

Property Rights and the Colonial Vision

The Influence of Locke and Hobbes on British Columbian Land Title

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The case of British Columbian colonization provides the quintessential example of the influences that different early modern political thinkers could have on the organization and leadership of new commonwealths. The type of debate that emerged around indigenous land rights was wide and varied, and thus the actions chosen during British colonization differs greatly depending on which area of Canada is being discussed. The situation that colonizers grappled with in BC was one of organizing settlement and trade systems for the British while pacifying Aboriginal tribes and justifying the encroachment of the native land. From the very beginning, the west coast area and the Indigenous groups that lived there would present an interesting case for imperialists to manage. This paper will argue that although Hobbesian techniques, developed in *Leviathan*, were practiced during BC's colonization it was the Lockean tradition of individual rights, especially that of private property, as presented in *The Second Treatise of Government*, that drove what BC land treaty legislation looks like today. First, I describe and analyze pre-colonization BC as a state of nature, and discuss why it was not what Hobbes had believed it would look like. Second, this paper looks at Lockean and Hobbsian contractualism and how these visions were utilized in the British Columbian case. Finally, I analyze the radical change of direction in the treatment of Aboriginal land title. I should note that this paper is not exhaustive in that it does not account for the indigenous or other non-European perspectives of the treaty methods employed in pre- and early-colonial BC. However, from the European point of view this paper will explain how BC became the only province in Canada, until very recently, not to have Indigenous land title legislation.

At the time of first European contact, in 1774, hundreds of thousands of Indigenous people, including thirty different peoples with their own languages, cultures, political systems and territories, inhabited BC. Peaceful overlap of territory and trade existed between groups in the coastal areas.¹ Similar political-economic systems also functioned in the interior plateau area. Both areas, respectively, relied on fish or root harvests, as opposed to agriculture for sustenance.² The focus on aquaculture and the willingness to trade made for a relatively non-hostile settlement of pre-colonization forts. In addition, the tribes in the BC area did not practice private or tradable property.³ Together, these aspects made for fairly painless colonization, especially for James Douglas, a leader that showed a genuine respect for the Aboriginal peoples.⁴

Between first contact in 1774 and the colonization of Vancouver Island in 1849 settlers did not interfere in aboriginal politics or society.⁵ Immediately we can see that a Hobbesian state of nature did not exist before British colonization. Certainly individuals on what would be Vancouver Island and the coast of BC were not practicing Hobbes' state of nature. That is to say without government, individuals must forcefully master as many people as possible in order to protect their security. Hobbes explicitly attributes this vision of a state of nature to Indigenous populations stating, "it may peradventure by thought, there was never such a time, nor condition of was as this...but there are many places, where they live so now. For the savage people in many places of America... dependeth on natural lust, have no government at all; and live at this day in that brutish manner, as I said before".⁶ If they were, in fact, using any means to preserve themselves there is no evidence of arms races, perpetual war or abundant uncertainty.⁷ Without a sovereign there were functional trading posts in addition to overlapping but peaceful harvest grounds and territory. Men were undoubtedly working together in order to guarantee everyone's existence.

The form of existence that we see here more closely follows Locke's notion that a community can function and flourish without a commonwealth.⁸ This form of community fits with Locke's laws of nature which stated that the individual must not only preserve themselves but also, by being judges and enforcers of the laws, they must preserve the others around them. These guarantees are what constitute individual rights. Locke illustrates this in his writing:

Every one as he is bound to preserve himself, and not to quit his station willfully, so by the like reason, when his own preservation comes not in competition, ought he as much as he can to preserve the rest of mankind, and not unless it be to do justice on an offender, take away or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another. And that all men may be restrained from invading other; rights and from doing hurt to one another, and the law of Nature be observed, which willeth the peace and preservation of all mankind...⁹

