Constituting Canada: Interdisciplinary Approaches to an Idea

Thursday 13th July – Friday 14th July, 2017

Abstracts

Eric Adams

Constitutional Stories: Japanese Canadians and the Constitution of Canada

Constitutions exist in stories. Constitutional stories – whether in formal judgments and statutes, media reports, scholarly writing, or cultural products – shape the fundamental understanding of our legal and political institutions, but also of our legal and political selves. Constitutions constitute in the broad, diverse, and conflicting worlds of stories we tell. Significant anniversaries have always marked an occasion for constitutional stories and their telling. The 150th anniversary of Confederation offers an opportunity to reflect on the stories Canada's constitutional history has to contribute to Canada's broader constitutional narrative and self-understanding. In particular, I want to explore how the constitutional history of Japanese Canadians – in both its well- known and hidden dimensions – reveals the significance of the constitutional stories we tell, and those we leave buried in archives. In doing so, we might see the capacity of constitutional history, largely abandoned by scholars for the more immediate imperatives of contemporary constitutional concerns, as integral once again to a full understanding of Canadian constitutional law, culture, and politics.

Eric M. Adams *is an award-winning teacher and researcher. He is an Associate Professor at the Faculty of Law, University of Alberta. He was recently awarded a Killam Annual Professorship (2016-2017) for excellence in teaching, research, and community service. Professor Adams publishes widely in the fields of constitutional law, legal history, employment law, and legal education. His work on Canadian constitutional history includes studies of the classic cases, Christie v York and Roncarelli v Duplessis. He provides frequent media commentary and advice on a range of constitutional matters, and his editorials have appeared in newspapers across the country. He is currently the lead legal historian on the SSHRC-funded Partnership Grant, Landscapes of Injustice, investigating the dispossession of Japanese Canadians during the twentieth century. He is working on several projects extending from that research, as well as a book on the history of the Canadian Constitution.*

Raymond B. Blake

Canada and the Dreams of Citizenship since 1867

One could argue that Canada is an artificial construct, created at a particular historic moment by British North American politicians who were responding to several contingencies, notably a fear of the Americans to the south and increased demands from Britain that they assume greater responsibility for their own affairs. They also had to reconcile the necessity of creating a nationally integrated economic union amid the fears in the colonies of surrendering control of their local affairs to a distant national government. This was especially true in French-speaking Quebec, but the Maritime colonies, too, refused to surrender control over local matters. In fact, two colonies simply refused to join in 1867 and large numbers of Indigenous peoples and communities were simply ignored. Yet, the issue of statecraft, the art or skill of conducting government affairs, was masterful in 1867. A federal constitution shared responsibility between competing provincial and national interests and found balance between unity and diversity while forging a national economy and providing a design for social cohesion.

This paper looks at notions of Canadian citizenship development since 1867 by examining five significant moments of citizenship change and the roles of a handful of influential persons (mostly prime ministers) who shaped Canada's approach to citizenship. The first dream of citizenship began in 1867 and might be termed the Cartier plan. It was based on the notion that Canada had to forge an identity that recognized and accepted diversity and pluralism in the new political union, but it largely foundered on emergence of an overwhelming desire for Canada to be a 'British' Nation. The second came after the Second World War when Canada engaged in an ambitious federal program of social reconstruction which that changed idea of the role of the national government and of citizenship in Canada. The third narrative of citizenship development came with Pierre Elliott Trudeau who was driven by a single political ambition to create a strong nation comprised of citizens with a strong national identity based on rights and diversity and presided over by a strong central government. The fourth dream of the citizenship came with the previous Conservative government that has attempted to construct a sense of belonging and attachment – a shared citizenship in other words that reduced multiculturalism to a descriptor of Canada rather than a policy initiative – even as it recognizes and embraces the many distinct and diverse cultures and identities that thrive in Canada. The fifth is now upon us with Prime Minister Justin Trudeau who is attempting to build upon the ideals of Cartier and others in 1867 and cast Canada as a nation of diversity.

This paper attempts to show that in Canada notions of citizenships are often fleeting as the political leaders search for political identities that can create a cohesive nation. However, these instances also stand as illustrations of how susceptible citizenship ideas can be to the needs and ideas of the moment and to the thinking of a few despite the important constitutive elements in Canada's development. Above all, the paper reveals the shifting conceptions and constant (or periodical) re-imagining of nationhood and citizenship in Canada.

Raymond B. Blake *is professor and head of the Department of History at the University of Regina. Previously, he was Craig Dobbin Chair of Canadian Studies at University College Dublin. He has published widely on Canadian history and Canadian Studies. His recent publications include Lions or Jellyfish: A History of Newfoundland-Ottawa Relations was published in 2015 by the University of Toronto Press and was awarded the Canadian Studies Network-Réseau d'études canadiennes Prize for the Best Book in Canadian Studies, 2015, and his co-edited Celebrating Canada: Holidays, National Days and the Crafting of Identities (2016). Three books are forthcoming in 2017, including a co-authored history of Canada, Conflict and Compromise: Pre-Confederation Canada and Conflict and Compromise: Post-Confederation Canada.*

Ben Eldridge

Constituting a Fantastic Nation: Mosaics, or Watts up in Canada?

