

John Locke and the Native Americans

John Locke and the Native Americans:
Early English Liberalism
and its Colonial Reality

By

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P U B L I S H I N G

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PREFACE

This book is based on the report presented at the symposium “John Locke after 300 Years” at the Annual Conference of the Japanese Society for British Philosophy held at Akita University in 2004. The report was then expanded and took finally the form of a book. The book in Japanese was published in 2006. The present book in English version is a translation of the Japanese one with some additions and elaboration.

I would like first of all to thank Professor David Armitage for reading through and giving valuable comments on my manuscript. I am grateful to Charles Douglas Lummis who read the manuscript and gave me instructive suggestions. I am also indebted to Kiyoshi Shimokawa who not only gave me critical remarks on my report and articles on Locke but continuously encouraged me to publish an English version of my Locke-study.

And my thanks go to members of the Japanese Society for British Philosophy who participated in the discussions on Locke’s political philosophy and its legacy, and those who exchanged comments and ideas regarding Locke with me.

ABBREVIATIONS

- EHU: John Locke. 1975. *An Essay concerning Human Understanding*, ed. Peter H. Nidditch, Oxford: Oxford University Press.
- JBP: Hugo Grotius. 2005. *De Jure Belli et Pacis* (1625), *The Rights of War and Peace*, ed. Richard Tuck from the edition by Jean Barbeyrac, Indianapolis: Liberty Fund.
- JNG: Samuel Pufendorf. 2005. *De Jure Naturae et Gentium* (1672), *Of the Law of Nature and Nations*, Done into English by Basil Kennet, Clark, New Jersey: The Lawbook Exchange, Ltd..
- OHC: Samuel Pufendorf. 1964. *De Officio Hominis et Civis Libri Duo* (1682), *The Two Books on the Duty of Man and Citizen according to the Natural Law*, translated by Frank Gardner Moore (1682), reprinted in New York and London: Oceana Publications.
- PE: John Locke. 1997. *Political Essays*, ed. Mark Goldie, Cambridge: Cambridge University Press.
- TT: John Locke. 1970. *Two Treatises of Government* (1690), ed. Peter Laslett, Cambridge: Cambridge University Press.
- W: John Locke. 1963. *The Works of John Locke*, 10 vols., Reprint of 1823 edition, Aalen (Germany): Scientia Verlag.

INTRODUCTION

In this study I shall deal with Locke's liberal political thought and his argument for British colonization of America as its corollary. Locke's argument for and his involvement in the colonization in America was made attentive to as early as in nineteen-sixties by Martin Seliger, Peter Laslett and John Dunn (Seliger 1968; Laslett 1969; Dunn 1969b).

In his work *The Liberal Politics of John Locke*, Seliger discusses Locke's argument for colonization in America in the context of his theory of conquest. First, Seliger's view on Locke's notion of "waste" is worth noting. He argues that, when Locke says that "anyone has liberty to make use of the waste"(TT.II.184), his definition of "waste" is shown in his words "great tracts of ground" which are "more than the people, who dwell on it, do, or can make use of, and so still lie in common"(TT.II.45). He calls Locke's assumption in question that the colonists have the right to decide what is more than the inhabitants of undeveloped areas could make use of. This is a sharp and correct criticism of Locke.

Seliger finds it unsatisfactory that Locke's criterion for distinguishing between a just and an unjust war remains naïve and simple one between "defensive" and "offensive". He further indicates that the very notion of "lawful conquest" is used, or rather misused, by Locke to justify colonial conquest. These comments are important analyses which clearly elucidated the assumptions which Locke and the colonists took for granted. However, Seliger's interpretation of Locke's argument on conquest leaves some doubt. He regards Locke's justification of colonial conquest as deviation from his own rule which forbids a lawful conqueror to annex any territory of the vanquished, since Locke, according to Seliger, allows the colonists to conquer the natives, if these resist acquisition of their waste territory by the colonists. But Locke considers, in my view, the acquisition of the waste as lawful irrespective of the rule forbidding the annexation of the native lands by the lawful conquerors, namely, without deviating from his interdict of their annexation, since Locke plainly admits acquisition of the waste by anyone as lawful in accordance with natural law.

As for slavery, Seliger argues that Locke made no effort to distinguish between actual and rightful enslavement, although he admitted that victory did not always favor the right side. In other words, he finds a moral

problem in that Locke evades the question whether the actual enslavement of Africans or native Americans is lawful or not. Seliger further maintains that, although Locke declares that one can lawfully enslave captives in a just war, he would no doubt deny that one could enslave captives in a war between European countries. He holds that Locke had exclusively enslavement in a war outside Europe (i.e. slave-raiding in Africa and conquest of the natives in America) in mind and finds rightfully that Locke makes a tacit discrimination between European and non-European people in respect of enslavement.

Seliger also discusses relevance of Locke's argument for colonization in America and enslavement of foreign people to his liberal thought. He says that, thinking theoretically, there is a striking paradox between Locke, the codifier of the doctrines of self-government and trust —and Locke, the founder-member of the Board of Trade who elaborated the principles of its colonial policy. As a matter of fact, however, he argues, Locke's justification of colonial conquest and enslavement of non-Europeans is part of his liberal thought. Seliger's exposition of Locke's inconsistency is remarkable and to the point.

