

The Philosophy of John Locke

New perspectives

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5 Locke, liberalism and empire

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In 1992 the High Court of Australia ruled in *Mabo vs. State of Queensland (2)* that 'native title' rights to land survived the British settlement of Australia. This is rightfully seen as a landmark case in Australian history. It not only brought Australian jurisprudence on these questions more into line with that of Canada, the United States and New Zealand (as well as contributing to the development of that jurisprudence), but also had a profound impact on public debate in Australia. In his lead decision, Chief Justice Brennan (as he then was), along with Justices Deane and Gaudron, emphasised the importance of rejecting the notion of *terra nullius* as a starting point for reconciling the common law with the fact of prior indigenous *dominium*.¹ Strictly speaking, however, the Court did not reject the concept in international law, since it did not question the sovereignty of Australia in any fundamental way. In fact, it accepted that Australia was a territory acquired by settlement at common law.² What it did do – and it was indeed tremendously important – was recognise, as courts in Canada, New Zealand and the United States had done,³ that native title was in fact part of the common law.

In other words, the Court distinguished between questions of property rights and the question of sovereignty. The absence of any explicit treaties between the indigenous peoples of Australia and the Crown, as well as the Court's acceptance of the 'act of state' doctrine grounding the indivisible sovereignty of the state, meant that it balked at drawing any links between native title and claims about the 'inherent' sovereignty of indigenous people.⁴ Can such a distinction be maintained? Is it a case of simply trying to slip native title into the existing structure of Australian property law, or are there deeper political and constitutional questions at stake? Jeremy Webber has argued for the latter, and claims that *Mabo* represents the beginning of a 'quite different relationship between indigenous and non-indigenous Australians of significance beyond the bounds of land law' (J. Webber 2000, p. 61). What it involves, argues Webber, is not only the recognition of a previously unacknowledged form of title in land but also recognition of accompanying forms of legal and political autonomy in relation to those lands and thus a 'mediation' of the sovereignty of the state.⁵

Whatever the ultimate outcome of this legal and political argument (and I think Webber is right), it encapsulates a debate that was at the centre of early modern discussions of empire: the relation between justifications of *imperium* and *dominium*.⁶

It is arguably around the shifting sands of these two notions that much of the ideology of British empire, from the sixteenth century onwards, is played out. As David Armitage has put it, 'the problem of uniting *dominium* and *imperium* would persist . . . as the fundamental and ultimately combustible dilemma at the core of British imperial ideology' (D. Armitage 2000, p. 94).

One of the most intriguing and original developments in recent work on John Locke has been the attempt to place Locke's political, moral and social theory in the context of these early modern debates on empire. The first aim of my chapter will be an attempt to synthesise and draw out some of the main conclusions of this research. There is no question of reducing Locke's intentions in the *Two Treatises*, in particular, entirely to this colonial context. But to simply ignore the internal and external evidence of his engagement with the arguments, policies and politics of England's colonial expansion would be equally negligent. How and in what ways was Locke engaging with the colonial project?

The second aim of this chapter is more speculative and theoretically ambitious. What does the 'colonial reading' of Locke suggest about the relationship between liberalism and colonialism in general? This question, in turn, rests on a related set of issues in the history of political thought. If the history of conceptions of the state has been central to the history of early modern and modern political thought written in the nineteenth and twentieth centuries, a time of the consolidation and proliferation of the nation state, then what happens to our histories of the state today when its death, or at least ill-health, is frequently pronounced? One response, by intellectual historians, has been to reconnect many of these early modern canonical discussions of the state with transnational processes and histories; in short, to connect the history of the state to histories of empire.⁷ One of the fascinating consequences of doing so is to begin to rewrite the history (or at least pre-history) of liberalism.

Background arguments

An important background to the justifications of colonialism in the sixteenth and seventeenth centuries is the language and conceptual apparatus of Renaissance humanism, which has been the focus of a number of important recent studies. Richard Tuck has argued that Renaissance writers were willing to 'countenance a wealth of possible indirect injuries as justifications for armed intervention in other peoples' affairs' (R. Tuck 1996, p. 7 and 1999), on the grounds of securing and pursuing glory for their country. Opposition to these arguments came from the theologians, and especially the School of Salamanca. Thus 'on the eve of the seventeenth century', writes Tuck, we have two quite distinct traditions of thinking about imperialism – theological and humanist – 'with the humanist approach corresponding . . . much more closely to the actual practice of the conquering European nations' (R. Tuck 1996, p. 12).⁸ And so when Hugo Grotius, Thomas Hobbes and John Locke, amongst others, took up the model of relations between natural men in the emerging language of 'modern' natural rights in the seventeenth century, it was this humanist account they turned to, argues Tuck, and not the

more critical theological one. There is another side to humanism, however, which recent scholarship on sixteenth-century English imperialism has been at pains to point out. If the pursuit of glory was a central humanist concern, so was a concern with corruption and thus a deep anxiety about the consequences of colonisation.⁹ This was particularly true of some of the earliest English colonial ventures in the Americas in the late sixteenth and early seventeenth centuries. Such anxiety was short-lived, but nevertheless complicates considerably the standard picture of the origins of English colonisation in the Americas.

So there is an interesting historical question as to where to situate Locke in the context of these early modern arguments about *imperium* and *dominium*. It is clear he was deeply involved in matters concerning England's expansion into the New World, both intellectually and personally,¹⁰ but how does his mature moral and political theory reflect this involvement, if at all? And more generally, what does it suggest about the relationship between colonialism and liberalism, if Locke is taken to be a canonical figure in the pre-history of liberal thought?

To begin with, consider three general arguments justifying colonisation at play in the sixteenth and seventeenth centuries:

- 1 *The argument from conquest.* In essence, the argument from conquest tied the extension of sovereignty to the propagation of the Christian faith, and hence the legitimacy of waging war against those who were perceived to reject Christianity and thus the foundations of natural law. The Spanish empire was engaged in just such a 'self-styled war of conquest' (A. Pagden 1998, pp. 39 and 65ff). Their early claims to the New World rested, in part upon the rather dubious authority of a papal grant (made by Pope Alexander VI in 1493), which presented 'such islands and lands . . . as you have discovered or are about to discover' from one who claimed sovereignty 'over all the world' (*ibid.*, p. 39). The idea was, in its strongest form, that the Pope, as true heir of the Roman emperors, not only enjoyed sovereignty over the whole world but rights of ownership as well. This kind of justification did not go very far, however, since it presumed the Pope had the appropriate jurisdiction in the first place, which of course many rejected. Moreover, how could such authority be said to exist over both Christians and non-believers, including the Amerindians, for example, who may never even have heard of the Pope, or even Europe for that matter. So *imperium* and *dominium* over the Amerindians had to be grounded in something less ambiguous; hence the attempt to justify it according to natural law. If the arguments linked to papal bulls went nowhere, then sovereignty over the Indians and rights to their lands lay with claims about their lack of reason and 'barbarity'. A 'pre-emptive strike' against such people was justified if their practices and 'sins' were contrary to human nature; these practices constituted an injury against properly civil men, even if only indirectly. Injury against the innocent justified aggressive intervention, even if those who were apparently harmed did not actually ask for help. Thus Juan Gines Sepulveda, Chaplain and official historian to the Emperor, claimed in 1540 that the Indians were not civil beings because they consistently violated

