

Storied communities: narratives of contact and arrival in constituting political community

Author(s) Lessard, Hester; Johnson, Rebecca; Webber, Jeremy H. A.

Imprint UBC Press, 2011

Extent xii, 370 p

ISBN 0774818794, 9780774818797, 9780774818810

Permalink <https://books.scholarsportal.info/en/read?id=/ebooks/ebooks3/upress/2013-08-25/1/9780774818810>

Pages 301 to 327

Downloaded from Scholars Portal Books on 2020-08-15
Téléchargé de Scholars Portal Books sur 2020-08-15

16

Hoquotist

Reorienting through Storied Practice

JOHNNY MACK

This chapter grew out of a conversation with Wickaninnish at his Port Alberni home in July of 2008. Wickaninnish's English name is Cliff Atleo Sr., and he is an Ahousaht citizen. He is a senior negotiator and spokesperson for the Ahousaht and other Nuuchahnulth tribes. He currently serves as President of the Nuuchahnulth Tribal Council. I am a Nuuchahnulth graduate student from the Toquaht Tribe and am one generation Wickaninnish's junior. Our conversation revolved around the relationship we, as Nuuchahnulth, have with the newcomers and how our approach to resolving the tensions in that relationship would change if we took stories seriously. Our entry point into this discussion was the current treaty process and the land and jurisdiction questions that underlie it. What follows is a series of my reflections on this conversation. To be clear, these are my reflections, and unless otherwise specified, they may or may not be shared by Wickaninnish.

How would taking stories seriously transform what goes on in treaty negotiations?¹ There are, of course, a number of ways to respond to this question. Below, I will share two separate responses, the first more trite than the second.

Response One: Settler Pack Up

If we understand the treaty process to be primarily about resolving disputes between settler and indigenous populations over jurisdiction and land, we

would look to the stories that support each party's claim to jurisdiction and land. In my mind, a careful consideration of the storied foundation of the two claims would lead to one inevitable conclusion. The settler population would relinquish its claim to any lands and authority not granted to it, apologize for its actions, and be willing to leave the territory if asked to do so. With that, indigenous peoples would be stuck with the very difficult question of how to resolve what, at that moment, had become the "settler problem." We had already tried to live with them as neighbours, and considering the track record from the first time around, we would be wise to send them packing. If they wanted to stay and showed an earnest desire to conduct themselves respectfully in observance of indigenous customs and law, perhaps a probationary period would be appropriate.

I would be content to leave my response there and feel that I have given a sufficient reply to the question of what we would do differently if we took stories seriously at the contemporary treaty table. However, it is unlikely that this opinion would be of suitable length and nuance to be included in this volume. Nevertheless, my sense is that the above is the most appropriate response to the question posed in my opening. If settlers took their story seriously, it seems that they would be required to confront the inherent injustice in their claim of any rights or authority over indigenous peoples and to their unconquered and unceded territory. Their claim to lands and authority is based on a conceptualization of indigenous people as less advanced in the scale of historical development. They have secured their claim to our lands by designating us wards who lack the social maturity and rational discernment of settler society and thus could not be viewed as possessing equivalent territorial and political rights. To my knowledge, this kind of thinking is unavoidably based on an evolutionary thesis that has been thoroughly discredited. Since the conclusion of the Second World War, this line of thought has been understood as ethnocentric, ideological, and incredibly dangerous. Without these evolutionary justifications, it becomes difficult, if not impossible, to legitimate Canada's claims in light of the dark story that undergirds those claims.² Without reference to the debunked and repugnant justifications that supported colonization, the story seems to become one of thievery, and in my view it should conclude with a return or at least a willingness to return the thieved items.

