

# LIBERTARIAN THEORY, CUSTOMARY COMMUNAL OWNERSHIP AND ENVIRONMENTAL PROTECTION

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## 1. Introduction.

In this paper I intend to offer a comparison of two attitudes towards property rights. The first is the liberal/Western individualistic attitude which in its strongest form, I believe, is represented by the libertarianism of Robert Nozick as it is set forth in *Anarchy, State and Utopia*.<sup>1</sup> The other perspective is the collective rights tradition which I find to be exemplified in the traditional Melanesian societies of Papua New Guinea, though, of course, the central features of this position can be located in other traditional societies.

I defend my choice of Nozick as exemplar of the liberal philosophy on property rights on the grounds that his strong position on individual rights presents this individualistic tradition in its purest form which contrasts interestingly with the orientation of non-Western communal societies. I could have chosen John Rawls whose work *A Theory of Justice* is an equally seminal and important contribution to the liberal tradition.<sup>2</sup> However, Rawls, as Nozick himself has pointed out, is less thoroughgoing in his commitment to individual liberties especially those relating to private ownership in that he construes these liberties as conditioned by the social end product of an egalitarian based distribution.<sup>3</sup>

I begin with Nozick's view as to the moral principles embodied in private property rights as expressed in *Anarchy, State and Utopia*. I will then present the collectivist perspective as it is to be found in traditional Melanesian communities indicating the contrasts between the two positions. Subsequently, I compare the ideological background which founds both positions. Ultimately, I conclude that the exigencies of environmental protection require that we balance the liberal attitudes with a traditional orientation which is based on collective rather than individual property rights.

## 2. Entitlement and Voluntary Transfers.

Ideals of individual liberty as they are said to apply to property rights find their strongest expression in the libertarian theory of Robert Nozick. Libertarians distinguish themselves from other liberals in their thoroughgoing determination to explore the social, political, and legal implications of a commitment to the pre-eminent values of individual freedom. In a sense their theories represent the refinement of certain leading liberal ideas which have shaped Western institutions during the last several hundred years.

The libertarian individualistic approach to ownership can be best elicited through attention to Nozick's conclusions concerning a legitimate entitlement. These are set forth in the "entitlement theory" as it is described in *Anarchy, State and Utopia*. It is alleged that the principles of this theory indicate how one would acquire "holdings" or "entitlements" in accordance with just processes.

In a wholly just world, Nozick tells us, the following inductive definition would exhaustively cover the subject of justice in holdings:<sup>4</sup>

- i) A person who acquires a holding in accordance with the principles of justice in acquisition, is entitled to that holding.
- ii) A person who acquires a holding in accordance with the principle of justice in transfer from someone else, also entitled to that holding, is entitled to that holding.
- iii) No one is entitled to a holding except by repeated applications of one and two.

The first principle Nozick terms "justice in acquisition," and it refers, *inter alia*, to ". . .the process or processes by which unheld things come to be held, the things which may come to be held by these processes, the extent of what comes to be held by a particular process . . .".<sup>5</sup> The second principle which refers to justice in transfer,

is said to encompass "The legitimate means of moving from one distribution to another . . ." and makes reference to the means by which an individual may acquire a holding through transfer and divest himself of a holding.<sup>6</sup>

Nozick recognizes that this is not a wholly just world and thus he adds a further principle, that of "rectification." In this instance one may legitimately acquire holdings through the attempted rectification of past injustices.<sup>7</sup> In such a case authorities try to estimate what might have occurred if the past injustice had not happened. The principle of rectification, however, plays a very minor role in Nozick's text and is not really germane to the significant conclusions which are reached. For this reason it can be safely disregarded.

In this paper I intend to concentrate upon the second principle, "justice in transfer", as a way of underlining the most significant differences between the liberal/libertarian and the customary Melanesian philosophy of ownership. This route, of course, avoids discussion of the separate issue of original entitlement including the original sources of entitlement of the transferor. This is intended for two reasons: first, matters of economy which dictate that in effective discussion one must focus on a distinct issue; second, the real difficulty in saying anything relevant and appropriate concerning the historical events surrounding original acquisition where in most cases the evidence is entirely and irretrievably unavailable.

Justice in transfer refers to the "legitimate means of moving from one distribution to another." As we have mentioned, this must encompass the legitimate means of acquiring through transfer and divesting oneself of a holding. As in many cases, Nozick is often content merely to indicate the significant issues involved, but he does state categorically that one essential component of just distribution is the quality of voluntariness. This can be interpreted to mean that one cannot legitimately or justly acquire a holding - regardless of other necessary conditions - unless there has been a voluntary transfer or conveyance; conversely, it is generally the case that one cannot successfully divest oneself of a holding unless one has acted voluntarily.<sup>8</sup>

This philosophical account of legal entitlement entails broader implications by casting a moral blueprint which excludes certain social and political arrangements and sanctions others. For example, welfarism and Keynesian policies could not even be contemplated if one were already convinced that the funds (taxation payments) to be used for such purposes, had been illegitimately acquired by the government and thereby contrary to justice in transfer. On the issue of laissez faire economics and the asserted independence of business activities with respect to government regulation, the entitlement theory offers an analogical defence of the autonomous choices and non-interference with

the holders of property and capital. On this reading, the voluntary transfers of property and capital, supposedly characteristic of free market activities, cannot be subject to government regulation or controlled to effect "socially responsible" decisions because this would act to limit voluntary aspects and thereby produce an illegitimate distribution, contrary to justice in transfer.