the law of nature insofar as their laws, practices and institutions were contrary to nature.¹¹ 'Crimes against nature', in this sense, justified depriving them of their natural rights: 'the natural law grants *dominium* to all those who are civil beings over all those who are not' (cited in A. Pagden 1987b, p. 92). It was these and other arguments which the Spanish Dominicans – the School of Salamanca or 'second scholastic' – contested over the middle course of the sixteenth century. Francisco de Vitoria (c.1492–1546), for example, acknowledged that the 'Indians' have 'properly organised cities, a recognisable form of marriage, magistrates, rulers, laws, industry, commerce, all of which require the use of reason' (*De Indis*, cited in A. Pagden 1986, p. 68).¹² Bartholome Las Casas (1484–1566), the closest we have to a defender of Amerindian property rights in these debates (albeit always within the political limits of a legitimate Spanish occupation and evangelisation of the Americas), argued that the kind of sovereignty and ownership (*dominium rerum*) presupposed by the Spanish crown could only be claimed if the Amerindians ceded their natural rights voluntarily.

- 2 *The argument from grace.* Another justification of empire that rested on the dispensation of a higher authority was the argument from grace: i.e. 'that no one can have civil *dominium* if he is in a state of mortal sin' (cited in A. Pagden 1987b, p. 83). This Lutheran account of *dominium* maintained that the authority of the prince depended not on God's laws but upon his grace, and thus if one fell from grace then he might be legitimately deposed by his subjects and replaced with a more godly prince. Thus no non-Christian – which obviously includes Amerindians – could hold legitimate *dominium* of his lands (or anything else, for that matter). Not surprisingly both the Spanish Dominicans and later, English Protestant theorists, resisted these arguments. For one thing, *dominium* derives from the fact that man is a rational being, and thus tying it to grace suggests he can lose this status (and the natural rights that go with it) simply by sinning. Although some acts are so bad that whoever commits them can be legitimately considered as something less than a man, this was not necessarily true of the practices and beliefs of the Indians (*ibid.*, p. 84). The main problem, however, was that the argument was too broad, for 'any theory grounded upon the supposed "godliness" of individuals – rather than the natural law – could be used to legitimate any claimant immodest enough to think himself a "godly ruler"' (A. Pagden 1998, p. 40).¹³ The potential for political instability and tyranny was obvious. This was something Locke himself made very clear in the *Letter Concerning Toleration*, which argued forcefully against the claim that civil power had authority in matters of conscience: 'No man whatsoever ought therefore to be deprived of his Terrestrial Enjoyments, upon account of his Religion. Not even *Americans*, subjected unto a Christian Prince, are to be punished either in Body or Goods, for not embracing our Faith and Worship' (*PTOL*, p. 43, discussed by D. Armitage 2000, pp. 97–8).¹⁴
- 3 *The argument from res nullius.* The argument from *res nullius* has its roots in Roman law, wherein all 'empty things', including unoccupied lands (*terra nullius*), were said to remain the common property of mankind until put to proper use

(A. Pagden 1998, p. 42). This idea, and the 'agriculturalist' arguments that were eventually pressed along with it, became 'the most powerful and most frequently cited legitimization of the British presence in America, and it was to be employed later, in a modified form, to justify British incursions into both Africa and Australia' (ibid., p. 47).¹⁵ Discovery and effective occupation of any part of America not already occupied by a Christian ruler, where settlement was warranted by a charter or grant, gave secure title to those lands against other European nations. But the doctrine of discovery applied only where the lands were genuinely uninhabited, or as it was eventually formulated in its 'enlarged' version, where the lands were 'practically unoccupied, without settled inhabitants or settled law'.¹⁶ It followed, therefore, that in order to gain sovereignty and *dominium* over any indigenous nations on those lands, a number of things would have to happen. First, the Indian nations would have to be persuaded to submit themselves to the *imperium* of the European sovereign, and then to sell their lands or parts thereof to it. But that required mutual consent and recognition of some kind (i.e. treaties), which, by definition, invalidated the application of *terra nullius*. Failing that, somehow, the actual presence of the indigenous peoples would have to be rendered legally irrelevant; hence the application of the 'enlarged' doctrine of discovery that denied indigenous peoples effective ownership and jurisdiction over their lands.

Locke made a sustained and important contribution to the development of the argument from *terra nullius*, as James Tully, Barbara Arneil, Anthony Pagden, Richard Tuck and David Armitage have shown. He rejected, as we have seen, the argument from grace. And the argument from conquest was problematic for a mixture of conceptual and empirical reasons. For Locke, conquest could not provide a stable justification for *dominium* because, in part, the political culture of England itself was the creation of a conquest in which a 'continuity theory' of constitutional law had been applied (*TT* II. xvi. 180).¹⁷ Conquest delivered *imperium* but not *dominium*, and was, in general, a difficult basis upon which to build a legitimate commonwealth (*TT* II. xvi. 175, 184). The English, for the most part, came to see their colonial enterprises as commercial and agricultural rather than militaristic. Although the very first English settlements along the Eastern seaboard of America were styled along classical lines as founding new commonwealths, these humanist ambitions were soon dashed against the harsh reality of the situation on the ground. By the 1690s, as we shall see, English theorists integrated their justification of colonialism and their analysis of the best way of governing their extended territories into the emerging discourse of political economy (Spain providing the sobering example of expansionism gone bad).¹⁸

This provides an important context for the 'colonial' reading of chapter v of the 'Second Treatise'.¹⁹ Chapter v attempts to answer an important question of natural jurisprudence, namely, how we come to have private ownership of something originally given to the world in common. But it also provides, argues Tully and others, a powerful justification for dispossession of Amerindian lands. How, precisely, did Locke's arguments do so?

Locke's argument

For Locke, of course, the 'great and chief end' of political society is the 'mutual Preservation of . . . Lives, Liberties and Estates' (*TT II. ix. 123*, p. 368). Property arises in external things in virtue of our having prior property in our person and our labour, which we 'mix' with previously un-owned objects thus founding exclusive property – although not specifying the degree of control we have over it (save that we can exclude others from it as long as we use it (*TT II. v. 27, 38, 44*)).²⁰ In conditions of abundance, these private acts of appropriation harm no one (and do not require another's consent), since everyone's claim right to make use of the world God gave to us can be met. In conditions of greater scarcity, these acts need not leave anyone worse off given the two provisos Locke thinks follow from his moral argument about our natural freedom, and his economic argument about the productivity gains of adding value through labour (*TT II. v. 40–2, 33, 36*).²¹ With population growth and an increasing scarcity of available land, and thus increasing 'inconveniences', some end up being excluded from their inclusive claim right to property, since with the introduction of money (which Locke claims is consensual) some can trade their surplus for cash and claim rights to their enlarged possessions on the grounds that they are making use of them (*TT II. v. 50*).²² The introduction of civil law is meant to settle and regulate property in these new conditions. On entering a community, men 'give up all their Natural Power to the Society which they enter into' to be regulated by the will of the community of which they are now a part, and which has as its end the preservation of mankind (*TT II. xi. 136, xv. 171*). A Commonwealth comes to have jurisdiction over a territory then, when

By the same Act therefore, whereby any one unites his Person, which was before free, to any Commonwealth; by the same he unites his Possessions, which were before free, to it also; and they become, both of them, Person and Possession, subject to Government and Dominion of that Commonwealth, as long as it hath a being.

