company. This is the invasion of My property.\textsuperscript{34}

This metaphor is used for the same purposes by Rev. William Paley in his \textit{Principles of Moral and Political Philosophy}. However Paley limits the right to help oneself in a way in which Reid does not, by adding that the guest could not fill his pockets or his wallet, or...carry away with him a quantity of provision to be hoarded up, or wasted, or given to his dogs, or stewed down into sauces, or converted into articles

\textsuperscript{31} Allan Gibbard, "Natural Property Rights" (1976) 10 Noûs 77 at 83.
\textsuperscript{34} MS 2131/7/vii/1c, PE, \textit{supra}, note 2 at 204, and see \textit{supra}, note 19.
of superfluous luxury; especially if, by so doing, he pinched the guests at the lower end of the table.\textsuperscript{35}

Reid would prohibit the guest’s actions \textit{only} rather than \textit{especially} if that guest’s excessive taking meant others went without; where the needs of all are satisfied, Reid seems to lack Paley’s egalitarian bent and to have no qualms about the accumulating of a superfluous or of riches. Nor does he go as far as to require us to assist others before we can help ourselves, in the way that Haakonssen seems to think he does:

While looking after himself every guest must still be constantly concerned for the satisfaction of his neighbour, the general happiness of the party and the honouring of his host. In short, individual claims are legitimate rights only when they do not conflict with the common good but, as far as possible, contribute to it.\textsuperscript{36}

In imposing a duty to serve others as a pre-condition of the right to help oneself, Haakonssen is confusing the requirement that one’s actions do not harm others or go against the common good (which is Reid’s position) with a claim that the exercise of one’s rights must also help others or, at least, actively promote the common good.

The feast metaphor makes it clear that everything is originally in a negative community (or “negative communion”) of goods over which no one (God excepted) has property rights and which contrasts with the idea of a positive community of goods (which exists where everything is held in common social ownership). Reid is here following the line of Gershom Carmichael who was responsible for popularising the ideas of Pufendorf in Scotland. Integrating elements of Locke’s labour theory of appropriation, Carmichael observed that if there were a negative community of goods, it was unnecessary to postulate, as Pufendorf had done, a contractual origin of property dependent on the consent of mankind.\textsuperscript{37} Through the exercise of liberty individual goods may be taken and consumed as of right without the need to seek the permission of others in the group, as long as this harms no one else. Not only that, but the intervention of another so as to prevent or interfere with such takings would be naturally judged to be an injury to the individual and an invasion of a right. Ryan aptly employs the phrase “‘property’ is parasitic on harmlessness” to sum up this sort of approach.\textsuperscript{38}

Every man, as a reasonable creature, has a right to gratify his natural and innocent desires, without hurt to others. No desire is more natural, or more reasonable, than that of supplying his wants. When this is done without hurt to any man, to hinder or frustrate his innocent labour, is an unjust violation of his natural liberty.\textsuperscript{39}


\textsuperscript{36} Knud Haakonssen, “Reid’s Politics: A Natural Law Theory” (1986-87) 1 Reid Studies 10 at 12. See also his “Introduction” in \textit{PE}, \textit{supra}, note 2.


\textsuperscript{38} Alan Ryan, \textit{Property} (Milton Keynes: Open University Press, 1987) at 64.

\textsuperscript{39} \textit{AP}, \textit{supra}, note 1 at 422-23.
But Reid does not seem to see the need to explain precisely how the exercise of that natural right (to acquire and to exclude others) does not harm others. We have to take it that the others who thereby miss out on an opportunity are simply judged by common sense not to have been injured. Instead, Reid elaborates on why preventing the exercise of the right to acquire from the negative community of goods would be judged to be an injury. He makes use of his division of property into two kinds: that which is consumed to sustain life; and the more permanent kind which is laid up and stored for the supply of future wants.  

Although the first kind of property, basic necessities, cannot be consumed “till they be occupied and appropriated”, the right to such property exists prior to any occupation or appropriation and is justified, according to Reid, as entailed within the right to life:

> If another person may, without injustice, rob me of what I have innocently occupied for present subsistence, the necessary consequence must be, that he may, without injustice, take away my life. A right to life implies a right to the necessary means of life. And that justice which forbids the taking away the life of an innocent man, forbids no less the taking from him the necessary means of life.  