The entitlement theory can thereby be seen to found a strong attack on what are perceived, *inter alia*, as the dystopias of socialist and welfarist states. But what is of interest to us is the strong individualist ideology implicit in the entitlement theory. This is to say the fact that the ideas of distribution, entitlement and property itself are seen from the individual rather than social perspective as ownership and entitlement are defined in terms of exclusive individual control. In developing the theory Nozick finds the concept of ownership and legitimate entitlement morally buttressed and supported by the constraints imposed by certain natural rights principles. The traditional natural rights position holds that natural rights are moral rights which invariably apply regardless of the conventional rule system and are ascribable to individual human beings solely on the basis of some alleged essential natural quality associated with their humanity. On Nozick's view "natural rights" are to be associated with certain moral intuitions which we connect with the values of individual autonomy.<sup>9</sup> The assumption is that the natural characteristic of all human beings is their capacity for individual autonomy.

Within the theoretical context the function of these natural rights is the protection of the freedoms which are perceived to constitute the autonomy of the individual. These natural rights stipulate the so called "moral side constraints," boundaries which other agents should not cross without the consent of the right holder.<sup>10</sup> The key to the connection between these natural rights and the notion of legitimate entitlement is the notion of individual freedom.<sup>11</sup> According to the entitlement theory, transfers which lack voluntariness lack legitimate entitlement. At the same time, Nozick argues that there is a natural right to property, and actions which are contrary to this natural right, entrench upon our individual freedom. The latter will necessarily occur when some agent, whether organizational or individual, interferes with the voluntary transfer or alienation of property. On this reading, therefore, interference with a voluntary transfer results in an illegitimate transfer which is synonymous with a violation of one of the "moral side constraints" (associated with private ownership) and, *ipso facto*, violation of the natural right to property.

Thus, Nozick links the notions of justice in transfer, legitimate entitlement and natural rights to property. Accordingly, actions or policies which ignore or deny individual voluntary transfers are contrary to

the notion of "private ownership" and result in something called an illegitimate entitlement which is synonymous with the violation of a natural moral right. Nozick labels such actions or policies as being contrary to morality or immoral.

One may conclude from this adumbration that institutional arrangements are both assessed and justified in terms of individual liberty. Property rights are held to exist independently of institutional structures as with other natural rights like the right to personal security. The emphasis upon individual rights as forming the moral background to the entitlement theory means, of course, that much rests upon the attribution of absolute value to the individual. But this leads to an apparent paradox as property rights are necessarily embedded within organizational structures in civil society and so become associated with constraints on individual liberty as organizational structures will ineluctably restrict one's natural individual freedom. However, Nozick justifies these minimal societal restrictions on individual liberty on the grounds that a certain minimal organizational regulation is necessary to safeguard a non-organizational right to the liberty of personal ownership. Ultimately the freedoms associated with property rights and personal security entail the implementation of the minimal state or "territory wide protection agency."

### 3. Communal Land Ownership.

By way of effecting comparison with this articulated ideology of a modern liberal individualistic utopia let us now consider a different ideology associated with what have been labelled holistic societies - societies in which the ultimate value is the society itself.<sup>12</sup> To illustrate certain important differences we will turn our attention to the traditional Melanesian societies of Papua New Guinea. Within this context, we encounter a dominant ideology of communal rather than individual values. Associated with these ideas we encounter conventions of ownership whose basis is communal rather than individual. In this instance an entirely different perspective on ownership rights unfolds. A.P. Power asserts that as land through generations was held by force of arms through social groupings, the fundamental ownership of land is by groups of some sort or other. Though customary administration of land within these groups is varied and group specific, the important constant, he remarked, was that the group owned, and individuals used, the land. "Individual land usage rights did not remove the reality that the group was the basis for ownership and the basis for the defense of these rights."<sup>13</sup> Similarly Heider in his study of another group of Melanesians, the Dani of Irian Jaya, also observes that individual hold-

ings correspond to usage rights rather than the western idea of ownership.<sup>14</sup>

The cultural entrenchment of communal rather than individual land holdings is reflected in the fact that the community derives its very identity through the communal land holding. Power asserts that the linchpin of Melanesian group or community life and history was the land holding and the communal land holding provided the locus for the community's cultural activities: political, military and social.<sup>15</sup> This difference of perspective leads to quite different attitudes towards matters of transfer and ownership. With respect to the issue of transfer, Power believes the Melanesian cannot fully disassociate himself from his land. Drawing from his experiences in the East Sepic Province, Power concludes that the Melanesian concept of a sale of land is really something like the western concept of a lease. After the Melanesian sells his land he maintains a proprietary interest in the land by some form of interest in the subsequent use of the land by the new owner.<sup>16</sup> In fact the idea of conveying land is a modern Western concept unknown in traditional Melanesian societies. It is only since the arrival of the cash economy and the colonial administration that legal structures have been deployed which allow for the conveyance of land either by individuals or communities, though land sale in Papua New Guinea continues to be constrained by the fact that 97% of the land is communally held.

