WHO FOUNDED CANADA?

RANDY BOSWELL

JOCELYN MACLURE

JEAN TEILLET

JACK JEDWAB

SEBASTIEN GRAMMOND

KATHLEEN MAHONEY

AVIGAIL EISENBERG

TOM FLANAGAN

CHARMAINE A. NELSON

TABLE OF CONTENTS

LETTERS

Comments on this edition of Canadian Issues?
We want to hear from you!

Canadian Diversity / ACS
1822A, rue Sherbrooke Ouest
Montréal, Québec H3H 1E4

Or e-mail us at <james.ondrick@acs-aec.ca>

Your letters may be edited for length and clarity.

🐦 **@CANADIANSTUDIES**

Cover image by Paula Provost - www.paula-provost.com

THE VEXING QUESTION OF WHO FOUNDED CANADA

RANDY BOSWELL

Guest editor Randy Boswell is a journalism professor at Carleton University and a writer specializing in Canadian history. From 2003 to 2013, he was a national reporter with *Postmedia News* covering issues and developments linked to Canada's past.

We know that the 1867 Confederation deal gave impetus to the idea that the country had two founding nations—the French-Canadian and English-Canadian inhabitants of the original four provinces. More than a century later, by the time of the 1982 patriation of the Constitution and adoption of the Charter of Rights and Freedoms, Canada—long since transformed into a vast land bounded by the Atlantic, Pacific and Arctic oceans—was being styled a nation of three founding peoples: French, English and Aboriginal. More recently, along the same lines, there has been a push to formally redefine modern Canada as the legacy of three founding nations, strengthening the position of Indigenous peoples within what philosopher John Ralston Saul has described as the "triangular reality" of Canada's genesis and evolution.

The terms employed in conceptualizing Canada's origins are contentious, and we shouldn't be sur-prised. They are, in a sense, sweeping generalizations about when Canada was founded, who did the founding and what, even, is meant by "Canada" or "nation". How are "nations" different than "peoples"? Can a nation be comprised of multiple sub-nations? Where do the "founding" provinces fit in? What, indeed, does "founding" actually mean? There are more questions: Can provincial boundaries delineate "peoples" or "nations"? How do language, ethnicity, religion, culture and citizenship intersect with the questions above? How do official bilingualism and multiculturalism relate to such problems? Where do the Irish-Canadian, Chinese-Canadian, Jewish-Canadian, Muslim-Canadian communities and myriad other "hyphenated" groupings fit into the "founding" framework?

Our intention in curating essays for the present edition of *Canadian Issues/Thèmes Canadiens* was to have insightful contributors confront some of these

questions and offer a wide range of perspectives on the "founding nations" of Canada. We are grateful that they have done just that, supplying an array of fresh ideas—let's call them "founding notions"—on a subject that is at least as old as Confederation and, like Canada itself, enduringly vexing.

Jack Jedwab, executive vice-president of the Association for Canadian Studies, sets the frame for discussion with the results of a nationwide survey that shows there is no clear consensus among Canadians about whether the country is best imagined as a "bicultural compact" between French and English, a tripartite entity that includes indigenous peoples as a founding force, or a political pact between four founding provinces. At the same time, Canadians are most likely to characterize the "predominant vision of the federation" as a "multicultural country with two official languages."

Among the country's founding peoples, insists McGill University professor Charmaine A. Nelson, were black Canadians—both enslaved and free—whose contributions to the settlement and development of the nation have been, and will continue to be, overlooked unless "another paradigm" displaces the traditional model of thinking about how Canada came to be.

University of Calgary law professor Kathleen Mahoney, a major architect of the Truth and Reconciliation Commission, argues that the "living lie" that Canada was the product of "two founding peoples, the British and the French," must be directly challenged and formally corrected—"through an Act of Parliament, a Proclamation, or a Parliamentary motion," ideally during the Canada 150 celebrations in 2017—to recognize First Peoples as

pivotal partners in nation-building. "The indigenous population provided land for settlers," she states, "entered into trade agreements and peace and friendship treaties with them, and fought alongside them in colonial wars."

Dr. Avigail Eisenberg, University of Victoria political scientist and expert in indigenous governance, calls attention to the risk of even looking for founding peoples or moments in Canada's past when the country's present challenges—including ongoing struggles over Quebec's future, multiculturalism and Indigenous rights—become even more complicated in the context of that search. "It makes better sense," she argues, "to resist a politics that treats the question of who is a founding people as settled or celebrates an episode in the past as a founding moment."

Legal scholar Sébastien Grammond examines the issue through the lens of Supreme Court rulings and highlights the creative ambiguities present in certain high court decisions that prove "compatible with a vision in which a person can belong to many peoples simultaneously"—including language-based, provincially framed, and coast-to-coast national conceptions of identity.

Philosophy professor Jocelyn Maclure argues that any search for "an unequivocal definition of the country" will prove fruitless in a Canada where "multiple identities abound." Expressing the view that "it is possible to achieve a balance between federalism, multinationalism and multiculturalism," he posits that Canada is simultaneously based on a founding pact between pre-existing governments but also on conceptions of nationhood that can encompass both "Canadian" as a whole and a "min-

ority national identity"—such as that embraced by most Québécois, or one rooted in belonging to one of the hundreds of Aboriginal nations across Canada.

To Tom Flanagan, the University of Calgary political scientist and historian, it is "pointless to debate whether a group of people does or does not constitute a nation" because such assertions of identity are ultimately bound up in the quest to secure and exercise power. Whether English-Canadian, Québécois, pan-Canadian or Aboriginal, talk of nations, he says, is best understood as a series of "rhetorical constructs" that distract and divide.

But Jean Teillet, an aboriginal rights lawyer and the grand-neice of 19th-century Métis leader Louis Riel, argues that acknowledgement of the Métis people as a founding nation of Canada—"the only Aboriginal nation that actively and positively participated in the negotiated founding of this country," she states—would underscore the fact that "we are the product today of Aboriginal exclusion," while encouraging Canadians "to tell new and better stories about Canada that include Aboriginal peoples."

QUEBEC AND CANADA: BEYOND CONSTITUTIONAL ANGST

JOCELYN MACLURE

Jocelyn Maclure is a philosophy professor at Laval University and is co-holder of the Chair in *La philosophie dans le monde actuel* (Philosophy in Today's World). His publications include the book *Secularism and Freedom of Conscience* (Harvard University Press, 2011), co-authored with Charles Taylor.

It isn't easy to define present-day Canada. The relations between the political community that is Canada and Canadian identity are too varied to allow for an unequivocal definition of the country. Canada is a political, democratic, liberal, federal, multinational and multicultural community. Charles Taylor was incontestably correct when he asked us to accept its "deep diversity." Taylor's concept of deep diversity referred not only to cultural diversity, but also to the different forms of belonging to Canada.[1] Canadian identity is a strong marker of personal identity for many Canadians. For others – like certain Quebec or Aboriginal nationalists or even citizens who are against any type of nationalism – Canada does not figure much, or at all, in their self-representation. Dual and multiple identities abound. Respecting these different forms of belonging to Canada is essential for federal stability.

The Canadian political community's structuring properties aren't mutually exclusive, be it from either a logical or a practical point of view. It is possible to achieve a balance between federalism, multinationalism and multiculturalism:

FEDERALISM: Canada is based on a sovereignty shared between sovereign levels of government that are responsible for their own areas of competence. The federal principle demands constant coordination between all levels of government. The federation will obviously function better when governments are willing to cooperate.

MULTINATIONALISM: Canada is based in part

---

1   Charles Taylor. *Rapprocher les solitudes: Écrits sur le fédéralisme et le nationalisme au Canada*, Québec: PUL, 1990.

on the relations between distinct nations. Nations anchor themselves in the collective memory and usually have a founding ethnicity, but in general they are, in the words of Benedict Anderson, "imagined communities." A great majority of Québécois see Quebec as being a distinct nation and a political community that should be able to rely on substantial legislative jurisdiction. Aboriginal peoples have always maintained and confirmed their national identities, despite colonial policies, and to this day continue to demand that their rights, both ancestral and those derived from treaties, be fully recognized. Since there are hundreds of different Aboriginal peoples and the vast majority of "Anglophone" Canadians do not identify with an Anglo-Canadian nation, the representation of a tri-national Canada founded on the relations between three founding nations is erroneous. Deep diversity means accepting that many Canadians identify with a Canadian nation encompassing all citizens, while many Québécois and Aboriginals identify primarily with a minority national identity. None of this is incompatible with Canada's stability and development.

MULTICULTURALISM: Canada is multicultural in both descriptive and prescriptive senses Thanks to the official multiculturalism policy, cultural diversity is seen as valuable and an integral part of Canadian identity. Newcomers are invited to integrate themselves, to contribute to the common good, to speak French or English, but not to completely assimilate or hide their culture of origin. It must be noted that Quebec inter-culturalism, when fully understood, shares multiculturalism's pluralist tendency with the explicit addition of a call for interactions between citizens of differing cultures.

As the philosopher Will Kymlicka has said, multinationalism and multiculturalism are not incompatible.[2] It is possible for distinct national identities to be recognized while ethnocultural diversity is made into a cornerstone of Canadian identity. It's a matter of opposing both Trudeauists and Quebec nationalists wanting to force us to choose between multinationalism and multiculturalism.