Many complicating factors quickly become apparent when one considers such a radical and massive return of this colonial plunder. For example, to whom would the land be returned? Is it the band council? The First Nations

Leadership Council? Traditional First Nations leaders? Further, what happens to the indigenous people who have been disenfranchised from their home tribes through colonial assimilation policies? What about the cultural hybrids with plural loyalties, split between ancestral and urban indigenous communities as well as the settler state? Do these people pack up and go as well? These are difficult questions that would require serious consideration if momentum were given to a “settler pack up” policy. My view is that such complications are primarily of procedural concern and do not disrupt the underlying substantive proposition that what was stolen should be given back.³

Response Two: Let Us Face It

In light of Chief Justice Antonio Lamer’s often quoted statement, “[l]et us face it, we are all here to stay,” we can safely presume that a settler pack up policy will not be advanced any time soon.⁴ For the time being, we need to assume that no one is going anywhere, and very little of what was taken is going to be given back. So I will reformulate the opening question to account for this reality and direct it to the community from which Wickaninish and I speak. This reformulated question is as follows: presuming the constraints of our existing political context – a context in which the settler party is unwilling or unable to meaningfully confront the thievery inherent in its story – *what would we as Nuu-chah-nulth* do differently if we took *our* stories seriously? I use the word “our” because it seems that stories are considered seriously in the treaty process. The problem as I understand it arises not from the level of seriousness with which we take stories but rather from the nature of the stories taken seriously in negotiation processes and outcomes. Of course, no meta-narrative lies behind the treaty process, and we have to acknowledge that many stories are alive in contemporary treaty negotiations. However, my sense is that, if we take current treaty processes as a whole, we can discern that they are given momentum by an identifiable story of neo-liberal hegemony. This is a contemporary story of post-colonial imperialism, which allows indigenous peoples a subordinated and controlled role as “self-determining” authors of their own exploitation. The treaty process thus contributes to the absorption of the indigenous story into this larger narrative of imperialism. It seems to me that taking our stories seriously in this context would develop into an imperative to dislodge them from the grip of this imperial narrative. However, I am getting ahead of myself. Let me return to my reformulated question.

In response to this question, two related lines of inquiry come to mind. One directs me to assess the stories that inform and animate the current treaty frameworks and approaches. The other directs me to assess our connection to the stories that support our claims and negotiating positions. The former inquiry intends to direct our attention to the implications of existing negotiating frameworks, mandates, and outcomes with the aim of identifying whether they grow out of, for example, an imperial or reconciliatory story. Put in Nuu-chah-nulth terms, the aim here is to determine whether current treaty frameworks and approaches are balancing and respectful.⁵ The latter inquiry intends to direct our gaze away from current negotiations and toward the stories that bring us to the treaty table so as to ensure that they continue to provide us, the Nuu-chah-nulth, with a robust or at least functioning constitutive foundation from which to assess our advancements. These two lines of inquiry are not meant to be sequential, with the first following the second, but rather are to be explored in tandem as means of both meaningfully engaging the real world of contemporary treaty making and staying connected to the stories that give us standing as a negotiating party.

As noted above, I do not believe there is a singular story or essential set of stories that brings us, the Nuu-chah-nulth, to the table. Communal stories are dynamic constructs that are continually in flux, emerging in particular times and spaces through complex processes of contestation and deliberation. The treaty process itself can be characterized as a historically situated manifestation of contested deliberation, as a mediating institution designed to help walk the parties through disagreement and sketch out a framework for the next chapter of the now enmeshed stories of the indigen and settler. My feeling is that speaking of identifiable discrete constitutive stories still makes sense. Their contested and constructed nature does complicate the manner in which we speak of them, but it does not negate the imperative to speak about them as relevant to concerns about justice and moral philosophy more generally.

My response here is brief and will dwell mostly on the question of our connection to Nuu-chah-nulth story. I will begin by suggesting that, on the face of it, it seems that current treaty processes are an extension of an imperial story of dispossession and assimilation. I will propose that, if we accept that this claim of imperial dominion has some legitimacy, we are called on to take great care for our own storied foundations so as to ensure that they are not overwhelmed or disrespected by the imperial undercurrents of contemporary treaty making.

