

**Postcolonial Citizenship: Reconsidering Indigenous Political Belonging  
and Authority in Settler Societies**

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## I. Introduction:

A consistent pattern has emerged in the scholarship and practice of settler states in general, and in Canada in particular, according to which indigenous claims to self-determination are interpreted as claims to a form of differentiated citizenship within the colonial state, overlapping substantially with forms of immigrant and national minority citizenship. Yet many prominent Indigenous scholars and leaders explicitly reject state authority and state membership while, at the same time, rejecting secession (Alfred, 2009; Niezen, 2000; RCAP, 1996). In this paper, I use the term 'postcolonial citizenship' to describe this unique ideal form of relationship between indigenous nations and settler societies. While this ideal has been consistently expressed through the substance and practices of treaty making throughout the history of indigeneous-settler relations, it finds formal contemporary representation in the recommendations of the *Royal Commission on Aboriginal Peoples* which calls for the maintenance of a 'nation-to-nation' relationship between indigenous peoples and the Canadian state entailing "the notion that dissimilar peoples can share lands, resources, power and dreams while respecting and sustaining their differences" (RCAP, 1996). It is 'postcolonial' because it represents the struggle to move beyond colonial ideologies that perpetuate the domination and oppression of indigenous peoples; it is a form of 'citizenship' because it represents a unique status vis-à-vis the settler state and society that is rooted in indigenous practices that affirm the constitutive relationships between indigenous communities and their traditional authorities while seeking to forge just relationships between these communities and authorities and those of the settler societies with whom they share territories. Although this vision of a just relationship between indigenous peoples and the state has persisted from first contact through to the present, the consistent conflation with minority politics of difference suggests that Western theory and practice appears unable to adequately comprehend or attend to claims rooted in the ideal of postcolonial citizenship. Moreover, approaches to indigenous difference stemming from Western ideologies have consistently resulted in the most brutal of consequences for indigenous peoples while, to a significant extent, enabling new and existing members of settler society to flourish.

This paper addresses two related questions that follow from these inconsistencies. First, why are indigenous struggles for self-determination and co-existence so consistently misrepresented as claims for a form of differentiated *Canadian* citizenship? And second, how is it that Western political thought, by and large, enables the freedom and flourishing of members of settler societies while resulting in the continued domination and oppression of indigenous peoples? In short, both questions address the broader problem of why postcolonial citizenship appears to be fundamentally incompatible with Western political thought in general.

The case is made that a key source of this apparent incompatibility is found in a tension that exists within the Western tradition itself—a tension that transforms an emancipatory political tradition aimed at offering robust protective and democratic rights and freedom from arbitrary rule into one that imposes political authority and necessarily seeks to assimilate or eliminate co-existing indigenous political communities and authorities. The source of this tension is located within the concept of *territoriality*—or the specifically

modern "spatial strategy to affect, influence, or control resources and people, by controlling area" (Sack, 1986: 1-2)— which exists as foundational yet undertheorized background feature imbedded in Western conceptions of legitimate political authority. In what follows, I unpack the concept of territoriality and its subversive function in traditional Western political thought as well as its role in exacerbating the conflict between Western and postcolonial conceptions of citizenship. I begin in Section II by arguing that modern political theory is fundamentally anchored to the normatively powerful and attractive arguments emerging from the Enlightenment regarding the idea that political authority is legitimate insofar as it is constituted by the community over which it exercises jurisdiction. As such, canonical social contract theorists (Thomas Hobbes, John Locke, and Jean-Jacques Rousseau) all provide some form of argument aimed at protecting against the imposition of arbitrary authority. However, Section III reveals the tension that emerges when these theorists are faced with the task of practical application in contexts defined by territorial rule. As a result, each thinker is forced to reverse their logic, effectively imposing a political authority that defines the community within its jurisdiction and, subsequently, seeks legitimation from it. The paper closes in Section IV by arguing that the consequences of territoriality are largely irrelevant to existing (and aspiring) members of settler societies because they already hold (or wish to cultivate) allegiances to settler polities and authorities. For indigenous peoples, however, the background condition of territoriality works to subsume them within the overarching settler community, to arbitrarily impose alien settler authorities, and to dispossess indigenous peoples of their traditional territories thus eliminating their existence as *peoples*. In short, territoriality not only undermines the emancipatory logic of foundational social contract theories, it renders postcolonial citizenship and the nation-to-nation relationship envisioned by RCAP an impossibility.

## *II. Early Modern Citizenship: The Priority of Community and the Promise of Emancipation*

The social contract theories emerging from the Enlightenment indicate a profound shift in modern conceptions of the legitimate relationship between community and authority. Emerging from a context of theocratic and Imperial domination, canonical thinkers like Hobbes, Locke, and Rousseau sought to articulate the novel idea that legitimate authority had its origins in 'the people' rather than Divine Appointment. Each thinker justified the existence of authority on the basis of some initial collective constitution of community—that is, some initial sense of a shared condition robust enough to maintain communal bonds. Imbedded in this idea is some form of the emancipatory promise that communities of belonging can be self-determining by constituting their own authorities and be free from subjection to foreign rule.

