

Melania Cannon introducing Barbara Arniel
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In “Colonialism: Locke’s Theory of Property,” Barbara Arniel provides a detailed and systematic examination of Locke’s *Two Treatises of Government*. In so doing, she also critiques the work of other scholars in the field, and places Locke’s writing in the context of natural law theory. She notes that much of his writing was directed specifically at other writers of the time, in a sort of dialogue. She situates Locke as typical of a range of thinkers at the time, including Hugo Grotius and John Winthrop.

In this piece, Arniel identifies a moment – or, as she calls it, a meeting-point – where Locke brings property, defined as land, and natural man, exemplified by North American indigenous people, together. The significance of this meeting-point is that Locke has set out his fundamental justification for property as labour. He argues that in the world in its natural state, all people hold property in common (rather than arguing that nobody holds property) and that it becomes personal property when we mix our labour – which is our own intrinsic and inalienable property – with the fruits of the earth. Arniel argues that when Locke refers to labour, he means agrarian cultivation, and Amerindian people, who to seventeenth century eyes appeared pre-civilized or primitive, provided the perfect example of the moment when property transitioned from being universally common to personal.

Arniel moves from this point into a discussion of how Locke justified the European colonization of North America through this analysis. He claimed that indigenous people had a free claim to the fruits of the Earth – for the reasons outlined above – but not to the Earth itself. His reason for this was again connected to labour, as it was his view that subduing the land through cultivation and enclosure was essential to taking a property interest in it. He viewed land that was not being used (or used properly) in what might be considered a European agrarian way as “waste,” and thus available for appropriation. Arniel critiques Locke’s view that money must be used in transactions involving property/land to avoid spoilage. She points out that the barter systems used by many Amerindian groups served the purpose just as well. However, from Locke’s perspective, the absence of a monetary system further justified European appropriation of American land.

Throughout the piece, there appears to be an understanding that Locke is both using a logical progression to show what the natural law regarding property is, but also that he uses a persistently conservative approach in stating that natural law; that is to say, to Locke the Indian breaks the natural law when he, in effect, does anything differently from what he was observed to be doing when the Europeans made contact. In contrast, the Europeans although they are interlopers are not required by natural law to refrain from altering their behavior. This could be a good starting point for using Locke as a mechanism to critique the Canadian courts’ approach to Aboriginal Rights and Title. In my view, Locke’s perspective on the nature of Amerindian property interests, and the requirement for establishing them, is strikingly similar to Canadian jurisprudence on the nature of Aboriginal use rights.

Particularly troubling, when viewed through Arniel’s article, is Locke’s assertion that common property is of a wholly different nature in the Americas, where it is the direct result of a gift from God, than in England, where it is the result of a compact between men. It may be useful to query whether this is the result of an exoticised European view of indigenous people as primitive or pristine, thus reflecting the European notion of the Garden of Eden, or whether in fact there is a pre-contact foundation for an indigenous belief that the land is a gift from a creator, and not divisible into parcels that might be considered real property in the present day legal sense.

Despite the concerns raised by Locke's idea that it is right for Europeans to colonize the Americas, Arniel emphasizes Locke's conviction that property in the Americas should not be taken through conquest. His approach, she stresses, is that there must be a legitimacy and productivity to the taking of the land. This is reflected in the transition of his argument from labour and then money creating or beginning property, to government doing so. Arniel ultimately places Locke within the context of the political and socioeconomic reality of the Americas at the time, where settlers were taking up more land than could be productively cultivated and defended. She paints a picture of Locke as rational, concerned, pacifist and – as far as he could be in that time and place – also concerned with and respectful of what he understood as indigenous property rights.