But, in addition, “man...a sagacious and provident animal”, foresees future wants, and desires to make provision against them. Hence goods are accumulated and stored, and take on the form of permanent property or “riches”. Reid views this as a justifiable exercise of individual liberty so long as no one is injured by it.

> The natural right of liberty implies a right to such innocent labour as a man chooses, and to the fruits of that labour. To hinder another man’s innocent labour, or to deprive him of the fruit of it, is an injustice of the same kind, and has the same effect as to put him in fetters or in prison, and is equally a just object of resentment.

Similarly the right to liberty justifies other incidents of property such as the right to transfer property.

With each kind of property, Reid seems to be attempting to establish a nexus between rights to property and the naturalness of the rights to life and to liberty by reasoning that a deprivation of the former ultimately violates the latter. However rather than strengthen the right to property, this lack of independence which it appears to have from the two other rights serves to hint at its redundancy.

Reid himself feels the need to supplement the justifications based on rights to life and liberty which he has given for private property, though we cannot be sure that he himself endorses all of them, since he may be simply reciting standard reasons to his students:

justifying Reasons of Property 1 Man a provident and Sagacious Animal 2 The Will of God the Supreme Proprietor has given him this disposition and therefore the Deity must approve the exercise of it according to Reason. 3 Property put it in a Mans Power to do

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40. Ibid. at 420.  
41. Ibid.  
42. Ibid. at 420-01.  
43. Ibid. at 421.  
44. Ibid.
good to others as well as himself and may reasonably be sought for this End. By means
of it we may be enabled to provide for those who are especially committed to our Care,
to make proper Returns for good offices, to supply the indigent, to reward Merit to encour-
age industry. And to promote the happiness of human Society. 4 The power of acquiring
Property is a proper Encouragement to Industry. Corol. As Property is intended only
for the good and Convenience of the Proprietor or of others, it cannot be justified any
farther than it has this Tendency. 45

Property in permanent things may be lawfully acquired 1 Because Reason directs us not
only to supply present wants but to provide against future. 2 Property serves to give exer-
cise to many of the Noblest Social Virtues, Liberty friendship Natural Affection. As
then we may reasonably desire the means of gratifying generous & noble Dispositions
we may as reasonably desire Property. 3 Property makes us less dependent upon the good
offices of our fellow creatures. which we all naturally desire to be. & less exposed to dan-
ger or mischief by their ill offices 4 As Reasonable Creatures we are capable of a wise
and beneficent administration of that Power which Property gives & this is one of the
Noblest employments we are capable of (must Men be alwise Minors.) The State of things
requires universal Diligence in Mankind in Order to their well being. And the Acquisition
of Property seems to be the most powerful spur to Diligence and patience. 46

A man is capable of acquiring property because Nature has endowed him with such a
measure of Judgment and Understanding as that he may make a good use of it. And if
he had not such a measure of Reason and Understanding there is nothing in the Law of
Nature that could justify the Acquisition of Permanent Property. 47

Further insights into Reid’s views on the justification of property can be found
in his comments on the system of entails (an entail being a deed, at that time regu-
lated by the Entail Act 1685, which secures the descent of heritable estate to a
series of heirs, withholding from the heirs the right to alienate any of the estate). 48
While approving, as a straightforward exercise of liberty, the right to transfer prop-
erty on death, Reid argues that the entail system should be abolished because entails
lead to poor use of the property involved and to a discouragement of trade, to the
undermining of virtue, industry and parental control, and to injustice between sib-
lings.

Every Extension of the Right of Property which is hurtful to human Society must be con-
trary to the Law of Nature which Justifies & guards Property only as far as it conduc-
tes to publick Utility. If perpetual Entails therefore be contrary to common Utility especially
in a commercial State as I conceive they are for the Reasons already Mentioned. they
cannot be justified by the Laws of Nature. 49

Some of these additional justifications, brought together here, identify property
as a means to an end, but in Reid’s theory the end goes beyond the utilitarian sta-
bility of society which Hume presents as the final cause of private property; Reid
sees property as contributing to a particular arrangement of society in which the
common good is promoted to its greatest extent.

