THE ROADBLOCK TO RECONCILIATION: CANADA'S ORIGIN STORY

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In 2017 we will celebrate the 150th anniversary of Confederation. The origin story of Canada will be the starting point of honouring Canada's two founding peoples, the British and the French. Their BNA Act[1] will be cited as the constitutional bedrock of our British/French Canadian identity as well as the foundation for the free and democratic nation we believe ourselves to be.

But here's the problem: our origin story is incomplete and misleading. In 1996, the Royal Commission on Aboriginal Peoples wrote in its report, "A country cannot be built on a living lie."[2] This lie, I argue, is in the story of Canada's origins and it must be corrected if we are to become the nation we think we are and create the necessary conditions for reconciliation with Canada's first peoples.

Fifty years ago, on the occasion of the 100th anniversary of Confederation, Chief Dan George, acclaimed author, poet, actor and First Nations leader, rained on Canada's Confederation parade. He silenced a crowd of 32,000 at Empire Stadium in Vancouver with his scathing "Lament for Confederation" describing Canada's horrific treatment of indigenous peoples.[3] This paper builds on Chief Dan George's lament—through this simple but bold proposal—that we should celebrate the 150th anni-

1 Constitution Act, 1867 30 & 31 Vict, c.3(UK) reprinted in RSC 1985, App1, no 5.

2 See RCAP report, available at: <https://qspace.library.queensu.ca/bitstream/1974/6874/4/RRCAP2_combined.pdf> at page 1.

3 *Vancouver Sun*, This day in history, July 1, 1967, Chief Dan George's Speech Lament for Confederation on Canada's 100th year "birthday." http://media.knet.ca/node/22507

versary by officially telling the truth about Canada's founding. This can be done through an Act of Parliament, a Proclamation, or a Parliamentary motion.

In support of the proposal, the paper addresses five themes:

- the importance of origin stories;
- how Canada's misleading origin story was justified;
- how Canada's origin story became public policy;
- the harms that Canada's origin story has caused;
- the implications of correcting the story.

The importance of origin stories cannot be underestimated. An "origin story" explains how a culture, or in this case a nation, came into being. An origin story serves both epistemological and ontological functions.[4]

Every country, every community, every family, has a story of origin to express who they are and where they have come from. Connecting our past to the present and explaining its relevance to everyday life, helps us to navigate our world, and to consider deep ethical questions about how we should conduct ourselves. A society with no stories, or stories that exclude some of its members, creates alienation and disaffection—like denying a person a name, or a family, its roots.

When origin stories describe the beginnings of politics and power, they serve as scripts for citizenship, a form of consent to a political vision.[5]

For the past several years, our country has gone through a painful existential crisis with respect to our origin story and our relationship with indigenous peoples. The Indian Residential School Settlement Agreement, the apology in Parliament, and the Report of the Truth and Reconciliation Commission—all have revealed shocking facts that contradict commonly held beliefs about Canada, its values, and what it means to be Canadian. The disconnect between our comfortable origin stories and the cultural genocide[6] of indigenous Canadians that went on for almost two centuries destabilizes everything from our understanding of ourselves and our history to our international reputation. The great American writer James Baldwin's insight, that "People are trapped in history and history is trapped in them,"[7] captures our identity crisis and calls for some explanation and resolution.

Canada's commonly understood story of origin pro-

4 David Christian, "Big History: Why we need to teach the modern origin story," *The Conversation*, http://theconversation.com/big-history-why-we-need-to-teach-the-modern-origin-story-10405, Nov 6, 2012.

5 Joanne H. Wright, *Origin Stories in Political Thought, Discourses on Gender, Power, and Citizenship*, University of Toronto Press Scholarly Publishing Division, 2004.

6 For a discussion of the use of the term, see "Residential school system was 'cultural genocide' most Canadians believe, according to poll," Laura Hensley, *National Post*, July 9, 2015, page 1.

7 James Baldwin, "Stranger in the Village," http://genius.com/4803827. "Stranger in the Village" first appeared in *Harper's Magazine* in 1953, and then in the essay collection *Notes of a Native Son* in 1955.

vides that our country came into being on the first of July in 1867, founded by 36 Fathers of Confederation who represented two peoples: the English and the French.[8]

A constitution, *the British North America Act*[9], set out the governance structure for the new country, including protection of the British and French languages, cultures and the civil rights.[10] As Canada welcomed immigrants from backgrounds other than British or French, multiculturalism was added to the origin story.[11] The fundamental character of the country, however, remained rooted in the British and French identities.