QUEBEC IN THE 21ST CENTURY

I would now like to take a deeper look at the status of Quebec in what I will call post-constitutional angst Canada. In terms of interpreting our history, I suggest that a new phase of our history began with the sovereignist movement's narrow defeat in 1995. The period between 1960 and 1995 was marked by the transformation of Quebec nationalism and the ascendancy of the sovereignist movement. The 1980 referendum was a disheartening defeat for the Yes camp, but it also served to normalize the sovereignist option and its primary vehicle, the Parti Québécois. Pierre Elliott Trudeau's ambiguous post-referendum promises and the adoption of the Constitution Act, 1982 without Quebec's consent legitimized the sovereignist movement in a new way—a legitimacy validated by the Meech (1990) and Charlottetown (1992) defeats.[3] The Yes party's near-win in 1995 can be explained by Lucien Bouchard's charisma and, in all likelihood, by the perception that the Canadian Constitution

---

2   Will Kymlicka, *Finding our Way: Rethinking Ethnocultural Relations in Canada*, Oxford University Press Canada, 1998.

3   Guy Laforest wrote a detailed thesis on the illegitimacy of the patriation of the Constitution. See his book *Trudeau et la fin d'un rêve canadien*, Québec: Septentrion, 1992.

was impossible to reform and the ROC's refusal, on two occasions, to correct the 1982 error.[4]

Twenty years later, the sovereignist movement is struggling to re-ignite the flame, and even to interest a critical mass of citizens. How did we get here? What brought about the end of our constitutional angst?

My thesis is that Quebec nationalism has proven to be, unexpectedly, the Trojan horse of Quebec sovereignty. The collective affirmationism that was at the forefront of the Quiet Revolution allowed for the development of a strong and distinctive national identity and of a French-speaking political community within the Canadian federation. Today, 63% of French Québécois identify primarily with Quebec (44.8% "primarily" and 18.2% "only"), while 9.3% of them identify primarily as Canadians (5% "primarily" and 4.2% "only").[5]

A francophone business class and technocracy were formed. University education in French was made more accessible. A francophone media, cultural and artistic scene emerged. Quebec transformed itself into a host society with enough confidence to integrate newcomers. Quebec is, in the words of sociologist Simon Langlois, a "global society."[6] Just as the creation of welfare states brought about the decline of socialism in the West, the Quiet Revolution's lasting victories correlate with the gradual downfall of the indépendantiste project. Only the intransigence of the Trudeauist vision for Canada was capable of breathing a new life into Quebec sovereignism.

One of the lessons we can draw from Quebec's identity and political reconstruction is that exercising constitutional powers is more important than observers from the 1980s and 1990s, including Charles Taylor, had thought. During those two decades of intense constitutional discussion, much weight was given to the importance of symbolically recognizing the nation of Quebec or the "distinct society" in the Canadian Constitution. It was necessary to officially and positively recognize the peoples' identities for them to develop healthy relationships with themselves, as well as a sense of belonging to the overall political community.[7]

---

4   James Tully, "Liberté et dévoilement dans les sociétés multinationales", trad. fr. Jocelyn Maclure, *Globe. Revue internationale d'études québécoises* 2(2), 1999: 13-36.

5   It must be noted that 27.8% of French Québécois identify as much with Quebec as with Canada. In the end, 77.6% of French Québécois report double identification. See François Rocher, "La mémoire de 1982 : Amnésie, confusion, acceptation, désillusion ou contestation?", presented at the symposium *30 ans après le rapatriement: L'état des lieux – Quel bilan ? – Quelles perspectives ?*, organized by AÉIQ, CREQC and AQDC, at l'UQÀM, April 12-14, 2012: 21. Online: http://aieq.qc.ca/documents/0000/0331/Rocher_F_memoire_1982_SondageLM.pdf . Last visited February 10, 2016. See also Antoine Bilodeau, Luc Turgeon, Stephen E. White and Ailsa Henderson, "Seeing the Same Canada? Visible Minorities' Views of the Confederation", IRPP Studies 56, Nov. 2015. Online: http://irpp.org/wp-content/uploads/2015/11/study-no56.pdf. Last visited February 10, 2016.

6   Simon Langlois, " Le choc de deux sociétés globales" dans Louis Balthazar, Guy Laforest et Vincent Lemieux (dir.), *Le Québec et la restructuration du Canada 1980-1992. Enjeux et perspectives*, Montréal, Éditions du Septentrion, 1991.

7   Charles Taylor, "La politique de la reconnaissance", *Multiculturalisme : différence et démocratie*, Paris, Flammarion, 1994.

Negotiations over the recognition of Quebec's distinct character, among other topics, failed twice, rather than once. Twenty years after the Yes's near victory, why doesn't this non-recognition fuel the fire of sovereignist fervour? I believe that it is because successive Quebec governments haven't ceased, throughout this period, to maximize their use of the powers given to them by the Canadian Constitution and to find creative ways of exercising self-government over issues that fall under mainly federal jurisdiction—for example, the issue of assisted suicide in the context of physician-assisted dying, which becomes a health services issue; the Quebec justice ministry's refusal to impose heavier penalties on young offenders; and Quebec's desire to create its own firearms registry. We know that one of federalism's virtues is that it is based on a counter-weight mechanism that fosters political dissent and the balance of power. Quebec didn't ratify the *Constitution Act, 1982*, but it does make use of all the means at its disposal and continuously negotiates agreements allowing it to consolidate its sovereignty.

In summary, intense constitutional policy failed miserably in the last two decades of the 20th century, but "normal" and "low-intensity" policy and Quebec's substantial autonomy within the Canadian federation nevertheless allowed the Quebec nation to assert its identity and politics. Today, the sovereignty project is failing to prove the need for its existence, which doubtlessly explains the hardened identity stance taken by many sovereignist intellectuals and politicians. We can hope that future generations of Canadian leaders will simplify the issue of the recognition of Quebec's distinct character – after all, sections 25 and 35 of the constitution recognize the specific identities and rights of Aboriginal peoples – but it is obvious that many of us in Quebec won't wait for the ROC's recognition to act.

Post-Quiet Revolution Quebec falls into neither the westphalian nation-state model, nor the "denationalized" one. Today's Quebec is globalized, that is to say it is a nation with inextricable ties to global dynamics. These dynamics create a w of challenges for all states, which must be dealt with through inter-state collaboration and the implementation of supranational powers. Every state faces problems related to climate change, international terrorism, economic stagnation, increasing inequality and accommodation of moral, religious and cultural diversity. A large majority of Québécois simply do not see how becoming a completely autonomous nation-state would help Quebec face those challenges.

Thus, we can see that the dichotomy between the visions of a Quebec unable to grow unless it achieves complete independence and that of a multicultural and *mono*national Canada is outdated. The rivals, Lévesque and Trudeau senior, were both wrong.

But that does not mean that everything is running smoothly in the Canadian federation. The decline of the sovereignist project does not seem to correlate, for the moment, with a significant increase of francophone Québécois identifying with Canada. One of Justin Trudeau's Liberal government's tasks will be to demonstrate that the federal state also belongs to the Quebec people and that it can work in their interest. Furthermore, in a civil society context, it is more important than ever to solidify a federal Can-

adian identity within the Québécois' repertory of identities by creating projects requiring collaboration and cooperation between citizens from Quebec and from other provinces and Aboriginal peoples.

THE MÉTIS NATION: THE ONLY NATION —ENGLISH, FRENCH OR ABORIGINAL— THAT ACTUALLY PARTICIPATED IN THE FOUNDING OF CANADA

JEAN TEILLET

Jean Teillet, IPC, is a lawyer specializing in Aboriginal rights law, with a particular emphasis on Métis law. She is currently writing a history of the Métis Nation, which will be published by Harper Collins in 2017. Jean is the great grand-niece of Louis Riel.

Nationalism requires too much belief in what is patently not so.—E.J. Hobsbawm

In Canada's ongoing and sentimental search for a coherent national theory, we reach for the tools of nationalism. This is revealed in the recent search for a common origin story that, if only properly explained and understood, would provide a universal organizing principle that we can all believe in and relate to. To this end, it has been suggested that we should reconsider Canada as the result of three founding nations – English, French and Aboriginal. It has a nice ring to it and the number three resonates in Christianity. Unfortunately it is not accurate or appropriate to use the idea of three founding nations as the founders of Canada.

It is wrong because it conflates two different concepts – language and nation. English and French, at least in Canada, are languages—not nations—and

Aboriginal is not a language or a nation. Aboriginal is a basket term that describes the many original nations in Canada who lived here before European settlement. With one notable exception, Aboriginal nations were not participants in the creation of this country. They were ignored and excluded. Their treaties made them wards of the state, not founding partners. This is not a pretty history, but then our history—especially with respect to Aboriginal peoples—has "not been so sweetly reasonable, nor so rationally symmetrical." That history does not change with revisions that ignore the historical facts.

Canada is a political entity that was created by negotiation. The original negotiating partners in the creation of the Dominion of Canada in 1867 represented two dominant language and religious groups – French/Catholics and English/Protestants —situated in different provinces. Whether either

group was recognizable as a nation in 1867 is debatable. But at that time, both groups chose to become one nation, Canada. The terms on which these two groups joined together into a nation has been the subject of an ongoing national debate, but one thing is clear: Aboriginal nations were not included.

Aboriginal groups were referred to as nations as early as 1763 in the Royal Proclamation, which referred to them as "the several Nations or Tribes of Indians with whom we are connected, and who live under our Protection." In the sense of the early meanings of nation that refer to common origin or descent, they were indeed nations. Later, nation became associated with common traditions, aspirations and interests that were subordinated to a central power. Whatever else we can divine about the early usage of the term nation, one thing is clear. It did not carry the meaning we give it today. It is our modern world that has sought to equate a united culture with the term nation.