45. MS 2131/I/vii/1c, PE, supra, note 2 at 205.
46. MS 2131/I/vii/13, PE, supra, note 2 at 210.
47. MS 2131/I/v/5, PE, supra, note 2 at 151.
48. MS 2131/I/v/5 and MS 2131/I/v/2, PE, supra, note 2 at 150-53; MS 2131/I/vii/12, PE, supra, note
   2 at 213-14.
49. MS 2131/I/vii/2, PE, supra, note 2 at 153.
The additional justifications do not appear in Reid’s published account of property and it is apparent that the prime justification for property is still that it is the result of the exercise of man’s basic rights to life and liberty. In summary, then, Reid’s justifications of private property are essentially threefold. There is the argument that private property is needed as the means to satisfying the right to life. There is the argument that the acquisition and control of things is merely an innocent exercise of the existing right of liberty. Finally there is a cluster of goal-based arguments that private property is useful for certain other ends beneficial to society.

But, however soundly based, these are not intended as justifications for unqualified rights to property. Indeed Reid identifies a number of qualifications and limitations to property rights.

**Limitations on property rights**

The first set of limitations relates to things which cannot be owned, and this would appear to include the sea and air, but not, as in the Roman and medieval traditions, things originally used for sacred purposes.

Requisites in things in capable of becoming property by Occupation 1 That the Subject be inexhaustible, incapable of Culture, need no Expence to preserve or Secure it. 2 That its becoming property hurts or endangers the Rights of others. Whether things Sacred are incapable of becoming Property? Neg. 90

From several passages, it is clear that Reid believes that, even where something is susceptible to ownership, individuals’ liberty in relation to their property is not unlimited, and that this is the case in respect of both rights of acquisition and rights of control: indeed, as has been apparent throughout, it is circumscribed particularly by the duty not to injure the rights of others. Although perhaps something of a commonplace, this claim is given a dramatic significance in his *Active Powers* in Reid’s presentation of property rights:

What was said above, of the natural right every man has to acquire permanent property, and to dispose of it, must be understood with this condition, that no other man be thereby deprived of the necessary means of life. The right of an innocent man to the necessaries of life, is, in its nature, superior to that which the rich man has to his riches, even though they be honestly acquired. The use of riches, or permanent property, is to supply future and casual wants, which ought to yield to present and certain necessity.

As, in a family, justice requires that the children who are unable to labour, and those who, by sickness, are disabled, should have their necessities supplied out of the common stock, so, in the great family of God, of which all mankind are the children, justice, I think, as well as charity, requires, that the necessities of those who, by the providence of God, are disabled from supplying themselves, should be supplied from what might otherwise be stored for future wants.

From this it appears, that the right of acquiring and that of disposing of property, may be subject to limitations and restrictions, even in the state of nature, and much more in the state of civil society, in which the public has what writers in jurisprudence call an emi-

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50. MS 2131/7/vi/13, *PE, supra* note 2 at 210-11.
nent dominion over the property, as well as over the lives of the subjects, as far as the public good requires.\footnote{51}

The reason for Reid’s division of property into two kinds is now obvious: the right to permanent property is conditional upon the satisfaction of everyone’s right to necessities, a situation which merely reflects the priority of the right to life over the right to liberty. Furthermore the right to life appears to be claim-right imposing positive duties on others to provide the means to life if need be. Such a radical welfare right theory underlines the secondary nature of the right to property: for the claim of others in need is not an exception to the right of permanent property, far less a supererogatory plea, but is a right prior to all rights of permanent property. It is in keeping with Reid’s intention here to retain the language of rights and justice despite the truth of James Moore’s observation that

[the merits of Reid’s perception that there is an important connection between justice and relief of the needs of others, is unfortunately weakened by his choice of idiom. Clearly members of a family are concerned to administer to each other’s needs, not from a sense of justice, but because of their love and affection for each other.\footnote{52}

This “welfarism” is a limitation internal to Reid’s conception and justification of property. Since the satisfaction of certain basic rights is a condition of private property, the rules of property will need to have a certain distributational content.\footnote{53}

Here is a point of fundamental opposition between Hume and Reid, which is brought into sharp relief by their differing treatments of the case of a famine or siege. Hume took it that a redistribution to everyone in need during such an emergency would be acceptable as a suspension of the laws of justice and of property. Reid, on the other hand, understands this redistribution to be demanded by justice itself (and even, looked at from another angle, by the justification for property). And this principle—that the higher right to life prevails over the benefit of having certainty in property rights—applies under ordinary as much as under emergency conditions.