Canada's literary history is as bleak as it is illustrious. This is a bleakness which permeates the reception of Canadian texts (or, more accurately, lack thereof); despite laying claim to many of the most innovative and influential authors of the past sesquicentenary, Canadian authors are frequently overshadowed by their more celebrated (and celebratory) Southern cousins. Part of the problem arises simply from historical publishing and distribution limitations; Canada's art is a

peripheral one, denied consecration in the hallowed halls of the major publishing houses. But this bleakness also manifests in the content of the texts themselves, and, indeed, Canada's literary output has become inflected with its own idiosyncratic tendencies, the most prevalent theme of which is, simply, perseverance. The difficult and impartial landscape of Canada seems to have had a marked effect on its artistic output: survival is an attenuated endpoint; many texts manifest an ongoing struggle against entropy which is, ultimately, futile. Nonetheless, the struggle is real. It is, then, no wonder that the writers of the fantastic, broadly defined, have taken such firm root in this soil – it is the soil itself that is both literal and metaphorical antagonist. In a certain sense, then, contemporary science fiction author Peter Watts is the Canadian writer par excellence. His growing literary reputation precedes him: if his name is recognized at all, Watts drolly suggests, he is known as "The Guy Who Writes The Depressing Stories." It is with Watts' highly pressurised debut novel Starfish (1999) that this paper will be concerned. Starfish portrays a world of unfettered Darwinian struggle, in which the anthropocentric strive for authority has resulted in the diminished possibility of long term human survival. Futuristic trappings notwithstanding, science fiction is always about the time in which it is written, and Watts' claustrophobic novel harnesses the constituent elements of a longstanding Canadian literary obsession to a distressingly final endpoint, where the struggle for survival itself is misguided.

Ben Eldridge i*s a postgraduate student in the Department of English at the University of Sydney. His thesis "Fiction, Science, & Discursive Power: Peter Watts' Functionally Generative Linguistic Paroxysms" considers the work of contemporary Canadian science fiction writer Peter Watts. Exploring Watt's manipulation of grammatical construction, prose, and generic categories, Ben questions whether it is syntactical methods of structuring discourse, rather than semantic content alone that produce the richly and diverse ambiguity of Watt's work. Ben holds an Australian Postgraduate Award from the University of Sydney. He has convened a number of literary events including the Sydney Science/Fiction Syndicate and the Sydney Literature of Australia Group.*

Stewart Gill

One Hundred and Fifty Years of Federalism and Canadian National Identity

Two major obsessions in Canadian Studies/History have been federalism and identity. The one hundred and fiftieth anniversary of confederation is an opportunity to reflect on both.The Canadian literary scholar Northrop Frye commented in the 1970s that "the Canadian identity is bound up with the feeling that the end of the rainbow never falls on Canada." He added: "It doesn't do to confuse our sense of unity with our sense of identity. Identity, in a country as big as (Canada) has to be restricted, localized, a neighbour sense. The cultural imagination has something vegetable about it; it needs to put down roots and draw sustenance for its own soil…. Canada is where these places are (a list of mellifluous and curious place-names on Railways) and a Canadian is anyone for whom their names conjure up the images of his inheritance". This paper will look at federalism and identity in the light of what happened in 1867. Federalism in one sense, historical as well as practical, was in 1867 a convenient, relatively near at hand answer to formidable political problems. But it was something more and was to become such as a sufficiency of people believed that it would become the vehicle for a new nation to set it on its way. It was within this federal framework that nationhood emerged.

Stewart Gill *is a graduate from the Universities of Edinburgh, Toronto and Guelph – the latter two on a Canadian Commonwealth Scholarship. Stewart is Master of Queen's College within the University of Melbourne an adjunct-Professor in the School of Historical and Philosophical Inquiry at The University of Queensland and a Senior Fellow in History at The University of Melbourne. He is a past President of the Association for Canadian Studies in Australia and New Zealand, the founding Chairman of the Pacific Asia Network of Canadian Studies and President of the International Council for Canadian Studies from June 2017. He is a Fellow of the Royal Historical Society and a Fellow of the Queensland Academy of Arts and Sciences.*

Patrick Imbert

How do Pedagogy and The Invention of a School System Could Have Constituted Canada: the Ideas of Charles Mondelet in Letters on Elementary and Practical Education (Montréal, 1841)

Horace Mann, the famous pedagogue of Massachusetts said that the most important thing to do in the USA was to produce Republicans out of the constant flow of immigrants who for the most part had no idea of democracy and republicanism. Charles Mondelet took his ideas from Mann (as well as Sarmiento in Argentina) and wrote a book which was aiming at producing citizens who would, contrary to the Ultramontane catholic school system of French Canada, be anchored in modernity: democracy, bilingualism, multicultural awareness, interest for Canada as a land to be developed by science and cultural activities. His book was published as a means to prepare Canada to his development as a future democracy aiming at embodying the important elements attracting people in North America, liberty, democracy, separation of religion and state. However, in French Canada, the catholic church monopolized the school system along the lines of religion, stability, the defense of the French language, and scholastics. Although his ideas were a fundamental preparation to the invention of a democratic constitution and of a country on its way to a certain kind of independence, they were censored, ignored and/or dismissed. Today even, his book published in English and in French, has not been republished. Hence, we will study what has been so challenging for Canada in his ideas, and what has eventually permeated in society, more than a century later. We will conclude that in the 19th century, there was a wide gap between how people were educated in French Canada and what was aimed at by the Constitution of Canada.

Patrick Imbert*, Ph.D., (1974). University of Ottawa Distinguished Professor and Director of the Chair: "Canada: Social and Cultural Challenges in a Knowledge-Based Society. He has been Executive Director of the International American Studies Association and President of the Academy of Arts and Humanities of the Royal Society of Canada (2009-2011). He has published 39 books and 300 articles dealing with transculturalism, exclusion/inclusion, Québec literature and semiotics.*

Asmaa Khadim

Section 35 Aboriginal Rights: Evolving Understandings in a Changing World

In considering the treatment of Aboriginal rights over the last 150 years, it is apparent that our conceptualization of the meaning and content of Aboriginal rights protected within Canada's constitutive documents has evolved over the years. It is now well settled in Canadian constitutional law that a duty to consult and accommodate with Aboriginal peoples arises wherever the Crown contemplates actions or decisions that may affect an Aboriginal or treaty right. Such duties are seen as necessary in order to give full effect to Aboriginal rights, encourage reconciliation with Aboriginal peoples and uphold the honour of the Crown. The necessity of engaging in a consultative process has been stressed in a line of landmark Supreme Court of Canada cases, among the most prominent of which may be Haida Nation v BC (Minister of Forests), Taku River Tlingit First Nation v. British Columbia and Mikisew Cree First Nation v Canada. Some view these advancements as an example of the progressive nature of Canada's constitutional commitment to advancing reconciliation with Indigenous peoples. However, as an area of law that is constantly evolving, it may be worthwhile to take stock at this juncture and consider some of the practical implications of this jurisprudence. Until now, the law of Aboriginal consultation and accommodation has been focused on procedural aspects rather than substantive rights. In practice, the predominant focus on procedural rights has posed serious limitations in giving effect to the substantive rights contained within section 35 of the Constitution Act, 1867. In addition, while there is a fair bit of jurisprudence on consultation, there is very little on the scope of the Crown's duty to accommodate.