Turning now to the relations between land tenure, individual rights, and matters of transfer we can summarize and interpolate through certain more familiar Western legal notions. Within the traditional Melanesian system, the individual has the right to use the land (always conditional on communal consent) but not to alienate, sell or unilaterally transfer his holding because title remains with the group or clan rather than the individual. In this instance we can see that the right which the individual holds as a member of the community or clan does not approximate a full ownership right, it is more properly a usufructuary right, the right to make use of holding which properly belongs to another so far as compatible with the substance of the thing not being destroyed or injured. I suggest that this right can be understood by analogy with the occupation right which an individual licensee gains through the purchase of a ticket on a public transportation vehicle like a bus. With the purchase of the ticket the individual has the general right to public transportation which particularizes a right to occupy and use a seat on the bus. Similarly the general rights associated with membership in the community or clan particularize a right to use communal land holdings. However, in both cases this is a bare usufruct; the holder of a right to public transportation does not also gain a right to transfer or convey the bus or parts of

the bus to other individuals or organizations, and neither does the individual clan member gain a right to sell or convey community holdings. However, as a member of the clan, the individual does gain certain rights and interests greater than those of a usufruct; the Melanesian clan member can, for example, participate in important decisions involving the development, disposition, devolution, and even sale of holdings. But unlike the liberal system which Nozick advances, communal consent is always necessary for individual dealing in land and the individual is never at liberty to alienate, sell or unilaterally transfer his interest.

Another Western concept which is useful in understanding the individual's right within the Melanesian system of communal land holding is that of trusteeship. We have already seen that liberal thinking (represented by Nozick), sees the rights of the group derivative from individual rights and thus confines the task of the organization (most often viewed as a minimal state) to providing protection and security for the rights and property of individuals. In contrast, the Melanesian position embraces a view which can be associated with Hegel's interpretation of the classical Greek political life, this is to say one which regards the organization or community as having its own proper interests and even rights, which condition the freedoms and interests of the individual. In this scheme the roles are reversed and it is the individuals who must promote the interests of the community rather than the community promote the interests of the individual.<sup>17</sup> In Melanesia these ideas necessarily apply to individual rights to land and land usage. This entails that the individual land usage is not exclusively personal but must also conform to communal purposes. Thus, in part, his right is that of trustee, one who holds property conditional upon the performance of certain positive duties towards another, i.e., the holder of the greater interest. This means that the individual right holder is not at liberty to impair the holding and indeed must strive to use the holding for the benefit of the superior interest of the full title holder, in this case the community.

However, the idea that a community or society might possess its own proper ends distinct from the purposes of distinct individuals - which at times take preference over individual purposes - has been strongly criticized by the liberal tradition. Nozick himself seems to view such a notion as an abstraction without content. On the subject of an overall social good he states:

Why not . . . hold that some persons have to bear the costs that benefit other persons more, for the sake of the overall social good. But there is no social entity with a good that undergoes some sacrifice for its own good. There

are only individual people with their individual lives.<sup>18</sup>

Thus, the libertarian sees a reality of individual interests and individual ends rather than social interests and social ends. The corollary is that individual ends in turn are created by individuals and not by social bodies, unless, of course, ends are forced upon individuals by other individuals who control organizational structures. This view was already given proscriptive expression a century earlier in the liberal manifestos of J.S. Mill in his demand that governments and social bodies leave the individual free of interference to choose his own life style or form of life.

However, failure to discern any ends and purposes other than individual ones may simply be indicative of a certain liberal ideological blindness. Others have readily affirmed the reality of social and communal ends. For example, Hegel believed that the community became its own end, i.e., the nurture and maintenance of its own way of life and culture (*Sitten*). The individual would realize himself not by exercising his liberty with minimal involvement in the restrictions of communal life nor by creating his own ends distinct from societal ends, but by adopting the cultural and institutional ends as his own ends. Hegel drew inspiration from ancient Greece where the life of the *polis* was thought to give ultimate meaning and individual existence apart from the *polis* was regarded as meaningless.<sup>19</sup> A parallel circumstance is observed in traditional Melanesia where the clan is the meaningful unit and individual existence independent of the clan is felt to be void of meaning. Within these older systems, values associated with the community condition and determine moral principles with the corollary that actions which are morally acceptable maintain, sustain and support communal existence; those which are morally unacceptable undermine, threaten, or destroy communal life.<sup>20</sup> The latter may include a spectrum of activities from passive non-involvement in community life to those actions which directly jeopardize the existence of society.

Libertarians like Nozick regard their notions of individual liberty as intuitive moral certainties whose validity is independent of cultural or temporal conditioning. The application of this conviction may be more ideational than real. Hegel and others have doubted these claims to independent validity and have remarked upon a culturally bound ideology of individualism which has gained ascendancy at the expense of an older so-called holistic ideology.<sup>21</sup> The liberal stress upon the subjective freedom of the individual has been defended as necessary in order to combat totalitarianism, fascism, and other evils. Hegel, however, interpreted this emphasis upon the value of the individual as a natural movement of thought which began with the rejection of older ideas associated with the value of the community and logically led to



the embrace of the opposing modern ideology of individualism. Hegel has not been alone in discerning this trend as certain modern anthropologists have come to similar conclusions. For example, Daniel de Coppet finds our modern way of understanding society exceptional in disregarding society as an ultimate value to the benefit of a quite opposite and non-social value, the individual. Like Hegel, De Coppet sees this trend as a historical process involving the progressive negation of the community as a whole. De Coppet locates the initial expansion of individualism in Medieval ideology. During this period, he alleges, there was a growing difficulty to assign a place to society in the context of (in and beside) God, Christ and the King. He believes that with the inability to effect an appropriate definition of society there began a very slow and gradual drift of ultimate value from society to the indivisible individual.<sup>22</sup>