However, according to Hume, it is of paramount importance that property rights are certain: social stability depends upon rigid adherence to the rules of property. The content of the rules and the distribution that results is of little real significance to Hume so long as the goal of stability is achieved. This benefit is lost if—as in Reid’s scheme—the right to permanent private property is conditional upon the satisfaction of the needs of others. Then property would be destabilised, since no individuals could know whether they had an exclusive right to any particular objects unless they were sure that everyone’s claims to necessities had been met, nor could they be assured of retaining property in something, since new claims to necessities might arise which would take precedence over their property rights. However, this problem can be at least alleviated by positive law acting through a system of taxation.

\footnote{51. \textit{AP}, \textit{supra}, note 1 at 423-24.}
\footnote{52. James Moore, “Hume’s Theory of Justice and Property” (1976) 24 Political Studies 103 at 118.}
When a Man's personal Service and even his life itself is at the [Service of] due to his country when its Safety demands it, it would be very odd to imagine that his Country should not have right to demand a farthing of his Money without his Consent.\footnote{MS 2131/7/vii/23, \textit{PE}, \textit{supra}, note 2 at 259. Reid has deleted “Service of” and superimposed “due to”.}

If a condition for retaining property is that the needs of all have been met, it is entirely legitimate for the state, acting on behalf of the needy or the common good in general, to tax by direct means the “excess” income of those whose needs are already satisfied, for that income is not yet theirs and thus no injury is done to them. Their net wealth is relatively secure.

The distributional rules which Reid is proposing do not require a right to equal shares of property (which is the immediate target of Hume’s criticism), although he has some sympathy with such a position. His approach is a welfarist rather than an egalitarian one. The right to necessities forms a “welfare safety-net”, but once that is satisfied, there is potential both for great inequalities in the distribution of riches and, thus, for incentives to industriousness. There is not the same need for the constant attentions of tyrannical government to curtail exchanges and enterprise which might lead to inequalities emerging. On the other hand, it must be conceded that Reid is open to the Humean criticism that assessing necessities would be an extremely difficult, contentious and never-ending task which might be felt to lead either to social discord or to too great a concentration of power.

The welfare limitation on private property appears in Reid’s published work. In his lecture notes and other manuscripts, Reid lists a series of other limitations upon the right of private property, amongst them the following:

1 That there can be no property in that which common Utility requires to remain common. If a man could occupy the Light of the Sun or the Air we breathe, or the water we must drink such Occupation if possible would be invalid and Null. Because it is inconsistent with the common and Natural Rights of Mankind. ...

4 A Man in danger of perishing for hunger may take it even by force where he can. Proviso. In these cases as much Regard should be had to property as is consistent with the common Good ...

7 Monopolies that are oppressive ought to be prevented or punished ...

8 A Man or a Nation may be hindered from acquiring such an extent of Property as endangers the Safety and Liberty of others ...

10 A Proprietor has no right to destroy his Property when the common Good requires that should be preserved, nor to keep up Mercatble Commodities when the common Good requires that they should be brought to Market. ...

Things Sacred. called by the Civilians Res nullius by the Canonists reckoned inalienable ...

12 In General as Property is introduced among Men for the Common Good it ought to be secure where it does not interfere with that end but when that is the Case private Property ought to yield to the Publick Good when there is a repugnancy between them.
Individuals may be compelled in such cases to part with their Property if they are unwilling, but ought to be indemnified as far as possible. 59

The frequent references, here, to the notion of the common good is a reflection of the traditional natural law thinking lying behind Reid’s lectures and writings. The promotion of the common good modifies the apparent individualism of his rights-talk (which is certainly not the “possessive individualism” of Hobbes and Locke) without however yielding to utilitarianism. Thus John Finnis’ point that we must recall that the common good is fundamentally the good of individuals (an aspect of whose good is friendship in community). The common good, which is the object of all justice and which all reasonable life in community must respect and favour, is not to be confused with the common stock, or the common enterprises, that are among the means of realizing the common good. Common enterprises and the exploitation and creation of a common stock of assets are alike for the common good because they are for the benefit of the individual members of the community... 56

has as its obverse the claim that

only those requirements—of liberty, of goods, and of services—whose satisfaction contributes to the common good are in fact rights at all. 57

