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Understanding Private Property: Land as a Relationship, Property as a Construct

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Abstract

Private property is viewed as a fundamental right in liberal ideology, based on a belief in equality. This paper critically examines some of the Western¹ ontological roots of private property by referring to Indigenous ontology to challenge the political constructs of gender and race in relation to property. I argue that the ontological views which underpin private property continue to ensure that private property will be racialized and gendered. Therefore, it is unlikely that private property can achieve the equality for all that Locke hopefully intended.

1. Introduction

This paper examines the ontological roots of the Western¹ socioeconomic system of private property as it developed in North America. The hegemony of Western-style private property as an economic system of organizing the material world, and its ability to drive out alternative property regimes, is prevalent. It is fundamentally linked with the concepts of individual freedom and equality. However, private property has for the most part been decoupled from its particular ontological roots, which have in turn made it appear natural and apolitical, a “commonsense system.” Of course, its affiliations to capitalism are clear, and in the increasing neoliberalization of social policies, our understanding of private property needs to be reexamined.

Most settler societies, such as Canada, are aware of the historical dispossession of land from Indigenous peoples, but the implications of the continued dispossession are less clearly understood or recognized. Racially contingent forms of property and property rights have been created and maintained (Harris, 1993) through continued occupation by settler governments and by the needs of a growing population of “settlers.” As the colonists in settler societies have never left, this permanent occupation is justified by very old colonial constructs of entitlement, that have now become lost in historically situated guilt, as well as current white settler privilege. As the legitimacy of continued settler occupation is argued to necessitate the seizure and privatization of Indigenous lands (Bonds & Inwood, 2016; Pasternak, 2015), the claims to freedom and equality that are promoted by proponents of private property are called to question.

Although title to most Indigenous reserve land in North America continues to be held, and in many cases administered, by the state, versions of private property designed to assimilate Native communities and their lands into the wider Euro-American socioeconomic way of life have been implemented and failed with devastating effects more than once in colonial government policy. The most recent round of land privatization policy initiatives, which cite greater autonomy, equality, and resource development for Indigenous communities as moral rationales, have

emerged in Canada with the First Nations Property Ownership Act first proposed in 2010, and most recently in the United States, with advisors to the new American President, proposing private ownership on reserve land for resource development (Volcovici, December 5, 2016). It is becoming increasingly difficult to take into account that the concept and system of landed property originated in a set of specific cultural, and to a certain extent religious values and beliefs that have become more and more obscured by the “neutrality” of neoliberal economic and political policies. The language of neoliberal policies are increasingly overlapping with sovereignty discourse and other discourses of equality and autonomy (Pasternak, 2015). Thus, in order to make sense of these types of privatization policies it is necessary to not only understand Western ontological roots of private property but to understand them in relation to Indigenous ontology regarding land.

If we are to consider the ontological roots of private property it will be useful to go back to some of the 17th century writings of John Locke who was working in the Carolina colony and wrote extensively on the radical idea of self-ownership and of owning landed property. In Locke’s influential writings on the radical idea of equality of all “men,” his idealized citizen in the social contract metaphor has come under critique for not including women (Okin & Pateman, 1990; Pateman, 1988a; Waldron, 2002) or non-Europeans, specifically Indigenous Americans (Arneil, 1996a; Mills, 1997; Tully, 1993; Tully, 2000a). Locke’s writings have had an influence on liberalism and colonialism, and the two have been intertwined in a formative, “mutually constitutive” (Armitage, 2004) relationship. Locke’s writings have been charged with justifying colonial expansion to North America (Arneil, 1996; Tully, 1993) and in turn dispossessing Indigenous peoples of much of their rightful territory. How could Locke, such a believer in equality for all, as evidenced in the phrase “Men being...by nature, all free, equal and independent,” create distinct limits on the benefactors of equality? These critiques have made important contributions to understanding colonialism and how it has informed citizenship.

In the sections that follow, I start with a brief description of the early years of contact between settlers and Indigenous communities in what is now called Canada, in order to contextualize the differences in ontological beliefs. The early realities of contact are critical in understanding how settler logic used the ideas of *terra nullius*, the Latin term for vacant lands, in order to justify the dispossession of Native peoples from their homelands. Next, I examine some of the main concepts associated with many North American Indigenous worldviews—interdependency, time and space, and nondiscrete categorization—referring to works by Indigenous philosophers². This is followed by an examination of the theoretical underpinnings of Western property concepts focusing particularly on John Locke’s theory on property. Following, I discuss Western understandings of property in terms of Indigenous tenets, referring to critical analysis of Locke’s social contract and draw out how it is both racialized and gendered. I argue that it is the ontological views which underpin private property that continue to ensure private property will be racialized and gendered and it is highly unlikely that private property can ever achieve the equality for all “men” that Locke hopefully intended. The paper ends with some concluding thoughts on the collaborative potential of these two worldviews.