From this we can see two things. First, not only is life a right of nature but so is liberty. Second, by no means is a state of nature mutually exclusive with a state of war, as Hobbes believes.¹⁰ The fact that individuals must be their own judges of law is one cause of a state of war. He admits, "I Doubt not...that it is unreasonable for men to be judged in their own cases...ill-nature, passion, and revenge will carry them too far in punishing others... I easily grant that civil government is the proper remedy for the inconveniences of the state of Nature," thus, he bases his logic for producing and agreeing to a social contract on the desire to enhance a community that already exists.¹¹

Only after the Oregon Treaty of 1846 did Vancouver Island become a colony. With the gold rush beginning in 1858 the

mainland was colonized as British Columbia. Both colonies were led by James Douglas until his retirement in 1864.¹² For nearly one hundred years before the colonization of Western Canada, Britain recognized the land rights of the native peoples. The Royal Proclamation of 1876 stated that “if at any time any of the said Indians should be inclined to dispose of the said lands, the same shall be purchased only for us, in our name,” admitting land title regardless of whether this undermines aboriginal sovereignty.¹³ By giving the heads of colonies the permission to extinguish aboriginal title by any means, this proclamation set the precedent to make treaties.¹⁴ All of Canada, including British Columbia, would partake in the treaty making process prior to Canadian confederation.

Vancouver Island became a British Colony in 1849 controlled by the Hudson’s Bay Company and led by James Douglas. Both the British government and the Hudson’s Bay Company recognized indigenous land title when Douglas began to make treaty arrangements with fourteen different tribes of the island. The most important fact about the Douglas treaties is that they represented unequivocal recognition of aboriginal title. These treaties allowed the British to establish their rule in BC.¹⁵ The Aboriginal population understood that they were selling their lands for settler use. This was an explicit agreement that can be perceived as a social contract.

Contractualism is the notion that foundations of the grounds of morality lie in actual or hypothetical agreements.¹⁶ Both Locke and Hobbes’ concept of the social contract is founded on the idea of an instrumentally rational bargain between self-interested individuals resulting in an agreement that is mutually beneficial to both sides.¹⁷ However, the contract, for Locke, is far more fluid and natural process than Hobbes’ vision of an explicit, single event. The difference between the two thinkers enters on how much power the sovereign obtains and how they can treat the individuals as citizens after the contract is produced. According to

Hobbes' state of nature, a contract is made because not doing so would be disastrous regardless of whether you entered into a contract out of mutual consensus or by means of force. For Hobbes, death would likely result regardless of the reason one chose not to consent to a social contract. Therefore, one could not agree with the terms nor want to be forced into a contract but the amount of authority that the resulting sovereign receives would be the same. Whether the citizens were the conquered, entering a contract by force, or newborn infants, entering a contract through tacit agreement, they are citizens and the sovereign is absolute.¹⁸ As Lewis stated, "For a commonwealth to exist it must have been created under a situation that the power inequality was such that it was the same as victor and vanquished regardless of war ever taking place. This is to ensure that people fear the sovereign enough to follow the covenant".¹⁹ These conditions are inconsistent with reality of the colonization of BC.

The case of BC defies Hobbesian logic given that the settler population was far outnumbered by the Aboriginal community. Guns were traded to the Indigenous peoples for decades and BC was not part of federated Canada thus had no army behind it.²⁰ Essentially, the situation which drove the social contract in BC was to secure the survival of the settlers; allowing the minority Europeans to live and industrialize without the fear of Indigenous upheaval. Treaties were not Hobbsian-style social contract in that they did not set up a unitary sovereign. Rather, treaties formed agreements of how and where the two groups would interact with one another. Again, this follows a Lockean ideal in that the social contract was made in order to facilitate what was already taking place in the state of nature.