Both Hegel and De Coppet argue that this modern individualistic ideology impedes an appropriate understanding and assessment of the community and its structures. Hegel discerned that assessments of behaviour and organizational norms based solely on liberal theory would offer no more than a deracinated analysis which abstracts individual choice from the inherited structures and their communal function.<sup>23</sup> Hegel's goal was a synthetic resolution which reintegrated the modern liberal attitudes and ancient view which attributed pre-eminent value to the community. Hegel sought to resolve the conflict through a movement of *aufgehoben* in which both perspectives were renewed and preserved in new synthesis, *System der Sittlichkeit*.<sup>24</sup>

Similarly, De Coppet, writing from a contemporary anthropological perspective, notes that as the liberal ideology values nothing beyond the individual, the continuous move towards its expanding freedom discredits society as a value and makes understanding society even more difficult.<sup>25</sup> De Coppet argues that understanding and proper assessment will be achieved, not through the isolation of individuals and their actions, but rather, in considering these phenomena in the context of a much greater whole, that is the society itself.

My argument in this paper is that this overemphasis on the value of the individual and his freedom (especially in the area of property rights) and the concomitant devaluation of society and the community's general interests have contributed to the environmental problems which we now face. This has been generated by an attitude which considers societal structures primarily in terms of individual freedom and interests, denying, of course, that society itself can be regarded as an entity with interests, a future, and a destiny. This devaluation of society, when coupled with a failure to acknowledge that interests of communities are intimately joined with particular localities and defined areas of land, may militate against appropriate social action in

these times of ecological crisis. This is to say that Western ideology of individual property rights and private enterprise has thereby elided the point that the community's interests are intimately connected with appropriate land use.

#### 4. Property Rights and Communal Survival.

As behaviour in holistic societies is judged in relation to communal sustenance and maintenance, organizational relationships and communal structures may be seen to reflect the goals. Indeed, reflection would indicate that this truth applies not only to holistic but to any successful society once we recognize that the idealism associated with individual autonomy may well have led us to misunderstand this social function. H.L.A. Hart holds that the central and enduring aspects of all moral and legal systems can be derived from a contemplation of the invariables of the human condition and the universal goal of communal survival. The aim of survival seems to be an empirical yet contingent truth about individuals and human communities and, according to Hart, it colors the structures of language, thought, and the rules of conduct which any social organization must contain if it is to be viable.<sup>26</sup>

A recognizable humanity will always include certain laws of association and within these rules or laws we will recognize a certain minimal content which these diverse systems share. Hart points to a recognizable core in all moral and legal systems determined by the exigencies of survival and certain natural facts about human beings - for example, facts relating to human vulnerability, approximate equality, limited altruism, limited resources, etc. With respect to the core content which is to be found in the viable system, Hart lists rules prescribing mutual forbearance and compromise, the necessity of sanctions, and some minimal form of the institution of property based on the limitedness of natural resources.<sup>27</sup>

Notwithstanding this common core, we can conclude that if the communal and institutional arrangements of all viable societies focus upon the goal of survival, there is a need for a continuing evaluative study of our legal and moral principles by reference to this consideration. This entails, I believe, that we supplement a commitment to the liberal ideal of individual freedom with a further commitment to goals of social continuity and viability. Choices, therefore, will always be unavoidable when conflicts develop in which issues of personal freedom threaten the viability of the society itself. Individual property rights, their scope and range now present such an issue - an issue in which powers embodied in such rights may ultimately have deleterious

effects on future communities and generations.

The right of the individual to transfer a holding, unilaterally, may be identified, in part, with what A.M. Honore describes as the right to capital - the power to alienate a holding or to consume, waste, modify or destroy it.<sup>28</sup> Part of the problem with Nozick's promotion of the individualist attitude to personal ownership and transfer is the failure to recognize that what an individual does with his holding cannot be entirely his own concern given that the holding forms part of the natural environment in which others and the community must exist. When I transfer a holding I transfer it to an individual or organization which usually has a particular use in mind. It may be true to say that I myself have not used the holding in a destructive, wasteful manner with harmful consequences for others, however, what mechanisms will protect us from the subsequent inimical environmental consequences derivative from ill-considered transfers? I argue that given the exigencies of our environmental concerns, it may no longer be feasible to give individuals a *carte blanche* to proceed as they wish when they intend to transfer a holding.

Let us look at a specific issue involving the transfer of individually held property, the phenomenon of development by sub-division. The latter is a familiar device of land developers in Western societies. Unless a specific municipality has passed regulations either to proscribe or control this practice, an owner or developer will always have this option at common law. Nozick's libertarian principles offer strong support for maintaining this general common law right and rendering it immune to supervening legislation. The entitlement theory states that one has the inviolable right to transfer one's property. This means, as we have seen, that any interference with this right to transfer, which necessarily includes the right to convey land by subdivision, involves violation of the natural right to property and *ipso facto* the individual moral side constraints. In effect, the application of Nozickian principles prohibit the municipality or any other community organization controlling the development of land by subdivision.

The seriousness of this issue should not be underestimated. Studies have shown that many of the ecological problems in Australia and in the rest of the world are generated by the overcrowding of human beings on areas of land which cannot accommodate the intense resource usage or the sewage and human waste resulting from population density. This problem has arisen in Perth Australia where the underground water supply lies close to the surface and is thereby at continual risk from leakage from septic tanks. In other parts of the world, for example, the Aral Sea and *environs* in Central Asia, population density has created a demographic disaster such that over use of water resources may irrevocably undermine an entire water system.

