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STRANGE MULTIPLICITY

Constitutionalism in an age of diversity

JAMES TULLY

University of Victoria, British Columbia

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imperial systems over the non-European world, thus adding an imperial dimension to modern constitutionalism.

Second, constitutionalism came into prominence throughout the world as former colonies freed themselves from European imperialism, built equal and independent constitutional nation states, and grappled with their older customs and traditions, while citizens struggled for equal recognition within and the new states created their own empires over Indigenous peoples. The global movement of anti-imperialism, modern constitutionalism and neo-imperialism began with the thirteen colonies in 1776 and continued through the monumental wars of liberation and decolonisation in the nineteenth and twentieth centuries, down to the overthrow of the Soviet imperial system after 1989 and South Africa today. No doubt it will continue.

The politics of cultural recognition constitutes a third movement of anti-imperialism and constitutionalism, this time by the peoples and cultures who have been excluded and suppressed by the first two movements of decolonisation and constitutional state building. Aboriginal peoples, women, linguistic and ethnic minorities, intercultural groups, suppressed nations and supranational associations experience the constitution of modern nation states as an imperial yoke imposed over their cultures, in a manner analogous to the way in which the proponents of the first two movements of constitutionalism experienced the old imperial systems they overthrew. This continuity among the three movements explains why the older language of imperial oppression and liberation has reappeared in the newer struggles and why they are often called struggles against cultural imperialism.

The second continuity is, as I mentioned above, that the people wish to govern themselves constitutionally by their own cultural ways. The difference from the first two movements is that, for the most part, they do not seek to build independent nation states in order to gain independence and self government. Rather, they seek forms of cultural recognition and degrees of self rule on the culturally various common ground within and across existing nation states. Seen in this light, the

politics of cultural recognition is a continuation of the anti-imperialism of modern constitutionalism, and thus the expression of a genuinely post-imperial age.

It is not a radical break, heralding the beginning of post-modern constitutionalism. Yet it is a continuation that cannot be merely assimilated into the conventional forms of recognition available in modern constitutionalism for, as I have indicated, it is these stultifying forms of constitutional recognition that suppress and thwart the cultural identities of those who demand recognition. The task of this book is to investigate how much of the inherited forms of modern constitutionalism needs to be amended to do justice to these tangled demands for cultural recognition. Paraphrasing a famous Cambridge political theorist, this book might be called *Western constitutional theory in the face of a culturally diverse future*.

'The spirit of Haida Gwaii' as a symbol of the age of cultural diversity
I would now like to introduce a symbol of the spirit of a post-imperial age of cultural diversity. It is the wonderful sculpture by Bill Reid, the renowned artist of Haida and Scottish ancestry from the Haida nation of *Haida Gwaii* (the Queen Charlotte Islands) off the northwest coast of Great Turtle Island (North America). The sculpture is a black bronze canoe, over nineteen feet in length, eleven feet wide, and twelve feet high, containing thirteen passengers, *sghaana* (spirits or myth creatures) from Haida mythology. (Please refer to the illustration at the front of the book.) *Xuuwaji*, the bear mother, who is part human, and bear father sit facing each other at the bow with their two cubs between them. *Ttsaang*, the beaver, is paddling menacingly amidships, *qqaaxhadajaat*, the mysterious, intercultural dogfish woman, paddles just behind him and *Qaganjaat*, the shy but beautiful mouse woman is tucked in the stern. *Ghuuts*, the ferociously playful wolf, sinks his fangs in the eagle's wing and *ghuut*, the eagle, seems to be attacking the bear's paw in retaliation. *Hlkkyaan qqusttaan*, the frog, who symbolises the ability to cross boundaries (*xhaaidla*) between worlds, is, appropriately enough, partially in and out of the boat. Further down in the

canoe, the ancient reluctant conscript, brought on board from Carl Sandburg's poem, 'Old Timers', paddles stoically (up to a point). *Xuuya*, the legendary raven – the master of tricks, transformations and multiple identities – steers the canoe as her or his whim dictates. Finally, in the centre of this motley crew, holding the speaker's staff in his right hand, stands *Kilstlaai*, the chief or exemplar, whose identity, due to his kinship to the raven (often called *Nangkilstlas*, the One who gives orders), is uncertain. Bill Reid asks of the chief, 'Who is he? That's the big question.' So the chief has come to be called 'Who is he?' or 'Who is he going to be?'⁵

The name of this amazing work of art is *The spirit of Haida Gwaii*. Since *Haida Gwaii* means 'the island home (or place) of the Haida', and 'Haida', like many Aboriginal national names, means simply 'the people', including all the animal and spiritual people who live in *Haida Gwaii*, the sculpture is 'the spirit of the home of the people'.