The land bought by the government was paid for with foodstuffs, tools and blankets. When funds for treaties began to run out, the European settlers (Douglas and the British Columbian Assembly) urged Britain to send resources because they feared an 'Amerindian' backlash. During this time, the gold rush had begun

and there was a high flux of settlers coming to BC. Settler parties became weary of building settlements on land where Aboriginal title had not been extinguished. An explicit letter sent to the imperial government by the Aborigines Protective Society illustrates the general feeling by people at the time towards the issue of Aboriginal title:

The Indian, being a strikingly acute and intelligent race of men, are keenly sensitive in regard their own rights as the aborigines of the country, and are equally alive to the value of the gold discoveries... there can be no doubt that it is essential to the preservation of peace in British Columbia that the natives should not only be protected against wanton outrages on the part of the white population, but that the English Government should be prepared to deal with their claims in a broad spirit of justice and liberality ²¹

The British government refused to further fund treaties, therefore, leaving Douglas hamstrung, unable to calm the settlers or the indigenous population.²²

As the situation stood, the treaty system could not continue thus, Douglas had to develop a new order to appease British Columbian inhabitants. To do so he created a system of reserves. Paul Tennant claimed that these reserves were made to be no more than ten acres and that they were set up as communities of assimilation, where the Christian church would preach and education would follow a British model. Not only were these practices against indigenous culture, they were implemented with no input from the indigenous peoples.²³ Tennant continues to describe the new Douglas system as a method to save the native population from being systematically forced off their lands or exterminated.²⁴ Olive Dickason, on the other hand, notes the Indigenous need for smaller reserves given that most just wanted

access to harvesting areas, hence, they did not need vast expanses of space. Furthermore, she claims that Aboriginal peoples had so much control over the process that they were known to have reserves enlarged up to 200 acres upon request.²⁵ Additionally, Douglas granted the Aboriginal population with pre-emption rights— that is, the ability to purchase vacant, un-surveyed crown land before other nationalities could.²⁶ Both historians agree that Douglas was sympathetic, seeing the Indigenous peoples as political equals. Also, the fact that, under Douglas, violence did not break out in BC over treaty making difficulties, as it did in America, speaks to the just nature of the colony's leader.²⁷

Although the second system appears, superficially, to be an almost violent form of assimilation, a closer look shows that it was not Douglas' first choice, nor did he do it to avoid making treaties. He was trying to maintain the rights of the Indigenous peoples. The notion of individual rights is an incredibly important creation by Locke. For Hobbes, the only inalienable right is the right to preserve oneself, "As first a man cannot lay down the right of resisting them, that assault him by force, to take away his life... the motive, and end for which this renouncing and transferring of Right is introduced, is nothing else but the security of a man's person, in his life, and in the means of so preserving life, as not to be weary of it".²⁸ He would argue that Douglas was still a man; therefore, it would be in his interest to make land treaties in order to preserve himself.²⁹ However, the language alone of the letters sent to imperial Britain acknowledges that the settlers understood and believed in a notion of individual Indigenous rights to property.

Private property was an obsession and an inalienable right for Locke. The right to private property was no less important than the rights to life and liberty. Paired with the idea that man must invariably preserve himself, the use of God given land for subsistence is necessary.³⁰ Labour is the factor that appropriates property. Locke was extremely specific in depicting property acquisition being not only the fruits picked and animals killed, but

also, and more importantly, the land cultivated, "...not the Fruits of the Earth (nor) the Beasts that subsist on it, but the Earth itself".³¹ As Barbra Arniel pointed out, land appropriation, in the Lockean tradition, is based on agricultural settlement, not conquest.³² This statement further explains that Douglas chose not to go to war with the Indigenous population of the area in order to force a social contract upon them. Given that each individual has the right to preservation all men must have access to the means to ensure that preservation. As a response, Locke created a clause stating that there must be enough land for all to exercise their rights. He wrote, "For this 'labour' being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good left in common for other".³³ This concept was seemed to be followed staunchly by Douglas. For example, Douglas made his belief in this clause apparent when he opened new land to Aboriginal tribes as they claimed need for it. An argument can be made that Douglas expanded the size of reserves strictly out of fear of an Indigenous backlash, which may be true, but there is little evidence that demands for larger amounts of land was what crippled his ability to lead. Furthermore, the reserves were enlarged unilaterally by Douglas only when the native tribes expressed need for the land, hence, Douglas was granting 'enough and as good' meanwhile, facilitating peaceful settlement for the British population. In other words, he was fulfilling the role of the state, which is to judge disputes, keep order and ensure that citizen's individual rights were respected.