(*TT II. viii. 120*, p. 366)

The rules governing property, although now conventional, are ultimately to be in accordance with natural law; they are legitimate only insofar as they have received the consent of those subject to them. As Locke argues, the '*Municipal Laws of Countries . . . are only so far right, as they are founded on the Law of Nature, by which they are to be regulated and interpreted*' (*TT II. ii. 12*, p. 293).²³ Thus whereas man's original inclusive claim right to property referred to the whole *world*, it now refers to the boundaries of the polity he has consented to join. These boundaries are, in turn, settled by contracts or treaties between nations in which members of each society give up rights of fair access to the other's territory.²⁴

Two crucial moves in this argument are of relevance to English claims in the Americas. First, even if, strictly speaking, the Indian 'Nations' (as he refers to them) are not in a raw state of nature, they in fact 'exercise very little Dominion, and have

but a very modest Sovereignty'. What societies do exist are not genuine civil societies ('the *Kings* of the *Indians* in America . . . are little more than *Generals of their Armies*' (*TT* II. viii. 108, p. 357)²⁵), and their members remain, for all intents and purposes, in a state of nature with regard to other European nations. This potentially legitimates taking aggressive action against those Indian nations who refused to cede their lands, on the grounds that by doing so, they violated natural law (*TT* II. ii. 9).

Locke's second move is to tie ownership very tightly to use and to labour. This served to block Amerindian claims to lands they did not use in the appropriate sense of the term. With the invention of money, property becomes mobile and thus 'surplus producing civil societies could . . . acquire rights over far more than the individual's due share without invading that of his neighbor' (A. Pagden 1998, p. 45).²⁶ Since Amerindians did not live in properly civil societies and did not cultivate the land, they could not legitimately expand their *dominium* beyond what they could use (*TT* II. v. 30). Furthermore, Locke claimed that the market and commercial systems developed in the light of the (consensual) introduction of money are justified because of the clear advantages commercial development brings to mankind (*TT* II. v. 34, 37–44). 'Labour . . . puts the *difference of value* on every thing', argues Locke (*TT* II. v. 40, p. 314); indeed, nine-tenths of those 'conveniences' useful to men are produced through labour as opposed to unimproved nature. As is clear from the text, Locke's point of comparison throughout this discussion in chapter v is with Amerindian societies, wherein a 'King of a large and fruitful Territory there feeds, lodges, and is clad worse than a day Labourer in *England*' (*TT* II. v. 41, p. 315 and J. Tully 1993a, pp. 161–5). It follows, therefore, that Aboriginal people do not have genuine property in their extended lands (as much as they have in the deer they catch, or the crops they sow), and equally, no proper jurisdiction over them, for government (and thus jurisdiction) ultimately tracks the ownership of land:

But since Government has a direct Jurisdiction only over the Land, and reaches the Possessor of it, (before he has actually incorporated himself in the Society) only as he dwells upon, and enjoys that: *The Obligation* any one is under, by Virtue of such Enjoyment, *to submit to Government, begins and ends with the Enjoyment.*

(*TT* II. viii. 121, p. 367)²⁷

From a Lockean perspective, individuals (and states) have rights of access to land and natural resources which trump jurisdictional claims over uncultivated territory. The bottom line is this: Locke's argument either presupposes that America was legally vacant at the time of European contact, or, that the Indian nations they encountered, even if they were societies (but not *civil* societies) did not possess any form of 'lesser international title' sufficient to exclude others from their territories.²⁸ The moral justification here rests on the not implausible claim that expropriation from the commons makes more people better off than if it is left untouched, or more precisely, underdeveloped.²⁹ And it was put forward by Locke, and by others

before him (like Hugo Grotius), as an argument that ought to compel agreement from the Indians as much as other Europeans, insofar as they were capable of recognising the right to self-preservation (and the duty to preserve mankind) upon which it rested. As we have seen, failing to recognise these natural duties left the 'offender' of natural law potentially open to justified punitive action.³⁰

Now it is clear that both of these moves in Locke's argument cannot be reduced exclusively to the colonial context. The right to punish in the state of nature is meant as much for domestic consumption, in the light of arguments over the right to punish tyrannical monarchs (e.g. Charles II) through armed revolt.³¹ This is crucial to the leading themes of the *Two Treatises* overall, which are an attack on absolutist and arbitrary government, and the defence of a constitutionalist theory of popular sovereignty and resistance. Tying property to labour and productive use also served important domestic purposes, as Richard Ashcraft and Mark Goldie have argued, as it suited a radical Whig political agenda to which Locke was contributing; that is, a defence of the industrious and trading part of the nation against those 'idle, unproductive and Court-dominated property owners' (R. Ashcraft 1986, pp. 264, 280–1 and pp. 264–81 *passim* and M. Goldie 1980, 1, pp. 195–236).

But to argue, therefore, that the consequences of Locke's arguments for England's imperial expansion were peripheral to the *Two Treatises*, and that chapter v, in particular, referred to America and Indians for illustrative or metaphorical purposes only is far too quick. The external and internal evidence supports a more complex reading. Locke wrote with an eye to *both* the domestic and international consequences of his arguments, just as Grotius, Pufendorf and Hobbes had done, simply because it was difficult (as it still is) to keep the domestic and international apart, especially when addressing the nature and justification of the state.³² He accepted, as is particularly clear from his writings on commercial and imperial policy, that the well-being of England depended on her securing a foothold in world trade, and that meant an effective and productive system of colonies and plantations, among other things. So, together with his detailed knowledge of and engagement with the internal affairs of Carolina and the colonial system as a whole; his extensive reading and reference to a wide range of colonial texts, histories and travel reports; and his engagement with the leading political theories of colonisation in his day, the evidence suggests that the *Two Treatises* (and especially chapter v of the 'Second Treatise') was written, in part, to justify the dispossession of indigenous peoples' lands as much as it was to justify the positive rights of ownership versus other European states, as well as defend a theory of limited government and popular sovereignty. Whatever Locke's explicit intentions, it was clear that throughout the eighteenth century, and even well into the nineteenth, the 'agriculturalist' justification of dispossession was associated with and formulated in the terms of the arguments found in chapter v of the 'Second Treatise'.³³ Needless to say the argument was often deeply unpersuasive, not only according to the Indian nations to whom it was directed, but to many colonists, colonial officials and imperial policy-makers as well.

