

Past Conceptions of Environmental Rights:  
Tensions and Solutions

By

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## Ashley Harriman Dodsworth – Past Conceptions of Environmental Rights: Tensions and Solutions

This thesis will argue that environmental rights are not new, that they are not the response of the modern world to unique contemporary problems. Contributing to two areas of scholarship within environmental political theory, that of re-examining the political canon and developing the concept of environmental rights, it will show that there is a tradition of engagement with the concept of rights to natural resources within past political theory. This argument will be proved through an examination of past political texts, drawn from thinkers as varied as the republican theorists Niccolò Machiavelli and James Harrington, the natural rights thinkers Hugo Grotius and John Locke, the eighteenth-century radicals and the leading theorists of the nineteenth century, Karl Marx and John Stuart Mill.

As a result of this analysis, it will be clear that previous political thinkers were aware of the problems inherent in securing the rights of all to finite resources. Through their work on rights, and specifically environmental rights, labour and property, they engaged with the contradictions at the heart of this concept. Yet the value of the previous work on environmental rights does not rest only on their awareness of these tensions but in their responses. These thinkers reimagined and reconceptualised environmental rights as limits to property; as justification for reclaiming and redistributing resources; as entitlements to 'as good' equivalents and as necessitating the exclusion of some from natural resources.

This examination of awareness of these inherent tensions and the creative solutions offered in response shows the depth and variety of the past conceptions of environmental rights. The historically informed understanding of environmental rights that results is one which endeavours to balance the claims, equality and freedom of all in the face of finite resources, offering both a source of inspiration and variety of options for contemporary environmentalists.

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## **Introduction**

From climate change to wilderness destruction, from the relentless consumption of limited resources to the release of pollution, the environment that all humanity depends upon for their survival is under threat. Yet humanity's shared vulnerability in the face of this destruction masks the fact that the effects of environmental damage are unevenly distributed. The severity of the threat and its uneven distribution, especially with regard to immediate risks such as lack of access to clean water, has resulted in growing support for the concept of environmental rights. These rights are put forward as a way of both articulating what is wrong with environmental destruction, and its uneven effects in particular and as a tool that can be used to ensure that action is taken to prevent or mitigate this. This growing support has resulted in the development of a specific literature surrounding environmental rights. In seeking to develop environmental rights these works have engaged with three key themes; the justification of these rights, their definition and conceptual critique.

The first theme asks why environmental rights are necessary. This question is addressed by Michael Anderson who notes that there are three ways of combining environmental concerns with rights (Anderson, 1996: 4 – 10).

Firstly, a set quality of environment could be a requirement of rights in general. Breena Holland takes this approach, arguing that the environment is a meta-capability, for no other capability can be realised without an environment capable of supporting human life and which all can access (Holland, 2004). This argument is also applicable to rights, with environmental quality and stability something no other right can be fulfilled without. To borrow Holland's terminology, the environment could be seen as a meta-right. Secondly, specific existing rights could be said to require a stable environment. The rights to life and health are often referenced here and Jan Hancock suggests that the rights to freedom from hunger and self-determination would also require control over natural resources (Hancock, 2003: Chapter Six). Rights against discrimination would also prevent rights-holders from being excluded from using and

accessing their environment along with others. But the benefits that the environment brings stretch beyond the mere fulfilment of any individual rights such as life or health. Instead it encompasses all aspects of human life. In recognition of this fact, the third option is the creation of specific rights to the environment, so that environmental access is secured directly, as opposed to being subsumed or implied by other rights.

The literature on environmental rights all starts by defending this third option and explaining why environmental concerns need to be considered a unique, specific right. In part this justification is pragmatic – as Kerri Woods points out, rights are ‘undoubtedly the biggest game in town in terms of the moral language used in politics’ (Woods, 2006: 579). James Nickel also made this point when he pointed out that rights have an internationally recognised system of normative weight, implementation and enforcement which environmental campaigns could benefit from (Nickel, 1993: 282 – 283). But two forms of theoretical justifications are also put forward. The first argues that environmental rights meet the required standard of criteria for rights in general. For example Nickel ‘present[s] a normative defence of right to a safe environment’, by arguing that ‘a right to a safe environment – defined narrowly – is a genuine human right because it passes appropriate justificatory tests’ (Nickel, 1993: 281 – 282). Nickel argues that a right to a safe environment is feasible, has clear duties with obvious duty-bearers, and is the only way to protect fundamental human interests (*Ibid.*: 288 – 295). If there can be said to be any rights at all, Nickel argues, then there are environmental rights, for the same justifications apply. This argument is also used by Aaron Lercher (Lercher, 2007) and Tim Hayward (Hayward, 2004), who argue that environmental rights pass the same criteria as moral rights and constitutional rights respectively. So if there are moral rights or human rights or constitutional rights, then there are environmental rights too.

The second justification is that, by recognising the importance of the environment to all aspects of human life and securing it first, other goals can be achieved. This reverses the logic of the second approach to the relationship between rights and the environment that Anderson identified. Environmental protection may not be securely guaranteed through the rights to life and health, this argument says but these rights will certainly be secured by environmental rights. This justification is adopted by Jan Hancock and Robyn Eckersley. Hancock argues that ‘that universal

environmental human rights to (i) an environment free from toxic pollution and to (ii) natural resources are required for existing legally stipulated human rights to be realised' (Hancock, 2003: 157). Rather than securing environmental protection through existing rights, Hancock seeks to place environmental claims front and centre with the assurance that other rights will be fulfilled as a result. 'Existing... human rights' do not secure an environment free from pollution, or access to natural resources, even though they are essential to human life, but creating these two rights will secure this and other rights. Once the environment is secure, other goals follow suit. Eckersley suggests that environmental rights could act as a bridge between end-specific environmentalism and the open-ended decision-making and neutral understanding of the good life as understood by liberal democracies. She asks whether 'a reformulated rights discourse, grounded in a prima facie respect for the autonomy of all life forms, also serve as a linchpin between green values and democracy?' (Eckersley, 1996: 214) and concludes that 'rights discourse... [could be] enlisted as a means of connecting democratic concerns and ecological concerns at the level of principle' (Ibid.: 214). Through recognising the importance of the environment to all human life and securing it against trade-offs via rights status, environmentalism and democracy are reconciled. Recognising environmental rights first is essential if we wish to consistently secure other rights and goals.

The two justifications of qualification and the ability to secure other aims, share an understanding of the importance of the environment for all aspects of human life. As a result environmental rights are capable of meeting any set criteria and will be essential to the achievement of any other rights or larger goals.

With the case for environmental rights in general made, the proponents of such rights turn to questions of definition. A variety of forms are suggested, with environmental rights likened to human rights by Nickel (Nickel, 1993) and Woods (Woods, 2010), basic rights by Shari Collins-Chobanian (Collins-Chobanian, 2000), welfare rights by Joseph Sax (Sax, 1990 – 1991), moral rights by Lercher (Lercher, 2007), constitutional rights by Hayward (Hayward, 2000, 2002, 2004), and communitarian and emergent rights by Richard Hiskes (Hiskes, 2009). With each variation a different aspect of such rights is drawn out and the tensions between the

interpretations are clear. A communitarian or constitutional environmental right, for example, will be held only by those of that community or under that constitution, in sharp contrast to the more universal human rights. Sax's focus on welfare rights is challenged by Collins-Chobanian who believes that environmental rights need to go 'Beyond... Welfare Rights' (Collins-Chobanian, 2000). She criticises Nickel for permitting other rights 'to compete with the right to a safe environment' (Ibid.: 141), illuminating the tension regarding the priority that environmental rights should have.

The idea that environmental rights are or include procedural rights is put forward by Sax and Eckersley. Sax claims that 'the first environmental right is the right to choose' what quality and quantity of natural resources we should be entitled to access (Sax, 1990 - 1991: 97). He argues that environmental rights do not mean that their holders are entitled to an untouched, unchanged environment, but rather that they should be able to decide for themselves how and in what ways their environment is used. Sax explicitly ties the 'basic right not to be left to fall below some minimum level of substantive protection against hazard' (Ibid.: 100) to procedural rights, arguing that each society must be able to use its procedural rights in order to decide what the 'appropriate level of protection' is. Eckersley provides a more expansive explanation of what procedural environmental rights would be, suggesting that they include:

'a right to environmental information and a corresponding duty on the part of the state to provide regular state of the environment reports, the right to be informed of risk generating proposals, third-party litigation rights, a right to participate in environmental impact assessment processes and the right to environmental remedies when harm is suffered' (Eckersley, 2004: 137).

Such rights would enable individuals to be informed of the state of the environment and the latest scientific knowledge and to adjust their threshold levels accordingly, as well as providing recourse when the threshold was not met. Hayward also examines the democratic element of environmental rights (Hayward, 2004: 84 - 88). However he is aware of the politics surrounding decisions made about the use of the environment and the potential danger of short term trade-offs that prioritise economic development. He therefore argues that environmental rights should be constitutionalised because environmental concerns need to be lifted above day to day



politics and short-term decision making. Though there is agreement as to the importance of decision making, endeavouring to balance the need for consultation and choice against the fundamental importance of the environment creates tension.

The final theme within the work on environmental rights is that of conceptual critique. Despite the justifications given and the variety of forms and definitions that are suggested, some remain sceptical about the relationship between rights and the environment. Eco-centrics and proponents of animal rights argue that environmental rights privilege humanity at the expense of the rest of the natural world (Redgewell, 1996, Barry and Woods, 2012: 384). This critique has been partially answered in the suggestion of a 'spill-over effect' that would see a better environment for humanity benefitting all other living creatures (Redgewell, 1996: 87) As Mary Midgley argued 'the interests of different species coincide so widely that really enlightened self-interest would not dictate seriously different policies from species-altruism' (Midgely, 1994: 111).

The eco-centric critique is not the only reason for scepticism regarding environmental rights. John Barry and Kerri Woods (Barry and Woods, 2012), Woods (Woods, 2006, 2010), Gunther Handl (Handl, 1992) and Helen Batty and Tim Gray (Batty and Grey, 1996) all question 'the assumed compatibility between human rights and the environment' (Woods and Barry, 2012: 384) because, as Ted Benton points out, rights fail to take account of the fact that 'humans are necessarily embodied and also doubly, ecologically and socially embedded' (Benton, 1993: 103). This critique is most strongly made by Batty and Gray, who argue that environmental rights are 'theoretically problematic... [because] the language of rights is not appropriate to the environment and that, while there may be a duty to protect the environment, there is no corresponding right to an adequate environment' (Batty and Gray, 1996: 150). They believe that environmental rights are problematic for several reasons such as: the problem of defining who is a right-holder and who is a duty-bearer; the problem of defining environmental rights, especially with regard to whether they are liberty rights or welfare rights and the different duties these rights impose; and the problem of enforcing environmental rights world-wide. All of these problems stem from one key

criticism, which says environmental rights 'require a fresh philosophical foundation' (Ibid.: 154).

More recently Woods has 'question[ed] the presumed harmony between human rights and environmental sustainability' (Woods, 2010: 25). This critical questioning has led Woods to suggest that while rights-based approach to the environment does have its advantages, these are off-set by persistent tensions between the two concepts:

'The idea of environmental human rights has much to recommend it, if and only if, human rights as human rights are not taken as they are but are instead reinterpreted so as to address the problem of underfulfilment of human rights and so as to recognise the ecological as well as the social embeddedness of human life. The human rights framework, however, has only limited utility from an environmental perspective' (Ibid.: 150).

Arguing that not enough attention has been paid to the inherent incompatibility between rights and finite environmental resources (Ibid.: 128), Woods suggests that an awareness of the problems and contradictions within environmental rights must be brought to the fore.

Within their response to these three areas of justification, definition and critique many of the authors mentioned here have looked to the canon of rights texts and thinkers. As a result, many refer to past rights thinkers and to Locke and Mill in particular (Eckersley, 1996; Dagger, 2006; Woods, 2010 all make this point). For example Collins-Chobanian briefly examines how Mill's harm principle can be used as a source for environmental protection (Collins-Chobanian, 2000) in her search for a justification for environmental rights. Eckersley also makes similar references to Mill and Locke, as does Woods, who believes that Mill could be very useful to the green cause in contrast to the 'anti-ecological' Locke (Woods, 2010: 78). Richard Dagger also touches on Locke's understanding of rights in his work on environmental rights, using Locke's description of rights as hedges to protect us against bogs and muddy ground to set up questions regarding who is a rights holder and the relationship between rights and individual's freedoms (Dagger, 2006). The best example of the use of these two central figures is Hayward's engagement with Locke. Hayward argues that Locke

‘remains an appropriate starting point’ for discussion of environmental rights because not only is he one of the most influential figures in rights theory but because he is concerned with the ‘natural conditions of existence’ (Hayward, 1995: 130). Hayward aims to show that Locke’s work on rights ‘has a rationale of justice... (with) social and ecological implications’, despite the prevailing opinion that he is ‘at the head of a tradition which is more to be associated with ecological indifference or malignity than eco-friendliness’ (Ibid.: 130). By tackling the founder of the tradition Hayward can show that the liberal rights tradition is compatible with environmental concerns. Yet this ignores the fact that Locke’s understanding of rights and the environment was not the only one developed at that point in time. Furthermore, in claiming that we are now ‘thinking about justice and rights in an ecological era’ (Ibid.: 133) Hayward suggests that Locke and other past thinkers were not.<sup>1</sup>

Here Hayward inadvertently reflects what John Meyer has described as ‘the actual connection between nature and politics [which] has been gravely misrepresented by the ways that both environmentalist thinkers and many other scholars have understood and discussed the history of western thought’ (Meyer, 2001: 2). Meyer argues that a false binary has been imposed, which sees an anthropocentric past contrasted with a more ecologically aware present. This overshadows the fact that there is a larger tradition of thinking about the environment and politics which sees both concepts as intertwined and inseparable. Unless this tradition is recovered ‘our theorising will be handicapped either by an inability to appreciate the inescapable significance of nature and the natural world for contemporary politics or by a failure to acknowledge the crucial role of political conceptions and judgements in shaping the ways in which nature is understood’ (Ibid.: 2). He argues that ‘nature’ is a political concept, which has been defined and shaped over centuries by power structures, debates and struggles. If ‘ecological era’ means a period when individuals thought seriously about their environment, its limitations and the implications of their dependence upon it, then all eras are ecological.

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<sup>1</sup> Jan Hancock looks outside the liberal tradition and consequently draws on Paine’s *Agrarian Justice* to anchor his argument for environmental rights (Hancock, 2003: 140). Yet his brief engagement fails to take account the complexities of Paine’s work.

This point has been made in recent years through a larger trend within environmental philosophy, known as ‘greening the canon’. Andrew Dobson suggests that this project has two elements to it: ‘first... bringing previously buried political theorists to our attention, and second... forcing us to reassess the work of canonical theorists’ (Dobson, 1993: 232). This is because, as Kovel points out, ‘the “past” is not something to be thrown aside; it is also a living repository of tradition’ (Kovel, 2007: 245) and ‘when we speak or become aware of something called nature we are apprehending something that also has a history at the least because the ways of speaking about it are social practices’ and political practices (Kovel, 2007: 95 – 96). Investigating this ‘past’ and the ‘history’ of these ‘practices’ has become a key area of environmental political thought, focusing on a wide variety of thinkers and traditions (Meyer, 2006: 779). For example Patrick Curry (2000) and Barry (2006, 2012) have examined the republican tradition, whilst David Pepper has shown the historical roots of eco-socialism (Pepper, 1993). The ‘green’ credentials of liberalism have also been repeatedly questioned, defended and reinterpreted with reference to the history of that ideology and its key figures. Marcel Wissenburg argues that while ‘there were once good grounds to suspect liberalism of at the very least a certain indifference towards ecological challenges – yet this attitude is changing dramatically’ and that liberalism is ‘greening’ (Wissenburg, 2006: 20). In making this argument Wissenburg draws heavily upon the work of Mill and Locke (see *Ibid.*: 21 and also Wissenburg 1998, 2005, 2006). More work has been done with regard to individual political thinkers. From Machiavelli (Barry, 2012) to Jefferson, (Ball, 2001, Cannavò, 2010) via Grotius (special edition of *Grotiana* 2001), Winstanley (Bradley, 1989; Monbiot 2007), Rousseau (Lane Clark Jr, 2004), Wollstonecraft (Hague, 2014), and Marx (Foster, 2000), a growing literature has re-examined the political canon. This sub-field of environmental philosophy has been well-served by these works, which have brought a sustained attention to a neglected aspect of the history of political thought and environmental political thought. These authors have drawn strong and complex links with past thinkers and the environmental challenges we currently face. Barry for example argues that the republican tradition has great relevance in the face of growing climate change because the republican tradition directly engages with the problems of vulnerability, fragility, sustainability, community and temporality (Barry, 2012). Barry

makes clear that he is not presenting ‘a ‘green’ interpretation of canonical texts and thinkers’ but rather is seeking to use several of the ideas and arguments within the republican tradition in order to develop and advance green political concerns (Ibid.: 216). This is a politically focused project that aims to provide new ground for thinking about and, more importantly, acting on current political problems.

But there has been too much singularity of focus within these works, with little comparison between the various figures and the link to environmental rights has rarely been made and certainly not consistently. This is surprising, because not only are theorists of environmental rights deliberately and consciously reaching back to the canonical thinkers, but because such thinkers explicitly and openly develop, defend and engage with the concept of environmental rights.

This thesis will therefore explore the past works in order to show that environmental rights are not new, that previous thinkers within the political canon developed these rights and responded to the tensions and contradictions within them. Going beyond Locke and Mill, it will show that figures as diverse as Hugo Grotius and Mary Wollstonecraft were concerned not just with the environment in general but with the rights of individuals to their environment in particular, and were joined in this project by previously unexamined thinkers such as Thomas Spence. More importantly this specific aspect of their thought, namely environmental rights, has never been set out, nor have their interpretations of this been compared and contrasted.

The central aim of this examination is not to develop our understanding of these figures or add to the ‘green canon’. Instead, I follow Quentin Skinner’s point that those who study political theory, particularly past political theory ‘ought... to be prepared to ask ourselves quite aggressively what is supposed to be the practical use, here and now, of our historical studies’ (Skinner, 1998: 107). The ‘practical use, here and now’ of this thesis is to contribute to current environmental political thought by advancing and informing our use of environmental rights, showing both the tensions and possibilities inherent within it. Looking to the past political thinkers can also provide a source of inspiration for current environmentalists and a sense of comfort that they are not the first to confront these challenges.

This is not to say that these past thinkers are environmentalists, certainly not as the term is currently understood. Ariel Hessayon makes this point, pointing out that a concern with access to natural resources does not imply an eco-centric view (Hessayon, 2008) and that these figures would not have thought of themselves as environmentalists. It is undoubtedly *not* the aim of this thesis to argue that these thinkers and their works should be considered as examples of eco-centric theory. Instead it will show that each is engaging in specific debates that concern the relationship of people to their environment and through it each other. Hayward makes this point when he shows that Locke was concerned with the 'natural conditions of existence' (Hayward, 1995: 130). These thinkers are engaged with the problems of access to natural resources, to the air, water, soil, forests, mountains and sub-soil resources, to the problem of the ecological embeddedness of human life (Woods, 2010: 150). The questions of power, inequality and entitlements that grow from this resulted in each thinker developing rights to the environment, in order to understand and manage these relationships.

In doing so each thinker acknowledges the contradictions and tensions inherent in trying to balance rights to finite resources. As a result the problems and variety identified within the contemporary literature, the questions of justification, definition and conceptual tensions, also occur in the previous understandings. But these thinkers also present solutions to these problems, developing politically creative and reflexive responses which drew upon multiple ways of conceptualising rights to a finite environment. This thesis shall identify these themes and ways of thinking about environmental rights, starting with an examination of the problems that are identified within environmental rights before examining the solutions, the ways of redefining and rethinking environmental rights that are presented in response. The 'practical use' of this material will also be stressed throughout, with the links to current environmental political theory and politics stressed in each chapter.

The first three chapters set out the tensions within environmental rights, starting with the problems inherent within rights themselves. Three key themes, freedom, equality and inclusion and claims, occur throughout the varied accounts of rights given by these thinkers and, when they are applied to finite natural resources,

tensions quickly appear. Whereas the first chapter will show that the three central themes create tensions when rights are applied to the environment, the second chapter looks at the tensions within the specific rights to the environment that these past thinkers developed. All the thinkers examined in this thesis develop and support rights to natural resources, albeit in different ways and for different reasons. These debates over issues such as dominium and usufruct, the divisibility of resources and whether resources are held in common by all or owned by no-one creates further tensions. The differences in these accounts and the tensions within environmental rights themselves will be examined, with the central themes of freedom, equality, belonging and claims again predominating. These themes also reoccur in the third chapter, which explores the final source of tension and problems with environmental rights, stemming from the belief that environmental rights include, and are synonymous with, the right to labour upon, develop and exclusively own natural resources. This chapter will show that all these thinkers are aware of the necessity of developing environmental resources and the role that ownership plays in this. However the inescapable fact that natural resources are limited and finite creates problems here, with exclusive private ownership by one person limiting what another can have. These three chapters identify the difficulties inherent in conceptions of environmental rights, difficulties that the previous thinkers debated and struggled with. These are political arguments, making explicit the power and control of some over the environment which all need and the resulting problems that need to be addressed.

The tensions inherent within the concept of rights, within specific environmental rights and within rights to labour and property in finite natural resources set out in the first three chapters problematizes environmental rights as a whole. Yet the past conceptions of environmental rights do not just identify problems and tensions within these rights, they also suggest solutions, as the latter four chapters of this thesis will show. The past thinkers diversify, moving away from their shared understanding regarding rights, environmental rights and the advantages and disadvantages of labour and ownership, into four responses to the problems of environmental rights. From the imposition of strict limits to ownership of natural

resources set out in Chapter Four, to the reclamation and redistribution of resources examined in Chapter Five, the discussion in Chapter Six of the reinterpretation of environmental rights as rights to the provision of compensation and equivalents, and the exclusion and denial of the rights of some examined in Chapter Seven, the solutions offered by previous political thinkers to the inherent tensions within environment rights are varied and creative, drawing upon different conceptual languages as they seek to reinterpret and reimagine environmental rights.

Each suggestion emphasises a different facet of environmental rights, from immediate survival, both physically and politically, to the importance of independent self-sufficiency, with some thinkers emphasising the importance of freedom and others the necessity of equality. The relevance of these solutions for contemporary environmentalism will be stressed within each chapter as this variety shows how environmental rights can bend and shift but not break in the face of numerous obstacles, particularly the crucial challenges of development (and the accompanying use if not outright destruction of resources) and the different forms of environmental resources.

This relevance will be shown with reference to the current debate over fracking in the UK which, though it seems to be a unique contemporary problem, would benefit from the analysis of past works set out in these chapters in two ways. Firstly, the awareness of the tensions inherent within environmental rights, particularly those which centre around labour and property, is reflected in the debate over fracking. Fracking is said to provide inexpensive, relatively clean energy, which is essential for the preservation of the quality of life currently enjoyed in the UK (Vidal, 2013). This reflects the arguments in favour of labour and ownership, as put forward by past thinkers such as Winstanley and Wollstonecraft as Chapter Three will show, is essential to the preservation of the quality and quantity of human life. That individual's rights to resources allow them to labour and develop such resources, use them as best they see fit and that environmental rights should ensure this choice is also put forward both in the past literature and in the pro-fracking arguments. Yet the response of those who oppose fracking also echoes the arguments of past thinkers. For example campaigners draw on the language of rights and of environmental rights in particular, as seen by the



report *A Human Rights Assessment of Hydraulic Fracking* (Gear et al, 2014) which these thinkers explored and defended. In addition, as will be shown in Chapter Three, many of the past thinkers argued that labour and property would lead to inequality and relationships of dependence, violating the equality and undermining freedom and these are the arguments that those who oppose fracking make. It is argued that those who can afford to leave the areas where fracking takes place and escape the pollution will do, leaving the poorest and most vulnerable to bear the effects. Additionally the jobs and profits that fracking brings will be welcomed by poorer areas, who would be dependent on the industry, dominated by it and so not able to freely govern themselves. Past conceptions of environmental rights are riven by the contradiction of labour and property, of asking whether developing and owning resources fulfils or violates environmental rights, and the arguments for and against fracking repeat these tensions.

Secondly, the solutions that these thinkers develop in response to these tensions, set out in Chapters Four to Seven, would be of use to the fracking debate. Campaigners both for and against fracking can draw on the conceptualisation of environmental rights as limits, reclamation and redistribution, equivalents and exclusions, depending on their own political needs. So, some communities may decide to conceptualise their environmental rights as rights to equivalents, specifically to labour and to a share of the profits as set out in Chapter Six. Other communities, perhaps more radical, might choose to reclaim the shale gas deposits and manage them on behalf of the group as a whole, reflecting the arguments set out in Chapter Five of Winstanley, Spence, Ogilvie and Marx. Rights-holders can therefore decide for themselves how their claims, freedoms, equality and ecological embeddedness should be managed in response to the use of natural resources for fracking.

The links between the conceptions of environmental rights developed by the past thinkers and a contemporary environmental issue is therefore clear. By looking to these past works, current environmentalists can better understand the concepts they are using, with regard to both the problems inherent in them and also the options available for rethinking and responding to these tension.

To conclude, in his overview of the relationship between rights and the environment John Merrills confidently states that ‘we can therefore conclude that though the notion of environmental rights would probably have appeared strange to the philosophers who pioneered the concept of human rights, there is nothing in the concept or its rationale which is incompatible with their thinking’ (Merrills, 1996: 28). This thesis will challenge this view and show instead that the notion of environmental rights would have certainly appeared familiar to the past thinkers and philosophers. They would also have been familiar with the tensions inherent within this concept, with the contradictions and problems of form and coherence that have been identified by contemporary scholars of environmental rights. Just as crucially they aimed to address these tensions, putting forward innovative, inherently political, controversial and creative solutions. This is not to forcibly ‘green’ rights discourse. Instead this thesis will show that environmental concerns already exist within the rights canon, from its earliest inceptions; when Nickel, Hayward and Lercher argue that if there are any rights at all there are environmental rights, they are more correct than they supposed. From the earliest modern understandings to the most influential texts, environmental rights are present and available for current environmentalists to draw upon. Barry asked ‘what if... the resilient sustainable way of life is ‘always already here’ present and available to us if we so choose?’ (Barry, 2012: 290). This thesis applies this question to environmental rights and in doing so shows that we do not need to find alternative philosophical foundations for environmental rights, as Batty and Grey believed, merely look to what is ‘always already here’.

## Methodology

Before this examination of the past conceptions of environmental rights can be shown, the methods and structure must be outlined.

Environmental rights are a key tool for green politics, offering a mechanism and moral force to arguments against environmental destruction and current patterns of distribution (Nickel, 1993, Woods, 2010). Yet these rights have to date been ‘under-theorised’ (Woods, 2010: 128), leaving green political thinkers and activists working with incomplete tools. This thesis therefore grew out of a desire to strengthen the foundations of environmental rights and so contribute to both green political thinking and green activism. This research initially focused on whether environmental rights should be classed as group rights or individual rights, which at heart is a question about how to think about rights to a finite resource. For unlike rights to education, or to freedom from torture, which can be secured and fulfilled for all, it is doubtful that each individual’s right to a finite good could be secured.

The research for this topic started by looking at the past conceptions of rights, in order to see why rights are believed to represent individual claims and to apply this understanding to the problem of individual claims to the environment.<sup>2</sup> As set out in the introduction, contemporary green theorists had not yet taken this approach to environmental rights and drawing links between environmental rights and past political theory seemed a clear way to strengthen the concept and add legitimacy to these rights. Yet in the course of this research, it became clear that these past thinkers were directly engaged with the concept of environmental rights. There is no need to apply the past understandings of rights to environmental claims, or to read our ‘modern’ environmental concerns into these texts because they are *already* directly engaged with the concept of environmental rights. The research question thus shifted to ask how previous thinkers conceptualised environmental human rights and

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<sup>2</sup> This was the approach taken by McKinnell, who also examined the question of whether environmental rights are individual or group rights (McKinnell, 2010). Whilst McKinnell’s work is important, she examined how these thinkers understood rights and then applied this to questions of the environment as opposed to showing how they thought about environmental rights.

responded to the tensions inherent in trying to secure the rights of all to finite natural resources.

This new examination started with the seventeenth century natural rights thinkers, who marked the zenith of natural rights theory (Tuck, 1979) and the point at which the modern understanding of rights developed. Grotius and Locke are the two central figures within the natural rights tradition so the merits of starting here were clear. Furthermore, Locke is the main figure referred to in the literature on environmental rights (Hayward, 1995; Eckersley, 1996; Dagger, 2006) and is seen as central to any understanding of right to the environment, whether in the service of environmental protection or in justifying environmental degradation (Trachtenberg, 2011) so examining his work would be essential to this project. Yet this focus on Locke ignores the fact that he was not the only seventeenth century theorist of natural rights to think about resource ownership – there were other concepts present at the time. This point is made here by an examination of the thought of Gerrard Winstanley. Winstanley developed a theory of common ownership of resources that was contemporary to but vastly different from Locke's understanding of property, despite drawing upon the same concepts, such as the idea that the earth is shared amongst all and all have rights to it.

With the understanding of the environmental rights of the seventeenth century established, the research moved forward to evaluate that developed during the eighteenth century. The underlying hypothesis was that environmental rights would be present here, in part due to the flowering of the rights discourse that took place in this period but also because this represented a universalization of rights, a point at which the circle of rights-holders was widened and the tensions within environmental rights would become more pressing. This was indeed the case, with prominent eighteenth century rights thinkers from Rousseau to Wollstonecraft to Paine engaging with the concept of rights to the environment. Environmental rights were even directly examined within the works of the Scottish Enlightenment, in the form of William Ogilvie's *An Essay Concerning Property in Land*. It also became clear that environmental rights were crucial to the radical politics of that century, as they were used to ground critiques against unequal resource distribution and power structures. This engagement with radicalism lead to an exploration of the works of radical

eighteenth century thinkers such as Thelwall and Spence who shared an equal commitment to environmental rights, though they conceptualised such rights in very different ways.

The research then moved forward to look at the nineteenth century and its two dominant political thinkers, Mill and Marx. Mill was a clear choice due to his defence of individual freedoms balanced against utilitarian principles, which related to the larger question of balancing rights to a finite resource and of the rights of all with the rights of the individual which initially motivated this thesis. Marx's inclusion in thesis may appear strange as he is highly critical of rights. Yet his work on labour, private property and reclamation used the same conceptual language as other thinkers examined here, who applied these ideas to environmental rights. For example Marx's critique of alienated labour reflected that made by Winstanley and Wollstonecraft. Secondary commentators on Winstanley and Spence, both of whom explicitly set out and defend environmental rights, frequently linked their works to Marx as a result of their shared language of reclamation and redistribution (Holston, 1999, Bonnet, 2010). Furthermore, additional research revealed that Marx supported the idea of rights, provided they were not 'bourgeoisie' rights and also engaged with the idea of rights to resources and what access to finite resources means. This is not a Marxist analysis but one which uses those of Marx's works which specifically examine rights and the use of the environment to examine the tensions within and the ways of conceptualising environmental rights.

The chronological research stopped with Mill, reflecting his centrality within the current conceptions of rights. Furthermore in the face of the repression of the early 1800s the radicalism of the previous centuries was dissipated and took with it the impetus and context for the development of innovative rights theory. This thesis therefore focused on the past political thinkers who engaged directly with rights to the environment, who specifically engaged with and developed this type of rights in order to examine the originators of environmental rights.

With the question of whether past political thinkers had any understanding of environmental rights answered definitively in the affirmative, the research for this thesis turned to the second question; how these thinkers conceptualised

environmental rights. This led to a more thematic approach. Up until this point the research and structure had been chronological, moving from the seventeenth century through to the eighteenth and finally the nineteenth century. This overlooked the similarities between different thinkers- for example both Winstanley and Marx draw on the language of reclamation and centralised control of resources. Wollstonecraft and Mill both emphasised the importance of the natural world for mental and spiritual freedom and all thinkers believe that the environment should be shared by all. A chronological focus would neither demonstrate nor explore these links, so the structure changed to enable this.

This new thematic focus also suggested an exploration of the republican tradition. As with Marx, this tradition offered a different understanding of rights, viewing them as, at best, secondary to the duties of citizens, as Duncan Ivison puts it (Ivison, 2010: 31). But viewing rights as secondary to duties, does still see a place for them within the republic – just because they are not predominate does not mean that they are not present. Furthermore, the republican tradition is concerned with the distribution of environmental resources within the republic and how the freedom and equality of individual citizens and the general good of the republic as a whole. Republican thinkers therefore draw on the same languages and concepts and their use of such then illuminates different aspects of them and of their relationship with environmental rights. The thematic engagement with republicanism also linked to the examination of radicalism and the seventeenth century natural rights thinkers. Examining these different political languages showed not only different ways of conceptualising, understanding and using environmental rights, but also the strength of their appeal and their presence within political theory as a whole.

The move to thematic approach rather than a chronological one changed the structure of the thesis itself. From the initial structure of moving through the centuries, the chapters now identify and examine different themes within the past conceptions of environmental rights. This approach allowed for comparison and for the differences between the past environmental rights to be highlighted, in a way that would not be possible in a chronological account. A comparison of Paine and Mill's account of a tax on ownership of natural resources, for example, is only possible once

it becomes clear that they are both using the concept of equivalents for natural resources. This way of understanding environmental rights, the possibilities inherent within it and what it illuminates about environmental rights as a whole, can only be explored once the differences between Paine and Mill's accounts are set out.

The thesis structure reflects both the shared understanding of environmental rights, and the tensions inherent within this concept, and the four different solutions that were offered in response. This initial research question regarding how the rights of all to a finite resource can be fulfilled was therefore addressed within the larger examination of how previous thinkers conceptualised such rights. Despite this change in research and shift in the question asked, the overall aim of this thesis, namely to address the 'under-theorisation' of environmental rights as Woods puts it, in order that they may become a more effective tool in the hands of green political theorists, remains.

### Exclusions

With the reasoning behind what was included in this thesis set out, this section will address what was excluded.

There are other thinkers who could have been included in this examination. For example the work of Edmund Burke is not included in this thesis, nor is that of another prominent rights critic, Jeremy Bentham. Adam Smith's discussion of the market and property could also be relevant to a discussion of the use of natural resources. Their exclusion from this thesis should not suggest that they could not contribute to green political thought or that they will not be examined in further work. They are however not the focus of this particular work.

This is because the works examined here are all engaged with three key topics – rights, property (whether individual or common) and labour - which are in turn specifically linked and applied to a discussion of natural resources. All the thinkers examined here engage, to a greater or lesser extent, with these three concepts and directly relate them to natural resources. For example, the rights based thinkers all directly support environmental rights and examine how such rights impact on

property. And the republican thinkers engage with the concept of rights (through their critique and rejection) and labour and property with regard to the environment, as shown in their discussion of the agrarian laws.

Furthermore, the broad arguments that these alternative thinkers make are addressed. The criticisms of rights, as made by Burke and Bentham, is addressed in the republican concerns for the whole and the emphasis on duties, and the examination of Marx and the discussion in Chapter Three of labour and development addresses some of the concerns raised by Smith. This is not to say that the exact points these thinkers make are covered or that those examined here are direct replacements. However many of the concepts that these thinkers raised are addressed by the thinkers examined here, who do so within arguments that focus explicitly on rights, ownership and labour as applied to the environment.

This thesis also focuses only on the past conceptions of the environmental rights of living humans, excluding the rights of non-humans and future generations.

This thesis is focused only on past accounts of the rights of humans to their environment and as such is open to the criticism of anthropocentrism. This criticism dogs all accounts of environmental rights (Shelton, 1991-1992: 104, 108, Redgwell, 1996: 71) because, as Anderson puts it 'a human right to environmental protection, no matter how ambitious in its protective objectives is still at base a human right and is very different from a right bestowed upon nonhuman species or upon natural resources' (Anderson, 1996: 14). The previous conceptions of rights to the environment are very clearly anthropocentric, as they see the environment as a site and means for human labour and activity. Chapter Three for example sets out how rights to natural resources are used to justify, support and encourage human labour upon them.

This thesis does not seek to deny the validity of animal rights, nor the rights of the natural world as a whole. Examining the rights of humanity to their environment need not automatically over-ride the rights of non-humans, as Eckersley, Hayward and Woods point out (Eckersley, 1996, Hayward, 2003, Woods, 2010). This is because environmental rights represent a concern for all humanity, rather than the political interests of a powerful minority. Hayward argues that many of the atrocities that have



been attributed to the anthropocentric position, such as over-fishing or the destruction of the rainforest are not committed in order to benefit all humanity, but to benefit specific groups of humans (Hayward, 1998). Indeed, as Hayward made clear, these supposedly 'anthropocentric' actions are often *opposed* by many people and cause great harm to others. This 'human focus', or a focus on all humanity is debated by the thinkers examined in this thesis, who are engaged in a variety of debates over how best to secure the rights of all humans to their environment. The politics of exclusion and equality occur throughout these accounts. The thinkers examined here are arguing for a wider understanding of rights and resources (though what this means is heavily debated) an argument that asks how the environment should be distributed so as to fulfil the claims of all and not the claims of a select few. The focus here is on the rights of people to their environment, particularly the impact their ecological embeddedness has on their political relationships. This is about the environment as a contested space, with individuals fighting over it, through political relationships of power and equality and the regulation of this through environmental rights, a task which these thinkers believed was performed by only by humans.

This thesis also examines the past understanding of the rights of current living humans to the environment, not the understanding of the rights of future generations to their environment. Again, this exclusion is not due to a lack of material as the texts examined here are relevant to the rights of future generations. Jefferson for example explicitly states that 'the earth is for the living' yet the ability of each generation to make its own decisions is heavily dependent on an environment that has not been damaged by previous generations, a point picked up by Ball in his article '*The Earth Belongs to the Living: Thomas Jefferson and the Problem of Intergenerational Relations*' (Ball, 2000). Locke's point regarding the rights of children, particularly with regard to the rights of children of conquered nations to their land could also be relevant. Any understanding of the rights of future generations would benefit from examining the work of these past thinkers.

But it is first necessary to understand the complexities of the past accounts of environmental rights in general. If and how past thinkers thought about the environmental rights of those yet to come cannot be explored until we know how they

interpreted environmental rights themselves. The shared starting point of rights, environmental rights, the tensions within labour and ownership and the resulting variety of responses have to be explored before the challenge of future generations can be considered. For example, Jefferson stated that 'the earth belongs to the living' however, as Chapter Seven will show, he argued that the republican state and its resources should be divided up into smaller, self-governing wards, the better to ensure self-sufficient government. Without an understanding of this exclusion, Jefferson's denial of future generations is harder to understand.

Overall, that this thesis provides this initial examination of the rights of the living to their environment is not to suggest that the rights of future generations are unimportant. Nor should it be seen to imply that these past works neither addressed this issue or that their works are not relevant to it. Indeed this would be a valuable alley for further research to explore as an awareness of the previous debates and an understanding of how previous thinkers conceptualised the rights of future generations would help ground the contemporary work and allow us to explore new ways of thinking about those yet to come and the problems of climate change. But before the rights of future generation rights can be extrapolated from the work of past thinkers, we need to first look at what they said about environmental rights.

### Historical Approaches to Environmental Political Theory

The justification for the sources that have been selected and the avenues that have not been explored has been shown. The final point to be made about the methodology of this thesis concerns the approach taken to this material.

I argue that political theory as a whole needs to be ecologically embedded and historically aware, rooted in both the natural world and what has gone before. Without this twin awareness political theory is left floating, unable to address the basic necessity of our lives and robbed of an understanding how the concepts that we use came to be and the possibilities inherent within them.

Environmental political thought has addressed this first deficiency. It has added an ecological dimension to political theory and in doing so interrogated the tensions

and fault-lines that arise when the central ideologies and concepts of politics are forced to confront their ecological embeddedness and subsequent dependence (see Benton, 1993 and Dobson and Eckersley, 2006 for examples). As a key element of environmental political theory and a central political concept applied to environmental issues, environmental rights are inherently ecologically aware as they grow out of the awareness of humanity's dependence on the natural world. This thesis therefore seeks to correct the second remaining oversight and provide a historically-aware grounding for such rights, through an examination of the previous conceptions of environmental rights and how these thinkers responded to these tensions and fault-lines.

Yet this approach of looking to past thinkers in order to inform current environmental theory seems to fall into the trap identified by Quentin Skinner. Skinner argues that there are 'no histories of concepts, only history of their uses in argument' (Skinner, 1988: 283) because contemporary readers need to take into account not just the meaning of a past text but the intention of the author in writing it. The immediate political context of the text must be recovered so we can situate the work in question and thereby understand the terms the author used and the effect they wished to produce. This approach opposes those who examine past authors for answers to the perennial 'big questions' (Skinner, 1969) as 'the history of political thought should be viewed not as a series of attempts to answer a canonical set of questions but as a sequence of episodes in which the questions as well as the answers have frequently changed' (Skinner, 1988: 234). Skinner does note that the 'Western traditions of philosophy have contained long continuities and that these have been reflected in the stable employment of a number of key concepts and modes of argument' (Ibid.: 283) and is sympathetic to attempts to show the history of concepts and how our current language has developed. However he adds that:

'I still feel that emphasising such continuities is hardly the same as establishing their perennial status. So I remain the sworn foe of those who wish to write the type of history in which... the views of Plato, Augustine, Hobbes and Marx on 'the nature of the just state' are compared. The reason for my nominalism as I have tried to stress all along is not so much that each of these thinkers appeared to answer this question in his own

way. It is rather that the terms involved in phrasing the question - 'nature', 'just' and 'state' - feature in their different theories, if at all, only in such divergent ways that it seems an obvious confusion to suppose that any stable concepts are being picked out' (Ibid.: 283)

In viewing this wide and divergent range of thinkers as all engaging with questions of environmental rights, this thesis appears to argue that they are all 'attempting to answer a [perennially occurring] canonical question' and thereby overlooking the immediate intention of each thinker. For example, when looking at Locke's understanding of rights to resources should not be seen as an environmental rights thinker. Instead he should be seen as contributing to a specific problem regarding the tension between the justification of private property and the political necessity of supporting the belief that the earth was given to all in common in order to oppose monarchical government. To focus on the former is to overlook his specific intentions.

Ariel Hessayon made a similar critique of environmental political thought. Hessayon criticised the methodology of environmental political theory, and environmental political history in particular, in his response to the 'greening' of Gerrard Winstanley. For example, Ian Bradley labelled Winstanley 'England's Pioneer Green' and argues that he should be considered the 'first Friend of the Earth' (Bradley, 1989: 14). Rory Spowers also supports the idea of Winstanley as an early Green, claiming that the Digger movement marks the birth of 'direct action' in defence of the environment (Spowers, 2002: 109), as does George Monbiot (Monbiot, 2000 and 2007), Derek Wall includes his work in *Green Histories* (Wall, 1994) and Alsop and Davis call attention to Winstanley's growing reputation as an environmentalist (Alsop and Davis, 2004: 769). Hessayon has attacked this growing trend (Hessayon, 2008: 11), arguing instead that 'Winstanley and the Diggers cannot easily be accommodated within emerging Green narratives' (Ibid.: 17). Attempting to do so, he points out, overlooks what Winstanley *actually* consistently did and said and his own intentions, particularly his insistence that the earth had been given to humanity for them to labour and develop (as set out in Chapter Three). The form of environmentalism that results is therefore not soundly rooted in its history but is instead built on a false conception which misinterprets the past. This in turns weakening the contemporary environmental politics that follows. Overall Hessayon critiques the attempt to cast

Winstanley as a hero in an environmental tradition for the same reasons Skinner gives – because in doing so the authors' original intentions have been overlooked.

Skinner and Hessayon are right to insist on the importance of intention, of not forcing thinkers into larger narratives and labels which they themselves would not have recognised nor into debates that they did not see themselves as contributing to. Furthermore, environmental political theory is seen as a unique new development – indeed that is part of its unique appeal and its distinction from previous 'anthropocentric' politics. It is a contemporary political response to contemporary problems, such as global warming, and one which is driven by modern scientific understanding. This thesis therefore appears to be distorting both the work of past political thinkers and environmental political thought.

But the approach taken here avoids this trap, for two reasons. It does so primarily because, as environmentalists have pointed out, the dependence of humanity on their environment *is* a constant problem within political theory. The ecological embeddedness of humanity, our inescapable rootedness in the natural world around us has is a constant which was recognised by these thinkers. Furthermore this is a political question, concerning issues of power and dominance, the organisation of society and its institutions and the relationship between individuals. Though the interpretations of this can and do change, and the specific reasons why these thinkers draw upon and conceptualise environmental rights differ, the fundamental importance of securing resources for all human life does not. As Marx noted that 'the first premise of all human history is, of course the existence of living human individuals. Thus the first fact to be established is the physical organisation of these individuals and their consequent relation to the rest of nature' (Marx, 2000c: 176) and what is true for 'all human history' is also true for all political thought. The ecological embeddedness of all human activity means that, however framed, political questions are engaging with canonical environmental questions. Questions of resource access, use and distribution may be the exception that proves Skinner's rule.

Secondly, it has been argued that the intention-focused approach does not rule out a comparative conceptual approach entirely. This point is raised by Mark Philp, who notes that contemporary political thinkers are interested in 'thinking about contemporary politics in terms that an engagement with thinkers from a range of different contexts can facilitate' (Philp, 2008: 138). This engagement involves 'a certain amount of loose translation' between contexts (Ibid.: 138) but Philp argues that this is acceptable, providing that scholars are upfront and do not push the text beyond its limits or without sound justification:

'A charitable reading of texts, that attributes to them, where it can be defended, a commitment to certain values for other than merely instrumental purposes, opens up the possibility of a dialogue across historical periods, and legitimates a form of contemporary political discourse that tracks value and aims to persuade others of those values' (Ibid.: 144 – 145).

To prevent scholars from entering into this dialogue is to reduce politics to history and deny that there is any relevance for the present in the work of past thinkers. This point is particularly relevant for the thinkers in this thesis, who all recognise the ecological embeddedness of humanity and who, for different reasons and interpreted in different ways, consequently examine the claims of all to the environments. This shared commitment enables the thematic approach of this thesis and by taking this shared commitment seriously, the differences in these accounts can be shown. The reason why Paine chose to focus on the idea of environmental rights as a claim to equivalent rather than as a right to reclaim resources or restrictions on ownership, for example, is a result not of a lack of commitment to claims upon the environment but to a sincere response to the tensions inherent within the concept.

Tying back to the argument made here that environmental political theory should be historically rooted, Philp concludes that 'a political theory that has no sense of its own history is likely to be impoverished... [because] political theorists need a degree of critical purchase in the language' that they use (Ibid.: 146). And I would argue that the same goes for environmental political theory, for a stronger understanding of the conceptual languages used, especially with regard to their tensions and their inherent inconsistencies can only lead to better theorising and a

better understanding of our context and present position. Overall, though Philp recognises the complexity of this approach, he reminds us of the value of:

‘the tracking of conceptual change and development and the evolution of discursive formations and political languages through history [which] allows us, on this view, to write a history of our own present and thereby to gain some reflexive purchase on our own political discourse.’ (Ibid.: 136).

Or, as John Meyer points out, through such an approach environmentalism can see past political theory as an asset, not as something to be overcome (Meyer, 2001).