Imperialism and the Story of the BC Treaty Commission

The first line of inquiry quickly reveals that current treaty negotiations rest on a hegemonic foundation. Wickaninnish seems to support this view by stating that what happens under the BC Treaty Commission cannot accurately be called negotiation.⁶ He asks, “How can we call it a negotiation when one side dictates the terms and the other side decides whether they are acceptable?” When one looks at the *Agreements* concluded under the BC Treaty Commission, it is difficult to imagine why a negotiator would accept a key provision that, for example, extinguishes (or modifies into legal irrelevancy) an indigenous people’s claim to 95% of their homeland and brings the remaining 5% under the provincial Land Title Act.⁷ Or that establishes a concurrent lawmaking regime that gives indigenous law a subordinate status in relation to federal and provincial laws.⁸ Or, finally, that expresses regret on behalf of settler governments for “contributing to the *perspective*” that indigenous people have of being wronged by the state, rather than for the settler government’s actual molestations and thievery.⁹ Do these provisions move us, the indigenous and settler parties, toward a new story of mutual recognition, equality, and coexistence? Or are these provisions – and perhaps the entire treaty project – embedded in the nonindigenous storyboard, exemplifying a new and more alluring chapter of softened imperialism aimed at strengthening state control of indigenous lands and domesticating indigenous peoples by liberalizing their modes of political and social order? I should probably pause here and say a few words about imperialism, given the concept’s salience to my critique.

Imperialism, as I understand it, is a concept referring to those institutional and ideological mechanisms that enable one entity to impose itself upon and exploit another agent through informally co-optive and/or overtly oppressive processes. Colonialism is one institutional expression of imperialism, but as post-colonial thinkers have demonstrated, the post-war decolonization project has done little to disrupt imperial relations. As Robert Young aptly states,

The ‘idea’ of imperialism was to redeem the plunder of colonialism precisely at the moment when that plunder had been extended into a hegemonic world political system. What the ‘idea’ [of imperialism] actually involved, however, was harder to say, and imperialism itself was correspondingly multifarious.¹⁰

I think it is fair to characterize contemporary treaty making in Canada as a process of deconstruction aimed at remedying what are now understood to be illegal and morally unjustifiable relations established in the colonial period. Our place in the world political system is being determined as we move to negotiate ourselves out of the *Indian Act*. Characterized in this way, the treaty process can be seen as an instance of decolonization. As Young suggests, imperialism manifests in the ideas that move the hegemonic power to redeem the plunder of colonialism. In this case, I understand that plunder to be both ourselves and the lands that birthed us.¹¹ In the Nuu-chah-nulth language, this is the ha'houlthee (everything within the boundaries of a nation's territory). Thus, when I state that the BC treaty process is an institutional deployment of imperial ideology, my claim is that this process is drawing the ha'houlthee into the liberalized spheres of the state. Thus, contemporary treaty making is an example of what the idea of imperialism "actually involved." In light of the troubling aspects of the treaty noted above, this conclusion seems unavoidable – the provisions ensure that we are still subject to a constitutional legal order that we did not create, and within that order, only 5 percent of the lands taken from us will be returned to us. Rather than providing for a reincorporation of the colonial takings into our own story, this process acquires our consent to lock that plunder into the state structure, where it will be subject to state authority and exposed to the hungry forces of the global market. One danger of this move into the liberal-democratic state is that it is a field within which we have limited mastery and where contemporary state and global hegemonic forces move with astounding and overwhelming dexterity. Without strong treaty agreements that grow out of our story, we stand little chance of subverting the multiple and dynamic forces of contemporary imperial dominion.

I recognize that more work needs to be done to explore the storied foundations of the treaty processes to support my claim that they are an extension of an imperial story. However, it seems that sufficient scholarly critique of treaty frameworks exists to establish what is at least a *prima facie* claim that the current treaty processes are imperial in character.¹² If we as Nuu-chah-nulth accept that this diagnosis may have some legitimacy, and we presume that imperialism is inherently disrespectful and normatively irredeemable, I think we have to acknowledge the potential hazards that treaty negotiations pose to our story. Of course, we are free to walk away from treaty negotiations if they become unbearable. However, the reality that "we are all here to stay" will not change, and turning away from settler

society is only to ignore a problem that will worsen without attention. That is to say, we will always be in some sort of negotiated relationship with settler society, and it is unlikely that any process of engagement will be insulated from imperial dynamics. Given this reality, we must proceed into all forms of engagement very carefully. It is this care concern that animates my analysis of our connection to Nuu-chah-nulth story.