For Reid an individual right can have no existence independent of the common good, for the common good confers validity on it and, simultaneously, defines the limits of its scope. Consideration of the good of the community enters into the initial judgment that a particular right exists, and, reciprocally, the proper exercise of valid rights is in the common good. Thus it is not that the common good intervenes on occasions where the public interest demands it to override existing rights. By making them interdependent, the natural law tradition of the common good ensures that there is no such split between individual interests and social interests. At the same time, because the exercise of some rights does more to positively promote the common good than the exercise of others, the rights which are thereby exercised can be classified hierarchically, and in this way the common good provides a means for adjudicating between competing claims of right. This approach will later allow Reid to subordinate the (full liberal) right to private property to the greater common good.

However, despite Reid’s concern for the rights of others, there is in his list no direct equivalent of Locke’s proviso that any original appropriation should leave enough and as good for others. 58 Because, I suggest, of the accelerated shift in the intervening century from a largely agricultural society towards a commercial one, Reid is willing to allow all of a specific resource, even land, to become appropriated from the common stock—as long as everyone’s necessities are provided for, through exchange, state intervention or by other means (though it may be that in

55. MS 2131/7/vii/11, PE, supra, note 2 at 207-08. Again, Reid is listing all limitations, even those with which he does not personally agree (e.g., on “Things Sacred” see text accompanying note 50).
57. Haakonsen, supra, note 2 “Introduction” at 63-64.
58. Locke, supra, note 8 at Book II, para. 33.
the case of something for which there is no substitute, such as the last dodo, the common
good requires that access to see or study it be given to others. Part of
the explanation here is that whereas for Locke the paradigm was determined by
the traditional importance of land, Reid was more influenced by the growth in fully
exchangeable commodities. The soundness of his approach is reinforced by the
fact that, interpolating rather freely, Waldron9 and Buckle have reinterpreted
Locke’s proviso in a more modern sense (which would be closer to Reid’s position
than has been traditionally thought):

In other words, “enough, and as good” can be understood to be satisfied even after the
introduction of the money economy, not because parts of the original common remain
unappropriated, but because the appropriation of land and other resources increases the
social bounty, both in quantity and availability. The worst off, the day-labourer, thus has
enough and as good of those things necessary for his preservation ... So the purpose of
the “enough, and as good” clause, in the stage of the money economy, is satisfied if
incomes provide a reasonable living.60

Similarly, it is interesting to note that in contrast to Locke,64 Reid does not men-
tion a “spoilage” limitation to the acquisition of property: presumably as long as
no one is harmed by the excess that someone has legitimately appropriated going
to waste, and assuming basic needs are met, a proprietor is free to let his or her
property go to waste.65 The closest Reid seems to go towards a spoilage provision
is a limited sympathy with some form of agrarian law to prevent the accumulation
of too much land by any particular individual.65 But, in fact, his objection is not
that the excess goes to waste; rather that too great an accumulation may be a dan-
gerous concentration of political power.

The limitations on property rights discussed thus far have been inherent in Reid’s
conception of property or have been constraints imposed by the natural rights of
others, natural law or the common good. Further restrictions on property rights may
be imposed by positive law. Traditionally natural lawyers have recognised the utility
of human or positive law in facilitating the application of natural law principles.
Reid admits that positive law is appropriate for giving detailed substance to the
natural right of property:

We grant, therefore, that particular laws may direct justice and determine property, and
sometimes even upon very slight reasons and analogies, or even for no other reason but
that it is better that such a point should be determined by law than that it should be left
a dubious subject of contention.64

