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JOHN LOCKE’S THEORY OF PROPERTY, AND THE DISPOSSESSION OF
INDIGENOUS PEOPLES IN THE SETTLER-COLONY

By Calum Murray

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I. ABSTRACT

This paper explores how John Locke’s theory of property, elaborated in chapter five of his *Second Treatise of Government*, provided a compelling conceptual and practical justification for the appropriation of Indigenous peoples’ territories in America by the early English settler-colonists of the 17th century. It examines how his property theory facilitated the nullification of Native American conceptions of land through the superimposition of European private property regimes in the settler colony. It further highlights briefly how indistinguishable dynamics also characterize the contemporary Israeli/Palestinian settler-colonial context, where the reverberations of Locke’s thought on property are pervasive. To do so, this paper examines two of the key components of Locke’s conceptualization of property (namely, human beings’ transition from a state of nature to political society, and the agricultural improvement argument) specifically in the context of their application in settler-colonial settings. Ultimately, this paper hopes to generate a more exhaustive appreciation of Locke’s theory of property by underlining its implications in settler-colonial enterprises and its function in abetting the expropriation of autochthonous lands.

II. INTRODUCTION

“The buffalo followed the stars, and the people followed the buffalo”.¹ While this evocative phrase encapsulates the essence of Native American conceptions of land, it has also become emblematic of indigenous peoples’ ongoing resistance to the increasing commodification of their sacred and ancestral lands, most notably through the ongoing construction of the Dakota Access and Keystone XL oil pipelines in the United States and Canada.² The controversy surrounding the legitimacy of these construction projects results predominantly from conflicting understandings of land, its purpose, and its meaning. Whereas some proponents of the pipelines herald a vision of land as an asset with pecuniary potential and as a resource that exists solely to satisfy human needs in an oil-driven market economy, Native American communities continually reassert their conceptualization of land as constitutive of their traditional *modus vivendi*, and as an integral and inseparable element of their “identity [...] as a distinct people”.³ This essay underscores the continuities between this setting and the clashes of conceptions of land that occurred, and continue to occur, in the settler-colonial context.

Specifically, this paper examines how John Locke’s theory of private property, elaborated in *Chapter V* of his *Second Treatise of Government*, provided a compelling conceptual and practical justification for the appropriation of Native American lands by European settler-colonists in the 17th century, and facilitated the nullification of Native American conceptions of land through the superimposition of European private property regimes in the settler-

¹ Nick Estes, *Our History is the Future: Standing Rock Versus the Dakota Access Pipeline, and the Long Tradition of Indigenous Resistance*, 8 (Verso 2019).

² *Id.*

³ JAMES TULLY, *Locke in Contexts: An Approach to Political Philosophy*, 153 (Quentin Skinner, ed., Cambridge University Press 1993).

colony.⁴ In addition, this paper highlights how indistinguishable dynamics also characterise the contemporary Israeli/Palestinian settler-colonial context, where the reverberations of Locke's thoughts on property are remarkably pervasive.

Accordingly, this paper first demonstrates how Locke's conceptualization of the "New World" and its indigenous inhabitants as being in a state of nature rationalized the European settler-colonial encounter in America and the dispossession of its aboriginal peoples. Second, this piece delineates how Locke's improvement argument fortified the justification for appropriating Indigenous territories by invalidating Indigenous peoples' understandings of land because of their failure to place ideas of enclosure and improvement through sedentary agricultural labor at their nucleus. It also demonstrates how this reasoning continues to sustain the ongoing dispossession of aboriginals in Palestine by the Israeli settler-colonial enterprise. Finally, this essay briefly considers how the appropriation of communally owned land during the Enclosure Movement in England was also characterized by "discourse[s] of improvement".⁵

III. "THUS IN THE BEGINNING ALL THE WORLD WAS *AMERICA*"

While the influence of Locke's thought in cultivating liberal political theory and informing contemporary understandings of private property is undisputed,⁶ the impact his thinking has had in assisting the European colonial encounter is "passed over in silence".⁷ By signalling that "in the Beginning all the World was *America*", Locke inadvertently made this "vast [...] continent an integral part of Western political philosophy".⁸ Locke's chapter on property is emblematic of the intertwinement between liberal notions of political society and property on one hand, and the European colonial project on the other.⁹