The change point appears in the Age of Revolution, when 'the people' began to be equated with the nation-state. This use of nation as the state was avoided in the American Revolution, where its founders went out of their way to avoid referring to a single 'nation' and instead to the several "United" States. It's how the Americans hoped to avoid the concept of a centralized and unitary government. Such ideas were incompatible with the federation the Americans were hoping to achieve. Instead of 'nation' they used 'the people' to describe the several 'states' in the aggregate. These united peoples were separate polities (states) with, at the time, no common culture, language or religion.

The French Revolution was entirely different.

Although it is largely forgotten today, there was no common language in France. In fact, the revolution repeatedly referred to this fact. In France, the galvanizing idea was the opposite of the American confederation. Revolutionary France sought to become one indivisible nation. For the French, a nation had one essential element, the collective participation—not of the upper classes, but of the masses. The citizen of France had only to possess a national sentiment and desire one common government.

All of which begs the question: What is a 'people'? Can we naturally equate the aggregate of individuals who live in a territory/state with an ethnic identity, a single linguistic group or on some other ground of collective recognition of the group's membership? A single ethnic identity and language played no part in the French or the American revolutions. What was important was that the common people came together against a particular interest. For both the French and American revolutions, ethnic, religious and linguistic differences had to be ignored; there were simply too many for their common project. In those revolutionary times, the nations selectively chose among menu items they wished to emphasize: ethnicity, language, religion, territory and common historical memories. There were no claims to unity based on all of the above, and in fact any attempt to do so would have undermined the main goals of these revolutions.

The Métis were one of the Aboriginal nations in Canada. They first proclaimed themselves a new nation in 1815-16. In their self-declaration, the Métis use of the term nation places them within their times, which was an era in which many new nations in the Americas were founded. The Métis

Nation claim to legitimacy was based on cultural roots from its Indian ancestors. It was this claim of old roots and fresh bloom in the advancement of its interests that gave the world the first glimpse that this new nation maybe had a future.

Our modern understanding of a nation is likely not what the Métis meant when they proclaimed themselves to be one in 1815-16. They certainly did not mean a nation-state. They did not assert an exclusive prior claim to the territory, since they did not exclude the claims of the Indians. They also did not mean to exclude the fur traders or the *Canadiens*. They had no existing polity at that time either, if by that we mean a governance system. The only governance they exercised was during the buffalo hunt but it was not applied to any other form of their society. They had one institution at the time, the family. What these interconnected Métis families had in common was a national goal and they used a combination of force and negotiation to obtain it.

Perhaps the Métis were not a fully-fledged nation in 1815 despite their claims, but they were certainly a nascent one. Still, they had a sense that they were something other. This distinction, this view that they were different and unique, was the fertile idea that began to take root. From that first generation born in the North-West of the 1790s, the idea that the Métis were distinct from their parents' peoples flourished. When they hit their adulthood, this cohort loudly proclaimed itself to be a nation and then proceeded to make it so. Throughout the world we have seen that a nation comes into existence when a sizable group of people in a community say they have formed one, act to protect their interests, and over time coalesce into that proclamation. By 1870, when Louis Riel's provisional government began negotiating with Canada towards the inclusion of Rupert's Land and the North-Western Territory, the Métis were fully established as an Aboriginal nation.

The Métis Nation was the only one of the "aboriginal peoples of Canada" that was an active partner in the negotiated founding of Canada. It is, therefore, accurate to include the Métis Nation as one of the founding nations of Canada. If we accept the notion that neither the English nor the French were nations in 1867, then it may be accurate to suggest that the Métis Nation was, in fact, the only nation – English, French or Aboriginal – that participated in the negotiated founding of Canada.

In 1992, unanimous resolutions in the Manitoba Legislative Assembly, the House of Commons and the Senate recognized the contributions of Louis Riel in the origins of this country. The resolution approved by the House of Commons and the Senate is as follows:

That this House take note that the Métis people of Rupert's Land and the North Western Territory through democratic structures and procedures took effective steps to maintain order and protect the lives, rights and property of the people of the Red River;

That this House take note that, in 1870, under the leadership of Louis Riel, the Métis of the Red River adopted a List of Rights;

That this House take note that, based on the List of Rights, Louis Riel negotiated the terms for admission of Rupert's Land and the North Western Territory into the Dominion of Canada;

That this House take note that these terms for admission form part of the Manitoba Act;

That this House take note that, after negotiating Manitoba's entry into Confederation, Louis Riel was thrice elected to the House of Commons;

That this House take note that, in 1885, Louis Riel paid with his life for his leadership in a movement which fought for the maintenance of the rights and freedoms of the Métis people;

That this House take note that the Constitution Act, 1982, recognizes and affirms the existing Aboriginal and treaty rights of the Métis;

That this House take note that since the death of Louis Riel, the Métis people have honoured his memory and continued his purposes in their honourable striving for the implementation of those rights;

That this House recognize the unique and historic role of Louis Riel as a founder of Manitoba and his contribution in the development of Confederation; and

That this House support by its actions the true attainment, both in principle and practice of the constitutional rights of the Métis people.

Aboriginal peoples were all participants in the founding of Canada as it exists today. Unfortunately their role in that story is, for the most part, a sad one. They should not be included now in a misguided attempt to mitigate a sense of guilt with respect to our collective treatment of the original inhabitants of Canada. Inclusion of Aboriginal peoples into the central themes of this country is a good idea. But it is perhaps best understood as a way of opening a dialogue that is more inclusive. In this respect, it would be a better idea to acknowledge that Confederation is incomplete and will remain so until Aboriginal peoples are fully included. A truly just and democratic Canada would work towards a modern inclusion in all the created stories of our future – in our aspirations and economies, and in our cultural, spiritual and historical stories. Inclusion does not mean revising the past with myths about Aboriginal inclusion. With the exception of the Métis Nation, the only Aboriginal nation that actively and positively participated in the negotiated founding of this country, we are the product today of Aboriginal exclusion. Let us start there, with the historic facts, and then change the exclusion from now on so we can tell new and better stories about Canada that include Aboriginal peoples.

THE POLITICS OF FOUNDING CANADA: THEN AND NOW

JACK JEDWAB

Jack Jedwab is the executive vice-president of the Montreal-based Association for Canadian Studies and the Canadian Institute for Identities and Migration. Holding a PhD in Canadian History from Concordia University, he has taught at Université du Québec à Montréal and McGill University, offering courses on the history of immigration in Quebec, on ethnic minorities in Quebec, on official language minorities in Canada and on sport in Canada. He has also written numerous essays and articles for books, journals, newspapers and websites across the country, including *Huffington Post*. Jedwab is also the author of many publications and government reports on issues such as immigration, multiculturalism, human rights and official languages.

Over the last half of the 20th century, there was considerable debate over who founded Canada. Canadians' comprehension of who founded the country is often a reflection of their contemporary perspective on the nature of the 1867 Confederation arrangements, something about which admittedly most Canadians have only a cursory knowledge. When asked whether they have heard about Canadian Confederation, a March 2013 survey revealed that just over one in ten had often heard something. In a January 2016 survey, some 15% agreed that they had a good knowledge of the history of Confederation (another 47% somewhat agreed).

The survey results and analysis that follow will be divided into two parts. First we'll review the debate over the existence of a British-French/bicultural compact underlying the 1867 Confederation agreement. We will look at contemporary public opinion about the nature of the Confederation agreement and how Canadians comprehend the current relationship(s) that define the federal partnership.

REVISITING THE DEBATE OVER THE COMPACT THEORY OF CONFEDERATION

Canada does not appear to possess a definitive or authoritative narrative around the founding of Confederation with regard to the intention of its principal architects. Perhaps that is what's so clever about the 1867 agreement. Uncertain as to how the future would unfold, the founders were ready to allow federation arrangements to give rise to varying interpretations in order to keep as many constituents as possible satisfied with what they thought they were getting. After all, most of our 'founding' politicians were seasoned negotiators ready to use their skill to strike a deal that was intended to be pragmatic. They were so good at it, that to this day, many Canadians remain unsure about whether the

federation arrangements were a compact between two cultures or a deal between four founding provinces or some combination of both. These talented founding negotiators were careful about what they put in the legal contract that bound provinces and peoples. Hence, in the British North America Act, there is nothing explicit about a compact of cultures between the British and French.

It is perhaps no surprise that historians are able to find passages from leaders' statements of the era to justify their view on the contractual (or 'compacted') nature of the federation.

Canadians are no exception to the general approach to assessing the past through the comprehension of the current situation. In the case of Confederation, underlying the conclusion one reaches about its nature is the idea that there was continuity between its original design and today's model. Historians have not been exempt from this practice. Many seek to develop a founding narrative to support a preferred contemporary one. One classic example of this is the 1999 publication by Paul Romney of *Getting it Wrong: How Canadians Forgot their Past and Imperiled Confederation.* Romney contends that a proper understanding of what the Fathers of Confederation "really" had in mind would have prevented the problems of national unity that have emerged over the last fifty years. Romney insists that Confederation was designed to be "a solemn pact between two nations." He also sees it as a compact of provinces, but one in which the said provinces were to be constitutionally equal to the federal government (in other words, they were not a lower order of government). In effect, it's true that the federation was a creation of the four provinces and not the inverse. Unlike future of generations of

scholars, Romney saw no contradiction between the compact of peoples and the compact of provinces.