60. Buckle, supra, note 32 at 158-59.
61. Locke, supra, note 8 at Book II, para. 31.
62. However, the specific evidence that I have for this view, namely Reid’s statement that
Thus to occupy and use improperly those things which God has given to Men in common is
an action indifferent in its self, and so far as it injures no man, nor tends to the hurt of human
Society we may lawfully and rightfully do it. (MS 2131/8/f/9, PE, supra, note 2 at 251),
loses much of its force if Haakonssen is correct in rendering “improperly” as “in property”.
63. See, for example, a letter from Reid to William Ogilvie, his successor at Aberdeen, praising Ogilvie’s
ideas in this area, reproduced in William Ogilvie, Birthright in Land, D. MacDonald, ed., (London,
1891) at 151-52. See also Haakonssen’s “Introduction” in PE, supra, note 2 at 81.
64. AP, supra, note 1 at 432.
Positive laws can specify what counts as occupation or transfer; it can clarify the meaning of “necessities”; it can regulate the division of rights in a particular piece of property (e.g. as between landlord and tenant); it can identify various methods of acquisition. Indeed the regulation of property through positive laws becomes so extensive that it may appear that property rights are purely the product of positive laws—as it appeared to Hume. In this context, Reid admitted that

if the virtue of justice is conceived to extend no farther than to the regulation of property
I should agree with Mr Hume that justice might be resolved into utility and derived its merit from its utility.65

Of course, Reid does not accept that justice extends only to property, far less that it extends only to the regulation of property. What he is prepared to concede is that once the general right to property is granted to be a natural right, the detailed rules (of positive law) governing that right in a particular society will be chosen so as to best suit that society. Similar reasoning applies to the regulation of contracts and promises: breaking a contract is naturally unjust, but what counts as a contract will vary with the conventions of particular societies.

However positive laws can go further than making natural law specific: they may legitimately abridge natural law or natural rights:

In the state of nature, every man’s property was solely at his own disposal, because he had no superior. In civil society it must be subject to the laws of the society. He gives up to the public part of that right which he had in the state of nature, as the price of that protection and security which he receives from civil society ... In the state of civil society, he must submit to the judgment of the society, and acquiesce in its sentence, though he should conceive it to be unjust.66

[Even] the Right of Occupation by private Persons [may be] limited by the Laws and Customs of States67

This does not necessarily mean that any rights may be abrogated entirely, especially since an individual’s “protection and security” must comprise, in part at least, the protecting and securing of his or her rights, but it does suggest a further way in which property rights may be qualified.

Thus the claim that there is a natural right to (permanent) property is attenuated in a variety of ways. Firstly, Reid does not press for the acceptance of property as an independent right: instead it is derivative from the rights of life and liberty and is a means to their fulfilment. Furthermore its scope and exercise are severely restricted by natural law and considerations of the common good as to what may be acquired and what may be done with it. Then, the residual right may be regulated, modified or surrendered through positive laws introduced in civil society in pursuit of utility. The rights which result from this are rather remote from the traditional idea of an absolute inalienable natural right.

To explore the nature of these residual rights, it may be useful to compare them

65. MS 2131/7/vii/1b.
66. AP, supra, note 1 at 423.
67. MS 2131/8/v/1, PE, supra, note 2 at 149.
with similar ideas in jurisprudential literature. George Panichas has distinguished a “possessor model of ownership” from a “proprietor model of ownership.”88 One of the characteristics which he attributes to the possessor model is that

Individual ownership can be exclusive or private just so long as that which is owned and that exclusive way of owning do not restrict or limit access by non-owners in the pursuit of fulfilling their basic needs.89

However Panichas’s scheme is closer to a socialisation of property since most things most of the time will be held as common property for the benefit of the community: individuals will only have temporary exclusive property rights when and for as long as they are using the objects, so that whereas

[i]he right to use so as to fulfill [sic] basic needs is a consequence of the liberal conception of ownership ... it does not function, as it does in the possessor model, as a condition for gaining and maintaining ownership.89

But Reid is not quite saying (at least not at this stage in the development of his ideas) that the only time you can “have” property is when you are using it.

An alternative might be to use the term “prima facie”90 rights. If this means that a variety of incidents of ownership are protected as rights but these have to yield to a stronger claim of necessity, it was a commonplace in the natural law tradition, familiar to Reid, no doubt, in the writings of Grotius, Pufendorf, his teacher George Turnbull, and Scotland’s dominant legal writer, Lord Stair. Hume’s suspension of the rules of property and justice in times of emergency is merely an extreme form of the same proposition. But in these writers the owner’s full property rights are assumed to exist and are outweighed or overridden by the claims of the indigent: debate centres on the extent of compensation, if any, due to the property-holder. Reid’s approach is different in that, for him, a right to permanent property does not come into existence until needs are met, whereas with the prima facie right, the right exists unless a need arises.