Seliger points out that Locke, although he constructed the system of domestic politics on the basis of freedom and equality contained in the law of nature, deviated from the law of nature in the external relations, particularly in treating life, liberty and possession of non-European peoples. I agree with him in principle in this respect. Yet, as I shall argue in chapter one below, Locke's law of nature consists of two levels: general and particular. Seliger seems here to mean by natural law the one on the general level such as the maxim of freedom and equality of man. Yet particular rules of the law of nature such as the one of property in land Locke dwells on reflect specifically European forms of society and their sense of value and have hence difficulty in claiming their universal applicability. Seliger does not examine whether Locke's law of nature on a particular level contains Euro-centric bias and prejudice against native Americans.

Nevertheless, Seliger's work brought an epoch-making result which opened a new field in Locke-studies and should be highly assessed.

I wrote, stimulated by Seliger, Laslett and Dunn, a paper "Natural rights and foreign peoples in John Locke" in 1982 in which I attempted to make clear the connection between his argument for colonization in America and his liberalism based on his concepts of natural rights and the law of nature, describing the history of English colonies including the wars with native Americans in the seventeenth century (Miura 1982). This paper is the original out of which the present work of mine has grown.

James Tully was the first to take up the problem of Locke's liberalism and colonialism in 1990s. He discusses Locke's theory of property and colonization in America in the context of the struggle of native Americans for self-government and recovery of their territory in 1980s and 1990s (Tully 1993). According to Tully, although the present native Americans claim that they have existed and still exist as independent political societies, United States and Canadian governments have repeatedly ignored and violated their claims. The grounds on which both of the two governments justify their Indian policies are, according to Tully, the concepts of progress, development and statehood which were formed partly out of Locke's ideas of property and political society in the eighteenth century. Tully then critically examines Locke's concept of property and his view of native Americans.

First, Tully raises the question whether native Americans had a political society. He refutes Locke's view that they are still in the late stage of the state of nature and have not yet attained the state of a proper political society and gives documents of contemporary European settlers as evidence. Tully claims that each native tribe had its territory with a marked border and that it had a council of decision-making of its own and laws of customary land use. He maintains that the Indians were conscious of their distinct nationhood with sovereignty over their people and their territory and points to the fact that the Mohegan Indians repeatedly made appeals to the Privy Council in London for sovereignty over their traditional lands.

Tully also calls in question Locke's argument that a foreigner (settler) can legitimately appropriate a tract of "waste" land or *vacuum domicilium* for cultivation without the consent of the neighboring native people. He points out that this argument was already advanced by Samuel Purchas and leading English settlers like John Winthrop and that there have been often disputes and troubles between the settlers and native Americans concerning land appropriation and land use. Tully perceives in these troubles protests of the natives against the legitimacy of land expropriation by the colonists. He also argues that land appropriation without the consent of the neighboring people would contradict Locke's own rule of "enough and as good".

Thirdly, Tully argues that Locke's comparison between the system of commercial agriculture of English settlers and the Amerindian subsistence economy of hunting and gathering by the quantity of conveniences each system produces is irrelevant, since the Amerindian economy is designed to produce limited (replacement) conveniences. Nevertheless, according to Tully, Locke makes the destruction of Amerindian socio-economic

organizations and the imperial imposition of commercial agriculture appear as an inevitable and justifiable historical development.

Fourthly, Tully indicates that Locke gives the right of war besides the grounds mentioned above for the expansion of English colonies in America. Since native Americans, according to Locke, do not have political societies, English settlers and the natives are in the state of nature in America and have natural law right to punish violence with death. Tully finds in this right of war Locke's justification for settling land troubles with the natives by arms.

Fifthly, Tully argues that John Bulkley, William. S. Johnson, Emerich de Vattel and others accepted these arguments of Locke for colonization in the eighteenth century and disseminated the theory that the establishment of a political society with cultivation, private property and written laws is requisite for a group of people to be recognized as a nation with sovereignty and territory among nations of the world. Although, according to Tully, the Crown title recognition of the aboriginal peoples as self-governing nations with exclusive jurisdiction over and ownership of their territories was reconfirmed in 1831, their property and self-government were repeatedly violated by the United States and Canadian governments. Tully urges that, if the Crown title recognition is valid, the claims of the present Amerindians to their property and self-government should be approved. He concludes that, if the Crown title recognition is right, Locke is wrong about the nature of property and government in Amerindian societies.

Tully's critical analysis of Locke's theory of property and political society with regard to Amerindian nationhood and property rights is a remarkable result since M. Seliger's work. But there are some points which Tully does not seem to have explored adequately which I shall mention briefly below.

First, though Tully touches on the wars waged between English colonies and the natives in seventeenth century, he does not investigate the causes of the wars. In order to examine the legitimacy of arguments of English colonists and Locke on war and property, it would be necessary to take up particularly the claims of the natives on the causes of the wars. If Tully had taken up this issue, he would have made clearer the partiality of Locke's arguments on property, political society and the right of war. He would have also shown at the same time how easily and arbitrarily phrases such as "right of war for self-defense" and "war for punishment" similar to Locke's were spoken of and misused by the colonists in the wars in Virginia and New England.

Second, although (or because?) Locke not only regards his law of nature and natural rights (which comprise respect for life, liberty and possessions of others as well as of oneself, property right and right of war) as valid in Europe, but also in all the world including America, he does not think it necessary that this law of nature should obtain consent by non-European nations. English colonists also believed so. When they found, as they believed, a transgression of the law of nature by the natives, they immediately resorted to a war of “self-defense” or “punishment” without communicating it to them or listening to their claim (as in the wars in Virginia in 1622 and 1644, in New England in 1646 and 1675). But, as will be discussed in detail below, the natives would not acknowledge the important parts of the law of nature Locke and the colonists took for granted (for example, the superiority of cultivation over hunting and gathering, of enclosure over communal landownership etc.). Tully does not call this Euro-centric assumption of Locke’s on the law of nature itself into question.