2. The multi-millions who inhabited *terra nullius*

The first peoples living in America were numerous, with recent demographic estimates being at just over 2 million for North America (Crawford, 2001; Ubelaker, 1988). The peoples were culturally diverse with dynamic and sophisticated social organizations and systems of governance. Several hundred distinct groups lived in all regions of what is presently called Canada, with some practicing farming and many with complex systems of government based on democratic principles.

In the 1500s, when the Europeans arrived to stay in the Americas, and over the next few centuries, some treaties were established between the colonial governments and Indigenous nations that respected Indigenous lands

and recognized Indigenous governance. However, as the population of settlers started to quickly outnumber the Indigenous populations, treaties increasingly failed and more and more Indigenous communities were either driven out from their traditional lands, or forcibly (re)moved to accommodate the growing settler populations. Although much of the land was actually in a complex and dynamic relationship with the hundreds of existing populations of Indigenous peoples, the settlers increasingly viewed and treated the lands as vacant, uninhabited and unused—*terra nullius*—a colonial fiction. Terra nullius, thus, became a key premise in the enduring Doctrine of Discovery, in which land that was deemed “unoccupied” was therefore “discovered” and could be claimed by the “discovering” European sovereign. This created a rationale for non-Indigenous colonial governments to legitimize and claim sovereignty over existing Indigenous governments and societies. By the 17th century, the practice of dispossession was firmly based in justifications of Western colonial property ownership. Land was “redistributed” from Indigenous peoples to poor settlers based on the fiction that the land was unused or unoccupied (Stanger-Ross, 2008; Wood & Rossiter, 2011), or that the land was not being effectively utilized (Williams, 1990 as cited in Singer & Beermann, 1993, p. 230).

How did, and does, this massive dispossession of land happen? Indigenous peoples’ relationship to the land included a spiritual connection (Singer & Beermann, 1993 p. 229, FN 48) based on a deep sense of non-hierarchical interdependence, rather than using land as a resource to sustain human life. Their epistemology was based in centuries of coexisting with, and on, the land, viewing land as a living organism, as a nonhuman form of life. On the other hand, a European ontology saw this vast “untouched” land of the Americas as a rich resource to be claimed and developed, in order to sustain colonial empires. For the Anglo-European colonists, this belief was tied to a deep belief in a Christian morality and dominion. As a result of this deep ontological difference, many tribes during first contact with Europeans denied “owning” their land in the European sense. Thus, as shall be discussed further in this paper, settlers were then able to feel justified in forcibly relocating Indigenous communities in order to accommodate their own settlement and their belief in the superiority of their worldview.

In this next section, we turn to exploring in some detail, common tenets found among North American Indigenous worldviews in order to clarify some of the differences in the Western concept of ownership. It is difficult to identify one defining Western or Indigenous worldview or even one Western concept of property. Despite these challenges, elucidating some of the main tenets occurring in each of the worldviews may shed some deeper understanding into the “ontologically specific grounds that inform institutionalized socio-cultural practices like property” (Bryan, 2000, p. 3).

3. Indigenous relationships to land

Amongst the many Indigenous nations and cultures in North America there are unique Creation stories that inform their respective ontologies. Within this diversity, there are some commonly held beliefs, which, although represented differently in the various cultures, can give insight into a unique Indigenous worldview, or ontology. This next section is dedicated to exploring four of the major interconnected ontological concepts that are related to Indigenous understandings and relationship to land: interdependence, nonhuman personhood, non-linear time, and non-binary categorization. In order to more accurately understand Indigenous ontology it is important to keep in mind that “... there is no one definite reality but rather different sets of relationships that make up an Indigenous ontology” (Wilson, 2008, p. 73, as cited in Little Bear, July 2009). A second consideration is that English language is infused with cultural values, and is thus limited in accurately expressing other worldviews. Although these concepts are extremely complex and difficult to parse out in a paper of this length, relying primarily on Indigenous philosophers and scholars, and to a large extent their voices rather than relying too much on interpretation, should give a brief, yet respectful, and hopefully accurate, representation of Indigenous ontology.

3. 1. "All my relations"

One of the primary concepts in much of Indigenous ontology is the concept of the complex connectivity of all life, often expressed as "all my relations." For example, this very profound phrase is commonly used among the Blackfoot peoples as an opening invocation and closing benediction for ceremonies (Deloria, 1999). It symbolizes a very comprehensive and complex ontology that embodies a relational approach (Youngblood Henderson & McCaslin, 2005, p. 7), acknowledging the connections between all diverse beings, human, as well as nonhuman. This complex understanding of life in everything is passed down orally from elders and in this way becomes connected with the spiritual beliefs, and the daily social and material interactions that have occurred over centuries. John Borrows (1999), an Anishinabe/Ojibway and member of the Chippewa of the Nawash First Nation, describes these interconnected relationships in the following way, "Our loyalties, allegiance, and affection are related to the land. The water, wind, sun, and stars are part of this federation" (p. 72). This idea of a federation of life is realized in ongoing interactions between the social (human), ecological, and spiritual realms, in which the "meaning of life is rooted in the experiences grounded in the sacred relationships of alliances" (Bastien & Kremer, 2004, p. 84, cited in Little Bear, July 2009). These federations and alliances sustain and acknowledge the interdependency of all things living, and in turn create a relationship bond with specific sacred sites that have endured for centuries. Gregory Cajete (2000, p. 4, as cited in Little Bear, 2009), a member of the Tewa of Santa Clara Pueblo, further explains:

This relationship is predicated on the fact that all Indigenous tribes—their philosophies, cultural ways of life, customs, language, all aspects of their cultural being in one way or another—are ultimately tied to the relationships that they have established and applied during their history with regard to certain places and to the earth as a whole. (Cajeta, p. 4)

It becomes clear that for Indigenous peoples, space is a very important referent and certain "events, patterns, cycles, and happenings such as animal migrations, cycles of plant life, seasonal rounds, bind people to specific places" (First Rider, 1994, p. 14).

Thus, if Indigenous peoples are deeply attached to specific places, what is their understanding of the idea of ownership? Dale Turner (2004), a member of the Temagami First Nation, advises that in order to understand traditional Indigenous concepts of ownership it is necessary to understand Indigenous peoples deep and complex connection to their homelands. Homeland does not only mean the physical land "but everything around one's world; land, air, water, stars, people, animals, and especially the spirit world" (Turner, 2004, p. 236). As the earth is shared with all things, and all things are living, individual and exclusive ownership does not occur, nor is it conceivable in this worldview. As all life is interdependent and without a hierarchical status, then "It is inconceivable to claim (own) that which must be shared" (Verney, 2004, p. 135). This idea of sharing all things is quite unique to Indigenous ontology and has profound implications when juxtaposed against Western ontology which values accumulation.

In these interconnected relationships, all things are considered life forms and are seen as dependent on one another. Significantly, each thing has a life force, or possesses energy waves (Deloria, 2006). The energy that Vine Deloria, a Standing Rock Sioux and one of the most influential Indigenous philosophers, talks about is in constant motion and creates a life essence that is constantly in motion with other life forms. Gary Witherspoon (1997), a non-Aboriginal studying the Navajo observes, "that the world is in motion, that things are constantly undergoing processes of transformation, deformation, and restoration, and that the essence of life and being is movement" (p. 48). In this way, a living universe can be imagined, with all things in constant communication and negotiation. In

explaining Indigenous interpretations of a living universe, Deloria makes strong reference to the strength and respect that the individual has for other life beings, whether human or not, to allow other life forms to fulfill themselves:

The living universe requires mutual respect among its members, and this suggests that a strong sense of individual identity and self is a dominant characteristic of the world as we know it. The willingness of entities to allow others to fulfill themselves, and the refusal of any entity to intrude thoughtlessly on another, must be the operative principle of this universe. Consequently, self-knowledge and self-discipline are high values of behavior...Respect...involves two attitudes. One attitude is the acceptance of self-discipline by humans and their communities to act responsibly toward other forms of life. The other attitude is to seek to establish communications and covenants with other forms of life on a mutually agreeable basis. (Deloria, 1999, p. 50-51)

This is a very important tenet of Indigenous worldview, and very different from Western rational thinking. For Deloria (1999), it is logical “that the universe is moral or has a moral purpose without simultaneously maintaining that the universe is alive” (p. 49). In other words, the life that is contained in non-human beings is as natural as any life and does not need to be distinguished, nor anthropomorphized, as discussed later in this paper.

In light of the profound differences between Western and Indigenous ontology, misunderstanding has been the norm due in part by the marginalization of Indigenous beliefs in the Western worldview. The ideas of spirituality in Indigenous worldviews is often rejected or marginalized in political philosophical analysis. For example, Indigenous relationships to land are viewed by non-Indigenous people to be primarily spiritual, but Dale Turner (2004) has argued that in fact they are also based in epistemology, found in the gathering and accepting of traditional knowledge on a daily basis. Deloria (2004) writes that it is easier for non-Indigenous peoples to understand the concept of energy waves between all living things, including human and nonhuman, as being spiritual. In addition, the Western belief in the universalism of its own ontology typically situates the Indigenous relationship to land and the non-human world as being in a pre-political primitive era, commonly known as the “state of nature.”