The advantage of such an approach and the reflexive purchase for environmental politics is inadvertently demonstrated by Paula Casal. Casal draws upon the thinkers examined within this thesis to support her arguments for environmental taxation and resource distribution. She noted that there is ‘a philosophical tradition advocating the rights of all humans to a fair share of the earth’ (Casal, 2012: 3). Casal specifically cites Locke, Grotius, Ogilvie, Spence, Paine ‘and possibly even J.S. Mill’ among others (Ibid.: 13). She had previously defined these figures (without Mill) as part of ‘a coherent and well-established philosophical tradition which defends the equal claim of all humanity to the earth’s natural resources’ (Casal, 2011:313 and footnote 23). Casal uses this tradition to ground her arguments for global taxes on natural resources within the established political canon, claiming a history and legitimacy for her arguments. But this overlooks several key differences in how these thinkers understood these claims to the environment. Furthermore she does not acknowledge that both Paine and Mill used these claims to justify taxes on natural resources, directly supporting her overall argument. Casal is overlooking the ‘history of the present’ and so missing out on an understanding of the possibilities inherent in this tradition which would have developed her work further.

Gaining a ‘reflexive purchase’ on what is meant by environmental rights and the concepts inherent within this produces a different form of environmental rights. It shows environmental rights to be contradictory and beset by tensions but rooted within political theory and thus legitimised. And it shows that, when discussing environmental rights, contemporary greens need to make clear what these are rights *to* and how they are conceptualised, for there is immense variety with the concept.

Such purchase also shows that environmentalists do not need to develop new philosophical groundings to defend and ground these concepts and the complexities involved as Batty and Gray suggested (Batty and Grey, 1996). Instead they need only to look properly at the grounding which such rights do have, the answer which are, as Barry points out “always already here’ present and available to us if we so choose’ (Barry, 2012: 290). This thesis therefore identifies a rich resource that current proponents of environmental rights can draw upon, for both a better understanding of what it means to have rights to the environment and as a source of inspiration, particularly with regard to the politically creative approach these thinkers put forward. If nothing else, through an awareness of the history of this concept and what has gone before, environmental rights scholars need not lose time reinventing the wheel.

Over the next seven chapters, the different ways in which the past thinkers conceptualised environmental rights will be set out. By drawing out and examining the languages of rights, environmental rights, labour and property, restrictions, reclamation, equivalents and exclusions, the range of ways in which we can think of environmental rights will be shown. The tensions within environmental rights are clearly identified and drawn out, reflecting contemporary worries regarding the coherence of the concept. Yet the breadth of responses, each of which brings out a different facet of environmental rights, stressing equality and freedom by turns, offers a way through these concerns. This flexibility and creativity, the political awareness and analytical rigour displayed by these thinkers is something that current environmental theorists can draw upon to defend, justify and define a key concept in their contemporary green thought and a key tool in their political struggles. If they are to do so, in order to use environmental rights to help meet the worsening ecological challenges, then it will be through an awareness of this history, which this material, structure and approach presents.



## Theoretical Overview

Before the thematic examination of the past conceptualisations of environmental rights can proceed, the theories of the thinkers selected must be set out. In particular this chapter will show how each thinker defines the key concepts of rights, freedom, property and the environment. These four concepts are central to the understandings of environmental rights developed by the thinkers examined in this thesis and so must be set out before the comparative work of the following chapters can be undertaken and the use to which these concepts are put examined.

Unlike the following chapters, this examination will proceed chronologically, in order to ensure that the context of each thinker is clearly delineated and that the ground is therefore laid for the subsequent thematic approach. The chapter will therefore start with Machiavelli, before turning to examine the seventeenth century thinkers Grotius, Winstanley and Locke. These three thinkers all draw upon the concept of natural rights, specifically the idea of a right to property in resources, yet they interpret property and freedom very differently, as a comparison will show. The examination of the seventeenth century figures is finished off by Harrington. A central figure within the republican tradition (though opinion differs as to why), Harrington does not engage with the concept of natural rights and takes a contrasting view of property that nevertheless builds upon a similar understanding of the environment and its importance to human preservation.

Moving forward to the eighteenth century, the work of two central figures within this century's political thought, Rousseau and Wollstonecraft will be examined. Wollstonecraft's work acts as a link to the radical theorists, Paine, Thelwall and Spence. Though all four thinkers share a commitment to rights and freedoms and develop a similar definition of property, their understanding of the environment differs, creating the tensions between these definitions that are explored in the forthcoming chapters. This section moves on to an examination of the work of Ogilvie, who marries this commitment to environmental rights with a less radical approach, before concluding with the work of Jefferson.

The final section examines the political thought of the nineteenth century. Beginning with the two key figures of that age, Marx and Mill, their understanding and definition of the key terms within this thesis will be set out.

This chapter will therefore show how the central concepts of this thesis, namely rights, freedom, property and the environment, were defined by each thinker and the context of that definition within their own work. It will also show the recurring themes which feature throughout these definitions including; natural and republican rights, with the former seeing rights as innate to all individuals and the latter arguing that rights are linked to membership of a community; the idea of labour as integral to property and the need to limit individual ownership; the importance of equality either to property ownership or between rights-holders; and the distinction between divisible and indivisible resources. With these themes and the clear distinction between the terms drawn, the thematic approach of the rest of the thesis can then begin.

### The Sixteenth and Seventeenth Century

The chronological approach means that this chapter starts with the thinkers of the sixteenth and seventeenth century.

#### *Niccolò Machiavelli*

Machiavelli revived the political thought of the classical republics for the modern world. In doing so he aimed to apply the experience of the past republics to his city-state of Florence (Machiavelli, 1996: 5 – 6, Skinner, 1981: 50). Though he believed that all republics would, inevitably, fall, Machiavelli attempted to show through these examples how Florence could be secured against the central threats of *fortuna* and corruption for as long as possible.

Central to this survival was the promotion of virtue (Machiavelli, 1996: 210) through military service and political tumult (see *Ibid.*: 16). These actions would help guard against corruption as military service would encourage activity and bravery whilst linking the citizens to the common cause of the republic. And an active, engaged citizenry who could take up arms in defence of the republic would be able to defend

the republic from outside threats and better able to respond to changes of fortune. Political tumult and struggle would allowed the republic to air its grievances and provided checks and balances on power (Viroli, 1998: 126 – 127, McCormick, 2013: 884 - 885). Furthermore this tumult prevented corruption by ensuring that no group remained permanently in office and provided space and context for struggle and heroic virtue as the people were kept alert and spirited (Worden, 1994: 88).

This model emphasises the duties of the citizens rather than their rights. Indeed Machiavelli 'cannot be said to be much concerned with what the natural law or rights of individuals require... he can be seen to want to establish the best circumstances for sustaining a republic that enjoys and sustains liberty' (Pierson, 2013: 191). His aim was to secure the republic which would in turn guarantee the liberty and claims of its citizens, not to secure the rights of citizens. This over-riding aim underpinned his understanding of property. This was a central part of Machiavelli's argument for he was 'concerned above all to identify those forms and allocations of property that will best secure the interests of the state' (Machiavelli, 1996: 191). Property should therefore be managed as best suits the needs of the republic rather than the citizens and used to 'keep the republic rich and the citizens poor' (Ibid.: 79).

Environmental resources were considered in the same way, for Machiavelli primarily understood the environment in the narrowest sense – that of individual, discrete, bounded resources. His description of control of resources, which includes water and sub-soil resources, in the *Discourses on Livy* makes this clear. Furthermore in his explanation of the fall of the Roman republic, Machiavelli points to the key role of the agrarian laws, governing the amount of land that citizens could own (Ibid.: 79).

### *Hugo Grotius*

The work of Hugo Grotius marks the benchmark between mediaeval and modern political thought (Tierney, 1994). His work on international law and freedom of the seas forms the basis of modern international relations and, as Richard Tuck puts it, he is 'the most important figure' within the tradition of natural rights (Tuck, 1979: 58). This is because he argued that rights were based on reason, innate logic and a shared humanity which represented a seismic shift away from the religious

understanding of the time that saw rights as given by God. And this shift also influenced his definition of property and natural resources.

Grotius defined environmental resources in two ways. He initially discussed individual, bounded resources such as the land, rivers and trees, noting that though such resources are essential for human preservation they are finite, bounded and non-renewable. Grotius drew a sharp distinction between these resources and those which 'resist possession' and are 'infinite' (Grotius, 2004a: 27) and so cannot be held by one person or state (Ibid.: 25). Under this latter heading, he classed the oceans, sunlight and atmosphere. Grotius' response to environmental issues, his understanding of rights, ownership and consent as applied to natural resources, therefore changes depending on which form of resources he is discussing. Whilst this distinction is based on a mistaken assumption that the atmosphere and oceans are 'infinite', Grotius' recognition of the difference between resources and the effect that this has on subsequent rights to resources is an important development.

Grotius' understanding of environmental resources formed the basis of his account of property. He believed that all natural resources, regardless of form, were initially held in common in 'a community of goods' (Grotius, 2001: 73). Some resources could be removed from this shared state and become private property but this change could only be brought about through the consent of others and was dependent on circumstances, for in a crisis resources should be considered in common – for 'utility... makes common again things formerly owned' (Grotius, 2004b: 86).

These definitions of natural resources and property, along with the belief that all individuals possess rights, as proved through the exercise of their reason, therefore underpins Grotius' work on international relations, on war and peace and on the law.

### *Gerrard Winstanley*

Gerrard Winstanley was one of the most unique political thinkers to emerge from the chaos of the British Civil War. Marrying theory and practice, Winstanley was part of a group of activists, known as the Diggers, who lived on St George's Hill in Surrey in accordance with Winstanley's vision of 'work together, eat bread together' (Winstanley, 2009b.: 513).

Central to this project, and Winstanley's work as a whole, was his argument that natural resources should be communally owned and a hatred of private property of resources. Winstanley repeatedly attacked the concept of private property, arguing that it was an example of sin, an affront to God's creation, which had been imposed by the 'Norman Yoke' after the Conquest of England. He argued that private property was theft and murder, claiming that private property owners 'live in breach of the seventh and eighth commandments thou shalt not steal nor kill' (Winstanley, 2009c: 11). This opposition to private property was driven by his belief that everyone had a right to their environment which was being violated by private ownership. Winstanley frequently claimed that the poor 'have an equal right to the land' (Winstanley, 2009d: 32) and that they have been 'robbed of their rights' (Ibid.: 35). These environmental rights are described as natural rights, with Christopher Hill claiming that Winstanley 'built his... theories on natural rights' (Hill, 1972: 118), as these are rights which all are said to have by their very nature. Only the common ownership of the environment could, Winstanley argued, secure the rights of all and therefore their survival.

Winstanley's understanding of freedom is highly controversial as in order to enforce communal ownership, he recommended intensive surveillance of the population, with buying or selling resources punishable by death. The communal utopia Winstanley describes in his final work *The Law of Freedom in a Platform* depends upon policing by 'overseers' who will monitor offenders, and ensure that tradesmen take all the goods that they have created to the storehouse. As a result of this constant surveillance, several commentators have pointed out the potentially totalitarian nature of this scheme, with J.C. Davis arguing that Winstanley accepted the 'repressive functioning of the state' (Davis, 1976: 92). Though this interpretation of Winstanley's work has been highly criticised (Kennedy, 2009) it does draw attention to the fact that Winstanley saw freedom as dependent on the common ownership of resources so any measures taken to ensure communal ownership were seen as promoting freedom, however restrictive they may be.

For all his work was driven by an awareness of the necessity of these resources for human survival, Winstanley did not engage with the idea of unbounded resources nor recognise the interdependence of the environment. Instead he focused on distinct, individual 'units' of resources, particularly land and forests. Whilst he was sharply

aware that these resources were finite and could be used up, Winstanley argued that better management and improved forms of ownership were all that was needed to ensure that limited resources could be developed without limits.

Though the Diggers were defeated, Winstanley's work survived and represents a counter-narrative of property within seventeenth century thought.

### *John Locke*

This counter-narrative acts in opposition to most influential of the seventeenth century political theorists, John Locke. Locke attacked the concept of divine monarchical rule and instead supported the creation of a limited government, which respected and protected the rights of all. If the government failed to do this, then, Locke argued, the people were entitled to rebel. Locke's account of rights and freedom supported this conclusion by setting out limits to the ruler's power.

Locke's conception of freedom therefore reflected this larger project. Locke defended individual's freedom from tyranny, yet this does not mean that Locke rejected all limits on freedom. Within the state of nature he distinguished between 'liberty' and 'licence' (Locke, 1972: 9), arguing that all individuals are governed by 'a law of nature' or 'reason, which is that law' (Ibid.: 9). Locke's understanding of rights in bound up in this interpretation of freedom. Locke was a natural rights thinker, arguing that all human beings had rights and that their 'reason' would help them follow this. The aim of society is not to replace this law of nature or these rights but to secure and defend them. As Locke made clear 'the end of law is not to abolish or restrain, but to preserve and enhance freedom...where there is no law, there is no freedom' (Ibid.: 32). Individuals join civil society in order to have their rights secured and to be sure of a judge to whom they can appeal, which Locke saw as securing rather than limiting their freedom.

Property was central to Locke's argument, as it marked the limit that others must respect. This is because firstly, property was the result of individual's labour which they combine with resources to create something new and unique and secondly property helped secure for individuals that which was essential to their survival. This account is based upon natural resources. Locke's definitions of property are based on natural resources – he speaks of 'turf that is cut', 'ore that is dug', 'apples' that are

eaten and land that is farmed (Ibid.: 19 – 20). Locke presumed that resources such as the atmosphere and oceans were infinite and so did not discuss them. Furthermore, Trachtenberg highlights that Locke is unaware of the interconnectedness of the environment, of how changes to one resource affect the environment as a whole (Trachtenberg, 2011).

Locke believed that individuals own that which they labour upon, provided that they abide by two provisos; 'enough and as good', which requires that enough resources of the quality of that which have been claimed are left for others and the spoilage limitation, which says that they can take only that which they use. This account of property is highly individual – people either own the results of what they themselves have laboured or they purchase the labouring power of others and thus own the results of their labour. As a result 'the turf my servant has cut' becomes mine because I have paid them for their labour. The implications of this understanding of property have been heavily contested but Locke's arguments surrounding rights, labour, ownership and limits are highly relevant for an account of environmental rights.

### *James Harrington*

The examination of the seventeenth century thinkers is rounded out by a consideration of the republican thinker James Harrington.

As with Machiavelli, Harrington did not invoke the concept of natural rights. Rather than building from individual entitlements, Harrington started from the larger needs of society, which subsumed individual claims and freedoms within it. This meant that he defined the claims that citizens could make upon their rulers and the freedoms that they had according to the needs of the republic as a whole and what was necessary for its security and stability. Property is one tool within this larger project. Harrington argues that if the distribution of property can be fixed then the republic can be permanently secured for 'in an equal commonwealth there can be no more strife than there can be overbalance in equal weights' (Harrington, 1993: 33). In order to achieve this, Harrington argued that landed estates should be broken up by limiting the extent of the resources that any individual could inherit or purchase.

Harrington referred to these limits to property as 'agrarian laws' (Ibid.: 100) because they specifically concerned property in land and natural resources (with the difference between the various resources recognised via their different values (Ibid.: 129 – 130)). These resources were seen as the source of human preservation, particularly with regard to water and the production of food. So essential were these resources to human life that ownership of them gave individuals the power to dominate others and destabilise the republic, hence the need to prevent monopolisation.

These agrarian laws were not designed to secure the rights of all to the resources they needed, but to ensure that resources were dispersed amongst the population. This would prevent any one group or faction from having the power to dominate others, as they would not be able to support an army greater than that of their rivals. Harrington argued that the superstructure of society itself, which he believed should comprise a senate and a revolving judiciary elected by a ballot in order to prevent corruption or the consolidation of power by minority interests (Ibid.: 34), should be built upon this fixed distribution of land and resources. Acting together, this ensures 'equality in the root and the ballot' (Ibid.: 100 – 101). His utopian republic was therefore built and preserved due to the limits to property, specifically property in resources, showing the importance of control of the environment.

Harrington believed that due to these limits to property this societal structure would be unchanging and thus could last forever, in sharp contrast to Machiavelli who held that the republic was only ever temporary. The claims and freedoms of the citizens would therefore always be in service to the needs of this society and always the same but they would be permanently secured and fulfilled.

### The Eighteenth Century

The political thinkers of the eighteenth century developed and advanced the idea of rights by extending the circle of who was considered a rights-holder and interrogating both the subject of rights and what they enabled their holder to do. The results of this development also influenced the understandings of property, freedom and the environment in this period.



### *Jean-Jacques Rousseau*

In examining the origins of society and man's true nature, Rousseau's work exposed the gulf between the innate equality and rights of all and the inequality and corruption of society.

Rousseau's perception of the inequality within society lead him to conclude that though 'man was born free... everywhere he is in chains' (Rousseau, 1994: 45). Rousseau argued that though there would be no speech, habitation or interaction between people in the state of nature, they would nevertheless be free. Yet with the development of language, arts and agriculture came an awareness of others. Individuals began to judge themselves relative to others, and wish to win their approval, leading to the development of property, excess and inequality. Thus 'free and independent as men were before they were now... brought into subjection, as it were to all nature and particularly to one another and each became in some degree a slave' (Rousseau, 1973: 202). Rousseau pointed out that all were disadvantaged by this inequality, for the poor would be forced to flatter and please the rich, which would in turn be weakened and corrupted.

A true social contract would prevent this by securing the rights of all. This represented a transformation of freedom for 'what a man loses by the social contract is his natural freedom... what he gains is civil freedom' (Rousseau: 1994: 59). For all the liberties that man enjoys in the state of nature, true freedom comes from reason and decision, which is only possible through the true social contract which secures the equality of all. Paradoxically, this contract would also 'force' its members 'to be free' (Ibid.: 58), that is to obey the general will of the majority rather than their own particular desires.

The concern over inequality and corruption that drove Rousseau's critique of society is reflected in his understanding of property. He argued that property bred idleness and corruption, yet at the same time was aware that property secured individual's survival and independence. As Pierson explains, this seeming contradiction was based on Rousseau's definition of property (Pierson, 2013). Rousseau supported property that was based on labour, occupation and necessity (Rousseau, 1994: 60 - 61)

as this would prevent the holder from being dependent upon others and encourage them to be active and virtuous. Property without these criteria would have no limits and enable some to prey on others, corrupting both the property holder and the dispossessed.

Rousseau's definition of property also included communal property, or 'the community's goods' that all members of the community have 'rights' to (Rousseau, 1966: 60). He argued that 'as they take possession of land enough for all, they enjoy its use in common or share it between themselves' (Rousseau, 1994: 62). Whether property be individual or communal of no importance, provided that 'the right that each individual has over his property is always subordinate to the right the community has over everyone' (Ibid.: 62) so that property was stripped of its power to enable the holder to dominate others.

Rousseau also engaged with the definition of the environment to the extent that modern commentators have argued that he developed an environmental ethic (Lane Jr, 2006). Despite his appreciation for the environment in and of itself, Rousseau was aware that it formed the basis of human survival. Within these arguments the distinction between forms of resources is also present, as for example in the argument that 'the fruits of the earth belong to us all and the earth itself to nobody' (Rousseau, 1973: 192) which draws a clear distinction between ownership of bounded and unbounded resources. Rousseau's broad and shifting definition of the environment therefore covers both intrinsic and instrumental value and the different forms of resources.

### *Mary Wollstonecraft*

Mary Wollstonecraft 'interrupt[ed]' (Gunther-Canada, 2001: 104) the political debates of the eighteenth century to point out that the arguments for the rights and freedoms of all should encompass women as well as men. Though her argument for the inclusion of women is the most famous aspect of her work, it was part of her larger commitment to liberating individuals from domination, so they could grow and contribute to the progress of society.

Though Wollstonecraft was a staunch defender of rights and an innovator in her understanding of their scope and role in political transformation, she did not have a set understanding of the concept. Instead, she 'blended' republicanism and natural rights (James, 2013, O'Brien, 2009: 180, Taylor, 2003: 214), shifting between a definition of rights as linked to citizenship (Wollstonecraft, 1989d: 220) and a definition of rights as existing outside society and acting as a standard by which to judge it (Ibid: 124 and 157), depending on the argument she was at the time making. Wollstonecraft's definition of freedom reflected the tensions inherent in her understanding of rights. Her political arguments often drew upon the negative conception of freedom, such as when she argued against the power and intrusion of aristocrats and monarchs. However she also drew upon the idea that freedom meant governing yourself (Coffee, 2013) both privately in the form of morals and conduct and publically in the form of participating in debate and government. Her understanding of freedom was meant to help protect against all forms of arbitrary power – whether it be from a king or a husband.

As with Rousseau, Wollstonecraft both supported and critiqued the concept of property. Wollstonecraft was acutely aware of the importance of being able to individually own property, as through her recognition that their inability to own property was a central cause of women's dependence on men, but she also attacked 'the demon of property [that] has ever been at hand to encroach on the sacred rights of man' (Wollstonecraft, 1995a: 9). Again as with Rousseau, this contradiction comes back to the definition of property. Chris Jones notes that 'Wollstonecraft defends a Lockean notion of property as the product of personal labour' (Jones, 2002: 49) as she supported the right of all to their labour, arguing that 'the only security of property that nature authorises and reason sanctions is the right a man has to enjoy the acquisitions which his talents and industry have acquired' (Wollstonecraft, 1995a: 24). As a result, Wollstonecraft believed that property should be strictly limited to only that which the owner had laboured upon and supported this form whilst attacking ownership founded on any other grounds.

With regard to the natural world, Wollstonecraft shows a sophisticated analysis of the relationship between people and their environment, pointing out its necessity for both emotional and political development (Kelly, 1992: 190). As a result she has

frequently displayed a larger understanding of the environment, viewing it as a whole rather than made up of individual resources, as demonstrated by her description of the moors that form the character of her heroine in *Mary: A Fiction* (Wollstonecraft, 1989a: 11). However her awareness of the larger environment should not disguise Wollstonecraft's concern for specific, limited resources. Her work on property focused on ownership of land in particular and was driven by an awareness that these resources were finite so the dispossessed would be left without alternatives.

### *Thomas Paine*

Wollstonecraft's political thought was influenced by fellow radical Thomas Paine – indeed she titled her second rights text *A Vindication of the Rights of Woman* in honour of Paine's *The Rights of Man*. In this work, Paine defended the actions of the French revolutionaries and the concepts of rights and freedoms associated with their cause from Edmund Burke's stinging attack. In his sequel *The Rights of Man Part Two*, Paine expanded his initial argument to include a defence of redistribution to those in need and the creation of hospitals and grants for the destitute, sick, unemployed, elderly and new mothers.

Paine insisted that 'men are born and always continue free and equal in respect to their rights' (Paine, 2000a: 151) for there are 'natural and imprescriptible rights of man' (Ibid.: 151). These rights were the rights to 'liberty, property, security and resistance of oppression' (Ibid.: 151), with Paine later adding natural resources to this list. This definition of rights therefore reflected Paine's understanding of freedom as freedom from oppression from the monarchy and from the power of the aristocracy.

Paine only engaged with environmental concerns in his final text, *Agrarian Justice*, in which he explicitly set out the rights of all to 'the earth, air and water', (Paine, 2000c: 320), with trees and sub-soil minerals subsumed within the term 'earth'. Paine does not address the difference between the resources, for example not referencing the fact that air and water are unbounded, whilst earth can be monopolised and exclusively owned. But this is due to the nature of the argument that Paine is making. As will be shown in Chapter Five, Paine argued that the right to 'earth, air and water' be reconceptualised as the right to receive financial equivalents. As a

result, the differences between the form of these resources does not matter and Paine need not develop this definition further.

As with Locke and Wollstonecraft, Paine defined property as that which individuals have themselves laboured upon (Ibid.: 327). This link between labour and ownership enables Paine to distinguish between common and individual property or, as he defined it, natural and artificial property. 'Natural' property refers to communal ownership of the natural resources of the earth and 'in its natural, uncultivated state was, and ever would have continued to be, the common property of the human race' (Ibid.: 325). In contrast Paine defined artificial property as the exclusive property of the individual who laboured upon it. His understanding that all natural resources are owned in common, with labour distinguishing between communal and exclusive property therefore echoes that of Grotius and Locke. Paine's radicalism comes instead from the consequences that he believes result from this shared ownership, most notably the claims that all are entitled to make upon property owners.

### *John Thelwall*

After Paine fled England the key figure in the English radical movement was the author and orator John Thelwall. Thelwall's writings and speeches, which drew thousands, covered subjects as diverse as foreign policy, the need for economic and educational reforms and criticisms of the monarchy and aristocracy. What united these subjects was Thelwall's concern for equality and his hatred of the domination of the poor.

Like Paine, Thelwall drew upon the concept of natural rights (Claeys, 1995: xlvii – xlviii), arguing in defence of the 'natural rights of man... [which] are determined by his wants, his facilities and his means' (Thelwall, 1995f: 457). In addition to these natural rights, he believed that every individual possessed civil rights: 'neighbours in a civil community have their common as well as their civil rights; the former derived from nature and secured, or meant to be secured by the specific compact under which the community exists; the latter generally speaking created by the compact and growing out of its specific provisions' (Ibid.: 451). This civil association is designed to secure the rights of every individual (Ibid.: 458), grounding natural rights in the society all have chosen to join.

This civil compact is, Thelwall argued, the means by which 'the earth has been appropriated' (Ibid.: 452) and resources that were initially owned by all become private property. As Iain Hampsher-Monk notes, Thelwall's theory of property 'allows both labour and first occupancy as title' (Hampsher-Monk, 1991: 13 and see Thelwall, 1995f:458 and 464) with the claims these actions create secured through the recognition of others. Though labour plays a role here, Thelwall diverges from a Lockean account in his argument that all who labour upon a resource are entitled to a share in it (Ibid.: 477). Property may be privately owned but the profit resulting from the development of such belongs to all he argued, because they have either laboured upon it or given up their entitlement to the earth in order to facilitate it

Thelwall was also uniquely aware, as his fellow radicals such as Paine were not, of the interconnectedness of the natural world and that non-bounded resources, such as the oceans and atmosphere were not infinite. As a result, Thelwall understood the problem of pollution, which he described as 'a nuisance' that must be 'abated' for 'it must consist in the particular invasion of some common right' (Ibid.: 452). Thelwall's conception of the environment therefore included all forms of resources, bounded and unbounded, and he was sharply aware that the latter was not infinite and could be damaged. And his conception of rights to the environment reflected this awareness, by understanding that pollution was a violation of individual's rights to their environment and that the rights to all forms of resources were vulnerable.

### *Thomas Spence*

Paine was also a key influence on another eighteenth century radical writer and activist, Thomas Spence. Spence agreed with Paine's attacks on the monarchy and aristocracy but he criticised Paine for not extending his argument further. In particular Spence argued that Paine did not support the logical conclusion of environmental rights, namely the seizure of natural resources from those who held them. By refusing to support such a plan and permitting private ownership of resources Paine was, Spence suggested, allowing inequality and domination to flourish and undermining all other attempts to secure the rights of all. For 'what does it signify whether the form of

government be monarchical or republican while estates can be acquired?' (Spence, 1982j: 131).

The central aim of Spence's works was therefore to 'destroy... private property in land' (Ibid.: 135). Only by this method could the rights of all be fulfilled and freedom from domination and oppression secured. Though private property was to be respected, so individuals could keep their goods and money (Ibid.: 150) no-one could own the land or other natural resources, such as 'mines, woods, waters, etc.' which he described as 'appurtenances' of the land (Spence, 1982b.: 73). So, unlike Paine and Rousseau, Spence's definition of property and the distinction between permissible and harmful property was not based on labour or necessity, but instead on the subject of that property:

'The right of property is that which belongs to every Citizen to enjoy and dispose of according to his pleasure, his property, revenues, labour, and industry. Here his property in land is excepted, which being inseparably incorporated with that of his fellow Parishioners is inalienable' (Spence, 1982k: 168).

It is therefore the struggle for control and ownership of the environment that is at the heart of Spence's definition of property.

Spence's arguments for the outlawing of private property in environmental resources were motivated by and linked to rights. Spence believed that everyone possessed 'sacred and inalienable rights....natural and imprescriptible rights', for 'all human beings are equal by nature and before the law' (Ibid.: 166). He also draws upon the concept of civil rights, for example differentiating between 'the rights of Man and Citizens' (Ibid.: 166) in *The Constitution of Spensonia*. Yet it is clear that natural laws underpin citizen's rights, for 'social laws, therefore, can never proscribe natural rights' (Ibid.: 166 – 167) and that the role of government is to protect and secure individuals rights (Ibid.: 166). However throughout all his works Spence highlights the right of all to 'natural' property in resources above all.

In order to secure these environmental rights, Spence suggested that the reclaimed resources should be given to the local parishes, to be owned and managed on behalf of their inhabitants. This plan is repeated throughout his works, leading

some contemporary scholars to argue that Spence was an early land nationalist or communist (Parssinen, 1973: 135, Claeys, 2007: 96). Yet this plan, and Spence's thought as a whole, was driven by a prior commitment to environmental rights.

### *William Ogilvie*

Though he was contemporary of Spence, the Scottish Enlightenment thinker William Ogilvie was less radical and more specific in his aims. Ogilvie did not argue against the monarchy or for democratic reform but was instead concerned only with how to distribute natural resources to secure the environmental rights of all. His only major work set out a plan to secure these rights through the reclamation and equal redistribution of natural resources.

Within this text Ogilvie drew heavily upon the natural rights tradition - indeed the full title of his only work is *An Essay on the Right of Property in Land, Concerning its Foundations in Natural Law*. This understanding sees rights as predating civil society and its institutions, which are formed to protect these initial natural rights and create civil rights. This latter form is held only by members of that society, whereas natural rights are held by all. It is therefore the role of the state to act to defend individual's rights, and they cannot abolish or act against them (Ogilvie, 1781: 21).

In addition to rights, the other key concepts in this text are 'property' and 'land'. To turn to the latter first, Ogilvie explicitly discusses ownership of land because he believes that ownership of the air and water cannot be 'fixed'. All therefore have access to 'the open air and running water' (Ibid.: 12) so the rights to these resources cannot be violated. Consequently Ogilvie turns his attention to the resources which *can* be appropriated and the subsequent rights violated. This focus should not disguise that Ogilvie believed that air, water and land were all 'essential to the welfare and right state of his life through all its progressive stages' (Ibid.: 11). His focus on the land is therefore born out of his belief that only this natural resource could be monopolised or destroyed.

In his examination of the ownership of the land and all resources connected to it (such as woods and sub-soil resources) Ogilvie argued that there was an 'original right of universal occupancy' held by all to these resources (Ibid.: 34) and 'that every



man has a right to an equal share of the soil, in its original state' (Ibid.: 17). This initial right was joined 'with the acquired rights of labour' (Ibid.: 34). Property was therefore the result of the initial right to resources *combined* with the right to own the results of labour and the first right must, he argued, take priority. Ogilvie makes this argument explicitly against Locke:

'Whatever has been advanced by Mr Locke and his followers concerning the right of property in land, as independent of the laws, of a higher original than they, and of a nature almost similar to that divine right of kings which their antagonists had maintained, can only be referred to this original right of equal property in land' (Ibid.: 15).

Ogilvie therefore believed that private property should be over-ridden in order to support the rights of all to their environment.

### *Thomas Jefferson*

Thomas Jefferson is better known as one of the Founding Fathers of America and the third President of the United States than as a political thinker. Yet Jefferson frequently wrestled with the concepts of rights, freedoms, property and the environment as he tried to establish the new republic of America.

Jefferson's political thought was driven by his commitment to republicanism yet his understanding of rights was based upon the natural rights tradition. He argued that free people '[claim] their rights as derived from the laws of nature and not as the gift of their chief magistrate' (Jefferson, 1977a: 20), making clear that he saw the republic as defending pre-existing rights. Thus 'our legislators are not sufficiently appraised of the rightful limits of their power; that their true office is only to declare and enforce only our natural rights and duties, and to take none of them from us' (Jefferson, 1999a: 143). A balance must be struck between a government powerful enough to defend these rights and yet not so powerful as to be able to 'invade' them, a balance which Jefferson believed could be maintained if, and only if the republic's actions were authorised by the citizens. Such rights are defined as 'the rights of thinking, and publishing out thoughts by speaking and writing; the right of free commerce; the right of personal freedom' (Jefferson, 1999a: 113). This latter right highlights Jefferson's understanding of freedom. Jefferson distinguished between true

freedom and liberty, with the limits being that of self-government and harm to others: 'Liberty... is unobstructed action according to our will. But rightful liberty is unobstructed action according to our will, within the limits drawn around us by the equal rights of others' (Jefferson, 1999e: 224). Freedom therefore consists in following our inclinations and our own government, to the extent that this does not harm others, knowing that we ourselves will not be harmed in return. Yet this definition of freedom is undermined by Jefferson's support for slavery. When Jefferson speaks of the 'members' of the community who have a 'voice', this category is narrowly defined and does not include all.

Jefferson also linked property to labour and was highly critical of the consequences of unequal property. He argued 'that [it was the] unequal division of property which occasions the numberless instances of wretchedness' (Jefferson, 1977b: 396) because 'the laws of property have been so far extended as to violate natural right' (Ibid.: 396 – 397). As a result he believed that property should be limited and sub-divided in order to ensure that there was enough for all and gaping inequalities of wealth and power were prevented (Ibid.: 396). Jefferson's understanding of property was based upon what was best for both individuals and the republic as a whole.

Though Jefferson's work on property was based on natural resources (as the source for goods and site of labour) his main engagement with the environment was driven by an awareness of the role that resources played in securing the republic. He argued that this common good could over-ride individual needs: 'I think the state should reserve a right to the use of the waters for navigation, and that where an individual landholder impedes that use, he shall remove that impediment and leave that subject in as good a state as nature formed it' (Jefferson, 1999c: 203). This concern also leads Jefferson to argue that resources should be divided up amongst the sub-divisions of the republic, to ensure the balance of the state and promote self-government.

## The Nineteenth Century

The final two thinkers examined in this thesis are drawn from the nineteenth century. The political theory of this age was responding to the new challenges of growing industrialisation and urbanisation. No longer did individual's rights need to be defended only from the incursions of the aristocracy or the monarchy. Instead the threat to rights came from the economic system and society as a whole – the 'tyranny of the majority' as Mill famously defined it. Yet these works were building upon and adapting what had come before them and shared many of the same concerns – such as the need to distinguish between the property which preserved the poor and the property of the rich that ensured their unequal and unfair dominance within society, as well as the preservation of the environment upon which all depended.

### *Karl Marx*

Karl Marx aimed to first understand and then to destroy the capitalist system, and to replace it with a communist society. In this society resources would be owned and developed by all, destroying the power of the bourgeoisie or capitalist classes.

The concept of property is central to Marx's work, as he repeatedly attacked the concept of private property and called for its destruction. However this attack was directed at the property of the bourgeoisie, for the property of the proletariat working class had, Marx argued already been destroyed. The proletariat had been driven from the land through the process of primitive accumulation. They were thus forced to sell their labour to survive, alienating them from both it and the end product that they created, which was instead considered the property of the employer who exploited them (Marx, 2000e: 522). In contrast Marx supported the workers claims to the results of their labour: 'we by no means intend to abolish this personal appropriation of the products of labour, an appropriation that is made for the maintenance and reproduction of human life and that leaves no surplus wherewith to command the labour of others' (Marx and Engels, 2000: 326). This form of property could only be defended through the destruction of bourgeoisie property, which was based on this surplus and the subsequent exploitation of others.

This critique of bourgeoisie property was reflected in Marx's definition of rights. Marx argued that rights kept individuals apart, saying that 'the so-called rights of man' were 'nothing but the rights of the member of civil society i.e. egoistic man, man separated from other men and the community' (Marx, 2000a: 60). Such rights also protected only that which the capitalist system deemed important – namely property and not people: 'the right of man to property [meant] the right to enjoy his possessions and dispose of the same arbitrarily, without regard for other men, independently from society, the right of selfishness' (Ibid.: 60). By protecting things, not individuals, rights lead 'man to see in other men not the realization but the limitation of his own freedom' (Ibid.: 60). Marx therefore argued that, by claiming something for ourselves, we are insisting on our ability to use it as we wish, without consulting the needs of others and are separating ourselves and the object of our claim from them.

Marx had no wish to defend the rights and freedom of bourgeoisie man to buy or sell labour and capital, to alienate others and destroy the resources that all need. Instead he fought for the rights and freedoms of all to labour and support themselves, free from alienation and domination, able to take and access the resources that they need and own the goods their labour produces in common with others.

The environment plays a key role in Marx's political thought. He was aware that 'the first premise of all human history is, of course the existence of living human individuals. Thus the first fact to be established is the physical organisation of these individuals and their consequent relation to the rest of nature' (Marx, 2000c: 176). So, because 'life involves, before everything else, eating and drinking, a habitation, clothing and many other things' (Ibid.: 181), the natural resources that are essential to this must be first secured. Marx also noted the effects of pollution on human health, as he was aware that non-bounded resources could be damaged and deliberately so in the case of industry. Beyond this physical survival, Marx also noted that natural resources are essential for labour, making their ownership central to the ideal form of labour under communism.

### *John Stuart Mill*

The other dominant political figure of the nineteenth century is John Stuart Mill, who endeavoured to balance the 'general utility' of society as a whole with the security, autonomy and freedom of each individual.

Mill stated that 'the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection' (Mill, 1977: 223). So provided that individuals do not hurt anyone, they should be free to do, say and act as they wish, deciding for themselves how to govern their lives. This is because Mill believed individuals were the best judge of their own happiness, so they would choose the way of life that was best for themselves which would therefore secure the greatest happiness for the most people. Furthermore by encouraging individuality and innovation through allowing a variety of lifestyles, Mill hoped to promote diversity which would in turn lead to progress. Freedom for each individual was therefore central to the freedom of society as a whole.

Despite this concern for the freedom of the individual and their protection from society, Mill was not a natural rights thinker, rejecting 'any advantage which could be derived to my argument from the idea of abstract right as a thing independent of utility' (Mill, 1977: 224). In earlier works he described rights as 'something which society ought to defend me in possession of' (Mill, 1969b: 250) and 'the claim we have on our fellow creatures to join in making safe for us the very groundwork of our existence' (Ibid.: 251). For Mill rights do not work in isolation, but when others recognise and protect our claim to something, namely the objects of physical necessity, freedom of thought and speech, and the social rights of association and participation.

Mill's work on property reflects a concerns over inequality balanced against a recognition that property is essential for independence and that individuals should be permitted to own the results of their labour. As a result Mill argued that no matter what the consequences, property must be respected (Mill, 1969a, 157) for the security for all which would be provided by the state seizing natural resources is less than that which is guaranteed by the protection and respect for rights and property. Instead Mill argued that the state should step in and mediate between the needs of all and the

claims of the property holder, in order to manage competing claims according to utility.

Mill directly and explicitly engaged with environmental concerns –as for example in his arguments for a stationary state with no economic growth. These arguments in turn reflect Mill’s understanding that the environment is finite, that as ‘no man made the land’ or other resources (Mill, 1965: 230) they must be carefully managed to ensure that all can access the resources they need to survive. This definition of survival encompassed both physical and emotional preservation, with Mill pointing out that the natural world as a whole, separate from the discrete, individual resources, was essential for humanity to develop and progress (see Mill, 1967b: 693). Mill’s understanding of the environment therefore showed a sharp awareness that resources are finite (and the consequences of this) and the myriad ways in which the natural world is necessary for humanity.

## Conclusion

This chapter has set out the political aims of each thinker examined in this thesis, in chronological order, focusing specifically on how they defined the key concepts of rights, freedom, property and the environment. From the early understandings of the sixteenth and seventeenth century, through to developments of the eighteenth century and the reflexive, applied understandings of the nineteenth century, the context of each theorist has been set out. Within this understanding key themes and similarities can be seen.

The first theme to notice is that these are arguments for immediate political change in order to overturn existing power structures. From Locke’s call for rebellion, to Paine’s support of the French Revolution and Marx’s desire to destroy and replace the capitalist system, these writers aimed not just to explain but to change their society and the way natural resources were managed. Whether seeking to argue for the equality of all, limit the power of government or restructure society, all the thinkers examined here used the concepts of rights, property and freedom as tools to

fight these battles and make their own arguments in response to the political debates of their time.

With regard to rights there is a distinction between the natural rights position and a republican conception. The former tradition argues that all individuals possess rights due to being human whilst the latter links rights to citizenship and membership of the republic. This sees rights as a tool in the struggle for a free life, rather than an end in and of itself to be achieved. However defined though the equality of the rights-holders, their level status with each other is essential to the concept, as will be shown in the following chapter.

The definitions of property offered by the thinkers in this thesis vary greatly and there is a sharp debate regarding the necessity or otherwise of ownership. Thinkers such as Winstanley, Spence and Marx argued that property can violate individual's rights and threatens the security of all whilst others such as Locke believed that property ownership *was* security and that the right to property was an essential defence against intrusion and domination. Others such as Wollstonecraft and Paine were torn, realising that property was essential to survival and independence and yet at the same time had the potential to undermine these concepts and enable a minority to control and oppress others (a dilemma that would become more acute when the subject of property was finite natural resources, as Chapter Three discusses). These various approaches are however united by a perceived link between labour and property and a belief that property should be limited – though the extent of these limits and the reason for this is heavily debated.

The final theme concerns the definition of the environment. The majority of the thinkers examined here draw upon the 'narrow' definition of the environment, which refers only to bounded natural resources, considered separate from one another. This approach focuses on the use of the environment for physical survival, ignoring the role that the environment plays in wider human experience and presumes, wrongly, that resources can be separated out in this way (Trachtenberg, 2011). However this narrow approach is acutely aware of the finite nature of these resources. The focus on individual units of land and water meant that, when these resources were monopolised or destroyed, the impact of the preservation of others and the violation of their rights, was immediately apparent. This understanding is most clearly seen in

the work of Winstanley and Locke, Rousseau and Paine, Spence and Jefferson and, as will be shown in the following chapters, it drove their concern with monopolisation and destruction of resources.

There is an alternative approach to the environment within these works, defined here as the 'wider' approach. This approach examined unbounded resources such as the atmosphere and the oceans, as seen in the work of Grotius and Thelwall and touched upon in Marx, and also discussed the value of the natural world as an interconnected whole for human development, as exemplified by Wollstonecraft and Mill. This understanding corresponds more closely to the contemporary understanding of environmentalism but can lose the urgency and immediacy of the narrow approach.

It is these reoccurring themes which will be unpacked and examined in the chapters that follow, as they influence how each thinker conceptualises environment rights and responds to the tensions inherent within them.



## Chapter One: Rights

Woods' points out that environmental concerns and human rights are not 'straightforwardly compatible' (Woods, 2010: 128) in part due to the tensions inherent within the concept of rights. She therefore cautions that for all the political advantages of environmental human rights, the 'scholars and activists' who wish to use the concept must first 'engage critically with the idea of human rights' (Ibid.: 129). This first chapter will reflect this approach by 'engaging critically' with the previous understanding of rights in general will be examined within this chapter, with the specific rights to the environment developed by these thinkers set out in Chapter Two.

Some of the central texts in the rights canon are included in this thesis alongside 'second-tier' rights tracts, as represented by the works of Winstanley, and Spence, and the works of those who utterly oppose to the concept of rights; Marx and the republican thinkers. This provides a comprehensive view of rights, from its strongest proponents to the fiercest critics and includes some of the most politically aware and creative interpretations on the subject. From Wollstonecraft's ground-breaking call for the rights of women to Marx's fear that rights are nothing more than a tool of the bourgeois, these works are aware that to have rights is to be bound up in questions of power, of barriers to freedom and questions surrounding our relationships with others. As a result, and despite these differences, there are continuing threads which can be identified as running throughout these accounts, concerned with freedom, equality and claims. This chapter will examine these threads and show how they relate to and are affected by an awareness of the environmental dependence of all. This is not an examination of the environmental rights suggested by previous theorists, but is instead an examination of their understanding of rights, as applied to environmental concerns. This chapter will thus introduce the problems and tensions that are heightened when rights are applied to the environment.

The first theme concerns the relationship between rights and political freedom and is drawn from the difference between the republican conception of rights and the natural rights tradition, and the tension between the two understandings of rights must be kept in mind. Central to this section will be the work of Wollstonecraft who, as

Susan James shows (James, 2013) deliberately combined both natural and republican traditions of rights. Her understanding of rights is built upon a thorough and creative engagement with the barriers to freedom, especially bodily freedom, in a way that is particularly useful for environmental rights.

The idea of barriers to freedom and the political arguments concerning power are reflected in the second key theme within these past conceptions; the idea that rights ensure equality between all individuals. Many of the thinkers in this thesis use rights to proclaim the equality of all in the face of arbitrary power, using the equality of standing that rights give as a tool in political struggle. But the status of rights-holder is often defined through inequality and exclusion and the arguments over the rights of women, children and non-citizens will be set out in order to demonstrate the diversity of the past thinkers. Yet stripped from these prejudices, exclusion could be necessary when discussing rights to finite resources but who is to be excluded and why remains highly contested. Equality is central to the concept of rights but equality of what and of whom remains up for debate.

The ideas of belonging, exclusion and equality lead into the final thread that this chapter has identified within the previous rights texts; that rights are claims. Rights entitle their holder to something, whether it be a specific good such as education or voting or to certain treatment such as freedom from torture. The implications of this for environmental rights are clear, as they represent claims to the natural world. However this sees the environment as a site only of human claims, not intrinsic value. Furthermore, how are claims of all rights-holders to be respected when the environment is fragile and finite? These points are explored through an examination of the work of Marx and Mill. What environmental rights are a claim to therefore, needs to be continuously questioned and re-interpreted.

These three tensions surrounding freedom, equality and claims to relationships are common to all the understandings of rights examined in this thesis and are heightened when rights are applied to finite resources, as commentators such as Benton, Batty and Grey and Woods have noted. As a result of these tensions the past proponents of environmental rights debate who should be excluded from the environment, what equality means with regard to environmentalism, what claims

individuals have (or should have) to their environment and what freedoms they have within that environment. These questions are interlinked and overlapping, complex and problematic and reflecting Woods, they start from the contested understanding of rights themselves. So before looking to the past conceptions of environmental rights and how they can inform current environmentalism, the foundations of how the past thinkers conceptualised rights themselves must be explored.

### Rights and Freedom

The first point is that rights are linked to freedom. All theorists examined here suggest this link but understand it differently. This reflects the difference between natural and republican rights. Republican rights are conceptualised as being in service to freedom, for they are seen as the means to secure this larger end. Within the natural rights tradition however, the fulfilment of rights is the same as being free, forming an end in and of itself. Which tradition is used is influenced by political concerns, with some drawing on the natural rights tradition in order to criticise existing political practices, including use and ownership of natural resources, and others drawing upon the republican tradition in order to promote communal approaches that emphasise the common good. Wollstonecraft's blending of the two forms suggests a creative engagement that aims to produce the best of both, creating a highly political understanding of rights that provides both a critique of the current society and an alternative which is grounded in lived experience.

### *Natural Rights*

Many of these thinkers draw upon the natural rights tradition to underpin their conception of environmental rights. Locke, Thelwall, Spence, Wollstonecraft and Winstanley all built on this tradition and Grotius is considered one of the most influential figures within it. At heart, natural rights are the rights that individuals have by virtue of their shared humanity or some set aspect of it, such as rationality. Such rights are (theoretically at least) possessed equally by all humanity from the moment of their birth. Natural rights are often attributed to divine gift, on the grounds that God gave individuals reason and life: for example 'for Wollstonecraft, a right to live

freely is an inalienable, natural entitlement given to each human being by God' (James, 2013: 24). Natural rights thus pre-date all forms of civil society, which is seen as being formed to protect an individual's rights, not grant or bestow them. This idea was suggested by Locke, as seen from his description of the formation of civil society, and Ogilvie who argued that the state was designed to protect pre-existing natural rights (Ogilvie, 1781: particularly 15). Natural rights appear to be the very *opposite* of politicised, existing outside the realm of society and human interaction. This means that natural rights can be used to justify evaluation and critique of society and Locke uses natural rights in this way when he argues that individuals owe no obedience to a government that does not respect or protect their natural rights (Locke, 1980: 66 and 68). This supposed distance from politics meant that natural rights could provide 'objective' standards against which society and powerful interests can be held to account. Due their perceived neutrality, natural rights were used to make highly political points.