The Nuu-chah-nulth Story

If we are to avoid the deeper pitfalls of imperialism, I believe we must direct a great deal of care to the manner of our engagement with the settlers. Here I pose a twofold query: First, is the manner of our engagement informed by a Nuu-chah-nulth storied tradition? And second, what can we do to maintain and strengthen our connection to those stories so as to ensure that they inform our approach to negotiated relationships? The first query is diagnostic; the second is attendant. With the benefit of Wickaninnish's insight, I will briefly offer some diagnostic reflection on the eroded state of our connection to our own stories and on how those erosions have developed. Then I will conclude by gesturing ahead to some possible models of attendance to enhance those connections. My sense is that, by looking to our own stories and attending to the health of our connection to them, we would become a more grounded, healthier people, better equipped to identify, withstand, and/or subvert the imperial impetus of treaty processes as well as imagine more balanced modes of reconciliation that respect Nuu-chah-nulth stories.

The imperative for this second line of analysis grows out of a recognition that, for 150 years, great efforts have been taken to change the way we relate to each other and the territory to which we belong. We would be wise to acknowledge that these efforts have been somewhat successful in their aims. For these 150 years, we have been subject to imperialism, and if we are to take our stories seriously, I think we must turn ourselves to the task of releasing from the imperial story.¹³ This is a tricky task: as now imperialized subjects, we can easily become trapped in institutions and processes that can potentially cycle our emancipatory strivings back into the very imperial framework we intend to escape. It seems to me that engaging in practices that ground ourselves in our own stories will help us avoid this trap. My belief is that, if we come to stand on our own stories, we will eventually occupy a non-imperialized subject position, from which we will be better able to assess whether treaty processes and outcomes honour Nuu-chah-nulth stories.

Before I move on, I feel compelled to acknowledge one point. I feel entirely ill-equipped for the task of analyzing our connection to our stories – an undertaking that I initially thought would be simple but have belaboured for months. I planned to interview Wickaninnish and then work to pull together his use of the terms *eesok* (respect) and *heshook-ish tsawalk* (a relational concept that means everything in this world is connected and establishes balance as a foundational life principle) to deliver a message of cultural resurgence through story.¹⁴ His message was that we must tell our own stories and use them to reconnect to the narratives from which colonial processes have worked to sever us. If we turn to our stories with a posture of respect and an imperative toward balance, our lives taken collectively and individually would markedly improve. We would also improve our capacity to make fair compromises in resolving our relationships with the newcomers. This was a basic message of cultural regeneration – a topic to which I have devoted considerable thought – and I presumed that unpacking its significance for this short chapter would be relatively easily. After weeks on the backspace bar, I came to realize my initial confidence was misplaced.

It was not that the task was overly complicated. Wickaninnish insisted on this point several times throughout our discussion. My problem was that I lacked a foundation from which to develop an opinion on the animating question. I was selected for this project as someone who could speak from a Nuu-chah-nulth perspective and to the implications that Nuu-chah-nulth storied traditions bring to bear on contemporary treaty negotiations. Owing to assimilative integration, I was not raised in those stories. Even though I grew up in our home village, very few people there who knew and lived our stories influenced my development. I have thought about the Nuu-chah-nulth story in the context of colonialism and the history of our relationship with the newcomers. I knew the colonial story of dispossession, dependence, and disease, but I realized that I had come to it already constituted by a conglomerate of intellectual, social, and spiritual traditions. I do not speak our language fluently, and though I have read and been told a number of our stories over the years, I was not formed by them in the way that Wickaninnish was. I am a generation removed from him, and my generation is the first of our people whose first language is English. And like most native English speakers, I have no second language. My education flows not from my grandparents and our *haahuupacakukqin* or *himwitsa* (our teachings or storied lessons) but from the provincial school system and all the other

agents of socialization that keep Canadians thinking and acting like Canadians. Even the story behind my name, Mack, results from a conversation between a missionary and an Indian agent who needed a surname to record my family in the census.¹⁵

I do not raise these facts to portray myself as a colonial victim in the hopes of garnering sympathy from the guilt-complexed settler. Rather, my intention is to suggest that I do not have a strong base to speak from in relation to Nuu-chah-nulth story. The analytical and narrative skills I bring to this project are drawn primarily from the academy. Thus, I came to understand my difficulty in engaging in this topic as a product of my own disorientation. I came to view my perplexity in relation to this essay as parallel to the disoriented state of our people in relation to the treaty process. It is this disoriented state that is the primary target here, which I will use as an opportunity to develop an imperative to reorient ourselves through our stories.