Early modern liberalism

What has all this got to do with liberalism? Liberalism is an invention of the nineteenth century of course, but it clearly has early modern roots. And the early history of modern liberalism is located squarely in the history of seventeenth- and eighteenth-century European political discourse. John Rawls, for example, identifies the historical origins of political liberalism in the 'Reformation and its aftermath, with the long controversies over religious toleration in the sixteenth and seventeenth centuries. Something like the modern understanding of liberty of conscience and freedom of thought began there' (J. Rawls 1993, p. xxiv). But is the connection merely chronological? As I argued above, Locke wrote with an eye on both domestic and international contexts. To establish any deeper connection between liberalism and colonialism, this point needs to be examined further.

There are (at least) *three* problems and hence sources of political argument in early modern Europe relevant to the early history of liberalism, and of Locke's place in that history: (1) the political theories developed in relation to protracted struggles against absolutism and arbitrary government (in England, for example, between King and parliament, and debates over the nature of the constitutional settlement); (2) the political theories developed in light of the devastating consequences of the Thirty Years War and the hostility between rival confessional states, each with their own (persecuted) religious minorities; and (3) the challenges posed by the emergence of commercial society, and particularly the struggle to combine a commitment to the public good with the dynamic but potentially socially corrosive effects of commerce and trade.³⁴

In relation to (1) and (3), debates over the character of the early modern origins of liberalism have been shaped over the past thirty years by the apparent opposition between 'liberalism' and republicanism, and often between conflicting interpretations of the centrality (or not) of Locke to the early modern roots of these supposedly conflicting languages of politics. In *The Political Theory of Possessive Individualism*, C.B. Macpherson located the roots of liberalism in the possessive agency he argued was at the centre of the political theories of Hobbes and Locke (and present, to varying degrees, in those of the Levellers and James Harrington): i.e. 'that man is free and human by virtue of his sole proprietorship of his own person, and that human society is essentially a series of market relations'. Liberal society is nothing less than a 'calculated device for the protection of . . . property and the maintenance of an orderly relation of exchange' (C.B. Macpherson 1962, pp. 270, 3). Locke is thus central to liberalism, according to Macpherson, because he consolidates the political theory of possessive individualism in such a way that allows for the later full blown emergence of liberal bourgeois capitalism.

J.G.A. Pocock, on the other hand, took aim at what he called the 'myth of John Locke'³⁵ – that everything in intellectual life after 1688 could be explained by Locke's presence in this context – and instead emphasised a complex 'non-Lockean republic of letters'³⁶ and alternative set of political languages, that had their roots in ancient constitutionalism, classical republicanism, as well as worries about corruption, politeness, civility and sociality. In particular, Pocock's excavation of

an alternative language of civic humanism emphasised the central role of civic virtue in securing the common good against tyranny, and hence the dangers of commercial society and the exclusive pursuit of 'interest'. Pocock's extraordinary thesis was that this 'Machiavellian moment' in Northern European political thought then migrated to the New World and helped shape the ideological origins of the American revolution. Moreover, it provided a new, much richer and more detailed landscape upon which to re-place Locke's *Two Treatises*, and thus gain a more complex understanding of Lockean thought in this context (J. Tully 1993b, 253–5).

It turns out that Locke's position in relation to the Liberal–Republican debate over early modern and modern political thought is much more ambiguous than originally thought.³⁷ If the ancient forms of political economy and virtue were inappropriate to a time of rapidly changing domestic and geopolitical circumstances, that is not to say they were completely jettisoned. Steve Pincus has argued that defenders of the English Commonwealth in the 1650s melded discussions of virtue with ones about interests, and mixed arguments for the common good with claims for material improvement. They combined a commitment to commerce and the politics of interest with a republican conception of liberty (*salus populi not Majesta Imperii*). It is this amalgamation, suggests Pincus, that constitutes the origins of liberal political philosophy: the desire to be 'modern, commercial, and polite on the one hand and to defend the common good on the other' (S. Pincus 1998, p. 735).³⁸ Locke becomes, on this reading, a kind of modern republican.³⁹ His project can be seen as emblematic of an attempt by many political thinkers during the mid to late seventeenth century to blend a commitment to some of the principles and ideals of the humanist republican tradition with the newly emerging commercial society.

Is this reading persuasive? I think it is, for two reasons. On the one hand, Locke's political theory of consent, limit and resistance – a scheme central to radical Whig and republican writers of the early 1680s and 1689 – entailed that '[the legislative power] in the utmost Bounds of it, is *limited to the publick Good of the Society*' (*TT II. xi. 135, p. 375*). The boundaries of the law of nature – that mankind ought to be preserved – are the 'rule of virtue and vice' (*TT II. ii. 7, iii. 16, xi. 134–5*).⁴⁰ Natural law commands what is in the best interests of mankind as a whole, and this leads to 'public happiness' by helping secure the preservation and prosperity of society (*Essay I. ii. 6*). Locke hovers between naturalistic and supernatural means of getting men to act rationally in this sense,⁴¹ but the importance of acting so as to benefit society, and not only oneself, remains clear.

On the other hand, since most people most of the time have great difficulty in clearly discerning their obligations under natural law, and hence in promoting the public interest, a complex array of forms of government were required to keep partiality and corruption in check. This was a consequence of having to combine an essentially hedonistic psychology, as outlined in the *Essay*, with a non-egoistic moral theory.⁴² To do so meant that the virtue of which classical republicans spoke belonged to a distant 'Golden Age', which was impossible to maintain with the development of money, expanding populations, growing trade and along with it, the rise of 'Ambition and Luxury' which reshaped human desires (*TT II. viii. 111, pp. 360–1, see also v. 37, viii. 107, 110*). But this did not mean men were no

longer required to act in such a way that promoted the common good or 'public happiness'.⁴³ Instead, it meant providing a different account of the nature of virtue to suit both the philosophical programme outlined in the *Essay* and the new political, social and economic circumstances of late seventeenth-century England.

Re-placing Locke in this wider early modern context has consequences as well for our understanding of his international political theory (2). Locke was writing in the immediate aftermath of the treaties of Westphalia. These treaties were intended to tie the various European states into a system of reciprocally guaranteed security by minimising the grounds for interference in each other's affairs, in essence, by guaranteeing their territorial sovereignty. Conflict could not be eliminated, but it could at least be regulated by a principle of non-interference. What occurred outside of Europe, however, in areas where no sovereign states (or civil societies) existed, was a different matter. States could pursue their extra-territorial expansionist ambitions without necessarily upsetting the balance of powers within Europe, although intra-European disputes over these territories quickly arose. In short, Westphalia helped constitute not only the international *system* of states, but also the sovereignty of the states themselves; that is, their exclusive and pre-eminent right to govern their territories and the populations therein.⁴⁴

As David Armitage has argued (2000, pp. 125–45), one of the defining concerns of British imperial ideology from the late sixteenth century onwards was the difficulty of combining *libertas* with *imperium*. The classic discussion of this dilemma – and one that received considerable attention in seventeenth-century debates over empire – was found in books I and II of Machiavelli's *Discorsi* (Machiavelli 1989, I, pp. 209–11, 334–9). There Machiavelli basically offered three options for the prince to consider with regard to expansion. First, be like Rome and tolerate the 'tumults' that come with *libertas*, including the quest for greatness (*grandezza*) through expansion. But this also meant inevitable decline, since expansion entailed the extension and expansion of military command and thus risked the potential of a constitutional overthrow and the servitude of the people (hence the deterioration of *libertas*). Second, be defensive (like the German republics), and curb one's desire for expansion. But this left one vulnerable to more ambitious and voracious neighbours. Finally, emulate Sparta, Athens or Venice, whose laws provided more for internal stability as opposed to imperial expansion, but this left one vulnerable to necessity and blocked the possibility for genuine greatness. For Machiavelli, not surprisingly, the only option was to be like the Romans, but this meant that *imperio* and *libertà*, ultimately, were incompatible.