Unfortunately, the effort that Douglas put into creating a colony that balanced both settler and Native citizen rights did not leave a similar legacy. The weakness of Douglas' policies was its basis on "his own personal magnanimity and that it was never codified in any legislative enactment," thus, when Douglas retired in 1864, there was no legal proof that these treatise ever existed.³⁴ The successor to the colony of British Columbia was Joseph Trutch, who led British Columbia into confederation with Canada in 1871.

Trutch had an invariably different stance on the status of First Nations than did Douglas. He considered the Indigenous peoples savages who were not candidates for rights to their claimed land. Moreover, he felt that they were of no value or utility to the lands and in turn felt that granting land title was against the good of the colony.³⁵ Trutch revoked pre-emption rights and prohibited the aboriginals from leaving their reserves, which he restricted to ten acres regardless of how many families lived there. These actions resulted in cases where a single white male could own a land package larger than the nearby reserve which was inhabited by a dozen Indigenous families.³⁶ Trutch's treatment of Indigenous peoples is shocking given that, in Canada's central provinces, it was standard issue to make treaties on the basis that each native family would get the same amount of land as a settler, which was approximately 640 acres.³⁷

In 1870, Trutch was the first person in BC to actively deny Aboriginal title ever existed, in turn, allowing the federal government to claim no knowledge of, or to ignore, the British Columbian native policy developed by Douglas. Trutch bypassed Douglas' treaties by calling them 'friendship agreements', made possible since the treaties never went through a legislative process. Therefore, both levels of government considered themselves unencumbered by native title.³⁸ Trutch agreed to give reserves to the federal government on the basis that their areas would not exceed ten acres. John A. MacDonald was pleased with the manner that Trutch ran the province, refusing Aboriginal title. Trutch's oppressive method made for easy settlement and for that reason, among others, BC became desirable for Canadian confederation.³⁹

Trutch's behavior speaks to both Hobbesian and Lockean influence. In regard to Hobbes' vision of a unitary sovereign power, the government would be absolutely justified in changing the policies towards the Aboriginal population; however, treating the majority of the population as savages would not be rational on Trutch's part as a man. In revoking the practices grounded in the

Douglas treaties and joining confederation Trutch forced a more traditional style social contract onto the Indigenous population. Under confederation Indigenous peoples were now part of a social contract with Trutch as the sovereign, although not an ideal unitary sovereign. For Hobbes, no one has individual rights, hence, Trutch would not be guilty of revoking land claims unjustly. However, one could argue that Trutch was granting such restrictively small parcels of land to the Indigenous peoples that he was threatening their ability to survive thus, not doing his job as a sovereign. In turn, Trutch put the province at risk of a rebellion which could have resulted in a return to the state of nature. As for Locke, these types of actions are based on the premise of positive law, that is, law created by the government. Understanding that there was no positive law surrounding the treaties, the land was justifiably deemed empty, and thus, no jurisdiction was required to appropriate the land.⁴⁰ Considering that the Aboriginal population at the time was still larger than the settler portion of citizens, this logic is inconsistent with Locke's desire for the majority to be the body that decides on positive law. Locke wrote:

For, when any number of men have, by the consent of every individual, made a community, they have thereby made that community one body, with a power to act as one body, which is only by the will and determination of the majority...it is necessary the body should move that way whither the greater force carries it, which is the consent of the majority, or else it is impossible it should act or continue one body, one community...⁴¹

Initially one may mistake Locke's statement as proof that Trutch was acting out of the Hobbesian tradition as an absolute sovereign. However, with further analysis of *Terra Nullius* we can see that he, more closely, followed Locke's means for appropriating property.