Indeed, it is hardly a coincidence that many of the examples Locke uses to illustrate his notion of the "state of nature" are derived from observations of Native American *modus vivendi*.¹⁰ According to Locke, human beings existed first in a state of nature before entering political society.¹¹ In the state of nature, private property in the "*Earth*" can be acquired through 'mixing' one's "*Labour* with" a resource. This is because "every Man has Property in his own Person", a position he illustrates by noting how "The Fruit, or Venison, which nourishes the wild *Indian*, [...] in common, must be his, and so his, *i.e.* a part of him".¹² Locke exemplifies his 'labor theory' by noting how natural law enables "the Deer that *Indian's* who hath killed it; 'tis allowed to be his Goods, who hath bestowed Labour upon it".¹³ Further, in the state of

⁴ JOHN LOCKE, *Second Treatise of Government and A Letter Concerning Toleration* (first published 1689/1690, Oxford University Press, 2016).

⁵ MARGARET DAVIES, *PROPERTY: MEANINGS, HISTORIES, THEORIES* (Routledge Cavendish 2007) 93.

⁶ GREGORY ALEXANDER AND EDUARDO PENALVER, *AN INTRODUCTION TO PROPERTY THEORY* (CUP 2012) 35.

⁷ TULLY *supra* note 3 at 146.

⁸ Herman Lebovics, *The Uses of America in Locke's Second Treatise of Government*, 47 J. HIST. OF IDEAS 567 (1986)

⁹ Andrew Fitzmaurice, *Liberalism and Empire in Nineteenth Century International Law*, 117 THE AMERICAN HISTORICAL REVIEW 122 (2012).

¹⁰ TULLY *supra* note 3 at 141-42.

¹¹ ALEXANDER AND PEÑALVER, *supra* note 6, at 37.

¹² LOCKE, *supra* note 4, at 15.

¹³ *Id.* at 16-17.

nature, individuals can reap the “spontaneous products”¹⁴ of their labor for elementary sustenance,¹⁵ providing this appropriation leaves “enough, and as good left in common for others”¹⁶ (Locke’s “proviso”)¹⁷ and providing it does not “spoil” the original resource.¹⁸ Locke also stipulates that private property can be acquired without the “Consent of all the Commoners”.¹⁹ In contrast to this “natural mode of labor-based property”,²⁰ Locke identifies political society as a later stage of human development (“the civiliz’d part of Mankind”),²¹ where individuals have established state-centred political institutions and “positive Laws to determine *Property*” and resolve property disputes which become pervasive after the creation of money,²² which generates a situation where individuals can accumulate more property than is required for mere sustenance.²³

Locke’s political society is hence construed in contrast to his state of nature. However, upon closer examination, this distinction is revealed to be a flagrant contrast between European understandings of legitimate political organization and property on one hand,²⁴ and Indigenous American conceptions on the other, one that resultantly warrants the right to appropriate Native American lands without the consent of its inhabitants.²⁵ Indeed, Locke initially indicates that European colonists’ interactions with Natives occurred “perfectly in a state of Nature”.²⁶ Locke interprets Natives’ practices which involved “hunting, gathering, trapping, fishing, and non-sedentary agriculture” as labor necessary to ensure primitive subsistence, thereby reinforcing his contention that these peoples lived and operated within a setting regulated by natural law.²⁷

Moreover, Locke takes Native American legal systems, which indeed lacked a state-centered, sovereign and authoritative entity (at least in the European sense of the term) to regulate the use of property as evidence that Native American forms of political organization fall below his threshold for establishing political society. This is despite his acknowledgment of the existence of “*Kings*”, which he dismisses as mere “*Generals of the Armies*” as opposed to rightful state officials.²⁸ The disputes over property that occurred among Natives are said to be resolved without the recourse to “positive Laws”,²⁹ but rather are resolved on an ad hoc basis by individuals performing the function of adjudicator only temporarily: the hallmark, according to Locke, of conflict resolution in the state of nature.³⁰ Needless to say, the obvious consequence of Locke’s categorization is that the consent of the Natives is not required to seize

¹⁴ Barbara Arneil, *The Wild Indian’s Venison: Locke’s Theory of Property and English Colonialism in America* 44 POLITICAL STUDIES 60 (1996).