Nowhere is this more apparent than in the area of natural resource development, as issues of consultation and accommodation most often arise within the context of mining, forestry, oil, and gas. The constitutionally mandated consultation framework does not require the consent of affected Aboriginal communities in most cases, allowing development approvals to be granted even where severe and detrimental impacts on treaty rights are anticipated. Alberta's oil sands development and regulatory approvals process offer a typical example of the difficulties encountered in applying the current consultation framework in practice. Ultimately, the question of whether consultation is "adequate" is a subjective one that is assessed on a case-by-case basis, leaving some Aboriginal communities with the sense that these principles are applied in a rote manner and fail to give meaning and effect to their section 35 rights. In addition, the role played by tribunals in considering constitutional questions regarding the adequacy of Crown consultation has been a particularly murky area of law, more so in light of the complex federal-provincial regulatory scheme that exists for the approval of resource development applications. A consideration of some of these practical ramifications may highlight opportunities for refining or re-imagining our understandings of section 35 rights to provide for a more enlivened understanding of these substantive rights in the future.

Asmaa Khadim *is a Lecturer in Law at Griffith University. She has been a member of the Law Society of Upper Canada (Ontario) since 2003, and was admitted as a Solicitor to the Supreme Court of New South Wales in 2015. Asmaa completed a B.Sc. at McGill University in Psychology and International Development Studies. She then obtained an LL.B. at Osgoode Hall Law School, York University, with a specialisation in*

International, Comparative and Transnational Law. She is currently a doctoral candidate at the Sustainable Minerals Institute's Centre for Social Responsibility in Mining (CSRM), at The University of Queensland. Asmaa's research areas include comparative constitutional law, international human rights, natural resource development and environmental law. Asmaa is currently the Canadian Program Advisor at Griffith Law School. She has also been a Faculty Advisor to Griffith Law School's Philip C. Jessup International Law Moot Court team. Prior to joining Griffith, she worked in private practice in Ontario, Canada. She has also taught constitutional law subjects at Bond University's Faculty of Law.

Chris Kostov

The Charlottetown Consensus Report and the 1992 Referendum: Equality of Nations versus the Equality of Provinces and Individuals

The Charlottetown Accord was designed to accommodate a whole spectrum of diverse and competing interests. The Accord had to deal with the demands of the province of Quebec for a distinct society, and a whole range of other issues for a special status of the province within the Canadian federal system, the equality of all provinces principle, the Aboriginal demands, the Rest of Canada demands, to balance all provincial and collective rights versus individual rights and to reflect all these various cultural, linguistic, economic, and political demands into the Canadian federal institutions. Essentially, the negotiations among the various parties offered a wide range of answers to the question "what is wrong with the current Canadian Constitution?" This paper focuses particularly on the rising Aboriginal demands, the Francophone minority rights, the demands of the province of Quebec, and the design of the major federal legislative institutions- the House of Commons and the Senate, which have to accommodate and reflect this range of constitutional changes. The author attempts to demonstrate why the Quebecers and the various Canadian Aboriginal groups were not content with the current constitutional order, what changes they offered and how this initiative for major constitutional changes failed due to the lack of consensus on how to strike a compromise among so many competing interests.

***Chris Kostov** obtained his Ph.D. in history from the University of Ottawa, Canada in 2009. He has specialized in modern Central & Eastern European history and Canadian Native Studies. He is the author of two books, 1 e-book as well as a number of academic articles and book reviews. Currently, he teaches history and International Relations at Schiller International University Madrid.*

Sarah Krotz

The Affective Geography of Wild Rice: Natural History and / as Constitution

The topography and waterways bordering the pre-Cambrian shield where wild rice grows make up a quiet yet potent part of Canada's affective geography. The locus of what some call a "wild rice war" between Anishinaabe rice harvesters and non-Indigenous cottagers, this area has been fraught with conflicting meanings and perspectives of how these areas should be used. As a literature scholar, I am particularly interested in how the meaning of the wild rice, or manoomin,

has been negotiated in textual descriptions, ranging from the naming of the plant, to its description in early colonial natural histories, to the pronouncement, on a contemporary piece of protest art near Pigeon Lake, Ontario, that "wild rice is Anishinaabe law." Moving between Indigenous, explorer and settler accounts of the plants, I draw attention to how early colonial writers anticipated the present-day conflict, their natural history writings opening up ways of understanding how a plant can be "law."

Sarah Krotz *is an Assistant Professor of Canadian literature in the Department of English and Film Studies at the University of Alberta, Canada. Her research focuses on space and place in Canadian literature, particularly of the long nineteenth century, with an emphasis on ecology and literary cartography. Her articles on literary geography, cartography, and natural history can be found in Canadian Literature, Canadian Poetry, Studies in Canadian Literature, and Studies in Travel Writing. Her monograph, Mapping with Words: Anglo-Canadian Literary Cartographies, 1789-1916, is forthcoming with U of T Press.*

Karthik Kumar

Dionne Brand and Dialectical Materialism: A Marxian Reading of Her Fiction

As a progressive and studied writer, Dionne Brand takes into her hand the responsibility of dealing with all the issues confronted by men and women and children of the Black community being not only the members of the proletarian class, but also because of belonging to the Black race. Right from the sufferings of the Blacks during slavery down through the periods of feudalism, early capitalism, the colonial period, the neo-colonial period and also globalisation-ruling currency are subject matter in her works. As a member of the Black community, she is committed to the task of unravelling the exploitative past and present of her people. She does it with panache and power.