Hoquotist

Hoquotist is a Nuu-chah-nulth metaphor used to describe a disoriented person or people. It refers to a person whose canoe is overturned. It appropriately describes the disconnection that currently exists between the Nuu-chah-nulth people and their stories. By this, I mean to say that our stories are still with us, but they are not in working order. It is a metaphor that Wickaninnish uses to describe the general state of our people. "Our people are lost," he told me. "They know what they are doing [in negotiations or decisions made in the band council] is wrong and it is only the tip of the iceberg. I believe the corruption is rampant, no matter which region you go in the province. Our people have a description for this. We are hoquotist. Our canoe is tipped over."¹⁶ He went on to say that this disoriented state resulted from the fact that we no longer know our stories. More specifically, we have become disconnected from the perceptual orientation and responsibilities that flowed from those stories.

Although we remain somewhat connected to our stories, we have also come to share those of the settlers. We have thus become constituted by a series of radically different storied traditions that do not coexist harmoniously. As a result we, as a collective and as individuals, come to understand the world through a set of confusing and contradictory lenses. We are embodying what indigenous scholar and elder Leroy Little Bear refers to as a "fractured worldview." Little Bear explains:

By force, terror, and educational policy, it [colonization] attempted to destroy the Aboriginal worldview – but it failed. Instead, colonization left a heritage of jagged worldviews among Indigenous peoples. They no longer had an Aboriginal worldview, nor did they adopt a Eurocentric worldview. Their consciousness became a random puzzle, a jigsaw puzzle that each person has to attempt to understand.¹⁷

In our attempts to formulate a coherent story out of this jigsaw of narrative, we go through processes of internal reconciliation. My sense is that the indigenous community, generally speaking, is struggling in this process and is ever more frequently choosing to resolve this tension by submerging its stories under those of the settler. It is clear to me that the stories that once provided our traditional communities with stability and meaning are held precariously by my generation, and we have come to rely on the settlers' ideologies to order our experience and help us make sense of the world. We retain enough of our ancestors' spirit and enough knowledge of our own story to know that all is not well in the world we increasingly find ourselves within, so we push back against the hegemonic thrusts toward assimilative integration. But we are no longer rooted well enough in our own story and schooled in the responsibilities it bestows for us to have somewhere else to stand. We are no longer floating in our canoe; nor do we have one at hand to return to.

Hoquotist as a metaphor captures our disoriented state more eloquently and precisely than any English word I know. An expansion of this metaphor in the context of colonialism and post-colonial imperialism may read as follows: The currents of colonialism have overturned our canoe and left us at sea disoriented, where our struggle simply to survive is the focus of our life energies. In previous generations, a deliberate effort was made to ensure that we did not get back into our canoe. Now that this pressure has been alleviated somewhat, we have the opportunity to rebuild our canoes, but we seem to have forgotten how. The overturned canoe is probably lost at sea, weathered and fragmented. Our challenge now is to return to the homeland and begin carving our canoes anew. Many difficulties quickly become apparent as we attempt this. We have forgotten so many things, including how to paddle, which land we belonged to, and how to carve. Further, there are few old-growth cedars left from which to build a canoe.

Instead of doing the work of finding our way back to our homelands and rebuilding our own canoes, we often choose to board the newcomers' vessel without full awareness of its course. We tell the newcomers that, while they

are in our territory, we have a right to be on board their ship, itself purchased with capital generated within and at the expense of our ancestral homelands. Though we do not know where this ship is going, we have learned that it moves fast and is full of comforts. Having grown accustomed to life on board, we tell ourselves that returning to the canoe is too complicated a process and that the world has changed in ways that make the slow-moving canoe obsolete. The canoe is inappropriate to the non-recreational needs of our industrialized existence. Still, we feel nostalgia for the old canoe, so we petition the captain to bring one on board, placed perhaps beside the totems adorning the ship's deck. This way we could enjoy looking at it and perhaps take it out for a weekend paddle.

This hoquotist thesis is only one point of view on the state of our people. Some would think hoquotist is no longer an appropriate metaphor for indigenous communities. They may consider the last forty years as a period of renaissance, pointing to the advances made by those few indigenous people who have successfully integrated into the political spheres, high status professions, the academy, business, and the arts. They may also highlight the fact that Aboriginal rights have been absorbed into Canada's common law and constitutional fabric, and that these rights have compelled the Canadian government to allow us a hand in determining the nature of our rights through negotiation. These folks may say that we have returned to our canoes and that, though not fully stable within them, we are emerging into a new relationship of respectful interdependence with settler society.