Third, though Tully mentions Locke’s argument on slavery and the practice of slave -trade and -labor in English colonies, he does not discuss this problem further. But this issue should in my view be discussed more in detail as a crucial problem in Locke’s theory of colonization and of the law of nature.

Barbara Arneil pursued Tully’s theme on colonization and native Americans in the context of British colonialism in greater detail (Arneil 1996). Her argument could be summarized as follows:

According to Arneil, Locke created two concepts “state of nature” and “civil society” on the basis of his knowledge of native Americans he learned from a number of travel books, making the latter’s criteria agrarian labor and rationality. He applied the former to the native communities and the latter to European societies. While a natural man in the state of nature is, Arneil argues, idle, superstitious and ruled by neither government nor civil law, a civil man is industrious and rational. Arneil holds that Locke saw English settlers and the natives under this distinct dichotomy.

Locke adopted, Arneil argues, the assumption that the state of nature must eventually yield to civil society. So far as the natives stay in the state of nature, they must be excluded from civil society of settlers, or they must assimilate to civil society.

Arneil indicates that the theory of property and philosophy of history based on Locke’s dichotomy of the state of nature and civil society, namely, English liberalism, swayed a powerful influence on the politicians, thinkers and religious leaders of Britain and the United States in the eighteenth and nineteenth centuries in their view of native Americans and

Amerindian policies. But she argues that actual native Americans do not fit into this dichotomized view of the natives and would reject it. She concludes that liberalism will continue to be plagued by the existence of people around the world who do not fit into the dualities which define it and could not accept the claims to universal reason upon which it rests.

I would give some comments to Arneil's argument shown above. First, Arneil indicates that Locke overlooked many aspects of Amerindian societies. For example, the facts that many settled forms of government existed among Amerindian communities and that the natives who were industrious and skilled in agriculture taught English settlers how to cultivate their land were ignored by Locke. These indications are important in order to critically assess Locke's view of native Americans, and more exploration of facts about the native societies through contemporary sources should be made besides travel books Locke possessed. I believe to have described native societies and lives in greater detail in chapters two and three in this study.

Second, Arneil argues that Locke's concept of property, particularly natural right of property based on labor is defined in the way that native Americans (and non-Europeans) are excluded from exercising this right, since it presupposes the dichotomies of the state of nature and civil society, natural man and civil man, pre-political and political society, idleness and industriousness, ignorance and rational knowledge. But the argument that Locke's theory of property contains the exclusion of the natives would only be verified, when it would be proved by adequate contemporary evidence that his definition of the state of nature and its dichotomies do not fit the real native societies and their lives. Her evidence does not seem to be sufficient in this respect and should be supplemented with more detailed examples of the native societies.

Third, Arneil elucidated through many unpublished records what blueprint for colonial policy for Carolina Shaftesbury and Locke as his secretary had. It consisted in sending over sufficient number of settlers to the colony, acquisition of land and its proper allotment to settlers, building towns for carrying out trade between England and the colony, ensuring industrious individuals as settlers, forbidding them to engage in gold mining, respecting the Amerindian lives and properties and keeping peace with them, good government with correct laws obeyed by all. But as Arneil notes, this blueprint was not welcomed by Carolina council and settlers since early 1670s, and instructions of Lords Proprietors were often ignored by the council so that tensions between Proprietors and settlers rose. These tensions grew not only concerning land allotment by the local government to settlers and land purchase by settlers from the natives, as

Arneil points out, but also because of the enslavement of natives and slave trade by settlers, as I shall show below, and led to the war against the Westoe Indians. How did Locke observe this separation between the Proprietors' blueprint and the reality of the colony of Carolina? This separation will eventually also imply the one between Locke's design of colonization based on his theory of property and the reality of English colonies in America as a whole. But Locke keeps silence about the fact of this separation. If Arneil had also gone into the failure of the blueprint, she could have made clear that it was bound up with the failure of Locke's dichotomy of the state of nature and civil society and could have consolidated her argument.

Fourth, Arneil points out that Locke's argument on conquest rejects the plundering of native Americans as the Spaniards did in the 16th century, only allows war and conquest within the bounds of the law of nature and restricts the right of the lawful conqueror to a minimum of compensation. She also indicates that Locke's argument for colonization does not give special weight to war and conquest but to expansion of property through peaceful and industrious cultivation. She is no doubt right so far. But if one links Locke's argument on war and conquest with his theory of the natural right of punishment (TT.II.9-11), it becomes clear that the lawfulness of a "lawful conqueror" is only based on a one-sided judgment of the colonists and that the "sovereignty" and customary laws of the native societies are ignored by him. Arneil does not examine his argument on conquest from this point of view. In addition, the colonists not only in Virginia and New England but also in Carolina exercised their rights of conquerors beyond the limits of those of a "lawful conqueror" Locke set in accordance with his law of nature, killing non-combatants such as women and children and taking possession of their lands forever. Although Locke no doubt knew these facts, he does not mention them in his argument on war and conquest. If he does not state his position toward this recent development in which English colonial rule in America was expanded against his norms on war and conquest, he must have given tacit consent to it. Arneil does not take up this silence of Locke's as an important problem in his argument for colonization. Her study thus contains in my view some points which should be supplemented or revised in accordance with her main position.