¹⁵ LOCKE, *supra* note 4, at 15.

¹⁶ *Id.* at 16.

¹⁷ ROBERT NOZICK, ANARCHY, STATE AND UTOPIA, 175 (Basic Books, 1974).

¹⁸ LOCKE, *supra* note 4, at 17.

¹⁹ *Id.* at 16.

²⁰ TULLY *supra* note 3 at 142.

²¹ LOCKE, *supra* note 4, at 17.

²² *Id.*

²³ ALEXANDER AND PEÑALVER, *supra* note 6, at 42.

²⁴ TULLY, *supra* note 3 at 141.

²⁵ *Id.* at 145.

²⁶ LOCKE, *supra* note 4, at 9.

²⁷ TULLY, *supra* note 3 at 156.

²⁸ LOCKE, *supra* note 4, at 55.

²⁹ *Id.* at 17.

³⁰ Barbara Arneil, *John Locke, Natural Law and Colonialism*, 13 HISTORY OF POLITICAL THOUGHT 587 (1992).

their lands, thereby inadvertently denying indigenous people a sense of agency which is, ironically, a fundamental tenet of liberal political theory.³¹ In this light, Locke's characterization can also be understood as a pragmatic effort to bypass processes of treaty making with the indigenous populations, which colonists often deemed to be illegitimate.³² Indeed, many of the prominent English settlers in the American settler-colonies, such as Samuel Purchas and John Winthrop (founder of the Massachusetts Bay Colony), argued that treaties with First Nations were invalid since treaties could only be enacted by legitimate state institutions, which the Natives were deemed to lack.³³ Crucially, these colonists attributed the absence of legitimate institutions to the fact that Natives still lived in a state of nature, which, they argued, curtailed the need to acquire their consent to confiscate their lands.

Another implication of Locke's characterization of Natives as existing in a state of nature is that European understandings of property are treated as unquestionably superior to Native American conceptions. This belief in superiority can initially be identified in Locke's contention that Native Americans have neither the need nor the desire to exit the state of nature and enter political society. For Locke, the hunting and gathering undertaken by Indigenous communities indicates their indifference towards enlarging "their Possessions of Land" or widening their "Ground[s]" which in turn abridges the need for establishing political society.³⁴ These peoples are relegated to a state of nature by virtue of their limited desires for accumulation as compared to the European settlers who, ostensibly, desired indigenous lands more than the Natives themselves.³⁵ Arguably Locke's categorization is premised on an arbitrary and Eurocentric vision of what constitutes a legitimate property right. In an "unimaginative" way,³⁶ Locke universalizes specifically European ideas of property and superimposes them over Native American ideas, thereby placing his theory within the larger colonial narrative of universalism.³⁷ In his characterization of Native American land use as being based solely on "individual labor",³⁸ Locke evidently overlooks the rationales, beliefs, and cultures that underlie aboriginals' land conceptions. He disregards the fact that ancient indigenous custom determined property rights not according to the products of labor, but rather according to the territories in which "hunting, trapping [and] gathering" would be undertaken by particular clans and tribes pursuant to the belief that land cannot be owned and divided for private ownership, but rather it is the land that owns its inhabitants.³⁹ Through Locke's theory, Native Americans are thus "assimilated to an [inferior] stage of *European* development" and

³¹ ELLEN WOOD & NEAL WOOD, *A TRUMPET OF SEDITION: POLITICAL THEORY AND THE RISE OF CAPITALISM – 1509-1688*, 135 (NY University Press 1997).

³² Joseph Singer, *Original Acquisition of Property: From Conquest and Possession to Democracy and Equal Opportunity*, 86 IND. L. J. 763 (2011).