My sense is that most of those sitting securely in the canoes are following defeated courses because those are the only ones opened up by the liberal freedoms and Aboriginal rights we now bear so tightly. I am afraid that, rather than being an indication of triumphant resurgence or renaissance, the successful integration of our people into settler state institutions is indicative of assimilation and the liberal state's shift toward a more malleable mode of intolerance. Integrative successes are indicative of submission. It appears that integration is an unreflective compromise of a people who simply tire of struggle or perhaps have forgotten the reasons for it.

My intention is not to say that integration is an easy path. Rather, I mean to suggest that liberalization opens up spaces of possibility for integration that were previously closed while continuing to impede paths to alternative visions of freedom – paths forged through different conceptions of what it means to be human, to live as community, to live in a relation to the land that draws on Nuuchahnulth stories of the world.

The Allure of Liberalism

Indigenous discontent has been effectively diverted into liberal fields of deliberation and dispute resolution. We as Nuu-chah-nulth have been lured into liberalism with certain offerings. We give chase to the liberal bait because, prior to its presentation, our story was wholly denied.¹⁸ Those who have taken this bait find themselves drawn into a liberal narrative where only domesticated components of the Nuu-chah-nulth story do not have to fight for space. To put it another way, we are lured into a liberal field by an offering to recognize our claims, but the recognition turns out to be a domestication in which the claims are transformed to fit within the current structure of the liberal state.

Let me begin by briefly outlining what I mean when I talk about liberalism. I use the term without great sophistication in reference to a mode of governance that places value on the person and protects the person's individual liberty and private property. Ultimate authority rests in the sovereign, which receives its authority directly from the people. Its primary obligation is thus to individuals, and it is committed to protecting those individuals from the molestations of social groupings and the presumptively insular ontologies that groups are thought to perpetuate. As it relates to indigenous people, liberalism has sought first to thin political allegiances to the tribe and thicken their connection to the democratic state. Indigeneity in this context would survive insofar as it was consistent with underlying principles of the liberal state. The degree to which such consistency exists is a contested subject that is fought out within liberal society's deliberative institutions. In the case of Canada, these deliberative institutions include legislative procedure, court judgment, and treaty agreement.

A purely legislative attempt to resolve the inconsistencies indigenous people posed to the liberal state was the infamous 1969 *White Paper on Aboriginal Policy*.¹⁹ The *White Paper* proposed to eliminate the *Indian Act* and other Indian-specific legal recognition of indigenous people, who would be absorbed as individuals into the state structure. The drafters of this policy position failed to problematize the persistent colonial rationality and imperial hegemony of the state: instead, they defined the problem as one of indigenous access to the liberal project. Framing the "Indian problem" in this manner produced policies aimed at eliminating all legal differentiation. Indigenous peoples saw the issues differently. For them, the policies of dispossession, despotism, and forced assimilation were at the source of their struggle. The solution would come by way of gaining more direct authority

over their lives, not less. The gulf between government and indigenous people could not be bridged, so the *White Paper* was retracted and the Indian problem postponed to a later date.

The 1969 *White Paper* packaged liberalism as a humanitarian response to the impoverished social conditions of indigenous people in Canada. I find it helpful to characterize the *White Paper* as a colonial mode of liberal imperialism. This bait and its veneer of humanitarian prerogative lured few indigenous people into the liberal framework. The Canadian government would not officially move from the *White Paper* position until the *Calder* decision in 1973. It was at this point that Canada began to adopt a post-colonial mode of liberal imperialism. This was a “soft imperialism” characterized by a rejection of a colonial apartheid/assimilation mode of operation in favour of one marked instead by integration and selective toleration of indigenous difference. Indigenous people would be permitted to retain certain aspects of their political and social identity, so long as those aspects had been domesticated by being processed through the liberal state’s institutional modes of recognition. These permissions constituted the more alluring bait of post-colonial liberalism.