But what are natural rights, rights to? Natural rights are rights to the essentials of life, which all need to survive. For example, Tuck argues that, for Grotius, natural rights were based on self-preservation (Tuck, 1979, Tierney, 1997: 322), This links with Locke's idea of natural rights to preservation of life, liberty and health (see Locke, 1980: 67, and 9, and Locke, 1988: 205).

Thelwall argued for greater flexibility regarding the content of natural rights. He started from the idea of preservation, arguing that natural rights 'are determined by his wants and his facilities and the means presented by the general system of nature for the gratification of the former and the improvement of the latter' (Thelwall, 1995f: 457). As Gregory Claeys points out, Thelwall believed that 'natural rights were thus not fixed' (Claeys, 1995: xlix) a point drawn from Thelwall's belief that the 'natural rights of man... are determined by his wants, his facilities and his means' which can and will change over time (Thelwall, 1995f: 457). Thelwall could therefore use the natural rights tradition to support rights that were unimaginable to previous thinkers like Grotius, such as rights to the profits of industry. Though Thelwall believed that the content of individual's natural rights could change, they would be a reflection of the fundamental right to survive, which could not be alienated under any circumstances:

‘you have a right to the gratification of the common appetites of Man; and to the enjoyment of your rational faculties... They are the bases of existence and nothing in existence - no, not even your own direct assent, can, justly, take them away’ (Ibid.: 476 – 477).

Wollstonecraft encapsulates what is meant by natural rights, stating: ‘it is necessary emphatically to repeat that there are rights which men inherit at their birth as rational creatures... and in receiving these not from their forefathers but from God, prescription can never undermine natural rights’ (Wollstonecraft, 1989c: 14). This highlights the apolitical aspect of natural rights and their use as a tool of critique. With regards to freedom, if natural rights are achieved, then their holder is said to be free. In predating society, they set out limits on what society can do and provisions that they must fulfil. On this understanding, environmental rights would appear to be natural rights, for they reflect our inherent dependence on the environment, which is common to all humanity no matter which, if any, society they are part of.

### *Republican Rights*

The republican tradition takes a very different view of rights. Indeed republicanism is often seen as hostile to rights, with Philip Pettit noting that ‘republicanism cannot be represented by any stretch of the imagination... as a tradition of rights akin to that which is sometimes associated with liberalism’ (Pettit, 1999: 303). Rights are said to have ‘secondary or derivative status’ within the republican tradition (Ivison, 2010: 31) which instead ‘elevates responsibility over rights’ (Dobson, 2006: 222). But a secondary role does still mean that there is a role for rights to play within republican thought and there are some who argue that this difference from a liberal understanding of rights is an advantage, as it allows for a stronger, more grounded conception of rights (Ivison, 2010). Within the work of previous republican thinkers, particularly in the work of radical republicans, there is a creative engagement with rights which saw this different, secondary role as a strength, for it enabled the nature and content of rights to be debated and reimagined.

James identifies three strands of historical republican thinking, each with a differing relationship to rights. The first, described as ‘Machiavellian’ and representing both classical republicanism and the revival of this tradition by Machiavelli and others

asks 'not 'what rights do we have?', but rather, 'if we want to live freely, what powers do we need to guarantee and what powers do we need to destroy?' (James, 2013: 8) This strand of republican thinking sees rights as tools, in service of the larger end of living freely. There is a sense of pre-determination in this account that establishes what a free life is and, if deemed necessary, defines and establishes the rights necessary to fit that end. But there are other traditions within republicanism, in which rights play a greater part:

'By contrast... [there are] two later strands of republican thought that accompanied the republican political experiments in England and Holland during the seventeenth century, both make use of the language of rights. The English strand is exemplified by Algernon Sidney... For Sidney, our powers to live freely are guaranteed by an antecedent moral right to liberty, which is itself backed up by a moral law decreed by God or nature. So for this tradition, our rights are ultimately moral claims, guaranteed by the law of God' (Ibid.: 9).

These latter strands of republican thinking are closer to the natural rights tradition, for not only does they explicitly invoke rights, but there is a sense of rights defined by God and morality, not just the interpretation of a free life. So, though there is a sense of rights that predate the current society, the focus here is still, to paraphrase James' description, on the powers necessary to lead a free life and the obstacles to be overcome if this is to be secured. Rights therefore remain in service to freedom, whilst complementing and informing what is meant by freedom in a way they do not for Machiavelli.

These different aspects of republican thinking share a focus on citizenship, which means that rights are held only by citizens of the republic. The emphasis placed on the importance of citizen's duties implies procedural rights, such as the right to be informed, to participate in decision-making. 'Republicanism... emphasizes the importance of active citizens doing their duty, participating and defending the collective way of life of their free community especially from external threat' (Barry, 2004: 25) and the necessity of 'fulfil[ing] the duties of a subject' as well as enjoying

‘the rights of a citizen’ (Rousseau, 1994: 58). To do this, citizens need to be empowered and rights enable the citizen to govern themselves.

Unlike natural rights, which are shared by all and so prefigure society, republican rights are held only by the members of the republic and are tied to the republic’s existence. In some ways linking rights with citizenship is an advantage, as it clearly identifies both the rights-holders and who is responsible for providing, defending and enforcing their rights. However the status of non-citizens is troubling. This point will be developed further in the next section, but for now it must be noted that republican rights are by their very nature political. From the start they engage with questions of power, authority, membership and inequality. Whilst natural rights can be used to critique and respond to these concepts, as they represent a presumably objective standpoint, republican rights cannot be separated from these questions.

This politicisation is not just based on the holder of such rights but on the content of these rights. Whilst the content of natural rights centres on and around self-preservation, republican rights are more open, aiming to secure ‘our powers to live freely’ (James, 2013: 9), however that may be defined. A minimum standard of environmental quality is essential to a life of freedom, but beyond this, the republic and its citizens can interpret what is meant by a free life as they wish. Overall, it is the nature and values of the republic in which these rights are held that will determine their content, further politicising such rights. This fluidity of content is joined by a focus on the common good of the republic rather than the particular good of individual rights-holders. This point is encapsulated by Rousseau, who suggested that individuals should put aside their particular individual goals in favour of the general will, which ‘is concerned with the common interest’ (Rousseau, 1994: 66). Only through the latter can true freedom be achieved. Republicanism does not view achieving rights as an end in and of itself, instead seeing them as a means of achieving freedom. Rights are therefore a tool in a much larger political struggle against power and domination.

Duncan Ivison believes this alternative understanding of rights, particularly with regard to their relationship with freedom ‘offers resources for rethinking human rights’ (Ivison, 2010: 32) which ‘take human rights in another direction: less metaphysical and more absolute, more contested and open to alternative interpretation’ (Ibid.: 43). This means that republican rights are more open to debate and flexible to change (for

better or for worse) than the more fixed natural rights. Since republican rights are built upon their societies' understanding of membership, equality and belonging, they can change with these terms and reflect ongoing political struggles. So as the membership of the republic is expanded to include others or to reflect emerging concerns, the rights of the citizens will also change. Republican rights can flexibly adapt to environmental concerns and the variety of ways the environment affects human life and this more grounded, 'more absolute' approach reflects the practicalities of ecological embeddedness.

### *Wollstonecraft and the Competing Interpretations of Freedom*

The two competing interpretations of rights that feature within this thesis have been set out. These two traditions can work together and their combination both provides a useful reinterpretation of rights and freedom, one which is particularly relevant to the environment.

This combined approach is suggested by Wollstonecraft. As noted earlier, Wollstonecraft 'blended' republicanism and natural rights (James, 2013, O'Brien, 2009: 180, Taylor, 2003: 214). As Taylor puts it, in 'their concern to push Wollstonecraft into the republican camp leads [commentators] to underplay or misinterpret key elements of her thought, including her natural rights perspective' (Taylor, 2003: 298). James suggests that Wollstonecraft 'is thus one of a group of writers who attempt to engineer a rapprochement between republicanism and the legacy of the natural right tradition' (James, 2013:24). These rights are not second to liberty but are instead a way of achieving it, a precursor. Wollstonecraft drew on two interpretations of rights and used them both to achieve her aims of independence and equality for all and because her work is fundamentally wedded to neither tradition, this blended conception does not prove contradictory.

James suggests that Wollstonecraft's blended conception is in response to the fact that 'endowing people with rights is therefore not merely a theoretical or theological exercise; rather, it is a political one that requires great imagination and ingenuity' (James, 2013: 25). In stressing the politics of this approach James notes that Wollstonecraft sought to combine the radical political



*purpose* to which she puts natural rights with the inherently political nature of republican rights. This enables her to interrogate who is classed as a rights holder and why, and question what rights individuals have. Wollstonecraft's reflexive approach of utilising both traditions allowed her to both use rights to advance her argument and question the concept entirely.

Concluding that Wollstonecraft's contribution to rights theory rests not on her understanding of rights but her application of this theory, James notes that 'Wollstonecraft's stance invites us to explore a whole range of ways in our bodily relations shape and limit our rights' (James, 2013: 15). On this reading, Wollstonecraft's approach to rights is therefore highly applicable to environmental rights, and the ways in which our bodily relations, our 'human embeddedness' (Trachtenberg, 2011) and dependence on their environment, shapes our rights. Our understanding of freedom, either as a means to an end or an end in and of itself, is dependent on an environment that, at least, supports our physical survival and health. Our freedom to act, to move or just to exist is dependent on this bodily relation, as is our freedom to decide for ourselves, as Wollstonecraft is aware of the ways in which individuals need the environment for their psychological development and mental freedom.

James believes that what is unique about Wollstonecraft's contribution to rights theory was 'her sensitivity to the range of powers or rights that a free way of life requires, and the many kinds of obstacles that have to be overcome if these are to be realised' (James, 2013: 26, Coffee, 2013). Acknowledging the importance of rights to the environment reflects the awareness of the range of ways in which the environment is essential for a free life. Later chapters will expand on Wollstonecraft's arguments for the rights of ownership and labour upon natural resources and the role they place in ensuring the freedom and independence of both individuals and society. Yet rights to the environment need to be fulfilled in order to give individuals any life at all - before the questions of what a 'free' life is, individuals must survive. The immediate fulfilment of environmental rights *is* freedom, the freedom to be able to choose and define what a free life is and what powers are needed to achieve that larger goal.

Finally, Wollstonecraft's combination of natural and republican rights highlights the political nature of rights. Deciding who has rights to what is a political act, as James notes, and one which requires a creative, reflexive approach. Wollstonecraft uses the natural rights tradition as ground from which to critique the current attribution and republican rights to open up the question of what these are rights to, what it owed to others and what is best for all. This highly politicised account is useful for reminding us that rights to the environment are political. The necessity of a safe environment is often taken for granted by those who have it. Rights to the environment can seem straight forward, securing access to that which individuals already have and representing a relationship between the rights holder and their environment. Applying Wollstonecraft's highly politicised account of rights reminds us of the problems of politics, power, exclusion and contest that surround rights and will only be worsened when the subject of such rights is limited natural resources.

This section has identified the recurring idea of rights as freedom and the two competing interpretations of this concept, natural and republican rights, which are put forward within the works examined. It has been shown that natural rights were presumed to be less political by nature than republican rights. For this reason they were used for political purposes as an objective standpoint from which to critique society. Yet republican rights alert us to the fact that rights are inherently political, as they reflect the prejudices and power of the society in which they are grounded. Thus there is a need to critique rights themselves, and ask who holds them and to what they are entitled. Though these traditions are generally seen as opposed to one another, James' work on Wollstonecraft, shows that they can work together to address not only which rights individuals have, but how those rights are to be realised. With regard to environmental rights, this combined conception of freedom illustrates the variety of ways in which individuals interact with their environment and the variety of powers needed for this. What does it mean to be free in our environment, or, as Passmore describes it, free in our space? (Passmore, 1973) Is the right to the environment an end in and of itself or a means to achieve labour and development? This problem is developed further in Chapter Three and influences the solutions set out in Chapters Five and Six but it grows out of this initial debate between means and ends. The

answers that the past conceptions of environmental rights make to these questions will be examined throughout this thesis, but they grow out of this initial problem of the contested relationship between rights and freedom.

Wollstonecraft's understanding of the political is useful for highlighting the politics of environmental human rights, which raises two further questions – who is classed as a rights holder and what is the content of these rights? The source of these questions and how they manifest within the previous debates over rights within the past literature will be examined in the following sections.

### The Politics of Exclusion

Out of an awareness of the political aspect of rights comes the question of who has rights, which is tied to the common thread which runs through all the past conceptions of rights, namely the belief that rights ensure equality.

Rights are said to grant equality of status to their holders, providing each with the same freedom (however defined) and secure ground from which to stand and claim that which is theirs. As Marx noted, rights by their 'very nature can consist only in the application of an equal standard' (Marx, 2000g: 615). This emphasis on equality is the reason why rights, particularly natural rights, are the central tool of the reformer. The equality inherent within rights not only undercuts ideas of aristocratic superiority and divine mandate to rule (particularly if God made all equal and endowed them with rights to match as Locke, Wollstonecraft, Spence and Winstanley claim) but insists that those with power must fulfil the needs and claims of others as equal to their own. To have rights is therefore to count, and to 'count' to the same extent as others. This idea of equality is particularly central to environmental rights as it reflects how all individuals equally depend upon the environment for survival. While the extent of this reliance may vary, the inherent ecological embeddedness of all human existence is consistent. The equality of standing and respect implied by rights is therefore necessary to safeguard this most fundamental requirement of (and for) all.

Yet linking equality to rights means that equality only applies to and between those classed as rights-holders and those denied this status are left in a dangerously

unequal position. This problem particularly troubles the republican tradition of rights, which openly denies the equality of non-citizens.<sup>3</sup> Yet even natural rights, supposedly held by all, are not equally applied (and at least republicanism is capable of recognising this point, whereas the supposed apolitical aspect of natural rights gives no room for debate on this matter). The problems of power and arbitrary rule affect both traditions, reflecting James' point that giving rights to individuals is a difficult, complex political act. Many of the texts examined here reflect the highly prejudiced politics of their time in their understanding of who is a rights holder and how far equality extends. This failure to cash out the promise of equality inherent within rights has left some commentators wary of these texts, particularly as sources for understanding ecological embeddedness. For example, Dobson points out that past republican thinkers believed that citizen's main duties were the supposedly masculine virtues of 'courage, leadership, service and sacrifice' (Dobson, 2003: 61). Though contemporary republicanism has stripped away this masculine prejudices, Dobson remains wary of what such an approach can offer environmentalists. Even Barry, who defends both a republican conception of citizenship and the necessity of these values in the face of climate catastrophe acknowledges that 'Dobson... rightly points out the gender bias of the classic republican focus on military and manly virtues' (Barry, 2004: 41). And this bias is inherent to many of the thinkers examined here. Jefferson made explicitly clear that:

'were our state a pure democracy, in which all its inhabitants should meet together to transact all their business, there would yet be excluded from their deliberation, 1. Infants, until arrived at years of discretion. 2.

Women... 3. Slaves... Those, then, who have no will, could be permitted to exercise none in the popular assembly; and of course could delegate none to an agent in a representative assembly' (Jefferson, 1999d: 219 – 220).

Jefferson used these criteria of age, gender and race to limit who can decide how natural resources are to be used, meaning that the ability of these groups to exist in their environment is severely compromised.

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<sup>3</sup> This distinction will be examined further in Chapter Seven. However this section will focus on exclusion from both the natural and republican rights tradition, as the same three groups are denied rights-holder status by both.

The influence of politics and the effect that power and conflict have on the ability of rights to deliver their supposed equality, is not a one way process that only enables some to exclude others. Politicisation also allows for several of the thinkers examined in this thesis to fight against this exclusion and argue for the recognition of the inherent equality implied by rights. For example, Wollstonecraft and Spence argued for all men, women and children to be considered rights-holders, with achieving such status seen as key to achieving political equality. To presume that all previous conceptions of rights share these prejudices results in a homogenised, monolithic view of these sources, which ignores the differences and disagreements between them. This prejudicial exclusion is certainly a problem, but it is not a problem that is shared by all the past thinkers. This debate over equality and exclusion turned rights into a contested battleground, with three central areas of conflict: the exclusion of children, of women and of non-citizens. The following sections will set out each area of conflict in turn, showing how the thinkers examined by this thesis argue both for and against equality of rights in these cases, with specific reference to the environment.

### *Age*

In his list of those excluded from the decisions surrounding their environment, Jefferson omits 'infants' and Paine and Ogilvie do the same. Ogilvie stated that only those over twenty one could assert their rights to resources (Ogilvie, 1781: 142) and this threshold was also employed by Paine. With regard to the environment this limitation offers a narrow view of the relationship between individuals and their environment. Paine, Ogilvie and Jefferson believed that children were incapable of exercising their reason and making decisions as to how best to use natural resources. Furthermore, they were subsumed within the family, and so were theoretically provided for by others. Here the environment is seen only a source for labour and therefore independence over and above a means to emotional and spiritual development or even physical survival. Though those under twenty one will have no individual claim to natural resources or a say in their use, they are acutely dependent on such resources. They need natural resources in order to grow and flourish into

adulthood, but they have no way to claim those resources or define what that might mean.

Spence actively challenged age limitations on rights and argued that children have environmental rights. In *The Rights of Infants* he asks:

‘shall we be asked what the rights of infants are? As if they had no rights? As if they were excrescences and abortions of nature? As if they had not a right to the milk of our breasts? Nor we a right to any food to make milk of? As if they had not a right to good nursing, to cleanliness, to comfortable clothing and lodging?’ (Spence, 1982i: 114)

Spence argued that children have an explicit right to ‘full participation of the fruits of the earth’ (Ibid.: 114) and their rights to shelter and food imply access to natural resources. He specifically criticised Paine for not permitting children to share in the profits of society on their own merits:

‘Under [Paine’s scheme] children will still be considered as grievous burdens in poor families. Under [Spence’s proposals] as *both young and old share equally alike* of the parish revenues, children and aged relations living in a family will, especially in rich parishes, where the dividends are large through high rents or the production of mines etc., be accounted as blessings’ (Ibid.: 124 emphasis added).

Spence’s belief that every child should share in the benefits of developing resources marked a crucial difference between the authors. He underlined this point when he makes clear that ‘such a share of the surplus rents is the imprescriptible right of every human being in civilised society, as an equivalent for the natural materials of their common estate’ (Ibid.: 119) and that ‘this surplus, which is to be dealt out again among the living souls in a parish’ (Ibid.: 119). Under Spence’s interpretation of environmental rights, children have a direct right to natural resources themselves. The idea that environmental rights should be held only by those of a set age is openly rejected by Spence.

## *Gender*

The second area of conflict is over the rights of women. To take one example, Winstanley made clear in *The Law of Freedom* that 'the earth is to be planted and the fruits reaped, and carried into Barns and storehouses by the assistance of *every family*: And if *any man or family* want Corn or any other provision, they may go to the storehouses and fetch without money' (Winstanley, 2009n: 359, emphasis added). He is clearly concerned with the position of men and families, with women and children subsumed within the latter. Winstanley treats the family as an autonomous, united unit under the guidance of the male head of house. As Thomas Corns, Ann Hughes and David Lowenstein note:

'the patriarchal household was taken for granted as the basis of social and political organisation... women and children were to be transferred to other households if they lacked an effective male head, a more patriarchal system than operated in fact in Winstanley's England where widows would routinely act as heads of households' (Corns et al., 2009: 47 – 48).

So, whilst Winstanley makes clear time and time again that the earth is given to all, his sublimation of women and children under the control of the father, brings into question whether they share these rights. Geoff Kennedy argues against the reading of Winstanley and suggests that Winstanley's rejection of patriarchy as a basis for government implied that it was 'not a sufficient basis for the subjection of women' (Kennedy, 2008: 198). He acknowledges that Winstanley's society is patriarchal but argues that it is a "benign" patriarchy [which] seems to coexist with both democratic political arrangements as well as progressive policies towards women; that latter assuming the form of a recognition of female self-propriety (Ibid.: 198). Kennedy is here overlooking the fact that Winstanley explicitly stated that only men would be able to take up the positions of officers and overseers (Winstanley, 2009n: 323 – 329). Women were denied a political existence and 'it is men he is talking to, and so only the male figure that is in his mind' (Hobby, 1999: 67). As a result, though all members of a family were to share in the labour upon natural resources, not all members of the family were entitled to decide what that labour should be or manage the results of such.

The denial of women's rights, to their environment and otherwise, as represented by Winstanley is hotly contested. Many past thinkers argue that, as women are equal to men and share the same dependence on their environment, they should share the same rights and that acknowledging their rights would confirm and secure their equality within society. As a result, though 'in the struggle for the rights of man, most radicals were concerned quite literally with the liberty of adult males rather than the rights of all mankind' (Dickinson, 1977: 251 – 252), some argued for the liberty and equality of women. And the most famous argument for women's rights is that made by Wollstonecraft.

Wollstonecraft demanded of her fellow radicals that if 'men contend for their freedom and to be allowed to judge for themselves respecting their own happiness, it be not inconsistent and unjust to subjugate women' (Wollstonecraft, 1989d: 67). That women were subjugated was beyond doubt, for 'females [are] in fact denied all political privileges and not allowed as married women, excepting in criminal cases, a civil existence' (Ibid.: 256). Within all her works, both fiction and nonfiction, Wollstonecraft shows the harm done to women by this denial of their individual rights. For example in *Maria* the heroine is unable to control her own money because both she and it are classed as her husband's property (Wollstonecraft, 1989f: 145 and 149 – 150). In order to counter such oppression Wollstonecraft calls for women to have a public existence, indicated and protected by rights. She even 'hints' that there might be a place for women within politics, as they should be fairly represented and that they should not be prohibited from entering the professions and running businesses (Wollstonecraft, 1989d: 217 - 220). We also see in Wollstonecraft's call to end sexual discrimination the influence of her religious beliefs (Claeys, 2007) for, if God made both men and women, then why should they be treated differently? Though 'the *rights* of humanity have been thus confined to the male line from Adam downwards' (Wollstonecraft, 1989d: 157), Wollstonecraft called for change.

Miriam Brody describes Wollstonecraft's call for women's rights as an example of how she 'took the egalitarian reform principles of her age and applied them to her own sex' (Brody, 2004: xxvi) and is linked to her support for the rights of poor men and religious dissenters. Yet there is an important difference here, for her call for women's rights is linked to their role as wives and mothers – she wishes women to have a civil



existence so that they may better support their children and so, by example, teach them to be self-supporting rather than passing on the habits of slavish dependence. Husbands are also said to benefit from the empowerment of women, as with a secure legal standing to support them, women will no longer have to play the coquette or domestic tyrant to secure themselves and their children. Instead men will neither dominate or be dominated in the home, creating free relationships of equals. Furthermore, though Wollstonecraft speaks of women entering professions she sees this as secondary to their primary, domestic, role. As a result, though Wollstonecraft does acknowledge the need for institutional reform (particularly ownership of property and representation), the majority of her arguments for women's rights call for 'a revolution in women's manners' (Wollstonecraft, 1989d: 114), for 'psychological and personal reform... change in individual attitudes' (O'Brien, 2009: 182).

Wollstonecraft's argument is reflected in Spence's work, in that both defend the rights of women in general and their rights to natural resources in particular in order to enable them to better care for their children. This link is superficially acknowledged by Barbara Taylor (Taylor, 2003: 215), who points out that both support female suffrage, but does not note that they both do so on the grounds that it will benefit a woman's children. Yet Spence makes this point explicitly in *The Rights of Infants*, which takes the form of a dialogue between a male aristocrat and a poor woman who declares that she and her sisters will personally fight for their rights to a share of the earth's resources if their men will not do so. Women are said to be the 'defenders of rights from the beginning', for:

'we have found our husbands, to their indelible shame, woefully negligent and deficient about their own rights, as well as those of their wives and infants. We mean to take up the business ourselves, and let us see if any of our husbands dare hinder us. Wherefore, you will find the business much more seriously and effectually managed in our hands than ever it has been yet' (Spence, 1982i: 118)

Spence stated that 'the natural fruits of the earth, being the fruits of our undoubted common, [women] have an indefeasible right to, and we will no longer be deprived of them' (Ibid. 118). Malcolm Chase argues that this represents 'the germ of the concept

of male oppression and an admission that masculine brutishness and turpitude lay at the root of inequality' (Chase, 2010: 51) and 'it may well be that the *Rights of Infants* represents a conscious attempt to widen the constituency of radicalism by an explicit appeal to women' (Ibid.: 52). But Chase overlooks the weakness of Spence's argument - for all he passionately opposes gendered limitations on rights, he does so on gendered grounds, only supporting women's rights to the environment on the grounds that they will provide for their children. Consequently Worrell argues that this support for the rights of women was merely a rhetorical ploy for 'Spence was at best an opportune feminist', who used women's rights as a means to achieve larger ends (Worrell, 1992: 32 – 34). In this respect Spence's conception of women's rights is closer to the republican tradition, as he sees their rights and freedoms as important only because they contribute towards the greater good of society as a whole. Women possess rights to resources because they are mothers, not because they are equals. This difference means men and women are presumed to take on different roles within Spence's new society – 'all male Citizens are equally admissible to public employments' (Spence, 1982k: 167). Spence expands on this in detail later in his constitution:

'female citizens have the same right of suffrage in their respective parishes as the men: because they have equal property in the country and are equally subject to the law and, indeed, they are in every respect as well on their own account as on account of their children, as deeply interested in every public transaction. But in consideration of the delicacy of their sex, they are exempted from, and ineligible to all public employments' (Spence, 1982k: 170 – 171).

Spence uses women's rights purely as way of securing children's rights. This is not the straight equality of all holders that rights bring, but instead an acknowledgment of difference and a lesser claim. So though under Spence's conception of rights both genders have the same rights to the environment, they do so for very different reasons. Spence's conception of the rights of children to their environment comes at the expense of the rights of their mothers, showing the political trade-offs that are made when trying to conceptualise what equality of rights might mean.

### *Non-Citizens*

Jefferson's final limitation was 'slaves' or those who are classed as non-citizens. Jefferson's use of the term reflects racial prejudices, and as with the categories of age and gender both the racist assumptions and the acceptance of slavery was challenged by other thinkers. This can be seen in the arguments surrounding the relationship between slavery and rights, with some such as Paine opposing slavery on the grounds that it violates the rights of all involved, whilst Grotius suggested that individuals retained the right to sell themselves into slavery. However the category of non-citizen in general is more problematic. As is pointed out with regard to republicanism: 'the right to liberty belongs to citizens only; to deny that liberty to non-citizens – women, resident aliens, and slaves – is therefore quite consistent with republican principles and no violation of anyone's rights' (Appleby and Ball, 1999: xxix). As a result, the republican tradition can recognise and support the rights of some whilst denying entirely the rights of others, without contradiction. This point ties back to the biases of age, gender and race, for the arguments in support of the rights of the marginalised are often based on the idea that these groups either are capable of or already do the work of citizens and so should be awarded the rights of such. This is clearly illustrated by Wollstonecraft, who argued against denying women citizenship by showing the work they do (or could do if properly educated and freed from male oppression) for the benefit of all. The aim is to move the discriminated across the barrier over citizenship, not to tear down the unequal distinction.

When applying the concept of rights to the environment, acknowledging the rights of some but not others may be necessary. Whilst granting universal rights to resources such as the sea and atmosphere is possible (though these resources are not inexhaustible) acknowledging the rights of all to resources such as lakes, rivers, forests and sub-soil resources etc., seems to run the risk of ensuring the over-use of these obviously exhaustible, finite resources, ensuring the tragedy of the commons (Hardin, 1968). Limiting rights to resources can be the only way to preserve them and prevent over use, particularly if rights to use are only granted to those who would bear the consequences of such. Thus only those who live on top of sub-soil resources would be permitted to exercise their rights to these resources, as they would be the ones to face the inconvenience and pollution involved. Accepting this fact moves the debate from whether or not anyone should be excluded from resources to the question of who

should be, changing the parameters of the debate but keeping the problems of power and inequality. These problems are examined in the responses to the tension between citizens and resources in the past conceptions of rights, particularly in the work of Winstanley.<sup>4</sup>

Winstanley argued for the rights of Englishmen to the resources of England. As Kennedy puts it, he sought to restore the 'creation right of all Englishman; that is the restoration of the rights and freedoms that Englishman enjoyed before the conquest' (Kennedy, 2008: 191). This focus on Englishmen reflected Winstanley's exclusion of women, as shown above. Yet gender bias aside, this represents an attempt to recognise the rights of all Englishmen, rather than just those in a certain area, widening the circle of rights-holders, rather than restricting it. His stipulation should therefore be seen as a call for inclusion, not exclusion. Kennedy describes this as the 'universalization of these use rights' to resources (Ibid.: 130), drawing on the work of John Gurney (Gurney, 2007) to argue that 'the significance of this [support for the rights of all Englishmen] is that customary rights to common land were usually restricted to members of a particular locality. However Winstanley extends these rights to all commoners regardless of their locality' (Kennedy, 2008: 130). Winstanley sought to extend rights to resources on the grounds that environmental rights were natural rights, held by every member of the nation, not just those who lived in the immediate area or who 'owned' that resource. Based on his criticisms of the current system of environmental ownership and his preferred alternative, it is clear that Winstanley believes that anyone should be able to access the resources of England for 'this restraining of the earth from brethren by brethren is oppression and bondage' (Winstanley, 2009n: 296). This extension explicitly challenged the structure of the society at that the time. Insisting that all Englishmen should be able to claim any resource meant that the Diggers were seen as a threat to the local environment and so the survival of those in the area where they settled. Winstanley's response to these charges touches on environmental rights, common ownership of the environment and how and by whom such resources should be used, points which are discussed in the

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<sup>4</sup> The republican tradition also engages with this issue, as explored in further depth in Chapter Seven.

next two chapters. But they start from this problem of the necessity of inequality, of restricting and limiting rights to finite resources.

The discussion of inequality with regards to the rights of citizens and non-citizens, particularly with regard to the environment, leads to the problem of unequal needs. Marx identified this tension when he pointed out that rights 'can consist only in the application of an equal standard' (Marx, 2000g: 615). This led him to *reject* the idea of equal rights, particularly as a guide to distribution. Marx argues that the differences between individuals, their different needs, decisions and abilities, means that they will require different resources in different amounts at different times. Much of the discrimination and inequality examined in this section is the result of this assumption. Women, for example, are presumed to be incapable of the rationality needed for decision-making involved in exercising procedural rights, and so do not need them. Paine and Ogilvie do not discuss the environmental rights of those under twenty-one, as they are presumed to lack the capability to use resources for themselves and are instead supported by their families. This presumption is frequently mistaken and only arises as a result of bias; however the underlying principle, that needs affect the equality of rights, is sound and Marx made this point explicitly. He argued that equal rights can lead to unequal results: 'thus, with an equal performance of labour and hence an equal share in the social consumption fund, one will in fact receive more than another, one will be richer than another and so on. To avoid these defects, rights instead of being equal would have to be unequal' (Ibid.: 615). As a result, Marx states that the 'narrow horizons of bourgeois right [must] be crossed in its entirety and society inscribe on its banners: from each according to his ability, to each according to his needs' (Ibid.: 615).

Environmental rights must take this distinction into account, as despite all humanity's dependence on the natural world, the extent of each individual's dependence on their environment differs – for example those with breathing difficulties will require a higher standard of air quality in order to function. On a wider level, those with a spiritual, religious or cultural attachment to resources will have more need of them than those who do not. The right to resources cannot therefore refer to a set, standard amount, yet there needs to be limits in order to prevent the

overuse and destruction of finite resources. Maintaining the balance of equality whilst respecting different needs is difficult, requiring the political creativity that James identifies and the regulation of relationships between rights-holders and between those with and without rights and the discussions of the past conceptions of resources throughout this thesis examined this tension.

This section has examined the greatest source of tension within the accounts of rights examined in this thesis, namely that though they stress the equality of rights-holders and use rights to argue against arbitrary power and privilege, there is a stark *inequality* in the definition of who is a rights holder. Women and children are discriminated against by many of those examined here, such as Jefferson and Winstanley, and thus denied the chance to either participate in the decisions made regarding the use of natural resources or from the right to claim natural resources for themselves. However, these presumptions are challenged by their contemporaries, who argue for the equality of women and children and use the idea of rights to do so. However, denying non-citizens rights to the environment and to limited natural resources in particular, may, when stripped of prejudicial criteria, be necessary to secure the preservation of such resources. The irony of the unequal results of equal rights, as best set out by Marx, further illustrates the problem of equality of rights as applied to environmentalism.

### Rights and Claims

The final common theme that this chapter identifies within the past conceptions of rights is the idea that rights are exclusive claims. This means that rights entitle their holder to claim something, like a set good, or some form of treatment, such as freedom from torture. The idea that 'rights are claims' is most famously made by Mill:

‘when we call anything a person’s right, we mean that he has a valid claim on society to protect him in the possession of it, either by force of law or by that of education and opinion. If he has what we consider a sufficient claim on whatever account, to have something guaranteed to him by society, we say that he has a right to it’ (Mill, 1969b: 250)

It is this aspect of rights which is invoked by environmental rights, which seek to grant the rights-holder an inviolable claim to the natural world. Winstanley, Paine, Thelwall, Ogilvie, Spence, Wollstonecraft, and Locke, all draw upon this interpretation of rights – see Locke’s description of the right of property, which is a claim to that to which we have added our labour (Locke, 1980: 19) or Winstanley’s description of rights to the common, which he argues that the law and aristocracy must recognise and allow the poor to fulfil (see Winstanley, 2009g: 32 – 33). To have a right to something is therefore to be able to say that ‘this is mine and all must recognise this’.

As rights to the environment focus specifically on the physical space around humanity and their interactions with it, the language of claims and relationships is particularly accurate. Any further definition of rights (such as liberties or immunities) grows out of this initial entitlement to the world around us. Zev Trachtenberg picks up on this when discussing Locke and environmentalism, noting that human survival involves the ‘active transformation of the natural world’ (Trachtenberg, 2011: 23). Trachtenberg argues that Locke understands the necessity of these actions and that his theory of property is designed to safeguard an individual’s ability to do this. The validity of this reading of Locke will be examined in a later chapter, but it does pick up on the importance of being able to claim the environmental resources that we need and Locke’s engagement with this fact.

However there are tensions within this theme, especially when claims are made by all to a finite environment, and Marx’s critique of rights identified this. As set out in the theoretical overview, the ‘widespread’ reading of Marx’s work on rights suggests that he opposed the concept because they only represent the claims of economic man (Benton, 1993: 108). This reading is based upon Marx’s withering description of ‘the so-called rights of man... nothing but the rights of the member of civil society i.e. egoistic man, man separated from other men and the community’ (Marx, 2000a: 60). Rights are thus designed to keep individuals apart and protect only that which the capitalist system deemed important – namely property. Marx highlights the dangers inherent here, calling ‘the right of man to property... the right to enjoy his possessions and dispose of the same arbitrarily, without regard for other men, independently from society, the right of selfishness’ (Ibid.: 60) Thus ‘man was

therefore not freed from religion; he received freedom of religion. He was not freed from property; he received freedom of property' (Ibid.: 63). Or, as Benton phrases it these are the rights of 'self-sufficient, egotistic individuals... who meet their needs through ownership or exchange of property' (Benton, 1993: 107) and 'it is this abstract individualism and the economic and political forces which sustain it which are the central objects of the Marxian critique' (Ibid.: 138).

On this reading Marx therefore argued that, by claiming something for ourselves, we are insisting on our ability to use it as we wish, without consulting the needs of others and are separating ourselves and the object of our claim from them. This criticism made clear the political aspect of rights, and showed how even natural rights are tied up in questions of power, domination and relationships with others.

In this critique Marx made the same points that are central to the eco-centric critique of environmental rights. This critique suggests that environmental rights view the environment as something purely for human use and control – as a 'thing' for humans to claim, 'as instrumental means to a distinctly human end' (Anderson, 1996: 14, also Redgwell, 1996). Furthermore, they argue that this approach values individual control over the environment at the expense of the connected biosphere and is used as a way to enable environmentally damaging behaviour. The 'freedom of egotistic man' to use his property as he sees fit and without reference to the needs of others becomes the 'freedom of anthropocentric' man to use the environment as he wishes and without care for either it or the others who depend upon it. Environmental rights become, to paraphrase Marx, the right to enjoy the environment and its resources, to dispose of or use them as we wish, without regard for others, independent of them or of any awareness of the connectedness of all humanity with their environment. Describing rights as claims sets up internal tensions for any account of environmental rights.

However both Benton and Waldron points out that Marx's critique of rights is more complicated than this initial reading suggests.

Firstly, Marx saw political emancipation is crucial to improving the position of the proletariat (Benton, 1993: 109) and Marx supported the rights of citizens to



participate in their community or, more specifically, to procedural rights. The emphasis on the proletariat taking part in elections and standing for office within Marx's work and *The Communist Manifesto* in particular would support the idea that he sees a role for procedural claims.

Secondly, Marx drew a distinction between the rights of man and the rights of citizens (Waldron, 1987: 129), noting that 'the rights of man are as such differentiated from the right of the citizen' (Marx, 2000a: 60) and only opposing the former. Marx thought the claims of universal rights empty, without grounding or content and offering no opposition to the capitalist system. It is this form of rights that he believes entrench division between individuals and provide them with 'freedom of' rather than 'freedom from' the concepts that oppress them (Marx, 200a: 63 and see Benton, 1993: 137: 'the target of Marx and Engels's critique is clearly that conception of universal rights and justice proclaimed in the course of the modern political revolutions'). In contrast Marx supported the idea of citizen's rights as they 'help to constitute the sort of community that Marx expects to see in the final phases of human emancipation' (Waldron, 1987: 130). This is because the claims of citizens are supported, for they are linked to their community, which can not only ensure that these claims are fulfilled but means that rights-holders are linked to their fellow citizens and will make their claims responsibly.

Benton questions whether Marx thought these rights of citizens were merely a means to an end, which would become obsolete as humanity became truly free (Benton, 1993: 110 - 11). This is certainly the view Waldron puts forward, arguing that 'Marx was convinced that although the advent of citizens' rights did constitute a form of community, still the political revolution in which they culminated was immeasurably less important than the economic and social revolution he looked forward to' (Waldron, 1987: 135). After the revolution, with no ownership of private property, there would be freedom from property rather than freedom of property, so there would be no danger that claims could be used to exploit resources or other people. Benton suggests an alternative interpretation. Under this view Marx saw a role for universal moral rights 'the full meaning or content of which cannot however be realised without profound further socio-economic and political transformations'

(Benton, 1993: 112). On this reading there is still a role for rights once they are separated from the bourgeois system, they need not be 'transcended' entirely (Ibid.: 110). Such rights will look very different in content and application but this is so much the better.

Overall, there is a space within Marx's work for rights provided they are interpreted as either citizen's rights, political rights or instigated after the revolution that secures a whole-scale transformation of society through redistribution of resources. What is significant at this point is the idea that rights should *encourage* relationships between individuals, binding them together into a community as opposed to representing barriers that divide them and should be separated from and used to critique the prevailing system of capitalist economics.

### Conclusion

This chapter has examined the understanding of rights developed by the thinkers examined in this thesis, in order to see the tensions within rights which carry forward to complicate environmental rights. This examination has shown that there are three key areas of tension.

From the competing traditions of natural and republican rights through to the politics of equality and inclusion to the idea of rights as claims held by all, the concept of rights themselves are debated. And when the awareness of humanity's environmental dependence is plugged into these themes, the tensions within them are heightened. Even before we get to environmental rights in particular, there are problems here. And these problems are political problems, as they are concerned with power, with relationships between individuals and with freedom.

The idea of natural rights and civil rights raises questions regarding the relationship between rights and freedom and the role of the state. Do rights represent freedom in and of themselves or are they a means to achieve this larger goal? Do they exist outside society and can thus be used as a tool of critique? Or are they tied to society and to membership, leaving their form and content explicitly linked to questions of power and exclusion and so open for debate? The competing answers offered by each tradition illustrate the range of debate over what it means to have a

right. By combining the two, Wollstonecraft endeavoured to address the range and variety of freedoms that individuals need, in a way that is crucial for environmentalism, which touches every aspect of our lives.

The second theme is that of equality and exclusion. The biased, prejudicial account of who is classed as a rights holder, summed up by Jefferson's three categories of exclusion is often used to justify not using past conceptions of rights in contemporary politics. But this response presumes a homogeneity between the past conceptions of rights, which is challenged by a closer reading of the texts. All three categories are challenged and arguments for the recognition of the rights of women, children and non-citizens can be found within these works. These issues are debated and fought over, vividly demonstrating the politics of rights. This conflict over the politics of exclusion and equality is relevant to any account of rights and the environment, especially with regard to rights to finite environmental resources which simply cannot support the unlimited use of all.

The final theme is that of claims. That rights are claims is one of the most enduring and basic understandings of rights and each thinker examined in this thesis engages this idea, albeit with varying degrees of strength. Marx rejected the concept of rights on these grounds, believing that such claims separate individuals from one another, permitting them to use the content of such claims as they wish with no thought for the needs of others. This problem grows sharper when the subject of such rights is finite, as environmental resources are. Marx's critique of rights reflects eco-centric worries that environmental rights will simply encourage destructive use of the environment, a problem picked up in the third chapter. On Waldron's reading Marx suggests that by grounding rights within a community the claims of all can be balanced, again suggesting the rights in general and rights to finite resources in particular need to be linked to a set group and negotiated.

The environmental implication of these three themes has been spelt out within this chapter. The following chapter will cash out these three themes with regard to the specific description of environmental rights within these works. For example it will be shown how the problems of indivisibility of resources will reflect the politics of equality and exclusion and how the different forms of ownership of resources limits the

respective claims that can be made. Woods' argument that there are tensions within rights themselves which will be heightened when applied to environmental concern, is therefore proven. The main contribution of this chapter though has been to show that securing the rights of all is problematic and needs to be a project of political creative flexibility that is aware of how 'bodily relations shape and limit our rights' (James, 2013:15). And this awareness of bodily relations, particularly our dependence on the environment lead these thinkers to support and develop understandings of environmental rights and, in the process carry forward these three points of tension.

## Chapter Two: Environmental Rights

This chapter will set out the central argument of this thesis by showing that previous political thinkers developed the concept of environmental rights; that they explicitly set out and defended the rights of individuals to their environment. Though the thinkers examined in this thesis make a variety of unique arguments, specific to their own political stance and circumstances, they all engage with the concept of environmental rights in order to support their position.

As set out in the introduction, an awareness of this history, of the presence of environmental rights within the political canon can provide crucial support for contemporary environmentalists. This is because such a history can provide legitimacy to the claims they are making, as in arguing for environmental rights to be respected in the response to threats such as fracking, protestors are part of a larger political struggle and on the same side as some of the central figures within political theory. Furthermore, this history can also act as a source of encouragement and inspiration, showing the strength of such claims and the variety within them. Yet the past conceptions of environmental rights are riven with tensions, which come from both the understanding of rights themselves and from applying them to finite resources. Looking to this history can therefore highlight key areas of tension that current advocates of environmental rights need to address – such as why the environment is shared and what is the extent of these rights. The past thinkers gave clear answers to these questions in their development of these rights and current environmentalists need to follow their lead and do so too.

The past conceptions of environmental rights all start from the same premise: that the earth belongs to all. Within their justifications of this claim, three arguments repeatedly occur – the idea that the earth is the gift of God to all, the understanding that the environment is essential to the self-preservation of everyone and thus all must be able to use it and that the inseparability of certain resources makes it impossible for any one individual to possess them exclusively.

Having set out the explanations for a shared environment, the second section will show how these past thinkers conceptualised this state. Were natural resources

owned by all, or did no-one have a specific claim to them? Drawing on Simmons (Simmons, 1992) the distinction between the conceptions of the positive and negative community of goods will be examined. This distinction links to the tension between usufruct and dominium, as set out by Paine and Locke. This tension relates to the justification that the earth was given to all by God, as it asks whether rights-holders are able to claim resources permanently or only keep them temporarily.

As a result of this belief that the environment belongs to all, however conceptualised, past thinkers suggested that all had a right to the environment. The third section will show that environmental rights are not something that has been 'read into' these past works, but are instead directly and explicitly developed and argued by these authors themselves and grounded in their larger conception of the earth as belonging to everyone. This chapter therefore develops one of the central arguments of this thesis, namely that environmental rights are not new. Growing out of an understanding that the environment belongs to all, the past thinkers believed that all had a claim to shared natural resource. So while they disagreed as to the reasons why the environment belonged to all and what form this belonging took (thereby contributing further to the inherent tensions that require the creative responses set out in Chapters Four to Seven) the presence of such rights is clear and 'always already here' (Barry, 2012: 290) for current environmentalists to draw upon.

### A Shared Environment

First the idea that the earth belongs to all will be explored. The language of a shared environment is the means by which the later arguments for environmental rights are made and so needs to be clearly set out. The majority of the thinkers examined in this thesis drew on the idea that the environment and natural resources belong to every living person. As a result everyone is permitted to take for themselves and subsequently consume natural resources, equal to others. For example, Winstanley frequently described the earth as 'a common treasury... for whole mankind in all his branches, without respect of persons' (Winstanley, 2009g: 85). He argued that 'the earth is a common treasury for all, both rich and poor' (Winstanley, 2009c: 10) and 'surely the earth was made... to be a common treasury for all, not a particular

treasury for some' (Winstanley, 2009b: 520). Jefferson notes that the 'earth is given as a common stock for man to labour and live on' (Jefferson, 1977b: 397). Other thinkers who use the language of a shared environment include Mill, who stated that 'the land is the original inheritance of all mankind' (Mill, 1967b: 691) and that all had 'common ownership in the raw material of the globe' (Mill, 1981 :239), Rousseau, whose description of the state of nature made clear that all can take the resources they need (Rousseau, 1973: 163 – 164) and Grotius, who argued that all resources were initially held in common by all mankind, so that 'each man could at once take whatever he wished for his own needs and could consume it' (Grotius quoted Salter, 2001: 539). Paine argued that that the earth belongs to all and 'in its natural uncultivated state was, and ever would have continued to be, the common property of the human race' (Paine, 2000c: 325), with Thelwall putting forward a similar argument (Thelwall, 1995f: 452). There is at least a strong similarity between these accounts; indeed they are almost identical in the way that they describe the earth and its resources as there for the use of all. The repeated use of the terms common store, stock or treasury stressed the ability of the earth to provide for human needs, since resources such as wood, water and fruits occur without human intervention or action.

Ogilvie differed slightly in this regard, for he described the earth not as a store or treasury but as the 'common occupancy of all mankind' (Ogilvie, 1781: 11), the common dwelling of all. The idea of occupancy does imply security and thus an environment that supports subsistence, if not the abundance suggested by the term 'common treasury'. However the emphasis on equality of ownership is present here, as it is in all of these accounts.

Three explanations are given for the common ownership of resources: firstly that God gave the world to all humanity in common; secondly that as all need the environment to survive all are entitled to it; and finally, that the form of many natural resources means that they cannot *but* be held in common.

Locke, Winstanley and Paine based their conception of the shared possession of the earth on the idea that God gave the world to all humanity and in abundance too. As God made the world, it was his to dispense with, and Genesis clearly states that he gave the world to Adam, 'to work and take care of' (Genesis, Chapter 2, Verse 15).