The recognition of a compact of French- and English-Canadian cultures was central to the deal struck in 1867 and, Romney writes, was regrettably denied in later years by the English Canadian establishment of historians that constructed a more centrist vision of the federation. Romney questions the widely accepted affirmation on the part of the late Donald Creighton and his followers that there is no evidence the Fathers of Confederation sought to establish a "compact of cultures" between the so-called two founding peoples. He argues that Creighton and others' dismissal of the cultural compact reflected the defects that emerged in historical knowledge about the period.

For his part, Creighton insisted that a close examination of the writings and statements of the Fathers of Confederation and the text of the British North America Act yield no evidence that the union would be based on a cultural compact between two founding peoples and that there would be an extension of the language and educational rights enjoyed by French Canadians in Quebec to the other provinces of Canada. In later years, eminent Canadian historian Ramsay Cook described the compact of cultures as an opportunistic fabrication. Cook is likely correct that the Fathers of Confederation didn't envision a compact of cultures. Even in one of the more articulate defences of the cultural compact theory, Ralph Heintzman agreed with Creighton that it would be "complete nonsense to insist that in the minds of the Fathers of Confederation there was a clearly understood 'pact' that guaranteed complete equality to both French and English throughout Canada."

But even if the BNA Act did not provide open

and explicit guarantees for the French language, Heintzman insisted there remained a strong case for the presence of a bicultural compact. This compact was animated by a "spirit of Confederation" or, in Creighton's own words, "an unspoken moral commitment which was meant to inform the whole union with its spirit." The "spirit'"in this case refers to an unwritten understanding that the concerns and aspirations of the "peoples" that were the obvious cultural foundation for the agreement of the provinces would not be dismissed. That Creighton, Cook and others contend that any rights conferred in that era upon the Catholic French language population were a function of political expediency says something about the opportunism of the founders.

Writing in 1971, Heintzman observed that: "In our present attempts to chart the course for Canada's second century, it is tempting to look to Canada's past for guidance, to put our history, as it were, to use. Unfortunately, our desire to make use of the past often makes it very difficult for us to know the past as it really was." Creighton directs the same accusation at the defenders of the cultural compact and describes those offering historical justification for biculturalism as "revolutionaries" who are either ignorant or purposely falsifying the past for political ends. Heintzman countered that when Creighton claims to speak only to the "true" nature of Confederation, he and other such historians are often telling us something about themselves. Creighton never hid his sympathy for a very limited extension of minority French language rights (which he also denied are rights). He felt that too generous an extension of minority language rights would imperil national unity.

Heinztman felt that the argument couldn't be settled

without carrying out additional research about expectations associated with the Confederation agreement, especially with regards to the French Canadian population of Lower Canada. He contended that "a moral obligation can be said to exist where one party to a contract held certain assumptions concerning the nature of the union into which it agreed to enter and where a reasonable justification for those assumptions can be demonstrated."

One of the more authoritative works on such expectations is Arthur Silver's *The French Canadian Idea of Confederation*. Based on a detailed analysis of the press in French Canada, he noted a certain range of opinions on the nature of the 1867 agreement. A recurring theme, however, was that Quebec would be the homeland of French Canada and that the province would be responsible for decisions around its nationality and religion. Silver illustrated this point with a quote from *La Minerve*:

Here was the very heart and essence of the pro-Confederation argument in French Lower Canada: the Union of the Canadas was to be broken up, and the French Canadians were to take possession of a province of their own—a province with an enormous degree of autonomy. In fact, separation (from Upper Canada) and independence (of Quebec within its own jurisdictions) were the main themes of Bleu propaganda. "As a distinct and separate nationality, we form a state within the state. We enjoy the full exercise of our rights and the formal recognition of our national independence."

Refusing federal involvement in such matters partly explained Quebec's resistance to empowering the federal government to intervene on behalf of minorities in existing or emerging provincial

jurisdictions (it further helps explain why the Quebec government has offered a moral defence or appeal for language minorities elsewhere in Canada while hesitating to intervene legally). Therefore, the idea of a bicultural compact that spanned the existing and future geography of Canada did not appear to be the prevalent vision of Quebec's French-Canadian leaders. They hoped, however, that the demographic realities and political persuasion would compel politicians to tread carefully when it came to the assistance of the vulnerable minority French population outside of the home province. Given the prejudices of the period, an appeal to openness to diversity held out less hope for success than did a dose of political clout.

CONTEMPORARY OPINION ON PACTS AND COMPACTS

Recent federal government statements might be described as a key contributor to varying opinion as they encourage a number of interpretations about the founding partners (to be sure, politically, this isn't necessarily a bad thing). In one of the closest things to an official history of Canada, the Government of Canada's Citizenship Guide states that "from 1864 to 1867, representatives of Nova Scotia, New Brunswick, and the Province of Canada, with British support, worked together to establish a new country…the old Province of Canada was split into two new provinces: Ontario and Quebec, which together with New Brunswick and Nova Scotia, formed the new country called the Dominion of Canada." (www.cic.gc.ca/english/resources/publications/discover/section-05.asp). The same document notes that: "To understand what it means to be Canadian, it is important to know about our three founding peoples." To be fair, there is no dir-

ect association of this statement and Confederation as the founding event. But Canadians reading the document with only some knowledge about Confederation could be forgiven for concluding that the pact was conceived constitutionally by both four provinces and three cultures.

It's difficult to support Romney's contention that Canadians have forgotten their past and imperiled Confederation. On the one hand, he practises some historical determinism when he suggests that better knowledge about Confederation in English Canada would have resulted in a different constitutional course and presumably something closer to the one preferred by Romney. On the other hand, Romney's thesis makes assumptions about what Canadians do or don't know about Confederation. It presumes that there is a dominant narrative around Confederation with which Canadians identify (though Romney suggests the narrative is different in Quebec than it is in English Canada).

In fact, recent polling conducted for the Association for Canadian Studies suggests that there is no consensus over Confederation's founding narrative. The survey reveals that it is the idea of a British-French partnership that is the closest thing to an agreed-upon narrative, with 29% of respondents endorsing that proposition, and another 26% adding Aboriginal People to the Confederation partnership. The idea that the founding partners were the four provinces resonates most with residents of Atlantic Canada. In the Atlantic provinces and Ontario, there is a greater tendency to choose the four "founding provinces" as the basis of Confederation.

WHICH OF THE FOLLOWING BEST DESCRIBES YOUR VIEW OF THE FOUNDING PARTNERS OF CANADIAN CONFEDERATION?

	Total	French	English	Other	ATLAN.	QC	ON	MB/SK	AB	BC
British and French	29%	26%	31%	29%	28%	27%	25%	33%	39%	37%
Aboriginals, French and British	26%	30%	24%	26%	17%	29%	24%	34%	30%	23%
The 4 provinces: Quebec, Ontario, Nova Scotia and New Brunswick	23%	17%	23%	27%	31%	18%	27%	12%	22%	22%
Aboriginals, French, Irish, Scottish, English and Acadian	12%	18%	12%	8%	15%	17%	13%	9%	6%	8%
French, Irish, Scottish, English and Acadian	7%	7%	7%	6%	5%	7%	7%	12%	2%	6%
Catholics and Protestants	3%	2%	2%	4%	5%	3%	3%	1%	0%	3%

As regards the predominant vision of the federation, the survey suggests that if there is any consensus, it would be that Canada is a multicultural country with two official languages. Just as many Canadian francophones see the federation as *multinational* as they do multicultural. Many non-francophones see the federation as a country of 34 million equal citizens. The response that resonates the least with Canadians is that it's a country of ten equal provinces—the one option, paradoxically, that is most closely associated with the provincial compact.

Equally paradoxically, as revealed in the correlation below, even those Canadians who believe the four provinces were the founding partners of Confederation are far more likely to say that we're best defined as multicultural with two official languages.

CONCLUSION: RIGHTING WRONGS

If there is a common thread in past and present interpretations of the Confederation arrangements, it is that they *tend to bend historical reality to fit contemporary frames*. In setting out to right a perceived historic wrong, there is a risk that we lead ourselves to believe erroneous representations of the past. Distortions of the past do us a disservice, as they often contribute to false nostalgia and/or romanticized visions of our history. For the most part, the Fathers of Confederation were not very tolerant of difference, as judged by our contemporary standards. They frequently reflected the prevailing

WHICH OF THESE VISIONS BEST REFLECTS YOUR PREFERRED IMAGE OF CANADA?

	Total	18-24	25-34	35-44	45-54	55-64	65 +	French	English	Other
Canada is a country of ten equal provinces	10%	10%	9%	11%	9%	12%	12%	9%	12%	8%
Canada is a multicultural country with two official languages	43%	53%	56%	45%	38%	34%	38%	40%	41%	53%
Canada is a country of three nations: the Quebec nation, the English-Canadian nation and the aboriginal(s)	17%	22%	13%	17%	19%	15%	17%	40%	12%	6%
Canada is a country of 34 million equal citizens	30%	16%	22%	27%	35%	39%	33%	11%	35%	33%

prejudices of their era, some of which they articulated openly.

While some things about the text and vision of Confederation will remain the focus of ongoing debate, certain assumptions about the country's founders are simply false. Indeed, in some instances, it's simpler to identify the things about which Canada's Confederation was *not* rather than what it was. One fallacy that many Canadians now endorse is the idea that Confederation was a product of three founding partners and hence the compact might be described as "tricultural". It's wrong to say that Aboriginal Peoples were a partner in the Confederation agreement. The reality is that they were excluded from it and from subsequent deals, something which has been the subject of legitimate concern in the decades that followed. The imagined inclusion of indigenous Canadians in the 1867 federative pact is often well motivated, but more a reflection of how some Canadians would like things to have been.