It is no surprise that Hobbes' *Leviathan* offers what might be considered the 'thinnest' connection between authority and community but, nevertheless, his entire thesis rests on the foundational argument that legitimate authority—or the state's 'right to rule'—is derived from the consent of the governed:

"For it is evident, and has already been sufficiently in this Treatise demonstrated, that the Right of all Sovereigns, is derived originally from the consent of those that are to be governed" (*Leviathan*: 599).

Hobbes relies on his own 'state of nature' narrative to defend the idea that there is a clear logical legitimating progression from the individual to the community to the authority. That is, individuals come together and form a community based on the motivation supplied by their shared aims "to defend them from the invasion of Forraigners, and the injuries of one another". Then, by contracting together to "erect such a Common Power ... [by] ... submit[ting] their Wills, every one to his Will, and their Judgments, to his Judgement" (*Ibid*: 227), the collection of individuals is transformed into a unified community comprised of individuals that incur obligations to each other and their common authority through the contractual act:

"This is more than Consent, or Concord; it is a reall Unitie of them all, in one and the same Person, made by Covenant of every man with every man, in such a manner, as if every man should say to every man, *I Authorise and give up my right of Governing my selfe, to this Man, or to this Assembly of men, on this condition, that thou give up thy Right to him, and Authorise all his Actions in like manner*" (*Ibid*).

The relative weakness of the link between authority and community is simply a product of the nature of the contract itself, given that Hobbes envisions individuals contracting with each other to submit to the authority rather than contracting with the authority itself. But this simplicity is complicated by Hobbes' desire to make it exceedingly clear that the authority itself is not only secular but also *constituted by* the community. According to the Hobbesian ideal, authority is not simply an entity that derives its legitimacy from the fact that it rules according to the pre-political interests of those who agree to submit to it. Rather, the sovereign is brought into being through the act of collective authorization. The sovereign, as an abstract authoritative entity, comes into being at the moment the collection of individuals agrees to appoint it as their representative. As a result, the multitude is represented as the singular "artificial person of the state" (Skinner, 1999), whose agents of rule exist as a 'man or an assembly of men'. By positing the state as the sole and singular representative of the multitude of competing voices, Hobbes can argue that the people do, indeed, constitute the sovereign which then represents the collectivity as a singular, stable unity. In this way, the people are presented as prior to authority and, therefore, as constituting authority—both as an *entity* or the "Seat of Power" (*Leviathan*: 75) and as a legitimate exercise of its *capacity* to rule.

If Hobbes offers the thinnest connection between community and authority, Rousseau occupies the opposite end of the spectrum. It should be kept in mind that even though Hobbes understood the people as constituting authority, a key point was that through the constitutive process, the people also agreed to relinquish their pre-political right to rule themselves unto the newly constituted sovereign—to "submit their Wills, every one to his Will, and their Judgments, to his Judgment" (*Ibid*: 227). This is precisely the aspect of the Hobbesian view that Rousseau rejects when he states that it is slavery to submit to laws that are not of our own making "while obedience to a law one prescribes to oneself is freedom" (*Social Contract*: 65). As such, his aim was to theorize a form of authority

whereby the pre-political right to rule oneself was retained and "under which each individual, while uniting himself with the others, obeys no one but himself and remains as free as before" (Ibid.: 60).

Like Hobbes, Rousseau relied on the consent of the governed, arguing that "all legitimate authority among men must be based on covenants" (Ibid.: 53). However, it is the nature of Rousseau's contract that establishes the far more intimate link between the community and the authority. Rather than contracting together to submit to an external authority as in the Hobbesian variant, Rousseau's model envisions individuals contracting together *to form* government. That any 'man or assembly of men' could exist as a legitimate authority by virtue of its putative ability to *represent* the multitude was considered an affront to the fundamental aim of freedom through self-rule. Railing against the English system of representation he argued that

the people's deputies are not, and could not be, its representatives; they are merely its agents; and they cannot decide anything finally. Any law which the people has not ratified in person is void; it is not law at all. The English people believes itself to be free; it is gravely mistaken; it is free only during the election of Members of Parliament; as soon as the Members are elected, the people is enslaved; it is nothing (Ibid.: 141).

Thus, while Rousseau parallels Hobbes by arguing that the "act of association creates an artificial and corporate body" called "the *state*" or "the *sovereign*", it is the distinct nature of the act of association that defines the more intimate relationship. By envisioning a collective contracting together to form government and, therefore, retaining control of authority Rousseau emphasizes that those party to the contract—those who "collectively take the name of *a people*"—are not only "*subjects*, in that they put themselves under the laws of the state", but are "*citizens*, in that they share in the sovereign power" (Ibid.: 61-62). In this way, Rousseau maintains, as Hobbes did, that legitimate authority is derived from the community, but Rousseau presents the constitution of authority in a much more literal sense, establishing a much more intimate link between the community and its government.