The spirit of Haida Gwaii came into being in Bill Reid's hands between 1984 and 1991. The passengers had to be rearranged several times and work had to be interrupted to protest against logging on *Haida Gwaii* and support the struggle for recognition of Haida sovereignty. The sculpture was transported to Washington DC and placed in the courtyard of the Canadian Chancery on 19 November 1991. Sitting directly across the street from the National Gallery, it is destined to become one of the major artistic landmarks of the Americas. A second bronze canoe in jade green patina was cast in 1994 and placed in the Vancouver Museum. *The spirit of Haida Gwaii* thus now sits on both shores of its Great Turtle Island home as a symbol of the 'strange multiplicity' of cultural diversity that existed millennia ago and wants to be again.

Claude Lévi-Strauss has said that, 'thanks to Bill Reid, the art of the Indians of the Pacific coast enters into the world scene: into a dialogue with the whole of mankind'.⁶ The question is, what kind of dialogue does Bill Reid's artwork invite humankind to engage in? How is a non-Aboriginal person to approach *The spirit of Haida Gwaii* in the right spirit, in, so to speak, the spirit of *Haida Gwaii*, in order to try to

answer this question? How can a non-Aboriginal person, after centuries of appropriation and destruction of Indigenous civilisations, free himself or herself from deeply ingrained, imperious habits of thought and behaviour and approach this symbol in the appropriate way? Exploring this question will introduce many of the themes of cultural recognition that will concern us in later chapters.

When James Cook landed on *Haida Gwaii* in 1778 and superimposed the name of a queen who bore no relation to it, there were ten thousand Haida flourishing on the islands and mainland. They maintained a delicate balance with the sea and forest and sustained a civilisation that had evolved over the previous twelve thousand years. Within 138 years of contact with Europeans their population was reduced over 90 per cent by the spread of European diseases, such as measles and smallpox, cultural dislocation and killing. Only 558 Haida remained alive in 1915. Forty villages were reduced to four.

The near extermination of the Haida by European imperial expansion is entirely typical of how Aboriginal peoples have fared throughout the Americas and wherever Europeans settled. The population of the Americas at the time of contact and invasion is estimated by historical demographers to be 80 to 100 million people. (The population of Europe was 60 to 70 million people.) They lived in a wide variety of complex and interrelated societies, some over thirty thousand years old. Ninety to ninety-five per cent of the Indigenous population was destroyed by European diseases, war, starvation and cultural destruction. For many nations, such as the Beothuk, Taino and Massachusetts, only the names remain. The Aboriginal population of what is now commonly called the United States and Canada was reduced from 8 to 12 million in 1600 to half a million by 1900, when the genocide subsided.

Bill Reid writes:⁷

Sometimes they [the European invaders] found great cities, the homes of people with cultures as advanced as their own, and sometimes so beautiful they thought they had stumbled into fairyland, so they promptly destroyed them. Sometimes they found beautiful,

gentle, generous people, so they made slaves of them and killed them.

Sometimes they found people who weren't so nice, so beautiful, or gentle and generous, but were almost as avaricious and acquisitive as they were themselves. These they dealt with as allies or trading partners until they'd relieved them of the goods they coveted; then they destroyed them and their cultures.

Like many other Aboriginal nations in the nineteenth and twentieth centuries, Haida government, constitution, religion, language, trade, family structures and burial practices were classified as a primitive stage of historical development, outlawed and uprooted. Haida land and fishing areas were taken and forests cut. Plant and animal species were reduced to a shadow of their former abundance and diversity. A modern constitutional regime was superimposed over ancient Haida customs and ways without Haida consent. Haida people were assimilated to this so-called superior state of development by being taken from their families at a young age and forced into residential schools where they learned European languages and ways, and suffered physical and sexual abuse. When these techniques of assimilation failed, they were returned to tiny areas of logged out and polluted land, called reserves, classified as obstacles to progress and left to gradually disappear because they were judged unfit for modern constitutional society.