Adam then proceeds to name the animals (Genesis, Chapter 2, Verses 19 and 20) in a clear sign of control over his environment. The earth is therefore created for the benefit of mankind and who are permitted to use it as they wish. But the addendum that Adam should 'take care' of the world sets up a tension between use and preservation. If working on the environment means changing or destroying it, can both these commands be followed? Passmore has qualified this by pointing out the sense of stewardship inherent within the Biblical account of creation, 'the tradition that man's responsibility is to perfect nature by cooperating with it... to actualise its potentialities, to bring to light what it has in itself to become and by this means to perfect it' (Passmore, 1974: 32). This challenges the assumption that this grant from God permits unrestricted exploitation of the earth (Passmore, 1974, Chapter 3 cf White Jr., 1967 or Fox, 1990). This initial grant sets up a tension between labour and stewardship, the command to 'work' on the environment and the command to 'take care' of it.

This passage from Genesis has been used by many to support *individual* not common ownership of the earth – God gave the land specifically to Adam, the argument says, so it belongs only to him and then his heirs as opposed to being the common treasury of all. The thinkers examined in this thesis challenge this assumption. Locke in particular argued that the earth is given to all, suggesting that the Bible is instead 'a confirmation of the original community of all things amongst the sons of men... appearing from this donation of God' (Locke, 1988: 242) and that 'God in this donation gave the world to mankind in common and not to Adam in particular' (Ibid.: 161). This direct grant of the earth is said to give Adam 'not private dominium over inferior creatures, but right in common with all mankind' (Ibid.: 229). The inclusive nature of God's gift to all humanity means that neither Adam nor any of his heirs, nor anyone living has 'a right to possess the earth with the beasts and other inferior things in it, for his private use, exclusive of all other men' (Ibid.: 227). Locke's interpretation of Genesis cast Adam as merely the *first* person to have rights to the environment, not the only one, meaning that in *Second Treatise of Government* he was able to draw on the Genesis story to support his further arguments with the claim that the earth is 'given to mankind in common' by God (Locke, 1980: 18) and that 'the earth... be common to all men' (Ibid.: 19).



Other thinkers gave a similar reading of this Genesis passage. Spence stated that:

‘it is said in the beginning of the Bible that Man was made to till the ground and have dominion over the whole Animal Creation. All this is self-evident, for he is indeed as it were the God of the lower World and his facilities both of body and mind sufficiently qualify him for this arduous task. But here the Lordship of man ought to stop’ (Spence, 1982j: 134).

This final reference to the limits of ‘the Lordship of man’ repeats a point on which Locke insisted, which is that this gift gives mankind ownership of the earth but no power over each other. Spence explicitly stated that God had given the earth to all (Spence, 1982d: 88) and suggested that the commonality of the grant creates equality among all, an idea that all the thinkers who draw on the idea of the Biblical grant of the earth put forth. This idea of God-granted equality of ownership of resources was most explicitly cashed out by Winstanley, who stressed throughout his works the equality of all before God, leading Gurney to describe his religious thought as radically egalitarian (Gurney, 2007: 104). This belief in religious equality influenced Winstanley’s politics and underpins his belief that everyone should be able to have a share in the earth – for if God made us all and dwells equally in everyone, then why should his creation be given to some and not all? Winstanley likened common ownership of resources to the Garden of Eden before the Fall (Hill, 1972: 145, Brace, 2004: 20), for ‘the earth is his creation right as well as mine’ (Winstanley, 2009m: 267) and any alternative is against God’s plan and so the result of sin. As a result of his religious beliefs Winstanley believed that ‘God’s will... is to grant each Englishman a creation-right to the free enjoyment of the earth’ (Kennedy, 2008: 184).

Paine also argued that God gave the world to all, stating that ‘land... is the free gift of the creator in common to the human race’ (Paine, 2000c: 334 and 320). This phrasing reflects that of Locke, Spence and Winstanley, but it runs counter to Paine’s overall religious beliefs. As Claeys points out, this contradicted Paine’s Deist thought (Claeys, 1989: 197 and 201) for, in arguing that God granted the world to all, Paine reversed his thought entirely by not seeing God in the workings of nature but instead viewing nature as the work of God. Claeys argues that this difference is due to the argument that Paine is trying to make regarding environmental rights in *Agrarian*

*Justice*: ‘No collective right to any fixed portion of the proceeds of landed property, especially by the poor, could be as firmly granted without a divine mandate... Paine’s argument therefore succeeded only because of a theologically-based workmanship model’ (Ibid.: 201). Paine needed to establish *why* the whole of mankind have rights to the land before he can argue for redistribution, placing more weight upon his conception of rights than previously and thus leading him to find an alternative means of support. Consequently Paine had to shift ground, as the emphasis on rights to the environment needed stronger support and he turned to the conceptual language of a shared environment, underpinned by the idea that the earth was given equally to all by God, to provide this.

The idea that the earth and all its resources were given to all mankind by God underpins several accounts of common ownership of resources. This justification implies equality, for if God gave the world to all, then all can claim it. God is not the source of individual’s rights to the environment, but instead the reason that some thinkers believe the earth to be shared by all and it is on this concept that their understanding of environmental rights is built.

The second justification is that the earth is common to all because all humanity is equally dependent upon it for their preservation. This idea is linked to the idea of God’s gift, as shown by Locke:

‘the plain of the case is this: God having made man, and planted in him, as in all other animals a strong desire of self-preservation and furnished the world [with] things for food and raiment and other necessities of life subservient to his design, that man should live and abide for some time upon the face of the earth and not destroy so wonderful a creation as a person’ (Locke, 1988: 204 – 205).

Thus ‘the earth and all that is therein, is given to men for the support and comfort of their being’ (Locke, 1980: 18). Zev Trachtenberg, with reference to Locke, describes this as an awareness of ‘human life as embedded in the environment’, and it is this ‘understanding of habitation... the fact that human life involves the active transformation of the natural world into a humanized domain’ (Trachtenberg, 2011: 1 and 23) which provided the second reason for the state of common ownership. Locke,

Winstanley, Thelwall, Spence, Jefferson, Wollstonecraft, Ogilvie and others all explicitly note the ecological embeddedness of humanity and thus the necessity of natural resources for human survival. As Mill starkly puts it, the land, and all other natural resources are 'the source from which mankind derive and must continue to derive their subsistence' (Mill, 1967a: 672). So if all need natural resources to survive, then all should be able to access them - the equality of dependence implies equality of access, for each has the strongest claim to the resources that they need. Again this argument was made by Mill, who believed that 'the land is the original inheritance of all mankind' (Mill, 1967b: 691) and that 'the country belongs, at least in principle, to the whole of its inhabitants' (Ibid.: 689).

This emphasis on common preservation is particularly prevalent in arguments for a shared environment that are not based on the story of Genesis. Marx for example noted that: 'the first premise of all human history is of course the existence of living human individuals. The first fact to be established is the physical organisation of these individuals and their consequent relation to the rest of nature' (Marx, 2000c: 176). The link between the environment and human survival is picked up in Marx's point that natural resources 'provide the means of life in the more restricted sense i.e. the means of physical subsistence' (Marx, 2000b: 87) and that 'the earth is [man's] original larder' (Marx, 2000e: 494), with the latter description clearly reflecting the description of the earth as a common store from which humanity can take the resources they need. This point is made throughout *Debates on the Law on Theft of Woods* which stresses that the woodlands should belong to all (Marx, 1975: 228) and is repeated in the description of the resources that Marx identified as being most important to human survival: 'the soil and this, economically speaking, includes water... supplies man with necessities or the means of subsistence ready to hand' (Marx, 2000e: 493). The dependent 'relationship of man to nature' means that 'man is part of nature' because 'man lives of nature... nature is his body with which he must remain in continuous intercourse if he is not to die' (Marx, 2000b: 90).

This same idea was put forth by Rousseau, who described the environment as 'the dwelling place and sustenance which nature gives [humanity] in common' linking preservation or 'sustenance' with common ownership and vice versa (Rousseau, 1994:

61). The idea that natural resources are shared is developed in detail in his description of the state of nature in which 'while the earth was left to its natural fertility and covered with immense forests, whose trees were never mutilated by the axe, it would present on every side both sustenance and shelter for every species of animal' (Rousseau, 1973: 163 – 164). As with the previous descriptions of the common treasury, there is again the sense of abundance here, which humanity need only collect to survive. This passage speaks *against* labour in the common store, suggesting that the earth and resources will provide for all only if they are not 'mutilated'. As with Marx this common state is not seen as a gift from God but the result of 'nature'. The ability of the natural world to support humanity is seen as a chance to be preserved, not a gift to be enlarged.

It is not just physical preservation that is secured. In addition to their argument that natural resources are necessary for physical survival, Wollstonecraft and Mill also called attention to the ways in which the environment secures the mental and emotional preservation of all. Wollstonecraft identified the importance of nature for mental and emotional development and its role in developing political freedom and consciousness. Gary Kelly notes that she saw the environment 'as the standard for constructing a state that will in turn construct mankind according to nature' (Kelly, 1992: 190). Through spending time with nature, individuals could be free of the corrupting effects of society and could instead discover their true selves and a real, as opposed to artificial, sensibility. 'Nature is hereby incorporated in her divinely sanctioned revolutionary project' (Kelly, 1992: 190) as it provides a means of refreshing individuals, providing an escape to something natural and real away from the corruption of society, and so an impetus for political change. Wollstonecraft argued that the environment was essential in developing our virtues and emotional sensibility, for in learning to care for nature, we learn to care for others, providing the grounds for support for the rights of all. Thus her suggested educational programme drew heavily on the natural world, which was said to be essential for true human development and the promotion of independence and self-sufficiency (Wollstonecraft, 1989d: 235 – 236). Throughout her works she was aware that individuals need the

environment for their emotional and political preservation as well as their physical survival.

Mill also argued that to view the environment only as a source for physical survival is to ignore its larger role in human life and development: 'the desire to engross the whole surface of the earth in the mere production of the greatest possible quantity of food and materials of manufacture, I consider to be founded on a mischievously narrow conception of the requirements of human nature' (Mill quoted in Packe, 1954: 491). As a result Mill supported the preservation of natural resources, describing the value of creating 'open, extensive tracts in a state of wild natural beauty' (Mill, 1967b: 693). He backed campaigns 'in favour of protecting Epping forest as a free resort within easy range of London and of keeping open footpaths through the leafy glades of the new forest' (Mill quoted in Packe, 1954: 491, Winch, 2004: 116 – 120) and that 'natural curiosities... of the greatest value to science, to history and to the instruction and enjoyment of every person... [who can] appreciate their value' (Mill, 1967b: 695) should be publically owned and made available for all. Not content with insisting that the state should act to preserve these resources for all,<sup>5</sup> Mill insisted that the needs of all to access resources for development overrode the rights of private property. This can be seen from his insistence that no land owner has the right to prevent individuals from accessing his land, a point that Mill illustrates with the example of the 'mountain scenery' of the Scottish Highlands, which he says must remain open to all (Mill, 1965: 232).

The state of common ownership is therefore justified due to the shared dependence of all upon the resources within it, both physically and mentally. The ecological embeddedness of humanity therefore justifies their shared ownership of the earth. Again the equality of all is stressed here, for if all need these resources, then all have an equally strong claim to them. This understanding of the shared environment is also linked to the idea of freedom because if individuals have secure access to the resources they need for their survival and

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<sup>5</sup> How this is to be done is examined in further detail in Chapter Six

independence, both physical and mental, then they are able to be free and independent on others.

The Biblical story of the creation of the world and the common dependence of all mankind on their shared environment provide two reasons for the idea that the environment is shared amongst all. There is a third reason, which suggests that the form of certain resources means that they cannot be divided. Though Grotius believed that the earth was by given by God to all humanity in order that they that they may secure their own preservation, he also believed that certain natural resources are commonly owned due to their form. He argued that 'the sea is common to all [as it is] to wit so infinite that it cannot be possessed' (Grotius, 2004a: 25), that 'the sea cannot become the property of anyone but owes forever to all men a use which is common to all' (Ibid.: 78). He expanded this argument from the sea to other natural resources, as seen from his reference to Ovid's claim that 'nature has not made the sun private to any, nor the air, nor the soft water' (Ibid.: 25).<sup>6</sup> Overall Grotius maintained that the sea 'could not be occupied, and so could not become anyone's property, both because of its vastness and because it was intrinsically suited to the common use of all mankind' (Tierney, 1997: 331).

This idea is present in the works of Paine, Spence and Ogilvie. All three specifically focused their defence of environmental rights with reference to rights to land, as they believed that this is the one resource that can be taken out of the common store. In contrast, they suggested that 'water' (by which is meant oceans and potentially rivers), 'air' and 'sun' belong to all and cannot be otherwise. Indeed in endeavouring to support his claim that the earth belongs to all, Ogilvie likened access to the land to 'the free use of the open air and running water' (Ogilvie, 1781: 12). This description of the air and water occurs in the opening paragraph of the text but is never developed, for Ogilvie believed that no-one can 'fix' their property in these resources and exclude others. Thelwall argued that light, air and water remain in common to all because they cannot be divided up and possessed by one individual; 'man has naturally an equal claim to the elements of nature and although the earth

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<sup>6</sup> Grotius' distinction between resources which can be owned individually and those which cannot is examined further in Chapter Seven.

has been appropriated by expediency and compact, light, air and water (with some exceptions) still continue to be claimed in common' (Thelwall, 1995f: 452) and the forms of these resources that can be so divided, such as lakes or wells are the 'exceptions' to this rule that Thelwall speaks of (Ibid.: 452). Yet Thelwall acknowledged that the actions of individuals can damage these common resources, for he speaks directly of the destruction caused to air and water by individual polluters and specifically describes such pollution as an attack on the rights of others:

'the light which illuminates my premises belongs equally to my neighbour as to me; it is therefore a nuisance to block it out. The air I breath must be breathed also by him; and the stream that flows through my garden waters his: if I stop the one with a dam or pollute the other by a pestilential manufactory, I ... [enact] a mean[s] of usurpation upon the common and superior right of nature' (Ibid.: 452).

While these resources cannot be exclusively possessed by individuals, they can still be damaged through their actions. What is crucial here is that Thelwall holds such pollution to be wrong specifically because it violates the rights of others to that resource. Though such resources may not be physically, exclusively claimed by one individual and so must be shared by all, the rights of all to these resources can still be violated.

This assumption of common ownership is frequently based on the belief that the air and water are infinite. Though Thelwall provides an explicit challenge to this idea, Grotius and Ogilvie implicitly assumes that 'the open air and running water' and 'free see' are unlimited so none can monopolise them. Overall, and for better or for worse, it is believed that some resources are held in common because they cannot be individually possessed or depleted.

The idea the earth and its resources belong to all is put forward by the majority of the thinkers examined in this thesis. This understanding is based on three central arguments which occur repeatedly in their description of and explanation for this shared ownership – that the earth is given to all by God, that all need the earth for their survival and that some natural resources, by their very form, must be held in common. By drawing on these arguments the thinkers examined in this thesis are able

to argue that the earth is owned by all. This not only laid the ground for an understanding of environmental rights but it enables them to make specific political points. If the earth belongs to all, then none are permitted to monopolise resources, nor exert arbitrary power over others. This point was touched upon the discussion of preservation, particularly in Wollstonecraft's understanding of the importance of natural resources for mental and political freedom, and is most famously made by Locke. As noted earlier, Locke used the concept of a shared earth that belonged to all to contradict Filmer's argument that God had given the earth to Adam and his heirs. In proving that the earth was given by God to all, Locke was able to counter this point and dismantle the subsequent justification for monarchical rule. Paine used the idea that the earth belongs to all to criticise the current distribution of resources and power, for if the earth belonged to all, why did some live in poverty whilst others grew rich? (Paine, 2000c: 324). The shared environment is not a description of an earlier time, but a political statement, as drawing upon this concept allowed these thinkers to undercut arbitrary power structures and promote the equality, preservation and freedom of all.

### Shared Ownership of Resources

This section will examine what form this shared possession was said to take, looking at the distinction between positive and negative ownership and the debates over usufruct and dominion. This is crucial to understanding how the past thinkers conceptualised environmental rights, as these debates influenced the form and the extent of such rights and created the tensions within them.

At heart, this is a debate over whether shared resources are owned by all or owned by none. Both understandings mean that all have an equal claim to resources and none can be excluded but the differences between the two conceptions does create questions and friction regarding how such resources are to be used. These understandings are based upon Pufendorf's distinction between 'a positive community of possessions, where all are equals by jointly holding property and a negative community of possessions where all are equals by having no property, but only an



equal liberty to use' (Simmons, 1992: 237). In the negative state resources are held in common in order to facilitate individual ownership, for everyone can take resources for their own because no-one has the right to stop them.<sup>7</sup> They can thus take the apples or the tree that produces them as they wish. The positive state of common ownership is said to be one in which resources cannot be appropriated as the initial state of equal possession must be maintained. Individuals may take that which they need, but cannot possess the means of creating the needed resources – so individuals can take apples from a tree or water from a river but they cannot own the tree or river. Simmons expands and further defines the idea of positive community into three separate categories through the means of identifying the rights possessed in each interpretation: - 'joint positive community: all persons jointly *own* the world, each holding an undivided proportional share', 'inclusive positive community: each person holds an inclusive *use right* to the common' and 'divisible positive community: each person has a *claim right* to a share of the earth and its products equal to that of every other person. Each may take an equal share independent of the decisions of the other commoners' (Simmons, 1992: 238, emphasis added, Cuncliffe, 2000: 5). Simmons points out the 'imprecision' of all these distinctions through the example of Locke and the difficulty of establishing which particular interpretation he supported (Simmons, 1992: 239 – 241).

This tension between use and ownership is expressed in terms of dominium and usufruct. Dominium allows individuals to take and own resources permanently (as in Simmons' negative state), whilst usufruct permits only temporary use and requires such resources to be returned to the common store. This question relates back to the extent of God's gift of the earth to all, by asking if God intended individuals to permanently possess their environment for themselves. Or is this gift instead a temporary grant, which allows individuals to use the world but not own it.

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<sup>7</sup> Claeys makes reference to this distinction with regard to Paine's conception of the common state, defining the difference between positive and negative conceptions of common ownership as 'positive community of property, in which goods were to remain in common in perpetuity', contrasted with the negative sense, in which resources could be developed as needed (Claeys, 1989: 200). This definition does not make reference to the different rights in each state and instead appears to match with the description of the difference between dominium and usufruct.

These different forms of ownership grow out of the different understandings of why resources are held in common. If some resources cannot be individually possessed, as Grotius and Thelwall pointed out, then they must be positively owned, indeed they cannot be otherwise. Grotius then suggested that all had a use right to the ocean, as they could not be said to own it or claim a share. Tierney supports this reading, arguing that Grotius thought the oceans ‘intrinsically suited to the *common use* of all mankind’ (Tierney, 1997: 331, emphasis added).

Paine’s understanding of a shared environment also reflected a positive conception of ownership. He argued that ‘man did not make the earth and though he had a natural right to occupy it, he had no right to locate his property in perpetuity in any part of it; neither did the creator of the earth open up a land-office, from whence the first title deeds should issue’ (Paine, 2000c: 326). God’s gift of the earth to all was designed, Paine believed, to allow individuals to temporarily occupy and not permanently own their environment. This understanding seems particularly apt for finite resources – resources cannot be monopolised and instead are circulated between all who need them. Paine conceptualised the shared environment as divisible positive community, which gives all ‘a claim right to the share of the earth and its products... equal to others’ (Simmons, 1992: 238). This reflects Thelwall’s understanding of the shared earth, in which individuals were entitled to claim and use resources but not own them entirely, for ‘the landed proprietor is only a trustee for the community’ (Thelwall, 1995f: 478). Marx also drew upon this conception, arguing that:

‘a whole society, a nation or even all simultaneously existing societies taken together are not the owners of the globe. They are only its possessors, its usufructuaries and like *boni patres familias* they must hand it down to succeeding generations in an improved condition’ (Marx quoted in Kovel, 2007: 268).

Whilst not using the term itself, Marx is clearly supporting the concept as a whole, arguing that all merely possess, not own, natural resources and must ensure that there is enough for others.

The difference between the positive and negative conceptions of shared ownership, between usufruct and dominium, are shown by the competing interpretations of Locke. Locke clearly stated that God gave the earth and all its resources to all to secure their preservation. But there is debate regarding whether this represents a grant of dominium, a negative form of ownership whereby individuals can possess resources outright, or usufruct, which is a state of positive ownership where all can use but not possess resources. Trachtenberg argues that Locke interpreted God's gift of the earth to all humanity in common to be a grant of usufruct: 'because survival is obtained directly from the products of nature rather than their underlying sources, Locke's theory does not grant ownership of the productivity of nature itself' (Trachtenberg, 2011: 15). Trachtenberg draws this reading of Locke from the work of James Tully (Tully, 1980) and the emphasis Locke places on the preservation of all individuals and the commonality of the initial grant of the earth to all. This reading draws on *First Treatise of Government*, which states that 'men may be allowed to have propriety in their distinct portions of the creatures; yet in respect of God the maker of heaven and earth, who is sole lord and proprietor of the whole world, man's propriety in the creatures is nothing but that liberty to use them' (Locke, 1988: 168). Individuals can temporarily use but not permanently own the earth, having rights only to that which they have transformed through labour (Trachtenberg, 2011: 16 – 17). This idea is supported by the insistence that, if there are no heirs, property should return either to the common store or be given over to the state to administer for the good of all (Locke, 1988: 208). On this reading, Locke put forth a limited conception of the grant from God, interpreted as a grant of usufruct. This allowed the rights holder to own only the minimal part of the resource which they transform through labour, never the whole, nor the means of producing resources, and even this is leased from God.

Yet Locke specifically and explicitly described God's gift of the earth to humanity as one of dominium, as seen from his description of 'the dominium of the whole species of mankind over the inferior species of creatures and the earth as a whole' (Locke, 1988: 161). This initial grant said to be one of shared dominium of all, 'not a private dominium, but a dominium in common with the rest of mankind' (Ibid: 161) thus all are equally entitled to the earth and its resources and entitled to

permanently own them. The earth is given to all in common that they may claim it for themselves. This represents the negative form of ownership, as described by Simmons. The initial grant from God is a grant of dominium that is held by all so they can secure their own preservation. They can thus take and exclusively keep the resources that they need, without the consent of others, for 'if such a consent as that was necessary, man had starved notwithstanding the plenty God had given him' (Locke, 1980: 19). Trachtenberg is right to note the Locke wished to secure the preservation of all, but this is done by ensuring that they can take and keep the resources they need. As this dominium is shared by all it is limited, as the discussion of Locke's understanding of limited ownership and equivalents, discussed further in Chapters Four and Six, shows. But this is a grant of dominium, a negative state in which individuals can permanently possess the resources that they need.

The conceptions of a shared environment, developed by the thinkers in this thesis, therefore vary. Some argue that individuals can permanently take the resources that they need for themselves, whilst others suggest that resources fundamentally remain in common, available for use but not possession. Yet with regard to environmental resources, the difference between use and possession may seem overdrawn. To 'use' clean water to survive *is* to use it up and remove it permanently from the common store. This argument is made by Grotius and it underpins his explanation of the move away from a shared environment. As Brian Tierney explains, for Grotius 'as regards things consumed in use there could be no separation between use and ownership. Food and drink became part of the very substance of the user and so necessarily belonged to him, to the exclusion of anyone else' (Tierney, 1997: 330 – 331) He then notes that Grotius extended this idea of use meaning ownership to include that which *produces* the resources which are consumed:

'He next wrote that, by a logical process, ownership was extended to things that were partially consumed in use like clothing. Then, with a considerable leap of the imagination, Grotius explained that the same principle was seen to extend necessarily to arable land and pastures since, although they were not actively consumed in use, their use was related to consumption, that is to the production of consumable goods' (Ibid.: 331).

Given the necessity of such resources for the production of what we need to survive and our understanding of the way in which land is 'used up' in the production of such, this is, I would argue, less of a leap than Tierney suggests. If the distinctions between using and owning, permanent and temporary are slippery, then the difference between these forms of ownership are problematised, left contested and open for interpretation. This creates tensions within the rights that result and which are based upon the fact that the subject of such ownership is finite and changeable.

### Rights to the Environment

As the earth and all its resources belongs to all, so all have a right to it. The concept of a shared environment is used to ground environmental rights, for if the environment belongs to individuals, they are entitled to claim it. As a result, almost all<sup>8</sup> the thinkers examined in this thesis explicitly stated that individuals have rights to their environment. Winstanley, Locke, Paine, Ogilvie, Thelwall, Spence and Mill all argued that individuals have rights to shared resources. Winstanley claimed that 'the earth is his creation-right as well as mine' (Winstanley, 2009m: 267) so 'it is our right equal with [others], and they with us, to have a comfortable livelihood in the earth' (Winstanley, 2009d: 39). Locke argued that each have 'a right in common with all mankind' to the earth (Locke, 1988: 157, also 205 and Locke, 1980: 18 and 21) and Thelwall stated that 'man has naturally an equal claim to the elements of nature' (Thelwall, 1995f: 452). Paine specifically claimed that there are rights to natural resources, saying that 'the earth, air [and] water' are the 'legitimate birthright... [of] all individuals' (Paine, 2000c: 320 and 321), and that 'every man as an inhabitant of the earth is a joint proprietor of it' and so has 'a natural right to occupy it' (Ibid.: 326). Spence described a 'common right to the earth' (Spence, 1982d: 80) for 'mankind have as equal and just a property in land as they have in liberty, air or light and heat of the sun' (Spence, 1982b: 68) and also to 'structures, buildings and fixtures, mines, woods, waters, etc.' as they are the 'appurtenances' of the land (Ibid.: 73). Ogilvie argued that

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<sup>8</sup> The republican thinkers did not put forward rights to the environment in the same way. However their understanding of rights, of access to the environment and importance of balancing the claims of all to natural resources means that they are highly relevant for an account of environmental rights as they did draw upon the same conceptual languages, as will be shown in Chapters Four and Seven.

‘the earth having been given to mankind in common occupancy, each individual seems to have by nature a right to possess and cultivate an equal share’ (Ogilvie, 1781: 11) alongside ‘the free use of the open air and running water’ (Ibid.: 12). Mill’s belief that the environment is shared by all led him to campaign against the distribution of natural resources in favour of the ‘reform and the vindication of those rights of the entire community’ (Mill 1967b: 690).

Even Marx offered support to the idea of rights to natural resources. In *Debates on the Law on the Thefts of Woods*, the text which he believed marked the turning-point of his thought as it led him to consider material conditions (Foster, 2000: 66 - 67), he wrote in defence of the rights of the poor to access woods and take firewood if they need to (Marx, 1975). As Foster puts it ‘nowhere were the rights of the poor themselves considered in this parliamentary debate [over access to woodlands], the task that Marx took up in his article’ (Foster, 2000: 67). Here Marx made clear that this right to resources overrode private property claims, emphasising that the rights of each individual to common resources should take precedence over private property (Marx, 1975: 230 – 231 and 233 - 234). Though Marx is not a natural rights thinker and his understanding of rights would shift, he did at this point ‘demand for the poor a customary right [to the woods] and indeed one which is not of a local character but is a customary right of the poor of all countries’ (Ibid.: 230). This emphasis on custom differs from the standard account of natural rights but the focus on universality, with a right to natural resource essential for survival said to be held by all who need them throughout the world, is similar. Whilst Marx was qualified in his support for rights, as shown in Chapter One, in this text he did specifically endorse a right to natural resources.

The environment as a whole, including resources such as air, water, land, forests, mountains and sub-soil resources are all specifically said to be the subject of individual’s rights. This represents a fraction of the descriptions, arguments and justifications for environmental rights within the works examined here. The intricacies of these rights, the differences between the different interpretations will be set out throughout the coming chapters. But they all start from this same place, from a shared commitment to the concept of rights to the shared environment.

Within the various descriptions of rights to resources there are again three common factors. The first is that these rights are shared by all and each must respect the rights of others. Calling back to the description given in Chapter One, these rights are generally natural rights, for they are based on humanity's shared attributes rather than membership of a particular society. So as the environment is shared by all, all must have rights and claims to it, which must be respected. For some thinkers this is due to the idea that all humanity is created by God, so individuals cannot destroy his creation. Alternatively it is suggested that acting to preserve others will ensure that they in turn preserve you, creating 'common preservation... a principle in everyone to seek the good of others as himself' (Winstanley, 2009n: 313). Individual rights to the resources that are shared by all and that all depend upon are limited by the competing rights of others. The emphasis here is on the equality of the claims. Each has equal standing and equal grounds from which to claim shared resources and so all must respect the rights of others.

This argument is made by Grotius who believed that the 'primitive right to take possession and use things' (Salter, 2001: 551) was matched by the additional law of 'inoffensiveness - harm no one' and the law of 'abstinence – do not seize the possessions of others' (Armitage, 2004: xiii and Grotius, 1964: 13). Mathias Risse notes that 'what is crucial however is that [for Grotius] original collective ownership rights constrain appropriation' (Risse, 2012: 101). What is important here is not the idea that environmental rights constrain appropriation; indeed how and why environmental rights can be seen as constraining appropriation is examined in detail in Chapter Four. What is important is that environmental rights require constraint and respect for the rights of all from the very beginning. This point was also clearly made by Locke, who insisted that:

'everyone as he is bound to preserve himself and not quit his own station [destroy himself] wilfully so by the like reason... ought he, as much as he can to preserve the rest of mankind and may not... take away or impair the life, or what tends to the preservation of the life, the liberty, health, limb or goods of another' (Locke, 1980: 9).

Rousseau expanded on this initial principle to describe 'two principles prior to reasons, one of them deeply interesting us in our own welfare and preservation, and the other

exciting a natural repugnance at seeing any other sensible being, particularly any of our own species, suffer pain or death' (Rousseau, 1973: 157), which are said to be the precursor to 'the rules of natural rights' (Ibid.: 157). Grotius, Locke and Rousseau all believed that the individual may legitimately prioritise their own preservation and the fulfilment of their own rights over that of others, as seen by Grotius' statement that 'each individual may, without violating the precepts of nature, prefer to see acquired for himself, rather than another, that which is important for the conduct of life' (Grotius, 1964: 10). However unless it is to the cost of the individual's own claims, they must respect the rights and preserve the lives of others. How this is to be done when the environment is finite is the challenge that these thinkers endeavour to answer, as the following chapters will show. This challenge grows out of this initial understanding that all have an equal claim to their shared environment.

The second theme relates to the extent of the claims that rights-holders can make and results from the competing understandings of dominium and usufruct. As discussed in the second section, in a positive state of ownership, as with usufruct, individuals can claim, use and jointly own resources, but they cannot have permanent unlimited individual ownership. The environmental rights developed by the thinkers who conceptualise the shared environment as positively owned do not permit the rights-holder to permanently possess natural resources.

Winstanley, for example believed that the earth was given to all by God to ensure their preservation and held in a joint positive community, to use Simmons' term, in which the environment was owned, indivisibly by all. This was a grant of usufruct, designed to ensure that all could labour upon the land but prevent anyone from owning it. Laura Brace makes this clear when she notes that Winstanley supported a right to usufruct and not property or appropriation (Brace, 2004: 20). For Winstanley environmental rights were meant to secure the ability of all to labour upon the land together (Winstanley, 2009c: 10) and he believed that exclusive individual property in resources would prevent this. As a result, he argued that rights to the environment did not entitle their holder to exclusively own natural resources. Winstanley's conception of environmental rights reflects his conceptualisation of the shared environment. In contrast those who believe the environment to be shared in a



form of dominium developed more extensive environmental rights, rights to own and permanently possess the environment. As environmental rights are grounded in this understanding of a shared environment, the form that shared ownership takes influences the rights that result.

The final theme within these understandings of environmental rights is that individuals are entitled to take the resources that they need to survive as they have a general right to the environment that belongs to them all. But they do not have a right to any *specific* resource. This is a general claim to resources, equal to that of others, not a specific claim, unique and individual to them.

Grotius made this point through his use of Cicero's metaphor of seats in a theatre. By invoking this example Grotius showed that though individuals have a right to a seat, they do not have a right to *a* specific, particular seat (Grotius, 2005: 421). Thus if I have a right to 'use things in common to all' as Tierney puts it, a right to the resources that I need, such as water, then I have a right to take some water but I do not have a right to water from any particular source. Furthermore, if someone were to take this resource from me, I would not be entitled to take it back. John Salter's analysis of Grotius' understanding of property and ownership makes this point when he notes that there is no 'right to recover ownership after possession is lost' (Salter, 2001: 552). Rights to the land, to the air, to water and to other resources are general and non-specific, though there is an element of quality – I have a right to the resources that secure my preservation, meaning that I have a right to water that is clean. However provided that this minimum criterion is met, there are no grounds for me to claim that one resource that secures my preservation is specifically mine over another which equally capable of doing so.

On this reading, environmental rights are rights to resources in general rather than particular. They enable individuals to claim resources as they need, but they do not allow them to claim any particular resource. A right to water does not enable an individual to claim water from a well rather than a river (provided that both are of the same quality). This ensures equality of access to resources amongst all as it prevents individuals from being denied access to any resource, for no-one has a prior set claim. But this does not allow individuals to protest against being deprived of resources to

which they are culturally or socially linked. Such specific rights to set resources only come about once the rights-holder has acted upon natural resources through their labour and transformed it. This marks the distinction between a resource shared between all and that which belongs specifically to the individual. This process, and the role of environmental rights in this, will be examined in the following chapter.

## Conclusion

This chapter has examined the conception of rights to the environment which the past thinkers developed. This chapter has shown that past writers were directly engaged in questions of access, ownership and rights to the environment. There is a shared commitment to these questions and a shared language that all use to examine these questions which enables comparison and analysis.

Examining the environmental rights developed by the past thinkers shows that such rights are, from the start, contested. This is because there are key differences within these accounts, particularly centring on why the environment belongs to all and what form this shared ownership takes. So when current environmentalists such as Joel Kovel call for a revival the idea of the commons (see Kovel, 2007: 268 for example) they need to engage with these options, as the variety within these past understandings makes clear. The shared environment is a debated concept and so therefore are the rights to that environment. Whilst the equality of all, both in the face of their dependence on the environment and their subsequent equality of access remains a common theme, the extent of the claims that they can make upon their environment remains open. Whether individual's rights enable them to claim natural resources permanently or temporarily is debated and how these claims are to be balanced against the matching claims of others is not resolved. The necessity of doing so however, of ensuring that all can fulfil their rights to the environment was stressed throughout. It is this initial tension, heightened by the problems of labour and property, which motivate the reinterpretation of environmental rights set out in the later chapters and these debates which influence what form those interpretations take. And again, when contemporary environmentalists seek to use environmental

rights, they need to directly address and answer these questions. The previous conceptions of environmental rights can provide crucial support in the form of legitimacy and inspiration, but in their variety and disagreement they show the assumptions that are often inherent within this concept.

Overall this chapter has shown that environmental rights are present within the political canon and that from this start they are contested and debated. Yet this debate inspires creative responses and a variety of answers and understandings of what it is to have a right to the environment.

### Chapter Three: Labour and Property

The previous two chapters argued that there are tensions within the past conceptions of rights in general and in the conceptions of rights to the environment in particular. Balancing the equal claims and freedoms of all to a finite environment is difficult and the different understandings of the extent of environmental rights makes this problem harder still. This chapter deals with the remaining problem which relates to labour on and private ownership of natural resources. This chapter will argue that there is a tension within the past conceptions of environmental rights when it comes to labour and ownership. which grows out of the debates over dominium and usufruct and the general right to resources.

On one hand environmental rights are designed to enable labour and property—everyone has claims to the earth on account of preservation and survival, which labour and property secure. However, the environment is finite. Allowing some to transform and exclusively possess natural resources will at best restrict others ability to do so and at worst violates their environmental rights.

This contradiction is at the heart of current environmental problems. As Sax argues, there is no ‘precept to leave nature untouched’ and no right to an unaltered environment (Sax, 1990 – 1991: 94). Sax believes that the role of environmental rights is defining the limit of this development and facilitating balancing the benefits of labour and development against the disadvantages that follow. In practical terms, the debate over fracking for example hinges on the ability to use resources to provide energy and funds in a way which risks the environmental rights of others. On a wider scale, the tension between intra-generational and inter-generational justice is whether the environmental rights of the present generation entitle them to develop natural resources or whether these resources should be preserved in order to secure the environmental rights of future generations, hinging on what Gardiner calls the (he believes mistaken) presumption that ‘helping the poor now and acting on climate change are mutually exclusive alternative’ (Gardiner, 2004: 587).

In seeking to understand this tension, the past conceptions of environmental rights are particularly useful. As Hessayon point out, the idea of labour is integral to past conceptions of the environment, as he demonstrates with regard to Winstanley who argued for the rights of all to the environment specifically to secure their ability to labour upon it (Hessayon, 2008). Hessayon argues that this aspect of past environmental thinking has been overlooked or distorted because it does not reflect current environmental sensibilities (Ibid.: 17). In responding to problems such as fracking or development, problems which focus on the use of finite resources and what environmental rights enable their holder to do with the resources they claim, looking to the past theorists, who engaged openly with this tension, can help us understand and gain a 'reflexive purchase' (Philp, 2008: 136) on the problem.

This chapter will show that the thinkers examined in this thesis are aware of this contradiction. The first section will explore what is meant by labour upon environmental resources, why labour is said to be a right and the link between labour and property. The second section will set out the three problems that labour upon and ownership of environmental resources cause, namely the destruction of resources, the problem of monopolisation and the inequality, dependence and threat to freedom that result. This awareness of the disadvantages of labour and property, the threat that they pose to the environmental rights of all is balanced against the advantages that they bring. Labour and property change the environment and the result of this is that more people can be survive and their quality of life is improved. This improvement in the quality of life refers not just to the improvement in the quality and quality of goods available but also in the way of life that labour and ownership supports. Through labour individuals have the opportunity to support themselves independently of others, and so are able to choose for themselves how to live their lives. Labour and property secure the preservation of individuals at the same time as they risk their survival.

Environmental rights must therefore both enable and oppose labour and property if the rights of all to natural resources are to be fulfilled, creating an impossible contradiction at their core. The past thinkers were torn, endeavouring to preserve the security of survival that labour and property offered whilst at the same

time trying to prevent the destruction and inequality that resulted. The tensions within the themes of equality, freedom and claims are visible throughout this struggle and this contradiction.

### Labour and Ownership of Environmental Resources

This first section will examine the right to labour upon and own natural resources. Within this past literature on environmental rights, the right to labour is seen as an integral part of what it is to have environmental rights. This is because the rights to the environment, set out in the previous chapter, are designed to enable individuals to take these resources and use them for their own preservation. But these thinkers believed that labour changed the extent of each individual's claim, and gave some an exclusive right to natural resources. The general right to resources, held by all thus becomes the specific right one individual has to a set resource and this change from the general to the particular enabled the holder to exclude others from that resource. Labour and property are the means by which the initial right of all to their shared environment becomes the exclusive claim one person has upon resources.

#### *The Definition of Labour*

The first step in the examination of labour and the environment to establish what these past thinkers meant by labour. Trachtenberg points out that:

‘Survival, [Locke] recognizes, requires transforming the environment.

Minimally, it involves displacing items from outside the body to inside the body. But distinctively human survival involves rearranging items in the environment so that natural processes yield more of what human beings want’ (Trachtenberg, 2011: 1).

Labour is therefore ‘the active transformation of the natural world into a humanized domain, i.e. a domain which has a physical structure created by human action’ (Ibid.: 22). But what is the extent of this? The ‘minimal’ definition covers breathing and drinking, as they move air and water into the body and transform them. While individuals need to be able to breathe and take in clean water, to describe breathing and drinking as labour misses the point. This is because these actions are reflex

actions, without thought or reason. In contrast, labour involves forethought and planning, action instead of reaction, as Trachtenberg's use of 'rearranging' implies. Daniel Russell makes this point when he notes that for Locke, labour 'is a directive principle' that turns 'something that might meet a need into something that actually does' (Russell, 2004: 309). This identifies labour with human agency, in that it gives shape and direction to natural resources and involves choosing which resources to labour upon and in what way. Thus it 'is not one factor among the many that go into the production of some good, but the very special factor that directs, co-ordinates and organises all the other factors in order to meet goals they cannot meet on their own' (Ibid.: 311). So it is not the act of drinking in and of itself that classes as labour, but the process of deciding where to drink from, when and how much. Thus 'at the end of every labour process we get a result that already existed in the imagination of the labourer at its commencement' (Marx, 2000e: 493). It is this acting according to intentions that is referred to as labour. As Marx puts it, people 'begin to distinguish themselves from animals as soon as they begin to produce their means of subsistence' (Marx, 2000c: 177) and so make decisions about where and how to best secure their subsistence. This claim repeats Rousseau's point that in wishing to labour upon resources 'we want to create, to copy, to produce, to give all the signs of power and activity' (Rousseau, 1966: 62). It is the conscious choices that we make which define labour, allowing individuals to exert control over the environment in which they live and ensuring their preservation and survival. Labour guarantees human survival as it enables us to both take and create – to take the water, fruits, wood or sub-soil resources that we require and to create something from existing resources, such as growing trees or crops or industrial processes.

The variety of resources that can be consciously transformed should be noted. Most of the discussions of labour examined here focus primarily on land, with woods, lakes or wells and sub-soil resources subsumed within that description. But larger resources such as oceans and the atmosphere can also be used and transformed. Large-scale industrialisation created air and water pollution that damaged these resources, perhaps irrevocably as pointed out by Thelwall (Thelwall, 1995f: 452) and Marx (Foster, 2000: 80 and 110). Labour affects all environmental resources.

### *The Right to Labour*

The link between labour upon the environment and human survival is identified by all the thinkers examined in this thesis. Enabling the ability of all to work upon their environment is said to be the purpose of environmental rights, with right-holders said to have a claim to the environment in order to secure the materials for their labour. The right to the environment includes the right to labour upon that environment, for better and for worse.

For some of the past thinkers, the right to labour was a natural right. Tuck points out that Grotius based his understanding of natural rights as a whole on the principle of self-preservation which depends upon labour on resources (Tuck, 1979, also Tierney, 1997: 322, Armitage, 2004: xiii). This can be seen from Grotius' insistence that 'the preservation of life and limbs [is based upon] the securing or getting things useful to life' (Grotius, 2005: 183, also Grotius, 1964: 10). This transformation of resources is a necessity for all humanity, making it a natural right not dependent on membership of any society. This understanding is also present in Locke's work, as he claims that 'God sets him [Adam] to work for his living, and seems rather to give him a spade into his hand to subdue the earth than a sceptre to rule over its inhabitants' (Locke, 1988: 172). This divine purpose underpinned 'the right everyone had to take care of and provide for their subsistence: and thus men had a right in common' (Ibid.: 206). Thelwall shared this reasoning, leading him to argue that mankind has 'a right to exercise his faculties upon those powers and elements so as to render them subservient to his wants and conducive to his enjoyments' (Thelwall, 1995f: 458). This is a radical political argument as the right to labour promotes the equality of all, for all are entitled to take and develop the environment and can therefore provide for themselves. This secures their independence as they are not left dependent on a feudal or monarchical ruler to secure their survival.

### *Labour and Property*

This right ensures that not only are the holders able to take resources and transform them but it also gives individuals a unique, exclusive claim to this transformed product. This is because the addition of labour separates what is privately



owned from the common store, marking the distinction between mine and yours. Labour transforms the general right to resources held by all into the specific exclusive claim held by one individual, as labour is said to mix something of the labourer with the resource in question so that 'nature become[s] one of the organs of his activity, one that he annexes to his own bodily organs' (Marx, 2000e: 494), and thus transforms both natural resources and the labourer (Ibid.: 493). In consequence, natural resources are no longer part of the common store, no longer owned by either all or no-one. An individual's right to the resource that they laboured upon thus trumps the right of all to their environment as labour distinguishes between common property and private property.

Within the literature examined in this thesis, labour is said to give individuals a property claim to the natural resources because the labourer transformed the resource and created something new. This mixing of labour with a resource gives it value and the status of property. As Locke's theory of property famously says 'the labour that was mine, removing them out of the common state they were in, hath fixed by property in them' (Locke, 1980: 19). This is because when we labour upon something, we combine that which we own, our physical effort and mental decisions, with the natural resource. So by planting a field, we combine our decision-making and forethought with the physical exertion of sowing the seeds, to create crops from the soil which belong exclusively to us. As Locke put it, 'labour puts a distinction between them and common: that added something to them more than nature, the common mother of all had done; and so they became his private right' (Ibid.: 19).

The idea of labour creating property is shared by other thinkers in this thesis. Rousseau for example states that 'possession must be taken not by empty ceremonies, but by work and cultivation, the only mark of ownership which ought... to be respected by others' (Rousseau, 1994: 61). Furthermore, in *A Discourse on Inequality* he noted that 'it is impossible to conceive how property can come from anything but manual labour: for what else can a man add to things which he does not originally create so as to make them his property?' (Rousseau, 1973: 201) Wollstonecraft also argues that 'the only security of property that nature authorises and reason sanctions is the right a man has to enjoy the acquisitions which his talents and industry have acquired' (Wollstonecraft, 1989c: 24).

The right to labour upon environmental resources and the right to own the results of this labour as exclusive property are inherent within the previous conceptions of environmental rights. Individuals' rights to resources were designed to secure their ability to labour upon those resources, allowing them to exercise their ingenuity and reason in order to guarantee their survival. The right to property works to recognise this labour by ensuring that individuals have a unique claim to that which they created. Property is dependent on labour, not on patronage, wealth or might, ensuring that all are capable of ensuring their survival and having something of their own. The understanding of rights as claims takes centre stage here. The theme of equality though is called into question. Though all are equally permitted to labour upon resources and create what they need and this understanding of property acts against existing power structures, the additional claims that labour bestows creates inequality between individuals. Once I have laboured upon a resource it becomes my property, the subject of my specific claim and your general right to that resource no longer holds. Our equality of claims and freedom to access shared resources is now shattered.

This creation of an exclusive claim would be less problematic if resources were infinite. Then all could labour upon and own resources, thus securing their preservation without risking that of others and the environmental rights of all could be secured. But environmental resources are limited. The previous thinkers were aware of this fact and so of the dangerous tension inherent within these rights.

### Monopolisation and Destruction of Resources: The Problems of Labour and Property

The past thinkers identified three problems that result from labour and ownership upon natural resources: the destruction of resources, the monopolisation of the environment by a minority, and the creation of inequality and dependence. Yet these problems are the result of individuals doing what environmental rights enable them to do, namely claiming and using their environment. These tensions clearly show that the use of the environment is contested and political. Even the seemingly

straightforward use of resources for survival involves exclusion, domination and power claims between holders.

### *Labour, Property and Destruction of Resources*

The first problem is that labour requires the transformation of resources, deliberately turning them from one state to another through human agency. This changes how the resources are utilised, either preventing others from doing so outright or reducing their ability to do so. So if one person drinks from a well, then there is less water for others. If someone encloses and cultivates that patch of land, there is either less land for others or, if they return the used patch to the commons, it will be less fertile than before. Other examples include felling woodland, digging for sub-soil resources or drinking or washing in lakes or streams. This destruction can also take the form of polluting a resource and thus making it unfit for the use of others (an example of this would be dumping waste products into a river or releasing pollutants into the air). Thelwall and Marx identified this problem when they attacked pollution and its effect on others. As discussed in Chapter Two, Thelwall noted that: 'the air I breath must be breathed also by him; and the stream that flows through my garden waters his: if I stop the one with a dam or pollute the other by a pestilential manufactory, I ... [enact] a mean[s] of usurpation upon the common and superior right of nature' (Thelwall, 1995f: 452). Through the transformation of resources, the rights of others are violated. Marx also made this point when he attacked 'the 'universal pollution' that resulted from capitalist development (Foster, 2000: 110, also Pepper, 1993: 63). 'Light, air, cleanliness' were transformed into 'darkness, polluted air and raw untreated sewage' (Foster, 2000: 75) and as a result 'dirt – this pollution and purification of man, the sewage of civilisation, becomes an element of life for [the worker]' (Marx quoted in Ibid.: 75). The transformation of resources through labour, whilst necessary to human survival and to advantages in the quality of life also destroys those resources, transforming them beyond further use and often with the results of harm rather than preservation.

