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Canadian Sovereignty and Universal History  
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**Preface**

We have, with good reason, taken up the practice of thanking the First Nation on whose territory a conference is held for the permission they have given us to do it. Instead, I wish we could begin by acknowledging at every conference held in this country that Canada, in its official capacity, recognizes that First Nations have jurisdiction over the land upon which we stand, or better yet, by acknowledging that whatever legitimacy our system of self-government may have is the result of the establishment of a just political relationship with First Nations. In fact, I wish I could begin by not needing to say that because, after over 300 years of settlement, our practices make it clear that it need not be said at all. But I cant. And that is the context within which I give this talk.

**A Story between Two Quotes**

I will frame my remarks with two quotes, both taken from Ted Chamberlin. The first, “If this is Your Land, Where are Your Stories,” is the title of one of his books. According to Ted, who reported to having heard it from Peter Usher, it was said by a Gitxsan Elder at a meeting with government officials, and was intended, at least in part, to show connection between narrative and place, a connection that the government officials did not have. I will use it in a slightly different sense. That is, I will respond directly to the Elder by narrating our (that is the settlers and their descendants) story of how we came to have jurisdiction over this land

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and therefore the right to determine which are its official stories. In short, I will explain how in our reckoning the land came to be ours.

The second is from a verbal report Ted made to a meeting of RCAP personnel held on a reserve in Alberta. It concerned a meeting he had just completed with the Gitksan about the possibility of making a collaborative film of their history. He told us, and this is only a paraphrase of what he said, that in Giktsan history “we (that is the settlers and their descendants) came up as Chapter 15 of the story.” To this, he added parenthetically “a little too early perhaps.”

Putting the two quotes together, then, they suggest that in Gitksan history we may well have stories of this land, but that these come later than many of the stories Gitksan tell. And that, it strikes me, is precisely correct. We are Chapter 15 of the story of this place and our stories are to be added to and interact with other stories, but our stories cannot substitute for them – and in particular- this holds for the story I wish to tell here – the story of how we came to have jurisdiction over this land; the story, that in a political sense, makes us Chapter 1 of the story of this place.

**Making us Chapter 1**

The Canadian state takes the position that jurisdiction over the land belongs to the settlers. Canada, over the years, has told many stories that explain how this state of affairs came to be true, and these have changed from time to time. Here, I will limit myself to the story we use today. It developed since the 1982 patriation of the Constitution and the need it created to

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reexamine relations between First Nations and the state. For the story, I am relying in particular on one recent judgment of the Supreme Court of Canada. I do so in part because, after five First Ministers Conferences and two referenda, Canada left that story untold, and the Supreme Court finally stepped in to tell it. My choice rests as well on this simple analogy. Origin narratives are produced in their most authoritative form by persons often called Elders by First Nations. These are people whose words carry such weight that we accept the path on which they take us even when we personally disagree with the direction it takes. It strikes me that in Canada the Elders are the members of the Supreme Court of Canada, for we follow what they say even when we disagree.

The judgment of which is speak is *Sparrow*. Rendered in 1990, in it, the Chief Justice and Justice La Forest, speaking for the court, told the story in these words:

It is worth recalling that while British policy towards the native population was based on respect for their right to occupy their traditional lands, a proposition to which the Royal Proclamation of 1763 bears witness, there was from the outset never any doubt that sovereignty and legislative power, and indeed the underlying title, to such lands vested in the Crown; see *Johnson v. M'Intosh* (1823), 8 Wheaton 543 (U.S.S.C.); see also the Royal Proclamation itself (R.S.C., 1985, App. II, No. 1, pp. 4–6); *Calder, supra, per* Judson J., at p. 328, Hall J., at pp. 383 and 402.

Now I realize that this snippet seems, at first glance, way too short to be a “story” much less carry the weight of a foundational narrative. But it does contain all the elements and, given the venue in which it was uttered, the authority necessary. It tells, albeit in a most compact form, the entire story. It begins by laying out who was living in the territory we now call Canada before the settlers arrived. These were, in fine, the kind of people who could occupy land. In that sense, the terrain was not the unoccupied land imagined in the classic version of

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the Settlement Thesis; that is, when the land is considered a *terra nullius* in all respects. It then states that, notwithstanding this recognition, from the first moment of settlement “sovereignty and legislative power, and indeed the underlying title” to these lands “vested in the Crown.” So, the people who occupied the lands did not occupy the lands in the crucial, political sense. Therefore, in fact, the Settlement Thesis applies with respect to political origins, and hence jurisdiction over the land only emerges with our settlement on these lands. And so, Chapter 1 can only begin with our arrival.