In terms of the relationship between political authority and those subject to it, Locke occupies a relative middle ground between Hobbes and Rousseau. Like both Hobbes and Rousseau, Locke argues that legitimate authority is constituted through the prior consent of the community:

And thus that, which begins and actually *constitutes any political society*, is nothing but the consent of any number of freemen capable of a majority to unite and incorporate into such a society. And this is that, and that only, which did, or could give beginning to any *lawful government* in the world (*Second Treatise*: §99).

Locke shared Hobbes' view that the primary motivation for the contract was rooted in the shared aim amongst a collection of individuals to protect their individual natural rights—the familiar "lives, liberties and estates" (*Second Treatise*, §123). However, Locke goes further by arguing, contrary to Hobbes, that "*freedom* from absolute, arbitrary power, is so necessary to, and closely joined with a man's preservation, that he cannot part with it" lest

he deliver himself into the "perfect condition of *slavery*" and nullify the consensual contract (*Second Treatise*, §23-24).

The imperative to avoid arbitrary power and therefore slavery foreshadows Rousseau's later work. However rather than situating self-rule and the opposition to arbitrary rule as the core shared aim providing the motivation for the contractual act as Rousseau did, Locke relies on its instrumental value to the original desire to protect individual rights. It was of central importance to Locke that sovereignty ultimately remained with the people and that the right to rule of the constituted authority—more specifically, the legislature—was understood as entrusted to the governing authority, conditional upon its continued protection of the aims underlying its constitution in the first place:

Though in a constituted common-wealth ... there can be but *one supreme power*, which is *the legislative*, to which all the rest are and must be subordinate, yet the legislative being only a fiduciary power to act for certain ends, there remains still *in the people a supreme power to remove or alter the legislative*, when they find the *legislative* act contrary to the trust reposed in them (*Second Treatise*, §149).

Thus Locke offers a significantly more robust connection between the political authority and those subject to it than Hobbes even though he defends this fiduciary relationship by relying on a similar commitment to the protection of individual rights. And while there is clearly a strong democratic current here, its value is instrumental. He does not, therefore, take the democratic argument as far as Rousseau seventy years later by situating self-rule as the initial shared aim motivating the constitution of political authority.

In sum, despite their differences, the collective legacy of these three thinkers remains tied to what has become the basic modern intuition that legitimate authority is derived from the people that are governed by it. The logic of all three approaches is clear: some shared aims draw individuals together to form a community of belonging that is robust enough to incur mutual obligations to establish a formal political community and, with it, legitimate political authority. In short, the community is prior to the authority that governs it. Indeed, the legitimacy of political authority is invariably presented as resting on, not only consent, but also the individual aims and mutual obligations incurred through the constitutive contractual process itself. Moreover, each approach relies on this logic to offer some emancipatory promise related to the initial shared aims: for Hobbes, mutual insecurity leads to the institution of an authority that can promise "*the safety of the people*. ... But by Safety here, is not meant a bare Preservation, but also all other Contentments of life, which every man by lawfull Industry, without danger, or hurt to the Commonwealth, shall acquire to himselfe" (*Leviathan*: 376); for Locke, similar insecurities motivate the shared aim of setting up an accountable authority that can promise to protect the 'lives, liberties and estates' of those subject to it; for Rousseau, a common desire for self-rule underwrites the establishment of a thoroughly democratic authority which offers the promise of freedom from arbitrary rule. All three of these variations on the emancipatory promise rely on the logical priority of the community bound together by shared aims and mutual obligations.

It is, no doubt, some approximation of these emancipatory promises that binds together the members and aspiring members of contemporary liberal democratic states like Canada. Yet, as normatively attractive as these political frameworks may be, the associated promises consistently fail for indigenous peoples who find themselves geopolitically imbedded within the settler state: indigenous peoples are consistently subject to the foreign rule of the colonial state and continue to struggle for basic rights, not to mention 'all other Contentments of life'; the 'lives, liberties and estates' of indigenous peoples are in constant peril; indigenous peoples have had their own democratic institutions undermined and destroyed while experiencing consistent marginalisation from the democratic processes of the colonial state. How is it, then, that a contemporary state committed to the protection of liberal democratic rights consistently undermines the same for indigenous peoples within its borders? How is it that the modern emancipatory paradigm appears, in practice, to be so fundamentally at odds with the aims of postcolonial citizenship?

As mentioned at the outset, one of the key candidate explanations for why the potentially emancipatory logic of social contract theories fails when confronted with colonial contexts is that these theories operate against the background condition of modern territoriality. This is directly related to the nature of the authoritative entity itself—that is, when the authoritative entity is understood as defined by fixed territorial bounds, the attempt to situate the constitution of community as prior to that of legitimate authority fails. The remainder of this paper examines how territoriality works as a background condition that confounds the emancipatory potential of the canonical social contract approaches.