This transformation and destruction of resources through labour are actively promoted by some of the past thinkers, such as Locke. Both Kathleen Squadrito and

Trachtenberg discuss how Locke justified behaviour that actively damages the environment (Squadrito, 1979, Trachtenberg, 2011)<sup>9</sup> and MacPherson's account highlights this when he notes that Locke believed that those who desired to leave the common store should be praised (MacPherson, 1962: 237) and that 'the essence of rational behaviour is "industrious appropriation" of more natural resources that are needed' (Ibid.: 232). Indeed Locke even goes so far as to say that 'land that is left wholly to nature... is called, as indeed it is, waste' (Locke, 1980: 26). Such is the difference in value that, if someone does develop the land, so far from violating the rights of all by destroying resources to which they has a claim, the labourer is said to have done them a service for which they should be grateful, for they have not taken resources from the others, but rather increased their supply (Ibid.: 22 - 23). Locke supported the rights to labour and ownership specifically because they enabled such transformation. (This point was also raised in Chapter One with regard to Marx's criticism of rights.)

Labour and property involve the transformation and destruction of resources and also enable and promote such behaviour. By giving individuals an exclusive claim to resources irrespective of others, the right to property means that they can use such resources as they wish. Whilst this both secures the preservation of the rights-holder and their overall freedom, it also enables them to destroy that which all need.

#### *'Lock up the land': Monopolisation of Resources*

The second problem that results from labour and property upon the environment is that of monopolisation. Natural resources are finite and many, such as land, forests, lakes and sub-soil resources, are clearly limited or bounded and so can be taken and controlled by one person entirely and exclusively. This problem is identified by Paine and Thelwall who argue that through the net accumulation of labour and property by individuals, all natural resources will be appropriated. This means individuals can be 'dispossessed of their natural inheritance by the system of landed

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<sup>9</sup> Though both conclude that Locke's theory as a whole does not support environmental destruction, they do this by 'thickening' his ecological awareness in accordance with the importance we now know it to have, in order to overrule these aspects of his work.

property' (Paine, 2000c: 333) as man's 'inheritance is alienated and his common right appropriated even before his birth' (Thelwall, 1995f: 476).

Other past thinkers argued that the monopolisation of resources was a deliberate act of aggression. Unlike Paine or Ogilvie, who believed that resources may have been accumulated without ill-intent (Paine, 2000c: 326, Ogilvie, 1781: 187), Winstanley, Wollstonecraft and Marx argued that by exploiting the right to property and the fact that certain natural resources are finite, some were able to deliberately monopolise resources and exclude others. This violates the rights of others and leaves them vulnerable and dependent. So, instead of enabling all to secure and access the resources that they need, the rights of labour and property can be used by a minority to prevent this.

Winstanley described private property and the monopolisation that resulted as the 'restraining of the earth from brethren by brethren [which] is oppression and bondage' (Winstanley, 2009n: 296) as the property-owners 'lock up the treasures of the earth... and suffer it to rust and moulder while others starve for want to whom it belongs' (Winstanley, 2009j: 223). By locking up the land, Winstanley thought that property owners deliberately endangered the survival of all because they could prevent others from taking the resources they needed for survival in their own right. This left the dispossessed dependent on them for access to resources which were theirs by right.

Wollstonecraft also attacked the monopolisation of resources, drawing particular attention to how the right of property was privileged above the right of labour. She argued that the rich had been allowed to break the link between property and labour and own resources which they did not develop themselves. As a result the rich could own resources and use them for pleasure whilst the poor, who had rights to those resources, starved. She illustrated this point with the example of how the landed estates of the rich are used for pleasure, as opposed to being developed to allow for the survival of all:

'The rich man builds a house; art and taste give it the highest finish. His gardens are planted and the trees grow to recreate the fancy of the planter... But if, instead of sweeping pleasure grounds, obelisks, temples

and elegant cottages as objects for the eye, the heart was allowed to beat true to nature, decent farms would be scattered over the estate and plenty smile around' (Wollstonecraft, 1989c: 56).

Wollstonecraft here suggested that if the vast landed estates of the aristocracy were broken up, these natural resources could be used for farming. The resulting farms would be 'decent' because they would enable their proprietors to produce enough for their preservation, thus allowing them to be independent and self-sufficient, and securing their freedom. By refusing to consider the preservation of others, by locking up the land and using resources for pleasure and aesthetic appearance rather than labour and development, the aristocracy is threatening not just other individuals but the body politic as a whole.

This attack may seem to contradict Wollstonecraft's support for 'wild' undeveloped nature, which she regarded as necessary from individual's emotional development and political freedom. Surely her response should be to suggest that all should be allowed to access the aristocracy's pleasure grounds which should be left to run wild rather than stylised. But her main goal is ensuring that all are able to labour and own the environment, with their freedom secured through the sufficiency and independent preservation that this brings. By breaking up the landed estates and creating 'decent farms' for all, the existing wilderness and wild places need not be destroyed. Furthermore, it is the lack of consent or discussion regarding the use of the land that is the problem here – no communal decision has been made regarding the best use of the land, instead it has been locked away at the whim of a minority. The selfishness that Wollstonecraft saw as inherent in acquiring natural resources and wasting them in this way ran utterly counter to the republican ideal of 'public obligation' to the needs of all which motivates much of her work (Taylor, 2003, also Jones, 2002). Overall, Wollstonecraft is pointing out that the right of property in resources is only secured for the rich: 'security of property!... And to this selfish principle every nobler one is sacrificed... But softly – it is only the property of the rich that is secure' (Wollstonecraft, 1989b: 15). The property of the rich is secured even though it monopolises the environment and so violates the rights of the poor to labour and own resources.

Marx's theory of primitive accumulation also engaged with this point, as it explained how the monopolisation of resources occurred. Primitive accumulation was 'the historical process of divorcing the producer from the means of production' (Marx, 2000e: 522) in which 'it is notorious that conquest, enslavement, robbery, murder and briefly force play the greater part' (Ibid.: 521). The word 'primitive' is used to indicate that this pre-dates capitalism, which could only begin when individuals were driven away from the land that supported them so 'great masses of men are suddenly and forcibly torn from their means of subsistence and hurled as free and unattached proletarians on the labour market' (Ibid.: 523). These resources were instead taken by a minority, who in turn hired the original possessors to labour upon these resources for them, creating a divide between those who owned the environment and those who laboured upon it. Dependence and inequality resulted. The claims of the usurpers were justified and defended on the grounds of the right of property with the usurper and the victims are recast as 'the diligent, intelligent and frugal elite... [and] lazy rascals, spending their subsistence and more in riotous living' (Ibid.: 521). Echoing Wollstonecraft's criticisms, the property of the 'diligent... frugal elite' was to be protected whilst the property of the poor was violated. Marx's understanding of primitive accumulation therefore reminds us that, when defending the right to own resources, we must ask how those resources came to be possessed in the first place. Whilst the potential for monopolisation is inherent within environmental rights, as resources are finite, this should not mean that they are used as a cover for monopolisation that results from 'conquest [and] enslavement'.

Monopolisation of environmental resources could occur as either a side-product of the net accumulation of individual labour and ownership, or as part of a deliberate attempt by a minority to gain control over others by possessing that which all need and using the right of property to defend their actions. Either way, no resources are left available to secure the environmental rights of others. Those who are denied these rights are left therefore dependent on others, whether by accident or design, restricting their freedom and undermining their equality of status. As Mill puts it, the extensive accumulation of resources 'confers on [the holder] power over other human beings – power affecting them in their most vital interests' (Mill, 1969a: 158).

The effects of this power is said to be the final disadvantage that results from labour and property in natural resources.

*'The Turfs my Servant has Cut': Labour, Property and Dependence*

The final disadvantage that past thinkers believed would result from labour and property upon natural resources was relations of dependence. Destruction and monopolisation of the environment leaves some dependent on others for access to the environment. The equality of all that rights are meant to secure, and the equality of access to the environment that environmental rights are meant to guarantee, is therefore violated as a result of the labour and property such rights promote.

This point is best illustrated through Locke's (in)famous insistence that 'the turfs my servant has cut...become my property' (Locke, 1980: 19 – 20). Why Locke believes that the labour of one person makes the resource belong to another has been the subject of fierce debate (see Macpherson, 1962, Waldron, 1988, Tully, 1993, Sreenivasan, 1995, Cohen, 1995, Waldron, 2002, Ward, 2010). But even if we accept that the turf the labour cuts does belong to the master, there are problems here.

Debate has focused on the position of the servant or labourer. Tully argues that they have voluntarily chosen to temporarily sell the results of their labour for a set time and are repaid and respected for their skills (Tully, 1988: 136 – 142). He also argues that they are able to leave the owner's employment if they so wish and seek better conditions. Tully is here emphasising the agency of the servant, who can choose which tasks to perform and under which circumstances, is paid wages and so has property of their own and is only bound to their master for a limited period of time. This reading is primarily drawn from Locke's distinction between servants and slaves, with the former described as:

'a freeman [who] makes himself a servant to another, by selling him, for a certain time, the service he undertakes to do, in exchange for wages he is to receive... yet it gives the master but a temporary power over him and no greater than what is contained in the contract between them' (Locke, 1980: 45).

This passage supports the view that the property owner/servant relationship is a way



of ensuring both that all are able to labour upon natural resources and that these resources are indeed used for the good of all (in being transformed to produce goods that are available to all). Allowing the turfs that the servant has cut to belong to the property owner respects both property and labour, because the labourer has the choice of how to exercise their right to labour on resources and what property they wish to receive as their right in return. Their environmental rights are therefore secured.

Tully's view has been fiercely critiqued (see Cohen, 1995: 188 – 194) predominantly for a failure to acknowledge the limited choice facing the labourer and their dependence upon the property-holder. They *must* labour upon resources, either to create what they need to survive or to earn money to buy those products, creating a power inequality. Tully later acknowledged this point, noting that labourers and servants are driven into these relationships by necessity (Tully, 1993: 132). Acknowledging the importance of labour upon natural resources and the real possibility that finite resources can be monopolised by a minority further limits the choice of the servants. The lack of property, of secure access to essential environmental resources, leaves the labourer dependent on the master and so undermines their choices, freedom and equality.

The debate over the position of the servants is linked to the debate surrounding Locke's two forms of consent – express consent and tacit consent (Locke, 1980: 63). Locke stated that 'express consent, of any man entering into any society, makes him a perfect member of that society a subject of that government' (Ibid.: 63 – 64). A person who gives their express consent to community joins themselves and their property to it, agreeing to be bound by the community's laws and judgements in return for the protection of their property. The property in question is also specifically property in resources, as seen from the references to 'his land', 'the proprietor of land' and Locke's insistence that those who 'enjoys any part of the land... must take it with the condition it is under; that is of submitting to the government of the commonwealth' and expressly consenting to be a full subject and member of that society (all quotes Ibid.: 64). Tacit consent on the other hand is expressed by anyone who:

‘hath any possession or enjoyment or any part of the dominions of any government... whether this possession be of land, to him and his heirs forever or a lodging only for a week; or whether it be barely travelling free on the highway; in effect [tacit consent is given by] the very being of any one within the territories of that government’ (Ibid.: 64).

This form of consent means that anyone who resides within the lands of a society is said to have consented to the government of that society, which means that they have consented to the distribution of resources. For the residents of a particular society (not the members, for only express consent can make someone a member of Locke’s society) their tacit consent to the government and to the makeup of that society is presumed because they remain within that society. People who disagree with a society and so do not give their consent can leave, for they are ‘at liberty to go’ (Ibid.: 65).

The implications of this are heavily debated. Geraint Perry argues that this is designed ‘to distinguish between two kinds of property owner which corresponded with the two broad classes of... society’ namely those with resources and those without (Perry, 2004: 103). Perry here draws upon the influential attack on Locke’s two forms of consent developed by C.B Macpherson. Macpherson argued that tacit consent placed binding obligations on some without creating any right to take part in the decisions that were made (Macpherson, 1962: 250), allowing ‘Locke [to] consider all men as members for the purposes of being ruled and only the men of estate as members for the purposes of ruling’ (Ibid.: 248 – 249, Townshend, 2000: Chapter Three). Others, such as Tully argued that this distinction was too sharply drawn. Certainly Locke’s statement that those who give express consent make over to the community ‘those possessions he has or shall acquire’ (Locke, 1980: 64) seems to imply that those without resources can give express consent on the grounds of future ownership. But given that the end of government is the preservation of property (Ibid.: 66) it is unclear why those without property would wish to become full members of society.

Two aspects of Locke’s work, the master/labourer relationship and the discussion of consent, ensure inequalities of status and rights. And in both these situations the common factor is property in natural resources as those who own them have dominance over those who do not.

Rousseau explicitly attacked such inequality in the *Second Discourse*. He appeared to despise property arguing that:

‘The first man who, having enclosed a piece of ground, be-thought himself of saying “this is mine” and found people simple enough to believe him, was the real founder of civil society. From how many crimes, wars and murders, from how many horrors and misfortunes might not anyone have saved mankind by pulling up the stakes or filling up the ditch and crying to his fellows: “beware of listening to this imposter; you are undone if you once forget that the fruits of the earth belong to us all and the earth itself to nobody”’ (Rousseau, 1973: 192).

Rousseau is specifically attacking property in natural resources here, and on the grounds that the environment belongs to all. This is based not only on the idea that ownership of resources deprives others of what they need to survive but enables rank and difference between individuals, which in turn promotes jealousy, theft and servility. As a result, the increase of property led to inequality within society – ‘equality disappeared, property was introduced’ (Ibid.: 199). What Rousseau opposed was not property itself, but the dependence and inequality that resulted. Pierson and Ethan Putterman both support this reading and suggest that ‘Rousseau’s real concern is not with equality but with inequality’ (Pierson, 2013:12, also Putterman, 1999), stressing that Rousseau believed an inequality of property allows for ‘the tyranny of the rich’. This led to dependence and servility: ‘a world of insincerity in which the rich and the poor were both minded to cheat and to deceive... Thus, ‘no one who depends on others, and lacks resources of his own, can ever be free’ (Pierson, 2013: 13, quoting Rousseau). Excessive property enables a minority to monopolise the finite resource that all need and so enables ‘relations of dependence and of dissembling’ to flourish (Ibid.: 3). Overall Rousseau despised the dependence and inequality that resulted from property in the environment.

Three central problems and tensions result from labour and property in resources: the problem of the destruction of resources, the monopolisation of finite resources and the resulting inequality and dependence. These problems threaten the

preservation, freedom and equality of all that the rights to labour and ownership are meant to secure and violate environmental rights. As a result past thinkers such as Winstanley, Rousseau, Wollstonecraft and Marx were highly critical of private property. Indeed they argued that exclusive individual property rights was used to deny individuals the resources that they needed, rather than secure them. These arguments suggest that advocates of environmental rights should oppose labour and development upon natural resources and particularly private ownership. But this is only half the story. As these thinkers were aware, paradoxically labour and property were necessary for the preservation of all and could represent the fulfilment of environmental rights.

### The Advantages of Labour and Property

As this section will show the proponents of environmental rights examined in this thesis supported the rights to labour upon and own natural resources because this will secure both their preservation and their quality of life. Environmental resources are essential to both the quantity and quality of human life not only in their initial, untouched state, but as the source for human agency, enabling them to create more goods of more variety. Furthermore, this act of creation and ownership in and of itself improves the quality of individual's lives by enabling them to live independently of others. This section will show why the past authors thought labour and ownership were necessary to environmental rights and could not be dismissed, despite their disadvantages.

#### *Labour as Divinely Commanded*

The argument that labour and ownership both secure human life and improve the quality of life is put forward (to a greater or lesser extent) by all the thinkers examined here. A secondary, 'thinner' argument for the necessity and advantage of labour and ownership is also made, on the grounds that labour is commanded by God and to his glory. This point was made explicit by Locke, who believed that:

'God when he gave the world in common to all mankind, commanded man also to labour... God and his reason commanded him to subdue the earth

i.e. to improve it for the benefit of life and therein lay out something upon it which was his own, his labour. He that in obedience to this command of God, subdued, tilled and sowed any part of it thereby annexed to it something that was his property' (Locke, 1980: 21)

Whilst Winstanley utterly opposed the concept of private property in natural resources, he also believed that God commanded humanity to labour. Winstanley aimed to 'prove' his argument with scripture and pointed out that after creating the world and giving it to all 'then the creating power or God gives two commands more. First to subdue the earth. And this implies plowing, digging and all kind of manuring' (Winstanley, 2009m: 258). This idea is also present within the eighteenth century texts, as seen from Spence's assertion that 'it is said in the beginning of the Bible that Man was made to till the ground' (Spence, 1982j: 134). Overall, it is clear within the past understandings of labour that several thinkers believed God commanded humanity to labour in order to preserve themselves and develop his creation.

This justification for labour and ownership is linked to the belief that God gave the earth to all in common, examined in Chapter Two. God is said to have given the world to all specifically so that they could labour upon it and thereby secure their own survival. The world was created and given for the purpose of sustaining human life through labour. The concept of God's gift of the earth to all reappears here in order to underpin labour as to prevent labour upon the environment is to defy God's will.

### *Labour and the Preservation of All*

The right to labour was said to be necessary because it secured the immediate preservation of all. As Locke was aware 'survival... requires transforming the environment' (Trachtenberg, 2011: 1) through conscious decision making – selecting which foods to eat, which shelter to choose, etc. If an individual's right to labour, to take and transform their environment, is denied then they will suffer and the past proponents of environmental rights were sharply aware of this. By ensuring that all are able to take the natural resources they need, each individual can survive and the production of food and other necessities can be increased. As Paine notes 'there is a necessity of preserving things in that [developed] state; because without it there cannot be sustenance for more, perhaps, than a tenth of its inhabitants' (Paine, 2000c:

324). Transforming the environment through labour produces the materials that humanity needs to survive. As a result Thelwall confidently claimed: 'I am sure of this, that enclosure, upon a fair and honest principle might be productive of the greatest advantages' (Thelwall, 1995b: 177), with this 'advantage' specifically defined as 'to produce the largest quantity of the necessities of life that the country can produce' and to share this throughout society (Ibid.: 178). Mill echoed this idea when he argued for the reform rather than abolition of property in land, on the grounds that 'the justification of private property in land has rested on the theory that most is made of the land for the good of the community by giving that full play to the stimulus of self-interest which is given by private ownership' (Mill, 1967a: 672). Denying individuals private property rights will, these authors claim, reduce the amount produced and so cause starvation and misery. This awareness of the consequences of violating the right to labour is especially acute in the work of Winstanley and Wollstonecraft, who argued that landed estates should be broken up specifically so that all could labour upon and own natural resources and so support themselves.

Winstanley emphasised the importance of the right to labour upon resources for human preservation. He developed his political theory in the years leading up to and including the civil war, some of the hardest years in English history, as bad harvests and the upheaval of war combined to make food scarce and drive prices to an all-time high (Petegorsky, 1940, Gurney 2007). In response to such hardship, which disproportionately affected the poorest within society, Winstanley emphasised the importance of labour, arguing that since the environment belonged to all, the poor should be allowed to labour upon resources and thereby provide for themselves (Hill, 1972: 128). Like Locke, Winstanley thought that land that was undeveloped was 'wasted'. He believed that 'if the waste land of England was manured [developed]... it would become in a few years the richest, strongest and [most] flourishing land in the World' (Winstanley, 2009l: 244) and the role of the environmental rights was to enable this. Rights to the shared environment therefore included the right to 'take plow and spade, build and plant, and make the waste land fruitful' (Winstanley, 2009l: 244).

Wollstonecraft also stressed the importance of labour upon natural resources for the preservation of all, especially due to 'the increasing population of the earth' (Wollstonecraft, 1989e: 288). She feared that natural resources would not be able to support such growth, creating the potential for 'universal famine' (Ibid.: 295). However rather than arguing for a limit to population, Wollstonecraft instead suggested that resources be developed and cultivated in order to provide for all. As discussed above, she thought that by breaking up the landed estates of the aristocracy and using these resources to create 'decent farms', more food and other goods would be created and so more people preserved. This was reflected in her earlier wish that 'the ground would not lie fallow' (Wollstonecraft, 1989c: 24) and would instead be opened up to labour, for 'the world requires the hand of men to perfect it... [to] tend to its improvement' (Wollstonecraft 1989e: 288). O'Brien notes that Wollstonecraft is 'on the side of progress, imagining forests cut down and more population, despite her deep appreciation of nature' (O'Brien, 2012). Labour on natural resources was, she thought essential to secure the population and prevent 'universal famine' because it transformed the environment.

Wollstonecraft's link between preservation and progress, the spread of population and the increase of civilisation, leads to the second reason why the thinkers in this thesis interpret environmental rights as the right to labour upon the environment: that labour advances not only the quantity but the quality of life for all.

### *Labour, Property and Quality of Life*

The right to labour upon the environment not only ensures human survival, but also preserves a certain kind of life and freedom. As the past thinkers point out, labour and property create a greater variety of goods and produce, which increases the material quality of life. But they also enable individuals to lead an independent, self-sufficient life, in which they are free and not dominated by others. Both materially and abstractly labour and ownership improves quality of life.

Materially speaking labour increases the quantity and variety of resources available, especially when compared to that which is available in the common store.

Grotius believed that it was this desire for greater variety that drove individuals to labour and to want to take resources for their own:

‘men being no longer contented with what the earth produced of itself for their nourishment; being no longer willing to dwell in caves, to go naked or covered only with barks of tress or the skins of wild beasts, wanted to live in a more commodious and more agreeable manner, to which end labour and industry was necessary’ (Grotius, 2005: 426).

The act of deliberately transforming natural resources means that more goods can be created out of raw resources – seeds can be planted to create more, sub-soil resources can be mined, trees can be chopped down and the wood used for buildings or firewood, and the cleared areas for agriculture or habitation. Furthermore, through labour individuals can satisfy their own unique desires, producing what they themselves wish for rather than what is available through nature. Property also plays a key role here, with Grotius believing it acts as an incentive towards industry and a way of ensuring that labour can be completed. After all if I have only a general right to resources, as set out in Chapter Two, I cannot claim back the resource I am working on if it is lost – someone can take the land on where I am growing seeds for example. Only through the specific right created by property can I hold onto the subject of my labour.

By using the right to the environment in this way, individuals not only improve their material conditions but also their quality of life, through increased freedom and equality. This comes not only from the exercise of their rights - from the inherent status that means rights-holders are equal to one another - but also because labouring upon natural resources is held to promote independence and self-sufficiency. Labour and ownership promote the holder’s freedom to live independently of others and mean all are equally entitled to support themselves. As Winstanley puts it ‘true freedom lies where a man receives his nourishment and preservation and this is in the use of the earth’ (Winstanley, 2009n: 295).

This idea that labour and property can bring benefits is also put forward by Wollstonecraft. As Virginia Sapiro points out: ‘Wollstonecraft asserts that pain and misfortune often serve as experience from which human beings can learn’ (Sapiro, 1992: 50 and also 49). Through the struggle of labouring upon resources, individuals



would themselves develop and grow. Wollstonecraft's republican beliefs are also at work here. She describes how owning and labouring upon resources could ensure freedom and independence, preventing individuals from being dominated by others and allowing them to make their own choices: 'Why might not the industrious peasant be allowed to steal a farm from the heath? ... Domination blasts all these prospects; virtue can only flourish among equals' (Wollstonecraft, 1989b: 57). By providing for themselves the 'industrious peasant' can survive independently of others and thus be their equal. Being able to keep what is made, exclusive of others, is essential to this equality, as it ensures a permanent source of preservation and prevent individuals from being dominated by others. The republican emphasis on self-government is also present here. Secure access to a source of preservation and the constant effort and decision making required for labour will enable individuals to better govern themselves and resist the influence of others. Allowing individuals to own and labour upon natural resources would therefore 'render the poor happier in this world without depriving them of the consolation... in the next' (Wollstonecraft, 1989b: 55). Labouring upon environmental resources therefore preserves and enhances the virtues of independence and self-sufficiency (Wollstonecraft, 1989b: 15, Wollstonecraft, 1989d: 212 and also Taylor, 2003: 229).

This reading runs counter to Taylor's belief that Wollstonecraft opposes the 'narrow landowning ideal of republicanism [in favour of] a far more egalitarian concept' (Taylor, 2003: 227). On this evidence, Wollstonecraft is closer to this ideal than Taylor suggests. Certainly Wollstonecraft's ideas regarding the value of independent self-sufficiency brought about by land-ownership, to both the individual and the whole are certainly influenced by, if not taken from, the republican tradition.<sup>10</sup> The idea of rights as a means to a larger end of freedom, as set out in Chapter One is clear here, with the right to the environment securing individual's ability to provide for themselves in a way that secures their freedom. Being able to take the resources that they need, develop them as they wish and have a secure claim to that which results, enables individuals to live secure in the knowledge that they are free from the

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<sup>10</sup> And by extending her critique of power relations to the family *within* the farm-house, Wollstonecraft leaves no corner for domination to flourish and breaks down the assumptions regarding the gender of the citizen.

domination of others and that they are equal to them. Environmental rights must therefore enable their holder to labour and hold the results of such if they are to address the politics of domination and power.

The final variation of the idea that labour can improve an individual's quality of life comes from Marx. Marx acknowledged the benefits that labour, industrialisation and property had brought about, such as the destruction of the feudal system and the increase of the population (Marx and Engels, 2002: 222 – 223). The capitalist system had 'shown what man's activity can bring about... [and thus] accomplished wonders far surpassing Egyptian pyramids, Roman aqueducts and Gothic cathedrals' (Ibid.: 222) and Marx did not wish for a return to a society without these benefits.

Furthermore as Waldron points out 'Marx's view is that the species life of man is primarily material – it is man's life as a producer working with others on nature and on the means of production society has created' (Waldron, 1987: 131). Humans are consequently both part of and dependent upon nature but have the ability to master it in order to secure their needs, an ability that separates them from other animals. Being allowed to express this species being and secure their own preservation through labour and engagement with resources is essential, as it allows people to be truly human and free from the influence of others. To deny this is to alienate individuals from the environment, from other people and from their very nature (Marx, 2000c). In describing the harm done to individuals by their alienation under the capitalist system, Marx notes that labour can and should be emotionally fulfilling, a way of connecting people to one another, to the resources they labour upon and to the product they create and keep.

Overall, the thinkers in this thesis acknowledge that labour and the ownership of resources secures and improves the material conditions of life by creating and increasing the amount, variety and quality of goods available. They also draw attention to the way in which labour and property can act to secure the non-material life of the rights-holder, ensuring their freedom and their equality with others by enabling them to independently support themselves. Winstanley, Wollstonecraft and Marx provide the sharpest criticisms of labour and property and the former two do so specifically on

the grounds that they violate the environmental rights. Yet they also point out that labour and ownership are essential to preservation and to the quality of human life. If environmental rights are to secure the preservation, freedom and equality of all, then they will have to ensure that the rights-holders are able to labour upon and own the environment.

## Conclusion

This chapter has argued that the past proponents of environmental rights were caught between the condemnation and acceptance of labour and ownership upon natural resources. They recognised both the necessity of labour and ownership and the disadvantages, how they violated equality and freedom and how they secured them. This contradiction lies at the heart of their understandings of environmental rights.

The necessity of the right to labour upon and own natural resources for human survival is clear to all the past thinkers examined in this thesis, with both immediate physical survival and the quality of individuals' lives dependent upon labour and ownership. Indeed, as these authors are writing in the time before wide-spread development and during periods of immense change and vulnerability, it could be argued that they have a stronger understanding of the importance of this than many contemporary environmentalists. This reminder is but one of the many advantages of looking to the past conceptions of environmental rights to ground our current understandings.

Yet there is an equal awareness of the dangers of such processes, of the destruction of resources that results and the danger that this poses to the survival of all. As the second section of this chapter showed, labour and property implies and encourages the destruction of the environment, enables the monopolisation of resources and creates inequality and relations of dependency between individuals. This problem is linked to the fact that labour and property are based on the finite natural resources that all need to survive - this is a specifically environmental problem. Being able to transform and claim these resources is essential to human life, but each instance of doing so reduces the resources that are left for others. Following the lead

of the past thinkers to recognise the importance of labour and use of resources does not therefore mean overlooking the damage that these actions cause. But it is instead to realise that environmental rights call for both the use and the preservation of the environment and that these twin competing needs must be balanced.

So, as this chapter has argued, the previous conceptions of environmental rights show that these rights are caught between the need to ensure that the environmental rights of all are filled and the understanding that to do so will undermine, if not outright violate, the rights of others to those resources. As a result of this contradiction the past proponents of environmental rights sought to rethink and reconceptualise environmental rights, displaying the political creativity that James identifies as central to ensuring rights as they developed a third path, seeking politically creative solutions that redefined and re-interpreted environmental rights. This marks the turning point in this thesis as these clear-cut tensions are the catalyst for the 'solutions' and interpretations of environmental rights examined in the following four chapters.

## Chapter Four: Limits to Labour and Ownership

With the tensions within environmental rights set out, the focus of this thesis now shifts to the solutions developed by the previous conceptions of environmental rights. The preceding chapters have shown that the past proponents of environmental rights were aware of the tensions and complexities inherent in the concept. From the problems of applying the central themes of rights, freedom, equality and claims, to a finite environment, to the debates surrounding the problems of 'common' ownership embedded within the past conceptions of environmental rights themselves, via the contrasting views of development and private ownership of resources, past thinkers are sharply aware of the problems inherent within environmental rights.

The following chapters will argue that the past thinkers suggested solutions to these conceptual tensions. These responses were politically creative, engaging with the problems of belonging, claims, freedom and equality in the context of a finite environment that all depend upon in innovative and imaginative ways. This chapter examines the first of these suggested solutions, which is that environmental rights should be seen as limiting property ownership. This way of conceptualising environmental rights aims to balance the rights of all to labour and property by limiting the claims that these rights entitle their holder to make. Grotius, Locke and Rousseau all suggest this approach and three themes link their responses – that individuals should have the consent of all to their property, that they should leave enough for others and that they should take only that which they need. By emphasising the link between the right to labour and the right to property, these thinkers can insist that individuals own only what they themselves can labour upon.

The solution of limiting the amount of resources that individuals can possess is developed by the republican thinkers examined in this thesis. Though their understanding of rights differs from that of the natural rights thinkers or radicals examined in this thesis, as set out in Chapter One, the idea that the claims that can be made upon finite resources need to be limited and balanced for the good of all is central to past republican thought. Conceptualised as agrarian laws, Machiavelli and Harrington debated how these limits should be defined and enforced but agreed that

this was necessary if the equality between the citizens was to be maintained and the conditions for the freedom of all secured. The republican tradition also developed the idea of communal ownership as a way of fulfilling these goals, with Machiavelli and Rousseau setting out how state ownership of resources could ensure equality between citizens.

The concepts inherent within the solution of limits complements the current environmental discourse around sustainability and duty. For example the emphasis on 'necessity' and 'enough' links to the central argument of environmentalism, that there are limits to growth and 'that the consumption of material goods by over-consuming individuals... should be reduced' (Dobson, 2007: 13). Many environmentalists also argue that private property promotes the destruction of environmental resources and so needs to be restricted and limited (see Hancock, 2003: 139 – 140, Kovel, 2007). Indeed as Trachtenberg points out many environmentalists oppose the inclusion of Locke within green narratives precisely because they believe he justifies unlimited, unchecked private ownership (Trachtenberg, 2011: 1 and 8)

There is also a clear link here to the arguments made by contemporary green republicans such as John Barry and Steven Slaughter (Barry, 2008, 2012, Slaughter, 2005). These thinkers are attracted to the republican tradition because it emphasises the duty of the citizens and the good of the republican as a whole which can be translated into the duties to act in sustainable ways. However these thinkers overlook the agrarian laws, which is the main direct engagement with ownership of resources within the republican tradition. Adding this concept to the green republican tradition can only strengthen this approach, as not only does it show that a concern for the control of resources is present within the texts of the republican canon but it provides a way to prevent the monopolisation of resources and promote equality.

These arguments over limits are played out in the fracking debate. Campaigners argue that property-owners should not be allowed to use their land for fracking, that this is a limit to their right to property. And, on a wider level, they question whether more energy needs to be produced at all, or whether those who own sub-soil resources should be forced to 'leave them in the ground' (Monbiot, 2015).

Examining this solution to the tensions inherent within environmental rights and how the past thinkers engaged with these concepts will help us understand these debates and this solution to the tensions inherent in environmental rights.

### Environmental Rights as Limits on Ownership

Chapter Three examined how the thinkers within this thesis argued that environmental rights enable their holder to labour upon and claim the natural resources they needed to survive. But environmental rights also act as limits upon property, restricting the amount that each person can claim in order to ensure that resources are left for others. This aspect of environmental rights was stressed by Grotius, Locke, Wollstonecraft and Rousseau, who emphasis the equality of all and the importance of freedom in order to limit the claims that rights-holders can make. In this way, they set two of the key themes within rights against the third. This is not to say that they dismissed the concept of property entirely, but instead stressed the foundations of property, such as consent, labour and the equality of all, in order to construct a form of limited, restricted, property. The accounts of this form of property drew on the languages of necessity, of ‘enough for others’ and of consent, themes present within the accounts of property as a whole, but which these thinkers brought to the fore.

#### *‘Enough and as Good’*

The most famous conception of environmental rights as limits to labour and ownership is that set out by Locke, who stated that the rights of all to the environment meant that labourers must ensure that there is ‘enough and as good left in common for others’ (Locke, 1980: 27). This will ensure that the rights of all to their shared resources can be secured and avoid the disadvantages the labour and property can bring:

‘So that, in effect, there was never the less left for others because of his enclosure for himself. For he that leaves as much as another can make use of does as good as take nothing at all. Nobody could think himself injured by the drinking of another man, though he took a good draught, who had a

whole river of the same water left him to quench his thirst. And the case of land and water, where there is enough of both, is perfectly the same' (Ibid.: 21).

The focus here is specifically on natural resources and the duty to leave for others the resources that they need, in both quantity ('enough') and quality ('as good')<sup>11</sup>. This proviso explicitly engages with the problem of finite resources, for if resources were infinite then this limit would not be necessary, as there would always be enough and as good.

The importance of ensuring that enough natural resources remain for others is also stressed in Locke's examination of the limits of the rights of lawful conquerors. In seeking to counter the argument that Locke justified the colonial occupation of America, Paul Corcoran draws attention to his insistence that the environment always belongs to its possessors, as it was given to them to ensure their preservation (Corcoran, 2007). Locke argued that even if one nation conquers another in a just war they would not be entitled to the lands of that nation. Whilst the victorious nation is entitled to take reparations, 'he has not thereby a right and title to their possessions' (Locke, 1980: 93 - 94). This is because those resources are said to have been given to that nation for its survival. So whilst the conquerors are entitled to punish those who attacked them, and even enslave them, they are forbidden taking the natural resources of the conquered peoples because the 'goods which nature, that willeth the preservation of all mankind as much as is possible hath made to belong to the children to keep them from perishing, do still belong to his children' (Ibid.: 94). So tribute and reparations can and indeed should be taken, in order to ensure that the costs of the war are not borne by those attacked. But resources that are enough for survival and equal to that which is taken *must* be left.

Helga Varden's critique of the enough and as good proviso raises two key points –scarcity and the differences between resources:

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<sup>11</sup> Here the focus is on Locke's initial argument that it should mean resources that are as good in quality as those that are taken. What is meant by 'as good' once money has been introduced is examined in Chapter Six.



‘Various particular pieces of land are empirically very different, so how do we tell whether we have appropriated correctly under the proviso. For example, it is difficult to see why any one person’s appropriation of a particular piece of land cannot be challenged by another person... After all, no two lakes, fields, forests etc. are equal in the sense of having the same characteristics. Consequently, it is unclear why leaving behind a different lake or field is both enough to leave behind and as good as the one that has been taken’ (Varden, 2012: 423 – 424).

The closest answer to Varden’s point is that Locke believed money and commerce form a standpoint from which to value and compare land (cf Varden, 2012: 424 with Locke, 1980: 23). Initially Locke is seeking to ensure that enough resources are left for preservation, which is a minimal standard he believes easily met (Ibid.: 23:). As a result, if one forest is larger than another, what of it? The needs to which it is required to meet are small. It must also be noted that ‘as good’ does not mean identical – though resources differ, Locke does not stipulate that we must leave resources that are exactly ‘equal’ to that which has been taken. One field may be different from another, but if it is larger this could surely compensate. And Locke’s belief in the abundance of land and resources also answers this problem – for if there is so much land available, others will not wish to question an individual’s holdings and equivalent resources can be found. Once this presumption that resources are unlimited and infinite is removed, the problem of differences between resources and what and how much is ‘as good’ is raised, as Varden points out:

‘The most promising way of reinterpret the proviso, consistent with Locke’s text, involves arguing that when scarcity arises, Locke’s notion of fixed property is softened... it can call for a rather radical reshuffling of land ownership, or it can cease to require the original landowners to provide newcomers with land and instead only either with subsistence means plus some conveniences or with some more limited use-right to the land’ (Ibid.: 418).

Varden thus argues that the proviso implies a reinterpretation of property rights in favour of a more sustainable and equitable usage that secures the environmental rights of all.

Locke believed there were plenty of resources that are enough and as good remaining, as his description of 'the wild woods and uncultivated waste of America' (Locke, 1980: 24, also 25 and 22 – 23) shows, and suggested that if there is a scarcity, it is of a lack of people willing to labour, rather than a lack of resources (Ibid.: 25), for 'there is land enough in the world to suffice double the inhabitants' (Ibid.: 23). However this idea of 'softening' individual's rights to resources in cases of scarcity is supported, for Locke clearly states that 'everyone, as he is bound to preserve himself and not quit his own station wilfully, so by the like reason... ought he as much as he can preserve the rest of mankind and may not... take away or impair the life or what tends to the preservation of the life, liberty, health, limbs or goods of another' (Ibid.: 9). The argument of *First Treatise* goes further than this, suggesting that anything not essential to an individual's survival could be claimed by those in need:

'God, The Lord and father of all, has given no one of his children such a property in his peculiar portion of the things of the world but that he has given his needy brother a right to the surplus of his goods; so that it cannot justly be denied him when his pressing wants call for it and therefore no man could ever have a just power over the life of another by right of property in land or possessions; since it would always be a sin in any man of estate to let his brother perish for want of affording him relief out of his plenty' (Locke, 1988: 170).

As a result of this emphasis, Tully highlights the obligations that he believes Locke attaches to property ownership, particularly the obligation of charity to others. Tully also argues that Locke would allow someone in need to use their 'natural claims rights in order to override the conventional rights of property to preserve himself, and one's family and, if need be others' (Tully, 1993: 113). If we do not have enough, Tully believes that Locke would permit us to claim it from others or to over-ride their rights and take it for ourselves (provided this does not leave others with insufficient resources).

Tully's understanding of Locke is controversial but the reading of Locke which says that in conditions of scarcity he would allow the superior claims of all to the earth

would override the rights of property that he and Varden develop<sup>12</sup>, is explicitly proposed by Grotius. His theory of property acknowledged that 'utility which should yield to necessity, makes common again things formerly owned' (Grotius, 2004b: 86). As a result, 'in a case of absolute necessity that ancient right of using things as if they still remained common must revive and be in full force' (Grotius, 2005: 434). Grotius illustrated this by noting that 'at sea where there is a scarcity of provisions what each man has reserved in store ought to be produce for common use' and 'in cases of fire I may demolish my neighbour's house if I have no other means of preserving my own' (Ibid.: 434).

The limitation of enough and as good therefore restricts the amount of property that individuals can initially claim through their labour and also, as Grotius insisted and Tully suggests, can over-ride the rights of property. Grotius believed that this reversion to common property would occur only in exceptional circumstances and even on Tully's reading Locke's account of charity is a short-term measure designed to secure immediate relief for a limited few. But as natural resources are finite, limited and irreplaceable, this state of emergency and the situation of scarcity that Varden describes, is a permanent condition. Environmental rights thus impose a limit on property, on both which resources can be claimed and which can be held, in order to ensure that there is 'enough' to fulfil the equal claims of all.

### *Necessity*

The second limitation is that of necessity. Individuals are permitted to take and transform only what they themselves need and cannot waste the resources that they own. This will ensure that enough and as good is left for others but the emphasis here is on use. Even if the rights-holder left enough for others, if they wasted the resources to which they were entitled then they would be said to have violated this limitation. This understanding of the implications of environmental rights is again most famously developed by Locke in his 'spoilage proviso'. This limitation says that 'as much as anyone can make use of to any advantage of life before it spoils, so much he may by his labour fix a property in; whatever is beyond this, is more than his share and belongs

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<sup>12</sup> This reading is also put forward by Trachtenberg, who supports Tully's reading (Trachtenberg, 2011).

to others' (Locke, 1980: 20 – 21) and thus forbids individuals from taking more than they can make immediate use of. Beyond this, they have no right:

'whatsoever he tilled and reaped, laid up and made use of before it spoiled, that was his peculiar right; whatsoever he enclosed, and could feed and make use of, the cattle and product were also his. But if the grass of his enclosure rotted on the ground, or the fruit of his planting perished without gathering or laying up, this part of the earth, notwithstanding his enclosure was still to be looked on as waste and might be the possession of any other' (Ibid.: 24).

This limitation refers specifically to environmental resources, as seen from the examples that Locke gave and the focus on waste and spoilage, which affects natural resources in particular. To describe this as a limit that environmental rights impose is not to apply Locke's theory to environmental rights but to see that this understanding of property, rights and limits *is* specifically concerned with rights to the environment. Indeed the idea of 'spoilage' is meaningless unless the resources in question are natural and can change. Overall the spoilage proviso imposes an ethic of sustainability on the use of resources, calling back to the initial description of the common store as designed to secure the preservation of all.

Locke's initial commitment to necessity and the spoilage proviso is clear but the introduction of money (Locke, 1980: 28) allowed the circumvention of these limits. Later thinkers adhered more strictly to the limits imposed by environmental rights and none more so than Rousseau, who insisted that individuals have only a right to the resources which they can use themselves and no more. This idea of limits to property is put forward by Ethan Putterman, who, as discussed earlier, argues that Rousseau's 'criticism of private property [is] a condemnation of ostentatious wealth exclusively and not, as may appear, an attack against all forms of private property' (Putterman, 1999: 419).

Pierson developed this point further when he linked Rousseau's hatred of excessive property with his support for necessity for all, noting that he wished everyone to have 'enough and no one too much' (Pierson, 2013: 14). This interpretation of Rousseau draws upon his claim that 'everyone should make a living,

and none should grow rich' (Rousseau quoted in Ibid: 11), and his argument that 'no more land must be occupied than is needed for subsistence' (Rousseau, 1994: 60). Though Rousseau believed that occupation forms the basis of property, the emphasis is on using natural resources for subsistence and necessity rather than for the creation of wealth and property for its own sake. Rousseau argued that society should aim to achieve 'simplicity against luxury, self-sufficiency or simple exchange over and against money and commerce' (Pierson, 2013: 14). Such a society would be able to ensure that the finite environment could be shared amongst all, answering Rousseau's critique: 'do you not know that numbers of your fellow creatures are starving, for want of what you have too much of?' (Rousseau, 1973: 204).

The second limit that environmental rights were said to impose on labour and the property is therefore that of use. Defined by Locke as only entitling individuals to take or create what they can use and by Rousseau as ensuring 'everyone had enough and no one had too much' (Pierson, 2013: 14), this limit meant that individuals need to restrict their labour to the creation of essentials so that the needs of all can be met. This ties to the initial definition and defence of labour and property as essential for human survival. However this raises questions about the definition of 'enough' and necessity. Rousseau clearly linked this to the initial survival of all and the benefits of independent sufficiency, as set out in Chapter Three. But labour upon natural resources is also essential for further economic development and industrialisation: is this to be included under the definition of necessity? Precisely how enough, necessity and subsistence are to be defined is linked to the third limit that environmental rights respect and impose, that of consent, with these terms needing to be defined by the rights-holders themselves. For as Rousseau made clear 'you ought to have had the express and universal consent of mankind, before appropriating more of the common subsistence than you needed for your own maintenance' (Rousseau, 1973: 204).

### *Importance of Consent*

Rights-holders do not need the consent of others to their rights, as rights are a claim that all must respect, a claim that forces compliance from others. But the extent and scope of rights can be a subject for debate amongst rights-holders, especially

when the subject of such rights is something which is both limited and that others are also entitled to, as with natural resources. As a result, the language of consent was also used to limit property ownership.

Grotius believed that property in resources was based on, as Salter puts it 'reason and decision' (Salter, 2001). For Grotius there is no property in a vacuum, as it is only in the presence of others and through their agreement, that we can own property. So, though the mixing of an individual's labour with the resource or the consumption of such is an intergeral part of this process, it is neither the main way to distinguish between what is held in common and what belongs to the individual alone nor the justification for an individual, exclusive right to that resource. Instead the consent and the recognition of our property rights by others that is necessary (Cuncliffe, 2000) and thus 'the right of the first occupant was now based on the consent of the community' (Tierney, 1997: 332). As Grotius explicitly states -

"Property therefore must have been established either by express agreement, as by division, or by tacit consent, as by occupancy. For as soon as it was found inconvenient to hold things in common, before any division of lands had been established, it is natural to suppose it must have been generally agreed, that whatever any one had occupied should be accounted his own" (Grotius, 2001: 75).

Mathias Risse notes that 'what is crucial however is that [for Grotius] original collective ownership rights constrain appropriation' (Risse, 2012: 101). Salter provides further confirmation of this when he points out that, for Grotius, 'private property thus entailed rights and obligations that did not exist originally and so an agreement was needed' (Salter, 2001: 552). The very nature of property as Grotius describes it, means that we need the consent or at the very least the recognition of others in order to call something our own private property. This recognises the inherent equality and importance of others relative to ourselves and also their claim to the resources we are taking. And this consent can be used to limit the amount that others take and hold exclusively.

Consent also played a role in Locke's understanding of property. Though as Varden points out, with reference to John Cuncliffe (Cuncliffe, 2000), in contrast to Grotius, Locke did not believe that consent was required for any individual work upon resources that are common to all (Varden, 2012: 425, Note 25) for 'if such consent as that were necessary, man had starved, notwithstanding the plenty God had given him' (Locke, 1980: 19). But to transgress the limits to that labour, particularly with regard to the spoilage limitation, 'mutual consent' was necessary to introduce 'some lasting thing that men might keep without spoiling', such as money (Ibid.: 28). Overall he argued that 'it is plain that men have agreed to a disproportionate and unequal possession of the earth' (Ibid.: 29) as it is to the benefit of all. Rights-holders are therefore entitled to claim the natural resources they need for their preservation, but to go beyond this they require the permission of others.

Locke believed that all would agree to unequal possession of the earth, despite their equal claims to the resources of the common store, and the initial limits to property. This was firstly due to the advantages that labour and property bring, especially with regard to the improvement in the quality of life. Secondly, the imperative from God that the world he created be developed (Ibid.: 21 and see also Coleman, 2005) would ensure that all would support the development of the earth. Finally, this presumed agreement can also be linked to his belief that there is an abundance of resources. Locke does not believe that land and other bounded resources are infinite, but it is clear that he believes that the resources available exceed demand (Locke, 1980: 21 and 23 - 24). Individuals would therefore have no need to refuse their consent to the unequal division of resources. The unequal division of the environment is only possible through the consent of all, with all equally required to give up their claims to the earth. That Locke believes this consent will be easily come by does not mean he is not sincere in stipulating that it is essential.