Dionne Brand more than succeeds in her characteristic way in sensitising about multitudes of problems faced by her beloved people. She is not only race-conscious, but also very class-conscious about her role as an educated representative of her people. She has taken a definite Marxian stand to view the whole scenario of the Black subjugation for being coloured and the underprivileged. The Marxian dialectical methodology has given the clearest view possible over the whole state of things. This dialectical materialist approach can be seen pervading although her minor and major works. It not only does give her works the authenticity they exhibit, but also it does impart the optimism and strength of will for her community to stand as a single man, chests drawn and heads held high in their struggle for a better future when they shall be sounded as normal men and women. Dionne Brand is exposing a progressive and futuristic soul in her works. Her characters inspire respectability and compassion. They do not seem to be perturbed at the end of the day. They are confident that they have the will power of their ancestry inside them to enable them to fight their enemy once they shove away all the negativities and difference. Brand's books declare that the fight is on for the Black for their emancipation. The characters of Dionne Brand exude different type and levels of spiritual powers. Once all these powers are concentrated in the phalanx of the whole Black race, their emancipation of becoming

proud members of the postmodern times is not far away. Dionne Brand is projecting such a message to her readers.

Dionne Brand portrays her characters as always struggling against the inequalities and disparities they face in the society. There is always a dialectics active in every life situation of her characters and that is presented by the author overtly or covertly. At times it is between the haves and the have-nots, and another time between the ruled and the rulers, and some other time, between the colonised and the colonisers. The dialectics is visible in her works in myriads of ways. During the period of slavery, it was between the slaves and slave masters. There are many characters that are portrayed to belong to this period of persecution. The woman folk of the Blacks is depicted to be suffering the most here. When it comes to colonisation and indenture labour also, these Black people were at the receiving ends of sufferings. Now, during the postcolonial days, again the same people are being exploited by one or another of capitalist devices in order to mint money for them. Thus, all through the history that Dionne Brand tries to drive into the heads of the readers, the history that has always been ignored, and if presented, only in intrigued ways, we can see mainly two groups of people: the ruled and the ruler, or the colonised and the colonisers.

Karthik Kumar *is Assistant Professor of English at Annamalai University, one of the oldest and most reputed institutions in India, where he has been working for 16 years. In 2008, he earned his doctoral degree in English with a specialization in Anglo- Indian Literature. Karthik has published more than 30 research papers in national and international journals and has participated in, and convened numerous seminars and conferences in India and abroad. Karthik is the author of two books—Paul Scott's Vision of India and Anglo-Indian Fiction: A Survey—and the editor of five edited collections. His chief interests are New Literatures in English and Green Literature, and he recently convened the two-day seminar Redefining Gender and Environmental Ethics: A Discourse on Green Literature. His mother tongue is Tamil.*

Phyllis E. LeBlanc

From the British North America Act to the Canadian Charter of Rights and Freedoms: the Acadian experience

This paper seeks to respond to one of the suggested questions for this conference : « What does the presence (or absence) of rights language in foundational documents like constitutions mean for their legal and affective power? » My paper will argue that events in the history of the Acadian people of New Brunswick speak to both exclusion and inclusion of rights language in relation to two foundational documents: the British North America Act of 1867 and the Canadian Charter of Rights and Freedoms of 1982.

At the request of the New Brunswick government, the British North American Act did not include rights language relating to already existing publically funded Catholic schools in New Brunswick. When in 1871 the government implemented the New Brunswick Common Schools Act, eliminating religious teaching in public schools, Catholics sought disallowance from the federal government through article 93 of the BNA Act. Since the federal government did not act

on this request in Parliament, Catholics appealed to the Privy Council in London, who upheld the province's rights while statuing it regretted the government's actions. Meanwhile, events in New Brunswick led to what historians have called an Acadian revolt, resulting in two deaths; this forced the provincial goverment to negociate a peaceful solution to the problem. This chain of events allows us to consider both the legal and the affective power of the BNA Act.

By 1981, the New Brunswick government enacted what is commonly called Law 88 : An Act Recognizing the Equality of the Two Official Linguistic Commuities in New Brunswick, which effectively recognized the principle of equality of both Acadian and anglophone cultural communities in New Brunswick. In 1993, at the request of the province, the federal government agreed to enshrine this law into the Canadian Charter of Rights and Freedoms. This particular action sought to ensure that the principle of equality would not be overturned or its impact lessened by future government actions, and this speaks directly to inclusion of rights language in the Canadian Constitution. In this case, as in the example of the 1871 Common Schools Act of New Brunswick, I will argue that the Acadian experience illustrates the potential of community as agency when dealing with the legal and affective power of foundational documents such as constitutions.

Phyllis LeBlanc *is Professor of History at the Université de Moncton in New Brunswick, Canada. Her areas of research include nineteenth and twentieth century Acadian history, with a special focus on migrations to urban centres, commemoration as it relates to collective memory and identity, and the cultural and economic strategies of elite classes of Acadian societies. Pr. LeBlanc is currently working on projects relating to the cultural history of southern Louisiana Cadiens (Cajuns), and women and gender. Pr. LeBlanc has acted as Director of Acadian Studies at the Université de Moncton, was a member of the Historic Sites and Monuments Board of Canada, sat on the executive board of the Canadian Historical Association, and is currently Secretary to the Revue de l'Université de Moncton.*

Sarah Maddison

Reconciliation, resistance and refusal in settler colonial states

Settler colonial states such as Australia and Canada are marked by a cycle of domination and resistance in the engagement between the state and Indigenous peoples. While state policies of reconciliation have produced moments of apparent progress towards decolonising practices, ultimately these moments have not fulfilled their decolonising potential. This paper argues that the apparent 'failure' of reconciliation in settler colonial states is inherent to the logics of liberal settler colonialism. These logics shape reconciliation as primarily an ideational rather than a structural process, to be pursued through education rather than legal or structural change. In this view, reconciliation is driven by a deep desire to restore moral and political legitimacy to settler institutions by drawing the Indigenous population into the wider polity. This drive has meant that, despite arguably good intentions, reconciliation remains a means of justifying colonial sovereignty and domination, which continues to be resisted by Indigenous peoples. The paper concludes with a consideration of the Indigenous right of refusal as a moment of new political possibility.