### III. Territoriality and Modern Citizenship:

Territoriality is, first and foremost, a specifically modern way of organizing community and authority according to relatively fixed spatial boundaries. Robert Sack defines territoriality as "a spatial strategy to affect, influence, or control resources and people, by controlling area" that is "intimately related to how people use the land, how they organize themselves in space, and how they give meaning to place" (1986: 1-2). Key features of territoriality include the ability to set relatively fixed and permanent geographic boundaries, to establish legal jurisdiction within these boundaries, and to control the flow of people and resources within and across these boundaries (Kolars, 2009: 70-82). As such, territoriality is centrally implicated, not only in discussions regarding the benefits and burdens of citizenship, but also in any determination of insiders and outsiders, or who might properly be considered a member of a political community, and the determination of the scope of the any political authority's jurisdiction.

Moreover, that this is a specifically modern strategy for organizing political community and authority is, by now, well observed. Generally speaking, medieval authorities were decidedly relational as opposed to territorial. Regarding theocratic authority, for example, it did not explicitly matter *where* one lived, but rather, what religion one identified with. Papal authority was assumed to extend to all of Christendom wherever believers could be found or converted—it was one's allegiance to theocratic authority that mattered (Hinsley, 1968; Skinner, 1978). Similarly, feudal authority, while materially dependent on the use of territory, was determined largely by personal allegiances and status. A vassal making use of

a particular territory was commonly subject to numerous competing allegiances of a relational nature (Spruyt, 1994). Furthermore, the territory itself was rarely characterised by fixed or mutually exclusive boundaries. The medieval political map "had never been composed of a clearly demarcated set of homogeneous political units. ... [It] was an inextricably superimposed and tangled one, in which different juridical instances were geographically interwoven and stratified, and plural allegiances, asymmetrical suzerainties and anomalous enclaves abounded" (P. Anderson, 1979: 37-8; J. Anderson, 1996; Ruggie, 1993; Spruyt, 1994). Of course, these overlapping forms of relational authority *required* territory and those subject to rule *occupied* territory. However, the key difference is that authority was *defined* by personal bonds rather than fixed territorial boundaries. To put it simply, medieval rule represented "rule over people rather than rule over land" (Spruyt: 1994: 40; Ruggie, 1993).

There is value in briefly glancing back toward the pre-modern era if only to acknowledge the historical contingency of the modern Westphalian organizing principle that circumscribes political units according to relatively fixed and juridically exclusive territorial bounds. This is the emergent context within which the Enlightenment thinkers developed their theories of the best form of relationship between community and authority. Each thinker developed their theories in ways that served to justify territorial boundaries on the basis of the interests of the communities within and to ensure protection from the arbitrary domination of Imperial rule. Yet the "sovereign territorial ideal" has since become "so thoroughly accepted that we rarely even stop to consider its impact on our thinking" (Murphy, 1996: 83). Indeed, territoriality is, by now, described as a defining feature of the modern "social episteme" or "the mental equipment by which people reimagined their collective existence" in modernity (Ruggie, 1993: 157, 169) and has become so entrenched in our theorizing that "[t]he only plausible model of political community we have is the state ... [that] ... affirms the presence of political community in territorial space" (Walker, 1990: 13, 14). Territoriality, then, represents an important background context for much of contemporary citizenship theory and is a core but often overlooked and undertheorized feature of modern authority and community.

With respect to the issues at hand, the central problem for all three approaches is that territoriality works to undermine their foundational contractual motivations, effectively flipping the emancipatory logic on its head and arbitrarily circumscribing the initial bounds of a putatively organic and self-determining community. That is, rather than individuals coming together to form communities and, therefore, the state, the state determines who the people are to begin with, sets the conditions for whatever shared aims they might have, and demands that communities form allegiances within state-defined geographical boundaries.

Of the three, only Locke and Rousseau attempt to maintain the logical consistency of their theoretical frameworks when faced with the impact of territoriality, if only in passing. Both offer brief explanations for how the territorial jurisdiction of the state might follow from the territorial property of the individuals party to the contract. Locke's approach is to build from his familiar labour theory of property to connect territoriality to the original constitution of the community:



Thus *labour*, in the beginning, *gave a right of property*, wherever any one was pleased to employ it upon what was common [i.e. not claimed by individual or state]. ... [A]ftwards, in some parts of the world, ... the several *communities* settled the bounds of their distinct territories, and by laws within themselves regulated the properties of the private men of their society, and so, *by compact* and agreement, *settled the property* which labour and industry began (*Second Treatise*, §45).

Nevertheless, the logic of his constitutive narrative is quickly reversed when faced with the task of practical application in a world already divided into territorially defined jurisdictions and authorities. Instead of communities playing the constitutive role in establishing legitimate authority, the territorial authority itself becomes constitutive of community and the only available role for individuals and communities is to *legitimize* rather than *constitute* existing territorial authority. This is evident in Locke's discussion of property rights regarding both inheritance and immigration. With respect to inheritance:

because common-wealths not permitting any part of their dominions to be dismembered, nor to be enjoyed by any but those of their community, the son cannot ordinarily enjoy the possessions of his father, but under the same terms his father did, by becoming a member of the society; whereby he puts himself presently under the government he finds there established, as much as any other subject of that common-wealth (*Second Treatise*, §117).