As regards the issue of the bicultural compact, a paradox has emerged from the literature with some analysts—mostly from Quebec—suggesting that the bicultural spirit of the 1867 agreement was betrayed in subsequent years (particularly with the 1982 Constitution) and others insisting that the Confederation agreement itself was a betrayal of French Canada. Some curiously contend it was both.

Nearly a century after Confederation, a Royal Commission was mandated to report on the existing state of bilingualism and biculturalism in Canada and to recommend what steps should be taken to develop the Canadian Confederation on the basis of an equal partnership between the two founding races (later changed to two founding *peoples*), taking

WHICH OF THE FOLLOWING BEST DESCRIBES YOUR VIEW OF THE FOUNDING PARTNERS OF CANADIAN CONFEDERATION?					
	British and French (binational/ bicultural)	Aboriginals, French and British (multinational)	French, Irish, Scottish, English and Acadian (multiethnic)	Aboriginals, French, Irish, Scottish, English and Acadian (multination/ multiethnic)	The 4 provinces Quebec, Ontario, Nova Scotia and New Brunswick (territorial)
Canada is a multicultural country with two official language	44	43	35	42	43
Canada is a country of 34 million equal citizens	26	28	33	32	35
Canada is a country of ten equal provinces	13	8	13	6	11
Canada is a country of three nations: the Quebec nation, the English-Canadian nation and the aboriginal(s)	16	21	19	21	11

into account the contribution made by the other ethnic groups to the cultural enrichment of Canada, and the measures that should be taken to safeguard that contribution. Clearly this was not an example of a country insensitive to its history. But what might have been suited to the cultural demography of 1867 but in line with the values of the 1960s was no longer as suited to the Canada of the latter period. Canada was no longer the country brought into being by the Fathers of Confederation The emerging vision, by the 1960s, was one of multiple cultural expressions with two overarching languages that were eventually designated "official.". While it is somewhat unfair to transpose the vision of the founders onto a more recent period, it is quite likely the Fathers of Confederation would have found multiculturalism highly objectionable.

With regards to respect for minority rights, looking for inspiration from most of the leadership of the 1860s requires a considerable stretch of the imagination. Yes, there were some tolerant voices in the Confederation era, but popular sentiment was less progressive. The federation architects did, however, lay the foundations for subsequent generations, which included many individuals who

sought sunnier ways to deal with minorities' desire to preserve their identities. And as for French language minorities, the 1982 Canadian Constitution marked a fundamental departure from what was proposed in 1867. Indeed, it was in the spirit of 1982 and certainly not 1867 that, in February 2016, Ontario Premier Kathleen Wynne issued a formal apology to the Franco-Ontarian community for a 1912 rule that virtually banned the use of French in the province's elementary schools.

CANADA'S 'FOUNDING PEOPLES' AND THE SUPREME COURT

SEBASTIEN GRAMMOND

Sébastien Grammond is professor at the Civil Law Section of the University of Ottawa, of which he was Dean from 2008-2014. Since 2004, he has taught contract law, civil procedure, indigenous peoples' law and constitutional law. He is the author of the books *Terms of Coexistence: Indigenous Peoples and Canadian Law* (2013), *Identity Captured by Law* (2009) and *Quebec Contract Law* (2011), as well as numerous articles.

In the recent Supreme Court decision for *Caron v. Alberta*, in which the Supreme Court ruled that Alberta does not have the constitutional obligation to enact its laws in English and in French, the three dissenting judges stated that "[t]he Constitution of Canada emerged from negotiations and compromises between the founding peoples."[1] The majority judges did not disagree with them. Although they did not use the expression "founding peoples," they also agreed that the constitutional provisions in question were the product of an agreement; however, they disagreed as to the scope of that agreement.

This may seem surprising, especially for a Supreme Court decision, because the constitution makes no mention of the concept of founding peoples and dominant federal ideology of the last half-century stands in opposition to it. In fact, "demotic" issues are one of the Canadian constitution's main "silences"[2] and they illustrate what Jeremy Webber calls the constitution's "agonistic" character—how it allows Canadians to collaborate despite sharp disagreements over the very nature of the country.[3]

This reference to the founding peoples, however, is fully in line with a theory that the Supreme Court has been patiently crafting for about 15 years. When the Court is faced with new issues requiring constitutional interpretation, it relies more and more on what is traditionally known as the "com-

---

1   *Caron v. Alberta*, 2015 SCC 56, at para 235, Wagner and Côté J

2   Dave Guénette, « Le silence des textes constitutionnels canadiens – expression d'une constitution encore inachevée », (2015) 56 Cahiers de droit 411.

3   Jeremy Webber, *The Constitution of Canada: A Contextual Analysis* (Oxford : Hart, 2015) pp. 6-8, 259-265.

pact theory of Confederation,"[4] which states that Canada is the result of an agreement (or compact) between its pre-existing political entities. Even if the Court does not usually employ the term "compact," it is what we could call a "contractual" vision of the constitution.

The normative consequences that stem from a contractual vision are not unequivocal. For example, during a certain era many provinces based themselves on the compact theory to assert that the constitution could not be modified without their unanimous consent. However, that is not how the Supreme Court uses the compact theory: it does not view the constitution as a directly enforceable contract. Rather, it takes into account the constitution's consensual nature in its interpretation; that is to say that certain provisions were enacted to protect the commitments made by the compact's various parties towards each other. The *Reference re Senate Reform*[5] provides an example. The Supreme Court had to decide, among other things, whether Parliament could provide for "consultative elections" to select senators without obtaining the provinces' consent and without amending the constitution. The Court recognized that the constitution's amending formula is the result of the provinces' demands to protect their interests with regard to the federal structure (the Senate in particular), which the federal government agreed upon in November 1981. To fulfil this commitment, the constitution had to be interpreted in a manner that would protect the provinces against any federal desire to unilaterally

make significant changes to the Senate. The federal government was then prevented from trying to proceed unilaterally; rather, it had to obtain consent from the provinces.

If, then, the Canadian constitution is the product of a compact, who are the stakeholders? This is where things get tricky. There are many versions of the compact theory. There is the compact among the four original provinces—and which the other provinces later joined—and another "binational" compact between Anglophones and Francophones, which is the one generally referenced when speaking about the "founding peoples." The constitution's amending formula reflects a further understanding of the compact that recognizes the federal state's role as a fully fledged player, which would suggest that the Canadian population as a whole also constitutes "a people." Furthermore, these versions of the compact have neglected the participation of Aboriginal peoples, not so much in the negotiations that led to Confederation, but rather through treaties that, from their point of view, enshrined the terms of their free adhesion to Canada. And so, multiple compacts could be superimposed (maybe involving multiple nested "peoples"), as implied by two Supreme Court judges in an Aboriginal rights case.

These four organizing principles are interwoven in three basic compacts: *1)* one between the Crown and individuals with respect to the individual's fundamental rights and freedoms; *2)* one between the non-Aboriginal population and Aboriginal

---

4   For a more in-depth analysis of this issue, see Sébastien Grammond's article *Compact is Back: The Revival of the Compact Theory of Confederation by the Supreme Court*, submitted to a peer-reviewed journal (2016).

5   Reference re Senate Reform, 2014 SCC 32, particularly at para 77.

peoples with respect to Aboriginal rights and treaties with Aboriginal peoples; and *3)* a "federal compact" between the provinces.[6]

This demonstrates that the founding peoples, or at least the parties to the compact, are not only those who were present at the Charlottetown and Quebec City discussions in 1864. The comments found in the recent *Caron* decision imply that a group that negotiated the terms of its admission into Canada, regardless of when that happened, could be considered a founding people. For example, in the *Caron* case, the Supreme Court states that an agreement was reached in 1870 between the federal government and the "people of Rupert's Land and the North-Western Territory,"[7] which it also describes as "a party with a strong interest in protecting the French language"[8] or simply "the territories' inhabitants"[9] and as belonging to the "Métis community."[10] Under the agreement, territories formerly owned by the Hudson's Bay Company were annexed to Canada. As a matter of fact, most, if not all provinces negotiated the terms of their admission to Canada in one way or another. According to the Supreme Court's approach, each province's population could constitute a founding people.

Is extending the concept of founding peoples the price of its reinstatement within constitutional discourse? Will the Court's approach allow unexpected groups to claim founding people status? It seems unlikely. In fact, the Court's approach seems to be primarily focused on founding acts rather than founding peoples. What the Court looks for is an agreement that serves as the basis of a constitutional text and sanctions the admission of a "people" into Canada.[11] The Court then interprets the document on the basis of the interests of the parties. The identity of that people then becomes a secondary issue, which explains, for example, the ambiguity displayed by the Court in the *Caron* case (were they "Métis" or the "territories' inhabitants," including non-Aboriginals?).

The approach based on founding acts is also compatible with a vision in which a person can belong to many peoples simultaneously.[12] For example, a Prince Edward Island resident can certainly identify with his province while also identifying with Canada as a whole. In most cases, an analysis of the Canadian constitution does not take into account the specificity of that province and it would not be necessary to specify that its population is a found-

---

6   *Beckman v. Little Salmon/Carmacks*, 2010 SCC 53, at para 97.

7   *Caron*, para 207.