Locke appears, in this context, as one of the many writers who by the 1690s were offering a potential solution to this dilemma. By then it was argued that states could no longer afford to choose whether or not to be expansive or defensive, trading or not, prepared for war or not – they had to be all of these in order to survive. The Spartan and German options were, in other words, not genuine options. But as much as commerce and trade risked importing corruption, they also offered a way to greatness without the military expansion that Machiavelli claimed led to inevitable collapse, since commerce depended more on freedom, and particularly

freedom of the seas (which in turn depended on maritime power), than armies or military rule. Liberty was required for successful commerce and commerce was the cause of greatness: 'wealth no longer lay in land but in trade and the population required for extensive manufacture' (Armitage 2000, pp. 165 and 143. See also *TT* II. v. 42). And labour and trade, not force, as we have seen, were the ultimate basis, according to Locke, of England's *dominium* in the New World. The mere accumulation of land was not the point, but rather its proper use and population. A flourishing colonial system thus formed a crucial part of England's reason of state, an example of the complex integration of domestic and international policy concerns that Locke was helping to shape.

Liberalism and empire

How is this meant to echo through to modern conceptions of liberalism? First, at a very general level, it demonstrates how the problem of cross-cultural evaluation and negotiation has formed a crucial aspect of the liberal problematic for much longer than many have thought. Second, the expropriation and near-extirmination of aboriginal peoples represents one among other of the 'original sins' of the founding of liberal democracies, at least in North America and Australasia. All political foundations are based on violence and injustice of some kind. But the cultural, political and legal presence and persistence of indigenous peoples has forced liberal democratic societies, to varying degrees, to confront this past both intellectually and practically. It is one of the historical legacies of wrongdoing, like slavery, with which states ostensibly committed to liberal values struggle to address in terms of those values.⁴⁵

For critics of liberal political theory, the fact that the early modern roots of liberalism are linked so explicitly to the justification of colonialism has important consequences for thinking about liberal political theory today. It does so most obviously in circumstances where early modern assumptions still inform legal doctrines that affect the proprietary interests of indigenous peoples. But some have argued that there are deeper philosophical connections as well. The crucial connection, it seems, is between colonialism and the language of subjective rights. This is so for two reasons. First, in order to define the nature and scope of rights, claims have to be made about the nature of persons, and particularly about those qualities or powers to which the rights refer, or are intended to protect.⁴⁶ This means drawing a distinction between those who are eligible for rights and those who are not, and between those who display and are capable of exercising the relevant powers and capacities and those who are not. Second, and more generally, all theories about rights ultimately depend on controversial claims about the wider purpose of rights and how they fit into more general conceptions of moral and political order. In both instances, the filling out of ostensibly liberal claims about the subjective rights of persons against arbitrary treatment by the state (and their fellow citizens) provides ample room for the introduction of less than impartial constraints on who is eligible to claim certain rights, and ultimately, what kind of society the language and practice of rights is meant to promote.

Richard Tuck (1987 and 1994), for example, draws an explicit connection between the emergence of the 'modern' idea of natural rights (i.e. radically subjective rights), liberalism and modern European expansionism. For Tuck, the autonomous rights-bearing agent at the heart of liberal individualism is a product of seventeenth-century theorising about the nature of the autonomous *state* acting in the international sphere. The sovereign individual is the 'traditional cousin of the sovereign state', argues Tuck, and especially the aggressive, violent and minimally constrained version described by Grotius, Hobbes, Locke, and Vattel.⁴⁷ Thus the connection between liberalism and imperialism is not merely chronological but metaphysical. That is, the analogy between the sovereign state and the sovereign individual acting on the basis of their natural rights, constrained by the recognition of the basic rights of others (but not much more than that), represents an influential vision of liberal freedom. This ideal of liberal agency may now be subject to criticism, especially as our conception of international order begins to approach more closely that of a law-governed civil society, but we can only really grasp these developments, Tuck argues, if we understand how the ideal emerged in the first place. And in moving away from it, he intimates, we will have to rethink our basic conceptions of rights and the notion of liberal agency that underpins them, along with our conceptions of domestic and international political order.

Another argument tracing the deep connections between liberalism and colonialism trades on the apparent paradox of liberal universalism: that is, how universalistic premises applied to politics (for example, that every man is naturally free and possesses 'natural political virtue', *TT* II. ii. 4, viii. 116–19) can result in particularistic and exclusionary practices and institutions (U.S. Mehta 1997, p. 60 and 1999). The gist of this argument is that lying behind the universal ascription of basic capacities to all human beings there lies a 'thicker set of social credentials that constitute the real bases of political inclusion' (U.S. Mehta 1997, p. 61). Thus, 'what is concealed behind the endorsement of these universal capacities are the specific cultural and psychological conditions woven in as preconditions for the actualisation of these capacities' (*ibid.*, pp. 61–2 and B. Arneil 1996, pp. 210–11). The spaces between universal capacities and the pre-conditions required for their actualisation, argues Uday Singh Mehta, are where 'liberal strategies for exclusion' operate. In order to be considered eligible for political inclusion, the 'universal subject' must develop his capacities in such a way so as to match the underlying purposes of the rights to which he is apparently 'naturally' entitled (*Essay* II. xxviii. 10–12). Thus Locke ascribes to the Indians a natural freedom, but denies their communities the status of civil societies. Bhikhu Parekh summarises this argument by claiming that whilst Locke's principle of equality 'offered at least some moral protection to Indians, it offered them no *political* protection' (B. Parekh 1995, p. 92). The gap between 'egalitarian interpersonal morality and an inegalitarian political and international morality is central to Locke's thought', argues Parekh, 'and indeed to most of the liberal tradition' (*ibid.*, p. 92). Universalist premises are inevitably shaped by cultural and historical particulars in their application, which means that universal standards are often, paradoxically, applied in culturally

specific ways. Some populations, or segments of the population, are capable of governing themselves through liberty and others not. This was true of those peoples who fell outside the Westphalian state system (such as the indigenous populations of the East and West Indies), as well as for some within it, such as the chronically unemployed (B. Hindess 2000).⁴⁸

Early modern theorists would understand the disjuncture Parekh identifies as the gap between the law of nature and the law of nations. Kant, for example, struggled with the difference between the need for *individuals* to exit the state of nature and submit to a lawful sovereign, and the problems involved in showing how *states* could be brought to do so.⁴⁹ And it is a disjuncture that political philosophers continue to struggle with today, liberal and otherwise. The task of reconciling the *imperium* and *dominium* of the liberal democratic state with the pre-existent *dominium* and *imperium* (and alterity) of indigenous peoples presents a complex strand of this problem.