Here, the son is under his father's authority until 'the age of discretion' at which point he can choose his preferred body politic. But if he leaves, he necessarily forfeits his right to his father's land, regardless of how thoroughly he may have 'mixed his labour' with it, because the land itself is part of the territorially defined 'dominion'.

As for immigration, Locke makes it clear that anyone joining an existing commonwealth not only joins himself to the community, but also

submits to the community, those possessions, which he has, or shall acquire, that do not already belong to any other government: for it would be a direct contradiction, for any one to enter into society with others for the securing and regulating of property; and yet to suppose his land, whose property is to be regulated by the laws of the society, should be exempt from the jurisdiction of that government, to which he himself, the proprietor of the land, is a subject" (*Second Treatise*, §120).

The new, practical logic is clear—the state is prior to the individuals who no longer form collectivities to constitute the state but, rather, are faced with the option to accept membership in a pre-existing community that is circumscribed by existing geopolitical boundaries or to join some other such entity. The only way that Locke's self-constituting community, and therefore the original emancipatory logic, can hold is under the condition that one is able to "agree with others to begin a new [common-wealth], *in vacuis locis*, in any part of the world, they can find free and unpossessed" (*Second Treatise*, §121). Indeed, this point is central to Locke's support for the appropriation indigenous territory that he described as the "in-land, vacant places of *America*" and the "wild woods and uncultivated waste of *America*, left to nature, without any improvement, tillage, or husbandry" (*Ibid.*: §36, 37). Here the territorial paradigm finds full expression. By presenting waste as "the

antonym of cultivation and enclosure" (Arneil, 1996: 110), Locke expresses the emerging ideal that the ability to control territory justifies jurisdiction. Through Locke's eyes, indigenous peoples did not control territory as effectively as Europeans did and thus, "for want of improving it by nature" (Ibid.: §41), ultimately forfeited their claim to it. As a result, the territories that sustained their pre-existing communities and authorities were considered a prototypical example of '*vacuis locis*' with no existing legitimate authority, enabling the imposition of European jurisdiction and, along with it, the narrative that European settlers might have had the opportunity to come together and establish authority in the 'empty space'. Yet without the initial extension of territorial authority over indigenous territories, the settling of indigenous territories would not have been possible to begin with. Nevertheless, whether we agree with Locke that his original state-of-nature narrative reflects the factual origins of legitimate modern authority—that "the *governments* of the world, that were begun in peace, ... were *made by the consent of the people*" (*Second Treatise*, §104)—is not of central concern. Hypothetical or not, the emancipatory thrust of Locke's logic is found in the original constitutive narrative itself and it is this specific logic that is reversed when confronted with the reality of modern territoriality.

Rousseau beings with a similar narrative reconciling territoriality with his original contractual logic:

We can see how the lands of private persons, when they are united and contiguous, become public territory; and how the right of sovereignty, extending from the subjects to the soil they occupy, covers both property and persons (*Social Contract*: 67).

Rousseau was, however, aware of the problems surrounding the practical application of his theory to contexts of pre-existing authority and the contradictions that it brought to light. Indeed, he opens *The Social Contract* with the observation that modern political institutions transform individuals who are born free into those enslaved by their political authorities. His question, "How can it be made legitimate?" (*Social Contract*: 49), alludes to that which Locke fails to confront—that an ideal constitutive moment may be impossible in the present, but that existing forms of government must be made to align with the emancipatory, constitutive logic at the root of his social contract. In fact, when moving from the ideal to the practical, Rousseau explicitly acknowledges that the actual origins of political societies are in tension with his proposed narrative. That is, for a collection of individuals, drawn together by their shared desire for self-legislation, to bring into being the sovereign state, there must be a pre-existing authoritative legal framework in place to prescribe the required democratic procedure.

How can a blind multitude, which often does not know what it wants, because it seldom knows what is good for it, undertake by itself an enterprise as vast and difficult as a system of legislation? ... Is it to be by common agreement, by sudden inspiration? (*Social Contract*: 83).

This is, of course, "the paradox of political founding" (Connolly, 1991: 465; Olson, 2007; Ricoeur, 1984) stated more directly by Rousseau in terms of how the 'social spirit' required for the original constitution of good laws and institutions is itself a product of the very institutions it is taxed with establishing.

For a newly formed people to understand wise principles of politics and to follow the basic rules of statecraft, the effect would have to become cause, the social spirit which must be the product of social institutions would have to preside over the setting up of those institutions (*Social Contract*: 86-87).

The problem presented by this paradox is that it requires a solution that is in direct tension with Rousseau's foundational normative claim that legitimate authority has its origins in 'the people'—it presents "a task which is beyond human powers and a non-existent authority for its execution" (Ibid.: 86). His practical solution is to have a wise legislator underwrite the founding by falling back on the medieval appeal to Divine authority, not because Divine authority is real, but because the only means by which to secure the allegiance of the people is through "compelling by divine authority persons who cannot be moved by human prudence" (Ibid.: 87). For Rousseau, this practical concession is not meant to permanently re-integrate religion into politics but merely to provide the missing and essential starting point: "we must not conclude from this ... that religion and politics have the same purpose among men; it is simply that at the birth of nations, the one serves as the instrument of the other" (Ibid.: 88). From this it is clear enough that Rousseau's original emancipatory logic is quickly reversed when faced with practical realities. Legitimate authority, which is initially presented as constituted by the people bound together by their shared aims for self-legislation is predetermined by an external authority that initiates the *a priori* imposition of a legal/institutional framework that must subsequently be legitimized by the people.