This bait would be sweetened with the repatriated *Constitution Act, 1982* and the redemptive promise of its section 35. A steady stream of indigenous litigants have chased section 35 into Canadian courthouses in the hopes of giving legal force to their claims. Later courts would acknowledge that inherent Aboriginal rights do in fact exist. These rights had a promising lustre, and we placed great hope in their ameliorative and emancipatory capacity. Pursuing them has produced tangible advantages by, for example, creating the conditions that make qualified integration a possibility for a number of indigenous people. Given our despondency prior to 1973, these gains cannot be easily dismissed, and even the most cynical critic is forced to admit that they have improved the lives of many indigenous people.²⁰ However, I do think we need to pause and consider whether the advances made within this liberal rights framework are leading us in a direction that we wish to pursue. As noted above, my sense is that we have been turned in the wrong direction. Admittedly, this is a subjective determination, and each individual and nation must balance the benefits of following this path with the risks that it may pose to the stories that define us. I am afraid that, currently, we as Nuu-chah-nulth are ill-equipped to answer this question because of the way that imperialism and liberalism have reformed our subjectivities, changing the way we understand and respond to the world.

Indigenous Subjectivities and Imperial Feedback

The fundamental problem with evaluating whether the rights held out to us by the liberal state are good for our people is that the pursuit of emancipation through the state has reworked the indigenous subject by facilitating our transition from an indigenous storied foundation to one that is framed by the stories of liberalism. We have been vigorously pursuing these rights since 1973, and in my view, this chase has taken us a long way from home. When we finally grasp the emancipatory precepts, we find something different from what we thought we were chasing. Being overcommitted to the chase, and left with little in our hands to take home from it, we find ourselves compelled to press on and make more of our efforts. To justify ourselves, we also tend to exaggerate the utility of the rights we hold. I call this dynamic the bait and switch of post-colonial liberalism. We are baited onto a path, chasing what appear to be emancipatory precepts, but these seem to change form at the very moment we take hold of them. Thus, emancipation continues to evade us, and the pursuit embeds us in a different story. From this new storied foundation, the contemporary indigenous subject is formed, and a new and daunting hurdle to understanding the Nuu-chah-nulth story emerges.

A clear example of this obstacle is found in the way that my generation has a strong consciousness of Aboriginal rights but a very weak understanding of their inherent foundations. This problem is evidenced by asking young educated indigenous people about the source of their Aboriginal rights. You will find that young people reference *Sparrow*, *Van der Peet*, or *Delgamuukw* more readily than they do the social/spiritual/legal traditions of their people. In light of our current situation, this is understandable. We grow up subject to various modes of ideological dissemination in settler societies and have allowed their political/legal institutions to enframe our claims. With two generations of our imagination formulated within this hegemonic story of Western liberal imperialism, we find it progressively more difficult to conceive as viable the task of constituting ourselves in accordance with our own stories.

One discouraging result is that the indigenous subject has so internalized colonial attitudes that a return to indigenous storied practice is perceived as secondary to the problems at the negotiation table. Wickaninnish has spoken up at meetings about the need to raise up the *hawiih* (Nuu-chah-nulth chiefs) and place them at the centre of the decision-making processes. He tells of the heightened need to ground ourselves in our stories, in our practices, and in our land as we proceed in treaty negotiations. With his

message unheeded, he repeats it, to the point where now impatient Nuuchah-nulth politicians and administrators roll their eyes and ask him to keep his interventions brief because they “don’t want to get sidetracked.” What is primary to band council and treaty commission administration is improving our life chances and that is understood thinly as economic advancement within the liberal state. Leaving our canoes behind and turning away from the constitutive potential of our stories are viewed as appropriate costs to be incurred for greater life chances within the storied framework of the liberal state.

Most of us fail to recognize what is at stake in this exchange because we have been raised under the rule of settler agents and their political and educational institutions; we have not experienced our stories as constitutive in a politico-institutional sense. Equally troubling is the fact that we are also losing a detailed memory of the time when our politics were grounded in our own stories. As a result, imperial rule is becoming normalized and unreflexively absorbed by the indigenous subject, just as it is in the settler subject. This process effectively reforms the contours of our ethical constitution and sensibilities in a manner that coheres with the liberal imperial story. Our current demands for justice are spoken from this subject position and are coloured by imperialism. Our emancipatory strivings thus tend to be fed back into the liberal project rather than clearing a path back to our canoes. Our pursuit of Aboriginal rights from this subject position leads us to occupy a peculiar space within the state as idiosyncratic “abo-liberal” subjects, or as “citizens plus,” in Alan Cairns’ famous reference.²¹ From this space, it becomes very difficult to take our stories seriously, because we have come to hear them as liberalized subjects. As Wickaninnish matter-of-factly puts it, “we have been overcome by colonial attitudes.”

