

# Race, Identity and the Law

## PRESENTED TO FOUR DIRECTIONS ABORIGINAL SYMPOSIUM AT QUEEN'S UNIVERSITY PRESENTED BY ELDERS WITHOUT BORDERS LEGAL COUNSEL, MICHAEL SWINWOOD

### INTRODUCTION

The headline in the Globe and Mail of Thursday November 16th, 2006 is as follows:

"Ottawa rejection of native-rights declaration 'sad'"

The opening paragraph states:

"Canada's reputation as a human rights leader will be smeared when it votes against a declaration on indigenous rights, warns the chair of the United Nations permanent forum on Indigenous issues."

The article discusses the United Nations declaration of the rights of indigenous peoples and observes that Canadian officials have "**gone from active supporters to strong opponents of the ...declaration.**" This is the true reflection of the official government policy regarding native/indigenous people of the territory known as Canada and in fact permeates policy throughout Turtle Island (North and South America) as government policy is informed through the consciousness of genocide

In the territory known as Canada we can see the existence of all parts of genocide, with many examples of each point:

- Outright killing – Frog Lake massacre (RCMP), Louis Riel (RCMP), Dudley George (OPP) and on and on.
- Imposing conditions of life designed to exterminate a group- Indian act of Canada
- Imposing conditions of life designed to cause mental or physical harm – the treatment of native people by the courts, the government, the Education system, the appalling conditions on the majority of reserves, the ghetto keepers known as chief and band council, etc..etc..etc...
- Sterilization – infected blankets of Amherst, the many documented cases of the sterilization of the Blackfoot nation in Alberta etc...etc...etc...
- Transferring of one group to another group – residential schools
- need I say more.

### The Royal Order of the Garter

In every superior court in the territory known as Canada we will find the Royal emblem of the Royal Order of the Garter. You will recognize the emblem which has a lion on its hind legs and a unicorn with a chain around its body. On either side of what appears to be a round globe but which is actually a depiction of a garter – yes a garter! In the round, is the motto "Honi soit qui mal y pense" – "Evil to him/her who thinks evil of me" and immediately below the garter, is the other motto, "Dieu et mon droit" – "God and my law", both mottos in French, although the symbol is the English crown.

Why in French, and what do these mottos mean and why would it have any application to the modern world? The answers lie in history, which has been told to us as lies, to protect those who belong to the Royal order of the garter and to keep people in darkness rather than in the light. A quick history lesson as told from the perspective of Rome and London. First of all, the **Holy Roman Empire began in Rome, continues to exist, yet its office is presently in London, England.** Go to Wikipedia.com, punch in the Holy Roman Empire and you will see **Pope Benedict at the head and all royalty of Europe as Princes and Princesses of the Holy Roman Empire.**

Punch in, at wikipedia, **Royal Order of the Garter** and you will be given the history of it, the Knights of the Royal Order of the Garter.

Its present membership (**all royalty of Europe, the Bush family, the Emperor of Japan** and do not forget **Lord Black of Crossharbour**) and the fact that the head of the Order is **Queen Elizabeth The 2nd.** She, who presently is identified as the head of the Royal House of Windsor, but who actually is the from the Royal House of Saxe Coburg Gotha of Germany. It was found to be inconvenient for the **Queen of England to be from Germany** in the First World War, so her Royal house name was changed to make it less unseemly. Yet, **she is of German ancestry** and we do find the holy Roman Empire linked with the German nation in the following title – Imperial Order and Association of the Nobility of the Holy Roman Empire of the German Nation – Look it up – wikipedia.com, and www.imperialcollegesofprincesandcounts.com; there for the looking!

What do mottos mean and why in French? Well, it was a French King, who happened to also have been the King of England who coined “Honi soit qui mal y pense” – “ Evil to him who thinks evil of me” – in making the declaration that whatever the King says, becomes the Law and evil to him/her who thinks otherwise. Likewise, “Dieu et mon droit” – “God and my law”, which emanates from the Calvin’s case 1608, which is an English case standing for the principles that the King is divine!