³³ BARBARA ARNEIL, *JOHN LOCKE AND AMERICA: THE DEFENCE OF ENGLISH COLONIALISM*, 132 (OUP 1996).

³⁴ LOCKE, *supra* note 4, at 55.

³⁵ TULLY, *supra* note 3, at 152.

³⁶ DAVIES, *supra* note 5, at 95.

³⁷ Emmanuelle Jouannet, *Universalism and Imperialism: The True-False Paradox in International Law?* 18 EUR. J. INT'L L. 379 (2007).

³⁸ TULLY, *supra* note 3, at 139.

³⁹ TULLY, *supra* note 3, at 154.

are not treated according to *their own* understandings of land.⁴⁰ Native American notions of property are thus “downgraded” and subsumed under European notions of property.⁴¹

This examination uncovers the justification for appropriating Natives’ lands that is dissimulated within Locke’s theory.⁴² While his theory defines Amerindians “by the specifically European institutions they lack”,⁴³ Arneil indicates how the only way they could have avoided Locke’s categorization and consequently the expropriation of their lands would have been for them to become European “in all significant ways”.⁴⁴ Locke’s implicit prescription echoes the civilizing mission that was the dominant feature of European colonization until the 20th century, and exposes the inherently imperial character of his theory. While Rose treats “force and violence [as] the nemesis of property”, this particular reading of Locke reveals how these attributes are implicitly built into his approach to property.⁴⁵

IV. “THE IMPROVEMENT OF *LABOUR* MAKES THE FAR GREATER PART OF [LAND’S] VALUE”

In his account of the foundations of imperialism, Edward Said developed the concept of “imaginative geographies” to represent how imperial powers ‘imagine’ particular meanings of land to vindicate their self-proclaimed sovereignty over foreign territories.⁴⁶ “Imagined geographies” are accompanied by “rationales” aimed at justifying the appropriation of these territories and eradicating the meanings accorded to land by these territories’ indigenous inhabitants.⁴⁷ Locke’s agricultural improvement argument constitutes one such rationale. According to Locke, it is “*Labour* [...] which *puts the greatest part of Value upon Land*, without which it would scarcely be worth anything”.⁴⁸ He claims that it is the “improvement of *labour* [which] *makes* the far greater part of the Value of land”,⁴⁹ and posits that “Land that is left wholly to Nature, that hath no improvement of Pasturage, Tillage, or Planting, is [indeed] *Waste*”. Locke again refers explicitly to Native Americans by asserting that “for *want of improving* [their fertile land] *by Labour*, [Natives] have not one hundredth part of the Conveniences” that European agrarian practices generate;⁵⁰ thus, their failure to improve their lands following Locke’s prescription means that “[Native] *Americans*” are “poor in all the Comforts of Life”.⁵¹

⁴⁰ TULLY, *supra* note 3, at 139. Emphasis added.

⁴¹ *Id.* at 147.

⁴² *Id.* at 149.

⁴³ *Id.* at 155.

⁴⁴ Arneil, *supra* note 14.

⁴⁵ CAROL ROSE, *PROPERTY AND PERSUASION: ESSAYS ON THE HISTORY, THEORY, AND RHETORIC OF OWNERSHIP* 269 (Westview Press 1994).

⁴⁶ Edward Said, *Invention, Memory, and Place* 26 *CRITICAL INQUIRY* 175 (2000). *See also, Orientalism* (Penguin Modern Classics 2003), pp.49-73, in which Said also comprehensively discusses the concept of “imaginative geographies”

⁴⁷ GARY FIELDS, *IMAGINED GEOGRAPHIES: PROPERTY RIGHTS, LAND IMPROVEMENT AND THE ORIGINS OF STATE TERROR IN PALESTINE*, in *TERROR AND ITS REPRESENTATIONS* 234 (Larry Portis ed., Presses Universitaires de la Méditerranée 2008).

⁴⁸ LOCKE, *supra* note 4, at 23.

⁴⁹ *Id.* at 22.