Along with the right to property there are limits to how much property one can acquire. As discussed earlier, labour is the means by which one obtains property. It has been established that in order to preserve oneself they must put their labour into the land. However, Locke claimed that it is not one's property if they have so much that they cannot manage it all.⁴² To let portions of land go to seed instead of improving it and making it fruitful would make that land as good as empty. This is exactly what the term *terra nullius* means, 'nobody's land'. If land must be worked to be owned, then land that does not have labour going into it is available for appropriation. Property is a natural right stemming from the fact that God gave man the land to live off of therefore, his definition of property is moral and not civil or legal ownership. Taking advantage of the, "naturalness in the relation between labour and property," along with moral underpinnings made it easy for a wide Christian population to understand and embrace property rights in practice.⁴³ This explains why there were no cries of injustice from the settler population which previously perceived the Aborigines as very intelligent and qualified for land title. It is the link between labour and industriousness that justified land appropriation and title for Englishmen in America. Following that God gave the land to man in common but intended that it be used and improved linked labour to industrious and rationality for Locke.⁴⁴

Not only did Locke use this logic to justify the appropriation of native lands to settlers, he explicitly made a connection between non-industriousness and Amerindians, writing that "there cannot be a clearer demonstration of anything than several nation of the Americans are of this... for want of improving it by labour, have not one hundredth part of the conveniences we enjoy, and a king of a large and fruitful territory there feeds, lodges and is clad worse than a day labourer in England".⁴⁵ The agriculturalist argument became the best justification that could be given for abolition of Indigenous land title in BC and all throughout the British colonies.⁴⁶ As Arneil wrote:

In essence Locke is not excluding Amerindians from the 'industrious and rational' criteria. On the contrary when the Indian adopts an agrarian from of labour, a sedentary lifestyle and private appropriation while recognizing the Christian God and developing English forms of education and culture, he will qualify under both criteria and enjoy the right to share equally in God's gift;⁴⁷

This is what Douglas was trying to do in his last years as leader of BC. Given the tight funding for treaty making and the desire to respect the rights of Aborigines, Douglas tried to assimilate the BC tribes, making it impossible for Britain to refuse their rights any longer. Despite Douglas' failures in each system, his was a just effort to try and provide 'enough and as good', a limit that Trutch felt did not apply to BC's Indigenous peoples.

After confederation, Trutch could no longer act as British Columbia's sovereign, but rather, since he was leader of a devolved power, he had to follow Canadian legislation and commitments. In 1874, the Liberal prime minister, Alexander Mackenzie unilaterally decided that BC was not properly addressing the basic need of its Indigenous citizens, thus, forcing Trutch to enlarge British Columbian reserves.⁴⁸ Trutch complied, after much dispute, but still only granted the minimum amount of land that was legally permissible. By the end of his administration, in 1899, Trutch left BC with no treaties and ninety reserves that averaged 183 acres each, regardless of how many families were living on them.⁴⁹ Just as Douglas did, the Canadian government attempted to follow the Lockean notion of 'as good left'. Because of the physical distance from British authority, Trutch acted as an absolute sovereign in a Hobbesian fashion until confederation when his power was considerably diminished. Locke believed in the importance of separation of power to check tyrannical the actions of leaders hence, confederation was the type of outcome he would have hoped for from a well organized commonwealth.⁵⁰

Although the revocation of Indigenous land rights was justified by *terra nullius*, the question of how an Aboriginal rebellion did not occur remains. Accepting that British Columbian colonization was more deeply influenced by Locke's *Second Treatise of Government* than Hobbes' *Leviathan*, the notion of a rebellion would not be ridiculous. Although the appropriation of native land to Englishmen was just given that the Indigenous population was not practicing means to own private property it is interesting that, being the majority, they did not find Trutch's actions tyrannical and thus unjust. For Locke, *terra nullius* would make such a rebellion unjust given that no Aboriginal rights existed. However, even if the Aboriginal population could have launched a defensible rebellion, Locke argues that it would have been unlikely because "people are not so easily got out of their old forms as some are apt to suggest. They are hardly to be prevailed with to amend the acknowledged faults in the frame they have been accustomed to."⁵¹ His logic was not adequate for early BC because Trutch's actions were sudden and the Indigenous population had not been part of the social contract long enough to have built inertia sufficient enough to cause complacency.