How is all of this relevant to today and native people? Perhaps if we look at **section 9 of the Constitution act. 1867**, it will become clear

– section 9 states“

The executive Government and authority of and over Canada is hereby declared to continue and be vested in the Queen”. Canada is not a sovereign country;this territory is the property of the Queen and the Royal Order of the Garter – reflect on the following names – The Royal Canadian Mounted Police, The Royal bank (symbol – Lion holding globe), The Royal Canadian Mint, The Royal Canadian Air Force, and on and on. The commander of the armed forces is the Queen (section 15 – Constitution act 1867) and Parliament is defined as – “ ... consisting of the Queen, and upper house styled Senate, and the House of Commons” (section 17 constitution act 1867). Additionally, to complete this history lesson, we must look at The Golden Bull of 1356, The Bull Inter Caetera (Alexander VI) May 4, 1493, and the Treaty of Paris of 1763, These three documents reveal the seeds of consciousness of genocide which prevails unabated to this day. The Golden Bull of 1356 extended special privileges to Princes and Princesses of Europe in that: “If they were Christian, any land claimed by them was theirs”, and furthermore special privilege was extended to : “The collection of tolls, the taxing of Jews, the claim to all mines and minerals of territories claimed and to Mint money”. The Bull Inter Caetera declared among other things : “That in our times especially the Catholic faith and the Christian religion be exalted and be everywhere increased and spread, that the health of souls be cared for and that barbarous nations be overthrown and brought to the faith itself”. The ‘savages’ were declared to have no souls and therefore, their killing would be sanctioned by the on almighty God. Finally, the treaty of Paris of 1763, which was the dividing of North and South America, by Royalty, was negotiated by the Supreme Knight of the Royal Order of the Garter.

**All of this continues today;** The Royal Order of the Garter continues today; The Holy Roman Empire continues today; Canada is not sovereign; the consciousness of genocide was birthed by royalty – witness the European Crusades 1100 to 1400, then the genocide of the Americas 1492 to the present; problems are never solved by the consciousness that created them.

## **Sovereignty of The Native/ Indigenous Peoples**

The proposition has been put forward by Dr. John Borrows, head of the Aboriginal chair of the University of Victoria, who observed as follows:

“Does Canada have underlying title to its territorial land base? Does it have exclusive sovereignty throughout the so-called dominion? These presumptions are questionable when one examines the most fundamental principles underlying the Canadian concept of the rule of law.

**Furthermore, from an Aboriginal legal perspective Canada does not have underlying title or overreaching sovereignty in traditional Aboriginal territories. Canadian courts have not explicitly explored the rule of law or Aboriginal perspectives on the question of Crown sovereignty and title. They have uncritically acquiesced to Crown proclamations, that sovereignty and underlying title to land throughout the country belongs to Canada. Yet the court’s articulation of the rule of law in other contexts and Aboriginal viewpoints on this matter, do not support the Crown’s conclusion.”**

**In the country known as Canada the question of sovereignty as it applies to the federal and provincial Government vis a vis their relationship with indigenous people is deeply flawed.** Legally, I submit that the British Parliament is incapable of legislating responsibility for Native people by virtue of its **pronouncements in section 91(24) of the British North American act.**

The idea that it could transfer this relationship between the crown and Native people to the present federal Government **is in direct opposition to the Royal proclamation of 1763.** Moreover, by what principle of law does the British Crown purport to legislate sovereign people out of existence? Might it be the Papal Bull of 1493 and the treaty of Paris of 1763 which combine Rome and London’s view of the “non-Christian barbarous nations” and the ability of the Pope and the King to combine the double whammy of religion and state to define sovereignty – could it be that this is what we mean when we say “honi soit qui mal y pense”? Does this define a consciousness of genocide and does it continue today? **Ever since the settlers came to the territory known as Canada, fraud and theft have informed their relationship with Native/Indigenous people resulting in the dispossession of their lands, customs, culture, language and spirituality.** From Louis Riel to Dudley George, the newcomers have displayed a complete disregard for the need to respect the initial inhabitants and continue to treat these initial inhabitants as they treat the environment – with contempt.

Let me refer to a gifted academic Dr. Sidney Harring, PH.D, who has written many books on the sovereignty issue, as it applies to Native people and let me quote from the forward in his book “White Mans Law – Native People in the nineteenth Century Canadian Jurisprudence” – the foreword, by the way, written by Mr. Justice Roy McMurtry, of the Ontario Court of Appeal:

“In recent years numerous important books have appeared which deal with the history of Aboriginal populations in early Canada. Although these studies add enormously to our understanding of the role played by Native peoples in the British North American and Canadian communities, there has been to date no significant study of the dynamic and at times tragic relationship between Euro-Canadian law and the legal traditions of Aboriginal populations.

Professor Sidney L. Harring now addresses that lacuna in this sweeping reinvestigation of Canadian legal history. In the nineteenth century, many Canadians commented proudly on what they regarded as this country’s liberal treatment of Indians. In challenging that concept, Professor Harring draws on scores of nineteenth-century legal cases. His study demonstrates that colonial and **early Canadian judges were sublimely ignorant of British policy concerning Indians and their lands and arrogantly indifferent to Native rights and traditions.** A great strength of study is its account of the remarkable tenacity of First Nations in continuing their own legal traditions despite obstruction by the settler society.