But do the arguments of Tuck and Mehta establish both necessary and sufficient conditions for thinking that there are deep philosophical connections between liberalism and colonialism, or more strongly, that there is an equivalence between them? The concept of autonomy is indeed central to the liberal tradition, and it can be traced back to theories about the autonomous agency of states and their right to declare war against, and appropriate the lands of, indigenous peoples. But this establishes only a necessary and not sufficient condition for the claim about deep connections between liberalism and colonialism. For autonomy is not the only value central to liberalism, and even if it was, there are different and less bellicose traditions of thinking about the ontology of states and individuals within liberal thought.⁵⁰ Moreover the picture of the unconstrained, autonomous sovereign at the heart of the Westphalian system is itself empirically dubious. From the seventeenth century onwards there have been regular and various conventions, treaties, contracts and norms imposed on states (often through force, but also by invitation) that constrain their relations over those they rule (S.D. Krasner 1999, pp. 73–104). Even Vattel, for example, in a passage Tuck himself cites, argued that if the tyrannical rule of a sovereign led to internal revolt, 'any foreign power may rightfully give assistance to an oppressed people who ask for its aid' (Vattel 1916, II. 4. 56). Norms of international recognition, for example, often included – and still do – constraints on the treatment of minorities, as did the treaties of the peace of Westphalia themselves.⁵¹ The motivation for imposing (or voluntarily contracting into) these constraints often had little to do with justice, of course, and more to do with necessity, e.g. maintaining system stability or advancing the particular interests of states. But this suggests that the norm of autonomy at the centre of Tuck's vision of the 'belligerent post-Renaissance state' lying behind liberalism was often – even in the middle of the seventeenth century – decoupled from actual practice. Autonomy, understood as the exclusion of external actors from determining or influencing domestic authority structures,⁵² has been compromised ever since 1648.

Similarly, the conjunction between certain universalist premises and the denial of the political reality and humanity of indigenous peoples may demonstrate a necessary condition for establishing an equivalence between liberalism and

colonialism, but not a sufficient one. For it is also the case that rights, embodying as they often do a conjunction between universalistic premises and culturally specific elaborations of them, have been turned around and used by indigenous peoples to criticise previously unacknowledged cultural and social partialities embodied in liberal norms and institutions.⁵³ Moral discourse is more supple and indeterminate and thus more difficult to pin down entirely within clearly delineated cultural bounds than the critical argument admits. The conclusion to be drawn, therefore, is not to deny that there are any deep connections between liberalism and colonialism – there clearly are – or to reject ‘liberalism’. Rather the demand should be for more historically attuned accounts of the conceptual and ideological character of liberalism, and normatively speaking, for more genuinely intercultural variations of it.⁵⁴

The colonial reading of Locke’s *Two Treatises* is an exercise in the excavation of the pre-history of liberalism.⁵⁵ It is especially valuable for drawing attention to the complex inter-relations between domestic and international concerns in early modern political thought, as I have emphasised above. The connections between liberalism and colonialism, both historical and conceptual, suggest that liberal theorists are often faced with the task of reconciling their commitment to individual freedom with the practical task of governing complex populations – some close at hand and others at a distance – that may or may not be susceptible to liberal forms of government. Thus liberalism is concerned not only with promoting individual and collective freedom, but also with various forms of government understood in the broadest sense of the term, that is, as mechanisms for regulating and disciplining freedom.⁵⁶ The motivation for asking these kinds of questions of Locke is to ask how this pre-history might have shaped liberalism’s present and thus its future. It clearly has shaped liberalism’s present, most notably through the persistence of indigenous peoples’ legal and political claims today. But since liberalism is a complex bundle of sometimes conflicting attitudes, beliefs and theories, and above all a ‘vital, politically, morally, and ideologically engaged [real historical movement]’, then by definition it will always be unclear ‘where its extension ends’ (R. Geuss 2001, pp. 69–71). It has a nominal as opposed to real essence. Liberalism is shaped by its history, both distant and more recent, but not determined by it.⁵⁷

Notes

- 1 66 ALJR (1992) 408 at pp. 418, 429, 451.
- 2 *Mabo*, pp. 417–18, 434. See *Cooper v Stuart* (1889) 14 App Cas 286 at 291 re. the status of a settled colony as it applied to Australia. See also Justice Gibbs in *Coe v Commonwealth* (1979) 53 ALJR at p. 408: ‘It is fundamental to our legal system that the Australian colonies became British possessions by settlement and not by conquest’. If the court had rejected *terra nullius* it would have questioned the settled status of Australia and thus opened up the possibility of an even more radical rethinking of the basis of property law. This was not a path the Court was willing to take; rejecting the settled colony doctrine risked fracturing the ‘skeleton of principle which gives the body of our law its shape and internal consistency’ (p. 416, see further pp. 418–20).