Sarah Maddison *was educated at the University of Sydney and the University of Technology, Sydney. She taught political science at the University of New South Wales from 2004-2014, where she also held roles as Senior Associate Dean (2007-2010) and as an Australian Research Council Future Fellow (2011-2014). She joined the University of Melbourne in 2015. She has published widely in the fields of reconciliation and intercultural relations, settler colonialism, Indigenous politics, gender politics, social movements, and democracy. In 2015 Sarah published Conflict Transformation and Reconciliation (Routledge) based on comparative research in South Africa, Northern Ireland, Australia, and Guatemala, and in 2016 she published the collection (co-edited with Tom Clark and Ravi de Costa) The Limits of Settler Colonial Reconciliation (Springer). Her book Black Politics: Inside the complexity of Aboriginal political culture (2009) was the joint winner of the Henry Mayer Book Prize in 2009. Her other recent books include The Women's Movement in Protest, Institutions and the Internet (co-edited with Marian Sawer, 2013), Beyond White Guilt (2011), Unsettling the Settler State (co-edited with Morgan Brigg, 2011), and Silencing Dissent (co-edited with Clive Hamilton, 2007). She is about to take up a position as Visiting Chair of Politics at the University of Cape Town and has previously held visiting positions at the Institute for the Study of Human Rights at Columbia University, the University of Connecticut, The University of Witwatersrand, and the University of Ulster. In 2009 she was awarded a Churchill Fellowship to study models of Indigenous representation in the United States and Canada.*

Bradford W. Morse

How Settler Constitutions Can Seek to Affect/Regulate Indigenous Identity: Canada after 150 and Australia after 116 Years"

Exploring this topic of how the national constitutions of Australia and Canada sought to allocate jurisdiction within their federal systems when it came to addressing the place of the original owners requires beginning in the colonial era of each. Before Canada became a semi-independent nation in 1867 (as it still did not control its foreign affairs or be able to amend the British North America Act, 1867 until the renamed Constitution Act, 1982 was passed by the UK Parliament), the early colonies were exercising some level of executive and legislative power in relation to Indigenous peoples. A similar situation occurred in Australia. Thus, this paper will start the story in the mid-1800s and trace it through the founding constitutions of both countries through the important amendments that occurred in Australia in 1967 and in Canada in 1982. The paper intends to examine the strategies used in each country to minimize Indigenous influence in the settler state while marginalizing their economic, territorial and political influence. It will close with some comments about the continuing human and social legacy of these uses of constitutional power to impact upon Indigenous identities and the far more promising direction in which each country is now headed.

Bradford W. Morse *is currently Dean of Law at Thompson Rivers University – Canada, after serving as Dean and Professor of Law from September 2009 until December 2014 at the University of Waikato, New Zealand. He remains as a Professor of Law at Te Piringa - Faculty of Law, University of Waikato, New Zealand, on a part-time basis. Professor Morse was previously Professor of Law, at the University of Ottawa where he served in the past as Vice-Dean and Director of Graduate Studies.*

His career includes appointments as Executive Director of the Native Legal Task Force of British Columbia (1974-75); Research Director of the Aboriginal Justice Inquiry of Manitoba (1988-91); and Chief of Staff to the Hon. Ronald A. Irwin, Canadian Minister of Indian Affairs and Northern Development (1993-1996). He has served as legal advisor to many First Nations in Canada. He was General Counsel to the Native Council of Canada from 1984-93. He was previously advising the Association of Iroquois and Allied Indians during the development of the Canadian Constitution, Act 1982 (1979-82). He has been a consultant to various royal commissions, government departments and Indigenous peoples' organisations in Canada, Australia and New Zealand.

Val Napoleon

Indigenous Law as Constituting and Constitutive of Internal Indigenous Reconciliation

The language of reconciliation is heard far and wide in Canada and beyond. Attached to it are hopes for the future, pains from the past, and so many expectations for social, political, legal, and economic change. How might Indigenous peoples ensure that the work of reconciliation has meaning and substantive results, and resist its reduction to forms of window dressing (read, university dressing, government dressing, etc.). One way is to develop standards for substantive reconciliation which incorporates Indigenous legalities, law, and processes. Another way is to identify and attend to the tasks of internal reconciliation – that is, engaging with questions of legitimacy, power, gender, human rights, and governing institutions that are a necessary and ongoing part of internal Indigenous conversations. Indigenous internal reconciliation will then inform external reconciliation between Indigenous peoples and non-Indigenous peoples and governments.

Val Napoleon's *current research focuses on Indigenous legal traditions, legal theories, feminisms, citizenship, self-determination, and governance. Several of her major initiatives include establishing the Indigenous Law Research Unit and the proposed JID (dual JD and indigenous law degree) program. She works with numerous Indigenous community partners across Canada on a range of Indigenous law research projects (e.g., Indigenous water law, harms and injuries, gender in Indigenous law, and lands and resources) and also with several national and international Indigenous law research initiatives. Some of the courses she teaches are Indigenous feminist legal studies, property, Indigenous legal theories, and Indigenous legal methodologies. She is from Saulteau First Nation (BC Treaty 8) and is an adopted member of the House of Luuxhon, Ganada, from Gitanyow (northern Gitksan).*

Mate Paksy

1867, or the Two Constitutional Tales about Minority-Nationalism: the Austro-Hungarian Compromise and the BNA Act