David Armitage recently addressed Locke's theory of colonization in his article "John Locke, Theorist of Empire?" (Armitage 2012). He raised the question "Was Locke a theorist of empire?" and gave the answer that he was not a theorist of empire, but a theorist of commonwealth and a specifically colonial thinker who devoted much thought to the settlement

and administration of colonies. According to Armitage, though it is true that theorists of empire in the 18th century such as Emerich de Vattel used Locke's arguments to justify European settlement beyond Europe and expropriation of indigenous peoples, Locke himself does neither argue for settlement in other regions of the world beyond America nor for construction of empire.

On the other hand, Armitage plainly recognizes that Locke gave grounds for justification for dispossession of native Americans on the agricultural argument. He holds that lands which the natives used for hunting and gathering but not for cultivation were called by Locke "vacant land" or the "waste" and regarded as open for appropriation by any colonist for cultivation. Though, Armitage argues, Locke so far gave justification for expropriation of the natives by English colonists, he does not provide any other ground for dispossession of the natives.

According to Armitage, Locke's statement that God gave the earth "to the use of the industrious and rational" should not, as some scholars hold, be understood to mean that Europeans have the prior claim to lands on the ground that they are industrious, while the natives are idle. He argues that the opposite of 'the industrious and rational' is not the idle and irrational, but "the quarrelsome and contentious" settlers who make claim to more land than they can use and so exceed the bounds set by the law of nature. Armitage also urges that Locke's high appraisal of the rational does not mean that Europeans are rational and the natives irrational. He refutes the interpretation which holds that Locke assumes the innate superiority of the Europeans in rational capacity as opposed to its lack of indigenous people as ground for indigenous dispossession. He claims that Locke had an egalitarian view that every human being around the world has rational capacity.

I would like to make some critical comments on these arguments of Armitage. First, he is right in holding that Locke is not a theorist of empire. There is no doubt that he did not argue for English or European expansion of colonies beyond America.

Armitage says that Locke was a colonial thinker who devoted much thought to settlement and administration in America. Indeed, Locke argues for economic benefit and legal and moral legitimacy of settlement in America. However, Armitage does not in my view seem to adequately examine how far the law of nature on which Locke justified colonization in America is valid, whether it respects indigenous sovereignty and territory, whether it treats native lives, liberty and possessions without prejudice or not. As mentioned above, Armitage indeed indicates that Locke justified the dispossession of the natives by settlers on the

agricultural argument which degrades non-agricultural land use such as hunting and gathering of the natives. But this is the only criticism Armitage makes against Locke in his article. In other respects, he advocates Locke indicating rightly that Locke argued for the rights of the natives, particularly religious liberty and that he recognized equal rational capacity of the natives to Europeans. But in regard to rational capacity of the native Americans, Locke recognized it in my view only as potential. He did not consider that the natives have actually come to exercise this capacity. When Locke says that the natives neither improve nor enclose their lands and that they do not use money common to the world (Europe) and hence do not have desire to raise yields of their lands, he means that they have not yet come to exercise their potential rationality and industriousness. It is under these actual circumstances that Locke considers it desirable that the settlers would appropriate lands in order to use lands more rationally and effectively than the natives. Armitage seems to have confounded potential capacities of the natives Locke recognized with the actual which he denied. However, Locke in fact justified the dispossession of the natives exactly on the ground that the natives have not yet actualized their potential capacities.

Armitage does not clearly express his position as to whether Locke recognized the existence of a political society among the natives. He indicates that *the Fundamental Constitutions of Carolina* mentions “treaties” with the natives and hence recognize the native capacity and title of collectively deciding and making treaties with settlers and conjectures that Locke also recognizes it. However, Locke says that the natives give their king only limited rights in time of peace and hence do not have a full political society, though their king commands absolutely in war-time. It is just because he denied the natives a political society that he states that anyone can appropriate a tract of land from the commons to cultivate it for the support of life without the consent of others.

Armitage says that Locke may have been responsible for the temporary laws of Carolina which banned the enslavement of local Indians and makes it evidence that he respected the rights of the natives. But these laws only prohibit enslavement for trade in slaves, that is, what Locke in the *Second Treatise* regards as unjust enslavement which violates the law of nature. When the settlers enslaved Indians on the pretense of self-defense, as they actually did in 1680s, Lords Proprietors and Locke could not help accepting their enslavement for punishment and hence could not dissuade them from enslaving the Indians for slave-trade. In addition, it is doubtful how far the laws of banning enslavement mentioned above were enacted on ethical ground of respect for life and

liberty of the natives. Probably Lords Proprietors (hence Locke also) only banned enslavement out of fear that worsening of the relations between the settlers and the natives might hinder the development of the colony of Carolina. The fact that the colony introduced, as provided in *the Constitutions*, slaves from Africa shows that the prohibition of enslavement of the natives was not, as Armitage assumes, instructed from a moral and legal standpoint, but only from circumstantial and political considerations of the relations with the natives (see chap.5).

Summing up, though I quite agree to Armitage that Locke was not a theorist of empire, I think Locke gave more justifications for denial of the sovereignty of the native Americans and for their dispossession than Armitage admits, as will be discussed below.