8   *Caron*, para 238.

9   *Caron*, para 222, 240.

10   *Caron*, para 207-212.

11   This would exclude groups who immigrated to Canada following an explicit agreement with the government (like the Ismailis in the 1970s) that isn't incorporated into the Constitution.

12   In the Canadian context, this idea has been explored by many people, most notably by Jean Leclair who has explored it in depth. See particularly *Legality, Legitimacy, Decisionism and Federalism: An Analysis of the Supreme Court of Canada's Reasoning* in Reference re Secession of Quebec, 1998, presented at the *Claims for Secession and Federalism : The Spanish Case in the Light of Federal Experience*, Bilbao, Spain, 25-25 November, 2015.

ing people. However, when interpreting the *Prince Edward Island Terms of Union*, which is part of the constitution, we could take into account that the province negotiated the terms of its union to Canada and that it was protecting a certain number of specific interests that found their way into the constitutional text.

This approach also allows us to avoid the thorny issue of distinguishing a people in its sociological sense (people with a shared language, culture, history, etc.) and a people in its political sense (the population of a given territory). By emphasizing founding acts, the Supreme Court avoids having to make a statement on the nature of founding peoples. To revisit the *Caron* case, the Court did not think it useful to specify whether the founding people in question was composed only of Métis or if it also included the non-Aboriginal people living in Western Canada in 1870. In the same vein, it is not necessary to determine if, during the negotiations leading up to the Confederation, a politician like George-Étienne Cartier protected the interests of the French-Canadians only or those of all the residents of Canada East. It does not prevent the Court from recognizing, in appropriate cases, the specific interests of the underlying "sociological" people. Thus, in a decision rendered in 2013, the Court declared that the Métis' territorial rights stemming from the 1870 agreement and guaranteed by the *Manitoba Act* had been violated.[13] Furthermore, several recent rulings demonstrate that Quebec specificity does get taken into consideration in the interpretation of certain constitutional provisions that apply specif-

ically to Quebec.[14]

In conclusion, recognizing that the constitution is the product of agreements between pre-existing political entities allows us to better respect the mutual commitments that shaped Canada. The "founding peoples" still count on those promises being fulfilled.

---

13   *Manitoba Métis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14

14   Sébastien Grammond, « Louis LeBel et la société distincte », article to be published in *Cahiers de Droit* (2016).

THE ROADBLOCK TO RECONCILIATION: CANADA'S ORIGIN STORY

KATHLEEN MAHONEY

Kathleen Mahoney QC, FRSC, is a law professor at the University of Calgary and Visiting Professor with Ulster University, Belfast (2015-2019). She was the Chief Negotiator for the Assembly of First Nations for the historic Indian Residential School Settlement Agreement, and was a major architect of Canada's Truth and Reconciliation Commission. Her research interests include Human Rights, Constitutional Law, Women's Rights, Judicial Development and Aboriginal Law. In her pioneering work in judicial education, she has authored numerous foundational papers and organized conferences, workshops and collaborative international projects around the world. She has published extensively in academic journals as well as in the popular media.

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 co-operation 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.

---

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

MULTICULTURALISM AND CANADA'S FOUNDING PEOPLES

AVIGAIL EISENBERG

Dr. Avigail Eisenberg is a Professor in the Department of Political Science and a Faculty Associate in the Indigenous Governance Program at the University of Victoria. Before moving to Victoria, Eisenberg was an Associate Professor in the Department of Political Science at the University of British Columbia, where she spent the first ten years of her academic career. She has held visiting research fellowships at the University of Edinburgh (1996-07), and the Université de Montréal (2004-05). She has been a resident fellow at the Rockefeller Centre in Bellagio, Italy and, most recently (2010-11), a visiting researcher at the University of Pompeu Fabra in Barcelona.

In 1982, many Canadians hoped that a constitution sensitive to multiculturalism and other group differences would promote an expansive set of rights for vulnerable groups and have a democratizing effect on constitutional politics. At the same time, many Canadians recognized that the driving forces behind constitutional renewal were not the claims of ethnic immigrant groups, but rather the claims of national minorities - the Québécois and Indigenous peoples - who had engaged in ongoing struggles to renegotiate the terms of their co-existence with Canada. The 1982 constitutional amendments addressed the claims of both national minorities albeit not to the satisfaction of either group (or set of groups in the case of Indigenous peoples). Indigenous peoples, who had long struggled against colonial policies, and the Québécois, who remained inspired by a separatist politics, might well have wondered what impact the constitutional recognition of multiculturalism would have on their struggles.

On the face of it, the Canadian state seems to keep the aspirations of the founding groups and 'cultural' minorities separate. This separation is reflected in the structure of the Constitution and also in much normative scholarship in which the policies applied to these different groupings are sometimes described as legally and administratively disconnected from each other. The policies governing Canadian diversity regarding ethnic minorities, Quebec, and Indigenous peoples have different origins, are embodied in different legislation, refer to different parts of the constitution, are administered by different government departments and are guided by different concepts and principles; "each

forms its own discrete silo, and there is very little interaction between them."[1]

But politics is never fully settled by constitutional and administrative structures and efforts to settle how national diversity is managed in Canada have led to political dynamics that can't be contained in these seemingly distinct silos. One issue facing Canadians today is how to manage these political dynamics more effectively. Identifying a founding peoples or founding moment for Canada will not help that project.

Consider first the case of Quebec, which rejected the constitutional deal in 1982 (albeit for reasons that had little to do with multiculturalism) and has not agreed to the constitutional package since. Some Quebecers suspected that the constitutional amendments were part of a central government strategy to weaken Quebec nationalism by bolstering the power of central institutions as the protectors of rights in Canada. They were not far wrong in their suspicions. Both Quebec and Indigenous peoples, who had long struggled against federal government policies that disadvantaged and excluded them from a full and equal partnership in the Canadian polity, have expressed concern that the 'multicultural framework', if applied to their communities, could reduce them to one of Canada's many ethnic minorities. Is there evidence for this concern?

It is helpful to recall that one of Quebec's concerns in 1982 was that the ascendancy of the Charter of Rights and Freedoms would impose national standards on provincial decision makers. Previous to the Charter, provincial objections (from many provinces) to decisions of the Supreme Court of Canada were sometimes framed as objections to the decisions of an unelected and distant court over provincial or local decision makers who are closer to the people and more sensitive to local values and norms. During constitutional negotiations leading to entrenchment, this same concern was expressed by some provincial leaders, and ended up informing the final document primarily through section 33, 'the notwithstanding clause.'

Over 30 years later this same concern re-ignites nationalist sentiments in Quebec and is used to mobilize opposition to minority accommodation there. It can even be detected in the *Report of the Bouchard-Taylor Commission on Reasonable Accommodation of Minorities*. The Report devotes considerable attention to the *Multani* case about a Sikh boy who wishes to wear a kirpan to school.[2] The challenge posed by this case is characterized in the Report as partly about 'local decision making'. Conflicts that involve cultural diversity, the Report claims, are better resolved in Quebec using a 'citizen route' rather than a 'legal route' in order to encourage citizens to manage their own differences, to avoid congesting the courts, and to respect Quebec's integration model.[3] To be sure, the *Multani*

---

1   Kymlicka "Ethnocultural diversity in a liberal state: Making sense of the Canadian Model(s)" in Banting, Courchene, Seidle, Belonging?: Diversity Recognition and Shared Citizenship in Canada, Montreal: IRPP, 2007, p. 39-40.

2   Multani v Commission scolaire Marguerite-Bourgeoys, [2006] 1 S.C.R. 256.

3   Bouchard Taylor, unabridged, p. 19.

case raises different kinds of issues. One issue is the claim that Quebec has a distinctive 'interculturalist' approach to social diversity, which emphasizes the integration of ethnic minorities into the dominant and distinct culture of Quebec. Another issue is that the controversy implicated Quebec's ongoing rejection of Ottawa-based decision making in order to promote nationalist politics. The case offered some political elites a strategic opportunity to enhance the electoral appeal of nationalist politics by exaggerating Quebec's distinctiveness on the matter of cultural diversity. According to this strategic view, the conflict over the kirpan did not arise primarily because Quebecers generally reject the kind of multiculturalism adhered to in Canada (which is, after all, also based on integration), but instead because high profile decisions, like *Multani*, are made outside Quebec, based on a constitutional document to which Quebec never consented. On this view, the philosophical differences between Canada and Quebec about multiculturalism have been distorted and exaggerated by nationalist politicking.

But the culprit here is also the imposition of a controversial court decision based on the Charter to which Quebec never consented. Everyone, even in Quebec, considers the decision to be final. But in politics, nothing is ever final or settled.

For Indigenous peoples, Canada's newfound respect for cultural difference initially had promise because cultural difference had historically served as a rationale used by state agents to deny Indigenous peoples rights to exercise jurisdiction on their ancestral territories, to vote, to educate their children in traditional ways, and even to enjoy basic civil liberties. Against a background in which Indigenous cultural difference had been denigrated and then later denied by the state, the possibility of having it protected and respected through constitutional guarantees, might have appeared attractive to Indigenous peoples, as it would have to immigrant groups who had faced racism and exclusion at the hands of the Canadian state.