Thanks to the so-called Canadian school of political science, Canada has turn out to be one of the core case studies in any discussion of the future of federalism in the post-conflict societies of Central-Eastern Europe and elsewhere in the world. Indeed, whereas the post-referendum (1995) 'Canadian model' has been classified manly as a 'prêt-à-exporter' positive example, the former Soviet Union, Yugoslavia and Czechoslovakia have been assessed as obvious negative examples

by a great majority of the scholars. Meanwhile, it is rarely emphasised fact that these failed, formerly federated countries—geographically speaking—are all heirs to the disintegrated Austro-Hungarian Dual Empire. Despite of the widely acknowledged Hapsburg cultural legacy, it is still hard to judge objectively the merits of this Monarchy, which might be posited to the middle of an imaginary scale of the Victorian United Kingdom on the one extreme and the despotic regime in Russia on the other. It is common knowledge that he Ausgleich (or Compromise) in 1867 introduced a dualist political and a seemingly federal system, allowing the Magyars to gain a position of dominance within the Hapsburg Monarchy. It is probably less known that the constitutional deal between the King Franz Joseph (1848-1906) and the post-revolutionary Hungarian élite did not gain so much support from the Austrian society, but implied a second compromise between Magyars and Croatian in addition to the constitutional recognition of other national minorities living in the Hungarian part of the Empire. Magyars notwithstanding oscillating to grant more rights and powers to their 'own' minorities and that was an essential fault. Being the primordial vindication, the foundation of an independent nation-state is the heart of the inevitably conflicting Central-European nation-building strategies. This sort of conflict of territorial interest is not a characteristic in case of the Canadian minorities, namely the first nation people and Quebeckers. Through the lens of comparative constitutional law, the analysis of the relevant parts of the BNA Act may show that all-thing considered the Canadian solution was closer to the idea of a fully-fledged multinational constituent power implanting some seeds of the Canadian nationhood with a promise of a representative democracy. The Austro-Hungarian Ausgleich was unable to forge a multicultural national identity precisely because minority status here is tantamount with a recognition of a territorially established nation-state. Therefore, minority rights in this particular region of the world seems to resist to be 'de-territorialized', whereas the Canadian model leaves more flexibility to enhance rights of both territorially concentrated and dispersed socially vulnerable groups. I shall conclude that in both cases, different nationalist ideologies play crucial functions, but while Canada should have been struggling with a sort of peripheral or defensive nationalism, nationalist movements in the former Austria-Hungary were driven by a hegemonic nationalism demanding their own homelands on ruins of the Hapsburg Empire.

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Galen Roger Perras

Canada's Constitutional Conspiracy? British Opposition to the 1877 Mills Mission to Washington DC and the Nature of Imperial Foreign Policy Making

According to the provisions of the 1867 B British North America Act (B NA) that created the Dominion of Canada, said Dominion could not conduct direct bilateral relations with foreign powers. Canada did not officially gain this power from Britain until the Statute of Westminster was passed by the British Parliament in 1931. According to Canadian historians, Canada first negotiated directly with a foreign power, the United States, without British participation or supervision in 1922-1923 when Canada and the United States signed the Pacific Halibut Convention. While British officials had objected to this action, Britain withdrew its objections when Prime Minister W. L. M. King threatened to open a Canadian Legation in Washington DC. B u t in fact, in August 1877, Canada's Minister of the Interior David Mills met personally with American officials, including President Rutherford B. Hayes to discuss the unwanted presence of thousands of armed Sioux, led by Sitting Bull, who desired refuge from a vengeful US Army after the Battle of the Little Big Horn. Canada, fearing a wider war on the g r e at plains, did not want the Sioux to remain on its side of the 49th Parallel. Yet Canadian officials also did not want the Sioux to be humiliated by the US Army. The result was the despatch of the ill-fated Terry Commission to Canada to negotiate the Sioux's return, a Commission that failed to assure Sitting Bull that his people would be well treated if they returned to the United States.

Though British officials in London and Washing ton DC were concerned too by the Sioux presence in Canada, they cared far more about Mills' unannounced arrival in the American capital and his demand that Britain's Embassy arrange meeting s with Hayes and his advisers, meeting s that Mills wished to attend without the company of British officials. Convinced that Canada's pro-American Liberal government sought constitutional change after various disputes between Ottawa and London about Canada's relations with the United States since 1867, while Embassy officials arranged said meetings, they and their masters in London forced an abject Canadian apology after the fact. But while Mills' impromptu mission, launched while an unsympathetic Governor General Dufferin was conveniently absent from Ottawa, appeared to constitute a conscious Canadian constitutional fait accompli, it was no such thing. Rather, it was an impromptu effort by a fearful and frustrated Canadian government that sought to speedily settle an emergency without violence and thus took advantage of Dufferin's absence to despatch Mills to America. Britain's government, led by Prime Minister Benjamin Disraeli and Earl Carnarvon, Secretary of State for the Colonies, seeking to undo the damage done to the Empire's unity by a less imperially minded Gladstone government that often had disdained Canadian interests, brooked no sig n s of independence, real or imagined, amongst Britain's colonial subjects, made certain Canada would not consider constitutional change for some decades when it came to the conduct of foreign affairs.

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for Military Strategic and Disarmament Studies, 2013; "Stepping Stones to Nowhere: The Aleutian Islands, Alaska, and American Military Strategy, 1867-1945" with University of British Columbia Press, 2003; "Franklin Roosevelt and the Origins of the Canadian-American Security Alliance, 1933-1945: Necessary But Not Necessary Enough," Greenwood Press, 1998

Susan Priest

Why Archives Matter: Personal Correspondence, Canadian Jurisprudential History and the Australian High Court 'Strike of 1905'

Academic literature reveals that in May 1905, after a bitter and protracted dispute between the then fourth Federal Attorney-General of the Reid-McLean Ministry, Josiah Symon and the Justices of the original Australian High Court; Chief Justice Samuel Griffith and Justices Edmund Barton and Richard O'Connor, the Court adjourned proceedings in Melbourne and went 'on strike'. This decision has since been regarded as the Court's final protest in its opposition to the Attorney-General's persistent attempts to interfere with the Court's sitting patterns through the curtailing of travelling expenses, accommodation costs and the provision of staff to run the Court.