This study of mine will examine Locke's argument for colonization in the context of his liberal political thought. In this examination, I shall not, as Tully, Arneil and Armitage did, so much consider the influences Locke had on later ages of 18th and 19th centuries as explore how he understood contemporary English settlers acquired indigenous lands and came to govern over the native peoples in America in the 17th century and how he judged the legal and moral legitimacy of this development of the colonies. Accordingly, I shall not only consider the settlement and expansion of the colony of Carolina but also Virginia and New England in the examination of Locke's argument for colonization.

In Chapter One, I show, first of all, outlines of Locke's liberal political thought. Then I take up his concept of the law of nature which constitutes the basis of his liberalism and investigate whether it contains any view that allows and justifies the acquisition of the lands of foreign, non-European peoples or not. As a result, it becomes clear that it contains some rules which exclude indigenous people from status of political society and land-ownership in favor of European colonists' land-acquisition.

In Chapter Two, I analyze Locke's argument for colonization of America in the context of discussions among contemporary thinkers and compare it with native American societies and their lives.

Chapter Three is concerned with the wars between the English colonists and the native Americans in the seventeenth century and investigates their causes, leaving Locke's texts for a while and making use of diverse literature both of contemporaries and scholars of the present age. This investigation is indispensable in order to examine how Locke sees these wars and to judge whether he does justice to their causes in the historical situation of the first contact between the English and the native people. This is the reason why I take substantial space in this chapter and

in Appendices for the historical observations on the wars between the English and the native Americans.

Chapter Four considers Locke's view of war in general and the English wars with native Americans in the context of the theories of war of contemporary thinkers. It becomes clear that he took the position on the causes of the colonial wars with the natives which was largely similar to that of the colonial governments: It is the natives who are responsible for the causes of the wars regarding both jurisdiction and property right of the natives on the one hand, and aggression and violence on the other.

Chapter Five takes up slavery in English colonies in America and Locke's view of slavery and discusses the legitimacy of slavery in regard to the law of nature against the background of contemporary arguments on slavery. It is not only concerned with Locke's position on English enslavement of the Africans, but that of native Americans as well in consideration of the fact that he was deeply committed to government of the colony of Carolina in service of Shaftesbury.

Chapter Six once again addresses the question: how is Locke's liberalism based on the law of nature related to his argument for colonization of America? I find a key to this problem in his understanding of "mutual preservation of their [Men's] life, liberty and estates" as the end of a political society in dynamic sense of expanding one's own liberty and possessions. The law of nature and colonization of America thus, for Locke, do not contradict but are, on the contrary, deeply connected with each other. English military conquest of America and slavery of Africans and native Americans in the colonies could only be largely accepted by Locke because of his individualistic, utilitarian and Euro-centric concept of the law of nature. I suggest in conclusion a re-orientation of liberalism towards expansion and deepening of the ideas of freedom and equality of all which mutually respect the rights of diverse cultures of the world.

CHAPTER ONE

LOCKE'S LAW OF NATURE AND ITS PROVISIONS OF EXCLUSION REGARDING THE RELATIONS BETWEEN ENGLISH COLONISTS AND NATIVE AMERICANS

In this chapter, I shall take up Locke's law of nature and examine what position it holds in his liberal political thought and how far it had universal applicability in the contemporary world. First, I shall give the outline of Locke's liberal political thought.

1. Locke's Liberal Political Thought

Locke is a philosopher whose political thought is later often characterized as one of the first forms of liberalism. On the other hand, he strongly argued for English colonization in America in *Two Treatises of Government*. Although this was paid attention to by some Locke-scholars since nineteen-sixties, it has not closely enough been studied with a few exceptions (Seliger 1968; Laslett 1969; Dunn 1969; Lebovics 1991; Tully 1993; Arneil 1996; Ivison 2003; Armitage 2004). I will make attempts to examine Locke's arguments for colonization of America and investigate how they are related to his liberal political philosophy. How does his political thought that advocates liberty and equality of all and self-government come to be bound up with the policy of invading and colonizing the lands of foreign countries, conquering the native people by force and establishing the government over them? Before starting to discuss this question, it would be appropriate to briefly give fundamental elements of Locke's political liberalism.

(1) Natural rights and natural law for all people

Locke's political philosophy is based on the idea of the natural right of self-preservation (preservation of life, liberty and possession) of all men as

well as the equality of all and the mutual respect for natural rights of others. Man was created as God's creature, and since God wills that men live in this world, they have the right of self-preservation. Being endowed with his own body, reason and liberty, man has the right of appropriating materials and possessions necessary for his life by the use of these capacities. These rights are natural in the sense of native rights conferred on everyone by God the Creator. Since everyone is created as equal, this natural right is given equally to everyone. Therefore, an employment of each man's right of self-preservation should be limited so that it may not encroach on that of others. "Being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions". This is the law of nature that God has given to mankind. It is the declaration of the Creator's will of "the peace and preservation of all mankind". Natural law can be found by reason of every individual. If a man in the state of nature invades another's right against this law, the injured man can punish the invader or demand reparation for injuries. Though after the establishment of a political society everyone's right of punishment is given up to the government, the law of nature remains the basis for the positive laws and is made concrete in them. Natural rights and the law of nature given to everyone are thus fundamental presuppositions for Locke's political thought.