The story also acknowledges our obligation to respect the relationship of First Nations to the land and the stories that they tell of it to the extent they were capable of doing so. That is, we respect “their right to occupy their traditional lands, a proposition to which the Royal Proclamation of 1763 bears witness.” And to put beyond dispute that this story is Chapter 1, to raise the narrative to a fundamental principle, the Supreme Court, that is our elders speaking collectively, adds the words “never any doubt.”

And, it is not just a story. It is a blueprint for action, for we deploy it to assess the status of First Nations. Yes, *Sparrow* says to subsistence and ceremonial use of resources like fish for we accept that First Nations were sufficiently advanced to rely on these economic activities at the time of settlement. Yet, *Sparrow* says, final authority rests with Parliament, for as *Sparrow* says, political society begins with our arrival. Therefore, whatever claims these people may have, they must be subordinated to that political authority. And that is why we make the assumption that First Nations have to make claims to lands they have long held, and that we have the authority to determine whether

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or not a First Nation has the right to sell fish based on our perception of its level of development at the time of our arrival. The position stands out most starkly in this example: the state presumes to have jurisdiction over artifacts as well as the human remains of individuals whose existence long pre-dates the arrival of settlers to this place. All of this, and of course much more – indeed every judgment- based in the end on the assumption that Chapter 1 begins with our arrival.

That, I would be compelled to reply to the Gitksan Elder is the answer to your question. This is our story.

**The Pedigree of our Origin Story**

On sober reflection, I think we have to admit that our story is bizarre. It evokes an imaginary world before our arrival occupied by mythological creatures who, while human in many respects, were not yet sufficiently advanced to have constituted political society. It then constructs a magical moment, the time of our settlement on these shores, when our mere presence instantly brings political community, that is our political community, over a swath of land that included, but was not limited to, the places where we actually resided.

Compared, as it must be, to the Gitksan narrative that evokes a world already peopled by humans with political community when we arrived some 15 Chapters into the history they tell, our account seems less believable, and dare I say it, more like a fairy tale to be told at summer camp than a sober reflection of fact, a proposition that is less based on reason than the Gitksan version. It is a finding that, to the Enlightenment mind, is perhaps the cruelest cut of all.

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Yet, the justices of the Supreme Court of Canada did not invent this story. No, they relied on legal reasoning, as that reasoning was rationed through important precedents that run from the 1919 judgment of the Privy Council *In Re Southern Rhodesia* back at least as far as the 1608 judgment of Justice Coke in *Calvin's Case*. And the foundation of that reasoning, reason itself, if you will, is located in the best thinking of the time, from the so-called principles of general evolution of the 19<sup>th</sup> Century, through the stadial theory developed by Adam Smith, back to the imaginary world Thomas Hobbes described as The State of Nature.

But why do we tell such a story? Of course in the first instance it is because it supports our privilege. And, supporting our privilege is the name of the game. To support it in all versions of the story we have told over the years, our reasoning remains faithful to one trope familiar to all of us who work on colonial narratives, that the Other is somehow disqualified from the cornucopia associated with ourselves on the basis of a deficiency on its part. But that is no explanation for we know that, given our power, we can shape almost any story to suit our needs. Therefore I reiterate: why do we tell *this* story, a story that, I think you will agree with me, is blatantly racist and ethnocentric and therefore so overtly contradicts our self-perception of our fundamental values as a society? What is it about this narrative that blinds us to the racism and ethnocentrism it professes?

The factor that stands out in my mind is that even after 300 years of settlement we are still sufficiently uncertain that the depiction of the First Nations advocated by the

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Supreme Court is false to dismiss it out of hand. And that leads me to the central question I wish to address: how Western thought imagines human existence in what we used to call The New World prior to our arrival.

**The New World and Universal History**

From the time of our discovery, Western scholars have overwhelmingly believed that the people of the “New World” represented an early, if not the earliest, form of human existence. And, albeit with some exceptions, whatever the schema we have adopted, up to today, has remained faithful to that belief.