Together with overuse of water resources, pollution from human sewage and detritus poses a major threat to the hydrological system and related ecological systems. Within the libertarian universe with its overvalued individual liberty and private property rights, there is nothing a community could do to control a subdivision development which threatens a population density which would effect these types of problem.

It is true that libertarian theory tempers the demand for individual autonomy with an entailed prohibition that one not use one's property to injure another or his holdings as this in itself would constitute violation of the moral side constraints. Tibor Machan, for example, has recently argued that libertarianism promises the most effective approach to environmental damage in that its principles require that pollution be punishable as a legal offense that violates individual rights to life, liberty, and property.<sup>29</sup> But this is not adequate to bring environmental concerns sufficiently under the aegis of libertarian theory. One can utilize libertarian principles to prohibit an industrial developer from dumping toxic heavy metal effluent into a river system, but according to the entitlement theory it is clear that an individual must be free to convey his property as he desires. Thus, in the instance where a large tract of land is subdivided and sold off as individual lots, nothing in libertarian theory can operate to prevent the possible unfolding of a destructive process where the lots are subsequently used for human habitation. The theory must remain mute concerning the subsequent use of the land where none of the individual holders use their holdings in a way which is directly harmful or deleterious to other individuals or the greater community, for example, if they use their property in the acceptable and customary home owner ways. Let us imagine that, as has occurred elsewhere, it is simply the case that over time the soil cannot properly absorb the cumulative human pollution, nor can the water system withstand the increased usage. Consequently, in several generations the original community is destroyed as the water system is depleted and the earth becomes too salinated and toxic to support the original population base.

In contrast, customary collective land tenure as evidenced in Melanesia would offer greater environmental protection. First, individual land rights are essentially usufructuary rights while the primary ownership right remains with the community. Thus, the community and not the individual exercises exclusive control such that an individual could not proceed to convey or develop real property without the consent of the community. In the above case of development by subdivision within the libertarian context, the individual could proceed to subdivide and develop his holding even if all other members of the community objected.

Furthermore, in the liberal system the only constraints on use are those associated with direct injury to other individuals. Tibor Machan, as we mentioned earlier, has described a program for environmental protection based on liberatarian principles in which he argues that any pollution which would most likely lead to harm being done to other persons who have not consented to being put at risk would have to be legally prohibited.<sup>30</sup> From my perspective this manner of procedure is still inferior to a communally based orientation on several grounds. First, because of the nature of libertarian theory there is always a presumption in favor of the property holder in the use of his property such that the individual right to do what one wishes with one's holding remains inviolate until it is shown that his action will bring about a result which is, or is likely to be, injurious to others. Thus the burden of proof seems to devolve upon those who are at risk to prove that they are at risk (by which stage matters may have already gone too far). For example, a community may wish to say no to the construction of a nuclear power plant in its vicinity. In this instance the community's intentions are to preempt the possibility of a monumental disaster even though, at law, they may be unable to adduce conclusive evidence proving that injury will be likely to occur. Clearly, the communitarian approach gives the community greater control and autonomy in its efforts to address environmental issues and plan appropriate safeguards. In addition, there are further advantages to the communal approach which might be loosely based on Melanesian structures. In Melanesia there are aspects of trusteeship associated with individual usufructuary rights, such that even the degree of control which the individual exercises must, in part, be directed towards communal benefit - the principle being the long term survival of the community. The implementation of these principles would necessarily abrogate any course of action, for example ill-considered transfers, which might harm future generations of the community even if the present membership is left virtually unaffected. In addition, this notion of ownership operates to promote the future of the community, as the community, the ultimate owner of the land, is thought to consist not only of present membership but also past and future members.

A further problem within libertarian theory, which militates against an axiology in support of environmental and general communal protection, is the tendency of libertarians to supplement principles based on individual liberty and autonomy with cruder utilitarian notions associated with people like Jeremy Bentham. These instances are most conspicuous where libertarians seem to confuse their allegiance to individual autonomy and embrace utilitarian calculations in support of those freedoms of private ownership intrinsic to the free market system. Initially in *Anarchy, State and Utopia* Nozick inveighs against utili-

tarianism as constituting an "end state principle" which, more or less, sacrifices individual liberty on the altar or Procrustean bed of forced resource distribution. Ultimately, utilitarianism is rejected because it entails this forced intervention in individual affairs.<sup>31</sup>

But the fact is that an allegiance to individual liberty, *simpliciter*, does not always provide unambiguous answers. For example, it is necessarily the case that championing certain forms of individual liberty can mean restrictions on other forms. Private property rights certainly represent one such dilemma for the libertarian. The legal notion of private property, as it is understood in English common law and in Nozick's entitlement theory, gives the private individual the right to acquire property and legally exclude others from its use and control. This right certainly enhances the liberty and autonomy of the property holder but doubtless places restrictions and limits on the non title holders, those who must respect these rights and, for example, stay off the other's land. (This alone indicates that the right of exclusive control and unilateral transfer is not at all separable from questions of land use, in that the individual property holder would have nothing to transfer if he could not limit the right of access and use by other community members and impose his own uses.) Furthermore, this issue becomes more controversial when one considers that in certain cases this property right may be colliding with traditional aboriginal rights like usage rights of hunting and fishing. In such a case, where traditional rights of usage conflict with acquired rights of private ownership, whose rights and freedoms should prevail? It is not at all obvious or intuitively clear that liberties of the private owner should have a stronger moral claim than traditional aboriginal usage. Nozick suggests that the dilemma can be resolved by compensating for the loss of certain liberties, e.g., to gather, pasture, engage in chase, etc. in those cases where the process of civilization has resulted in a net loss.<sup>32</sup> In other words, after initially questioning the moral validity of utilitarian principles, Nozick reintroduces the utilitarian calculus to settle an issue which has no clear cut resolution through the unaided application of the basic libertarian notion of individual liberty.