⁵⁰ *Id.*

⁵¹ *Id.*

The deployment of Locke's improvement "ideology" to justify appropriating aboriginals' lands constitutes the common thread linking the European colonists' dealings with Native Americans to the ongoing settler-colonization of Palestine,⁵² despite the differences between these two contexts.⁵³ Indeed, while the European settler-colonial administrators in America viewed the lands principally as repositories of potential economic wealth, the Zionist settler-colonization of Palestine is defined by a more profound "theological" motivation.⁵⁴ Zionist thought presents the settlement of Palestine as a "biblical burden" and as the precondition for re-establishing a long lost connection with the ancient land of Israel.⁵⁵ Nevertheless, although the territories in America and Palestine are 'imagined' differently by those seeking to appropriate them, Locke's improvement rationale remained pervasive in justifying the acquisition of lands in both contexts, which demonstrates the extensive practical potency of Locke's ideas in facilitating settler-colonial activities.⁵⁶ Accordingly, the geographies in both settings were 'imagined' as unimproved, under-productive, wasted and vacant lands, thereby activating the settlers' right to appropriate them.⁵⁷

Arguably the most important aspect of Locke's argument and this 'imagined geography' is the characterization of indigenous inhabitants as being neither 'industrious' nor 'rational' which is used to explain their inability to "cultivate [their] lands in the proper fashion", leaving them "open for use by" settler-colonists.⁵⁸ For Locke, although "God gave the World to Men in common", he really only gave it to the "industrious and rational" – those individuals deemed capable of improving land and drawing from it "the greatest conveniences of Life" through their labor. Indeed, "it cannot be supposed that [God] meant [land] should always remain common and uncultivated".⁵⁹ According to Locke, the "earth is there to be made [as] productive" as possible, thereby condemning Native American conceptions and uses of land which did not prioritize commodification and the generation of conveniences.⁶⁰ In Locke's vision, improvement is synonymous "with civilisation itself",⁶¹ and European agrarian practices are correspondingly quantifiably more productive and 'sophisticated' than autochthonous hunting and gathering.⁶² Locke's universalisation of productivity and convenience-generation means that land which is not cultivated industriously and rationally (i.e. with the goal of producing conveniences) is 'imagined' as squandered terra nullius.⁶³ Locke's contention legitimizes claims that Native Americans are neither industrious nor

⁵² BRENNAN BHANDAR, *COLONIAL LIVES OF PROPERTY: LAW, LAND, AND RACIAL REGIMES OF OWNERSHIP*, 8 (Duke University Press 2018).

⁵³ Gary Fields, "This is Our Land": *Collective Violence, Property Law, and Imagining the Geography of Palestine*, 29 J. CULTURAL GEOGRAPHY 267 (2012).

⁵⁴ BHANDAR, *supra* note 52, at 130.

⁵⁵ *Id.*

⁵⁶ Fields, *supra* note 53, at 234.

⁵⁷ See generally, Karl Widequist, *Lockean Theories of Appropriation: Justifications for Unilateral Appropriation*, 2 PUBLIC REASON 3 (2010).

⁵⁸ TULLY, *supra* note 3 at 157.

⁵⁹ LOCKE, *supra* note 4, at 18.

⁶⁰ WOOD & WOOD, *supra* note 31, at 131.

⁶¹ TULLY, *supra* note 3 at 164.

⁶² LOCKE, *supra* note 4, at 17.

⁶³ TULLY, *supra* note 3 at 163.

rational because of their failure to use their land in a specifically European manner based on “Pasturage, Tillage, or Planting”.⁶⁴

Echoing Locke’s argument, an English colonist in New Plymouth, Robert Cushman, presented a justification for dispossessing the area’s aboriginal communities by arguing that they “are not industrious” because they lack the intellectual faculties required for making appropriate use of the land by commodifying it.⁶⁵ Also, John Cotton (a Massachusetts Bay Colony minister) argued that Native Americans’ title to the land could not reasonably be recognized because “they make no [...] improvement” to the land.⁶⁶ Not only do these arguments legitimate the appropriation of Native Americans’ lands by presenting them as unacceptably under-exploited, “barren” and therefore “destined to be improved” by industrious European cultivation,⁶⁷ they also discriminate against Native Americans due to their nomadic culture, which necessarily prioritized non-sedentary, subsistence living over commodification and improvement.⁶⁸ Additionally, such arguments discriminate against Native Americans on the fact that they lacked the specifically European technology necessary to make continue improvements to their lands.⁶⁹