(2) Property based on labor

According to Robert Filmer, the lands and natural wealth of the country belong to the king; the people can only live on the lands and its resources by permission of the king. In opposition to Filmer, Locke maintains that all men are equal in the use of the lands and resources. God gave, Locke says, all things in the world to mankind in common and commanded them to labor. Man should labor by making use of his reason and his body and acquire food, shelter and clothing from nature necessary for his and his family's subsistence. The man who thus labored and got the fruit of his labor can, according to Locke, appropriate it as his possession. However, Locke says that the law of nature has set limits to property right: One should not appropriate so much that the possession rots before one uses it; furthermore, one should leave as much to the appropriation of others as one acquired to himself so that they may satisfy the needs of subsistence. Locke says, however, that the limitation of property by prohibiting the rotting of possessions became unnecessary after mankind introduced money in the form of enduring, imperishable metal as means of exchange. Men have "the desire of having more than they needed", and

money is the social device and institution that satisfies this desire. As money economy spread, Locke holds, people vigorously expanded their activities and commerce, and strove for accumulation of property. As a result, people could increase their “conveniencies of life” and improve their living.

(3) Denial of absolute monarchy and the divine right of kings

Locke thoroughly refutes the theory of divine right of kings that was strongly advocated in the 1640s and again brought forward toward the beginning of 1680s. Robert Filmer whom Locke criticizes argued in his *Patriarcha* on the grounds of the Old Testament that political power was conferred by God to fathers of early families of mankind and afterwards handed over to patriarchs and then to kings. Filmer held that kingly power is solely based on God and is therefore only responsible to God and not to the people the king governs. Locke argues against Filmer that the status and power of the king of a country are political and quite different from those of the father of children. According to Locke, an absolute monarch that the theory of divine right of kings advocates admits no right to the people and suppresses even the activity of speech and petition of the people as revolt against the king. Under the absolute monarch, Locke holds, the people are almost in slavery. He argues that the king is no more than a man with natural rights as well as any other person in the kingdom. Locke maintains that political power is not directly given by God as the divine right of king theory claims, but stems from the people.

(4) Political power based on the consent and trust of the people

Locke makes an assumption of “state of nature” in the early stages of human society in which neither an established, known law nor an indifferent and known judge nor power to execute the judgment existed. But, according to Locke, though each man in this state has the right of punishment against encroachments of others, he cannot prevent invasions of property and other infringements of others nor properly punish them, and cannot therefore lead a peaceful life. In order to resolve these inconveniences, Locke says, people gathered and agreed to give up each one’s power of punishment into the hands of a political body (government) and entrusted it with political power. The end of government is the preservation of life, liberty and possession of the people. As is clear from here, political power originates in the consent of the people. Government is entrusted with political power by the people. The power of the entrusted

government is not unlimited, but it should only use its power for the end of preservation of life, liberty and estate of the people. It is clear how different the status and power of this government are from those of an absolute monarch. It is the people who bring forth the government, lay its foundation and bring it to use its power properly.

(5) Division of power and the supremacy of legislative power

The government Locke designs consists of legislative, executive and federative powers. Of these three powers, the legislative is supreme. But it is not absolute and arbitrary power like that of an absolute monarch, but one under the condition that it makes laws necessary for achieving the end of government, namely, "the good of the people". It is not permitted to make laws contrary to this end, because it is against the trust of the people. Legislature consists of representatives who are elected by the people. Executive power is one that executes laws the legislature made. Federative power has on behalf of the nation the power of war and peace, leagues and alliances as well as transactions with foreign countries. Though executive and federative powers are different in their ends, they are united and left to the same persons for convenience' sake. Executive and federative powers are ministerial and subordinate to the legislative; they are not allowed to execute policies beyond the extent of laws legislature made. Legislature always remains the supreme power of the commonwealth. And it is by this principle that the commonwealth can be secured in the hands of the people. The supremacy of the king such as an absolute monarch is thus refuted, and the supremacy of parliament is declared.

(6) Religious liberty and the principle of separation between church and the state

According to Locke, man not only strives for self-preservation and happiness in this world. Since he is endowed with an immortal soul, he also seeks eternal happiness. Eternal salvation of the soul, Locke holds, belongs to each individual, and care of one's eternal salvation is left to oneself. Eternal happiness of a man, unlike earthly happiness, cannot be obtained by anyone else but himself. His earthly happiness can be fostered by means of others' labor or power of the state. But his eternal happiness cannot immediately be acquired by the state or a church. Peace of one's soul cannot be attained without one's own full persuasion. It is of no use for the state or a church to force faith of a certain religion or denomination on a man. A church is, according to Locke, a free society of men, joining

together of their own accord for the public worship of God in such manner as they believe will be acceptable to God. Anyone must have the liberty to become member of a church and also to go out of it if he pleases. For Locke, religious liberty of each individual is “the rights which God and nature have granted them [men]”, namely, natural rights of which the state cannot rob him/her. Locke insists that the state is a society of men constituted only for preserving and advancing their civil goods such as life, liberty and estate as well as peace and safety of their society. On the other hand, the care of eternal salvation of individuals is the matter outside of rights of the state. The state should not compel men to eternal salvation in a definite way of worship it prescribes. The state should equally tolerate every religion and denomination, if it does not interfere with public good. The state and church should be separated.

(7) The right of resistance and revolution

As is shown above, government is established by the consent of the people and entrusted with political power. Therefore, government should aim at the preservation of life, liberty and possession of the people and employ for this end legislative, executive and federative powers. If legislature or executive power uses its power against this end, Locke argues, the people are released from the obligation of obedience to the government, because the government failed trust of the people. The people have the right to disobey and resist the laws of the government in this case. Furthermore, Locke argues, the people have in this situation the right to dispel those in positions of power and install others in power. This is a revolution, but it is not an illegal but a just revolution. Since the establishment of government is based on the consent and trust of the people, a revolution on the part of the people becomes legitimate if the trust is broken up by those in power.