But what of territoriality? According to the initial narrative, territoriality should obtain organically through the merger of the 'united and contiguous' lands of the people who are party to the original contract—people have particular relationships to land and, because of this, the constituted authority has a territorial character. However this logic cannot hold when the authority is revealed as prior to the constitution of the people. The founding paradox is resolved by acknowledging that, contrary to the original narrative, authority constitutes the laws of the people. But how are the bounds of the people established when they are robbed of their constitutive powers? By now it should be clear that the pre-existing authority does not only impose the initial legal/institutional framework, but that this framework is *already* territorial before the people are brought in to legitimize it. Although Rousseau readily abandons his initial normative foundations in order to establish authority, he provides no similar explanation for how this authority came to be territorial. Instead, he simply observes that it is so and admires it as a superior modern strategy of rule:

"This advantage seems to have eluded the ancient monarchs, who, in calling themselves simply the King of the Persians or the Scythians or the Macedonians, appear to have regarded themselves rather as rulers of men than as masters of their countries. Monarchs of the present day call themselves more shrewdly the King of France, or of Spain, or of England and so on; in holding thus the land, they are very sure of holding the inhabitants" (*Social Contract*: 67).

Thus, rather than individuals being drawn together organically, constituting themselves as a community, and incurring mutual obligations through the act of constituting legitimate authority, as Rousseau's original normative framework would have it, a pre-existing authority defines, not only what the original legal/institutional framework is to be, but by its very nature, imposes a territorial circumscription on the collectivity of candidate individuals in first place. In this way, territoriality works as an undertheorized background condition—an inherent feature of the imposed authority—that renders the ideal constitutive moment doubly impossible: first, by spatially defining *who* the people are before they are able to determine what their shared aims might be; and second, by imposing a territorially defined legal/political framework on the constitutive moment, effectively transforming an organic act of self-determination into an exercise in top-down nation-building.

Hobbes also recognizes this founding paradox but makes short work of it with much the same reasoning that Rousseau would use over a century later, by arguing that the original contractors, lacking "humility", "patience", and "the art of making fit Lawes" would be able to constitute nothing but a precariously built "crasie building" and, as such, would require a prior authority—"a very able Architect"—to establish the initial authoritative framework (*Leviathan*: 363). Addressing this particular problem only in passing, Hobbes spends more time addressing the impracticality of the idealism behind the founding myth, observing that "there is scarce a Common-wealth in the world, whose beginnings can in conscience be justified" (*Leviathan*: 722). However, he fails to see this as problematic, much less paradoxical. Instead, he simply closes the chapter on the founding of the Common-wealth by noting that, in addition to the ideal constitutive narrative that grounds his theory—the logical progression that he entitles "Common-wealth by *Institution*"—sovereignty can also be legitimately attained through conquest, or "Common-wealth by *Acquisition*" (*Ibid.*: 228).

Later, in his discussion of 'Common-wealth by *Acquisition*' Hobbes makes it clear that there ought to be no real consequences to this shift in the means by which authority is established: "the Rights and Consequences of Sovereignty, are the same in both" (*Ibid.*: 252). His confidence in the stability of his general theory is rooted in the claim that authority established through conquest, nevertheless retains the key consensual component:

Dominion is then acquired to the Victor, when the Vanquished, to avoyd the present stroke of death, covenanteth either in expresse words, or by other sufficient signes of the Will, that so long as his life, and the liberty of his body is allowed him, the Victor shall have the use thereof. ... It is not therefore the Victory, that giveth the right of Dominion over the Vanquished, but his own Covenant. Nor is he obliged because he is Conquered ... but because he commeth in and submitteth himself to the Victor" (*Ibid.*: 255-256).

Lockean suspicions surrounding coerced consent aside, it is immediately evident that the constitutive dynamics shift radically when faced with this alternative and, as Hobbes suggests, most likely of contexts. Rather than individuals constituting themselves as a community and incurring mutual obligations to submit to the authority that is constituted through the contractual act,

Sovereign Power is acquired by Force ... when men singly, or many together by plurality of voices, for fear of death, or bonds, do authorise all the actions of that Man, or Assembly, that hath their lives and liberty in his Power (Ibid.: 252).

The general case, then, is best described as one for which authority is not, in fact, constituted, but is pre-existing (pre-constituted) and what is left is for individuals to join a community that did not constitute itself, but that was previously defined by an external authority. Hobbes spends even less time than Rousseau in explaining why this previous circumscription of community is spatial. Indeed, he takes the territorial nature of authority as given, observing in passing that "Dominion" is tied to "place": "For the Sovereign of each country hath Dominion over all that reside therein" (Ibid.: 252). Territoriality, then, becomes a defining feature of the modified practical framework simply because it is an assumed background and defining feature of the imposed authority.