There are continuities between these characterizations of Native Americans and those attributed to the indigenous populations of Palestine by Israeli settlers. Theodor Herzl underscored the unimproved and visibly barren nature of Palestinians’ lands as a justification for establishing a Jewish homeland in Palestine.⁷⁰ Moreover, Arthur Ruppin contended that Europeans’ agricultural systems based on sedentary cultivation and land improvement generated superior standards of living to those enjoyed by Palestine’s Arab populations, who, to their demise, appeared indifferent to their land’s significant economic potential.⁷¹ The flavor of Ruppin’s argument is ineluctably Lockean. It essentially presents Palestinians as “poor in [...] Comforts of Life” because of their failure to adopt European practices.⁷² Further, Ruppin contended that “Jews [were] a product of the twentieth century” contrary to Palestinians who had not entered the modern age.⁷³

Bhandar observes how Zionist settlements in Palestine are premised on “Enlightenment perspectives” and discourses of superiority which place “Jews on the side of modernity” while relegating the indigenous peoples to an inferior, pre-modern state.⁷⁴ As one Palestinian explained, “I planted [olive] trees to become rooted to the land”.⁷⁵ To many Palestinians, olive trees symbolize a profound cultural and historical anchorage to the land rather than a means of

⁶⁴ LOCKE, *supra* note 4, at 23.

⁶⁵ Quoted in TULLY, *supra* note 3, at 156.

⁶⁶ TULLY, *supra* note 3, at 150.

⁶⁷ Fields, *supra* note 53

⁶⁸ BHANDAR, *supra* note 52, at 118.

⁶⁹ See generally, John Bishop, *Locke’s Theory of Original Appropriation and the Right of Settlement in Iroquois Territory*, 3 CAN. J. PHIL. 311 (1997).

⁷⁰ Fields, *supra* note 53.

⁷¹ ARTHUR RUPPIN, *THE AGRICULTURAL COLONISATION OF THE ZIONIST ORGANISATION IN PALESTINE*, 2 (Hopkinson & Co 1926).

⁷² Widequist, *supra* note 57.

⁷³ RUPPIN, *supra* note 71, at 3.

⁷⁴ BHANDAR, *supra* note 52, at 130.

⁷⁵ Fields, *supra* note 53.

improving it and increasing its productivity.⁷⁶ While Palestinians see the trees in this way, Zionist settlers interpret them as evidence of an illegitimate and ultimately inferior form of land usage. They consider such land usage to be the mark of an inferior and unindustrious people, a narrative whose Lockean character is difficult to avoid.⁷⁷

Israeli settlers accordingly characterize the “Palestinian geography” as an empty space, and actively present this perceived vacancy as a valid reason for appropriation.⁷⁸ For example, in his vindication of the construction of Israeli settlements on Palestinian land, the former mayor of Ariel decried Palestinians’ ‘unproductivity’ and ‘idleness’. He stressed that Palestinians “*don’t plant!*” and “*don’t cultivate*”, while settlers, on the other hand, “made something [in Ariel]”.⁷⁹ This statement reveals the embeddedness of Locke’s agricultural improvement argument in contemporary narratives and its continuing practical relevance in justifying the appropriation of Palestinian territories.

