

# Confederation comes at a cost: Indigenous peoples and the ongoing reality of colonialism in Canada

In 2015 Justice Murray Sinclair, chair of the Truth and Reconciliation Commission, declared: “Reconciliation is about forging and maintaining respectful relationships.”<sup>1</sup> Why did he point this out? The reality remains that Canada and Canadians are not respectful of our relations with Indigenous peoples. As such, the relationship between Canada and Indigenous peoples (termed “Indians” in 1865—but a relationship that would also extend to and include Inuit and Métis) at present remains “unreconciled.”

## A LAND OF MANY SOVEREIGN NATIONS

Today Canadians are on a journey to reconciliation because in the 1860s the Fathers of Confederation had no regard for the rights or interests of Indigenous peoples of Turtle Island (what most of us call Canada). What is most striking, though not surprising, is the absence of Indigenous peoples (and perspectives) from the debates in the Canadian Parliament in 1865. At that time, Indigenous people comprised many sovereign nations, all of which had very different political, economic, and social structures. They were self-governing, with sophisticated land and resource management regimes. There were multiple Indigenous nations spread across the country, some having already negotiated “peace and friendship treaties.” In the 1860s, the Indigenous peoples in the Prairies, much of British Columbia, and the North still dominated the local economies, and maintained their access to buffalo, fish, and fur-bearing animals. This access would diminish after Confederation.

In 1865 Indigenous constitutions and Indigenous laws were rooted in a deep and reciprocal relationship with the land that prioritized people, place, ani-

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mals, nature, and respect for the earth. Indigenous scholar Kiera Ladner contends that, despite Canadian claims of sovereignty, Indigenous constitutional visions did not simply disappear. Rather, the new state acquired lands, rights, and resources through what she terms “magical ways.” Even though Indigenous peoples were absent from the minds of those that would ultimately lay the foundations for the Canadian nation, Indigenous lands (and the resources contained therein) were not. Indeed, the opposite: Indigenous lands were and remain central to the Canadian Confederation project.

Mired in colonial mindsets and European Christian values, the men in attendance at the debates were con-

cerned about matters of race, by which they meant Irish, Scottish, French, and English. They considered issues of jurisdiction and the division of powers between the new provinces and a central government. They debated whether to form a unitary or federal nation. Ultimately, they were blind to their own prejudice and ignorance. While Indigenous peoples were cast as subhuman and “savages,” the settlers saw themselves as the great White saviours who would save the Indigenous peoples from themselves. Indeed, settlers believed so firmly in their own superiority and civilization that they were unable to see the importance of the contributions of their Indigenous hosts. Instead, “Indians” were a problem that had to be solved.

## A PROBLEM TO BE SOLVED

Since before Confederation, the long-term and stated goal of Euro-Canadian settlers had been to bring the Indigenous peoples from their “savage and unproductive state” and force (European-style) civilization upon them, thus confirming Canada’s place among European Christian nations. Despite the civilization project goal of the newly arrived settlers, the only explicit reference in the Waite version of the Confederation debates to “Indians” addressed the “Indian territories” that fell between Canada West and British Columbia. The politicians saw these territories as obstacles to be overcome rather than the rightful territories of Indigenous peoples to be negotiated and acknowledged—this, despite the fact that in 1763 King George III had proclaimed that all Indigenous territories remained the land of Indigenous peoples unless otherwise ceded, surrendered, or purchased. The Royal Proclamation was issued to prevent the unlawful theft of

Confederation comes at a cost, page 34

# Confederation comes at a cost continued from page 33

Indigenous lands throughout the new empire. In practice, in large parts of Canada, particularly the Maritimes and British Columbia, government officials and legal authorities assumed that European settlement superseded Indigenous rights to territory.