The situation here is interesting because it reflects an inaction on the part of the Amerindians that would follow Hobbes' advice given in *Leviathan*. As Hobbes desired a unitary sovereign whose sole job was to protect the lives of the commonwealth's citizens, he would have considered the lack of rebellion a display of rationality on the part of the Aboriginals. Moreover, he would find Trutch's actions, systematically oppressing the majority of BC's population, irrational. In writing that "the end of Obedience is Protection; which, wheresoever a man seeth it, either in his own, or in another sword, Nature applyeth his obedience as man seeth it, either in his own, or in another sword, Nature applyeth his obedience to it, and his endeavour to maintaine it," Hobbes says that the lack of resistance shows a very salient notion of Hobbesian rationality in the Aboriginal citizens.⁵² Hobbes portrays people as generally irrational, feeling they deserve rights which the

sovereign has not responsibility to grant them. Furthermore, he envisions private property as a dangerous privilege because this type of power external to the state would, with time, act as a disease to the functionality of the commonwealth.⁵³ By the time Trutch was in power it was to both the settlers and the Aboriginals understanding that private property was a human right. It is the placid nature of the Indigenous towards their loss of rights that fits Hobbes' tradition more so than Locke's.

BC's colonial history is a complex illustration of the different ethical stances colony leaders could take when organizing a new political and social order. James Douglas and Douglas Trutch both guided BC organization on Lockean tradition but the notions they chose to emphasize took the early colony on very different paths. In Lockean thought, Douglas' route of recognizing Indigenous land rights and respecting property limits to leave 'as good and enough' was equally as just as Trutch's use of *terra nullius* and denial of Aboriginal title. The social contract made was a textbook example illustrating the creation of a commonwealth in order to facilitate the industriousness and thus preservation of mankind, practices already present in the state of nature. Douglas proved to have an opinion of Aboriginals as equals, which resonates much more closely to today's idea of the relationship between BC citizens of European decent and First Nations peoples. Unfortunately, due to a lack of legislation, Douglas' legacy is one of small reserves, denial of land title and less protection than First Nations in the rest of Canada were able to obtain. The leadership and the citizenry of BC practiced both Hobbesian and Lockean principles but ultimately the importance of individual rights, especially that of property, shows the weight of Locke's influence. This influence led British Columbian treaty legislation and Aboriginal rights to be as they are today.

Notes

- ¹ Paul Tennant, "Aboriginal Peoples and Aboriginal Title in British Columbia Politics" In *Politics, Policy and Government in British Columbia* Kenneth Carty Ed., (Vancouver: UBC Press, 1996), 47.
- ² Mitja Durnik, "Property Rights as a "Consequence" of Economic System: The Case of John Locke and Canadian Aboriginals." *Innovative Issues and Approaches in Social Sciences (IIASS)* 1.1 (2008), 83; Tennant, "Aboriginal Peoples and Aboriginal Title" 47.
- ³ Ibid., 48; Durnik, "Property Rights", 82.
- ⁴ British Columbia, *Paper Connected with the Indian Land Question, 1850-1875*, (Victoria: Richard Wolfenden, 1876), 13-14.
- ⁵ Paul Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1848-1989* (Vancouver, UBC Press), 77.
- ⁶ Thomas Hobbes, *Leviathan* Ed Herbert W. Schneider (Indianapolis: the Liberal Arts Press, 1958), 78
- ⁷ Lewis, "Recognizing Rights", 50.
- ⁸ John Locke, *The Second Treatise of Government* Ed. Peter Laslett (Oxford: Oxford University Press, 1988), para 21
- ⁹ Ibid., para 5-6
- ¹⁰ Hobbes, *Leviathan*, 77.
- ¹¹ Ibid.
- ¹² Tennant, *Aboriginal Peoples and Politics*, 77.
- ¹³ King George III, *Royal Proclamation 1763*
- ¹⁴ Durnik, "Property Rights", 74.
- ¹⁵ Tennant, *Aboriginal Peoples and Politics*, 20.
- ¹⁶ Nicholas Southwood, "A Deliberative Model of Contractualism" *Politics Philosophy Economics* 7, no. 2 (2008): 184.
- ¹⁷ Ibid.
- ¹⁸ Ibid., 185; Thomas J. Lewis. "Recognizing Rights; Hobbes on the Authority of Mothers and Conquerors" *Canadian Journal of Political Science/ Revue canadienne de science politique* 36, no. 1 (2003): 40.
- ¹⁹ Lewis, "Recognizing Rights", 50.
- ²⁰ Olive Patricia Dickason, *Canada's First Nations: A History of Founding Peoples from Earliest Times* (Don Mills: Oxford University Press, 2002), 238.
- ²¹ British Columbia, *Paper Connected with the Indian Land Question, 1850-1875*, 13-14.
- ²² Peter A. Cummings & Neil H. Mickenber, *Native Rights in Canada*, (Toronto: General Publishing, 1972), 177; Tennant, *Aboriginal Peoples and Politics*, 25.