But consistency may well be the hobgoblin of little minds as Emerson once pronounced, and so perhaps one should not dwell on this point of inconsistency. But let us consider that, in effect, Nozick is admitting that obvious injury and loss of liberty are suffered by those who have had their rights of usage extinguished by the rights of private ownership which he upholds. His response to this diminution of freedom is to suggest that this can be redressed through the benefits of civilization, i.e., through industrial development and the ensuing material benefits that these injured individuals will receive.

But again this thinking elides communal and environmental con-

cerns by considering communities and their problems as reducible, without remainder, to individuals and individual benefit or disadvantage. It thereby misses the point that aboriginal hunting and fishing rights are not simply individual rights but also communal rights intrinsic to a communal form of life (i.e., rights whose control and enforcement invests in the community rather than the individual). Thus, in effect, by dividing land into individual freehold estates, one removes the traditional communal land base from communal control placing the control in individual hands. Furthermore, one undermines the future of a traditional holistic community by sabotaging customs and practices associated with traditional land use. The latter point is intimately connected with the fact that individual control and conveyance of land facilitates industrial development and industrial uses inconsistent with traditional forms of land use. Thus, the overall effect of the implementation of individual forms of land tenure has been disruption to certain traditional activities and the vitiation of the community's control of its own destiny. In some cases there has been violent resistance to these developments gaining prominence in recent years as environmental groups have begun to draw attention to the struggles of various indigenous peoples to maintain a traditional form of life in the face of encroaching development.<sup>33</sup>

Finally, buttressing libertarian arguments for certain preferred "liberties" with references to utilitarian advantages will not strengthen the case in non-Western eyes, as holistic thinking does not view the interests of the whole as equal to the interests of the parts. The fact that individual members of the community are enjoying a standard of living previously unachievable will not be entertained as an argument, if this is achieved through social relationships and land use which threaten the cohesion and continuity of the community.

These observations may be dismissed as a mere academic points about the differences between holistic and liberal thinking and, necessarily, the ideological differences between the developed and the developing world. Indeed it will, no doubt, be argued that liberal/libertarian principles are merely the agents of change which help modify outdated forms of community life so that these communities can adapt to modern development. But the uncritical acceptance of this thinking may be mistaken on two counts: first, traditional forms of land use have tended to be aligned with natural cycles and surrounding ecosystems thus tending to preserve and renew the environmental habitat; second, as our understanding of ecological processes deepen, Western societies may come to realize that we must also balance the preoccupation with the immediate material products of development with a concern for the manner in which we are using the environment. This may well mean devaluation of utilitarian advantages and certain liberties associa-

ted with private ownership in favor of communal control with the aim of preserving the habitat or niche structure in which our future human societies must survive.

Ultimately, enshrining the private rights of conveyance and transfer has entailed protecting individual rights to control and determine land use, with little restriction beyond provisos against direct harm to other proximate individuals. In these days of ecological crisis, however, one is increasingly in need of policies which tie land use to communal benefit and the renewal of depleted resources. It is the suggestion of this paper that this can only be effected through the modalities of ownership which re-establish the prominence of the community and the ability of the community, rather than the individual, to plan and coordinate appropriate land use.

Some of my last remarks may lead the reader to think that the focus of my criticism has shifted from libertarianism to industrialization and therefore that I have indulged in a straw man form of argumentation. However, what I emphasize is that the practical and environmental realities indicate that individual forms of ownership, especially in the case of land tenure, tend to facilitate environmental damage: first by instituting forms of ownership which are conducive to rapid industrialization; but even at the pre-industrial stage through the underlying triadic relationship between individual holdings, the cash economy, and non-traditional land use. With respect to the latter phenomena and the incidence of environmental deterioration, one need only refer to the fundamental and irreversible changes which have been effected in the Melanesian way of life with the transformation of Papua New Guinea from a subsistence to a cash economy. The motor of change has been the demand for cash which unlike subsistence farming requires the use of land on a more or less permanent basis for cash cropping. The demands of cash cropping in turn exert pressure on the community to alienate communal land into forms of tenure other than communal in order to facilitate permanent use. When this occurs control of the means of production no longer resides with the community. Subsistence farming of commons does not have such an effect as these lands, after one or two generations of family use, revert back to commons. Aside from the obvious social significance, which we have already diagnosed, this development has profound environmental importance as the cyclical use of land for subsistence farming is replaced by the cash cropping of plantation crops on a permanent basis. This departure from the traditional forms of land use which harmonize with natural cycles and the substitution of permanent cash cropping generate an environmental strain on the land and the depletion of this resource whether or not industrial methods of production are employed.<sup>34</sup> With respect to the environment one witnesses the emergence of extensive plantations for



producing rubber, oil palm, sugar, cocoa, tea, coffee etc. Furthermore, this desire for cash has also led to the foreign backed and controlled developments in the areas of gold and copper mining. Power, who has observed this phenomenon in the East Sepik alleges, that this has led to winners and losers and the breakdown of the communal nature of social organization.<sup>35</sup> Those who are not sufficiently enterprising have been alienated from the social organization and the results are now encountered in terms of urban drift, crime and urban unemployment. However, the point is that the alienation of communal land to individual holdings is seen to be part of a process which effects environmental damage (and social disruption) without necessarily involving implementation of industrial methods of production.