In the Western (mis)recognition of life in nonhuman nature, the ecology discourse ends up gendering and heterosexualizing nonhuman nature and animals (Lee, 2009). From a Western ontological perspective, this concept of life in the material world can be exceedingly difficult to conceptualize and is easily misinterpreted and misappropriated:

The practical criterion that is always cited to demonstrate its validity is the easily observable fact that the earth nurtures smaller forms of life—people, plants, birds, animals, rivers, valleys, and continents. For Indians, both speculation and analogy end at this point. To go further and attribute a plenitude of familiar human characteristics to the earth is unwarranted. It would cast the planet in the restricted clothing of lesser beings, and we would not be able to gain insights and knowledge about the real essence of the earth. (Deloria, 1999, p. 49-50)

As Deloria (1999) observes in the quote above, the idea of life in all things also has a secular function and, also noteworthy, has some elements of an epistemological function. He emphasizes, “few people understand that the phrase [All My Relatives] also describes the epistemology of the Indian worldview, providing the methodological basis for the gathering of information about the world” (p. 52). Deloria makes the distinction that the gathering of information is not about humans collecting information about objects, but rather a “reciprocal communication within a more-than-human world” (as cited in Cheney, 2002, p. 95). These two precepts—the idea that there is life in the non-human world independent from humans, and that there is no hierarchy of beings with humans at

the top—are commonly missed and misunderstood by Western interpretations. In fact, the Western penchant for anthropomorphizing nonhuman nature is quite pervasive.

3. 2. The Earth is our Mother

Creation stories, as told by Indigenous peoples themselves, invariably relate to land (Verney, 2004) and several, for example from the Iroquois, Blackfoot, and Cree, feature female creators of life and peoples. Land is seen as “Mother Earth”, as an “interdependent sustainer of life...not to be stripped, taken apart, or desecrated, nor should boundaries or property (ownership) be placed upon her” (Verney, 2004, p. 134). These nurturing associations, which primarily feminize the Earth in its nurturing role, appear to be a deep and consistent worldview across many different Indigenous cultures. However, as I understand this concept, it does not necessarily refer to a female embodiment but rather the essence of nurturing and interdependence. In the creation story of the Diné, Marilyn Notah Verney (2004) writes that it is through Indigenous spiritual connection with Mother Earth that people live communally with all living things. This interdependency, according to Verney, leads to a philosophical understanding of sustainability and relations of equality.

The generalized Indigenous worldview that the Earth/land is feminine, nurturing, and giving of life, may underpin the social structure of many pre-contact Indigenous societies that were matrilineal (Barker, 2008; Simpson, 2008). This assumption has led some Indigenous writers to make the argument that the status of women was not necessarily lower than that of men (Jaimes, 1992; Smith, 2006), although others have challenged whether pre-contact societies were as devoid of gender hierarchy as some would imagine (LaRocque, 1996, p. 14). The strong belief in interdependency and lack of ownership would seem to suggest the potential for less gender hierarchy between Indigenous men and women than was found at the time in the Anglo-European colonial settler ontology.

In contrast to Indigenous concepts of interconnectivity and reciprocity in conceptions of Mother Earth/Mother Nature, the Western reference to nature, “Mother,” has been argued by some feminists to reflect a “pattern in the way we conceive of women” as being “irrational or ‘untamed’” (Lee, 2009, p. 200). Nature and land, like women, are seen to be in need of taming and domesticating, situated in a hierarchy in which humans, particularly men, are in a dominating role and of a superior status. Lori Gruen (1993) writes, “The categories ‘woman’ and ‘animal’ serve the same symbolic function in patriarchal society. Their construction as dominated, submissive, ‘other,’ in theoretical discourse...has sustained male dominance. The role of women and animals in postindustrial society is to serve/be served up; women and animals are the used” (p. 61). Some ecofeminists criticize the deep ecologists’ declaration of being one with nature as “gender-oblivious” and “fundamentally narcissistic, androcentric, and colonizing” (Gaard, 2011, p. 40). These critiques are in line with critiques about appropriating cultural concepts without fully understanding them.

Mother Earth is not an anthropomorphization of a woman as a mother, but rather embodies the nurturing aspects and interdependent aspects of all life. The earth sustains life not as a servant but as an equal. If there is a hierarchy of life as is believed in Western ontology, it is noteworthy that the earth is not inherently dependent on humans but humans are clearly dependent on all life forms on earth and in the universe for survival. Indigenous ontologies seem to recognize, honour and respect this.

3. 3. Time and space temporality as responsibility

In his book *God is Red*, Deloria (2003) identifies a profound difference in Indigenous concern with space versus

Western concern with time, indicating that “statements of either group do not make much sense” (p. 63). Sacred spaces among Indigenous peoples take not only physical but also cosmic forms. For Western religions, sacred places “are appreciated primarily for their historical significance and do not provide the sense of permanency and rootedness that the Indian sacred places represent” (p. 67). For example, it is difficult for non-Indigenous persons to understand places that are deemed Indigenous sacred places/spaces when they do not have a verifiable historical significance in the European sense.