The purpose of this presentation is to focus less on the minutiae details of this unique event as it unfolded between August 1904 and July 1905. Instead, it aims to demonstrate that, through a brief analysis of some of the formal Australian High Court and Departmental correspondence of the time, and a series of personal letters exchanged between then Attorney-General Symon, the UK Privy Council, the US Supreme Court and in particular the Canadian Supreme Court also in May 1905, that archival sources remain invaluable for research purposes.

They reveal, in this instance, a significant foundation exists on which to reconstruct a comparative and historical legal narrative regarding the establishment and early workings of both the Australian High Court and the Canadian Supreme Court in their day-to-day expenses and staff utilised to run these respective courts at the apex of their judicial systems. They also reveal the lasting influence these written exchanges had on the future operations of the Australian High Court during the disagreement in a new emerging Commonwealth polity between the months of August 1904 until July 1905.

The personal correspondence, in summary, serves to illuminate the importance of the preservation of personal archives as an alternate, comparative jurisprudential history and the contribution it makes towards shaping a lasting legacy of what to this day, remains an inimitable narrative in Australian legal history, the High Court Strike of 1905.

Susan Priest *is Assistant Professor of law at the University of Canberra. Her primary research areas are in Australian legal history, Australian constitutional legal history, Australian judicial biography and early post Federation politics. She published in other research areas including women and the law, human rights and the tertiary experience for first year law students. Susan's recent collaborations have explored key high profile criminal trials presided over by Justice William Charles Windeyer in nineteenth Century Australia and also the impact of*

court architecture on Australia's High Court as an itinerant court in the first decade of its operation. She is currently finalising a publication on George Reid, Australia's fourth Prime Minister and have recently commenced an archival study of the life of Justice Richard O'Connor, appointed as a puisne justice to the first High Court bench of Australia in October 1903.

Claire Turenne Sjolander (& Heather Smith)
Tale of Two Highways: Death, Dying and Grievable Lives

Highway 1: On September 6, 2007, the Ontario Government unveiled new signage along the 107-mile stretch of Canada's busiest highway from the Canadian Air Force Base in Trenton to the Forensic Sciences Centre in Toronto. Henceforth to be called the 'Highway of Heroes', the stretch of road would honour and memorialize the 158 fallen Canadian soldiers repatriated from Afghanistan.

Highway 2: In remote northern British Columbia, there lies a 500-mile stretch of highway bereft of government-constructed memorials to the 35 women, many aboriginal, who have gone missing over the past 30 years. Referred to as the 'Highway of Tears' by the communities along the route and the families of the missing, the grief and loss associated with this roadway remains largely invisible.

Through a comparison of these two highways, this paper explores the meanings associated with the idea 'grievable lives' in order to unpack who is defined as properly Canadian (and why)? The lives of Canadian soldiers are memorialized through public recognition of their death and are celebrated in the renaming of the highway in Ontario; the solemn presence of hundreds on highway overpasses every time a military cortège made the journey from Trenton to Toronto underscored the depths of national mourning and grief. In contrast, the signs along the Highway of Tears read: 'Don't hitchhike'. The missing women are thus framed as victims of their own presumed high-risk behaviour, and thereby complicit in their own deaths. Whereas the soldiers' lives received national coverage in lengthy obituaries, the missing women are not constructed as having had 'grievable lives'. Using feminist analysis, this comparison of the tale of these two highways reveals the myriad ways in which Canadian identities continue to be constructed in order to both celebrate and marginalize multiple differences in Canada and to re-inscribe what it is to be a 'Canadian'.

Claire Turenne Sjolander *is Professor of Political Science at the University of Ottawa. Since 2000, she has held a number of administrative positions at the University of Ottawa, including founding Director of the School of Political Studies, Director of the Institute of Feminist and Gender Studies, Vice-Dean (Graduate Studies) at the Faculty of Social Sciences, and since 2015, Dean of the Faculty of Graduate and Postdoctoral Studies. She is a member of the editorial board of the journal Critical Studies on Security as well as a member of the Advisory Board for the series Politique mondiale, published by Les Presses de l'Université de Montréal. From 2005-2007, she served as President of the International Studies Association (Canada region). She was recipient of the Marcel Cadieux Distinguished Writing Award given to the best article published in an issue of International Journal for "Through the Looking Glass: Canadian Identity and the War of 1812," 69:2 (2014), pp 152-167 and was*

the recipient of the 2012 ISA-Canada Distinguished Scholar Award. In 2014, she was the International Visiting Professor at the Faculty of International Relations, Ritsumeikan University (Kyoto, Japan). Her research interests focus on the intersections between two main areas of study: Canadian foreign policy, and gender and international relations. Most recently, she is co-editor (with Heather A. Smith) of Canada in the World: Internationalism in Canadian Foreign Policy (Oxford University Press, 2013), and has also published a piece with Jérémie Cornut on the militarized construction of motherhood in Canada's war in Afghanistan ("Mothers, Militarization and War: Quebec in Afghanistan," American Review of Canadian Studies. 46:2 (June 2016), pp. 273-289).