The importance of consent to the extent of labour and property was also stressed by Rousseau. His belief in the importance of agreement and consent draws heavily on the republican tradition. This is seen in his explanation of how the social contract underpins labour and the property that results, creating an 'association which will defend and protect, with the whole of its joint strength, the person and property

of each associate' (Rousseau, 1994: 54). So each individual makes their property over to their fellow citizens, with whom they have joined together to make a republic but, though 'the community receives the possessions of individuals it does not in anyway despoil them, but instead ensures their ownership is legitimate, changing usurpation into genuine right' (Ibid.: 62). The social contract therefore mediates both between the state and the citizens and between citizens, providing a means by which labour and ownership of resources is recognised by all and 'the state acts as the basis of all rights' (Ibid.: 60). This is why Rousseau insisted that 'the right that each individual has over his own property is always subordinate to the right that the community has over everyone' (Ibid.: 62). Indeed, when citizens receive their resources through the social contract, they are classed as proprietors of public goods not independent owners of property: 'those having possession being therefore considered as persons entrusted with public property' (Ibid.: 62). Overall, Pierson sums up the role of the social contract best when he describes it as a way to 'inaugurate property rights' (Pierson, 2013: 3). Under the social contract, the state can ensure that none take too much and turn the 'possession' of first occupancy into acknowledged ownership, provided it leaves none without. Furthermore, all can refuse to recognise as legitimate the wastage or unsustainable use of resources. By balancing the claims of all and making each the guardian of another's work, the social contract can ensure that each has enough to labour upon and is guaranteed the results of their labour.

The limits that environmental rights impose on the claims of others therefore need to be decided by the rights-holders themselves acting together. Grotius, Locke and Rousseau all suggested that ownership of natural resources requires the consent of others, though whether this be to the initial act of possession as Grotius proposed, or to the move past other limitations (such as the spoilage proviso) as Locke believed. Despite these differences, the shared stress on the importance of consent comes from the same premise; that all have an equal right to the earth, and, as the environment is finite, for one person to exercise their rights will restrict the ability of others to do the same. The equality of all implicit in their equal rights of the earth means that their consent is essential to the use of the environment they are entitled to.



The three limits to property suggested by the past thinkers, namely, the need to leave 'enough and as good' for others', the need to take only what is necessary, and the need for consent have been set out. The presence of these limits in the previous conceptions of environmental rights shows that not only were these authors aware of the disadvantages that labour and property could cause when applied to finite resources, but also that they were prepared to suggest potential solutions and ways of reconceptualising and rethinking what the claims of all to the earth meant. As a result these limitations are two-way, allowing the claims of environmental rights to impose limitations on the rights of property and also limiting the claims that environmental rights themselves entitle their holder to make. As a result of this inter-relatedness, this understanding of the right to property in natural resources that results is stronger, for it ensures that all can take and hold the resources they need, fulfilling the themes of equality and freedom as well as (limited) claims. As with Rousseau's attack on property, the aim is not to abolish ownership of natural resource outright, but to reconceptualise what this means and so balance the claims of all, ensuring that all can fulfil their environmental rights despite the fact that the subject of those claims is finite.

### Republicanism and the Agrarian Laws

This section will show that republican thinkers also argued for limited ownership of the environment through an examination of Machiavelli and Harrington. The republican commitment to the common good and an emphasis on the conditions for freedom necessitated a strong engagement with the problem of access to resources and monopolisation. As Jefferson explained 'I am conscious that an equal division of property is impractical. But the consequences of this enormous inequality producing so much misery to the bulk of mankind, legislators cannot invent too many devices for subdividing property' (Jefferson, 1977b: 396).

These devices are known in the republican tradition as agrarian laws, as they are specifically designed to limit the amount of natural resources that any individual can own in order to ensure equality within the republic. The agrarian laws were not set out to secure environmental rights, as Pierson notes in his examination of Harrington's

understanding of the agrarian: 'Harrington is certainly concerned with the distribution of property and despite his sometime disavowals with its redistribution but not upon the basis of any natural right' (Pierson, 2013: 193) and 'Machiavelli... never employs the language of rights' (Skinner, 1998: 18). Instead the overall focus is on securing the foundations of the republic by capping the amount that any citizen can claim to prevent inequality and so domination from flourishing. Though rights are not pre-eminent here, the themes of freedom and also equality and claims are present here in the same way that they motivate the accounts of limits to property set out above. The agrarian laws therefore also represent a reconceptualization of claims to the environment and an understanding of how the language of limits can be used to think this through.

In the *Discourses on Livy* Machiavelli noted that in the classical Roman republic, two agrarian laws were introduced: the first ensured that 'no citizen could possess more than so many jugera of land' (Machiavelli, 1996: 79, with jugera being the equivalent of 'the amount two oxen could plow in a day', Ibid.: 60, n.4) and the other declared 'that fields taken from enemies should be divided among the Roman people' (Ibid.: 79). The agrarians thus 'limited the amount of public land that any citizen could hold and redistributed to the plebeians public lands held already in custody by wealthy Romans' as John McCormick put it (McCormick, 2013: 885). These laws offended both the nobility and the plebeians, as they allowed the republic to take land away from one group and denied the other the chance of gaining it. Opposition to these laws led to discord between the people, who turned first to one leader and then another to lead their factions as both the plebs and the nobility tried to seize more land from each other and from the state. Machiavelli summarised this conflict as the 'scandals the agrarian law gave birth to in Rome' (Machiavelli, 1996: 78).

As discussed in the theoretical overview, Machiavelli was in favour of conflict and tension within society:

'Those who damn the tumults between the nobles and the plebs, blame those things that were the first cause for keeping Rome free and that forth, and that they consider the noises and the cries that would arise in such tumults more than the good effects that they engendered' (Ibid.:16).

However, the dissent over the agrarian laws went too far and destabilised the Roman republic entirely. The conflict began when the plebeians 'wish[ed] to share honour and belongings with the nobility' (Ibid.: 78) and

'shows how much more men esteem property than honours. For the Roman nobility always yielded honours to the plebs without extraordinary scandals, but when it came to property, so great was its obstinacy in defending it that the plebs had to recourse to the extraordinary... to vent its appetite' (Ibid.: 80).

The tensions surrounding the agrarian laws were described as extraordinary because they went much further than previous quarrels. Though Machiavelli had praised the agrarian laws for causing essential tumult, he recognised that they had the potential to cause long-term instability because they involved the control of that which was central to honour, power and preservation, namely natural resources. Though the agrarian laws could create the conflict that liberty required, the 'esteem' granted to ownership of natural resources meant that they fostered as much corruption as they prevented. Control of natural resources and the honour and prestige that brought was, Machiavelli believed, key to understanding the collapse of the republic into factions and civil war.

Whilst he attributed the downfall of the Roman republic to the conflict created by the agrarian laws, Machiavelli did not oppose the concept of agrarian laws entirely. This point draws on McCormick's reading of Machiavelli (McCormick, 2013), which argues that Machiavelli did not oppose the idea of agrarian laws, but instead saw them as necessary to prevent inequality, corruption and the end of the republic. 'The fatal flaw therefore according to Machiavelli resides not in the laws themselves but in the fact that they were not instituted until it was too late for them to be passed without violent opposition or too late to be fully efficacious upon enactment' (Ibid.: 886). Had the laws been in place at the beginning of the republic, or enforced through military strength (Ibid.: 888 – 891), they would have preserved rather than damned the republic. Machiavelli therefore 'concludes... by validating the necessity of laws precisely like those [agrarians] proposed and promulgated' (Ibid.: 885).

The reason why this conflict was so destructive was that it was caused by what Machiavelli believed to be the two key threats to the stability and long-term security of the republic: *fortuna* and corruption. The conflict over the agrarian laws was sparked by *fortuna*, in the form of newly-acquired resources, and corruption in that the nobility wanted to possess these resources and the plebeians wanted to share in this honour and spoils. 'This inequality, Machiavelli suggests, corrupted the functioning of Rome's assemblies as increasing poor and vulnerable citizens stopped questioning, criticising and when necessary actively opposing legislation sponsored by increasingly rich, influential and self-interested individuals' (Ibid.: 887). What McCormick does not address is that the citizens were 'increasingly poor and vulnerable' because the nobility were taking the lands and resources that were uniquely fundamental to their survival. The conflict over the agrarian laws affected them more powerfully than previous tumults.

'Machiavelli, holding a cyclical view of history, supposed that the virtue and glory to which he urged republics to aspire would inevitably be impermanent' (Worden, 1994: 88). But though the republic could not be permanent, it could be extended through good government based on the virtue of its citizens, which would include careful control of environmental resources through measures such as the agrarian laws. As a result, Machiavelli suggested that the republic should control natural resources, to ensure balance and that citizens were able to access them as the state dictates but not to own them and no debate or change in this permitted. It is the republic as a whole which should benefit from ownership of and access to natural resources, rather than individual citizens and thus 'well-ordered republics have to keep the public rich and the citizens poor' (Machiavelli, 1996: 79). This allows for the conservation and management of finite resources far more directly and helps the republic weather the storms of *fortuna*.

Barry suggests that Machiavelli's acceptance of both the vulnerability of the republic and the inevitability of its fall along with his suggestions for prolonging its existence in the face of this threat are highly relevant for current environmental understandings (Barry, 2012: 226). As he points out 'politics for Machiavelli... is an attempt to build an enduring and safe home for human lives in a world ruled by contingency and filled with potentially hostile agents' (Ibid.: 223). Barry links this

awareness of the vulnerability of the republic and the need for the citizens to be vigilant against threats with the challenges of 'existing unsustainably'. He points out that Machiavelli also made this link when he examined the role that the environment plays in shaping the republic and its citizens (Ibid.: 222 – 224). Unfavourable environmental conditions could however be overcome if combined with strict control of resources, which would ensure that Machiavelli's citizen's remain virtuous: 'civic virtue can be produced in even in a fertile location through the use of commonly agreed laws demanding austerity in the interest of sustaining practices' (Ibid.: 224). This would ensure that the citizens developed what Barry defines as 'resilience' to *fortuna* and corruption. Barry does not link this reading back to Machiavelli's discussion of the agrarian laws, but the laws do reflect this point. Through limits to property, and enriching the public rather than the private good, the republic can secure itself against threats and, as Barry notes, this shows an awareness of how important natural resources are to the stability of Machiavelli's republic.

This point was carried further by Harrington, who suggested that, by using the agrarian laws to 'fix' the distribution of land and resources, the republic could be not just extended but made permanent. Harrington's overall place in the republican tradition is highly contested, with Pocock arguing that he is central writer who epitomises republicanism (Pocock, 1975: 384) and 'the crucial figure... who brought about a synthesis of civic humanist thought with English political and social awareness, and of Machiavelli's theory of arms with a common law understanding of the importance of free hold property' (Ibid.: viii). In contrast Jonathan Scott argues that Harrington drew upon the republican tradition only to subvert it (Scott, 1994, 2000 and 2011). Certainly his belief that republic could be fixed forever and the lack of concern for the morality of the citizens marks Harrington out from the tradition as a whole. Despite these differences, in his use of agrarian laws to limit property Harrington drew upon a central theme within the republican tradition.

Harrington believed that agrarian laws would secure the republic forever because they would maintain a balance of power: 'an equal agrarian is a perpetual law establishing and preserving the balance of dominion by such a distribution that no one man or number of men within the compass of the few or aristocracy can come to

overpower the whole people by their possession in lands' (Harrington, 1992: 33). Or as Scott puts it, 'thus Oceana identified the underlying causes of England's political instability and fixed them. It secured the foundation by preventing any further change in the balance of dominium with an agrarian law' (Scott, 2011: 208 and also Scott, 2000: 316) This tactic would secure the republic because, if all own equal amounts of land, then no-one can secure the loyalty of more tenants or have the resources to support a greater number of armed men than another (Harrington, 1992: 16). So while Harrington joined Machiavelli in acknowledging the 'scandal' that the agrarian laws caused in Rome and noting that 'agrarian laws of all others have ever been the greatest bugbears' (Ibid.: 101), he also shared his opinion that such laws were necessary, pointing out that he 'cannot see how an agrarian [law] as to the fixation or security of a government can be less than necessary' (Ibid.: 106) and that these laws 'being good for all, could hurt nobody' (Ibid.: 101). Indeed 'without an agrarian, government, whether monarchical, aristocratic or popular hath no long lease' (Ibid.: 13). Harrington develops other measures to secure the security of the republic and to prevent corruption, such as the rotation of offices, having selected members of the populace vote on laws decided by a senate body, and a strict programme of daily communal ritual (Scott, 1994). But these measures are specifically said to be built upon the equal distribution of land, so that the republic is 'fixed' through 'an equal agrarian arising into the superstructures or three orders, the senate debating and proposing, the people resolving and the magistracy executing by an equal rotation through the suffrage of the people given by the ballot' (Harrington, 1992: 34). The distribution of resources is key to the stability of the republic as it maintains equality between the citizens, ensuring the freedom of all.

But what did Harrington mean by agrarian laws? He defined them as limits to ownership of resources, specifically with regard to inheritance (Pierson, 2013: 195). These laws meant that 'every man who is at present possessed, or shall hereafter be possessed of an estate in land exceeding the revenue of five thousand pounds a year and having more than one son, shall leave his lands equally divided among them' (Harrington, 1992: 101). Harrington also limits the amount of land an individual can own: 'no man, not in present possession of lands above the value of two thousand

pounds by the year, shall receive, enjoy (except by lawful inheritance), acquire or purchase unto himself lands... amounting, with those already in his possession, above said revenue' (ibid.: 101). In contrast to Machiavelli, who defines agrarian laws specifically with regard to the amount of land, Harrington's emphasis on equality of value also makes clear that this refers to other forms of natural resources in addition to land, as can be seen in his reference to 'mixture of estates' and the subsequent different rents and the different amounts of land permitted in Scotland (Harrington, 1992: 129 – 130). The rights of ownership of natural resources are therefore strictly limited in two ways – how much individuals can possess in life and what they can do with these resources after death. These limits are specific to ownership of resources as no limits were placed upon the amount of money an individual could possess. Commentators on Harrington have overlooked this point – for example Pierson notes that Harrington's limitations apply only to landed wealth (Pierson, 2013: 195) but does not make the connection to environmentalism. Yet these laws show how Harrington is aware of the ecological embeddedness of society and the economy, as he realises that whoever controls the environment, controls society as a whole.

Harrington is also aware that all members of the republic depend on the environment. The agrarian laws are designed to ensure that natural resources are spread among the gentry and Harrington is by no means a democrat in the contemporary sense. Indeed he 'denied equality of civic rights to those incapable of self-rule and to those incapable, as he saw it, of participation in communal self-rule' (Davis, 1998: 233) as 'not only did age, gender and economic dependence exclude people from citizenship but issues of status, profession, performance and morality could exclude those otherwise qualified for citizenship from full civic participation' (ibid.: 232). With regard to the agrarian laws, Davis notes that 'the agrarian law of Oceana was a device to preserve a propertied aristocracy as well as to prevent the balance of dominium tipping over into the hands of the few' (ibid.: 231). Davis is correct in his assessment of Harrington but this does not mean that Harrington was completely unaware of the plight of those who do not own the land, nor that he discounted them from the common good. This can be seen from his attack on those who increase the rent on natural resources:

‘racking up rents is a vile thing in the richer sort, an uncharitable one to the poorer, a mark of slavery and nips your commonwealth in the fairest blossom. On the other side, if there should be too much ease given in this kind it would occasion sloth and so destroy industry, the nerve of a commonwealth. But if ought might be done to hold the balance even between those two, it would be a work in this nation equal unto that for which Fabius was called Maximus by the Romans’ (Harrington, 1993: 197 – 198).

The sense of common good is repeated here, with the state balancing the rents on land and resources so that domination is prevented, and yet labour encouraged (Ibid.: 109 – 110) to the benefit of all. This calls back to the tensions between the advantages of labour and the problems of inequality set out in the previous chapter, with the breakup of monopolies and the distribution of resources through the agrarian laws combined with injunctions against racking up rents said to be the solution. As a result, all will be able to access the environmental resources that they need, albeit to greatly varying degrees and their labour will be promoted without any danger to the balance and stability of the whole.

Harrington’s engagement with the agrarian laws showed that they were specifically conceived as limits on the ownership of the environment in order to ensure the conditions for the equality and freedom of all.

This section has shown how the concept of agrarian laws was used within the republican tradition to limit the amount of natural resources the citizens can possess. Designed to ensure that no one citizen becomes too powerful and that there is equality between the populace, agrarian laws address the problem that natural resources are finite. By preventing the monopolisation of finite resource and limiting the ways in which they can be used, the ability of all to claim and access such resources can be fulfilled. Overall, there is a conception of rights to resources within republican theory, but those rights are bound by the republic. The equality and freedom inherent within such rights is stressed, but the claims that they make are limited. So, even though these laws are not designed to secure natural rights (Pierson, 2013: 193) they are designed to secure the freedom of all by preventing inequality and



domination from occurring and securing the republic. This requires that the right to property is reconceptualised and subordinated to the service of the whole, to the common good. The same themes are present here, the same motivations, politics and responses, as drove the rights-based accounts examined in the first half of this chapter. The republican understanding of the importance of distribution of resources and the methods suggested to achieve this are therefore relevant to an understanding of environmental rights, particularly as conceptualised as limits upon resources.

### Conclusion

This chapter has examined the first suggested solution to the tensions and contradictions caused by labour and property upon a finite environment, which are that environmental rights limit the property that each can hold, and that the claims they entitle their holder to make are limited in turn. With reference to the three key themes within rights, this represents an attempt to balance the rights of all to the limited environment, limiting their claims in order to ensure the equality of all. And while this may seem like a restriction of each person's freedom to take and use the environment to which they are entitled as they see fit, by preventing inequality and monopolisation from occurring and giving some power over others through control of the environment that all depend upon, the freedom of all is promoted.

The idea of limits to environmental ownership was suggested by a variety of thinkers, such as Machiavelli, Grotius, Locke, Harrington and Rousseau, all of whom conceptualise such limits differently. The first section set out the three themes within Grotius, Locke and Rousseau's description of the limits to property. These are the idea that 'enough and as good' must be left for others, that individuals are permitted upon and so own only what is necessary and the importance of consent, for both the initial creation of property and in understanding and interpreting these limits. The examination of each of theme drew upon the understanding of labour, of rights to the environment and of rights themselves, set out in the previous chapters, and combined them to question the extent of rights to own the environment. Balancing the claims of all to their shared environment required rethinking the extent of these claims and

reconceptualising the rights to own the environment. The rights to private property that resulted were more dependent on others, more interlinked with other rights-holders and their environment. If this means that the resulting right to property was not as initially thought, then that may be no bad thing.

The second section of this chapter set out an alternative means of limiting property in natural resources. Known as the agrarian laws, this approach imposes strict limits upon ownership of natural resources, enforcing limits which cannot be transgressed without threatening the stability of the republic as a whole. This section examined how two central figures within the republican tradition, Machiavelli and Harrington, interpreted these laws. Though they did not draw upon the idea of rights in formulating and justifying these laws, the same themes of limited claims, equality and freedom are present here. The agrarian laws are said to be necessary to secure the conditions for the freedom of all, by preventing any one person from gaining enough power and influence to destabilise the republic. That it is control of the environment that is said to grant this power, and so must be regulated by specific laws, shows the awareness of the importance of the environment, especially to the freedom of all. As a result, this explanation of why and how property should be limited is relevant to an account of claims to the environment.

Despite the differences within the two conceptions of limits to property, they are both driven by a desire to offset the disadvantages of property and to promote a less consumptive lifestyle, wherein resources are used and managed for the good of all. In this way they are a precursor to the current debates around sustainability and the need to restrict the use of resources and raise key questions for contemporary environmentalists.

These questions centre on the fact that these two accounts of limits to ownership of the environment stress the necessity of limiting the claims that individuals can make in order to ensure the equality and freedom of all. In this way, the thinkers who propose this solution chose to restrict one of the themes inherent in rights in order to promote the other two. Current green politics has often attempted to not draw attention to this limitation for political advantage (Dobson, 2007: 120 - 121, 147 and 202) but the example of the past thinkers suggests that they should

embrace this reconceptualization, stressing the benefits of limiting claims and so ensuring that there are enough resources to ensure rights of all to their environment and the independence this can bring.

This reconceptualization is tempered by the emphasis on consent within this solution, especially as developed by Grotius, Wollstonecraft and Rousseau. This factor is critical for our current understandings as promoting the benefits of limitation will be easier if people can define enough and necessity for themselves. If consumption is to be reduced so that all have 'enough' or limits imposed on property to prevent resource damage then questions of consent, of who is agreeing to this and what they are agreeing to, will need to be decided.

The question of the extent of these limits, of just what limits rights-holder may decide to place on property leads to the second solution to the tensions inherent within environmental rights developed by the past thinkers, that of reclamation and redistribution.

## Chapter Five: Reclaiming and Redistributing Resources

An alternative solution to the tension inherent within environmental rights is that put forward by Winstanley, Ogilvie, Spence and Marx, who suggested that environmental rights be interpreted as the right to reclaim and redistribute natural resources. This chapter will examine this solution, showing how it emphasises the theme of equality of all, albeit at the expense of freedom.

From the opening explanation of the reasons given to justify taking back environmental resources this chapter will move to explore the suggested means and methods by which land and other natural resources should be reclaimed. With the reasons for the reclamation of the land and the means by which this is to be achieved set out, the alternative systems of redistribution, involving state, parish and limited private possession, that are suggested in the place of exclusive private ownership as alternatives that would fulfil the environmental rights of all. Finally, the definition of equality within these alternative systems will be discussed. Though this emphasis on the equality of all to their environment secures one of the key themes of environmental rights, it will be argued that this equality is only possible through the denial of another central theme, that of individual freedoms.

This reconceptualization means that environmental rights would justify taking back resources such as forests or lakes from their owners and shared equally amongst all. In the fracking example, the environmental rights of those affected would enable them to reclaim the land and distribute it amongst themselves. Indeed when environmental rights are evoked it is usually in order to call for reclamation or redistribution, as seen in Jan Hancock's understanding of the concept (Hancock, 2003, especially the work on common property rights in Chapter Six as seen in 137 - 142). As a result this solution has proven popular among environmental activists. For example Kovel's arguments against capitalism and private ownership of the environment in favour of a usufructory approach are influenced by Marx and so draw heavily on this language. He states that in an 'ecologically realised society' all would have rights of ownership to resources of 'special significance' and rights of use and ownership to the means of production (Kovel, 2007: 269) and that these rights would be grounded 'in

each locality' (Ibid.: 247). This solution is also one that many anti-fracking campaigners call for, as can be seen in the Reclaim the Power movement or in Balcombe anti-fracking protests and the subsequent formation of local energy corporations in the town (Barkham, 2014), showing the appeal this radical, revolutionary vocabulary holds.

But before contemporary environmentalists adopt this understanding of environmental rights there are two key questions. The first is the question of how resources are to be reclaimed. As will be shown, Spence and Marx were open to the possibility of violent methods, Ogilvie called attention to the role of institutions and Winstanley argued that rights-holders need to peacefully disengage with the system that oppresses them. Current campaigners will need to decide which method they believe to be appropriate for their own struggles and their own political goals. Secondly, the past thinkers argued strict limitations needed to be enforced in order to ensure an equal redistribution of natural resources and to prevent any further attempts to violate the environmental rights of all, and contemporary environmentalists will need to decide the extent to which they embrace this.

In his chapter on 'the Human Right to Natural Resources', Hancock makes clear that:

'although the principle of [common property resources] is vindicated in this chapter as the ownership system most suitable to the realization of the claimed environmental human right to natural resources, this chapter does not address the practicalities of implementation' (Hancock, 2003: 138).

Yet the past thinkers explicitly addressed these practicalities. Whilst the means of both reclamation and the maintenance of equal redistribution may be unpalatable to modern environmentalists, as this chapter will show they are integral to this understanding of environmental rights and cannot be easily discarded.

Overall, this chapter will examine the solution of reclamation and redistribution of environmental resources and argue that this understanding of environmental rights forces us to confront the tension that finite resources creates between equality and freedom.

## Need for Reclamation

In Chapter Three the disadvantages of labour and the development of natural resources were examined and the thinkers included in this chapter were at the forefront of that critique. From Winstanley's fury at those who 'lock up the treasures of the earth' (Winstanley, 2009j: 223) to Spence's hatred of private landlords, described as 'a host of hereditary tyrants and oppressors' (Spence, 1982e: 96), they all criticise those who monopolise natural resources and violate the rights of all to the earth.

These attacks on those who owned natural resources reflected the political use of natural rights, as set out in Chapter One. As that chapter showed, because they exist 'outside' of society, natural rights can be used to criticise the practices and organisation of society and suggest an alternative. As a result Winstanley, Spence and Ogilvie explicitly draw on the natural rights tradition (see Hill, 1972: 118, Spence, 1982k: 166 and Ogilvie, 1781: 15). Each used natural rights to ground their critique of private property, as it enabled them to argue that exclusive property in resources violated the rights of all to the shared earth. In arguing for the reclamation and redistribution of environmental resources, they were judging their society against this outside standard and trying to change it in order to meet this criteria.

Marx was by no means a natural rights thinker. In attacking private property and excessive ownership of natural resources in particular, he was directly attacking the 'natural' rights of the property owners to use their resources as they saw fit without concern for the rights and needs of others. But as shown in Chapter One, he did support the concept of citizens' rights, which he believed would unite and bind individuals together over shared concerns. Marx can therefore be seen criticising the existing distribution of resources for prioritising the rights of some above the claims and needs of all. This is a political action, a reflexive act that questions the subject of rights themselves. Overall, while Marx's understanding of rights was different from that of Winstanley, Spence and Ogilvie, they all arrived at the same conclusion: namely the environment should be reclaimed from those who hold it, in order to secure the environmental rights of all.

That environmental rights are the motivating factor is made clear by the fact that only private property in natural resources was deemed a violation of rights. All four thinkers permitted exclusive, and even unequal, ownership of non-environmental resources after reclamation. For example, in his outline of an ideal society Winstanley allowed individuals to take goods and class them as their own: what 'any family hath fetched in... either clothes, food or any ornament, necessary for their use, it is all a propriety to that family' (Winstanley, 2009n: 323). That these goods are considered exclusive property of the family is also seen from the description of 'laws to punish them sharply' if anyone were to commit an offence against 'his neighbour's... house or furniture therein' (Ibid.: 293). For Spence the right to property in general is allowed and defended, even as he attacked property in natural resources (Spence, 1982k: 168). Individuals are permitted to own that which does not affect others but as natural resources certainly do not fall into this category, the protected right to property does not apply. This argument can also be seen in Marx's work, for the Ten Point Programme prohibited only private property in land and resources and abolished the right of inheritance (Marx and Engels, 2002: 243 - 244) and the imposition of a graduated income tax suggests inequalities of wealth and possession would be permitted (Ibid.: 243).

This repeated difference between the abolition of property in natural resources and the acceptance of other forms of property demonstrates the importance of the environment. Ownership of the environment gives the property-holder control over the resources that others desperately need to survive. This gives the property-holder a power over others and the ability to dominate them that undermines their equality and freedom and so all other rights. It is therefore only private ownership of the environment that is being critiqued and so only natural resources that will be reclaimed.

#### 'Re-taking the Land': Means and Methods

As a result of this critique of the current system of private ownership, all four thinkers suggested the same solution of reclamation and redistribution of resources.

But how was the environment to be reclaimed? Two approaches were suggested. The first argued that the dispossessed should retake natural resources directly for themselves, the second that the environment be reclaimed on behalf of all through the exercise of political power through state institutions. This section will set out these two approaches with particular reference to the debates over the need for pre-existing political rights, the importance of rights-holders claiming their rights directly for themselves and whether the rights of property owners must be respected. These debates relate back to the idea that reclaiming the environment is a means by which to ensure environmental rights, exploring the 'practicalities' of what it means to have and assert a right to the environment.

There is a further similarity within these separate approaches, namely that all four focus on how to reclaim and redistribute bounded resources such as land, forests, sub-soil resources, lakes or ponds. This is due to practicality as these are the resources that it is physically possible to hold and redistribute, along with the pressing need to reclaim the resources that are believed to be finite before the current holders destroy them. Indeed Ogilvie argued for the reclamation and redistribution of bounded resources, particularly land, because he believed that it was impossible for any one person to monopolise the 'open air' and 'running water' (Ogilvie, 1781: 12). These methods therefore focused primarily on reclaiming bounded resources.

### *Reclaiming Resources through Direct Action*

The first method suggested for retaking natural resources is that the majority of the population act directly to reclaim the resources that have been taken from them.

In a plan likened to a strike action (Hill, 1973: 131), Winstanley's solution for reclaiming the environment was that the poor should refuse to work upon the lands of the rich, as 'for one to give hire and for another to work for hire; this is to dishonour the work of creation' (Winstanley, 2009c: 11) which was given to all by God. Working for hire also enabled the monopolisation of natural resources because it enabled others to possess more land than they themselves could work:

'for by their labours they have lifted up tyrants and tyranny and by denying to labour for hire they shall pull them down again. He that works for



another, either for wages or to pay him rent, works unrighteously and still lifts up the curse' (Winstanley, 2009c: 16).

If the poor withdrew from working on the lands of the rich and instead supported themselves by labouring upon resources, they would secure their own preservation. The rich would therefore be forced to starve or work their lands themselves and so could no longer own vast estates, which contained were far more resources than one person could labour upon. This focus on labour affected the resources that could be reclaimed. Winstanley specifically referred to refusing to work on the land and forests and in choosing to labour on commonly held bounded resources instead. Through labouring on common lands to support themselves *alongside* others, rather than for them, the equality of all would be secured along with their rights to the earth.

As Kennedy puts it, Winstanley's plan for reclaiming the environment 'hinges not so much on the throwing open of enclosures but rather on the withdrawal of wage labour' which 'fundamentally undermines the concrete basis of [enclosure]' (Kennedy, 2008: 129). The private landowners who enclosed the land were not the only tyrants, for Winstanley also classed those who would continue to work for hire to be oppressors, rather than oppressed. These workers were accused of being just as tyrannical as those who owned the lands on which they laboured, so that 'the hand of the Lord shall break out upon every such hiring labourer and you shall perish with the covetous rich men that have held and yet doth hold Creation under the bondage of the curse' (Winstanley, 2009b: 516 - 517). Winstanley therefore believed that 'as long as they continued to work for others for hire, the slaves were complicit in their own slavery' (Alsop and Davis, 2004: 766).

Gurney makes clear that Winstanley 'insist[ed] that land should not forcibly be expropriated' and instead 'acknowledged that private enclosures would not be brought under common cultivation until such a time as they were voluntarily surrendered by their owners' (Gurney, 2007: 102). Gurney is drawing on Winstanley's assertion that the Diggers:

'shall meddle with none of your properties, but what is called commonage, till the spirit in you make you cast up your lands and goods which were got and still is kept in your hands by murder and theft; and then we shall take it from the spirit that hath conquered you and not from our swords, which is

an abominable and unrighteous power and a destroyer of creation. But the son of Man comes not to destroy but to save' (Winstanley, 2009d: 35). Overall Winstanley made clear that 'we do not thereby take away other men's rights' (Winstanley, 2009g: 88). There is a practicality here, in that the Digger movement was vastly outnumbered and could not have survived a physical confrontation. Yet Winstanley was also committed to non-violence as 'a matter of principle' (Hill, 1973: 40). This was because he thought that rights secured by the sword were not truly fulfilled, for the freedom they brought was compromised and created further relations of inequality: 'freedom gotten by the sword is an established bondage to some part or other of creation... Victory that is gotten by the sword is a victory that slaves get over one another' (Winstanley, 2009h: 133). Repeating the patterns of exclusion and violence would not ensure the rights of all, for if one set of rights could be 'justifiably' violated, all rights were at risk. Even though environmental rights concern the basis of all existence, they could not take precedence over other rights and justify their violation.

Spence also believed that the land and other resources must be directly reclaimed by the rights-holders themselves. Yet unlike Winstanley he thought this should be achieved through the physical seizure of all natural resources, backed by violence. Spence distrusted all institutions of society as it stood, believing them to have been unutterably corrupted by the system of private property in land and to act only in the defence of their own property (Spence, 1982h: 109 and 1982g: 105 – 106). In *The End of Oppression* Spence argued that the government's power and interests were based upon extensive private property over natural resources, so reform of this system was unlikely to come from that quarter. But though he makes clear that the landless must act to fulfil their rights themselves, not through institutions, he did not follow Winstanley's suggestion of a peaceful strike. Instead Spence argued that those who so clearly benefitted from violating environmental rights would not voluntarily choose to relinquish such power. That such essential rights would rely on the goodwill of others and be secured only at their behest, sat uneasily with Spence, as it left the fulfilment of environmental rights at the mercy of those who had, he argued, consciously and knowingly violated them. Furthermore, Spence thought that when

individuals' rights are violated all have a *duty* to rebel: 'when the Government violates the rights of the people, Insurrection becomes to the people, and to every portion of the people, the most sacred and the most indispensable of duties' (Spence, 1982k: 170). Consequently Spence argued that those without access to land and resources should secure their rights through direct physical action:

'let us suppose a few thousands of hearty determined fellows well-armed and appointed with officers and having a committee of honest, firm and intelligent men to act as a provisionary government.... If this committee published a manifesto or proclamation directing the people in every parish to take, on receipt thereof, immediate possession of the whole landed property within their district... and that every landowner should immediately on pain of confiscation and imprisonment deliver to the [parish rebels] all writings and documents relating to their estates that they might immediately be burnt' (Spence, 1982e: 95).

Thus the people could quickly reclaim all bounded natural resources and fulfil their rights. And if violence were necessary, then so be it: 'if the Aristocracy arose to... [protest] let the people be firm and desperate, destroying them root and branch' (Spence, 1982e: 95). Knox argued that to see Spence as a committed revolutionary is to fundamentally misunderstand him (Knox, 1977: 92 – 98) but this is hard to reconcile with his warning 'let your blood be upon your own heads' (Spence, 1982i: 120). Chase acknowledges a 'permissive, though carefully qualified attitude to violence' was present in Spence's thought and 'developed precisely in response to his increasing awareness of economic realities of political power based on land' (Chase, 2010: 56). For Spence the violation of environmental rights and the subsequent effect on every aspect of human life and the denial of freedom and political power that resulted justified the extremity of the means.

Winstanley and Spence both argued that in the face of the tensions within environmental rights, particularly those caused by labour and property, individuals should assert their environmental rights by reclaiming natural resources for themselves. Relying on others to provide them with natural resources was seen denying the equality of standing that rights are meant to secure and continued the

position of dependence and vulnerability. Furthermore, this direct action is to be communal, an expression of self-determination on behalf of the community as a whole, reasserting the balanced, group relationships that excessive ownership destroyed. On this reading, environmental rights must be secured through the actions of the rights-holders through collective action which in turn asserts both the claims and equality of all.

Despite this shared conception of how the resources should be reclaimed, Winstanley and Spence differed in their attitude to violence. Winstanley believed that violating one form of rights would threaten all others, so environmental rights cannot be secured through the violation of other rights. Spence reversed this argument in order to suggest that those who have violated environmental rights have shown such contempt for the rights of others (and for their most essential rights at that) that their own rights need not be respected in turn. The importance of environmental rights thus becomes the justification for such violence.

### *Reclaiming Resources through Institutions*

The second suggested means of retaking the land is that of working with and through established institutions and political processes. This was the option that Ogilvie and, to an extent, Marx put forward.

Ogilvie discussed a variety of ways by which natural resources could be reclaimed which all share a common theme; that a powerful actor will reclaim and redistribute bounded resources on behalf of all. The role of monarchs, property-owners, invaders and private corporations were all discussed (Ogilvie, 1781: Part Two) and shown to be capable of bringing about the reclamation of the environment, albeit at different speeds. Crucially direct action by the people was never discussed. It is however clear that Ogilvie believed that these powerful actors would reclaim and redistribute the environment in response to public pressure or in order to win the support of the people. For example Ogilvie suggested that an invading prince could reclaim and redistribute the land in order to gain support for his new rule (Ibid.: 59 - 60) or that landlords would give up their resources in order to appease their tenants (Ibid.: 128 - 133), showing an awareness of the political power that the majority hold. The various means discussed were all based on mass public support and a clear

demand for redistribution which would influence established actors to act to secure the rights of all.

Marx suggested that the environment should be reclaimed through the exercise of political power by the majority. He and Engels clearly stated 'that the first step in the revolution by the working class, is to raise the proletariat to the position of ruling class, to win the battle of democracy' (Marx and Engels, 2002: 243). The 'political supremacy' of the proletariat (Ibid.: 243) was achieved by the bourgeoisie itself, who 'drag it into the political arena' to fight its battles against the aristocracy and 'therefore supplied the proletariat with its own elements of political and general education, in other words it furnishes the proletariat with weapons for fighting the bourgeoisie' (Ibid.: 230). Dragged into the political arena, bolstered by the knowledge of the defecting bourgeoisie and with numbers on their side, the proletariat would form a highly effective political party that could easily achieve its goals:

'This organisation of the proletarians into a class and consequently into a political party... compels legislative recognition of particular interests of the workers, by taking advantage of the divisions among the bourgeoisie itself.

Thus the Ten Hours Bill in England was carried' (Ibid.: 230).

Marx repeated this idea when he noted that the English working class have at their disposal 'their power and... their liberties, both of which they possess legally' (Marx, 2000h: 643). Marx therefore suggested that the proletariat turn their 'powers' against the bourgeoisie, using their superior numbers to create legislation that benefits them and readdresses the inequalities between the two classes. And central to this is the 'abolition of property in land' and the subsequent reclamation of natural resources (Marx and Engels, 2003: 243). Again there is a sense of community here, in that those whose rights have been violated act together to reclaim the resources to which they are entitled. However this means of retaking the land rests on the existence of democratic rights, which the monopolisation of natural resources and the subsequent domination and inequality places in jeopardy.

As a result Marx was also prepared to countenance violence. The opposition of the proletariat and bourgeoisie was described as a 'civil war' which 'breaks out into

open revolution and where the violent overthrow of the bourgeoisie lays the foundation for the sway of the proletariat' (Ibid.: 232). Thus the proletariat 'makes itself the ruling class and, as such, sweeps away by force the old conditions of production' (Ibid.: 244) and 'openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions' (Ibid.: 258). This change in attitude reflected the different rights that the proletariat possessed in each country. Marx made this explicitly clear when he explained that:

'we do not deny that there are countries... where the workers can achieve their aims by peaceful means. However true that may be, we ought also to recognise that, in most of the countries on the continent, it is force that must be the lever of our revolutions; it is to force that it will be necessary to appeal for a time to establish the reign of labour' (Marx, 2000f: 643).

This point is backed up by the contrasting examples of the English and German proletariat. Though the English working class currently 'know not how to wield their power and use their liberties', they possess them (Marx, 2000h: 643). In contrast, the German proletariat do not have democratic rights and so 'in Germany the working class were fully aware from the beginning of their movement that you cannot get rid of military despotism but by a revolution' (Ibid.: 643). If the proletariat can exercise their democratic rights, 'all those pretty little gewgaws... appropriate only in a democratic republics' (Marx, 2000g: 611), then that should be the means by which they retake natural resources. In countries without these rights, the proletariat may have to use violence.

The second approach to reclaiming the land therefore suggests that the dispossessed should assert their political power upon state institutions so that they will recognise and fulfil their environmental rights. As with the first method, the political relationships are crucial here, with an awareness of the political power of the majority being the motivating factor in Ogilvie's explanation of why the powerful would give up their resources. This process also highlights the interconnectedness of rights, with one form able to act to protect another, particularly in Marx's understanding of the role of democratic rights. This awareness of interconnectedness and political power offsets the criticism that this method does not address the existing

inequality and leaves the dispossessed dependent on these institutions, as Spence argued. Instead this method represents a way of asserting environmental rights by turning existing systems to account, making them recognise the strength of the claim that all have to their environment.

This section has set out the two means by which these thinkers believe that the environment can be reclaimed. These two approaches both suggest that the environment should be reclaimed by drawing the political relationships, relationships of dependence and domination, which exist between those who own resources and those who need them. These relationships work both ways, with the property owners dependent on the labour of others, as Winstanley noted and influenced by their public pressure, as Ogilvie believed. This assertion of interconnectivity is reflected in the approach to rights, with environmental rights entwined with and grounding, literally, other rights. Different understandings of this inter-relationship led to different approaches to violence. On one hand, violating the rights of property-owners is said to destabilise all rights, on the other, the unique severity of the threat to individuals' preservation and freedom and the impossibility of asserting other rights without secure access to the environment is said to justify such action.

In drawing out what it means to assert environmental rights, these thinkers highlight how such rights are entwined with the politics of community, dependence and equality. Fulfilling such rights will, they remind us, require going against ingrained power structures and asserting political power. Creative solutions, such as Winstanley's withdrawal of labour, may also be necessary to think around the challenge of disengaging with the systems that monopolise the environment. Overall the equality of all is stressed, whether through the political power that the rights-holders have or through their ability to disturb the established system, violently or otherwise. The need to assert this equality and reclaim the environment is repeatedly stressed and is also present in the understandings of redistribution.

## Alternative Models of Ownership

These four authors aimed not just to reclaim the environment but to redistribute it, as all four thinkers explore the question of what a right to the environment actually entitles individuals to. Winstanley and Marx suggested that natural resources should be communally owned, with individuals entitled to access them and labour upon them, Spence argued for parish ownership with equal access for all, and Ogilvie believed resources should be redistributed equally among individuals. These accounts do not reflect a form of eco-primitivism, a desire to return to the earth without the benefits of industry or development. Instead, they reflect sophisticated, creative approaches to asserting and securing environmental rights in ways which secure the equality of all and ease the tensions within environmental rights. What the four various attempts make clear though, is that to secure one aspect of environmental rights (in this case equality), another will have to give, as finite resources cannot support all.

The main focus here is on rights to bounded resources which can be physically held. However the reclamation and redistribution, such as it is, of unbounded resources is addressed through Marx's discussion of pollution which, as discussed in the theoretical overview, showed an awareness of the damage that can be done to these resources and the subsequent harm caused (Foster, 2000: 80 and 110). The 'universal pollution' that he saw in industrial towns was the result of capitalist industry, and it was the workers who suffered the effects of it as their 'essential elements of life itself were forfeited' (Foster, 2000: 75, also 80). Marx's awareness of this pollution and the damage it caused suggests that control of unbounded resources, such as the atmosphere and rivers, would be included within his alternative system. As the capitalist system was destroyed, the forms of industry which produced such pollution would be limited or prohibited.

### *Central Ownership*

Winstanley and Marx suggested that natural resources should be owned by a central body, such as the state, because if resources were owned and controlled



centrally, then all members of society could be permitted to access them and labour upon them, thus fulfilling their environmental rights. A right to an equal share of the earth would therefore mean that all rights-holders were equally able to access communally held resources.

Winstanley's understanding of this approach was much narrower than that of Marx, as it only included finite, bounded resources. The idea that these resources should be shared amongst all is repeated throughout his work as 'the necessity that the land become a common treasury for all was at the heart of Winstanley's social and political vision' (Corns, Hughes and Lowenstein, 2010: 45). Yet it is only in his final text, *The Law of Freedom in a Platform*, that Winstanley explained how natural resources should be distributed.

In Winstanley's reimagined society, the state owns all bounded natural resources, with the rights of all to the earth being secured through all being equally able to access these resources. Whilst some individuals would work in trades and professions, the majority would work upon the land. However, by law 'every family shall come into the field, with sufficient assistance at seed time to plow, dig and plant and at harvest time to reap the fruits of the earth' (Winstanley, 2009n: 371), meaning that all maintain a connection with the land and assist in labouring upon shared resources. The results of this shared labour are to be placed into communal storehouses and redistributed according to need – 'the earth is to be planted and the fruits reaped, and carried into Barns and storehouses by the assistance of every family: And if any man or family want Corn or any other provision, they may go to the storehouses and fetch without money' (Ibid.: 359). The storehouse system ensured that the distribution of resources could be monitored and controlled. Winstanley imagined two types of storehouse; one to which the raw materials are brought and from which anyone can take either food or materials to work upon, and a second where the finished goods created by tradespeople are taken.

This system was designed to secure the benefits of labour, particularly the improvement in the quality and quantity of goods available, whilst ensuring that the environment as a whole remained in common. Rights-holders were also entitled to all the goods and resources of the society, regardless of whether or not they themselves

laboured upon them, so the preservation of each individual was therefore secured not by the results of their own individual labour but through the results of the labour of all. Overall, the equality of all is stressed – the land was to be owned by all, everyone has equal opportunity to labour upon the earth, with communal labour emphasised and equal liberty to take from the storehouses. Yet the freedom of all is restricted, particularly with regard to mandatory labour, as Winstanley insisted that everyone should work on resources at harvest time. The emphasis here is on the importance of state control and direction – with the centralised body deciding when all should labour upon the land and how the products of such labour are to be distributed in turn.

Marx also developed a plan of centralised ownership of reclaimed resources. For example, under the Ten Point Programme natural resources were to be owned and controlled by the state (Marx and Engels, 2002: 243 – 244). Such centralization enabled labour upon resources through the ‘establishment of industrial armies, especially for agriculture’ (Ibid.: 244) and ‘the bringing into cultivation of wastelands, and the improvement of the soil generally in accordance with a common plan’ (Ibid.: 244). This ensured that resources were controlled and developed in a way that benefitted all. Yet this land was not necessarily all worked in common, for Marx and Engels suggested that land owned by the state could be rented out to individuals and the funds raised used for the good of all through the ‘application of all rents of land to public purposes’ (Ibid.: 243). And as the proletariat controlled and directed the use of resources, the industries which produce pollution would either be stopped altogether or limited in order to improve the life and health of all (Foster, 2000: 110).

This concern for a more productive use of the land led to an emphasis on the importance of equal distribution of the population throughout the state. Marx supported the ‘rescue’ of the population ‘from the idiocy of rural life’ (Marx and Engels, 2002: 224). As Foster points out, this represented a desire to balance the benefits of civilisation and development with the access to resources and lack of pollution that rural life was believed to provide (Foster, 2000: 137). By redistributing the population, the use of localised resources could also be balanced, ensuring that local water supplies or woods were not over used. Population redistribution would

also help break up the 'large industrial towns' which had become so polluted through the concentration of capitalist industry and localised over-population.

The description of the state ownership and management of the environment set out by Marx and Engels in *The Communist Manifesto* reflected the concept of common association set out by Marx in *Economic and Philosophical Manuscripts*, which summarised his understanding of the post-reclamation society:

'[to] retain the benefits of large landed property from an economic point of view and realise for the first time the tendency inherent in the division of land, namely equality. At the same time association restores man's intimate links to the land in a rational way, no longer mediated by serfdom, lordship and the imbecile mystique of property' (Marx quoted in Ibid.: 79).

This examination of Marx's plan for redistributing natural resources has shown how crucial state control is in managing resource use. This is because Marx was primarily focused on how the environment should be owned and controlled, not on what individuals were entitled to. He believed that 'it was in general a mistake to make a fuss about so called distribution and [to] put the principle stress on it' (Marx, 2000g: 615). The principal stress should instead be placed upon the conditions in which resources are used, for 'if the material conditions of production are the cooperative property of the workers themselves, then there likewise results a distribution of the means of consumption different from the present one' (Ibid.: 616). Rights to resources are therefore *not* used to decide the resulting distribution of communist society; instead they underpin the equal initial ownership of the resources in the first place. Marx interprets claims to the environment, and the equality that results and must be maintained, with reference to shared ownership of natural resources and means of production amongst the identified group of rights-holders. This also answers Marx's argument that 'equal' rights can have unequal results (Ibid: 615), set out in Chapter One. So the right to water would entitle its holder to use the water in the wells and lakes along with others as opposed to securing a claim to the source of the water. Individuals were also prevented from polluting the water, as that would violate the right of others to access the water equally. Marx therefore called for redistribution of ownership and opportunity, preserved through the abolition of private property in resources and subsequent state control.