Relations with all things in the universe have a sense of temporality, which is directly linked to Indigenous peoples’ sense of responsibility and identity to homeland. Indigenous understandings of time and space shed further light on an Indigenous understanding of ownership. Time is not experienced as a linear concept (past-present-future) with a momentum of only forward movement (Little Bear, 2009). It incorporates the idea of renewal, as mentioned above, and also a sense of multidimensionality. For Indigenous planner Ted Jojola (2004), a tribal member of the Pueblo of Isleta in New Mexico, valuation in land use is found in the long-term with the “operative principle being that of land tenure” (p. 89). For example, Winona LaDuke, of the Ojibwa Nation, writes of learning from “older relatives” both human and other:

Native American teachings describe the relations all around—animals, fish, trees, and rocks—as our brothers, sisters, uncles, and grandpas...these relations are honored in ceremony, song, story, and life that keep relations close—to buffalo, sturgeon, salmon, turtles, bears, wolves, and panthers. These are our older relatives—the ones who came before and taught us how to live. (LaDuke, 2015, p. 2)

This sense of length of tenure across generations, for example, is evident in the Iroquois confederacy in which they considered how their decisions may affect seven generations in the future. This brings a sense of responsibility of maintaining the land cared for by previous ancestors where, “the notion of property becomes one of inheritance” (p. 89), as well as maintaining land for future successive generations. Jojola continues, “The community is mobilized, therefore, to make certain that individual activities uphold their collective agenda. And unlike mainstream society, the acquisition and retention of a land base or territory becomes paramount” (p. 89). Individuality among Indigenous communities becomes “subsumed in collective values” (p. 89). As peoples are bounded to certain territories, land becomes a responsibility in the past, present and future and ancestors, both human and other, become part of the continuum and community.

3. 4. Beyond the binary

The lack of distinction between human and non-human things emanates from the Indigenous “nondiscrete ontology of being” (Waters, 2004, p. 97). As we have seen from the discussion so far, Indigenous ontology does not see the world in distinct opposites. There are no distinct human and nonhuman categories, but rather life energy emanates from all things. Thus, in ontology that is founded on nonbinaries, hierarchies become much more difficult to construct. For example, Western thought is anchored in static bifurcations such as rational/irrational, female/male, European/non-European, human/non-human, private/public, individual/communal, etc. Because these fundamental concepts are discretely split, and therefore tend to become essentialized in order to maintain their distinctness, they “enable (though may not necessitate) an hierarchical value judgment to take place (eg. mind over body, or male over female) precisely because of the sharp bifurcation” (Waters, 2004, p. 98). Instead, Indigenous ontology understands constructs as complementary, involving fluid boundaries that interact or “cross over” to other constructs so that things can

go together “in such a way that one would remain itself, and also be part of the other. In this way, an hierarchical valuing of one being better, superior, or more valued than another cannot be, or rather is, excluded by the nonbinary logic” (Waters, 2004, p. 99). This is a key concept and one that is difficult for the non-Indigenous mind to accept, let alone understand. The lack of discrete boundaries for understanding the world means that, for example, in many pre-contact Indigenous societies, gender categories were much more fluid compared to colonial European ones (Lugones, 2007; Smith, 2003), and as such roles were not as strictly tied to male/female (Allen, 1992) in the same way Western roles were.

This discussion of Indigenous ontology in relation to land is by no means fully exhaustive and it runs the risk of misunderstanding complex ideas and oversimplifying them. It is important, despite the risks in attempting to understand Indigenous ontology, so that the assumed superiority of Western ontology can be challenged. It does, however, shed some useful light on how English property theories are, in fact, culturally specific and in that way may prove useful in questioning the utility and sustainability of Western ontologies in regard to our shared material world.

4. Locke and the ontological underpinnings of private property

Europeans brought with them a different worldview to America, one based in Christian religious teachings of (European) patriarchal dominion of all creation, as well as economic principles of ownership. Their ontology was based in discrete binary categories, valuing hierarchies of power and difference. In order to better understand the Western viewpoint and relationship to land in the Americas and the development of the ideology of “property”, this paper now turns to the prominent Western philosopher John Locke (1632-1704) and his writings on equality and the justifications of property as they have underpinned much of our modern understanding of property. Locke spent almost 10 years in both private and public colonial administration in the American Carolina colony and was very active in developing and applying his theories during that time. David Armitage (2004) argues that there was an “immediate and identifiable colonial context that contributed to his [Locke’s] distinctive theory of property” (2004, p. 602). Thus, it is fitting to explore Locke’s writings in order to uncover the underlying ontologies that have shaped the Western understandings of private property.

