

**ROADBLOCKS TO RECONCILIATION: CANADA’S ORIGIN STORY AND OTHER  
MISGUIDED THEORIES**

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In 2017, Canada celebrated the 150<sup>th</sup> anniversary of Confederation. It was an occasion to recall the story of the BNA Act, the Fathers of Confederation, and the British/French duality that together formed the bedrock of the free, equal, diverse democracy we believe ourselves to be.

But here’s the problem: our origin story is false. In 1996, the Royal Commission on Aboriginal Peoples observed, “A country cannot be built on a living lie.” After more than 150 years in denial, coming to terms with our true origin story is long overdue. Recognition that Indigenous peoples were founders of the nation must be recognized in a formal, legal way. Only then will there be a solid foundation for Canada to reconcile its past and lay the foundation for a new relationship with its First Peoples.

Origin stories are important. Every country, every community, every family, has an origin story to express who they are and where they have come from. A nation’s

origin story serves as a script for citizenship; it helps citizen navigate their world, form relationships and solidify their identity. But when a nation's origin story ignores the existence and contributions of those integral to its founding, it can create a deep sense of alienation, isolation and hostility.

The accepted story of Canada's origin tells us the nation came into being on July 1, 1867. Thirty-six "Fathers of Confederation" representing the British and the French colonial powers signed the *British North America Act*, setting out the governance structure for the new country. Significantly, it expressly protected the English and French languages, cultures and civil rights.

Indigenous Canadians are invisible in this origin story even though they were present on the land for thousands of years prior to Confederation and without their contributions Canada would not be the country it is today. For example, the fur trade, the backbone of the economy for more than 250 years, depended entirely upon Indigenous hunters, oarsmen, guides and traders for its viability. Without the fur-trade, the colonial ambitions of exploration, settlement, and economic and social development would have failed miserably. But by far the most significant contribution was the vast tracts of land acquired through treaty negotiations with the Indigenous peoples — lands that have produced immense riches making Canada one of the wealthiest nations in the world. But instead of recognizing their contributions and having them at the Confederation table, the so-called "Fathers of Confederation" betrayed their Indigenous partners, relegating them to non-citizen status. The BNA Act ignored their languages, cultures, laws and civil rights. For more than 150 years, the unequal distribution of rights and the imposition of non-citizen status on Indigenous peoples allowed the "foundation myth" to be perpetuated and ingrained in the Canadian mentality.

To justify their racially unequal treatment of Indigenous peoples, the British and French colonizers used philosophical and legal justifications. To meaningfully disengage from past systemic wrongs, it is necessary for the wrongdoer to re-think the philosophy, rationale and justification that supported past egregious behavior. The treatment of the First Peoples was not planned and operationalized without legal and philosophical justification. The two most important justifications for the systematic discrimination and cultural genocide of Indigenous peoples in Canada were the discovery doctrine and the formal equality principle.

The Doctrine of Discovery was the self-serving legal principle whereby Europeans claimed rights of sovereignty and ownership of regions they claimed to “discover.” Under this doctrine, Indigenous peoples could not claim ownership of their lands, but only the right to occupy and use the land. The Doctrine of Discovery originated in 1493 when Pope Alexander VI issued a papal bull in which he authorized Spain and Portugal to colonize the Americas and its native peoples as subjects. The bull decreed that any land not inhabited by Christians was available to be "discovered," claimed and exploited by Christian rulers, and declared that "the Catholic faith and the Christian religion be exalted and be everywhere increased and spread, that the health of souls be cared for and that barbarous nations be overthrown and brought to the faith itself."

The decree asserted the rights of Spain and Portugal to colonize, convert and enslave the Indigenous peoples inhabiting the Americas, justified the explorers' claims on land and waterways and promoted Christian domination and superiority. This "Doctrine of Discovery" subsequently became the legal tool justifying all European claims in the Americas as well as the foundation for western expansion

in the United States. In 1823, in the U.S. Supreme Court case of *Johnson v. McIntosh*, Chief Justice John Marshall's opinion in the unanimous decision held "that the principle of discovery gave European nations an absolute right to New World lands." The Doctrine of Discovery has never been renounced. It remains the basis for Canadian law and as such continues to impact Indigenous peoples. The formal equality principle goes back to the teachings of Plato and Aristotle, 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 without offending the equality principle. So under this formula, discrimination against slaves, women and Indigenous peoples was not considered unequal treatment.

In the Canadian context, formal equality combined with the Doctrine of Discovery assured the perpetual dominance of the British and the French founders over the land and the permanent subordination of the Indigenous peoples who occupied it. Formal equality allowed the imposition of the *Indian Act*. As long as all Indians were treated the same under the Act, the formal equality standards were satisfied. Similarly, the Indian Residential Schools policy that treated Indigenous children differently by destroying their family bonds, their languages and cultures, and ultimately their identities as compared to non-native children, would not have raised eyebrows or set off alarm bells, as formal equality was the operating principle underpinning it.

The flip side of formal equality is assimilation. Assimilation was seen as a solution to the problem of difference, and in the Canadian context, as the colonial settlements grew, "Indians" were seen as "a problem" that needed fixing through forced assimilation. Nicholas Flood Davin, MP, wrote *The Davin Report* in 1879,

shortly after Confederation. In it, he explicitly dictated the assimilation imperative saying the government must carry out such policies “until there is not a single Indian in Canada that has not been absorbed into the body politic.” The Indian Residential Schools combined the formal equality principle with the assimilation policy to create the most egregious human rights violation in Canadian history.

The impacts of these wrongheaded and discriminatory theories and policies based on them have been a corrosive reality with a very high cost: the Oka crisis, the *Idle No More* movement, scathing United Nations reports, years of acrimonious litigation, roadblocks, unresolved land claims, missing and murdered aboriginal women and girls, an epidemic of Indigenous suicides, unmarked graves, arsons, the Report of the Truth and Reconciliation Commission — all say the same thing: that the division between Indigenous and non-Indigenous peoples in Canada has grown deeper and more hostile since Confederation. The paradox here is that as this divide grows deeper, our common destiny binds us ever more tightly together by imperiling all of us.

Put differently, the consequences of non-recognition have been harmful and costly both to Indigenous peoples and to all other Canadians. The human and economic costs of disproportionate incarceration, poverty, high school dropout rates, lower life expectancy, poor health, unemployment, addictions and an epidemic of suicides are too big a price to pay to maintain a status quo that cannot be morally, ethically or legally justified.

The Supreme Court of Canada finally rejected the formal equality doctrine in 1989. The court said the concept could be used to justify the Nuremberg laws of Adolf Hitler because similar treatment was contemplated for all Jews who were different

than Germans. The discovery doctrine too, has been widely discredited as racist and in violation of basic and fundamental Indigenous human rights. Had the British and French Fathers of Confederation not been misguided by assimilationist values, formal equality and the Doctrine of Discovery, we would not now be trapped in a 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.

The opportunity to set the record straight remains upon us. Canada's true origin story is a powerful narrative that could not only be the shared story of every Canadian for generations to come, it could open up possibilities for lasting reconciliation and set the stage for a genuine nation-to-nation relationship.

*A version of this article was published in 2016, prior to the 150<sup>th</sup> anniversary of Confederation.*