Beginning in the 1970s, Indigenous peoples advanced legal claims for rights and resources, some of which were based on arguments about the need to recognize and protect their cultural identities. In 1982, Section 35 provided an additional and seemingly more powerful way to advance claims. Eventually, in the 1990s, the courts became receptive to these cultural claims. But it soon became evident that cultural claims invited the courts to interpret Indigenous culture. In some legal cases, the Court required Indigenous claimants to submit evidence to show that the practice they claimed as a right (e.g.s to hunt, fish, or trade in customary ways) is 'distinctive and integral' to their culture, a 'defining characteristic' of their culture and one that their community has adhered to since before contact with European settlers.[4] Some Indigenous people objected to these cases perpetuated a colonial relationship and were at odds with the treaty-based relations Indigenous peoples sought to establish with the state.

State recognition of 'cultural difference' can require judges to interpret and understand a controversial

---

4   Van der Peet [1996] 2 SCR 507 at *Summary of Reasons*.

cultural practice as a means to develop an effective remedy that reconciles the practice with mainstream laws. The aim of this process, which is called accommodation, is to treat minorities equally by ensuring that they are not required to abandon their cultures in order to have full access to the benefits of citizenship. Accommodation is a central part of multiculturalism. Its aims are different from those of Indigenous peoples who instead seek self-determination and jurisdictional autonomy. When accommodation is applied to Indigenous practices, the risk is that reconciling cultural differences will become the focus of attention and debate and that the consequences of colonial dispossession and assimilation will be ignored. Ironically, in an age and place where culture has been acknowledged as an important source of respect and empowerment, Indigenous people may be less inclined to frame their claims in terms of cultural arguments and less likely to argue for cultural rights today than they have been in the past.

There are good reasons for a state to recognize cultural distinctiveness and for a diverse country to strive to be as inclusive as possible when identifying a founding moment and a set of founding peoples. But, as recent history shows, state responses to diversity exist against a complicated background of accomplishments, political strategies, failed policies and broken promises which have not been forgotten or rectified. From this vantage, it makes better sense to resist a politics that treats the question of who is a founding people as settled or celebrates an episode in the past as a founding moment. A better option is to recognize the unsettled-ness of Canada and treats founding-ness as a matter that perhaps lies in the future rather than the past.

THE MONEY OF FOOLS

TOM FLANAGAN

Tom Flanagan studied political science at Notre Dame University, the Free University of West Berlin, and Duke University, where he received his PhD. He has taught political science at the University of Calgary since 1968. He was elected to the Royal Society of Canada in 1996, and was named University Professor in 2007. He retired from the Political Science Department in 2013 but continues to teach in the University of Calgary's School of Public Policy. Flanagan is Chair, Aboriginal Futures, at the Frontier Centre for Public Policy. His book *First Nations? Second Thoughts* won the Donner Canadian Prize in 2001.

Words are wise men's counters, they do but reckon by them; but they are the money of fools…
— Thomas Hobbes, Leviathan, Part 1, Ch. 4.

The word "nation" has become a political talisman precisely because of its ambiguity. Going back to its source in the Latin *natio*, it refers to people who have something in common by birth, such as race, language, religion or culture. But it also denotes political communities that possess or aspire to sovereignty, that is, the right to self-government free from outside influences.

Since the word "nation" can mean such different things, it is perfectly suited to the rhetorical needs of politicians, whose stock in trade is calculated ambiguity. Switching back and forth between the meanings of "nation" can be a profitable strategy for building a supporting coalition and amassing power. You can always deny that you want sover-eignty in the full, potentially separatist sense of the term while still demanding powers that should adhere to the talismanic status of "nation."

It is, therefore, pointless to debate whether a group of people does or does not constitute a nation; such a debate is the "money of fools," about which Hobbes wrote derisively. "Nation" is a strategic concept, used as a weapon to gain status for one's group and thus to increase political power.

When Canada was founded in 1867, it was under-stood to comprise a single nation in the political sense, even though it was obviously composed of diverse peoples. Sir G.E. Cartier called Canada a "political nationality," meaning that allegiance to the Crown through Canada's proposed system of self-government would hold the country together, while differences of language, religion, and race could be accommodated within the federal system.

The original understanding lasted a hundred years, until the 1967 Progressive Conservative "Thinkers Conference" and subsequent leadership race thrust the concept of *deux nations* onto the public stage. Liberal leader Pierre Trudeau, always clear-sighted in these matters, adamantly refused to use the terminology of *deux nations*. The problem, as he well understood, is that if Quebec has the status of a nation, its membership in Canada is conditional and dependent upon public opinion in Quebec. For Quebec to leave Canada would be like Canada leaving NATO —regrettable, perhaps, but ultimately a decision for the nation to make.

After the defeat of the Parti Québécois in the 2014 Quebec election, sovereignty is not much in the news, but it may come back some day. The position of the New Democratic Party, embodied in its Sherbrooke Declaration, is that Quebec has the right of self-determination, up to and including full sovereignty, and that a majority decision in a referendum would be sufficient to exercise that right. Most Francophones in Quebec appear to share that view.

The Canadian position, as enunciated in the Supreme Court's reference on separation and in Parliament's *Clarity Act*, is quite different: Quebec can separate from Canada only under constitutional procedures, which will require the approval of Parliament and the provincial legislatures. From this point of view, Quebec may be sociologically different from the rest of Canada, but is not a sovereign nation. That was the intent of the motion introduced by Prime Minister Stephen Harper and passed by the House of Commons in 2006: "That this House recognize that the Québécois form a nation within a united Canada / Que cette Chambre reconnaisse que les Québécoises et les Québécois forment une nation au sein d'un Canada uni."

So it's "all quiet on the Quebec front" for now. Most Québécois have come to think of themselves as a nation, both politically and culturally, but are not pushing the issue for the time being. Most Canadians might be willing to think of the Québécois as a cultural or sociological nation but not as a political nation that can unilaterally sunder its ties with Canada. Meanwhile, the rhetoric of nationalism, including threats of separation, has made federalism profitable for Quebec. The single most profitable prize is the equalization program, of which Quebec is the chief beneficiary. Quebec has been able to take the "money of fools" all the way to the bank.

The rhetoric of nationalism entered native affairs with the Dene Declaration of 1975: "…we insist on the right to self-determination as a distinct people and recognition of the Dene Nation …. What we seek then is independence and self-determination within the country of Canada." The inspired phrase "First Nations" first appeared in 1980, and within less than a decade it had become standard terminology. Canadian political leaders, who continued to resist calling Quebec a nation, conceded that rhetorical ground to First Nations without resistance.

But what does it actually mean to re-baptize Indian bands as First Nations? There are about 600 First Nations in Canada, more than three times the 193 members of the United Nations. The average population of a First Nation is a little over a thousand; and, since many members live off reserve, the average size of a reserve community is only six or seven hundred. Whether we call them Indian bands or First Nations, these aboriginal commun-

ities are essentially small municipalities (mainly rural, though some are now urban). Though they have many dealings with the provinces in which they are located, they are still mainly under federal jurisdiction through the Indian Act.

The rhetoric of aboriginal nationalism has had many practical consequences, however, with the word "First" being particularly lucrative. Since about 1990, the Supreme Court of Canada has been evolving a new doctrine of aboriginal rights and title, of which the most practical consequence thus far has been the "duty to consult" imposed upon governments before allowing natural resource projects to go ahead in the ill-defined "traditional territories" of First Nations. This has given native leaders enormous leverage amounting almost to a veto power *de facto*, even if it is not quite that *de jure*. On the positive side, the duty to consult has led to numerous "impact and benefit" agreements, which have given some First Nations a profitable role in resource development, including jobs and job training, service contracts, and monetary payments. On the negative side, it has made the whole resource development process much slower and has blocked major pipelines and frontier roads. Indeed, the slow pace of development, in which the duty to consult is a major factor, may yet prevent Canada from getting into the export of liquefied natural gas, despite the obvious economic and environmental benefits.

The "Nation" part of "First Nations" has accelerated the move towards self-government by transferring powers that used to be exercised by Indian agents into the hands of chief and council. But it is a limited form of self-government, because First Nations are still bound by the Canadian Constitution, Charter of Rights and Freedoms, and Criminal Code.

An increasing number of First Nations raise substantial own-source revenue through their business activities, but most are still fiscally dependent on federal transfers.

Consolidation of the present First Nations into fewer but larger tribal nations as recommended by the Royal Commission on Aboriginal Peoples would make sense but has not happened. The Indian bands created by Canada in the 19th century are the First Nations of the 21st century. More than a century of history has built up so many vested interests around them that reorganization is scarcely conceivable. To take just one example, each chief of a First Nation is a member of the Assembly of the First Nations, which is the major aboriginal lobby group for all of Canada. The chiefs are entrenched, and they will not easily yield their positions as heads of nations, even if there is more myth than reality in that role.

The rhetoric of nationalism demands that Canada deal "nation to nation" with First Nations. In a literal sense this casts First Nations as sovereign entities engaging in diplomatic relations with Canada, but of course this is far from reality. In reality, it means that First Nations have come to hold a preferred position among pressure groups lobbying for the attention of the federal government. Accordingly, new Prime Minister Justin Trudeau has held special meetings with the Assembly of First Nations; promised increased funding, especially for aboriginal education; and also promised to review all legislation passed without sufficient consultation with First Nations. Other interest groups can only dream of such access.

Mr. Trudeau will find, however, that it is not so easy

to carry out this version of "nation to nation" deal-ings. There is a good reason why they call them-selves "First Nations," not the "First Nation." They represent dozens of different tribal peoples, further subdivided by history into First Nations that are really administrative units under the Indian Act. As Harry Truman said of economists, they don't point the same way even if you line them all up end to end. There is no aboriginal "nation" that can deal with the Canadian nation (or with the English-Canadian and Québécois nations, for those who prefer that rhetorical construct). Conjuring with words can't change fundamental realities.