4. 1. Justifications of private property

Before Locke, the English philosopher Thomas Hobbes (1588-1679) conceived the hypothetical conditions of what the lives of people might have been like before societies came into existence. Hobbes’ “natural condition of mankind,” and subsequently Locke’s “state of nature,” became a theoretical starting point for most ensuing theories of civil society. Locke, like the other colonists, were Christians and so understood time and history in a linear way. The state of nature was a state of no political organization or authority, there was no mechanism to protect people and their possessions. Civilized peoples would progress out of that primitive state as they would rationally understand the need to set up a system to secure their “property.” Locke’s view of the “state of nature” started from the premise that all resources in the “natural” state “belong to Mankind in common” and are bestowed by God. Thus Locke needed to construct a theory to get from his belief that all humans held the world’s abundant resources in common, to a theory that would morally justify private property rights held by individuals.

Locke’s notion of self-ownership, or “every Man has a Property in his own Person”, allowed him to theoretically transition from common dominion of property, to private ownership. He managed this by skillfully characterizing a

person's individual labour as the key element that "adds value" to a thing in nature and thus in turn establishes and justifies possession and ownership of land by that person. Locke recognized that it was not reasonable for all men to own property. Therefore, Locke theorized that labour was actually a form of property that could be sold, and thereby justifying a system of trade that allows people to trade their surplus of goods, leading to monetary exchange.

Locke fastened the idea of labour and land in order to justify how land could be owned unequally even though in the state of nature all resources "belong to Mankind in common" (TT § 25). For Locke, self-ownership means that one owns their labour and any unappropriated thing that is mixed with it becomes one's rightful property that no one else can claim against, "For this 'labour' being the unquestionable property of the labourer" (TT § 26). Locke elaborated on these ideas and expanded them justifying capital exchange by moralizing that improving a resource via one's labour in effect makes more resources available for others to enjoy. Locke based his justification of appropriation on the material needs of human beings writing, "God having made Man...as strong desire of Self-preservation...to the use of those things that were serviceable for his subsistence...upon the right he had, to make use of those things, that were necessary or useful to his Being" (TT § 1, para 86). However, subsistence level production was equated with the primitive state. Gathering, fishing and hunting as practiced by Indigenous peoples was seen as not attempting to produce and accumulate beyond mere subsistence. Thus, AmerIndians were deemed savage and primitive.

For Locke, the very action of mixing labour with land not only creates property, but it more importantly creates the need for government and a social contract in order to reaffirm the exclusion of others from any rights that they might have previously had in common. Locke expresses this in his statement, "It being by him removed from the common state nature placed it, it hath by his labour something annexed to it, that excludes the common right of other Men" (TT.II § 26). Here, Locke is clearly individualizing the idea of property and he reinforces this with establishing a fear and suspicion of common resources in land. If all things were held in common, then there would be no reason to empower a government to protect individual holdings. Locke reinforces his justification of individual possession with his fear of what "was necessary, Man had starved, notwithstanding the Plenty God had given him" (TT § 27). This has been interpreted as being a "paradox of plenty" (Sreenivasan, 1995, p. 28) in that God provided Mankind with an abundance of natural resources in common to sustain them, however, common ownership might interfere with, or even prohibit that very sustenance. This fear of common usage of land was situated in the context of the pre-political "state of nature" as being primitive and "brutish." It was based in the belief that common usage could not be managed from multilevel governance as was practiced in many Indigenous nations in America. In this way, Locke created a racialized concept of the state of nature by dismissing and essentializing AmerIndians' socio-political relations as primitive.

With the imagined transition from the savage state of nature to a civil society, Locke and other philosophers relied on another level of fiction in the form of an agreement between peoples in society and the government—a social contract. For Locke, "The reason why men enter into society is the preservation of their property" (TT § 222), and governments were primarily established to give security to their natural and inalienable right to property. Locke understood rules and laws as "guards and fences", to "limit the power and moderate the dominion of all members" (TT § 222). In Lockean theory, the social contract between the government and civil society would enable all to live within a shared system of laws, which would ensure the stable enjoyment of the three natural entitlements being: life, liberty and property (TT § 131). We shall discuss in this next section how some scholars have challenged the understanding of the idealized citizen in Locke's social contract as being gendered and racialized.

5. Challenging the ontological underpinnings of private property

This next section looks at some of the fundamentals of Locke's theory of private property and critically examines them in relation to the Indigenous ontological tenets that were previously discussed.

5. 1. State of nature

Locke's belief in the fictional "state of nature" has come under serious criticism for misrepresenting the culture and political reality of the Native peoples encountered by the settlers in America (Arneil, 1996; Tully, 1993). As has been previously discussed, many of the Native peoples had developed political systems, territorial boundaries and customary uses of lands, and had a strong sense of identity with, and sense of sovereignty over, their territories (Tully, 1993; Tully, 2000b). The Royal Commission on Aboriginal Peoples in Canada (RCAP, 1996) has declared that the "concepts...of terra nullius and the doctrine of discovery are factually, legally, and morally wrong" (RCAP, p. 141). However, the destructive stereotype of "Native as primitive" has endured, not in the original sense of savage, but in the idea that Indigenous peoples' ways of life, knowledge systems, and culture are portrayed as being traditional and economically underdeveloped. For example, federal laws that rule on Native land claims demand that claimants prove they are using the land in traditional precontact ways. In this way Native peoples are required to prove they are still living in a "state of nature" in order to be eligible to regain their traditional territories.