Looking back on the wreckage of this long injustice in 1933, the Lakota Sioux Elder, Luther Standing Bear, asked the question that is now posed by the politics of cultural recognition to the constitutionalism that accompanied and legitimated it:⁸

Did a kind, wise, helpful and benevolent conqueror bring this situation about? Can a real, true, genuinely superior social order work such havoc? Did not the native American possess human qualities of worth had the Caucasian but been able to discern and accept them; and did not an overweening sense of superiority bring about this blindness?

During each period of this 'American holocaust', as the historian David Stannard argues it should be called, the

Aboriginal peoples have resisted and refused to submit as best they could, from silent forms of refusal and tactical compliance in residential schools and prisons to armed battle, confrontation, negotiation, accommodation, agreement and co-operation on the land and in the courts. The result has been, as we shall see, the complex, historical interaction on a vastly unequal common ground between the relentless domination of an overpowering imperial order and the indomitable liberty of ancient peoples.

Since the early twentieth century, and especially since World War II, the Haida and other Aboriginal nations, in the face of appalling social and economic conditions, have sought not only to resist and interact, but to rebuild and reimagine their cultures; to 'celebrate their survival'. *The spirit of Haida Gwaii* is both a symbol and an inspiration of this revival and 'world reversal', as the Aboriginal peoples call it: to refuse to regard Aboriginal cultures as passive objects in an Eurocentric story of historical progress and to regard them from Aboriginal viewpoints, in interaction with European and other cultures. Although this monumental work of art cannot but be grounded in, and a celebration of, Bill Reid's own cultures, it is as well an ecumenical symbol for the mutual recognition and affirmation of all cultures that respect other cultures and the earth. The difficult reversal of worldview enjoined by *The spirit of Haida Gwaii* and required for mutual recognition is described by the Mi'kmaq poet Rita Joe, from her perspective, in the following way:⁹

Your buildings tall, alien,
Cover the land;
Unfeeling concrete smothers,
 windows glint
Like water to the sun.
No breezes blow
Through standing trees;
No scent of pine lightens my burden.

I see your buildings rising skyward,
 majestic,
Over the trails, where men once walked,

Significant rulers of this land
 Who still hold the aboriginal title
 In their hearts
 By traditions known
 Through eons of time.

Relearning our culture is not difficult,
 Because those trails I remember
 And their meaning I understand.

While skyscrapers hide the heavens,
 They can fall.

The spirit of Haida Gwaii evokes a boundless sense of wonder. It is the mystical. I want to walk in silence around its overflowing spirits, letting their endless perspectives and interrelations awaken the play of my imagination from its dogmatic slumber. I know its meaning is unfathomable and my words are unworthy. Mine is a crude voice over a multiplicity of cultural voices who, if one could only learn to look and listen, speak for themselves. The sheer, manifest presence of the myth creatures confronts and calls into question the overweening sense of superiority which, since first contact, has rendered us deaf and blind to the multiplicity of spirits who constitute this place and its ways and led us to impose alien constitutions and interpretations over them.

Here, Aboriginal and European myths cross, for the oldest European constitutional story is that of Oedipus who, led by his own sense of superiority, transgresses the customs and ways of Thebes and imposes an alien constitutional culture, which then blinds him to the injustice that lies at the foundation of his rule. Oedipus and the citizens of Thebes are so accustomed to their constitutional order that it takes an outsider, the blind Tiresias, to see the underlying fault. This tragedy of misrecognition and usurpation is finally revealed to him in *Oedipus at Colonus*, but it is fully grasped only by Antigone, daughter of Oedipus and Jocasta, the child of the crossing of native and newcomer cultures. Antigone courageously tries to bring this most fundamental of political lessons to the attention of Creon, king of Thebes, by

upholding the customary ways of burial against the prevailing law. Creon, like Oedipus, is blinded by the imposed constitutional order and its immanent, yet seemingly universal, standards of justice. This terrifying stance of cultural hybris and blindness he portrays is graphically depicted by the chorus in the 'Ode to man'. As a result, he fails to recognise either the justice of Antigone's demand or the means of accommodating it offered by the conciliatory Haemon, his son and Antigone's lover, and exemplary citizen of the intercultural common ground. And so the tragedy continues.

First and foremost, it is surely safe to infer, the spirit in which *The spirit of Haida Gwaii* should be approached is a willingness to listen to its culturally diverse spirits. Let us listen to the voice of Bill Reid:¹⁰

Here we are at last, a long way from *Haida Gwaii*, not too sure where we are or where we're going, still squabbling and vying for position in the boat, but somehow managing to appear to be heading in some direction. At least the paddles are together, and the man in the middle seems to have some vision of what's to come.