- 3 The *Royal Proclamation* (1763) came close to recognising Aboriginal nations as self-governing and possessing *dominium* over their lands and played an important role in the influential Marshall cases: see *Johnson v McIntosh* 21 U.S. (8 Wheat.) 543 (1823), especially at 593 and *Worcester v the State of Georgia* 31 U.S. (6 Pet.) 515 (1832). In *Johnson*, Marshall argued that the rights of the original inhabitants 'were, in no instance, entirely disregarded; but were necessarily . . . impaired'. In *Worcester*, he acknowledged that their status as 'nations' or states was never extinguished, but that a 'weak state, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of self-government'. Thus the Indian nations became 'domestic dependent nations' in American constitutional law. In Canada, it was not really until the 1973 *Calder* decision that 'Aboriginal title' or 'Indian title' was clearly acknowledged as arising from the common law. See *Calder et al. v Attorney General of British Columbia* (1973) 34 DLR (3d) 145. Compare the earlier *St Catherine's Milling and Lumber Co. v R* (1888) 14 App Cas 46, in which Lord Watson claimed that the 'tenure of the Indians was a personal and usufructuary right, dependent on the good will of the Sovereign' (at 56).
- 4 See *Mabo and Seas and Submerged Lands case, New South Wales vs. Commonwealth* (1975) 135 CLR 337 and *Coe v Commonwealth of Australia* (1993) 118 ALR 193 (HC), 198–200. For an important recent Canadian case see *Delgamuukw v. R* (1991) 79 D.L.R. (4th) 185 and then on appeal, *Delgamuukw v British Columbia* (1997) 3 S.C.R. 1010. In the appeal, the Gitksan and Wet'suwet'en amended their claim for both 'ownership' and 'jurisdiction' over the territory in question (some 58,000 square kilometres of British Columbia), to one of Aboriginal title over it. In allowing the appeal, the Court went on to try and specify more precisely the content and nature of Aboriginal title.
- 5 J. Webber 2000. See also D. Ivison 1997a.
- 6 For early modern understandings of *imperium* see D. Armitage 1998, pp. 103–4 and on *dominium* see J. Tully 1980, pp. 69–71.
- 7 See especially D. Armitage 2000, pp. 1–23 and J. Tully 1995b.
- 8 On the theme of Renaissance humanism more generally, see his 1993, especially chs 1–3.
- 9 A. Fitzmaurice 1999 and 'The Machiavellian argument for colonial possession', forthcoming. See also D. Armitage 1998.
- 10 On his personal involvement see M. Cranston 1984. For some of his colonial writings, see Locke 1997, especially pp. 160–81 (*The Fundamental Constitutions of Carolina*, 1669), 252–9 ('Atlantis', 1676–9) and 272 ('Carolina', 1679). Another relevant essay, not in Locke 1997, is 'Some chief grievances of the present constitution of Virginia' (1696). See also Locke 1991, 2, pp. 487–92 especially 'For a General Naturalization'. On the colonial reading of Locke more generally, see J. Tully 1993a, especially pp. 140–1, 1993b, B. Arneil 1996, R. Tuck 1999, pp. 166–81 and D. Armitage 2000, pp. 97–8, 163–9. As noted, Locke helped draft *The Fundamental Constitutions of Carolina* in 1669–70 for his patron, the Earl of Shaftesbury, who was a leading figure in the founding and running of the colony, and acted as Secretary to the Lord Proprietors between 1668–75. He was made a landgrave (i.e. nobleman) in the 'aristocracy' of Carolina in 1671. For further discussion of the Constitution see Locke 1993, pp. 41–4; a copy of the 1669 version is provided on pp. 210–32. Locke was also familiar with (and extensively criticised) William Penn's colonial venture in Pennsylvania, whose constitution Penn gave to Locke in Holland in 1686 (see the comments quoted in Cranston 1984, pp. 261–2. For further discussion see R. Tuck 1999, pp. 177–8). Locke was an investor in the slave-trading Bahamas Company and the Royal African Company (Cranston 1984, pp. 115). He wrote extensively on matters of trade, including serving as Secretary to the Council of Trade and Plantations (1673–4) and was an active member of the Board of Trade (1696–1700). He was, as Cranston (1984, p. 119) puts it, 'easily infected with Ashley's zeal for commercial imperialism'. For a discussion of some of Locke's activities on the Board of Trade, see M. Goldie's Introduction to Locke 1997,

- pp. xxvi–ii, D. Armitage 2000, pp. 163–9 and D. Ivison 1997b, pp. 122–33. D. Armitage is preparing the forthcoming Clarendon edition of all of Locke's colonial writings. Armitage has also established that Locke's involvement with *The Fundamental Constitutions of Carolina* extended well beyond the 1670s, including a redrafting in 1682. In fact, Armitage argues that there is a case for dating the writing of chapter v of the 'Second Treatise' to around this time as well, and hence that Carolina was a crucial colonial context for the discussion of property there. I am indebted to David Armitage for discussions on these matters, and for allowing me to read his important forthcoming paper, 'Locke's Carolina Revisited'. He should not be held responsible, however, for how I go on to develop some of these themes below.
- 11 For a discussion see A. Pagden 1986, pp. 109–18.
 - 12 Vitoria goes on to qualify this claim, however, and ultimately to argue that although the Indians are not beasts or natural slaves, they are akin to natural children, and thus justifiably under the tutelage of the King of Spain.
 - 13 See also A. Pagden 1987b, pp. 82–8.
 - 14 See also Locke's criticism of Filmer's argument concerning God's grant to Adam grounding the *imperium* of absolute monarchs: *TT* I. v. 24; discussed in J. Tully 1980, p. 60.
 - 15 In relation to Australia see A. Frost 1981, pp. 513–23 and H. Reynolds 1992, pp. 15–18, 74–6.
 - 16 *Cooper v Stuart* (1889) 14 App Cas 286 at 291 as per Lord Watson.
 - 17 This is discussed in J. Tully 1993a, pp. 154–5. See also the discussion in B. Arneil 1996, ch. 6.
 - 18 For a superb discussion of this Machiavellian background see D. Armitage 2000, ch. 5.
 - 19 As D. Armitage, B. Arneil and J. Tully point out, more than half of the references to America, Americans and Indians are found in chapter five (II. v. 26, 30, 36, 37, 40, 41, 43, 48, 49).
 - 20 See J. Tully's account of the 'maker's right' argument in his 1980, pp. 104–24. For criticism see A.J. Simmons 1992, pp. 252–60.
 - 21 On the debate between 'positive' and 'negative' community see A.J. Simmons 1992, pp. 238–41 and J. Tully 1995a, pp. 110–12.
 - 22 With the introduction of money, labour is gradually disconnected from ownership.
 - 23 The 'art of government' is the ability of legislators to make laws conformable as possible to natural law given the particular historical, cultural and practical circumstances of the polity.
 - 24 The key discussion is *TT* II. v. 45.
 - 25 Compare *TT* II. viii. 102, where Locke expresses doubts about the Indian nations in America being commonwealths at all.
 - 26 See also J. Tully 1993a, pp. 160–6 and B. Arneil 1996, pp. 146–50. Note that labour is crucial for the *beginning* of ownership of property (as a means of tracking value), but becomes separable from it with the invention of money.
 - 27 See the discussion in R. Tuck 1999, p. 176.
 - 28 The phrase is from B. Slattery 1991, pp. 686–7.
 - 29 For a contemporary variation on this Lockean theme see D. Schmidtz 1991, especially ch. 2.
 - 30 Emmerich de Vattel, author of the most popular textbook on international law in the eighteenth century summarised this last argument in a brutally clear fashion:

The cultivation of the soil . . . is . . . an obligation imposed on man by nature. The whole earth is designed to furnish sustenance for its inhabitants; but it can not do this unless it be cultivated. Every nation is therefore bound by natural law to cultivate the land which has fallen to its share. . . . Those peoples . . . who . . . disdain the cultivation of the soil . . . fail in their duty to themselves, injure their neighbours, and deserve to be exterminated like wild beasts of prey.

See Vattel 1916, at I. 7. 81. See also II. 7. 97, where he argues that 'the savage tribes of North America had no right to keep to themselves the whole of that vast continent'. See also H. Reynolds 1992, pp. 17–18. For the background to this language associated with the right to punish in the state of nature see R. Tuck 1999. Some of the language here is reminiscent of the sections in the *Two Treatises* that deal with the right to wage war against those who violate the law of nature; see especially *TT* II. iii. 16. J. Tully and R. Tuck both argue that, read against the background of Renaissance humanism, this doctrine helped to legitimate aggression against the Indians, including in Carolina (see for example *TT* I. xi. 130 and Tully 1993a, pp. 142–5). Tuck, in particular (1999, pp. 171–7), argues that Locke, like Grotius and Hobbes, used the same explicit comparison between the international realm and the state of nature, and the same willingness to countenance aggressive action (including pre-emptive strikes) on the basis of not only actual but potential harm. But it is not clear from the *Two Treatises* at least, that Locke endorses aggressive *pre-emptive* strikes, as much as he does the natural right of self-defence and punishment. For example, he emphasises retribution 'what is proportionate to his Transgression' and 'so far as calm reason and conscience dictates' for the purposes of '*Reparation and Restraint*' (II. ii. 8, p. 290). However Locke does acknowledge that a man has the right to '*kill a thief*, who has not in the least hurt him, nor declared any design upon his Life, any farther then by the use of Force, so as to get him in his Power' (II. iii. 18, p. 297); and that a '*declared design of force*' and not just force itself, where there is 'no common Superior on Earth to appeal to for relief' (II. iii. 19, p. 298), gives a man the right of war versus an aggressor. But this still seems short of the kind of arguments we find in Grotius and Hobbes. See Hugo Grotius 1738 at II. 20. 40 and Thomas Hobbes 1998, pp. 10–11.