Nicole St-Onge
Louis Riel, the Metis and the dream of the 'Exovidat'

This paper explores the use of a transnational and comparative history approach to reinterpret Métis leader Louis Riel views on the role and structures of both State and Society. The focus is on an analysis of Riel's writings up to and during the 1885 North-West Metis Resistance. The paper seeks to move beyond the dichotomous depiction of Riel as either political leader or religious visionary. Instead, Riel was constructing a "church-state" in opposition to Roman Catholicism, the Canadian and American States, and also in opposition to traditional Native tribal structure. Riel's thinking was influenced not only by the neo-ultramontane ideas then current in French Canada, but also those of García Moreno, Ecuadorian statesman and creator of the most comprehensive church-state society in the nineteenth century. Linking Riel with this Ecuadorian context and also to the parallel historical example of the Mayan free state known as Cruzob illustrates how Riel was not unique, nor was his resistance simply the expression of an isolated political or messianic movement. Rather, Riel saw himself not just as a Métis nationalist, a champion of western Canadian rights, or an anti-colonial revolutionary, but as a leader in a hemispheric movement to construct a theocratic ultramontane state in the Canadian Northwest. Riel in this context is but one example, among many found in the 18th and 19th century Americas, of Native leaders trying to create or recreate their societies within the context of profound social, economic and cultural 'shattering'.

Nicole St-Onge *received an MA in Anthropology and than a PhD in History from the University of Manitoba. Currently she is a full professor in the department of History at the University of Ottawa (Canada). Her research focuses on French Canadian voyageurs, Great Lakes fur trade communities and Plains Métis buffalo hunters. Her most recent publications are "Familial Foes?: French-Sioux Families and Plains Métis Brigades in the Nineteenth Century" The American Indian Quarterly 39, 3 (2015), 302-337, " 'He was neither a soldier nor a slave: he was under the control of no man' : Kahnawake Mohawks in the Northwest Fur Trade, 1790-1850" Canadian Journal of History 51(1), (2016) 1-32 and B. Macdougall & N. St-Onge, "Metis in the Borderlands of the Northern Plains in the Nineteenth Century," J. O'Brien & C. Andersen (eds), Sources and Methods in Indigenous Studies. Routledge (2016).*

Matt Watson

'Universal' Values and Aboriginal Difference: Should the Charter of Rights and Freedoms Apply to Self-Governing Aboriginal Communities in Canada?

Should the Canadian Charter of Rights and Freedoms apply to constrain the actions of self-governing Aboriginal groups in order to protect the rights of vulnerable members? Or would the Charter's application undermine traditional Aboriginal cultural practices and force Aboriginal communities to remake themselves in the image of the more individualistic, rights-focused wider society? After analyzing and evaluating several arguments for and against the Charter's application, the article claims that it is appropriate for the Charter to apply even to inherent-right Aboriginal governments. It also cautions, however, that in light of significant cultural differences between these communities and the wider non-Aboriginal society, and in order to ensure that Aboriginal Canadians can feel that the Charter protects their interests both as Canadians and as Aboriginals, the Charter must be applied in a flexible manner, characterized by a very high level of deference to Aboriginal governments at the s. 1 stage of the analysis (where rights are contextualized in light of broader societal interests and values). It is further argued that there ought to be a recognition by the judiciary that the basic human rights the Charter seeks to protect may be secured in different ways in different cultural contexts. Such an approach, while it may not necessarily secure the general endorsement of all of Canada's Aboriginal groups, offers the best hope of promoting fundamental human rights within self-governing Aboriginal communities while simultaneously respecting the cultural distinctiveness of Canada's Aboriginal peoples.

Matt Watson *is a Lecturer in the TC Beirne School of Law, The University of Queensland. He teaches Jurisprudence and Administrative Law. Matt's research interests lie primarily in the fields of legal and political philosophy. His core research areas include multiculturalism and minority rights (with an emphasis on minority language rights and language policy), constitutionalism, the intersection of law and politics, the liberal philosophical tradition, and all aspects of the philosophy of law. Matt is currently working on a research project that enquires into the legal and moral permissibility of taking account of religious and cultural membership in refugee resettlement determinations. Matt was born and raised in greater Vancouver, and earned a BA from Simon Fraser University, an LLB from UBC, and an LLM from Queen's. Matt recently completed his doctoral studies in law at the University of Oxford. His DPhil thesis, written under the supervision of Professor Leslie Green, asked what principles and objectives ought to guide language policy in multilingual democracies.*

Habiba Zaman

Immigration and Multiculturalism in Canada and Australia: A Comparative Review

Australia and Canada are two major immigrant-receiving countries with goals of attracting workers with certain skills from the international labour market and meeting specific target numbers for these workers in any given year. In fact, both Australia and Canada actively seek to attract immigrants with what one may identify as "population policies". Currently, the majority of immigrants in Australia and Canada are from Asia, and at least six of the ten top-ranking migrant-sending countries are located in Asia. Unlike the United States, the "skilled" category

constitutes a major proportion of current immigrant population in Australia and Canada. To maintain "harmony" between immigrants and the wider society, both Australia and Canada have adopted a policy of multiculturalism.

This paper presents a comparative review of policies of Canada and Australia. It examines the skills-oriented recruitment strategy that focuses on Asian immigrants and the outcome of this market-driven force on these immigrants, especially female immigrants. After looking briefly at multiculturalism under neo-liberalism, the paper demonstrates the shifting discourse on such terms as "difference", "assimilation", "integration", "harmony", and "social justice" within the multicultural framework. In Australia, this shifting discourse is reflected by the revival of monoculture under the banner of "one nation", and in Canada, by the increasing withdrawal of financial support to multiculturalism. I use narratives from my past research with settlement workers and advocates at the Migrant Resource Centres in Sydney, New South Wales, Australia, as well as interviews with front-line immigrant activists in Vancouver, British Columbia, Canada, to shed light on Asian immigrants' experiences in two societies apparently committed to social justice.

Habiba Zaman *is a Professor in the Department of Gender, Sexuality, and Women's Studies at Simon Fraser University, British Columbia, Canada. Zaman is also an associate member of SFU Labour Studies Program. Zaman is the author of several books and reports including Breaking the Iron Wall: Decommodification and Immigrant Women's Labor in Canada (2006) and Asian Immigrants in "Two Canadas": Racialization, Marginalization, and Deregulated Work (2012). She is a Board member of South Asian Network for Secularism and Democracy (SANSAD) and South Asian Film Education Society (SAFES).*

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