Bill Reid seems to interpret *The spirit of Haida Gwaii* as if he were not the creator but witness, fellow traveller and mediator. He is reluctant to say anything definitive about its meaning. Tentatively and with respectful circumspection, he describes how it seems and appears to him, as if he too were trying to find or to hear the appropriate words to recognise this strange multiplicity that has come into being, somewhat inadvertently, before him. Although this collection of Indigenous beings has been here for millennia, it is as if we are being asked to see and hear them for the first time, and so to learn the art of mutual recognition.

Approaching *The spirit of Haida Gwaii* in the right spirit does not consist in recognising it as something already familiar to us and in terms drawn from our own traditions and forms of thought. This imperial attitude is to be abjured. Rather, recognition involves acknowledging it in its own terms and traditions, as it wants to be and as it speaks to us. No matter from which direction you approach the canoe, the crew

members manifestly seem to say that, after centuries of suppression, they are here to stay, in their own cultural forms and ways. Hence, if there is to be a post-imperial dialogue on the just constitution of culturally diverse societies, the dialogue must be one in which the participants are recognised and speak in their own languages and customary ways. They do not wish either to be silenced or to be recognised and constrained to speak within the institutions and traditions of interpretation of the imperial constitutions that have been imposed over them. This world reversal, from a habitual imperial stance, where one's own customary forms of reflection set the terms of the discussion, to a genuinely intercultural popular sovereignty, where each listens to the voices of the others in their own terms, is the most important and difficult first step in contemporary constitutionalism.

A constitutional dialogue in 'The spirit of Haida Gwaii'

The spirit of Haida Gwaii, I would now like you to imagine, can be seen as just such a constitutional dialogue, or multilogue, of mutual recognition. The passengers are squabbling and vying for recognition and position each in their culturally distinct way. They are exchanging their diverse stories and claims as the chief appears to listen attentively to each, hoping to guide them to reach an agreement, without imposing a meta-language or allowing any speaker to set the terms of the discussion. The chief's subjection to the rule of mutual recognition is symbolised by the crests of the crew's nations and families carved in the speaker's staff. Bill Reid has spent decades preparing to portray such a dialogue by recreating the cultural distinctiveness and interrelations of each of the spirit creatures, first by mastering the great Haida artistic traditions of formline sculpture in which they appear and then by learning the myth stories they are telling each other.

The conversation also seems to be 'diverse' in the three respects of overlap, interaction and negotiation mentioned above. The narratives of the thirteen *voyageurs* tell of how their identities have been shaped and formed through millennia of overlapping interaction together. They exist as they are, in all

their distinctiveness, not in spite of, but in virtue of, their interdependency over time and history. These aspects are embodied in the endless ways in which they overlap and criss-cross without losing their identities in their astonishing arrangement in the canoe. The intercultural dimension of the sculpture is further heightened by the presence of non-Haida travellers: the mainland beaver and wolf, and the ancient reluctant conscript from European-American mythology.

The questioning, contestation and renegotiation of their cultural identities seem plain for all to see. Is this not the constitutional game they are playing as they vie and squabble for position, both in the canoe and in Haida mythology? The chief signals this Derridean feature because, although a Haida chief is usually a man, he is called *laana augha*, village mother, so he must act like a mother in caring for the common good if s/he is to secure respect and authority. All the passengers are Métis, exhibiting the non-identity of cultural identities: the dogfish and mouse women, the bear mother, who is part human, the wolf with his human forepaws and the others, for they are other-than-human persons who take off their furs and feathers at home and converse like human persons.

The theme is crystallised in *Xuuya*, the raven steering the canoe, who is forever changing his or her identity and so illustrating that things are not always as they appear – that our habitual forms of recognition are often stultifying forms of misrecognition which need to be upset and reversed from time to time. Members of the black canoe thus have the civic ability to see their association from multiple viewpoints. Jamake Highwater, a Blackfoot-American philosopher, explains that this ability of reflective disequilibrium, which is common to Aboriginal cultures, has been learned by twentieth-century European artists and writers through their interaction with 'primitive art' and slowly introduced into European cultures under the name 'post-modern'.

Now, the ability to change perspectives – to see and understand aspectually – is acquired through participation in the intercultural dialogue itself. By listening to the different stories others tell, and giving their own in exchange, the