We have adopted that belief in to position First Nations within the two primary grand theories of human developed invented by the Enlightenment. The first is the assumption in Social Contract Theory that the people of the New World illustrate our manner of life in the State of Nature; that is, the period that exists until through the Social Contract humans form political community and progress to the state of society.

In my understanding, the State of Nature is conceptualized as an unchanging condition of existence. What I mean is that it is assumed that the first generation of people living in that condition lived no differently than did later ones. It is, if you will, a time that is timeless, an a-historic kind of time in which knowledge is not accumulated through experience and transmitted from one generation to another. In that sense, it is a form of time that stands outside of history. It is, to follow Foucault’s framework, a form of time appropriate to juridical-philosophical discourse on origins. By exemplifying the State of

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Nature as the way in which Indians were living when we first arrived, Enlightenment political thinkers disqualified them from participation in historical-political time, and therefore, Canadian law, which follows so faithfully from the premises of Enlightenment philosophy, feels comfortable in representing them as living in a condition prior to the formation of political community.

The second, as Meeks makes clear, is their placement in historical-political time as the first stage in the narrative of universal history that was introduced by Tourgot and Smith in the latter part of the 18<sup>th</sup> Century. To arrive at this placement was no mean trick for at in that era, as it had been since 1492, the Bible was considered to represent a faithful account of universal history. Every place, every people, and all history were to be found therein. But of course, the New World and the people who inhabited it seemed to have been missed, and, indeed, hunting, the economic form adopted by most peoples in the New World certainly could not be the earliest form of human existence for neither Cain nor Abel were hunters. This problem was also finally reconciled in the latter part of the 18<sup>th</sup> Century when scholars finally agreed that the peopling of the New World took place immediately after the Flood, and that, therefore, hunting represented the first stage in the remaking of universal human history that began at that time.

Unlike placement in the State of Nature, locating First Nations in the first stage of universal history puts them into the form of time we associate with the accumulation of knowledge from one generation to another. However, in reading Smith in relation to Locke, one comes away with the sense that the hunting stage is really nothing more than

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the historicized equivalent to the State of Nature; that is a period in human history where knowledge accumulation does not take place, or at best takes place at a snail's pace. But, when Smith was writing, this period is considered to have been quickly transcended for most, and one that lasted in the New World, following from Bishop Ussher's chronology (considered authoritative at that time), for about 4000 years before it was interrupted by our arrival. So, while it is a period when little accumulation occurs, at least it is of relatively short duration. If First Nations are slow, they are, in this timeframe, not that much slower than is the rest of humanity.

The discoveries at Brixham Cave in 1858 (only 80 years later) created a revolution the time frame of universal history. As Truatmann explains (Man date? P. 380):

The revolution in ethnological time was the sudden collapse, during the decade of Darwin, of the short chronology for human history based on the biblical narrative, a chronology in which the whole of human history had been crowded into the space of a few thousand years. The discovery of human remains in association with the bones of extinct animals changed all that. What replaced it was an ethnological time that extended human history indefinitely backward, for tens or hundreds of thousands of years, or more. Very suddenly the bottom dropped out of history and its beginnings disappeared into an abyss of time.

This revolution in time had its greatest impact on the so-called first stage of universal history. And today, instead of beginning 4000 years ago and co-existing for most of its duration with other stages, the first stage stretches back, depending where one defines the beginning of "humanity," from at least tens of thousands to hundreds of thousands and even millions of years. It is a period of extraordinary length in comparison to other stages; and, rather than being understood as co-existing with other stages, it becomes the only stage in which humans lived for most of our existence.

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It must be emphasized that, at the time of its introduction, this revolution in time greatly affected scholars whose work depended on the study of universal history. This is exemplified in the *Communist Manifesto*. As we all know, in it Marx and Engels grounded their argument with the claim: “The history of all hitherto existing society is the history of class struggles.” Published in 1848 and therefore before the revolution in ethnological time, this claim, as Trautmann points out (1987:251f) was advanced based on Biblical time. However, 40 years later ethnological time had replaced Biblical time and, as Trautmann again points out, this is reflected in the following footnote that Engels added to that claim, a footnote the relevance of which I am sure has gone unnoticed by most (as it had by me prior to reading Trautmann). The key words in the footnote are: “That is all *written* history. In 1847, the pre-history of society, the social organization existing previous to recorded history, was all but unknown.” Furthermore, as we know, Marx spent a good portion of the latter years of his life exploring the consequences of this newly expanded time frame for his general theory of evolution.