In sum, each social contract approach derives its central normative thrust from the initial claim regarding the popular origins of legitimate political authority—that a community comes together and constitutes both itself and its ruling authority. Yet when moving from theory to practice each accepts the logical reversal according to which a pre-existing authority defines the terms for the constitution of the community within its jurisdiction. Thus, the origins of the system of legitimate authority are no longer found in the self-determining, organic constitution of a community but are established by fiat by an existing authority that first defines a community and then seeks to be legitimated by it. The emancipatory dynamic which describes how a collectivity of individuals might come together through a recognition of shared aims, values, etc. to constitute itself as a community and incur a meaningful sense of mutual obligation sufficient to underwrite the constitution of a shared authority or authoritative framework, is reversed such that the imposed authority imposes a spatial circumscription on who 'the people' are. In short, the people no longer define themselves, but accept their constitution as given by a pre-existing authority. The legitimacy of the new relationship between authority and community depends, therefore, on the ability of the authority to garner the support of those over whom it claims jurisdiction.

The modern strategy of territoriality is of central importance because it defines the essential character of modern authority *before* it requires democratic legitimation. That is, territoriality is fundamental to the origins of modern conceptions of legitimate authority because it enables the prior imposition of authority in the first instance. None of the canonical thinkers theorize this aspect in any satisfactory way. Locke clings tenaciously to the unworkable myth of popular origins, Hobbes merely notes peripherally that the imposed power is territorial in nature, and Rousseau, while admiring the efficacy of territoriality, fails to recognize its pivotal role in the establishment of modern democracies, instead focusing on the mystical narrative necessary to convince a circumscribed people that the imposed authority is legitimate to begin with. However, the modern paradigm is one that presents any legitimate authority as one that effectively operates within relatively fixed geographically defined boundaries. The new legitimating logic, then, demands that, as a prerequisite, any candidate authority must be effective in controlling bounded geographical space. Of course this can be considered a step up from the medieval paradigm,

broadly speaking, according to which authority effectively imposes non-spatial relational hierarchies, in that it works to set relatively firm limits to Imperial expansion. Yet it fails to realize the emancipatory aims to switch the logic from, as it were, top-down, to bottom-up. When one considers that the modern territorial organizing principle is based on the effective exclusive control of geographically bounded communities within its spatial jurisdiction, it becomes immediately apparent that this represents an *a priori* circumscription on the possibilities for any self-constituting community of belonging. The fluid, unbounded, and constantly fluctuating dynamics of communal bonds are channeled through existing, territorially defined, authoritative institutions that give priority to any acts of citizenship that reinforce a state-defined identity while delegitimizing those that strain against it. Not only is the top-down logic firmly entrenched, but also the legitimacy of this paradigm depends upon the prior ability of any imposed authority to effectively control geographical space. In this sense, the origins of any modern system of legitimate authority are not to be found in the self-constituting community, as the dominant narratives would have it, but are found in the principle of territoriality and the possible conceptions of legitimate authority that it enables.

#### IV. Consequences of Territoriality:

It is apparent, by now, that the basic emancipatory promise at the heart of the canonical social contract narratives is compromised by the background condition of territoriality such that these theoretical narratives fail to hold, in the strictest sense, for *anybody*. That is, authority rarely, if ever, follows directly from the self-constitution of a community of belonging and is nearly always, in the first instance, given. However, the consequences are decidedly asymmetrical. From the perspective of the bulk of members or aspiring members of the colonial state, the inaccurate mythology behind modern social contract narratives is relatively irrelevant—membership in the state-defined community is explicitly aimed for or valued and is the basic necessary condition for access to the benefits that follow from membership. Authority, from time to time, may appear to lack legitimacy, but most are content to wait until the scheduled time at which they can cast a ballot to voice their opposition and, hopefully, usher in a more acceptable ruling party. However, even when dissatisfaction intensifies to the point that the people take to the streets, the ruling or authoritative entity, itself—the 'Seat of Power'—is rarely rejected. Rather, people strive for a change in who occupies the seat in the hopes that this will lead to changes in the distributions of benefits and burdens within society. Indeed, it is often the stability of contemporary legal/political institutional frameworks and the constitutional guarantees protecting the rights of citizens that can work to garner the 'constitutional patriotism' (Habermas, 1998) of citizens or to develop an enduring 'societal culture' (Kymlicka, 1995). Such political communities are bound by a common allegiance to the framework that enables them to realize the shared aim of living in and enjoying the benefits of membership in the liberal democratic state.