(8) The principle of mutual respect for territorial sovereignty and inviolability of territory

The state has a certain size of population and territory, and outside of it, there exist other countries. Locke describes how “civilized” countries settled the boundaries between themselves: “The leagues that have made between several states and kingdoms, either expressly or tacitly disowning all claim and right to the land in the others possession, have, by common consent, given up their pretences to their natural common right, which originally they had to those countries, and so have, by positive agreement,

settled a property amongst themselves, in distinct parts and parcels of the earth" (TT.II.45). According to this agreement, each state ought to respect the territories of other states, while it makes efforts to maintain its own territorial integrity. If a certain state by unjust war conquers another, Locke says, the illegal conqueror does not have the right to govern the conquered people. Legal right of government, Locke argues, cannot be acquired by force, but it only stems from the consent of the people. The theory of government based on the consent and trust of the people thus consistently leads to the principles of sovereignty and the right of self-determination of each nation and their mutual respect.

This is the outline of Locke's liberal political philosophy. Let us now look at his argument on the law of nature which lies at the base of his liberal political thought.

2. The origin of the law of nature and the way to find it

As is well known, the law of nature has from ancient times been conceived of as one that is, unlike positive laws, implanted in man's mind as unwritten code and that is valid widely without any limitation to certain countries or regions of the world and permanently without any limitation to certain period of time (D'Entrèves 1951). Positive laws of a country do not always apply to other countries, since they are norms that more or less reflect its historical and cultural traditions as well as geographic and climatic character. Other countries require their own laws that fit into the special ways of life of their people. On the other hand, the law of nature has been thought to exist in the minds of people as norm of conduct valid in any country and in any age beyond the limits of regional particularities and historical traditions. Locke develops his idea of law of nature in the context of this Western legal tradition and states that the law of nature is universally valid as follows:

"Thus the law of nature stands as an eternal rule to all men..." (TT.II.135)

I shall deal with Locke's idea of the law of nature in his later works, especially in *The Two Treatises of Government* and *An Essay concerning Human Understanding*. His early work "*Essays on the Law of Nature*" (written ca.1664) will be left out of consideration, since it seems to show a considerably different position from that of his later works. Furthermore, I shall concentrate on Locke's law of nature with special regard to the relations of English colonists and native Americans.

Where does the law of nature come from? Where is its origin? Locke says that "the law of nature, i.e. ...the will of God, of which that is a

declaration” (TT.II.135). For Locke, the law of nature thus originates in the will of God. In another place, he explains as follows:

“The divine law, whereby I mean, that Law which God has set to the actions of men, whether promulgated to them by the light of nature, or the voice of revelation. That God has given a rule whereby men should govern themselves, I think there is no body so brutish as to deny. He has a right to do it, we are his creatures: He has goodness and wisdom to direct our actions to that which is best...This is the only true touchstone of moral rectitude; and by comparing them to this law, it is, that men judge of the most considerable moral good or evil of their actions” (EHU.II.28.8).

It is clear that Locke means by “the divine law” the law of nature. “We” who are God’s creatures can be understood not only as English people and Europeans, but also as all mankind including native Americans, because according to the teaching of Christianity, God is the creator of all things and has created all human beings in the world. How, then, can a man know the law of nature as God’s will? Locke says in the passage quoted above that God makes known the law of nature “by the light of nature” or “the voice of revelation”. “The light of nature” means reason with which each individual is endowed, and “the voice of revelation” is God’s words revealed in the Bible. Therefore, Locke now speaks of “reason, which is that law [law of nature]” (TT.II.6), then quotes a passage from the Bible when explaining a provision of the law of nature (TT.II.11, 31). One can thus find the law of nature as God’s will by one’s own reason and the Bible.

3. General Principles of the Law of Nature

Though Locke describes the law of nature in different ways, the most comprehensive formulations he gives for it run as follows:

“The fundamental law of nature being, that all, as much as may be, should be preserved...” (TT.II.183).

“The first and fundamental natural law...is the preservation of the society, and (as far as will consist with the publick good) of every person in it” (TT.II.134).

“The law of nature...which willeth the peace and preservation of all mankind” (TT.II.7).

These formulations are general principles which order preservation of society as a whole or all mankind.

Secondly, there are formulations that concern the level of individuals, namely, those of liberty and equality of every person. Locke says: "Man...have (sic) an uncontrollable (sic) liberty, to dispose of his person or possessions" (TT.II.6). This is also called "right of self-preservation" (TT.II.11). As to equality, he says: "Creatures of the same species and rank promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination or subjection" (TT.II.4). This is also called "rule of reason and common equity" (TT.II.8). From these principles of liberty and equality of each individual, Locke deduces the following formulation:

"Reason, which is that law [law of nature], teaches all mankind, who but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions" (TT.II.6).

Since everyone has equally the right of self-preservation without exception, he ought not to invade but respect the right of self-preservation of others.

In order to secure the validity of these principles of the law of nature, Locke establishes a right to punish an offender against this law and to seek reparation from him. He says:

"Every one has a right to punish the transgressors of that law [law of nature] to such a degree, as may hinder its violation" (TT.II.7).

"He who hath received any damage, has besides the right of punishment common to him with other men, a particular right to seek reparation from him that has done it" (TT.II.10).

Since there exists neither law nor judge nor an executioner of judgment in the state of nature, everyone has thus the right of punishment of a transgressor of the law of nature as well as claim for damage he received.