Upon Confederation, the Constitution of 1867 assigned exclusive responsibility for Indians to the federal government. Section 91(24) of the *Constitution Act, 1867* makes the federal government responsible for “Indians, and Lands reserved for the Indians.” Shortly after Confederation, the new Dominion government passed the *Indian Act* (1876), consolidating an array of colonial statutes passed by the former Province of Canada. This all-encompassing legislation set out to “remake the Indian” into a European. Known as the gradual civilization act, the legislation was broad. Most significant among the provisions, it defined who was and was not considered to be an “Indian” by the federal government, set out the band council system of government, and also established the conditions by which Indians could be enfranchised (namely, if they voluntarily gave up being Indian). Duncan Campbell Scott, who joined the civil service in 1879, famously stated why he thought the residential school legislation was a good idea, as follows: “I want to get rid of the Indian problem. I do not think as a matter of fact, that the country ought to continuously protect a class of people who are able to stand alone. ... Our objective is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question, and no Indian Department, that is the whole object of this Bill.”<sup>2</sup>

## THE INDIAN ACT

The *Indian Act* has been amended many times over the past 150 years, but it remains in existence today. It is the only piece of colonial legislation enduring today that specifically aims to assim-

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ilate and control a specific group of people. No settler group, no newcomer to Canada, is subject to such scrutiny and control by the state as Indigenous peoples are. This is one of the ways we perpetuate an inherently disrespectful relationship. This is one reason why Indigenous peoples are not and should not be considered simply another cultural group that makes up the multicultural fabric of Canada. They are not immigrants to this land; this has been their land since time immemorial. The *Indian Act* remains critical evidence that colonialism is alive and well today. It is a constant reminder that the state of Canada is premised on the theft of Indigenous lands. Given this enduring colonial reality, it is easy to see why we are in an era focused on reconciliation with Indigenous peoples.

At the same time, reconciliation remains a contested concept. Indigenous scholars like Taiaiake Alfred and Jeff Corntassel<sup>3</sup> and more recently Glen Coulthard<sup>4</sup> caution that reconciliation is not a gift that can be offered by the state. Rather, it must begin with Indigenous peoples themselves and be rooted in Indigenous concepts, knowledge, and traditions. Frustration with reconciliation emerges, in part, out of multiple failed efforts by the state to address

Indigenous concerns. Since Confederation, various national governments have endeavoured to solve the “Indian problem” through legislation. Most notable is Pierre Trudeau’s first “just society” measure. On the anniversary of his landslide election, in 1969, Trudeau, along with his minister of Indian affairs Jean Chrétien, proposed the now infamous “White Paper,” which contained three main proposals: (1) abolish the *Indian Act*; (2) transfer responsibility for Indians to the provinces; and (3) close the doors of the federal Department of Indian Affairs. Indigenous peoples from across the country were appalled at the proposal, which had been drafted without their input or consent and which threatened to eliminate the fiduciary duty owed them by the federal government. Indigenous peoples mobilized nationally to challenge the legislation, and the government withdrew it.

## ATTEMPTS AT RECONCILIATION

In 1982, Trudeau’s patriation of the Constitution entrenched the term “aboriginal” to mean “Indian, Inuit and Métis” peoples in Canada. This “catch-all” term was hailed by settler society as a step toward recognizing Indigenous peoples in Canada, yet at the same time the reality is that it lumped multiple nations and peoples together under a single rubric that could not and does not reflect the reality of diversity. The new Constitution also ensured that historic and existing Indian treaties were both recognized and protected. It would be easy to point to this constitutional change as a seismic shift in federal policy, especially in comparison to the language of Scott and the 1969 White Paper. However, accommodation and inclusion must not be mistaken for change or for decolonization. As Frantz Fanon<sup>5</sup> famously wrote, beware of the gifts of the oppressor, for they continue to oppress. Indeed, Coulthard and Alfred caution against such efforts. In their view, state-offered reconciliation perpetuates state dominance via state institutions. They sug-

gest that the term “reconciliation” remains a ruse to perpetuate the original assimilationist agenda. In this and in many other important ways, Canada and Canadians and Confederation continue to fail Indigenous peoples in an apparent desire to “solve” the problem without meaningfully altering our systems, values, and institutions to reflect and engage with Indigenous knowledge, norms, and ways.

Another example of a failed attempt at reconciliation was the Royal Commission on Aboriginal Peoples (RCAP). Launched in 1990 in response to the Oka crisis,<sup>6</sup> the RCAP was a major and costly undertaking that produced a five-volume, 4,000-page report with 440 recommendations on how to renew the state-Indigenous relationship. Ladner suggests that the form of reconciliation recommended in the RCAP report is not about promoting Indigenous governance but rather is tantamount to a relationship based on “negotiated inferiority.” She writes: “We need to create a renewed relationship based upon a true partnership in Confederation, which is based upon a realization of a post-colonial vision and not a perpetuation of colonialism.”<sup>7</sup> Indigenous legal scholar John Borrows adds, “A faithful application of the rule of law to the Crown’s assertion of title [and thus, sovereignty] throughout Canada would suggest Aboriginal peoples possess the very right claimed by the Crown.”<sup>8</sup> Therefore, as Ladner concludes, we must begin the process of thinking against colonialism to create a post-colonial future.