In 1963, for example, Prime Minister Lester Pearson convened the Royal Commission on Bilingualism and Biculturalism, whose mandate included recommending "what steps should be taken to develop the Canadian Confederation on the basis of an equal partnership between the two founding races, taking into account the contribution made by other ethnic groups to the cultural enrichment of Canada."[12] Commenting on its mandate, the Commission stated, "the Commission will not examine the question of the Indians and the Eskimos. Our terms of reference contain no allusion to Canada's native populations. They speak of 'two founding races,' namely Canadians of British and French origin, and 'other ethnic groups,' but mention neither the Indians nor the Eskimos. Since it is obvious that these two groups do not form part of the 'founding races,' as the phrase is used in the terms of reference, it would logically be necessary to include them under the heading 'other ethnic groups,'[13] but that too, is unclear." The composition of the Commission itself, four French Canadians (three from Quebec) and four Anglo-Saxons (three from Central Canada) reflected the notion of "two founding races." Two representatives of the "other ethnic groups," but no indigenous persons, were appointed.

Indigenous Canadians point out that unless Canada's origin story acknowledges their contributions to the founding of the nation, it perpetuates a lie.[14] They point to the constant presence of their nations for thousands of years throughout Canada. To ignore the impact of hundreds of indigenous nations with distinct cultures, and unique knowledge and understanding of this part of the world, is

8 See Kenneth McRoberts, "English Canada and Quebec: Avoiding the Issue," http://robarts.info.yorku.ca/files/lectures-pdf/rl_mcroberts.pdf. Roberts points out that the notion that Canada is composed of two founding peoples or nations was endorsed by all three federal parties.

9 *Constitution Act*, 1867 (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5 [hereinafter Constitution Act, 1867]. Several more BNA Acts followed.

10 Ibid, s. 133

11 Canadian Multiculturalism Act R.S.C., 1985, c. 24(4th Supp.)

12 http://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/dunton1967-1970-ef/dunton1967-70-vol1-eng/table-eng.pdf at p. 173

13 See RCBB, available at: < http://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/dunton1967-1970-ef/dunton1967-70-vol1-eng/dunton1967-70-vol-part2-eng.pdf> at page XXVII.

14 Supra, note 2

irrational and mendacious. Indigenous populations had laws, forms of governance and spiritual traditions. Indigenous knowledge systems, languages, and forms of social organization influenced the way the settlers survived and prospered. The indigenous population provided land for settlers, entered into trade agreements and peace and friendship treaties with them, and fought alongside them in colonial wars.

From an economic perspective, the fur trade, the mainstay of colonial economies for more than 250 years, relied on the participation and cooperation of indigenous peoples for its existence. The fur trade opened the continent to exploration and settlement, missionary work, and social and other economic development. But by far the most significant contribution to the building of the Canadian nation and its economy were the vast tracts of land Canada acquired through treaty negotiations with the indigenous nations—lands that have produced immense riches, making Canada one of the wealthiest nations in the world. And yet once the treaties were signed, the policy of mutual recognition and respect became one of eliminating indigenous nations as legal and political entities.

It is no surprise, then, that at the Confederation table in 1867 there were no chairs for indigenous peoples. Instead of recognizing indigenous rights to languages, cultures, laws and civil rights in the BNA Act, the Fathers of Confederation gave the federal government total control over "Indians and lands reserved for the Indians."[15]

Having relegated the indigenous peoples to virtual non-citizen status, it became easy for the Fathers of Confederation and subsequent governments to promote the myth that only the British and the French were responsible for the foundation of Canada.

Shortly after Confederation, the first *Indian Act*[16] passed, operationalizing the structural inequality that persists to this day. The Act prohibited, *inter alia*, voting, the hiring of lawyers to fight for land rights, fundraising for political reasons, travelling off reserve and cultural activities, and denied Indian status for those who attended university.

The racially unequal treatment of indigenous peoples was legally and philosophically justified by the governors of Canada through the use of the discovery doctrine and the formal equality principle. The doctrine of discovery[17] was the legal fiction whereby Europeans claimed rights of sovereignty and ownership of regions they claimed to "discover." Under this legal fiction, indigenous peoples could not claim ownership of their lands, but only rights of occupation and use.

15 Section 91(24) of the Constitution Act, 1867) Aboriginal Affairs and Northern Development Canada (AANDC), formerly known as Indian and Northern Affairs Canada (INAC), has been the main federal organization exercising this authority (OAG 2011-06-04 p. 4).

16 https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/1876c18_1100100010253_eng.pdf

17 Jennifer Reid, "The Doctrine of Discovery and Canadian Law," *Canadian Journal of Native Studies* 2(2010) 335-359. http://www3.brandonu.ca/library/cjns/30.2/06reid.pdf

The formal equality principle derives from the teachings of Plato and Aristotle,[18] whose definition of equality was that likes were to be treated alike. Those who were different from the dominant comparator group could be treated differently. Under this formula, discrimination against common men, slaves and women did not raise any equality concerns.