The above is principal part of the formulations of the law of nature Locke gives.

4. Particulars of the law of nature

Locke not only gives general principles of the law of nature but discusses its particular aspects. His arguments are also here based on God's will.

(1) Particular practical implications of God's will

As mentioned above, Locke gives the right of self-preservation as one of the principles of the law of nature. He now points out the importance of labor as the way of securing self-preservation. He says:

“God, when he gave the world in common to all mankind, commanded man also to labour, and the penury of his condition required it of him” (TT.II.32).

Man requires means of living in order to live and must labor for this end. Locke further says:

“God and his [man's] reason commanded him to subdue the earth, i.e. improve it for the benefit of life, and therein lay out something upon it that was his own, his labour. He that in obedience to this command of God, subdued, tilled and sowed any part of it, thereby annexed to it something that was his property, which another had no title to, nor could without injury take from him” (TT.II.32).

Locke here indicates what kind of labor God commands: It is one that subdues a parcel of land, cultivates it and sows it with seeds, in short, it is agricultural labor. Locke holds that God makes, among all kinds of labor, much of cultivation and agricultural use of land.

“Since he [God] gave it [the world] them [men] for their benefit, and the greatest conveniences of life they were capable to draw from it, it cannot be supposed he meant it should always remain common and uncultivated” (TT.II.34).

As is clear from this passage, God wills that man acquires as much means of living as possible and leads a rich and comfortable life. And it is also God's will, Locke believes, that man for this end cultivates as vast land and produce as much harvest as possible. Man should not leave lands uncultivated. Locke further says:

“He [God] gave it [the world] to the use of the industrious and rational” (TT.II.34).

God is pleased with the industrious and rational man, namely, the man who assiduously cultivates and improves lands and strives for increasing products and profit. This is what Locke believes to be God's will in regard to the relation between man and nature.

(2) Particular formulations of the law of nature—property and its increase

Locke deduces a formulation of the law of nature on property from God's will on man's labor as described above. Locke says:

“Thus this law of reason [i.e. law of nature] makes the Deer, that Indian's who killed it; 'tis allowed to be his goods who hath bestowed his labour upon it, though before, it was the common right of every one” (TT.II.30).

Locke here states that he who labors has by the law of nature the right to appropriate the product of his labor. This applies not only to game of hunting, but also to product of agricultural labor. Furthermore, Locke says that land itself becomes property of man who cultivates and improves it. Locke says:

“But the chief matter of property being now not the fruits of the earth, and the beasts that subsist on it, but the earth it self; as that which takes in and carries with it all the rest: I think it is plain, that property in that too is acquired as the former. As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property” (TT.II.32).

The right to property in a thing is based on labor a man puts in on the task of obtaining it. Accordingly, the right to property in land depends on agricultural labor a man puts in on it.

It is worth noting that Locke here expresses the view that a man does not need the consent of others in acquiring property in land. He says immediately after the passage quoted above:

“He by his labour does, as it were, inclose it from the common. Nor will it invalidate his right to say, every body else has an equal title to it; and therefore he cannot appropriate, he cannot inclose, without the consent of all his fellow-commoners, all mankind” (TT.II.32).

Locke here stands on the presupposition that the land, before it is enclosed, was uncultivated and belonged to all mankind without any definite possessor. He holds that it is absurd to claim that a man should obtain the consent of all common possessors, i.e. all mankind in order to acquire property in a tract of land he tills. Locke is undoubtedly right in this respect. But how about the case of commons of a local community? In this case he partly recognizes the right of appropriation of the product of labor without the consent of other commoners and says:

“We see in commons, which remain so by compact, that ‘tis the taking any part of what is common, and removing it out of the state nature leaves it in, which begins the property; without which the common is of no use. And the taking of this or that part, does not depend on the express consent of all the commoners. Thus the grass my horse has bit; the turfs my servant has cut; and the ore I have digg’d in any place where I have a right to them in common with others, become my property, without the assignation or consent of any body” (TT.II.28).

But it is worth noting that Locke here only recognizes the right to the fruits of the earth yielded by labor in commons but does not mention the right of a commoner or anyone else to appropriate a tract of land out of the commons without the consent of other commoners. There is no doubt that he denies this right from a common sense standpoint. It is important to keep in mind that Locke thus admits the right to appropriate a tract of land which is uncultivated and common to all mankind without the consent of others, while he denies the right of a commoner or anyone else to appropriate land out of the commons of a local community without the consent of all commoners. I shall later take up this view of Locke’s in regard to commons of native Americans.

5. Locke’s Creation of the State of Nature as That of Lack of Political Society

As we have seen, the law of nature is, according to Locke, moral norm proclaimed by God to mankind through reason and revelation since men appeared as God’s creatures in this world. Locke calls the state of society in the first stages of mankind “state of nature”. It is the state of complete liberty and equality, in other words, the state in which a common authority consisting of a commonly known law, an impartial judge and an executioner of judgment are lacking among people (TT.II.4,7,19,87-89,124-126). This could be called state of nature among individuals. Locke also states that in the seventeenth century world where the number of countries increased which had moved from the state of nature into political society there exists still a state of nature among the governments of countries, since there a common authority and power are still lacking (TT.II.14). This could be called international state of nature and distinguished from the state of nature among individuals without political society.

Locke distinguishes political society from state of nature. For him, political society is one that is equipped with legislature and written laws, impartial judges, and power to execute laws and judgments (TT.II.124-126,