Winstanley and Marx suggested that environment should be owned and controlled by the state, creating an over-arching power that can secure the claims of all. The understanding of positive ownership and usufruct, set out in Chapter Two, therefore reoccurs here, as rights-holders are said to be entitled to use and access resources but not own them. This approach therefore interpreted equal rights to the environment as equal rights to use and access the environment under the direction of a centralised body.

### *Parish Ownership*

Spence is often said to share this approach (see Parssinen, 1973: 135, Claeys, 2007: 96). As Chase explains 'our view of Spence has come dangerously close to being refracted solely through the prism of land nationalisation – a concept Spence, with his suspicions of centralised authority would have had some trouble comprehending' (Chase, 2010: 18). Instead Spence argued for the decentralisation of resource ownership, as can be seen from his warning to the national government not to 'meddle in every trifle, but on the contrary [to] allow to each parish the power of putting laws into force in each case and not interfere' (Spence, 1982a: 63). Spence wished for the environment to be held in common by the inhabitants of a *parish*: 'the land with all that appertains to it is, in every parish made the property of the corporation or parish' (Ibid.: 62) so that that 'the land shall no longer be suffered to be the property of individuals but of the parishes' (Spence, 1982j: 135). He therefore interpreted environmental rights as the right to an equal share of local resources, embedding these rights within the immediate resources. As Knox identifies, under Spence's plan 'by the agreement of its people, the parish would become a corporation, owning all the land within its borders' (Knox, 1977: 78). The parish's total control of all its resources is made clear:

'The land with all that appertains to it, is in every parish made the property of the corporation or parish, with ample power to let, repair or alter all or any part thereof... but the power of alienating the least morsel in any manner from the parish either at this or any time is hereafter denied... Thus are there nor more nor other lands in the whole country than the

parishes; and each of them sovereign lord of its own territories' (Spence, 1982a: 63).

This can also be seen from the way that each individual parish is said to retake the land. Though they are backed by the central armed militia, land and other natural resources are to be retaken and redistributed by local rebels from the parish.

This raises questions about the ability of Spence's model to secure rights to universal resources such as the atmosphere. Spence's presumption that resources which are not physically bounded are infinite meant that he focused instead on those resources which are clearly limited such as land and 'mines, woods, waters, etc.' which could be subsumed within the parish system (Spence, 1982b: 73). Furthermore, Spence accepts this in order to limit the size of the parishes, as they are to be 'designedly not too large that it may the more easily be managed by the inhabitants' (Spence, 1982k: 172).<sup>13</sup> His description of the minimal central government, designed to address issues such as national defence, suggests that they could be held responsible for these resources but this is an extrapolation (Spence, 1982k: 177 – 178). Spence sacrificed the amount and the variety of resources that individuals could securely claim in order to ensure that the claims that they do make can be fulfilled. This links back to the competing ideas of freedom and the idea that rights ensure that their holder has the freedom to make choices, a freedom that is seems to be missing from Winstanley and Marx's centrally-controlled systems.

Within Spence's description of the parish system there are two key elements: rents and storehouses. With regard to the latter, and as with Winstanley, Spence described a system of public storehouse of grain, coals and other essentials in each parish (Spence, 1982j: 137). Yet unlike Winstanley, individuals are allowed to take from these stores only in times of extreme need. This ties back to the idea that environmental rights are designed to promote independence, self-sufficiency and true freedom through enabling labour upon resources. It also suggests that the interpretation of rights to resources can change during periods of crisis, particularly

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<sup>13</sup> This links Spence to the republican idea that a small community is the only way of ensuring direct self-government, examined in Chapter Seven.

those relating to the finite aspect of natural resources, is present here. This suggests both reflexivity and creativity, essential to thinking about claims to a finite, changeable environment.

Equality of access to the parish resources was to be achieved through renting them to individuals (Spence, 1982k: 172). Everyone was entitled to rent shared resources and must be provided with a tenancy if they request one (Spence, 1982k: 173 – 174). They then become answerable to the parish for maintenance of these resources but are entitled to keep the results of their labour and charge others for it. Renting the land to individuals thus served two purposes. Firstly, it permitted individuals to work the land for themselves, securing their rights to both resources and the product of their labour without permitting them to own land and thus risk others rights. In short it ensured usufruct, enabling individuals to have the benefit of labour whilst preventing them from owning property. Secondly, it produced revenue that was split between the inhabitants of the parish:

‘Thus, after a Parish, out of its Rents, has remitted to the state and County, its legal quota towards their expenses, and provided for defraying its own proper contingencies, the remainder of the Rents is the indisputable joint property of all the Men, Women, and Children having settlement in the parish, and ought to be equally divided among them’ (Ibid: 167).

The income from the rents was split amongst the parish inhabitants and varied depending on the amount of rent charged. This in turn differed according to the amount and quality of resources available. Spence acknowledges that each parish has different resources and that as a result some will have resources of either a higher quality (such as more fertile land, older forests etc.), a greater quantity, or both. By acknowledging and compensating for this variety, Spence displayed creativity and flexibility of thought in order to ensure equality of all when faced with a varied environment.

The rent that was paid to parish members enabled them to purchase the increased quantity and quality of goods created through the concentrated labour on the rented lands<sup>14</sup> and so could share in the benefits of development. The money

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<sup>14</sup> The idea of a rights to compensation the lost resources likes to Thomas Paine’s interpretation of environmental rights, set out in the next chapter and Spence explicitly drew attention to the similarity

redistributed from the collected rents also reflected Marx's focus on needs, not strict equality of distribution, for Spence suggests that additional grants be given on the birth of children, allowing larger families to receive more money (Spence, 1982i: 119). Yet, Spence's inclusion of money within his understanding of equality of opportunity and access as well as shared ownership represents a further step in the interpretation of what equal environmental rights entail.

### *Equal Redistribution to Individuals*

The final alternative model of environmental redistribution is Ogilvie's argument that reclaimed resources should be redistributed amongst individuals. Like Spence, Ogilvie believed that environmental rights, particularly those to the land, entitled individuals to labour on their own and to keep the results of their labour for themselves, rather than sharing it among all. However, whilst Spence suggested that this right should be interpreted as permitting individuals to rent the land, Ogilvie believed that environmental rights entitled individuals to privately own the resources. This is a move away from the understanding of usufruct and joint positive ownership, embraced by the other three thinkers, and towards private ownership. However this ownership is severely restricted as individuals can only claim a set amount, equal to that of others.

Ogilvie cashed out environmental rights by arguing that rights-holders were entitled to claim resources in their neighbourhood to own and farm. As the large landed estates of the aristocracy were dismantled by the aristocracy themselves or by outside actors (Ogilvie, 1781: 42), there would be enough land and other resources for a system of small farms, owned and worked by 'the greatest number' of rights-holders (Ibid.: 55 – 56). He assumed that most rights-holders will wish to become 'independent freehold cultivators' (Ibid.: 55 – 56) once they were given 'the opportunities of entering upon or returning to, and resuming this their birthright' (Ibid.: 13).

Right-holders were entitled to claim an area of resources not exceeding 'forty acres' or any more than 'may be cultivated to advantage by one small plough' (Ibid.:

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between the two schemes in the Appendix to *The Rights of Infants*. However he repeatedly pointed out that Paine's scheme did not reclaim resources, which Spence thought significantly contradicted any understanding of environmental rights (Spence, 1982i: 125).

142). This amount is said to be enough to allow one family to survive (Ibid.: 216) but not be so extensive that they can create more than is necessary for survival. Thus a state should aim to ensure that the cultivation of the land is 'just sufficient to maintain its people' (Ibid.: 201) with a focus on using the land to create crops and other necessities for the preservation of all, not the luxuries that fulfil the 'gratification of a few' (Ibid.: 210). This emphasis on sufficiency and subsistence links back to the Ogilvie's acknowledgement that as bounded natural resources are finite, the amount individuals can claim must be limited. This limitation is also based upon Ogilvie's belief that the environment is shared by all on the grounds that all need it to survive. The claims that these rights enable their holder to make are therefore limited and focused on ensuring the survival of all.

Ogilvie stressed that 'no individual can derive... a title to any more than an equal share of the soil of his country' (Ibid.: 12). This caveat is announced immediately after Ogilvie explains that all have a right to the land, so the right and the equality of these rights are inherently linked. The text then goes on to explain that those who own more property than is permitted must give up their excessive possession for 'actual possession of more... cannot preclude the claim of any other person who is not already possessed of such equal share' (Ibid.: 12). This insistence that everyone have an equal share is even said to be 'a maxim of natural law' (Ibid.: 17) and the only way of securing the nation's 'highest degree ... of happiness' (Ibid.: 31). As with Spence, Ogilvie was also aware that bounded environmental resources differ in extent and quality, and this was reflected in how he interpreted an 'equal share'. He suggested that more than forty acres could be claimed in areas with poor quality soil or with fewer resources (such as trees or sources of water). Such variations in claims would balance out as the amount that each individual could produce would be equal for everyone (Ibid.: 142). This provides another example of the creative, flexible thinking needed to conceptualise rights to different resources, as well as thinking about what equality means in an environmental context.

The three ways of redistributing the reclaimed environment have been explored, from Marx and Winstanley's conceptions of centralised control, to Spence's emphasis on the parish and the limited individual ownership put forward by Ogilvie.



What all thinkers share is the idea that this redistribution should focus on equality. Equality of access to essential resources for all is the driving force behind these patterns of redistribution, growing out of the hatred of inequality that resulted from labour and property and the idea that the environment belongs to all. The link between rights and equality, set out in Chapter One, reoccurs as the dominant theme within this understanding of environmental rights. This is because of two factors - firstly, the awareness that all rely upon natural resources for survival and secondly, an awareness that unequal ownership or access to resources creates severe inequality within society, which all four opposed.

The discussion of what is meant by environmental equality was cashed out here to mean equal access to environmental resources or, in the case of Ogilvie, the provision of resources capable of providing for an equal subsistence. However interpreted there is a tension between freedom and equality, particularly with regard to the model of state control of resources and equality of access set out by Winstanley and Marx. Whether freedom is defined as a means, an end or blended combination of the two, it poses a challenge to balancing the equal claims of all to their finite environment, particularly when the resources in question are bounded. This problem of freedom is heightened when these thinkers turn to the question of how to maintain these equal environmental rights.

### Maintaining Equal Environmental Rights

The final section of this chapter will show that the importance of equality to these accounts meant that within these alternative models, measures were introduced to prevent unlimited private property from reoccurring, thus ensuring that the environmental rights of all would be continually secured. Environmental equality was to be achieved through limiting individual freedom, playing one common theme within rights against another.

Winstanley, Spence, Ogilvie and Marx all suggested that the environmental rights of all should be predominantly maintained through the prohibition of buying or selling natural resources to prevent the creation of exclusive claims to resources and

monopolisation. Indeed all four saw the right to purchase or sell natural resources as a violation of environmental rights. Winstanley stated that 'if any do buy or sell the earth or the fruits thereof... they shall be both put to death as traitors' (Winstanley, 2009n: 373) and Spence argued that 'we must destroy... private property in land' and those who try to maintain this system (Spence, 1982j: 135 and 1982d: 82). Marx made clear that private property in land must be abolished in *The Communist Manifesto* and that 'for us [communists] the issue cannot be the alteration of private property but only its annihilation' (Marx, 2000d: 306). Though Ogilvie permitted limited ownership of the land, he made clear that buying more land or selling that which they received is not permitted (Ibid.: 149 – 150). All four thinkers restrict and deny the freedom to buy or sell resources in the interests of maintaining equality. After the reclamation, environmental rights entitle their holder to either own a set amount of resources (Ogilvie), rent or receive the rents of locally owned resources (Spence) or access centrally owned resources in common with others (Winstanley and Marx). They are not entitled to claim more than this. The idea of limits to labour and ownership, introduced in the last chapter as a possible solution to the problem of ensuring that the rights of all to labour upon finite resources is reflected here, albeit in a different form. Here, individuals are either given the limited amount directly, or they labour with others without any question of individual ownership of resources.

This link to labour led to the second way in which equality of resources is maintained. All four wished to encourage labour in order to secure the preservation and independence of all but they denied that labour upon resources would give individuals a claim to them. This breaks the link between labour and property, set out in Chapter Three specifically so the initial pattern of redistribution can be maintained.

Ogilvie denied that anyone can acquire more resources through labouring upon them. He prevented individuals from adding to their allotted land by labouring even if they develop unclaimed or 'wasted' resources. '[A] right founded in labour cannot supersede the natural right of occupancy' which in turn is drawn from the right to the land (Ibid.: 16) and 'actual possession of more... cannot preclude the claim of any other person who is not already possessed of such equal share' (Ibid.: 12). Thus rights-holders are entitled to own a set amount of land, but that distribution is fixed, and

fixed so that it is 'just sufficient to maintain its people' (Ibid.: 201), ensuring equality amongst all. Winstanley, Spence, and Marx do not need to deny the right to own the results of individuals' labour, because they deny private ownership of the shared resources, of the means of production, which instead are held by either the state or the parish. If individuals cannot own resources then they cannot increase their ownership of natural resources or prevent others from labouring upon them. In contrast, as Ogilvie wishes to allow individual's possession of land and resources, indeed interprets equality of resources as owning equal amounts of resources, he must place strict limits on this to prevent inequality.

Winstanley offered a further means of maintaining equality: surveillance. His storehouse system, which allowed all members of society to take either the natural resources or the goods created from those resources that they needed was supported and enforced by consistent surveillance. This would ensure that individuals contributed to communal labour and refrained from buying, selling or hoarding natural resources. The communal utopia Winstanley describes in *The Law of Freedom in a Platform* depended upon policing by 'overseers' who monitor all and ensure that tradesmen take all the goods that they have created to the storehouse. Each storehouse will also be manned by overseers, who will ensure that all goods are placed within the common store and distributed only to those who need them (Winstanley, 2009n: 323 – 329). Furthermore 'all ancient men, over sixty years of age, are general overseers' (Ibid.: 328), meaning that they are entitled to report on the behaviour of others, particularly with regard to not working the land or taking too much – such as those who 'suffer more meat to be dressed at a dinner or supper than what will be spent' (Ibid.: 378). In light of this suggested constant surveillance, J.C. Davis argued that Winstanley accepted and embraced the 'repressive functioning of the state' (Davis, 1976: 92). Whilst to label Winstanley a totalitarian is to overstate the case, it is certainly true that his description of the ideal state is based on monitoring and surveillance of all aspects of individuals lives and that this is said to be necessary to secure the environmental rights of all.

This section has shown how Winstanley, Spence, Ogilvie and Marx believed equal rights to the environment should be maintained. They responded to the disadvantages of labour and ownership by tearing up the existing distribution of resources and imagining new ways of allocating and managing resources that would ensure that the environmental rights of all were respected. These solutions were seen as essential if oppression and rights violations were not to occur again, as without such limits, monopolisation and destruction of resources could creep back and resources would have to be reclaimed all over again.

What underpins these three solutions is the privileging of equality over freedom, of choosing to establish barriers to freedom in order to ensure that the rights of all are equally secured. This solution is a political one, for in choosing to sacrifice individual freedoms in order to secure equality, these thinkers make a trade-off between two central strands within the concept of rights. This limitation on what can be done with resources, on individual labour, and in the case of Winstanley, what we would understand as a free life, are said to be necessary restrictions, limitations only in the way that denying someone the freedom to steal from others is a restriction.

## Conclusion

Ogilvie confidently claimed that his wish that 'property in land should be diffused to as great a number of citizens as may desire it' was 'no impracticable Utopian scheme' (Ogilvie, 1781: 195). This chapter has shown how four of the past thinkers conceptualised environmental rights as the right to reclaim and redistribute environmental resources and argued that this was 'no Utopian scheme' but a practical possibility.

There are strong similarities between these accounts. All began with a critique of the system of exclusive private ownership, which they believed represented a violation rather than the fulfilment of environmental rights, as it created inequality, exclusion and dependence. As a result, Winstanley, Ogilvie, Spence and Marx all argued that the fulfilment of environmental rights demanded that natural resources be taken from those who hold them. Once resources have been reclaimed on behalf of all, they are then to be shared between all rights-holders, with measures in place to

prevent anyone monopolising them again. Despite this strong similarity there is a variety within this outline, allowing for flexibility and responsiveness to circumstances and the way in which individual interact with their environment.

This emphasis on equality involves thinking through what equal environmental rights mean. Conceptualised as rights to reclamation and redistribution, when described in this language and in these concepts, environmental rights are grounded in the immediate environment, specifically in nearby bounded resources and in the communal labour of all. The reappearance of the concepts of usufruct and joint positive ownership of the earth also stress that these are rights shared by all and so limited by the claims of others. These understandings of environmental rights present them as rights of equality, asserting the exactly equal claims on behalf of all and ensuring their equality in turn. This embedded grounded understanding also reflects the relationships between individuals, in both the ways of reclaiming the environment and of enforcing this equality. This point is particularly brought to the fore by Winstanley, who drew on existing relationships of dependence to both reclaim resources and enforce surveillance by the community.

The alternative understandings of how the environment should be reclaimed answer the questions of 'the practicalities of implementation' that Hancock avoids (Hancock, 2003: 138). As a result, these radical, revolutionary thinkers remind us that fulfilling and securing environmental rights, particularly equal environmental rights, may require extreme and desperate measures. Even if current environmentalists do not share these conclusions, if they engage with this concept then they will need to engage with the questions of methods and how to ensure equal environmental rights just as these past thinkers did. For example, Kovel and the anti-fracking movement are certainly not calling for the violent reclamation of resources, nor that a subsequent distribution be defended through the death penalty and intense surveillance. But they need to make clear why they are rejecting these solutions and the alternative answers they are giving to these 'questions of implementation', of how natural resources are to be reclaimed, how they are to be redistribution and how this redistribution is to be maintained, if they are not to develop purely 'impracticable Utopian schemes'.

Winstanley, Ogilvie, Spence and Marx all believed that, if given the chance to directly fulfil their environmental rights and to labour upon resources, the majority would accept. After all this would enable them to preserve themselves and live freely, independent of others. Indeed reclamation and redistribution were specifically designed to ensure that all can directly access natural resources. But what if individuals choose not to labour upon resources? For example Spence's system of rents and the subsequent distribution of the money raised, suggested an alternative language of equivalents. Spence saw this as a secondary theme within the larger concepts of reclamation and redistribution but other thinkers draw upon this language directly in their reinterpretation of environmental rights, as the next chapter shall show.

## Chapter Six: 'As Good' and Equivalents

This chapter will examine the third approach to resolving the tensions within environment rights, which is developed by Locke, Paine, Thelwall and Mill. The solution set out by these four thinkers suggested that environmental rights entitle their holder to claim an 'as good' equivalent or compensation for environmental resources. So instead of seeking to limit the labour and property of some, or of taking resources from those who own them and redistributing them amongst all, this solution suggests that environmental rights entitle their holder to claim resource equivalents to compensate for their lack of natural resources. The environmental rights of all can thus be equally fulfilled, despite the limited amount of resources themselves. This interpretation of environmental rights addresses head on the problems of securing the rights of all to finite resources and demonstrating the creative reimagining that James believes is necessary when thinking through what it means to have rights (James, 2013).

As a result, this solution holds great appeal for modern environmentalists. This is because the reconceptualization of environmental rights as rights to equivalents enables the development and use of resources whilst at the same time respecting and fulfilling environmental rights. This solution to the tensions within environmental rights can therefore accept arguments for economic growth, especially those made by developing countries such as India who argue that they need to be able to use resources (Yeo, 2014) without sacrificing the claims of all to their environment. Thus the benefits of labour and development are secured for all whilst rectifying the disadvantages. This point is reflected in Joseph Sax's work on environmental rights. As discussed in Chapter Four, he argued that there is no 'precept to leave nature untouched' and no right to an unaltered environment (Sax, 1990 – 1991: 94). This is because a society may prefer the benefits of industrialisation and development, seeing these advantages as preferable an untouched environment and this reconceptualization respects and accommodates that choice.

Yet despite the attractions of this solution, some remain wary. For example the idea of compensation and equivalents is a central theme within the debates over

fracking in the UK, with compensation offered to affected communities (Watt and Rawlinson, 2014, Morris, 2014). But in this instance the majority of environmentalists stand opposed to this reconceptualization. These divisions are, I would argue, based upon questions of consent, what is an acceptable equivalent and the balance of equality, claims and freedom. And in their reconceptualization of environmental rights and engagement with the concept of equivalents, the past thinkers specifically answered these questions, offering up solutions that current environmentalists could use.

This chapter will therefore show how and why Locke, Paine, Thelwall and Mill reconceptualised environmental rights in this way and the alternatives within these approaches, linking back to the debate over what equality, freedom and claims should mean with regard to environmental rights.

All four strongly oppose the reclamation of resources, as the first section will show. This was because not only would the advantages of labour and private property be lost, but the rights of the property-owners violated. The idea of 'as good' equivalents was introduced to square this circle, providing a means by which the environmental rights of all could be secured, despite the fact that natural resources are finite and have already been used or claimed by some. This rejection of reclamation is tied to an insistence on the importance of consent – equivalents are only valid if all agree to their introduction. Otherwise they represent a continued violation of environmental rights, rather than a creative reconceptualization.

Despite this shared rejection of reclamation these four thinkers had very different conceptions of what would be an appropriate environmental equivalent. Each interpretation grows out of a different understanding of environmental rights. By examining the competing understandings of environmental equivalents we can interrogate the purpose of environmental rights. In discussing what is 'as good' as the environment therefore, what is important about the environment, and what environmental rights are designed to secure, becomes clear. And current environmentalists need to decide for themselves the answer to this question if they are to use this solution.



## Rejection of Reclamation of Resources

Chapter Three showed that the past thinkers were caught between the advantages and disadvantages of labour and property - on one hand, labour and property represented the fulfilment of environmental rights, what environmental rights are designed to enable their holder to do. On the other, they represent a threat to such rights, for they enable the destruction and monopolisation of the environment. And the finite nature of the environment means that if one individual exercises their environmental rights in this way, then the ability of other rights-holders to do the same is fundamentally compromised. Locke, Paine, Thelwall and Mill were all aware of this dilemma, though with differing degrees of severity. Mill for example was acutely aware of the problems that result from the fact that 'no man made the land' (Mill, 1965: 230) though Locke skimmed over this problem, due to his belief that there were more resources available than required (Locke, 1980: 25 - 26). Though they are aware of this tension, overall these thinkers wished to promote labour and property upon natural resources, to ensure both the preservation and an improvement in the quality of life for all. As a result, they rejected the solutions examined in the previous chapters, specifically that of reclaiming and redistributing resources.

Paine's opposition to 'retaking the land' is based upon the sharp distinction that he draws between natural and artificial property, with the former being the natural resources of the earth that belong to all and the latter being the results of individual labour. As Claeys points out, Paine argued only for equality in the former (Claeys, 2007: 44 – 47) and *Agrarian Justice* was written in *opposition* to French revolutionary Babeuf's arguments for the seizure of all goods (Paine, 2000c, 321 - 322). For Paine, only uncultivated land is 'the common property of the human race' and individuals were entitled to 'the value of improvement' that their labour had brought about (Ibid.: 327). And, like Ogilvie, he believed that the unequal system of land ownership was not the fault of current landowners – 'the fault is not in the present possessors' (Ibid. 326). Thus 'while therefore I advocate the right and interest myself in the hard case of all those who have been thrown out of their natural inheritance by the introduction of the system of landed property, I equally defend the right of the

possessor to the part which is his' (Ibid.: 326). So far is Paine from calling for the reclamation of the land that he refuses even to impose a limit on the amount that can be owned. Paine explicitly contrasts his work with that of the republican thinkers, arguing openly against the system of agrarian laws, set out in Chapter Four:

'Nothing could be more unjust than agrarian law in a country improved by cultivation; for though every man as an inhabitant of the earth is a joint proprietor of it in its natural state, it does not follow that he is a joint proprietor of cultivated earth. The additional value made by cultivation after the system was admitted, became the property of those who did it, or who inherited from them, or who purchased it' (Ibid.: 326).

Paine's method of ensuring the claims of all to their environment was designed to respect this difference between equality of ownership over resources and the inequality of claims to developed resources.

Mill opposed the reclamation and redistributing of resources on the grounds that it would be a violation of the property holders rights. This point is made clear in his work for the Land Tenure Reform Association, when he repeatedly stressed that neither he nor the Association 'take it upon themselves to decide' if private property is a mistake (Mill, 1967b: 690). He emphasised that 'the Society is formed to promote, not the abolition of private property, but its reform and the vindication of those rights of the entire community which need not be and never ought to have been, waived in favour of the landlords' (Ibid.: 690). As Mill put it when defending the Association: 'we shall not be suspected, we hope, of recommending a general resumption of landed possession, or the depriving anyone, without compensation, of anything which the law gives him' (Mill, 1969a, 157). This is because, for Mill, rights are 'something which society ought to defend me in possession of' for 'no other reason than general utility' (Mill, 1969b: 250). If society will not defend an individual's rights, then the rights of all are undermined. Respecting rights guarantees the long term 'security' of all (Ibid.: 251).

Thelwall also argued against reclaiming and distributing natural resources on the grounds that it was against the good of all, though he does not make the appeal to rights that Mill does. Instead he states that: 'in the present state of human intellect and human passions, absolute equality of property is totally impossible. It is a visionary

speculation which none but the calumniators of the friends of freedom ever entertained' (Thelwall, 1995c: 193). 'Reinstating an equality of landed property was, to Thelwall, clearly impossible' (Claeys, 2007: 146) and he fought instead for a 'golden age of equality: I mean the imperceptible gradations of rank, where step rises by step by slow degrees, and link mingles with link in intimate and cordial union, till the whole society connected together by inseparable interests indulges that fellow feeling between man and man' (Thelwall, 1995c: 194). Despite his commitment to the equal rights of all to the earth Thelwall argued that inequality of ownership produced the best outcome for all, provided it was based on agreement and promotes the overall interconnectedness of all members.

In contrast, Locke does not specifically state his opposition to the idea of reclaiming and redistributing natural resources because he would not comprehend such a plan. 'God commanded, and his wants forced him to labour. That was his property, which could not be taken from him' (Locke, 1980: 21) and the role of government was to ensure this. If the government were to reclaim and redistribute resources or not act to prevent others from doing so, then the property owners would be entitled to dissolve it and form another which would protect their holdings.

Locke, Thelwall, Paine and Mill therefore rejected the idea that natural resources should be retaken from those who held them and redistributed equally among all. This is because, particularly for Paine, Thelwall and Mill, they saw the extensive ownership of resources on the part of some and the resulting inability of others to exercise their environmental rights as the result of all fighting to exercise their equal rights to limited resources, rather than a deliberate violation. Over-riding the rights to property in natural resources would therefore be a violation of environmental rights and, as Mill suggests, be conceptually incoherent too, as both claims have equal weight, and their holders have equality of status. Instead all four thinkers seek to secure the rights of all to the environment, property-owners and the disposed alike. And since there is a finite amount of resources and more cannot be created, the means by which they choose to do this is by providing 'as good' equivalents to those without.

## A Right to 'As Good' and Equivalent Resources

The idea of a right to 'as good' or equivalent resources is suggested by Locke, Paine, Thelwall and Mill to ease this tension. Under this solution, rights-holders are entitled to compensation for the move away from a common store in which their environmental rights were fulfilled.

This description comes from Locke and his limit to labour which ensured that 'there was still enough and as good left' (Locke, 1980: 21) for others. This proviso was discussed in detail in Chapter Four, with reference to the limits on property imposed by 'enough' but here it is the implications of what is 'as good' that will be developed. This equivalent may come in the form of a monetary payment, through the state taking action to provide equivalent resources or through an injunction on the property-holder to ensure that there is 'as good' left for others. Whilst what 'as good' means varies – is it a means of subsistence, money, or resources themselves? – the idea that individuals should receive *something* in recognition of the fact that they lack the resources they are entitled to is consistent across these works. This equivalent represents a re-interpretation of what these rights mean in a post-common store, industrialised society. As Chapter Two showed, all the thinkers in this thesis suggest that all have rights to environmental resources. Reconceptualising these rights means that the central themes of claims, freedom, and the equality of all are respected, though the actual substance of the claim changes – from the right to land and water to the right to 'as good' land and water. The understanding of environmental rights remains the same, but the understanding of the environment changes.

Consent plays a key role in this re-conceptualisation as the provision of an 'as good' equivalent is only a valid re-interpretation if the rights-holder permits it. For example in Locke's work on property, the introduction of money was designed to circumvent the spoilage proviso and it is this shift that opens up the idea of equivalents to natural resources. What is crucial to note is that Locke insisted that money was only introduced 'by mutual consent' (Locke, 1980: 28) and that gold and silver 'has... value only from the consent of men' (Ibid.: 29).

Though Paine, Mill and Thelwall do not believe that industrialisation was brought about with the consent of all, they believe that rights-holders will agree to the provision of 'as good' equivalents because it will enable them to both fulfil their rights and share in the benefits of private ownership and development. This is because not only will they benefit from the increase in quality and quantity of life, of what Thelwall describes as 'the greatest advantages' that can be brought about from labour and property (Thelwall, 1995b: 177), but from the protection of rights to resources in general. All four believed individuals would support this new understanding of environmental rights.

What this is an agreement to, varies for each thinker. All four put forward a different interpretation of what is meant 'as good' as environmental resources. The initial understanding of environmental rights that these thinkers put forward focused on rights to air, water, land, forests and sub-soil resources of a quality necessary for human preservation. By suggesting that environmental rights should no longer represent a direct claim to the environment, the question of what these rights entitle their holder to is thrown wide open. The following sections will set out what each thinker within this tradition believed would compensate for a lack of natural resources.

### *Locke and an Equivalent Living*

Locke is the obvious starting point, coming first chronologically and providing the most influential definition of this re-interpretation. Furthermore, Chapter Three laid the groundwork for an analysis of Locke's thought as it set out his initial understanding of 'enough and as good' which limited property ownership by requiring property-owners to leave 'enough and as good' resources for others (Locke, 1980:21). At first this seems to reflect Mill's point that individuals have a right to equivalent resources. But the introduction of money fundamentally changes how the provisos are interpreted.<sup>15</sup> Both the 'enough and as good' and the spoilage limitation are circumvented in order to encourage 'the industrious and the rational' to develop the earth for the good of God and of all (Locke, 1980: 21 also Coleman, 2005). As a result,

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<sup>15</sup> Trachtenberg claims that - 'it is a matter of scholarly debate as to whether the provisos still hold after the invention of money or the transition to civil society' (Trachtenberg, 2011: 14, footnote 10). Yet he does not discuss the 'enough and as good' proviso, despite its clear relevance to an environmental account.

rights-holders are no longer entitled to 'enough and as good resources', but instead have a right to 'as good' to subsist upon (this reading runs counter to Tully, 1994: 121). This means that they are entitled to a livelihood, to work that can support them. So if one person (X) claimed all available resources, but paid others to labour upon these resources then not only would these resources be said to belong to X<sup>16</sup> but they would have left 'as good' for others because they would be able to subsist, due to the wages X paid them. The preservation of all is thus secured.

This answers Pierson's worry that 'it's hard to see how such a finite good [natural resources] could be appropriated while still leaving enough and as good for others' (Pierson, 2013: 217). Though enough and as good resources cannot be left, more than enough and as good is created from labouring upon those resources and from allowing individuals to labour for hire so that they can afford to purchase that which is created. This reading of Locke is suggested by C.B. Macpherson, who argues that Locke believes:

'although more land than leaves enough and as good may be appropriated, the greater productivity of the appropriated land more than makes up for the lack of land available to others...if there is not then enough and as good land left for others, there is enough and as good, indeed a better, living left for others. And the right of all men to a living was the fundamental right from which Locke had in the first place deduced their right to appropriate land' (MacPherson, 1962: 212).

Sreenivasan backs this reading arguing that enough and as good is achieved if: 'either there is sufficient unappropriated land remaining for everyone to produce his subsistence or every plot of appropriated land is sufficiently productive to sustain as it were capable of sustaining prior to being appropriated and this many landless individuals are permitted to access it to produce (or earn) their subsistence' (Sreenivasan, 1994: 141). He argues that Locke's aim is to preserve 'everyone's liberty of access to the means of production' (Ibid.: 152). Thus individuals have rights to their environment in order to secure their preservation, as Locke made clear: 'the earth and all that is therein, is given to men for the

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<sup>16</sup> As 'the turf my servant has cut' is mine, as discussed in Chapter Three on labour

support and comfort of their being' (Locke, 1980: 18). In developing the environment, all will work together on the resources owned by some, both securing the preservation of all and fulfilling God's plan for the earth.

On this reading there is no difference between supporting yourself through labouring for yourself and working for others. This recalls the debate over the position of the servant who cuts the turf, set out in Chapter Three (see Tully, 1988: 136 – 142 cf Cohen, 1995: 188 –194)) and the problems of equality and freedom. Are those who labour upon the natural resources owned by others truly their equal? On one hand their 'liberty of access' to their means of preservation is dependent on the permission of others and so their rights are not secured. Their preservation is not their own hands. Alternatively, 'enough and as good' is a requirement which the property-owner has to respect. This gives the dispossessed a claim against the property-owner that they must respect (Sreenivasan, 1994: 149). There is also a link to Locke's understanding of the rights of charity, which says that property owners are obligated to ensure the preservation of others (see Tully, 1988: 131 – 132, Sreenivasan, 1995:149, Waldron, 2002: 177 – 185, Pierson, 2013: 232).

The claims of all to preservation must be met – though the means of this are open for interpretation. Labourers may be paid with money, or food or resources which can be exchanged, but all ensure the survival of the individual, which Locke believes to be the purpose of rights to natural resources.

#### *A Grant 'to Every Person': Paine and Financial Equivalents*

The idea that rights-holders should be provided with equivalents to secure their survival is also present in Paine's understanding of equivalents. Unlike Locke though, he stresses that this equivalent should ensure their independence as well as their preservation, with his understanding of environmental equivalents taking the form of a financial grant given to all by the state. Whilst Locke simply wished to secure individual's preservation, Paine was concerned with the manner in which this preservation was secured.

In *Agrarian Justice* Paine says that every member of society is entitled to a grant of fifteen pounds when they reach twenty one and a 'pension' in the form of 'the sum of ten pounds per annum... to every person now living of the age of fifty years and

to all others as they shall arrive at that age' (Paine, 2000c: 327). These grants are universal, with Paine explicitly stipulating that 'it is also right it should be [given to everyone] because it is in lieu of the natural inheritance, which, as a right, belongs to every man, over and above the property he may have created, or inherited from those who did' (Ibid.: 327 - 328). All have a right to their environment and so all have a right to the equivalents that result - 'the payments [must]... be made to every person, rich or poor. It is best to make it so, to prevent invidious distinctions' (Ibid.: 327).

Additional grants will be given to the blind, those who are disabled and others Paine believed to be physically incapable of earning their own living (Ibid.: 331). As the rights to the environment are natural rights, the right to an equivalent is too. This ties back to the examination of natural rights in Chapter One, which argued that natural rights are able to critique their current society, providing an 'outside' standard by which they can be judged. Paine used the idea that all have a right to the earth and to the equivalent of this right to argue against the poverty of his society that denied this fact and to justify his alternative.

In order to fund this grant, Paine suggested a tax on all landed property worth over five hundred pounds, which increased with the extent of the land owned (Paine, 2000c: 329 – 330, 333 - 355). He stipulated that this tax was to be taken on the death of the property owner to ensure that individuals retained the result of their industry but broke up the landed estates and attacked primogeniture. This has the advantage of ensuring that no one is 'robbed' by this form of taxation – as the potential inheritors have not worked to create this property, they have no right to it (Ibid.: 328). This tax was specifically justified on the grounds that all have rights to resources. Paine stated that the tax was designed to compensate those who are 'dispossessed of their natural inheritance by the system of landed property' (Ibid.: 333). He referred to this tax as ground-rent, arguing that: 'Every proprietor, therefore, of cultivated land, owes to the community a ground-rent (for I know of no better term to express the idea) for the land which he holds; and it is from this ground-rent that the fund proposed in this plan is to issue' (Ibid.: 325). The basis in environment rights can also be seen from the fact that it is only landed property that is being taxed. To use Paine's distinction this is a tax on natural not artificial property (Ibid.: 327), for it is only the former that violates the rights of others by creating a 'monopoly of natural inheritance' (Ibid.: 328).



Various interpretations of this scheme have been suggested. John Seaman has argued that this shows that the tax upon land is in fact a form of 'ransom', as John Marangos explains:

'This doctrine asserts that those who do not own property have a claim on property legitimately by their virtue of their equal right to nature.

Effectively the landless, in our case, hold private property at ransom, as they may extract a price for allowing owners effective rights to such property. Failure to pay this ransom will undermine the security of property' (Marangos, 2008: 318).

This interpretation acknowledges both the importance of the equal rights of all to shared natural resources and that private property is dependent on the consent of those without. But there are problems with this interpretation - for example if the grants paid represent a 'ransom', why do the property owners themselves receive grants? What Seaman calls 'ransom', King and Marangos liken to basic income theory, with Paine said to be an early proponent of this concept (King and Marangos, 2006, Marangos, 2008), and Van Parijs also suggests that Paine is proposing a form of basic income theory (Van Parijs, 1992). This reading does acknowledge the importance on rights to land and environment for Paine's account (Marangos and King, 2006: 60 – 61) and Marangos notes that 'Paine's vision in *Agrarian Justice* was ingrained in a society structured around land' (Marangos, 2008: 317). But rather than underpinning an account of basic income, in which the provision of money to all is the main purpose, in *Agrarian Justice* the rights to natural resources are the centre of the argument. It is the lack of resources that prompts the reconceptualization and so the provision of a financial grant, not any arguments for the necessity or justification income. Neither Marangos nor King link this back to the claim that rights-holders have been 'dispossess[ed] of their natural inheritance' (Paine, 2000c: 333) which is the sole reason why Paine believes individuals are entitled to this money. Paine is engaging with the problem of how to compensate and reinterpret rights to the environment, not using environmental rights to support a further account of income distribution. Environmental rights are ends in and of themselves, not a means or justification for

additional claims and to suggest otherwise is to confuse the arguments of *The Rights of Man Part Two*<sup>17</sup> and *Agrarian Justice*.

Cuncliffe's interpretation is more convincing, for it describes *Agrarian Justice* as setting out a 'compensation' strategy' (Cuncliffe, 2000: 9) that will 'secure the financial equivalent of natural rights entitlements to land' (Cuncliffe, 2000: 8, emphasis in text). This reading captures the aim of Paine's plan, but does not address what Paine believes the point of such compensation is – what, exactly, it is compensating *for*. I argue that Paine is compensating for the loss of subsistence and livelihood, which he believed rights to natural resources would secure. These grants could be used to purchase resources, but through allocating a monetary grant (rather than resources themselves) Paine is choosing to provide individuals with the end result, with the secure, self-sufficient preservation and independence that claiming resources would give them, rather than the resources themselves. This point is illustrated by Paine's comment that 'when a young couple begin the world, the difference is exceedingly great whether they begin with nothing or with fifteen pounds apiece' (Paine, 2000c.: 333). Overall this grant was designed to secure the equality and independence of the rights-holders, enabling them to support themselves and decide for how to live their life without relying on others.

*'Something more in the general distribution': Thelwall and a share of profits*

Paine's contemporary Thelwall also suggested that environmental rights should be reconceptualised as allowing their holder to claim a financial equivalent. As shown in Chapter Two, Thelwall argued that 'man, from the very circumstance of his existence, has an inheritance in the elements and powers of nature, and a right to exercise his faculties upon those powers and elements' (Thelwall, 1995f: 458). In his support for labour Thelwall does initially seem to reflect Locke's point that equivalents should be provided at the point of initial acquisition. As Iain Hampsher-Monk explains:

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<sup>17</sup> While the scheme in *The Rights of Man Part Two* also included grants to those in need, funded by a land tax (Paine, 2000b: 232 – 233 and 242) there are two main differences. First under the plan set out in *The Rights of Man*, payments are to be made only to those who meet set criteria, unlike the universal grant of *Agrarian Justice*, given to all on the basis of each individual's claim to the environment. Second, though *The Rights of Man* does draw on the idea of a land tax, this is second to other forms of tax.

‘To monopolise a piece of land, presumably when land has become scarce is [for Thelwall] equivalent to monopolising a whole species of wild animal and to do this is to “preclude others from their common rights of exerting their facilities for their own advantage upon an important part of the gifts of nature”. Thus, although property is the first fruit of useful industry, “the means of being usefully industrious are the common right of all” and all should be allowed to fulfil these rights’ (Hampsher-Monk, 1991: 13, quoting Thelwall).

So while we are allowed us to act upon our ‘common inheritance’ and make a natural resource our own through labour, we must make sure there is something left for others to labour upon. Thelwall translates this theoretical claim into practical politics by arguing against ‘territorial monopolists’ and suggesting that strict limits be placed on how much any individual can possess: ‘I doubt very much whether it would not be to the happiness of this country if no farm was held by any individuals of more than two hundred acres’ (Thelwall, 1995c: 195). By refusing to impose such limits, monopolies could be created, ‘farms [became] objects of commercial speculation’ and scarcity and famine result (Ibid.: 193). Thelwall stressed that agrarian justice must allow *all* to exercise their rights to labour upon the environment.

Despite this seeming support for the idea that the ‘enough and as good’ equivalent should entitle rights-holders to equivalent resources, Thelwall argued that ‘the earth has been appropriated by expediency and compact’ (Ibid.: 452), meaning that individuals have agreed amongst themselves that, as the most convenient means of securing the preservation of all, the earth should be divided. This agreement provided the basis for ‘the rights of labourers: for rights as labourers they most undoubtedly have, grounded in the triple basis of nature [their natural rights to the earth], of implied compact [consent] and the principles of civil association [civil rights]’ (Ibid.: 476). Thelwall suggested that individuals have joined a civil society and divided the earth up between them in order to increase the preservation and prosperity of all. All agree to the division and non-sustainable use of resources and take part in this development and so ‘have a claim, a sacred and inviolable claim... to some comforts and enjoyments in addition to the necessities of life’ (Ibid.: 398 - 399).

This is because, unlike Locke, Thelwall categorically denied that 'the turf my servant has cut' belongs to the master, insisting instead that it belongs to the servant: 'let the proprietor reflect upon the nature of his possession – let him reflect upon the genuine basis of property. What is it after all but human labour? And who is the proprietor of that labour? Who but the individual who labours?' (Thelwall, 1995f: 475). The share of the profits is proportionate - while Locke's servant receives a set amount in return for their labour, Thelwall's labourer retains a share in that which is produced:

'the whole condition of the universe has been materially altered by cultivation. That cultivation has been conducted by the labour and diligence of the mass of mankind. Is it right then that a few should monopolise all the advantages of the new state of man and leave to the toiling multitude only a dark vicissitude of woe?... It is not right' (Ibid.: 475).

So as profit and development come from the joint labour upon jointly owned resources and it should be shared amongst all. The combination of rights to natural resources and the rights of labour meant that all were entitled to a monetary grant, 'not merely equal to his support, but proportionate to the profits of the employer' (Ibid.: 477). This would enable the labourer 'to maintain himself and a family in decency and plenty' (Ibid.: 478). Thelwall believed that individuals had a right 'to receive as much from the toil and faculties of others, as your own toil and faculties threw into the common stock' (Ibid.: 476). He made explicitly clear that it is 'every man, every woman, every child' (Ibid.: 398) were entitled to claim a share of the profits of their society. This inclusive extension of a share in society's benefits to all its members shows that it was the shared natural right of all to the earth that was the cause of this grant, not just the rights of labour, for 'has [not] everyone of nature's children a right to share her bounties?' (Thelwall, 1995c: 201)

The idea that individuals were owed a share of the profits made moves beyond the fixed amounts set out by Paine, as by linking the amount individuals receive to the profits made, the amount received could fluctuate. On one hand this means that there was little security for those who depend upon this stipend and, in hard times, their equivalent would be reduced, leaving those least able to survive at the greatest risk.

Allowing the subject of rights to fluctuate is also troubling and it could be argued that rights to natural resources are more vulnerable than others. After all, if crops fail due to bad weather, or ponds and rivers dry up due to drought, then individuals' rights will be violated and Thelwall's scheme is merely reflecting this. By allowing the substance of a right to fluctuate, individuals are left dependent at the mercy of other factors and individuals, which the exercise of their rights was designed to prevent. However this interpretation of equivalents was designed to create a sense of community – when one member does well, all will do well and employers and industrialists cannot benefit themselves without benefiting others. This is linked to Thelwall's rejection of reclamation and his definition of an age of equality as one in which 'the whole society [was] connected together by inseparable interests' (Thelwall, 1995c: 194). The sharing of profits is designed to create this society and reflect that the perseverance of each is dependent upon all.

This reinterpretation of environmental rights links to Thelwall's argument that rights should evolve and change in pace with human needs. This point is related to Thelwall's use of civil rights, rights which change and fluctuate as conditions in the society to which they are linked changes and new barriers to freedom arise, but it reflects his view of natural rights. As Chapter One showed, natural rights were viewed as 'fixed' standards outside of society and by which it can be judged. But as Claeys points out, for Thelwall 'natural rights were thus not fixed [so his] view could encompass the greater needs that social evolution fuelled' (Claeys, 1995: xlix) a point drawn from Thelwall's belief that the 'natural rights of man... are determined by his wants, his facilities and his means' which can and will change over time (Thelwall, 1995f: 457). His understanding of environmental rights can thus grow and change as humanity's relationship with the environment changes, with the move away from common ownership towards industrialisation and private ownership marking the biggest shift of all. This flexibility explains why Thelwall's interpretation represents the greatest move away from the initial idea that individuals have a right to enough and as good resources in favour of a right to a share of the profits of labour and development.

### *Mill and Provision of Equivalent Resources*

The final thinker to put forward the concept of equivalents as a solution to the problems of rights of all to finite resources was Mill. His understanding of this concept shared a state-based focus with Paine but expanded beyond financial equivalents, to argue that rights-holders need to be able to claim equivalent resources.

Mill believed that the state should take responsibility for managing resources because the environment is finite and limited. The same reasoning behind his re-imagining of environmental rights motivates his method of fulfilling them: 'Now it is an acknowledged principle that when the state permits a monopoly, either natural or artificial, to fall into private hands, it retains the rights and cannot divest itself of the duty to place the exercise of the monopoly under any degree of control which is requisite for the public good' (Mill, 1967a.: 672). To this end he, like Paine, suggested a land tax, the proceeds of which would enable the state to purchase resources and either redistribute them to the dispossessed or hold them in common for all. Mill specifically linked this tax to the rights of all to environmental resources on the grounds of:

the 'rights of the entire community which need not be and never ought to have been waived in favour of the landlords. One of these is the right of laying peculiar taxation on land. Landed property enjoys a special advantage over other property [as it is a natural monopoly] and for that special advantage it ought to pay' (Mill, 1967b: 690).

His conception of a land tax is matched by a tax on the income made from renting natural resources: 'I see no objection to declaring that the future increment of rent should be liable to a special taxation... [linked to] a general rise in the price of land' (Ibid.: 821) and 'the existing land-tax ought not to be regarded as a tax, but as a rent-charge in favour of the public' (Ibid.: 821). Both are tied to Mill's awareness that environmental resources are finite – meaning that as resources are destroyed or monopolised, demand will increase and so will the profits from rent. He suggests that the money raised be used to purchase natural resources from those who currently possess them so that they can either be redistributed or owned by the state on behalf of all. (This may seem similar to the concept of reclamation and redistribution, but the

insistence that resources must be purchased from the current owner differentiates between them.)