31 See the discussion in R. Ashcraft 1986, pp. 305–12.

32 This dual focus is emphasised by D. Armitage, R. Tuck, M. Goldie and J. Tully as well. For a general discussion of this problem in political theory see R.B.J. Walker 1993.

33 For evidence of its use in the eighteenth century, see R. Tuck 1999, p. 182–4 and J. Tully 1993a, pp. 166–76. See also Marshall's (see note 3) rejection of Locke's agriculturalist argument, appealed to by the defendants in *Johnson and Graham's Lessee v McIntosh*, especially pp. 569–70, 588–92 and in *Worcester v Georgia*, p. 517. In an 1830 letter to the counsel assisting the Cherokee Nation in its suit against the state of Georgia (the second of the influential Marshall cases), James Madison wrote, echoing Locke: '[B]y not incorporating their labour and associating fixed improvements with the soil [the Cherokee] have not appropriated it to themselves, nor made the destined use of its capacity for increasing the number and the enjoyment of the human race', quoted in G.E. White 1988, p. 721. See also B. Slattery 1991. H. Reynolds (1992, pp. 74–6) points out that the agriculturalist argument was well-known and 'popular' throughout colonial Australia in the first half of the nineteenth century, though '[i]t was a strange argument to advance in a pastoral country where only a tiny proportion of the land was under crop'.

34 See for example C.B. Macpherson 1962 and S. Holmes 1995.

35 J.G.A. Pocock 1980 and 'Authority and Property: The Question of Liberal Origins', in Pocock 1985, pp. 103–24. Pocock does not deny the importance of Lockean arguments to the American rebel literature. His point is that Locke cannot be taken as the exclusive source for their arguments, nor that he should be seen as representing the core of American political ideology from the eighteenth century onwards.

36 The phrase is J. Tully's: see his 1993b, p. 254.

37 This is shown brilliantly by J. Tully 1993b. See also S. Pincus 1998, pp. 705–36. Both J.G.A. Pocock and Q. Skinner acknowledge how, at times, Locke sits between these two languages of political thought: see for example, Pocock 1993, pp. 416–17 and Skinner 1989, pp. 114–16.

38 See also D. Armitage 2000, pp. 168–9.

- 39 For an interesting development of this theme, albeit along different lines than pursued here, see T. Pangle 1988.
- 40 See also *Essay* II. xxviii. 11. Locke's most extensive discussion of virtue is probably in *STCE*; see below, n. 43.
- 41 For more discussion see A.J. Simmons 1992, ch. 1, J. Tully 1993a, pp. 179–241, J. Dunn, 1969, pp. 192–9 and D. Ivison 1997b, chs 4–5.
- 42 For a defence of this non-egoistic reading of Locke's moral theory see J. Tully 1980, 103–4 and A.J. Simmons 1992, 37–47.
- 43 As he wrote in *STCE*, 'the great Principle and Foundation of all Vertue and Worth, is placed in this, That a Man is able to *deny himself* his own Desires, cross his own Inclinations, and purely follow what Reason directs as best, tho' the appetite lean the other way', §33, p. 103.
- 44 I am grateful to Barry Hindess for discussions concerning this point.
- 45 For further discussion of this problem see D. Ivison 2000.
- 46 There is obviously a connection between the language of rights and the emergence of capitalism, a claim central to Macpherson's interpretation of Locke. Thus, insofar as there is a connection between liberalism and capitalism, and then between the emergence of capitalism and colonialism, there is a deep connection between liberalism and colonialism. This issue deserves more careful consideration than I can give it here. The general problem is that, as an explanatory framework for early modern European expansionism, the assumption that colonialism is a product of the acquisitiveness inherent in capitalist relations risks overlooking or oversimplifying the complex historical and moral sources of argument tied to the justification of empire in the sixteenth and seventeenth centuries. For some discussion see J. Tully 1993a, pp. 127–8.
- 47 R. Tuck 1999, pp. 14–15, 84, 195–6, 226, 233–4. See also J.B. Schneewind 1998, pp. 3, 483. Kant was the first to use and transform the notion of autonomy as it applied to states and explicitly apply it to individuals. Individuals are self-governing in the sense that they give themselves a law that necessarily also provides them with the motivation to obey it.
- 48 On Locke's own thoughts concerning the unemployed, see his 'Draft of a Representation Containing a Scheme of Methods for the Employment of the Poor' in Locke 1993, pp. 446–61.
- 49 'Toward Perpetual Peace' in Kant 1996a, p. 327.
- 50 Arguably in Kant, for example, although see the discussion in R. Tuck 1999, pp. 207–25 and P. Schroeder 2002. For contemporary discussions see J. Raz 1986 and C. Beitz 1999.
- 51 On the peace of Westphalia see S.D. Krasner 1999, pp. 79–82. *The Royal Proclamation* and the *Treaty of Paris* (both 1763), provide two examples of constraints on state action incorporated into international treaty-making. The *Proclamation* included a provision for the 'several Nations or Tribes of Indians with whom We are connected, and who live under our Protection', that they 'should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds'. The *Treaty of Paris* included provisions giving Catholic subjects in Canada the same rights as those in Britain, however meagre those were.
- 52 This definition of 'Westphalian sovereignty' is Krasner's, see S.D. Krasner 1999, pp. 20–5.
- 53 See for example the essays in S. Garkaw, L. Kelly and W. Fisher 2001 and R.A. Williams Jr 1990, pp. 660–704. For criticism of 'Aboriginal rights' from an indigenous perspective see T. Alfred 1999, pp. 57–9, 140.
- 54 See J. Levy 2000, especially pp. 212–16 and D. Ivison 2002.
- 55 Or perhaps the pre-history of the pre-history of liberalism. Regarding Locke as a liberal in any systematic sense is, of course, anachronistic. But the ideological role that Locke plays in the way liberalism marshals its past – his role in the liberal canon, in

other words – justifies the attention he receives here (and elsewhere), when asking questions about the nature of liberalism.

56 This theme is explored more fully in D. Ivison 1997b.

57 I am grateful to Peter Anstey for his invitation to participate in the symposium that led to this volume and to the other participants for their comments and questions. I am particularly indebted to David Armitage, Andrew Fitzmaurice, Barry Hindess and Ian Hunter for discussions about Locke and early modern theories of empire, and for their help and encouragement.