Today, legal decisions respecting native rights and land claims reverberate throughout our society, affecting the rights and obligations of all Canadians. This study helps us to understand and come to terms with how we arrived at our present condition. It leaves no doubt that Canadian Native legal culture requires further study by scholars and that aboriginal history demands more serious attention by courts in rendering decisions.”

In contrast to this British system of law superimposed on the indigenous nations of Turtle Island, stands the rich traditions of Native law as expressed in the Great Law of Peace of the Haudensaunee Native (Iroquois Confederacy) and the constitution of the Algonquin nation as expressed in the pike. Herein you will find protocols informed by spirituality, with custom, tradition and ceremony as the benchmarks of the conduct of the individuals in their society. The Elders of Turtle Island, the Grandmothers and the Grandfathers have maintained the knowledge and wisdom of these undertakings, and through oral history have insured the continuation of this rich culture from the Aztecs, Mayans, Hopis, Algonquins and many other nations. The difference between the paradigms of the British legal system and the indigenous culture can be viewed by contrasting the square with the circle. It can be posited that the western world resolves and revolves within the square (courtrooms, boardrooms, house of commons) and the indigenous world resolves and revolves within the circle (sweatlodge, drum circle, healing circle). It can be said that the square is informed by the left side of the brain (logic, science, math) and the circle is informed by the right side of the brain (magic, ritual, ceremony) herein lies the conundrum.

Furthermore, the British legal system conducts matters in society through the pen and the paper – legislation – and the Elders of Turtle Island are guided by oral prophecies, speaking to the past, present and future. We are now bringing into sharp focus the identity of two systems which are having great difficulty seeing each other. It is suggested that both paradigms have something to offer each other, as left and right hemispheres of the brain can combine to inform a balanced consciousness.

In an introduction to essays on Aboriginal and treaty rights in Canada, Michael Asch had this to say:

“ Law has two contrasting faces. On one face, the rule of law represents a crucial means whereby the dominant rules and values in a society are applied and enforced. On the other, law represents a place where, sometimes, those rules and values are challenged and new ways of understanding may emerge. Such is the case with Aboriginal rights law. It is axiomatic that, since Confederation, Canadian law has represented a fundamental means whereby values and institutions derived from the culture of settlers, immigrants, colonists, and their descendants were to be imposed upon Indigenous peoples. At the same time, there have been moments when these institutions and values have been successfully challenged through the application of the rule of law.

**One central moment of challenge was the 1973 decision by the Supreme Court of Canada in the Calder case.** That decision established that, notwithstanding either the course of Canadian history as understood by the descendants of the settlers, immigrants, and colonists or legal precedent derived from British colonial law, the **Canadian state was required to recognize the self-evident yet hitherto ignored fact that Aboriginal peoples lived in societies prior to the arrival of Europeans and that, as a consequence, there was a likelihood that their institutions, tenures, and rights to government remained the presumption of Canadian sovereignty.** It was a singular moment and it did not go unnoticed by the governing politicians or by the legal community. Indeed, such is the power of law that this decision set in motion a course that, ultimately, led governments to move from a position where Aboriginal rights were deemed not to exist to a place where both Aboriginal and treaty rights were recognized and affirmed in the **1982 Canadian Constitution Act.**”

## Conclusion

Despite mans greatest intention, race, law and identity for the indigenous people on Turtle Island is informed by the consciousness of genocide. This sad truth is ignored and certainly not accepted in our present society. The federal government's ridiculous shift in position on the United Nations Declaration on Indigenous right is transparent and unfortunately supportive of the thesis advanced in this short presentation. **By virtue of section 35 of the Constitution act 1982, "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed."** The existing aboriginal right which must be recognized and affirmed is sovereignty. Sovereignty has never been taken away from the indigenous nations and it is the prism through which the solution to the woeful problems that now exist between the Crown and Indigenous can be solved. To continue these self evident truths in their relationship is to condemn both societies to continued and elevated dispute. The spirit can only be imprisoned so long until the energy of freedom breaks through the shackles of enslavement.

It is incumbent on those who express an interest in these matters to truly understand our past, in order to redefine our present and insure the future for seven generations to come. Politics will not solve these problems, administrators will not solve these problems, only good-minded people with the will and the choice to bring about change will influence the required changes.

I leave you with the following passage from Manly P. Hall from his book "The Secret Teachings of All the Ages"

"When the mob governs, man is ruled by ignorance;  
when the church governs, he is ruled by superstition;  
and when the state governs he is ruled by fear.  
Before Men can live together in harmony and  
Understanding, ignorance must be transmuted  
Into wisdom, superstition into illumined faith  
And fear into love"