Honoré puts forward the suggestion that full ownership is not simply a matter of rights but entails obligations too.91 However he restricts this to the obligation not to use things in a harmful fashion (a limitation on the liberty of free use) and makes mention of liability to execution for debt, to taxation and to expropriation by the public authority—all as exceptions to the standard incidents. There is no suggestion that there is inherent in the incidents of full ownership an obligation to the needy.

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89. Ibid. at 349.
90. Ibid. at 351-52 (Emphasis in the original).
92. Honoré, supra, note 25 at 123.
The term that seems to best fit Reid's elusive residual rights is "conditional", since they only come into being if and when certain conditions are fulfilled. Perhaps Reid himself begins to doubt their value:

The things we may occupy are either such 1 as are for present Use or Consumption or 2 such as are of a permanent nature & are used without being consumed. The first must be occupied; but it may be Disputed whether the second may not be left in the Community of Nature, or at least remain in a State of positive Communion see Plato. Utopia. Paraguay. 73

The way is now open for Reid's Utopian scheme, in which he argues that the best way of promoting the common good is through the replacement of private property by common ownership. Taking private ownership on the one hand and public or common ownership on the other as the two realistic alternatives, Reid assesses each in turn.

The final rejection of private property

While private property satisfies very effectively man's desire for distinction and pre-eminence among his fellow men, it also through its unequal distribution corrupts the rich and debases the poor and leads to crime: life becomes a scramble for money to the exclusion of more worthy goals, a scramble in which each individual's interest is often set in opposition to both the public interest and the interest of every other individual.

Suppose then a Nation of which the individuals have all their wants supplied by the Publick, the produce of their Labour being to be put to a publick Stock for the common benefit. 74

In this Utopian system of common ownership (where there is a "positive community of goods") there would be fewer temptations to bad conduct, Reid believes, but on the other hand there may not be sufficient incentives to do the labour necessary to provide for the subsistence and happiness of society. One remedy for this would be proper education and training; another the use of symbols of esteem and reward—titles, honours, even badges or medals. These would be graded according to the utility and difficulty of each profession and the industriousness and merit of the individual. Indeed, Reid considers that this would be a better system of reward than private property is:

It is a capital Defect in the System of private Property that the different Professions and Employments are not honoured & esteemed in proportion to their real Utility, & the Talents required for the discharge of them. The most useful and necessary Employments are held in no Esteem. Nor indeed do they deserve it; because they are undertaken only for the sake of private Interest. Their utility to the publick is accidental, & not in the view of those who practise them. 75

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73. MS 2131/1/vii/13, PE, supra, note 2 at 210.
74. MS 3061/6, PE, supra, at 284-85.
75. Ibid. at 290.
But rather surprisingly—though he denies any inconsistency, since use rights alone rather than full ownership rights are given—Reid includes material rewards in his scheme of incentives:

But there is a Splendor and Magnificence, in having Servants, Horses, Chariots, Houses and Furniture, which does not appear to me to be incompatible with the Utopian State, though Sir Thomas More seems to be of another Mind.

When such Splendor is bestowed by the State, as the Reward of Merit, either in a Mans Life or at his Death; it is the most substantial Reward such a State can give, and proves an incentive to Merit in others, as well as creates Respect in the lower Orders. 76

He contrasts this with the situation where “Splendor & Magnificence is produced merely by Riches without regard to Merit”, which leads to pride and to envy. It seems that his quarrel is not with the inequality of private property but with the failure of riches to correspond to merit (thereby losing their rationale as an incentive). The use rights that people would enjoy in Utopia would not be equal, not simply because individual needs vary, but also because meritoriousness varies. The imperative of guaranteeing the provision of necessities, not overall equality, remains the driving force of his ideas. To further this, “an Accumulating Fund” 77 would insure against accidents, losses caused by bad harvests, flooding, or the depredations of enemies. Admitting that this interventionist scheme would create a huge bureaucratic burden, Reid counters by pointing out that the great mass of laws necessitated by the institution of private property would become redundant. Reid also recognises that various liberties relating to property—conspicuously the right to transfer—would be lost in Utopia, but this is offset by the strengthening of the security of necessities.