In a paper of this length there is certainly insufficient space to provide an exhaustive survey of the environmental and social damage effected by the transfer and alienation of land from communal holdings. Among other things, these events have resulted in the release of toxins into the alluvial systems. Add to all this the emergence of the logging industry and one encounters the host of familiar environmental problems which are beginning to plague all third world countries and the world in general.

Aside from issues of cultural continuity and environmental protection, there are other strong economic reasons for preserving the communal land tenure within Papua New Guinea. This traditional institution functions as a source of economic and social security for most Papua New Guineans. Collective ownership, which has been an integral part of the Melanesian subsistence culture, ensures against demographic displacement and nutritional deprivation which have occurred elsewhere in the third world. As 97% of the land in P.N.G. is communally owned, clan holdings continue to offer alternatives to those alienated by the cash economy and urban life. This has served as a mitigating factor which has obviated some of the worst aspects of third world development which occur when landless displaced peasants are forced into overcrowded urban centres. Studies also indicate that subsistence farming through the communal land system is demonstrably efficient.<sup>36</sup> Accordingly, hunger and nutritional deprivation have not been significant problems in Papua New Guinea. Development, therefore, has not been retarded by the necessity for additional investment in agriculture thus allowing the economy to mobilize domestic resources for public capital formation.

However this does not mean that abandoning certain liberal principles associated with the notion of private ownership necessitates the embrace of socialism. In other words, the traditional collectivist perspective, as it is found in Melanesia and certain parts of Africa, does not imply a socialist system. Western individualism and Western forms

of socialism are both seen as anathemas to the communitarian ideal embodied in the traditional notion of local communal rights. R.W. James has explained that the traditional communal form of land tenure enshrines the values of participatory democracy.<sup>37</sup> Thus, while the individualistic liberal position with its emphasis on individual decision making and control does not accommodate traditional modes of collective control, it is also the case that the socialist orientation which promotes centralized governmental management rather than local management is equally antithetical to the traditional collective mode of local control through participatory democratic structures. This, according to James, does definite work in explaining resistance, both within Melanesia and parts of Africa, to the imposition of forms of land tenure based either on the individualistic liberal model or the socialistic central management model.<sup>38</sup> In practical terms what we are calling for is management on the local community level through the democratic participation of the recognized members of the community.

## 5. Conclusion.

The necessity for some control over the use of the natural environment cannot be overstated as the exercise of the so-called individual right to capital in the interests of intensive development and capitalist endeavour has resulted in the destruction of many features of the natural environment and a gradual process of pollution. This has precipitated a crisis in various ecosystems which may eventually disrupt the biosphere itself such that the colossal effects our species is having on its own habitat may eventually render it unsuitable for future generations. These can be looked upon as the effects of ecological succession, the process by which the structure of the biological community, with respect to both niche structure and species structure, alters as a result of the species modification of its habitat. As happens most often in the case of dominance of one species within an ecosystem, this process ultimately renders the habitat unfit for the dominant species. However, this knowledge in itself should alert us to the necessity for controlling this process and adopting a rational and strategic policy to eschew these developments.<sup>39</sup>

Western development which has proceeded with the idea of exclusive individual ownership and the right to capital at its centre may no longer be suitable for the sustainable development of the natural environment. Different attitudes towards individual ownership and different modalities of ownership may now be more suitable. I suggest that this may require a return to or at least balancing of individualistic liberal ideals with values embodied in customary communal owner-

ship as found in Melanesia and elsewhere.

According to this thinking, the values embodied in communal ownership entail individual rights which are derivative from communal ownership rights. This departure from the liberal formula, which regards the community's rights as derivative from the individual's pre-eminent right, implies limitations on the individual's right to transfer and the right of capital. In the former case, in which the communal right is pre-eminent, this means that the individual will have to obtain communal approval or consent before exercising the right to capital, which, *inter alia*, includes the exclusive power to transfer the holding and control development. In Melanesia ownership of the means of production - land - has been communal rather than individual. The advantage of regarding ownership as communal based rather than individual based can be measured in the degree to which this will operate to retard the continuing damage to the natural environment. (One admits, of course, that the fact of communal ownership is no absolute guarantee that environmental damage will not occur, however, communal ownership implies that it will be less easy for the individual title holder(s) to avoid liability for the effects of mismanagement.) This will be especially the case if one regards the community as consisting not only of the present membership but also future membership (which is the case in Melanesia).<sup>40</sup>

1. Nozick, Robert, *Anarchy, State and Utopia*, (New York: Basic Books, 1974).
2. Rawls, John, *A Theory of Justice* (Cambridge: Harvard University Press, 1971).
3. Nozick, 1974 p. 198.
4. *Ibid.*, p. 151.
5. *Ibid.*, p. 150.
6. *Ibid.*, p. 151.
7. *Ibid.*, pp. 152-153.
8. *Ibid.*, pp. 153-154.
9. *Ibid.*, p. 50.
10. *Ibid.*, pp. 30-33, 171-173.
11. *Ibid.*
12. For a provocative discussion of this concept see Daniel De Coppet, "The Society as the Ultimate Value and the Socio-Cosmic Configuration," *Ethnos* 55 (1990): pp. 140-151.
13. A.P. Power, "Resources Development in East Sepic Province", in *Ethics of Development: Choices in Development Planning*, (C. Thirwell and P Hughes, eds. Port Moresby: U.P.N.G. Press, 1988), pp. 269-281, p. 269.