So, where to begin? Many Canadians simply do not know enough about Indigenous culture and values to appreciate the important contribution they could make to settler institutions and ways of knowing. Many more continue to believe that Indigenous knowledge and institutions are merely relics of the past or that they are not as sophisticated as those of settler society. They are wrong. Instead, settler understandings of Canada constructed at Confederation were entirely premised on the dis-

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possession of Indigenous peoples and their institutions. Clearly, Confederation came at a cost. In addition, it was not simply a constitutional compromise between provinces and races. Indigenous peoples whose lands and rights were whittled away as a result of the colonial enterprise were in fact, and remain today, the “biggest losers.” Today, as has been the case since Confederation, much of the Canadian economy (and those employed in it) is based on the exploration and extraction of resources on Indigenous lands for which Indigenous peoples receive little or no compensation. Canadian citizens continue to enjoy a standard of living that stands in stark contrast to the standard of living experienced by many Indigenous peoples.

While the state has arguably made space for Indigenous peoples to participate in contemporary society, in many more important ways the state remains a barrier to the real inclusion of Indigenous knowledge and an obstacle to real reconciliation. The lack of equal education, the failure to adequately finance

health care, and the issues of overcrowded and inadequate housing in Indigenous communities reflect an ongoing failure to commit to real and meaningful change and to treat Indigenous peoples with the same level of respect and in the same manner as settlers are treated (though the recent election of the Liberal government offers potential hope for the future).

## **ACKNOWLEDGING COLONIALISM**

In the end, Canada’s Confederation documents were written in a colonial era in which the “Fathers” of Confederation worked to unite a nation and build a country predicated on the displacement and dispossession of Indigenous peoples. It is impossible to celebrate Confederation without acknowledging the fact that it came at a cost. Inherently, Confederation was a colonial project, claiming territory in the name of the Crown and assuming ownership of it. At no point were Indigenous nations or their rights acknowledged. Implicitly, though not in law or in practice, Confederation is based on the principle of *terra nullius*—literally, land without people. Indigenous peoples were not considered the rightful owners of the land. Yet, Indigenous people were and are connected to the land in ways in which the Fathers of Confederation did not, and many Canadians still do not, recognize or appreciate. Today, Canada remains a nation entrenched in colonialism, all rooted in a colonial document. If we are to venture down the path toward real reconciliation, we need to rethink how we govern and how we conceptualize ourselves, perhaps even alter Canadian institutions and norms to embrace Indigenous ideas and institutions that can better shape the journey, going forward. So as the country celebrates Confederation, it is important that we pause to confront the reality of the past and the colonial relationship with Indigenous peoples to put into stark focus Canada’s journey toward reconciliation. 🍁

**Confederation comes at a cost, page 36**

# Confederation comes at a cost continued from page 35

## NOTES

1. Truth and Reconciliation Commission of Canada, <http://www.trc.ca/websites/trcinstitution/index.php?p=3> [archived site] (accessed April 14, 2016).
2. Scott, quoted in E. Brian Titley, *A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada* (Vancouver: University of British Columbia Press, 1986), 50.
3. Taiaiake Alfred and Jeff Corntassel, "Being Indigenous: Resurgences Against Contemporary Colonialism" (2005) 40:4 *Government and Opposition: An International Journal of Comparative Politics* 597-614.
4. Glen Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014).
5. Frantz Fanon, *The Wretched of the Earth* (New York: Grove Press, 1963).
6. As the Oka crisis reminds us, colonialism is a violent process and throughout Canadian history Indigenous peoples have been the victims of violence inflicted on them by the state. For more on the events that took place at Oka, refer to Geoffrey York and Loreen Pindera, *People of the Pines: The Warriors and the Legacy of Oka* (Toronto: McArthur, 1999).
7. Kiera Ladner, "Negotiated Inferiority: The Royal Commission on Aboriginal People's Vision of a Renewed Relationship" (2001) 31:1-2 *American Review of Canadian Studies* 241-64.
8. John Borrows, "Questioning Canada's Title to Land: The Rule of Law, Aboriginal Peoples, and Colonialism," in *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002), 113.

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