Another significant aspect of Locke’s improvement argument is the requirement that land be enclosed. According to Locke, enclosure is both the mark and the consequence of industrious labor. He notes how “*As much Land as a Man [...] Improves [...] so much is his Property*” and thus “inclose[s] it from the Common”.⁸⁰ In America, the Natives’ failure to enclose their territories for sedentary agricultural purposes was often presented as “part and parcel of [their] unproductive use of the earth”,⁸¹ and as a justification for appropriation.⁸² For example, Winthrop argued that English settlers can seize Native Americans’ territories because “they inclose noe Land”.⁸³ Similarly, Francis Higginson asserted that, unlike English settlers, Native Americans “have no right to their [...] lands” because they haven’t “any settled places” and entertain a nomadic lifestyle which precludes enclosure.⁸⁴

Interestingly, Winthrop and Higginson presented these arguments in favor of appropriation before Locke published his *Second Treatise of Government*.⁸⁵ Therefore, it may be argued that Locke’s ideas were symptomatic of an extensive discourse of ‘advancement’, discovery, and expansion at the time rather than the undisputed and identifiable justification for the European settler-colonization of America – and, subsequently, the Zionist enterprise in Palestine. Because Lockean ideas were already being actively implemented in America before he composed his theory, this appraisal seems initially plausible. Nonetheless, although Locke was indeed operating from within a specific tradition of thought and became, during the course of his career, engulfed in scientific discussions that emphasized the agricultural benefits of enclosure and improvement, Locke’s reality was arguably not so benign.⁸⁶ Given especially his

⁷⁶ Anne Meneley, *Time in a Bottle: The Uneasy Circulation of Palestinian Olive Oil*, 38 MIDDLE E. REP. 18 (2008).

⁷⁷ BHANDAR, *supra* note 52, at 29.

⁷⁸ Fields, *supra* note 53.

⁷⁹ Quoted in Fields, *supra* note 53.

⁸⁰ LOCKE, *supra* note 4, at 17.

⁸¹ ROSE, *supra* note 45, at 19.

⁸² Allan Greer, *Commons and Enclosure in the Colonisation of North America*, 117 AM. HIST. REV. 365 (2012).

⁸³ Quoted in TULLY, *supra* note 3 at 150.

⁸⁴ TULLY, *supra* note 3, at 150.

⁸⁵ See generally, David Armitage, *John Locke, Carolina, and the Two Treatises of Government*, 32 POL. THEORY 602 (2004).

⁸⁶ WOOD & WOOD, *supra* note 31, at 133.

personal and professional involvement in the English colonial venture, Locke was well aware of the implications of his argument.⁸⁷ Also, the lingering presence of improvement narratives in the Israeli-Palestinian context showcases how Locke's theory, although perhaps not invariably referred to explicitly, nonetheless continues informing settler-colonial processes of dispossession.

V. LOCKE'S AGRICULTURAL IMPROVEMENT ARGUMENT AND THE ENCLOSURE MOVEMENT

These processes also have antecedents in the "landscapes of enclosure and dispossession" that took shape in England during the Enclosure Movement.⁸⁸ The Enclosure Movement progressively transformed communally owned land into private allotments, and "replaced the [perceived] chaos of open fields and common lands with a neat patchwork of hedged fields".⁸⁹ The Enclosure Movement is relevant to studies of settler-colonial appropriation because the Lockean discourses that underpin settler-colonial ventures explored in this paper were not conceptualized, developed and applied in a vacuum. Rather, as Bhandar suggests, many of the property regimes used by European settler-colonizers to appropriate indigenous peoples' lands were first and foremost practiced, refined, and perfected in the European context, before being exported and adapted in the settler-colonial context⁹⁰

Just as in the settler-colonies, Lockean notions of land improvement were pivotal in facilitating the appropriation of the English commons, and were "cited systematically as the basis" for justifying the enclosure of these lands.⁹¹ For the purposes of materializing this radical 're-imagination' of England's geography, enclosure advocates often characterized, in a Lockean manner, common lands as wasted and derelict resources, which could only be put to good use through enclosure and improvement.⁹² Communal lands were said to generate "unemployment, idleness, vagrancy and crime", and enclosed and improved lands were presented as antidotes to what were perceived to be unproductive and consequently illegitimate modes of communal ownership.⁹³

While the proponents of enclosure referred to private property holders as "virtuous" individuals, they also persistently stigmatized communal ownership as being the product of the uneducated and "misdirected" of society, in a way that echoes the routine characterization of aboriginals in America and Palestine as being unindustrious and irrational because they failed to enclose and improve their lands agriculturally.⁹⁴ Through the emergence of class discourses in the ceaseless debates concerning the Enclosure Movement arose a narrative whereby in order to enhance the quality of life of the poor and bolster the economic productivity of the English

⁸⁷ Armitage, *supra* note 85.