NEITHER INDIGENOUS, NOR SETTLERS: THE PLACE OF AFRICANS IN CANADA'S 'FOUNDING NATIONS' MODEL

CHARMAINE A. NELSON

Charmaine A. Nelson is an Associate Professor of Art History at McGill University. Her research and teaching interests include postcolonial and black feminist scholarship, Trans Atlantic Slavery Studies, and Black Diaspora Studies. She is the author of five books, including *Ebony Roots, Northern Soil: Perspectives on Blackness in Canada*, published in 2010. Her sixth book, *Slavery, Geography, and Empire in Nineteenth-Century Marine Landscapes of Montreal and Jamaica*, will be published this year.

The power to narrate, or to block other narratives from forming and emerging, is very important to culture and imperialism, and constitutes one of the main connections between them.
— Edward Said, Culture and Imperialism, 1993

Settlers are founders of political orders and carry their sovereignty with them.
— Lorenzo Veracini, Settler Colonialism: A Theoretical Overview, 2010

Canadian national identity cannot be separated from its imperial roots as a part of the British and French empires, the transatlantic world through which the metropoles became fattened by the trade in slave-produced plantation goods. As Said advised, control of narration was a centrepiece of colonial power, underpinning the imperial project of geographical expansion. But Veracini reminds us that the role of the settler was both ideological and material in the replication of Europe in the "New World" and the imposition of the citizen as white.

Canada's too frequent excision from its imperial transatlantic origins facilitates the pervasive myth of racial tolerance and the erasure of "other" founding peoples like Africans, who were neither indigenous nor settlers. Indeed, slavery was a part of Canada's early colonizing efforts and entailed both the local enslavement of indigenous and African people and the overseas investment in tropical plantation slavery in the Caribbean. Printed in the *Halifax Gazette* in 1752, one notice listed the sale of six enslaved Africans, the first described as "A very likely Negro Wench, of about thirty five Years of Age, a Creole born."[1] As William Renwick Riddell has explained,

---

1   Joshua Mauger, "Advertisements, JUST imported," *Halifax Gazette*, May 30, 1752, p. 2.

Creole indicated a Caribbean origin.[2] Meanwhile, a 1797 business ledger recorded the commercial transactions for thousands of gallons of rum (puncheons) imported from the slave-holding territories of the British Caribbean by the Montreal-based, Scottish merchant James McGill.[3] Therefore, like many others of his and lower classes, McGill not only enslaved indigenous and African people in Canada, but was enriched by his participation in plantation slavery elsewhere.[4]

Although French and British practices of slavery date back to the 17th century, and the first known black visitor arrived in 1605 (Mathieu da Costa), most Canadians are woefully ignorant of these histories. Instead, we are early taught to celebrate our liberation of African-American slaves during the Underground Railroad (1833-1861), and to vilify our American neighbours for their practice of plantation slavery. But what is excised in this process of selective amnesia is the more than 200 years when we (Canadians) were also slaving.

Indeed, the forays into slaving by the "founding nations" were by no means accidental. In 1688, the colonial administrator of New France, Jean-Baptiste de Lagny (Sieur des Bringandières), petitioned the governor, Jacques-Réné de Brisay (Marquis de Denonville), and the intendant, Jean

Bochart de Champigny, to appeal to France for slaves. The petition explicitly advocated for the importation of African (Negro) slaves, citing the extraordinary expense of labour in the colony as a hindrance to enterprise, which could be remedied through slave labour.[5] By the mid-18th century, slavery was also firmly entrenched in places like Nova Scotia, where slave sale and fugitive slave advertisements became a staple in the *Halifax Gazette*. But while we are accustomed to thinking of the French and the British as mortal enemies, such hostilities were soon suspended in the pursuit of shared colonial profit underpinned by the disenfranchisement of specific racial populations. Thus, although fierce adversaries in other regards, the French and British in the region agreed upon the necessity of the preservation of slavery. As Robin Winks explained, after 1760, slavery was "specifically protected by the terms of the treaty of capitulation between Britain and France."[6]

But if narration includes not just official, but also unofficial representation, traces, and utterances, and if to be a founder is not merely to possess the ideological power and material control of the land, but to carry out the actual hard labour of the colony, then enslaved and free blacks and indigenous people, too, were founding populations. However, since the plight of any socially marginalized group

---

2   William Renwick Riddell, "Slavery in the Maritime Provinces," *The Journal of Negro History*, Vol. 5, No. 3 (July 1920), p. 360.

3   James McGill, Cash Book, accession #: 0000-1207.01.0, McGill Archives, McGill University, Montreal.

4   Marcel Trudel, *Dictionnaire des Esclaves et de leurs Propriétaires au Canada Français* (La Salle: Éditions Hutubise HMH Ltée, 1990), p. 108; Frank Mackey, *Done with Slavery: The Black Fact in Montreal* 1760-1840 (Montreal: McGill-Queen's University Press, 2010), pp. 72, 443 (note # 130).

5   Robin Winks, "The Blacks in Canada: a History," *International Journal of Canadian Studies*, vols. 33-34 (2006), p. 16.

6   Winks, "The Blacks in Canada," p. 23.

is the loss of self-representation, black Canadians (especially the enslaved) have been historically bereft of the cultural, economic, and material resources, and leisure time to leave significant traces of their lives. They were denied the ability to implement and control their own Canadian narratives and to have such narrations legitimized and preserved.

But one archive that clearly reveals the ongoing resistance of historical black Canadians to the deprivations, surveillance, and violence of slavery, is the fugitive slave archive. Attempting to recapture one's slave necessitated the disclosure of details, which were unhelpful to the idea of slaves as controlled, idle, unintelligent property. When, in 1779, the enslaved black woman Cash escaped from the Quebec City tailor, Hugh Ritchie, he placed a detailed advertisement, which read in part:

"RAN-AWAY, From the Subscriber…a Negro Wench named CASH, twenty-six years old, about 5 feet 8 inches high, speaks English and French very fluently; she carried with her a considerable quantity of Linen and other valuable Effects not her own…*it is likely she may change her dress…(sic)"*.[7] (italics mine)

Ritchie's notice implied that Cash was a criminal, not just for her paradoxical act of "self-theft," but for absconding with "Effects not her own."[8]

But the details of Cash's escape also revealed the possibility of refined clothing as disguise for an enslaved fugitive looking to "pass" as free. What is striking about Cash's clothing is not the mere quantity with which she escaped (a sign of her intelligence and forethought), but its refinement and quality. While the clothing of the enslaved was regularly described as old or worn, the drabness of the colours also telegraphed the age of the garments. In contrast, only one of Cash's items was described as old: a pair of stays.[9] The assortment of dress with which she escaped—"a black sattin Cloak, Caps, Bonnets, Ruffles, Ribbons, six of seven Petticoats"—proclaims not just very feminine attire, but also a distinctly upper class and non-utilitarian one.(sic)

While Rebecca Earle has noted that white 19th-century commentators on Caribbean and South American societies wrote disparagingly about the black female appropriation of upper class, white female fashion staples such as the parasol and gloves, for the ways in which such refined clothing contrasted with the sun-darkened, muscular bodies of enslaved females, it is unclear if clothing like Cash's engendered the attention and derision of whites in Quebec or Nova Scotia.[10]

While as David Waldstreicher has noted, most enslaved people would have possessed only one

---

7   Hugh Ritchie, "RAN-AWAY, From the Subscriber," *Quebec Gazette*, Nov. 4, 1779; reproduced in Mackey, "Appendix I: Newspaper Notices," pp. 323, 536 (note #34).

8   Marcus Wood, "Rhetoric and the Runaway: The Iconography of Slave Escape in England and America," in *Blind Memory: Visual Representations of Slavery in England and America, 1780-1865* (Manchester, Manchester University Press, 2000), p. 79.

9   Ritchie, "RAN-AWAY".

10   Rebecca Earle, " 'Two Pairs of Pink Satin Shoes!': Race, Clothing, and Identity in The Americas (17th – 19th Centuries)," *History Workshop Journal*, No. 52 (August 2001), p. 184.

set of clothes, Cash's bounty of dress was almost certainly the direct result of her enslavement by Ritchie, a tailor.[11] However, rather than merely assuming that her knowledge of clothing pro-duction, repair, and maintenance was something imparted to her by Ritchie, we must instead ask to what extent Cash's enslavement and labour exploitation by Ritchie resulted in his profiteering from *her knowledge*. This is perhaps why, after stat-ing that she had absconded with stolen "Effects," Ritchie also conceded that, "she has also taken with her a large bundle of wearing apparel *belonging to herself*."[12] (italics mine)

A fundamental part of nation building is the management of "undesirable racial populations."[13] Such management acts to position these same populations as interlopers in the imperial project. If to accept the "founding nations" model is to centre certain white populations at the expense of reify-ing the marginalization of others, then it's time for another paradigm; one in which those like Cash, who did the heavy lifting, are also remembered and celebrated.

---

11   David Waldstreicher, "Reading the Runaways: Self-Fashioning, Print Culture, and Confidence in Slavery in the Eighteenth-Century Mid-Atlantic," *The William and Mary Quarterly* (April 1999), p. 252.

12   Ritchie, "RAN-AWAY".

13   Eva Mackey, *The House of Difference: Cultural Politics and National Identity in Canada* (Toronto: University of Toronto Press, 2002), p. 23.