Later generations of scholars, particularly archaeologists, have investigated this very lengthy first stage almost exclusively for what it can tell us about the major moments in universal history, searching for times and places where great inventions like language and tool making and major migrations, like the movement of peoples to the New World, took place. This focus has produced the appearance that the first stage is an unimaginably long expanse of time in which, apart from moments when humanity incorporated transformative insights or actions, humans lived in the very form of timeless time we

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associate with the State of Nature. Thus, to cite one example taken from a recent article in the Victoria Times-Colonist, a highly respected scientist, thinking in terms of universal history, nonetheless reaches for analogy to the State of Nature as described by Hobbes when he connects obesity in the world today to a time when those of our ancestors “who weren’t greedy and didn’t grab the last crust of bread were the ones who died, and therefore their genes are no longer in our gene pool.” Or, to cite an example closer to home, when Justice MacEachern who I feel certain is not a racist uses the same analogy to conclude that, for the Gitxsan:

(i)t would not be accurate to assume that even pre-contact existence in the territory was in the least idyllic. The plaintiffs' ancestors had no written language, no horses or wheeled vehicles, slavery and starvation were not uncommon, wars with neighbouring peoples were common, and there is no doubt, to quote Hobbs (sic), that aboriginal life in the territory was, at best, ‘nasty, brutish and short.’

In short, the presumption that we are Chapter 1 of the story of this place originates from a belief that the First Nations remain in the first stage of universal history, and that, as this stage is incredibly long, it means that First Nations have less capacity to learn from experience and transmit what they have learned from one generation to another than do we. And that arises because of our adherence to a model of universal history born in the Enlightenment that places First Nations at a time when history took place at a much slower pace, if at all. In that sense, although they have lived on this continent over 15000 years in our way of reckoning they are still working on chapter 1.

But we know this is ridiculous. We know that all people have the equal capacity to accumulate knowledge and experience events, and have equal ability to transmit what we

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learn from generation to generation. Whether we operate on linear, cyclical or other forms of time all of us have histories of equal length. It therefore behooves us to reject a theory of universal history that presumes very little learning occurred before our arrival in favour of a form of understanding (and I think it is through a heterodox reading of universal history) and admits that the people who have been living with this land for over 15000 years have an awful lot to teach us about how to live here. And it is when we finally accept that simple truth that we will gain the confidence to reject the story *Sparrow* tells of how, by our mere settlement on it, this land became ours.

**To Arrive in the New World**

As settlers and as the settler state, we well recognize that we were not here at the beginning. Rather, in our story, this place is Chapter 15 of the story of another place, the place of our own origins. And that is fair, because we are Chapter 15 of a story of another place. But, even after 300 years of settlement, we do not see ourselves as Chapter 15 of the story of this place, much less begin to ask ourselves about the first 14 chapters. Yet, it is the only way that we can ever become a part of this land.

But how are we going to learn these stories, what are the protocols we need to follow to encourage the people who know them to tell them to us and thus, at least as I interpret it, also become, as First Nations people often explain, a part of this land? To do this I know we need to accept, to use an analogy I learned in the North, that we are the younger siblings and that therefore we can only learn our place by listening to our elders. To do this necessitates opening up Chapter 15 and taking responsibility for the consequences of what happened with

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our arrival. And most importantly of all, as I have come to understand, it necessitates that we arrive open-handed and ask to enter into a relationship with those who already tell the stories of this land; and to be prepared to leave if that is what they say, especially after having experienced us for 300 years and more.

I know this is just an idea. I do not think it will happen, at least not soon. But I am firmly convinced that until we place ourselves in that position we will not have arrived in the New World nor made contact with the people already living here. Until then we will remain in a delusional world of our own making, a world in which privilege is our only reality. What I mean is that, to finally arrive in the New World we must give up the story we tell about an imaginary place, filled with imaginary people; and that means we accept that, as Chapter 15 of the story of this land, our place depends in the first instance on the relationships we build with those who, if and when they are willing, will teach us the history contained in its first 14 chapters.