He concludes that the balance of the argument is in favour of the Utopian system. Though he is well aware that in political terms it is most probably impracticable, since the change to it would need to be by the consent of all existing property owners or be an injurious taking of property by the state, he never intended to present a manifesto but rather an abstract speculation on

that Form of political Society which seems to be best adapted to the Improvement and Happiness of Men. 78

It might be thought that this sentence holds the key to the explanation of Reid’s apparently radical shift from a defence of a natural right to private property to advocating its dissolution: the former approach is a genuine philosophical response to David Hume; the latter mere idle speculation. Alternatively, perhaps Reid simply changed his mind about property. But the better explanation is that, when its true nature is revealed, the natural right to private property is found to be so circumscribed that Reid saw it to be only a short step to suggest that private property might be superseded by a system of common ownership.

76. Ibid. at 291. The servants are to be “Servants of the State”. This scheme is, of course, open to Hume’s criticisms of merit as the basis of property rights (see text accompanying note 10 supra).
77. Ibid. at 293.
78. Ibid. at 280.
The reasons should now be clear. A system of property rights can only be justified for Reid if it satisfies basic welfare needs. While legitimate claims to property will also arise as a result of the exercise of liberty, liberty is heavily circumscribed in every society and as times change and populations grow the restrictions may become tighter. Utilitarian arguments provide additional reasons for recognising property rights, but these are supplementary, often relating to the form or regulation of the property system, and may be outweighed by other considerations.

Where, as with both Reid's conditional rights system of property and his Utopian system, welfare rights are protected, the decision as to which is the more justifiable system in terms of its form will take into account how well welfare rights are protected, but will be more greatly influenced by the delicate balancing of liberty and a variety of utilitarian factors. It may well be that the residual liberties that go with private property will be judged important enough to settle the matter in favour of private property. Nevertheless, the way is open to the lawmaker to change the existing rules of property if that would better promote the common good. A radical legislator may even, with Reid, believe that the common good is best promoted by common ownership, leaving the individual with a residual (but inalienable) right only to use and consume immediate necessities.

Conclusion

While it would be patently false to pretend that every remark which Reid made on property rights is completely reconcilable with every other, a coherent theory of property can be pieced together from his various writings. It may be that, individually, the components of this theory can be found in other writers, but the precise route of the journey on which Reid has led us from natural rights to common ownership is a uniquely Reidian creation.

However, what is important, ultimately, in his writings about property is not whether Reid's move to the Utopian system follows from his earlier account, but the strength of the argument that he puts forward, from a starting point of common sense natural rights, for a conception of property which gives inherent priority to the securing of basic necessities for all. This is a conception which challenged the dominant view of both David Hume and Adam Smith that the rules of justice (and property) serve to protect existing property rights or holdings and cannot require any redistribution. Though the accounts they gave differed, Hume's view being effectively positivist while Smith relied on a natural rights approach, their analyses converged in treating property rights as formal, private, and untrammelled by positive legal duties to aid others.

Writing in 1976 of the reasoning which led Hume to this very conservative theory of justice and property, James Moore noted

Now the judgement that the satisfaction of needs and wants could be best effected in a society which offered security for owners of property was never more nor less for Hume than an experimental judgement, based upon experiences of the inconveniences and hardships which followed from attempts to contrive alternative social arrangements. ... But the experience of the two centuries of social life that have passed since Hume wrote
requires us to recognize that social justice involves more than security for owners of property; it requires attention to those more basic concerns of social justice expressed perhaps imperfectly by his contemporary critics: the recognition of individuality and the relief of human needs.79

However, since Moore wrote these words, "those basic concerns of social justice" have found themselves taking second place to a resurgence of the ideas which Hume and Smith promoted, and it is, instead, these latter which have become the modern orthodoxy, through the writings of such as Hayek, Nozick and Posner. It is not my task here to offer a detailed response to these modern writers. But it may well be that, just as they have drawn heavily from Hume and Smith, so their critics will find in Reid's struggle with the nature of property the substance of an effective challenge to their orthodox analysis of property. At the very least, Reid's advocacy of natural rights, combined with his rejection of his contemporaries' treatment of private property as an unqualified right, offers the possibility of an alternative conception of property which better promotes social justice.

79. *supra*, note 52 at 118-19.
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