Many of the foundational ideas of Western liberal concepts of property are underpinned by Christian beliefs and are seen as being legitimately pertinent to philosophical understandings. James Tully (1993) characterizes Locke as a "theistic theorist" (p. 305) and Locke's belief in natural law binds him to believe in the relationship between "Man" and God. Christian understandings of the world, especially at that time, were strictly binary which highly influenced the early modern thinkers like Locke (Marshall, 2006). Thus, the state of nature could exist in the imagination of the 17th and 18th century philosophers and others because of their ability to see time as a linear progression from past, progressing to the present, and on to the future, in that direction. Locke's ability to "other" Indigenous peoples, his ability to relegate them to a primitive state, not being capable of the civilities of Europeans, was facilitated by his ability to think in binary categories. Indigenous peoples were not Europeans, they were not white, they were not Christians, etc. If Locke had taken time to understand Indigenous ontology he might have been able to promote more than toleration of other cultures. He might have been able to appreciate their belief in non-discrete categories and the interdependence between all things and peoples.

The relationship to land for the colonists was one of resource hierarchy and utility and land was only valuable, and property justifiable, when it was being developed and used for human sustenance. The established fiction of terra nullius, combined with the right of European-style husbandry, was justification of "the establishment of European property in America" (Tully, 1994, p. 154). Locke argued that agricultural commercialization of land was efficient, "ten times more than those which are yielded by an acre of land of an equal richness lying in waste in common" (TT § 37). Tully (1993) argues that this resulted in the privileging of European commercialization of land and in the destruction of AmerIndian socio-economic organizations that were based more on sustainable and replacement usage. Indigenous agricultural practices reflected their ontology of interdependency and lack of hierarchy of humans over nature rather than resource development. In Western ontology, development out of a primitive unused state and the ethic of improvement, "underwrites an exploitative stance towards nature" (Tully 1994, p. 190), and is still very dominant in non-Indigenous economies.

In Locke's perspective then, land is strictly seen as a resource to be mixed with labour, which would then justify

its individual ownership. This focus on the individual, possessing property in the self, became a fundamental precept of liberal ideology. It has been argued that Western conceptions of ownership, understood as a form of individual exclusivity and hierarchy, are unable to accommodate the Indigenous tenet of interconnectivity among humans and other parts of the natural world (Hendrix, 2008). For Native scholar Ted Jojola, the collective relationship with land is in stark contrast to the individualism of Western society and the often temporary or ephemeral relationship with land:

In mainstream American society, 'identity' appears to be invested in 'property rights' with a paradigm shift decidedly towards the notion of 'individualism.' Individuals become the sum of their tangible goods, particularly as these pertain to property and land. And when people grow discontented and are ready to move elsewhere, they literally 'pull up stakes' and transplant themselves. (Jojola, 2004, p. 89)

The above quote draws attention to the profound difference in the effects of valuing land as a fungible commodity, something that can be exchanged, and how that might affect identity and social relationship with the material, non-human world.

However, despite the focus on equality and freedom, Locke's vision of the idealized citizen who volunteers to enter into a social contract with a government in order to protect individual private property, is an overtly gendered and racialized one. As has been discussed above, certain racialized peoples were not included in the vision of the political state. Martin Seliger (1968) criticizes Locke for not clarifying whether enslavement of Africans or Native Americans was lawful or not, but instead Locke confuses and makes inconsistent moral statements by suggesting that slavery was permissible in wars, as long as they were fought outside of Europe, presumably with non-Europeans. Although Locke does not write overtly on the subject of race, his ideas impacted the displacement of Indigenous peoples in America and to the justification of slavery (Waldron, 2002, p. 21).

As for gender equality, in *The First Treatise*, Locke targets the extreme patriarchy of Robert Filmer (Waldron, 2002) and challenges the assumed God-given superiority of men and the subordinate roles of women. In some ways Locke elevates women in terms of paternal care giving of children, however he grants strict authority to the husband, writing in *The Second Treatise* that it is necessary that the final decision-making "naturally falls to the Man's share, as the abler and the stronger" (TT § 82). And if Locke was willing to clearly support the husband's ultimate authority in the home then it is hard to argue that Locke intended women to have equal voice and participation in civil society. Carole Pateman (1988b) has done ground-breaking gendered analysis of Locke in which she stresses in her book, *The Sexual Contract*, that Locke did not include women in his description of political power as being between free and equal individuals. Pateman reads Locke's use of "Men" in "all Men by Nature are equal" (TT § 54) to be used in the exclusive, referring only to males. Pateman writes, "Women are excluded from the status of 'individual' in the natural condition...the attributes of individuals are sexually differentiated; only men naturally have the characteristics of free and equal beings" (Pateman, 1988b, p. 53). Furthermore, Pateman identified Locke's distinction of the public realm versus private realm as being at the heart of women's oppression and continued subordination in the sexual contract. However, the dichotomy of the public/private has been heavily critiqued by feminists as not being a useful and diversely applicable analytic as many women, due to race and class, are in fact in the public sphere and suffer oppression. Although that is true, Locke's heteronormative focus on white women as being tied to white husbands and children, and women's political (public) subjectivities as ambiguous, means that Locke's distinction between public/private does draw a racialized and gendered distinction in his envisioning of the ideal, self-possessing citizen. Locke does not suggest anywhere in his writing that women have equal status to men in political terms (Dunn, 1982, p. 121). Locke suggests, rather, that women have a lack of control over property and denies many property and