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- ²³ Tennant, "Aboriginal Peoples and Aboriginal Title", 48.
- ²⁴ Ibid.
- ²⁵ Dickason, *Canada's First Nations*, 240.
- ²⁶ Ibid., 219; Tennant, "Aboriginal Peoples and Aboriginal Title", 48.
- ²⁷ Cummings, *Native Rights in Canada*, 173.; Dickason, *Canada's First Nations*, 219.
- ²⁸ Hobbes, *Leviathan*, 82.
- ²⁹ Ibid., 109.
- ³⁰ Locke, *The Second Treatise of Government*, para 24.
- ³¹ Ibid., para 32.
- ³² Barbra Arniel, "John Locke, Natural Law, and Colonialism" *History of Political Thought* 13, no. 4 (1992): 603.
- ³³ Locke, *The Second Treatise of Government*, para 26.
- ³⁴ Robin Fisher, *Contact and Conflict: Indian-European Relations in British Columbia 1774-1890*, (Vancouver: UBC Press, 1977), 156.
- ³⁵ Thomas R. Berger, *Fragile Freedoms: Human Rights and Dissent in Canada*, (Toronto: Clarke, Irwin, 1981), 222.
- ³⁶ Dickason, *Canada's First Nations*, 241; Tennant, "Aboriginal Peoples and Aboriginal Title", 48.
- ³⁷ Ibid., 46.
- ³⁸ Ibid., 49; Cummings, *Native Rights in Canada*, 176.
- ³⁹ Tennant, "Aboriginal Peoples and Aboriginal Title", 49.
- ⁴⁰ James Tully, "Placing the *Two Treatise*" *Political Discourse in Early Modern Britain*, In Eds Nicholas Phillipson and Quentin Skinner, (Cambridge: Cambridge University Press, 1993): 257.
- ⁴¹ Locke, *The Two Treatise of Government*, II para 96.
- ⁴² Ibid., para 42.
- ⁴³ Allen John Simmons, *Lockean Theory of Rights*, (Princeton: Princeton University Press, 1992), 224.
- ⁴⁴ Locke, *The Two Treatise of Government*, para 34.
- ⁴⁵ Ibid., para 41.
- ⁴⁶ David Armitage, "John Locke, Carolina and the Two Treatises of Government" *Political Theory* 32, no.5 (2004): 618.
- ⁴⁷ Arniel, "John Locke, Natural Law, and Colonialism", 587.
- ⁴⁸ Canada, *Report of the Royal Commission on Aboriginal Peoples*, (Ottawa: Minister of Supply and Services Canada, 1996), 774.
- ⁴⁹ Ibid.
- ⁵⁰ Locke, *The Two Treatise of Government*, para 143.
- ⁵¹ Ibid., para 223.
- ⁵² Hobbes, *Leviathan*, 144.
- ⁵³ Ibid., 213.