For indigenous peoples, on the other hand, the effects of the territorial paradigm amount to nothing less than the continued destruction of their own pre-existing political communities and authorities and, ultimately, the elimination of their existence as such. Because territoriality is an integral feature of Western political theory that presents political

communities and legitimate authority as coextensive with controlled, bounded territory, the settler state must claim and have some measure of success in exerting control over its claimed bounded space. The ideal of postcolonial citizenship—indeed, the mere existence of indigenous peoples—explicitly confounds the colonial territorial logic because indigenous peoples present competing claims to the territory claimed by the state, claims that predate the establishment of the state and that continue to the present. While this struggle for territory is often understood in strictly material terms as debates over who ought to profit from the resources of a given territory, a consideration of territoriality brings to light the importance of landbase to the mere *existence* of political community and authority. As Peter Wolfe explains, whether conducted through strategies of assimilation or outright genocide, the *elimination* of indigenous nations as such—that is, as political communities holding a claim to territory and exercising autonomous jurisdiction within it—has, and continues to be, the colonial aim rooted in the primary motivation to secure access to and control of territory: "Territoriality is settler colonialism's specific, irreducible element" (2006: 338). For many members of settler societies the fact that territoriality legitimates existing political systems rather than some popular sovereignty narrative is an inescapable, perhaps regrettable, piece of historical trivia. However, from the perspective of indigenous peoples, the territorial logic presents a real and decidedly *existential* threat that has already decimated their political communities and authorities and continues currently in, for example, attempts to privatize what remains of indigenous lands<sup>1</sup> or the modern treaty process.<sup>2</sup> While the contemporary context has moved beyond the outright and brutal killing of the actual indigenous *people*, colonialism has entrenched the structural elimination of indigenous nationhood.<sup>3</sup> The legitimating logic of territoriality does not require the elimination of indigenous individuals, only the elimination of their land-based collectivities. From this perspective, it seems clear that the disconnect between the theory and practice existing in the foundations of Western political thought—a disconnect that leaves contemporary citizens with little choice but to seek forms of participate in the legitimation of existing authoritative entities rather than constituting them—is one that produces the most unacceptable of consequences for generations of indigenous peoples who continue to resist the appropriation of their territories by colonial states.

Furthermore, failing to critically engage the territorial paradigm in the Canadian context reinforces the pattern that conflates indigenous claims with those of immigrant and other minority groups of Canadian citizens, undermining possibilities for the creation of the kind of community of belonging between indigenous peoples and members of settler societies

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<sup>1</sup> For recent arguments in favour of privatizing indigenous territories in Canada see Flanagan, Tom, Christopher Alcantara, and Andre Le Dressay. 2010. *Beyond the Indian Act: Restoring Aboriginal Property Rights*. First Edition. Montreal and Kingston: McGill-Queen's University Press.

<sup>2</sup> For example, Mohawk scholar Taiaiake Alfred argues that according to the modern treaty process in British Columbia, Canada "Indigenous nations must surrender their independent political existence and ownership of their lands to Canada" (Alfred, Taiaiake. 2001. "Deconstructing the British Columbia Treaty Process". *Balayi: Culture, Law and Colonialism*. Vol. 3. 37-65).

<sup>3</sup> Patrick Wolfe describes "settler colonization" as "structural" because it exists as a "complex social formation" according to which settle society persists through the continued dispossession of indigenous lands and as "continuity through time" because this logic continues into the present (Wolfe, Patrick. 2006. "Settler Colonialism and the Elimination of the Native". *Journal of Genocide Research*. 8:4. 387-409).

envisioned by postcolonial citizenship and compromising the development of the kinds of shared aims that social contract theories rely upon for the *post hoc* legitimation of a given authority. On the one hand, territoriality functions to impose both authority and community, demanding that indigenous peoples share an allegiance to state-defined authorities and polities. While the identities of new and existing members of settler societies are often defined largely by their desire to be members of the settler society and fall under the jurisdiction of its authority, indigenous peoples experience this imposition as nothing less than the usurpation of their right to rule themselves with reference to their own political authorities and communities. It is plain enough, then, that settler society is likely to be seen as an alien community, imposed on colonized peoples against their explicit protestation. It is also, therefore, unreasonable to expect colonized peoples to generate the bonds of solidarity and mutual obligation with settler societies that are necessary to underwrite and sustain the legitimacy of settler authority over their communities.

On the other hand, in addition to imposing unrealistic shared aims, territoriality, by definition, excludes the kind of shared aims that postcolonial citizenship and the recognition of indigenous nationhood must entail. If recognition of the kind defended by the *Royal Commission on Aboriginal Peoples* is to obtain—that is, if the relationship between indigenous peoples and the Canadian state is to be understood as "nation-to-nation" and as entailing "the notion that dissimilar peoples can share lands, resources, power and dreams while respecting and sustaining their differences" (RCAP, 1996)—the basic tenet of territoriality that legitimates authority by virtue of an authoritative entity's ability to exert exclusive control over bounded territory must be abandoned. As the findings of RCAP suggest, there already exists a foundation for a community bound by shared aims, and that foundation is to be found in treaties between indigenous peoples and the settler societies. However, this foundation is not one that leads to a singular inclusive political community falling under the ultimate jurisdiction of a singular political authority. Rather, it leads to the harmonious coexistence of 'dissimilar peoples' sharing territories and governing themselves according to their own legal and political systems.

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