inheritance rights to women that he awards to men (Hirschmann & McClure, 2010). In English common law in the colonies in the 17th and 18th centuries, when a woman married, all of her property was transferred to her husband, and her realty came under a husband's control (Shammas, 1994). These laws were primarily available to wealthy colonial women since slaves, servants and racialized women were not considered property owners. Almost two hundred years later, this patriarchal construction, and Locke's insistence on binary gender roles and abilities, had devastating effects for Native women. European gender roles were imposed and legislated in the discriminatory *Indian Act* in Canada and in the *Dawes Act* in the US, which among other laws, assigned land ownership only to Native men (Roback, 1992, p. 23).

6. Concluding thoughts

Land, seen as a resource to be exploited for the purposes of human usage, despite efforts of environmental protection, and, especially the untapped resources on Indigenous reserves, are uniquely vulnerable. The exploration of Indigenous ontology in relation to land in this paper has helped illuminate some of the particular, and arguably problematic Western ontological underpinnings of private property. Locke's writings on the origins and the justification of property, especially in the dispossession of Indigenous peoples land in America, shows the constructed nature of values associated with property—development, labour, race, gender—as being just that, constructed. Indigenous ontology brings with it a validly different way of understanding, respecting and relating to the material world, and, arguably a more sustainable one.

North American governments, despite their professed commitments to respecting and promoting Indigenous rights (as indicated by the United Nations Declaration on the Rights of Indigenous Peoples), and despite substantial resistance from both Indigenous and non-Indigenous peoples, are promoting resource development on or near Indigenous traditional lands with recent examples such as the Kinder Morgan Trans Mountain oil pipeline in Canada, and the Dakota Access pipeline in the United States. The government rationale is often cited as “in the national interest”. However, disastrous oil spills are not uncommon and make it often impossible to restore the land to its previous state. Alongside these contested and imposed development schemes are government initiated private property initiatives for Indigenous territories. These are being promoted as giving Indigenous communities equal access to the domestic and global economy, arguably obscuring the state motivated reasons. However, despite the obvious dangers, there are spots of promise.

In 2013, the Tuhoe people and the New Zealand government agreed upon the Te Urewera Act, which gave the Te Urewera National Park, “all the rights, powers, duties, and liabilities of a legal person” (Parliament of New Zealand, 2014). Although a board of human “guardians” will act on its behalf, the Te Urewere area is now protected as a life form unto itself, rather than as a resource for human sustainable consumption. More recently, the New Zealand government is seriously considering extending the same rights as a human citizen to the country's third largest river, the Whanganui River. These types of legislation give recognition to nonhuman entities as having a life force that warrants protection, as having “legal personality,” but also recognizes the interdependency and non-hierarchical relationship between human persons and nonhuman persons. Importantly, this type of recognition may bring to fruition alternative ways to understand life forms in non-gendered and non-racialized ways, that we may be able to utilize in our understandings of human-human relationships. Our challenge is to not anthropomorphize the natural world in similar ways that result in gendered and racialized expectations and limitations. However, how much momentum can these types of policies, based in Indigenous worldviews, achieve in the present hegemony of private property ownership, based in Western ontological views? Imagine if Locke had integrated some of the Indigenous

ontological tenets? Would our present understanding of private property be different? Would it be less racialized? Would it be less gendered? Would we be more amenable to the ideas of nondiscrete categories of life? What we can know is that if we are going to do our part in saving all life forms on the planet, human and nonhuman, then we are going to have to reevaluate Western understandings of socioeconomic institutions like private property.

Notes

¹ I use the term Western in reference to the English ontological underpinnings of private property as it has developed in North America.

² I make explicit reference to relevant author's Indigenous identity in order to make salient the authenticity and veracity of Indigenous ontologies and epistemologies, and to challenge the hegemony of Western ontology. I do this mindful of the dangers that making this kind of distinction has also been used, or at least interpreted, by some to further marginalize, rather than legitimize, alternative views to dominant thought.

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