Noting that 'in England, the sale of land generally means its sale to the rich' (Mill, 1967a: 683), Mill argues that only state intervention can ensure the claims of the poor to these resources. As a result he proposed that the state purchase available land, at the going market rate using the money raised from the land tax. So, like Paine, Mill believed that the land tax will fund compensation, though it is the landowners who are compensated for their loss:

'a right to compensation for whatever portion of their interest in the land it may be the policy of the state to deprive them of. To that their claim is indefeasible... they should not be dispossessed of it [their resources] without receiving its pecuniary value or an annual income equal to what they derive from it' (Mill, 1965: 230).

Thus the rights of landowners would be respected, as the choice to sell was theirs and they received what the land was worth, but the land is now controlled by the state on behalf of all.

Mill specifically attributed the provision of equivalents to the state because natural resources are limited. He points out that 'land is a monopoly, not by the act of man but of nature; it exists in limited quantity not susceptible of increase' (Mill 1967a: 672) and he later repeats that 'land is one of these natural monopolies' (Mill, 1967b: 690) because 'no man made the land' and so more cannot be created (Mill, 1965: 230). And 'when the state allows anyone to exercise ownership over more land than suffices to raise by his own labour his subsistence and that of his family, it confers on him power over other human beings' (Mill, 1969a: 158). As a result, the state was duty-bound to rectify this situation (Mill, 1967a: 672) and ensure the rights of all to the environment.

This could take the form of having the land cultivated under the state's direction, selling it on to small cultivators at a lesser price or parcelling it out as allotments. The state could therefore direct and stipulate the use of the land, encouraging the development of some resources and not others to ensure sustainability (for example renting out farm lands and encouraging planting the soil, whilst maintaining control of the forests to prevent deforestation). Mill also argued

that the state should purchase land and resources with the express intention of preserving them undeveloped, describing the value of creating 'open, extensive tracts in a state of wild natural beauty' (Mill, 1967b: 693). These open parklands would enable individuals to access natural resources for pleasure and spiritual enjoyment, allowing for the development necessary for free choice. Preserving some areas from development could help decrease pollution. For example, if the land was purchased by the state rather than factory owners, this would prevent it from being used for industry and so reduce air and water pollution.

So, though rights-holders were unable to take the resources they are entitled to for themselves, Mill believed that the state has a duty to provide them with equivalents. These equivalents might take the form of public parks, or publically run development, or small parcels of land rented or sold to individuals. This plan to ensure that individuals receive equivalent resources, rather than an equivalent livelihood reflects a different conception of freedom, which leaves Mill closer to the republican understanding of rights as a means to a larger end of freedom. Mill sought to provide individuals with the means to ensure their freedom, both through independent subsistence and the natural space to develop mentally and spiritually, rather than the end in itself in the form of money. He viewed rights to the environment as enabling individuals to develop, decide for themselves how to support themselves and how to live and improve themselves through their own labour. Financial equivalents (Cuncliffe, 2000: 8) cannot provide this as they do not acknowledge the various aspects of humanity's ecological embeddedness and so are not 'as good'.

## Conclusion

This chapter has shown that four of the past proponents of environmental rights suggested that environmental rights be re-interpreted to grant their holder a claim to 'as good' equivalents to natural resources. Starting from a shared rejection of reclaiming and redistributing resources, Locke, Paine, Thelwall and Mill all used the idea of a right to equivalents as a way to square the circle of fulfilling the rights of all to their environment. By reconceptualising environmental rights as rights to resources which are 'as good', these rights can be fulfilled despite finite resources and the



appropriation of others. All four thinkers stress that this reconceptualization could only be undertaken with the consent of those who would receive these equivalents - that they believed this consent would be easily come by, due to the advantages of allowing labour, private property and development and the security that comes from respecting the rights of property-owners, does not diminish the fact that they believed it to be necessary.

From this shared start, all four thinkers offer a different understanding of what an environmental right to equivalents would entail: Locke's understanding of 'enough and as good' meant the right to a living, Paine's conceptualised environmental rights to mean financial grants to all, Thelwall believed that all have a claim to the profits that resulted from their shared labour and Mill argued that equivalent resources should be provided for the rights-holders to either labour upon or use for spiritual and mental refreshment. The main difference between these schemes grows out of the different understandings of what environmental rights themselves are designed to achieve for their holder. The links between environmental rights and labour, examined in Chapter Three, underpin the accounts of Locke, Paine and Thelwall, hence their engagement with the idea of providing a livelihood or a share of profits. The environment is the basis of human preservation and advancement through development and so all should be entitled to share in this. Curiously enough, it was Mill, who most clearly acknowledged the finite aspect of natural resources, who makes allowances for open access and non-exclusion. Yet this is linked – because there are no more resources available, because 'no man [can] make the land' (Mill, 1965: 230) the state must ensure that all are able to access natural resources by providing equivalents, such as parks and preventing property-owners from barring others from access. Furthermore, Mill suggested the provision of as good resources is necessary for something *other* than labour. The public spaces are designed to allow individuals to take aesthetic enjoyment from natural resources rather than using them up for physical survival or economic development.

Different answers were given to the question of who is responsible for providing the equivalent, a responsibility that, given the awareness of finite resources, becomes crucial. Locke placed the responsibility on those who initially acquired the property whilst Paine and Mill suggested that the state should take on this role, which

Mill specifically justified on the grounds that the state retains a duty to control monopolies such as the environment. Thelwall is less clear about how each individual's share of the profits of communal labour are to be distributed. The focus on profits does suggest that the owners of the resources, those who own the means of production and control the shared resources, are responsible for sharing enough and as good of the profits made with their labourers. Beyond this, Thelwall suggests that society as a whole is responsible for ensuring that all receive their share for 'society is responsible, in the first place, for an equivalent for that which society has taken away' (Thelwall, 1995f: 476). This idea ties back to the 'implied compact' by which the natural world was divided between all – as all agreed to allow the appropriation of 'natural inheritance' then all are responsible for ensuring that there is an equivalent provided 'till the whole society connected together by inseparable interests indulges that fellow feeling between man and man' (Thelwall, 1995c: 194).

Finally, it must be noted that the flexibility of equivalents also suggests that they can adapt to address claims to all forms of resources. Though the examples given by Locke, Paine, Thelwall and Mill focus on bounded resources, as in Paine and Mill's land tax, equivalents could be provided for damage to the atmosphere and to rivers, especially if interpreted as either a living, a financial grant or a share in the profits from the actions that caused such damage. Indeed Thelwall's point that air and water pollution are rights violations seems to clearly imply this. The pollution that would otherwise violate the rights of all to the environment, to the clean air and water to which they are entitled is permitted as individuals choose to claim a share of the profits that result from such actions rather than the resources themselves (or as Locke would have it, a living from these industries). Paine's understanding of equivalents would see all receive a financial payment, possibly increased from the initial allocation to cover damage to these additional resources. Mill's conception of a right to as good is harder to square with unbounded resources, though the idea of unbounded resources being held for all to access could be plausible, or the taxation and subsequent purchase and stoppage of industries that polluted such resources is viable. Overall, by moving the focus of environmental rights away from specific resources, this conceptualisation of such rights is better able to address and adapt to the differences between resources.

This chapter has therefore set out the solution of reconceptualising environmental resources as rights to equivalents, as developed by the past thinkers of Locke, Paine, Thelwall and Mill. In doing so it has shown not just evidence of this approach but the variation within this and the responses to the competing themes of equality, freedom and claims. If contemporary environmentalists wish to draw upon this understanding of environmental rights then they too need to address these points.

Indeed I would argue that divisions within environmentalists relate back to these alternatives. To take the example of fracking that has been referred to throughout this thesis, environmental campaigners in the UK have rejected the reconceptualization compensation and equivalents proposed by the industry. This is due I would argue to three factors, all of which are highlighted in the work of the past thinkers. The first is a lack of consent. The four thinkers examined here all stress the importance of consent in reconceptualising environmental rights in this way and this consent is neither being offered nor respected in this example. Secondly, the offer of equivalents in this case reflects that of Locke and Paine, in that jobs and financial compensation is offered, and the arguments put forward by Thelwall and Mill regarding the need for all to share equally in profits and for alternative resources to be provided, are ignored. Finally, in the offer of jobs that could be created through fracking, the problem of inequality, dependence and potential for domination is present here, just as it is in Locke's response of a living. By looking at the past understanding of environmental rights as equivalents, it becomes clear why this option has been rejected and what an acceptable alternative could be.

## Chapter Seven – Exclusion and Unbounded Resources

The role of consent was stressed with the previous solution and this raises the question of inclusion. Who did Locke and Paine see as consenting to the reconceptualization of environmental rights as rights to equivalents and who was entitled to claim these equivalents in turn?

This point of membership and inclusion has been raised in the current debates over ownership of resources. The question of whether all humanity is entitled to all resources (see Casal, 2012 for example) or whether specific groups, often said to be nations and their members, have unique claims to set resources (Miller, 2012) has been frequently raised and debated. Chris Armstrong points out the dilemma of needing to '[take] general claims seriously, while at the same time responding to the legitimate special claims that members of particular communities' have to specific resources (Armstrong, 2014: 217). These works are often linked back to the past political thinkers, particularly Locke (e.g. Nine, 2008). But as yet the participants in this debate have not looked at how past thinkers themselves conceptualised their understandings of environmental rights in response to these competing claims.

This chapter does so by examining the last solution developed by the past thinkers to the tensions inherent in environmental rights, one which sought to deny the rights of some, in order to secure the rights of others. This response argues that as the rights of all to a finite limited environment cannot be secured, the aim should be to fulfil the rights of a few.

This conceptualisation of environmental resources moves away from the theme of equality, choosing instead to promote the claims and freedom that such rights bring. The idea of environmental rights as necessitating exclusion and decoupling from equality dogs the other suggested solutions to this problem. Though the thinkers examined here draw upon the idea of the shared environment and the subsequent claims of all to these resources, the re-conceptualisations of environmental rights, as set out in the past three chapters, imply a set group of rights-holders. Paine's *Agrarian Justice* provides a clear example of this. His argument that environmental rights should be reconceptualised as rights not to natural resources but to financial equivalents

applies only within an established nation state, despite his earlier assertion that ‘the earth in its natural, uncultivated state was, and ever would have continued to be, the common property of the human race’ (Paine, 2000c: 325). This move from the human race to the nation state has consequences, in that some must be excluded or shut out of resources. To update this problem, contemporary environmentalism often urges ‘think global, act local’, but this shift from the global to the local has consequences too, for both the extent of the action individuals can carry out and the claims they can make.

In Paine’s work, this shift ties back to the difference between natural and republican rights, as set out in Chapter One. Natural rights are said to be the rights of all, whereas republican rights are held only by the citizens and are backed and guaranteed by the republican state. The solution of exclusion is most clearly developed within the republican tradition. The first section will set out the republican arguments for a limited or sub-divided state as developed by Rousseau and Jefferson. It will be shown that these arguments regarding the size of the republic are based upon presumptions regarding the resources that the republic owns and the best way of managing them and excluding some in order to ensure the freedom of others.

This suggested solution quickly runs into practical problems. Unbounded natural resources such as the oceans and atmosphere cannot be separated between individuals. This point was raised in Chapter Two, as Grotius and Thelwall in particular, used this fact to justify the presumption of shared environment that belongs to all. This indivisibility has been touched upon throughout this thesis as the different forms of natural resources affect the subsequent rights to those resources – a fact previous political thinkers were aware of and current proponents of environmental rights need to take more seriously. As this point poses the biggest challenge to the solution of exclusion, it is examined in the second section of this chapter. Grotius in particular addressed how rights to bounded and unbounded resources differed and developed a two-tier model of rights and exclusion in response. Thelwall also addressed this problem, and his solution drew on a combination of natural and republican rights in order to balance different claims and enable exclusion in the face of different resources.

Overall, in examining the fourth solution to the problems inherent within environmental rights, this chapter shows how the past thinkers developed the solution of exclusion. By not securing the rights of some to their environment and choosing instead to prioritise the claims of others, the tension of fulfilling the rights of all to a limited environment, in all forms, can be addressed. This solution is an uncomfortable one, as it deliberately contradicts the equality of all that rights are meant to secure and contemporary environmentalists may wish to avoid it. But it does show the hard choices that the fact of our embeddedness within a finite environment requires and the severity of the challenge that is involved in re-conceptualising environmental rights. Though contemporary environmentalists may reject these options, they need to take this challenge as seriously as the past thinkers do.

### Republicanism and Exclusion

The solution of exclusion is most clearly developed within the republican tradition. As discussed in Chapter One, the concept of citizenship is integral to republicanism for, as Dobson notes, 'citizenship is a condition for which one requires qualifications and those who do not qualify are denied it' (Dobson, 2003: 68). The biased exclusions on who could qualify as a citizen, such as the denial of women's citizenship by Rousseau, were dismantled by contemporary thinkers, most famously by Wollstonecraft. But the necessity of the distinction between citizen and non-citizen remained.

There is an extent to which this exclusion is useful, particularly for rights. Chapter One introduced Ivison's argument that in linking rights to citizenship, republicanism 'take[s] human rights in another direction: less metaphysical and more absolute, more contested and open to alternative interpretation' (Ivison, 2010: 43). This is because republican rights can be more easily defended and guaranteed as there is both a designated claimant and a set body responsible for securing such rights (Ibid.: 37). And, as they are rooted within a clearly defined society, republican rights can reflect the reality and the politics of everyday life. In short, these rights are embedded in the republic itself and its politics, rather than existing abstractly outside it. By

moving away from theoretical intangible standards, rights can become more directed at specific problems, sacrificing universal appeal for greater immediate effectiveness. When conceptualising rights in light of ecological embeddedness, a form of rights that are already embedded in lived reality is useful.

As a result, this suggested exclusion reflects Dagger's argument that rights need to be reconceptualised as inter-linking, creating 'connection [and] inter-dependence' (Dagger, 2006: 201) and 'forms of relationships' (Ibid.: 214) if they are to respond to the challenge of ecological embeddedness. Republicanism offers just such an understanding, with its citizens connected together and dependent on one another for their common good. Republicanism therefore provides the understanding of rights that Dagger believes is necessary in the face of a finite environment. However these re-imagined rights are only available for some, as these relationships shut out others. They refer specifically to a group whose rights can be secured, who can contest and debate their content, and this group is clearly defined through the exclusion of others. Republicanism secures the rights of some, connecting them and grounding their rights, guaranteeing their claims and freedoms outright, through the denial of the rights of others. So whilst other solutions examined in this thesis prioritised equality over freedom and claims, here the emphasis is on claims and freedoms. But how does such exclusion work and, how did the past thinkers describe and justify such exclusion? The next section will examine how Rousseau and Jefferson believed the republic should be limited and the environmental implications.

### *Size, Population and Natural Resources*

The idea of exclusion is developed most clearly within the republican literature, particularly in the debates surrounding the size of the republic. It was argued that a large republic with a great many citizens would be unable to exercise true self-government - if the republic was vast then the citizens would not be able to gather to debate the politics of the republic, if it contained many citizens, the voices of all would not be able to be heard and they might not have the chance to take up positions in government. Either way, factional government would result meaning that individuals would no longer control their own lives or be free.

Within the republican literature two solutions were offered to this problem: firstly that the republic as a whole should be limited in size and number, a response suggested by Rousseau; secondly, that the republic should be sub-divided into smaller, self-governing units, an approach put forward by Jefferson. Each of these responses has different implications for rights to resources and exclusion.

Rousseau suggested that the republic as a whole should be restricted. He believed that all have equal claims to the environment, yet thought that 'democracy [suits] states that are small and poor' (Rousseau, 1994: 112). This was because his rejection of representative government meant that the state must be small enough to allow every citizen to take part in the decisions made regarding the running of the state. Furthermore, despotic authority is harder to enforce in a small, populated area:

'the greater the density of the population, the harder it is for a government to encroach on the sovereign authority, leaders can reach decisions in their houses as safely as kings can and a crowd can assemble as quickly in the streets as troops in their barracks... The strength of the people is effective only when it is concentrated: it is dissipated and lost when spread out' (Ibid.: 115 – 116).

Were the republic to be larger or less concentrated, then at best citizens could not meet and debate and at worst they were vulnerable to domination and arbitrary power. As a result Rousseau suggested that a republic with less territory would be internally stronger than one with a larger area to cover.

Rousseau's second condition is that the republic should be 'poor' (Rousseau, 1994: 112) in order to prevent luxury and corruption. He specified that the republic should have fertile but limited resources, as only 'places in which the surplus of produce over need is adequate are suitable to free peoples' (Ibid.: 112). The republic would thus control enough resources to ensure that the citizens would survive and secure their preservation, but only as a result of their labour. If there are too many natural resources, then a monarchical government would be best, in order to ensure that the excess is taken up by the government for the good of all, preventing the corruption of private citizens (Ibid.: 112). If the natural resources available can provide individuals with only 'enough [so] no-one had too much' (Pierson, 2013: 14) there will



be no temptation for inequality and domination to flourish and the limits to individuals' rights can be easily imposed.

In order to remain 'small and poor', the republic could have only limited population and resources. Whilst enough citizens are needed for the necessary dense population, too many and not all will be able to take part in government, leading to factions. So in order to maintain a 'small' republic, some will have to be excluded. Furthermore, the limited amount of resources will place a limit on the number of citizens who can be supported and whose claims to the environment can be fulfilled. A poor republic has few resources and can thus support and fulfil the environmental rights of fewer citizens. The realities of ruling the republic and ensuring the freedom of its citizens necessitated exclusion.

An alternative understanding of the solution of exclusion is put forward by Jefferson. He believed that a republic could govern a larger area, including many natural resources and numerous citizens, but only if it was sub-divided with a limited number of citizens bound to each section:

'The article however nearest my heart is the division of the counties into wards. These will be pure and elementary republics, the sum of all which, taken together, composes the state, and will make of the whole a true democracy as to the business of the wards, which is that of nearest and daily concern. The affairs of the larger sections, of counties, of states and of the Union, not admitting personal transaction by the people, will be delegated to agents elected by themselves; and representation will thus be substituted, where personal action become impracticable' (Jefferson, 1999d: 219).

The wards were to be 'five or six miles square' (Jefferson, 1977d: 537) and all would hold meetings to decide on major issues on the same day and send either their response or their representative to the central government. In this way, every ward would debate and decide for themselves how the republic as a whole was to be run, creating a strict two-tier system, with direct government on local issues within the ward and indirect representative government on the larger issues that affect all wards (Ibid.: 537). Jefferson makes clear that this representative form of government is to be

used as sparingly as possible in order to promote local self-government within the wards. This will ensure that America 'shall be as republican as a large society can be' (Jefferson, 1999d: 219).

As with Rousseau there is a strong environmental aspect here, as 'all lands within the limits which any particular society has circumscribed around itself are assumed by that society and subject to their allotment only' (Jefferson, 1977a: 19). Thus the resources within the limit of each ward would be considered the subject of that ward and its residents. Ward residents had the right to access these resources and the right to make decisions regarding how they are to be managed, for the republic as a whole will:

'impart to these wards those portions of self-government for which they are best qualified, by confiding to them the care of their poor, their roads, police, elections, the nomination of jurors, administration of justice in small cases, elementary exercises of militia, is short to have made them little republics, with a Warden at the head of each, for all those concerns which, being under their eye, they would better manage than the larger republics of the county or state' (Jefferson 1977d: 537).

Though not directly mentioned by Jefferson, bounded resources would fit within this description. Natural resources such as localised sub-soil resources and sources of water, land or woodlands that lie within the ward boundaries would be managed by those who live there. Furthermore, this would support Jefferson's larger aim of undercutting centralised power, as it would ensure that each ward was self-sufficient with regard to resources (and, linking back to Harrington, ensure a balance amongst the wards).

This system of small scale, responsible government embedded within the local area ensures that the rights to resources within that area can be easily fulfilled and secured for the members of that ward. Tying back to the idea of consent, the residents are also able to make decisions regarding the use of that resource. As an example, consider a forest located within the boundaries of a ward. The rights-holders within the ward would be able to decide how their rights to the forest were to be conceptualised. So they could decide to draw upon the language of equivalents and cut down the trees in exchange for a financial grant or use the idea of limits to labour

and ownership and restrict each member's access and use of the forest. As Jefferson and Rousseau pointed out, limited number of members would facilitate the decision-making process, making it possible for all to meet and be heard within the resulting discussion regarding their rights. Furthermore, by limiting the rights-holders to those within the ward, there are fewer claims to resources, making them easier to balance. So by excluding others, even if they are citizens of the same republic, the ward system would thus 'better manage' the rights of the members to their immediate resources.

Limiting the size of the republic or dividing it into wards was designed to prevent corruption because power is linked to control of natural resources. If the republic is to remain 'poor', then the resources it holds must be limited; if centralised power is to be prevented from developing, then either the republic must be small or the resources need to be divided amongst the wards. Promoting these objectives requires engaging with the division of environmental resources and it also has the effect of enabling a greater link between citizens and their environment.

#### *Exclusion and Environmental Rights: Contradiction in Terms or Painful Necessity?*

This solution of exclusion runs counter to the idea that the environment is shared by all, a claim which, as Chapter Two showed, both Rousseau and Jefferson endorsed. Rousseau in particular argued that all should be able to access the environment in order to secure their preservation, making the restriction of the republic seem to be not a reconceptualization of environmental rights but an utter violation. As Dobson points out republicanism 'decide[s] the distribution of rights and responsibilities... [on a] territorial basis' (Dobson, 2003: 68). Dobson argues that territorial exclusion means that republicanism is unsuitable for examining environmental problems, as neither environmental resources nor environmental damage can be so bound.

There are two responses to this criticism. The first is that there is an extent to which Dobson is wrong. Assigning rights and responsibilities on a territorial basis is appropriate for *certain* resources. For lakes, wells, forests, land or sub-soil resources, limiting the rights to access and make decisions regarding the use of this resource is possible and, as discussed in Chapter One, may even be necessary. This way only a set

number can access the resource, which can promote sustainable use, particularly as it ensures that those who make the decisions regarding the use of a resource are the ones who live with the consequences. As Jefferson noted, such exclusion 'impart[s] to [those who are embedded with specific resources] those portions of self-government for which they are best qualified' (Jefferson, 1977d: 537). Thus only those who live within the area of a bounded resource or within the republic that contains it, have rights of access and decision making, potentially the rights of ownership, and the duties that come with this. Within this sphere, their claims and their freedoms are secured.

The second response is that securing the rights of some to the environment rather than the rights of all may be the only possible option. Thinking about rights and the associated claims, equality and freedom in light of humanity's embeddedness within a finite environment requires not only political creativity but also hard choices. There may come a point at which, no matter how inventive the response, how creative the reconceptualization, there will not be enough natural resources to fulfil the claims of all. Environmental rights may limit ownership and be limited in turn; resources may be reclaimed and subjected to strict control but the tensions within environmental rights may still not be eased. The contrast here may not be between choosing to securing the rights of some rather than the rights of all, it may be between choosing to secure the rights of some as opposed to the rights of none. Exclusion may not be the solution we wish to choose, but it may be the only one available.

This section has examined the last solution presented to the problems inherent within environmental rights, that of exclusion. Through an examination of Rousseau and Jefferson's work on the size and structure of the republic it was shown how past thinkers conceptualised the exclusion of some from resources. Whether through restricting the size of the republic as a whole and the resources it controlled, or through sub-dividing the republic and its resources into smaller, self-governing units, both of these solutions are designed to promote self-government and thus the freedom of the citizens. This also ensures that the citizen's claims to resources and so their preservation can be secured through providing them with secure access to the resources they need. By not fulfilling the environmental rights of some, the rights of

others can be more easily secured. Through limiting or sub-dividing the republic, the claims and freedoms of the citizens are secured.

### Exclusion and Rights to Unbounded Resources

The defence of exclusion, set out above, argues that it may be appropriate to think about rights to bounded, rivalrous resources in terms of exclusion. This raises the question of how this solution could address the tensions within rights to unbounded resources. Contemporary definitions of environmental rights as rights to 'clean air, water and soil' (Collins-Chobanian, 2000, Hiskes, 2009) or 'a right to a healthy environment' (Sax, 1990, Hayward, 2003) overlook this problem.<sup>18</sup> These rights refer to both bounded and unbounded resources, resources that can be controlled and monitored, with access regulated and ones that are more difficult to protect without engaging with the difference in rights that will result. Yet this problem was addressed in the previous conceptions of rights to the environment, as will be shown through an examination of Grotius and Thelwall. This point has been touched upon in previous chapters, but as this fact poses a particular challenge for this solution, it will be examined in depth here.

### *Grotius and Rights of All vs. Rights of Citizens*

Grotius developed the most explicit and through engagement with this point within the previous works on environmental rights. He clearly differentiated between resources which are impossible to own or contain and those which are within the remit of an individual country.

With regard to the latter, Grotius argued that it was only the citizens of that state who would have the right to both access these resources and to participate in the decisions regarding how that access should be defined. However the laws of

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<sup>18</sup> Hancock does address this problem when he distinguishes between 'the human right to an environment free from pollution' and 'the human right to natural resources' with the latter said to be 'applicable to local environmental resources such as water, lakes, land, forests and sub-soil resources' (Hancock, 2003: 137). This is however the exception that proves the rule and though Hancock acknowledges that this latter right would have to be held 'communally' (Ibid.: 155) he does not discuss the necessary exclusion, particularly necessary if such a right is to achieve his stated aim of 'realizing... cultural self-determination' (Ibid.:143 – 148).

preservation, which states that 'each individual may, without violating the precepts of nature, prefer to see acquired for himself, rather than another, that which is important for the conduct of life' (Grotius, 1964: 10) and of necessity, which made clear that 'in a case of absolute necessity that ancient right of using things as if they remained in common must revive' (Grotius, 2005: 434), would permit non-citizens to access that resource if they were in desperate need. So if a river lay within the territory of state A, 'the people of a country might possess a river as included within their bounds [though] could they not the sea' (Grotius, 2004a: 30, and 46). Citizens of that state would have the right to participate in the decisions made regarding the use of that resource and would have the right to 'enough' of that resource however defined. So they may have the right to swim or fish in the lake, or to release the pollutants of industry into it, or to take the water from that lake to power industrial process or water crops, as they had all freely decided. Non-citizens would be excluded from these decisions and not permitted to use the resources as the members of that state did.

Yet if a non-citizen were to be within the territory of state A and on the verge of dying of thirst they would be able to drink from the lake if they so wished or to fish for food to immediately preserve their life. They would not be able to take part in the decisions made regarding the use of the resource, nor take water for industry, nor release pollutants but they would be able to take enough to secure their preservation. In this way, though non-citizens would not bear the responsibilities for deciding how such a resource was to be used or maintained and would not retain the right to 'enough' however defined, they would be able to preserve themselves. The people of state A would 'own' the river but in such way that 'yet the common use should not be hurt' (Ibid.: 30) or 'by such occupation the common use be not hindered' (Ibid.: 27).

However this two-tier response is applicable only to resources within a state or those that cross identified state boundaries. Grotius acknowledges that the rights are different for resources such as the sea and atmosphere, which are not owned by one or more countries, but instead belong to all. Calling back to the discussion of indivisible resources in *The Free Sea* he stresses again and again that the air 'it cannot be possessed... the sea is common to all, to wit so infinite that it cannot be possessed' (Grotius, 2004: 25). He also makes reference to Ovid's claim that 'nature has not made the sun private to any, nor the air, nor soft water' (Ibid.: 25).

This section has shown that Grotius' work on rights to environment resources explicitly engages with the question of how rights change according to the type of resource in question. Though not within the republican tradition, this account draws upon the same language of exclusion, to suggest that non-citizens can be excluded from resources held by a particular state. Their rights to labour, to property and to take part in the decisions made regarding the use of that resource are thereby not recognised. However their right to preservation and subsistence *is* fulfilled and they are not excluded from using resources to secure their preservation for 'utility... should yield to necessity'. With regard to bounded resources, who is classed as a rights-holder and the extent of the claims that they can make differs. This distinction is underpinned by a desire to preserve resources and secure their sustainable use, as can be seen from Grotius' statement that all can use unbounded resources for they are infinite. Nico Schrijver and Vid Prislán define this as Grotius' 'idea of inexhaustibility' (Schrijver and Prislán, 2009) and once this was introduced, Grotius' argument shifted. These twin justifications, that such resources cannot be possessed by any one individual and that they are 'so infinite' (Grotius, 2004: 25), means that Grotius moves away from the two-tier model of rights in order to argue that the rights of all to unbounded resources should be recognised.

#### *Civil Rights, Natural Rights and Unbounded Resources*

Grotius' explanation of the difference between rights to bounded and unbounded resources is the most explicit engagement with this tension within the past literature, but it is not the only one. There is a second strand of work which responds to the question of how rights to different forms of resources differ, one which links to the combination of civil and natural rights examined in Chapter One and was applied to environmental resources by Thelwall.

As shown in the theoretical overview, Thelwall believed that every individual possesses both natural rights, which belong to all equally and civil rights which they gain from the membership of the specific community (Thelwall, 1995f: 451). Civil rights were, he argued, designed to secure natural rights, by grounding them in the

community and society of others (Ibid.: 458). Thus individuals have natural rights to their environment and civil rights to the share of the profits created from labouring upon those resources in co-operation with other citizens.

As with Grotius, non-citizens are not able to claim the rights of citizens. Those who are not a member of a society and do not share in its labour, do not have rights to environmental equivalents. Excluded from communal labour they are also unable to access the benefits of that society, both those that result from the development of resources and from the 'golden age' in which all are bound together link by link (Ibid.: 194). Thelwall's understanding of this unequal interconnected civil society calls back to Dagger's argument for the reconceptualising of rights as representing 'a form of relationships' (Dagger, 2006: 214) in which all are 'interconnected' (Ibid.: 201). Thelwall explicitly cashes out the inequality of this relationship, both within this conception of society and those excluded from it.

This exclusion is applied only to civil rights, the rights to participate in labour on shared resources and claim a share of the profits. Natural rights are held and retained by all and Thelwall argued that it was the duty of others to respect these rights, for 'what I have a right to demand for myself, it is my duty to secure for others' (Thelwall, 1995f: 459) and 'to know the natural rights of others, it is only necessary to know our own' (Ibid.: 458). Yet without the membership of civil society these rights cannot be fully secured (Ibid.: 458). All may possess natural rights, but they may not be able to fulfil these claims without the status of citizens.

It will now be shown how this distinction between natural and civil rights, and the exclusion implied in this, maps on to the difference between bounded and unbounded resources. Thelwall stated that: 'man has naturally an equal claim to the elements of nature and although the earth has been appropriated by expediency and compact, light, air and water still continue to be held in common' (Ibid.: 452). All have a natural right to the environment. The division of the earth and bounded resources through 'expediency and compact' means that



bounded resources belong to specific societies whereas unbounded resources remain in common. This is made clearer in his attack on air and water pollution:

‘the light which illuminates my premises belongs equally to my neighbour as to me: it is therefore a nuisance to block it out. The air I breathe must be breathed, also, by him; and the stream that flows through my garden waters his: if I stop the one with a dam or pollute the other by a pestilential manufactory, I make my individual right of compact a mean of usurpation upon the common and superior rights of nature’ (Ibid.: 452).

This passage is crucial to Thelwall’s argument for a shared environment held in common by all but it is also key to Thelwall’s understanding of exclusion. The contrast with Grotius is clear, as Thelwall appreciated that these common resources can be damaged. The use (and potentially destruction) of divided resources, such as lands, forests, lakes or sub-soil resources is acceptable, provided that the rights to share in the profit of doing so is fulfilled. These resources may not be used up though, but must be preserved instead as civil rights ‘generally speaking created by the compact and growing out of its specific provisions; and therefore fit objects of superintendence and restriction to the authority under which they exist’ (Ibid.: 451). This means that civil rights can be debated and defined by the community as a whole deciding for themselves how these resources should be used and what pollution they are prepared to permit. Whilst natural rights would be fixed, the contested, open nature of civil rights permits and encourages this re-examination.

This combination of natural and civil rights adapts well to the varieties between natural resources. With regard to exclusion, as shown above Thelwall repeatedly stated his concern for the rights of ‘one common family’ (Ibid.: 398) and insists that each must protect the rights of all (Ibid.: 459). All have natural rights to air and water and all are to be permitted to join the compact of civil rights - no-one was to be left out. Thelwall explicitly states that individuals join the compact of society in order to fulfil their environmental rights, so it would be contradictory to suppose that they would support a system that risks these rights. Natural rights to both bounded and unbounded resources are secured by joining society, which either prevents pollution of unbounded resources or

secures ownership and access to the former. This is secured through either imposing limits to ownership, breaking up of large farms or promoting communal labour. Civil rights then entitle individuals to a share of the profits and the benefits of the society that they have joined.

This combination of civil and natural rights allows all individuals the right to access 'larger', non-excludable resources such as the oceans and the atmosphere but to access 'smaller', bounded resources such as a lake, forest or sub-soil resources then they will need to join the society which controls them, either through state ownership or state imposed limitations. Only those who bear the duties of republican rights take part in the labour of that society and so are entitled to 'as good' equivalents. This respects the fact that all individuals need access to their environment to survive but also takes into account the different ways we interact with our environment and the different types of natural resource. Thelwall both reinterpreted environmental rights and provides the creative, imaginative response to securing them that James suggests is necessary to secure and fulfil these rights, especially in the face of limited, diverse nature of the subject.

## Conclusion

This chapter examined the fourth solution offered to the tensions of environmental rights, that of exclusion. By denying the rights of some, this argument suggests, the rights of those who remain can be more easily secured. Rather than trying to reinterpret environmental rights so that they can secure the claims of all to the finite, limited environment, this approach suggests that a limited environment can only support limited claims. The claims and freedoms that rights guarantee are therefore saved at the expense of equality. This solution may seem extreme and against everything environmental rights are meant to stand for, but it reflects the hard choices that may be necessary.

This solution is most clearly set forth in the republican literature. Both Rousseau and Jefferson argued that the republic needs to be limited, in order to promote the freedom and security of all. To do this, it was necessary to restrict either

the amount of resources the republic owned, as Rousseau suggested, or sub-divide the republic into autonomous blocs that controlled their own affairs, as argued by Jefferson.

This solution of limiting or sub-dividing resources and thus emphasising local control and the engagement of individuals with their immediate environment complements many environmental aims. Indeed this may seem to be the best solution for promoting sustainable use of resources as those who would bear the consequences of resource use are the ones to decide and it is this reasoning that motivates the arguments for recognising 'special claims' to resources, as Armstrong puts it (Armstrong, 2014: 217). For example such an approach would ensure that only those who live above sub-soil resources from deciding on their use and excluding those who live elsewhere and thus would not be affected by the process. In the fracking example, this would mean that only those who live in the fracked areas would decide whether or not the process would go ahead.

But this response by its very nature excludes some from accessing resources and making decisions about their use. While this may be the source of the appeal, it means that the rights of some are consciously and willingly denied, a dangerous precedent to set and one which raises questions as to who makes these decisions and on what criteria. Excluding and denying the rights of some to the shared environment may therefore seem too high a price to pay to solve the tensions inherent within environmental rights.

This solution is particularly appropriate for bounded, rivalrous resources that can be held and monopolised but seems to fail when applied to resources such as the oceans and atmosphere. How are some to be excluded from these unbounded resources? This question highlights a point that has been touched on throughout this thesis, which is that rights to resources change as the resources themselves do so. This point was raised explicitly within the past conceptions of environmental rights, with Grotius presenting a two-tier model of environmental rights, stressing the rights of state members to bounded resources and the rights of all to unbounded resources and to claim resources in times of need. Thelwall also engaged directly with this problem through his conception of natural and civil rights and his argument for the rights of all

to their shared environment and for the rights of citizens to the equivalent of such resources. These solutions draw out different aspects of environmental rights, recognising the importance of the environment for survival but restricting rights to other types of use. These two responses show how the previous conceptions of environmental rights not only engaged with the problem of how rights to resources could differ but how the solution of exclusion could work for rights to different resources. Even if current environmentalists do not wish to draw upon this conceptualisation of environmental rights, this question of form needs to be answered.

This chapter has examined the last solution offered to the tensions inherent within environmental rights. Though the conceptual language of exclusion, with its inherent inequality may seem unpromising and impossible, it is just as valid a solution, and one which is as sincerely offered, as the others examined within this thesis. And it reminds us that thinking about environmental rights requires not only flexibility and creativity, but also hard choices. As the tensions within environmental rights become harder to reconcile and the claims of all to a finite environment become harder to fulfil, contemporary environmentalists would do well to take heed of these solutions and the questions raised here. After all, as resource are destroyed, getting to decide whether to secure the general and specific rights to resources (Armstrong, 2014: 217) may no longer be an option.

## Conclusion

This thesis has argued that environmental rights are not new and are instead already present within political thought. To think that these rights are something new, developed in response to the unique challenges of the modern world, is to ignore this history and impoverish our understanding of the concepts. Some authors have moved towards this conclusion, using the work of past thinkers to underpin their arguments for environmental rights (Eckersley, 1996, Hayward, 1996, Hancock, 2003, Dagger, 2006, Casal, 2011, 2012). But this thesis has advanced this work through a wide-ranging, thematic analysis of the previous understandings of environmental rights, one which showed how a wide variety of past thinkers reinterpreted and reconceptualised rights to the environment in order to adapt to the problems inherent within environmental rights.

Looking clearly at the works of past thinkers shows us their conception of environmental rights. These understandings are varied and flexible, perhaps differing from that which we would expect in their endorsement of labour and ownership, their means for enforcing equality and their acceptance of exclusion and resource equivalents. But they were truly committed to facing the challenges that result from human dependence on a finite environment.

This historically rooted approach to environmental rights clearly shows that they are not an added-on, modern addition. Furthermore, starting from this understanding of environmental rights developed by these thinkers gives us a different type of environmental rights, and a different type of environmentalism, one which, as Meyer points out, views past political theory as an asset, not as something to be overcome (Meyer, 2001), and recognises that 'the "past" is not something to be thrown aside; it is also a living repository of tradition' as Kovel points out (Kovel, 2007: 245).

These rights are contradictory and varied, beset by tensions but they are there and show that the environment has long been a site of power and political struggles, of claims and exclusions, barrier and freedoms, which has been defined and fought over.

The first three chapters showed how all these past accounts of environmental rights start from the same shared language, one replete with tensions. The first chapter examined how these thinkers conceptualise rights as a whole, arguing that there are three main themes within the past understanding of rights: the relationship between rights and freedom, which reflects the contrasting traditions of natural rights and civil rights; the idea that rights secure equality of status and inclusion for their holder; and the idea that rights are claims, entitling their holder to something. These three themes immediately run into tensions when applied to environmental issues. The second chapter defended the main argument of this thesis, which is that past thinkers explicitly developed environmental rights. Building upon a belief that the environment belonged to all, even if understandings of the reasons for this and the form of ownership differed, the majority of the thinkers examined here supported the right of people to their environment. The extent of such rights, what they entitled their holder to, was left open for debate, which reflected the arguments surrounding labour and property in natural resources. The third chapter set out these arguments for and against labour and ownership of resources, examining the problems of destruction, inequality and dependence but also the necessity of this for human survival and quality of life. Environmental rights need to both promote and oppose the use of resources, as they seek to balance the claims of all to limited finite resources.

The final four chapters showed how the past proponents of environmental rights responded to this challenge. This thesis identified the four main strands of reinterpretation that were developed within the past works as a solution to these tensions. Chapter Four explored the idea that environmental rights represent limits to ownership, an idea that stresses the equality of all and questions just what it is to be free within our environment. The importance of equality was also said to justify the language of reclamation and redistribution, as set out in Chapter Five. This was not a destructive language, focused only on tearing down existing property and power structures, but one which instead created alternative patterns of resource ownership through which the rights of all to the environment are secured. The following chapter examined the reinterpretation of environmental rights as rights to 'as good' equivalents to natural resources, an interpretation which seeks to change the claims

that environmental rights entitle their holder to make in order to ensure the equality and freedom of all. Finally Chapter Seven explored the final response to these tensions, which argued for the exclusion of some from resources to which they were entitled.

Following Skinner's point that those who study past political theory should ask 'what is supposed to be the practical use, here and now, of our historical studies' (Skinner, 1998: 107), the aim of this thesis has been to show the relevance of these past works to contemporary environmental political problems. The links between this material and current literature and issues, particularly that of fracking in the UK, have been outlined within each chapter and will be explored here in order to show the advantages of this approach and the benefits it can bring to current environmental campaigns.

The debate in the UK over fracking uses the same language and concepts as the past thinkers did when discussing the advantages and disadvantages of labour and ownership, as set out in Chapter Three. Applying the various interpretations of environmental rights to the fracking debate shows the value of such variety and how looking to these past environmental rights can shed light on our contemporary environmental problems

The first solution to the tensions inherent within environmental rights, set out in Chapter Four, sees environmental rights as limiting property in the environment. By both limiting the claims that the rights-holder themselves can make and limiting the claims of others, the claims of all can be achieved. The three key limits here are enough for others, necessity and consent. When these concepts are applied to the fracking debate we see that environmental rights would ensure that fracking could only take place with the consent of all, would only be permitted if it were necessary for the fulfilment essential energy needs and that 'enough and as good' resources (whether this shale deposits, unpolluted air and water or undisturbed land) was left available for others. If these conditions were not met, then fracking would be said to violate environmental rights.

The concept of limitations is shared by the republican thinkers who use this language to discuss the agrarian laws and Chapter Four also examined Machiavelli and

Harrington's work on the agrarian laws. Though not based on rights claims, these laws explicitly engage with the problem of how to balance competing claims to environmental resources. The relevance of this to an account of environmental rights is made clear when applied to this contemporary example. So Machiavelli's belief that the agrarian laws help 'keep the public rich and the citizens poor' (Machiavelli, 1996: 79), would suggest that the profits made from fracking be given over to the state. There should be great debate over whether or not fracking takes place, with public officials questioned closely, but from the start the proceeds should be held by the state in order to both benefit all and shore up the state against *fortuna*.

Chapter Five examined the idea that environmental rights justify the reclamation and redistribution of environmental resources. This argument is made by Winstanley, Spence, Ogilvie and Marx, who all wished to see natural resources taken from their current owners and suggested alternative models of ownership, which would better secure the access of all to the environment. This is a highly political solution, embedded in local resource ownership and power structures and one which engages with hard questions concerning the role of violence in enforcing environmental rights and the measures needed to enforce and maintain environmental equality. Applied to the question of fracking, this understanding of environmental rights would argue for the public reclamation of shale deposits and the land under which they lie. These resources would then be controlled either by the state or by the local communities. All would be able to take part in developing such resources or could prevent such resources from being used. The designated use of resources would be tightly controlled and monitored to ensure that the equality of access was maintained. This interpretation of environmental rights has been echoed in anti-fracking protests, showing the appeal this radical, revolutionary vocabulary holds.

Alternatively, we may choose to draw upon the understanding of environmental rights as rights to 'as good' equivalents. This interpretation, set out in Chapter Six was developed by Locke, Paine, Thelwall and Mill. Seeking to retain the benefits of development and balance the competing claims of all to the environment, this understanding of environmental rights suggests that the rights-holder be able to claim the equivalent of resources, however understood. Though the claims that individuals were entitled to make would change, the freedom of the rights-holders



would be secured and their equality defended. Under this interpretation those affected by fracking would have a right to equivalents for the resources they had lost. This could take the form of equivalent resources, such as the provision of new land, away from the site or the creation of public parks to allow them to still access natural resources, as suggested by Mill. Alternatively they could either receive guaranteed jobs within the industry, financial compensation or a share of the profits made, as Locke, Paine and Thelwall respectively argued.

The final conception of environmental rights offered within the past literature is that of exclusions. This understanding draws on the republican tradition and suggests that the severity of the challenge involved in balancing the rights of all to a finite resource means that we might need to accept that only the environment rights of some can be secured. This solution is tied up in questions regarding bounded and unbounded resources. Exclusion may be an appropriate way of thinking through rights to bounded resources, linking the rights to such resources to those who live with the consequences. On this understanding, only those who live in the immediate area of the gas drilling would be permitted to decide whether or not the fracking process would go ahead and others would be excluded. Drawing on the republican conception of limitation and exclusion, this would enable a more efficient consultation process. Where this approach runs into difficulties is when it is applied to rights to unbounded resources. The release of methane gas and the potential seismic disturbances suggests that fracking be classed as a threat to rights to unbounded resources. Applying Grotius' argument, his emphasis on the rights of all to unbounded resources and the importance of necessity and preservation would therefore suggest that all would be entitled to take part in the debate over fracking – for the potential threat would mean that 'utility which, in times of necessity, makes common again things formerly owned' (Grotius, 2004b: 86). Alternatively, applying Thelwall's blended understanding of natural rights and civil rights, the threat to the natural rights of all would be recognised and perhaps compensated but only those who lived in the immediate area would take part in the decision-making process and the communal labour.

What is crucial here is the variety of ways in which we can interpret environmental rights and the different responses to the debate surrounding fracking

that results. Individuals can draw on the languages of exclusions, limits, equivalents and reclamation and redistribution in choosing how to reply to this question, depending on their own political needs. So, some communities may decide to conceptualise their environmental rights as rights to equivalents, specifically to labour and to a share of the profits made as argued by Thelwall. Other communities, perhaps more radical, might choose to reclaim the shale gas deposits on behalf of the group as a whole. Individuals can therefore decide for themselves how their claims, freedoms, equality and ecological embeddedness should be managed.

More generally when examining the debate around fracking, the awareness of the past conceptions of environmental rights can help. For example, when the advocates and opponents of fracking each invoke rights to natural resources to support their side, we know to ask how their understanding of rights balances equality, claims and freedom and how they interpret rights to bounded and unbounded resources. We can interrogate which language they are using to conceptualise environmental rights and ask why. As noted above, the proponents of fracking frequently draw upon the language of 'as good' equivalents, as it will enable fracking to go ahead. Yet this understanding reflects the interpretation of 'as good' that was forward by Locke and Paine, and focuses on a living and financial grants rather than the wider understanding of equivalents developed by Thelwall and Mill. Furthermore does is the concept of rights employed in this debate informed by its history? If not, for what advantage do those involved gain from denying this? For example, it might be more politically advantageous for those who oppose fracking to overlook this history since the past thinkers offer support for labour and development, seeing them as a problematic yet necessary aspect of environmental rights.

This examination of the ways in which the past thinkers have conceptualised rights to the environment has shown that they were aware of the tensions within such rights and put forward creative solutions. Environmental rights are not new, nor do we need to develop new philosophical groundings to address the complexities involved in securing the rights of all to finite resources (Batty and Grey, 1996). Instead we need only to look properly at the grounding which such rights do have, the answer which

are, as Barry points out “‘always already here’ present and available to us if we so choose’ (Barry, 2012: 290).

The knowledge of this ‘already here’ grounding that this thesis presents means that current environmentalists can have a stronger understanding of our current debates and a ‘reflexive purchase’ as Philp put it (Philp, 2008: 136), on the languages, concepts and options available to us as we try to think through contemporary environmental problems. This creates a rich resource that current proponents of environmental rights can draw upon, for both a better understanding of what it means to have rights to the environment and as a source of inspiration, particularly with regard to the politically creative approach these thinkers put forward. The past thinkers recognised the tensions inherent in securing the rights of all to a finite environment and responded, in order to ensure that all could access the environment upon which their lives depended. Current environmentalists need to do so too.

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