⁸⁸ Fields, *supra* note 53.

⁸⁹ LAURA BRACE, HUSBANDING THE EARTH AND HEDGING OUT THE POOR *in* LAND AND FREEDOM: LAW, PROPERTY RIGHTS AND THE BRITISH DIASPORA, 9 (A.R. Buck, John McLaren and Nancy Wright, eds., Ashgate Publishing 2001).

⁹⁰ BHANDAR, *supra* note 52, at 23-28.

⁹¹ ELLEN WOOD, *ORIGINS OF CAPITALISM*, 89 (Monthly Review Press 1999).

⁹² *Id.* at 9.

⁹³ *Id.*

⁹⁴ *Id.*

commons, these wasted lands needed to be improved to their fullest potential, a process which necessarily involved “molding” the lower classes into industrious and productive labor.⁹⁵ Needless to say, such descriptions echo the European settler-colonial experience in which Native Americans’ title to land was deemed legitimate only insofar as it was “molded” to conform to European requirements. There are also striking similarities between the disdain for communal conceptions of land exhibited by improvers in England, and that which foregrounded the invalidation of Native American and Palestinian land conceptions.

VI. CONCLUSION

Locke might well be regarded as an “apologist for the expropriation of indigenous lands through [settler-] colonial expansion” by drafting a property theory that both justified the appropriation of Native American lands by European settlers, and continues to Israeli settlements in Palestine.⁹⁶ Locke’s view of Native Americans as living in a state of nature provided the groundwork upon which settler-colonial aspirations and the nullification of Native American property conceptions could be materialized. Further, Locke’s notion of agricultural improvement further fortified the case for the “unilateral appropriation” of indigenous lands both in America and Palestine.⁹⁷ Finally, ideas of improvement were also prevalent in vindicating the expropriation of communally held lands during the Enclosure Movement.

This conceptualization of Locke’s property theory is vital for acknowledging how an appraisal of private property regimes is incomplete without considering how these regimes developed alongside “colonial [and domestic] modes of appropriation”, which destroyed livelihoods and obliterated alternative understandings of land, all for the sake of productivity.⁹⁸ It is also conceptually relevant for understanding how the hegemonic and seemingly benign idea of private ownership – and its associated discourses of improvement – is tainted by a history of dispossession that persists into the present. Indeed, property laws based on Lockean notions of improvement and economic output that were instituted by the British Empire in India continue to facilitate the socially and environmentally harmful activities undertaken by multinational corporations there.⁹⁹ Also, the idea of bolstering economic ‘development’ in the Global South can be interpreted conceptually as a poignant manifestation of Locke’s improvement argument that closely resembles the imperial rationales for appropriation put forth by European and Zionist settlers, as well as improvers in England.¹⁰⁰ Importantly, however, in the context Israel’s unwavering and fervently expansionist claims, and in light of the persisting disregard for Native Americans’ concerns over the construction of oil pipelines through their traditional territories,¹⁰¹ it is helpful to uncover the inherently Lockean ideas that belie these recent developments as a viable starting point for both vindicating the increasingly

⁹⁵ BRACE, *supra* note 89, at 13.

⁹⁶ DAVIES, *supra* note 5, at 7.

⁹⁷ Bishop, *supra* note 69.

⁹⁸ BHANDAR, *supra* note 52, at 3.

⁹⁹ See generally, David Arnold, *Agriculture and “Improvement” in Early Colonial India: A Pre-History of Development*, 5 J. AGRARIAN CHANGE 505 (2005).

¹⁰⁰ See generally, Shiraz Dossa, *Slicing Up Development: Colonialism, Political Theory, Ethics*, 5 THIRD WORLD QUARTERLY 887 (2007).

¹⁰¹ Estes, *supra* note 1.

precarious rights of indigenous communities worldwide and resisting the persistent superimposition of private property conceptions over all others.