The Fathers of Confederation embraced both the formal equality principle and the doctrine of discovery. Formal equality combined with the doctrine of discovery assured and justified the perpetual dominance of the British and French founders over the land and the permanent subordination of the indigenous peoples who occupied it.

The Aristotelian formal equality principle underpinned the imposition of the *Indian Act*. As long as all Indians (who were different than non-Indians) were treated the same under the Act, the formal equality standards were satisfied. Similarly, the Indian Residential Schools policy that treated Indian children differently compared to non-native children would not have set off alarm bells, as it was central to the operating principles of government.[19] The formal equality theory was finally rejected by the Supreme Court of Canada in 1989.[20] The Court said the concept is seriously deficient in that if it were to be applied literally, it could be used to justify the Nuremberg laws of Adolf Hitler since similar treatment was contemplated for all Jews.[21] The Court went on to say, "It was a wise man who said that there is no greater inequality than the equal treatment of unequals."[22] The discovery doctrine, too, has been discredited by all major human rights organizations and the United Nations as a socially unjust, racist concept in violation of basic and fundamental indigenous human rights.[23]

As a result of these discredited doctrines, we are now trapped in the narrow framework of an origin story that has left indigenous Canadians marginalized, dispossessed and unrecognized, and the rest of us intellectually debilitated, morally disempowered and personally depressed, wondering who we really are.

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18 *Ethica Nichomacea*, trans. W. Ross, Book V3, at p. 1131a-6 (1925). Also Strauss and Cropsey's *History of Political Philosophy*, University of Chicago Press, 1987. press.uchicago.edu/ucp/books/book/chicago/H/bo5973605.html—see summary at http://pegasus.cc.ucf.edu/~stanlick/equality1.html

19 Nicholas Flood Davin, MP, author of *The Davin Report*, wrote in 1879, shortly after confederation, that the government must carry out the assimilationist Indian residential school policy, "until there is not a single Indian in Canada that has not been absorbed into the body politic."

20 *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143.

21 Ibid, at p. 166

22 Quoting Frankfurter J. in *Dennis v The United States* 339 U.S. 162 (1950) at 184.

23 (Miller 2006: 4). Although there were antecedents to the doctrine, it was Pope Alexander VI who applied them to the Atlantic World of the 15th century, in a two-part papal bull known as *Inter caetera*. The Doctrine of Discovery was the legal means by which Europeans claimed rights of sovereignty, property and trade in regions they allegedly discovered during the age of expansion. These claims were made without consultation with the resident populations in these territories—the people to whom, by any sensible account, the land actually belonged. The Doctrine of Discovery is a critical component of historical relations between Europeans, their descendants and Indigenous peoples; it underlies their legal relationships to this day, having smoothly transitioned from Roman Catholic to international law.

The division between indigenous and non-indigenous peoples in Canada has grown increasingly deeper and more hostile since Confederation.[24] Fuelling the anger and dissatisfaction with the status quo are disproportionate incarceration rates, suicide, poverty, high school drop-out rates, missing and murdered indigenous women, lower life expectancy, poor health, unemployment and addictions.[25]

The opportunity for Canadians to set the record straight is upon us. Our true origin story is a powerful narrative that, if officially adopted, will become part of the shared story of every Canadian for generations to come, and will open up possibilities for genuine and lasting reconciliation. The new federal government's mandate letters are encouraging. For example, Prime Minister Justin Trudeau's letter to Caroline Bennett, the Minister of Indigenous and Northern Affairs, states: "Your overarching goal will be to renew the relationship between Canada and Indigenous Peoples. This renewal must be a nation-to-nation relationship, based on recognition, rights, respect, co-operation, and partnership." The letter also provides that among the minister's top priorities is to support the work of reconciliation.[26]

Recognition and reconciliation go hand in hand. For the Parliament of Canada to recognize indigenous peoples as equal partners in the founding of the nation would be a powerful, long overdue recognition and a profound gesture of reconciliation. It would be a moment for the ages all Canadians could celebrate.

24 Douglas L. Bland, *Time Bomb: Canada and the First Nations*, Dundurn Press. 2014. Recent history has seem The Idle No More movement, the Oka crisis, the Royal Commission on Aboriginal Peoples, the United Nations Report of James Anaya, years of acrimonious litigation, protests and unresolved land claims, the report on missing and murdered Aboriginal women, and the Truth and Reconciliation Commission Report—all of which say the same thing: the status quo is not tolerable for indigenous peoples in Canada.

25 See for example the Report of Amnesty International, *Indigenous Peoples in Canada*, http://www.amnesty.ca/our-work/issues/indigenous-peoples/indigenous-peoples-in-canada

26 See more at: http://pm.gc.ca/eng/minister-indigenous-and-northern-affairs-mandate-letter#sthash.TSEKAfir.dpuf