14. Heider, K., *Grand Valley Dani, Peaceful Warriors*, (New York: Holt Rinehart & Winston, 1979), p. 32.
15. Power, p. 269.
16. *Ibid.*, p. 270.
17. See E. Mantovani, "Traditional Values and Ethics," in *Ethics of Development: The Pacific in the Twentieth Century*, S. Stratigos and P. Hughes, eds. (Port Moresby: U.P.N.G. Press, 1987), pp. 188-202.
18. Nozick, pp. 32-33.
19. G.W.F. Hegel, *Grundlinien der Philosophie des Rechts*, J. Hoffmeister ed. (Hamburg: University Press, 1955) pp. 208-210, 256.
20. See: Mantovani, in which the author, a Catholic cleric, offers an insightful and colourful discussion of the difference between the moral values which animate traditional societies and the Western values which are a part of the Western forms of life.
21. See: Hegel, De Coppet.
22. De Coppet, p. 141.
23. For a good discussion of this point see K.H. Ilting, "The Structure of Hegel's Philosophy of Right", *Hegel's Political Philosophy: Problems and Perspectives*. Z.A. Pelczynski ed. (Cambridge: Cambridge University Press, 1971), pp. 90-1-10.
24. Hegel, pp. 208-210, 256.
25. De Coppet, p. 144.
26. H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1964) p. 188.
27. *Ibid.*, p. 192.
28. This and other aspects of the modern legal concept of ownership is thoroughly explored in A.M. Honore, "Ownership" in *Oxford Essays in Jurisprudence*, A.G. Guest ed. (London: Oxford University Press, 1961) pp. 107-147.
29. Machan, Tibor, "Pollution, Collectivism, and Capitalism", *Journal Des Economists et Des Etudes Humaines* 2 (1991), pp. 82-102.
30. *Ibid.*, p. 92.
31. Nozick, p.154.
32. *Ibid.*, p. 178.
33. In substance, introduction of utilitarian theory to fill the lacunae in libertarian theory further militates against an axiology which promotes communal control of environmental habitat, appropriate land use, and future development. Indeed utilitarian theory merely increments the conflict in values. Let us consider for a moment a factual example, that of Bougainville Island in the North Solomons province of P.N.G. Until two years ago the Panguna Copper Mine on Bougainville Island generated a third of the taxation revenue of P.N.G. The mine made the North Solomons the richest province in P.N.G. and gave the residents of the province the highest per capita income in the nation. At the same time, however, the mining development and its ancillary services had become a disruption to the traditional life on Bourgainville Island. Traditional forms of usage like hunting and fishing had been directly disrupted and also, in other more derivative ways, the general activities and customs associated with traditional community life. However, if one is wedded to the utilitarian calculus formulated by liberal thinkers like Bentham and Mill a century ago, these people should have been entirely accepting of these changes which had wrought so much individual material benefit. Libertarians like Nozick would join ranks with traditional utilitarians arguing that social and material changes were morally justified by virtue of increments in individual utility through individual material benefit (compensation payments for the loss of traditional rights) and increased liberties through superior individual freehold rights which, in many cases, were replacing customary forms of communal land tenure. Again these attitudes are necessarily reflective of the fact that both libertarians and liberal utilitarians, despite internal dogmatic disputes, are captives of a common liberal ideology which judges social situations in terms of individual loss and benefit. The Bourgainvilleans, however, did not frame the

issue in the latter terms. They did not ask whether, as individuals, they were materially better off, they asked whether their society or community was better off and they came to the conclusion that it was not. Ultimately, Bougainville island plunged into a state of revolt as the Bougainville revolutionary army closed the Panguna mine and subsequently drove the P.N.G. Defence Force and all foreigners from its shores. Bougainville declared itself independent of P.N.G., and the P.N.G. government embargoed the island effecting ever deteriorating levels of health and general welfare. These conditions continue at the time of writing.

Stepping back from these historical events we again underline a conflict of underlying principles, the liberal and the holistic. The Bougainvilleans judged according to the latter and looked at social change as it was seen to affect their society as a whole. In doing so, they attended to the traditional Melanesian consideration which regards the identity and interests of the community as intimately connected with the communal land base. It was obvious that the presence of the mine had disrupted the traditional relationship between community and its communal form of land use which was not consonant with the customary form of community life.

34. A.P. Power, "The Future of Clans in Papua New Guinea in the 21st Century", in *Ethics of Development: Choices in Development Planning*, C. Thirwall and P. Hughes, eds. (Port Moresby: U.P.N.G. Press, 1988) pp. 156-175.

35. *Ibid.*

36. See Ghillean Prance, "Fruits of the Rainforest", *New Scientist* 13 (1990), pp. 35-45.

37. R.W. James, *Land Law and Policy in Papua New Guinea*, Monograph 85. (Port Moresby: Papua New Guinea Law Reform Commission, 1985), p. 38.

38. *Ibid.*

39. For an interesting discussion of this concept and its relevance to the capitalist development of the environment see P. Catton, "Marxist Critical Theory, Contradictions, and Ecological Succession," *Dialogue* 28 (1989): pp. 637-655.

40. See: Mantovani, "Traditional Values".