Attending to Our Stories: A Simple Solution

I believe that liberation from imperialism will come by way of mending the frayed ties to our own stories. We have tried to liberate ourselves through section 35 by plugging our claims into its proof tests, and in doing so, we have found ourselves drawn further into the imperial framework where our stories become unimportant and emaciated. Our calls for justice are thus pulled away from their foundations and into a field where they are drawn on inconsistently and become jumbled and impoverished. Wickaninnish says that our liberatory task is not as complicated as it appears when approached through section 35. For him, emancipation will come through the simpler task of returning to our canoes through our own stories.

Wickaninnish believes that our problem is not that our right to be free in our homeland has been deprived of appropriate recognition. The solution does not require the negotiation of complex treaty arrangements, constitutional amendment, or getting section 35 right. Given that he has worked as a treaty negotiator for the Ahousaht, it is clear that resolving our relationship with the newcomers is important to him. However, he seems to suggest that the project of resolving our relationship with them has been inappropriately separated from and takes precedence over the project of resolving our relationship to ourselves and to the stories that constitute us as Nuu-chah-nulth people. Wickaninnish's challenge to us, the Nuu-chah-nulth, is to direct our emancipatory energies toward our collective and individual selves, caring for our self-relationship through a practised engagement with our stories.

Initially, I was not convinced that returning to Nuu-chah-nulth stories would be a simple affair. I wondered whose stories we should listen to. And whose rendition of that story do we take as authoritative? What do we do about the fact that we have forgotten much of our story? I wondered if our stories contained deliberative principles that we could draw upon to make these decisions and to resolve conflicts that arise as we move to regenerate them. I posed these questions to Wickaninnish, and predictably, he told me that I was complicating matters:

We start with the hawiih [chieftainship] story. We stand a better chance of coming together under their story and withstanding any scrutiny because we still have memory of it. These stories themselves are not complicated. They are stories about who we are, who we are related to, where the territory is. If the whole community knows these stories, then other stories about the hawiih's responsibility for the ha'houlthee, which includes the people, will also be told. People will begin to make the connection between the hawiih's authority and his responsibilities.

His response satisfied my query. To my knowledge, most Nuu-chah-nulth people know who their chiefs are and have some awareness of the stories that ground their authority. The difficulties of our situation arise less from our ignorance of our stories than from the fact that we have been subjectivated by a multiplicity of stories. The presence of imperialism in this plurality cultivates grounds that encourage certain stories to thrive and choke life out of their competition. In this context, our challenge is to bring life back

to our story. Wickaninnish reminds us that the roots to these stories may be dormant, but they are still with us. We simply need to tend to them. The strongest of these roots are our hawiih stories, which would provide us with a foundational and relatively uncontentious starting point.

Being satisfied with that answer, I moved to my next question, which was aimed at identifying a best practice model. I asked Wickaninnish if we could point to any Nuu-chah-nulth chiefs who were more strongly connected to their story and heeding the chiefly responsibilities in exemplary fashion. He answered no and remarked that this was why the Nuu-chah-nulth are in such a troubling place. I asked him why the chiefs were not fulfilling their responsibilities and what he thought the solution was. Let me quote him at some length here:

It is because they are not taught. It is because of not knowing. People are putting self over and above everything else and saying "I am chief." A true-hawiih never had to say that because people knew he was a chief and respected him.

I talk about simplicity a lot and the solution here is simple. It is the hawiih standing up. I talk to Shawn [an Ahousaht hawiih] about this. I tell him he has to go home and feed the people. When you do that you have a captive audience. Bend their ear. Tell them who you are, your history, tell them about your relations, tell them about your territory. Do it again and again. Ingrain it deeper and deeper. They will respect you for that. If we do this, life would become easier. Without even [directly] trying, things become easier.

I think we have become caught up in colonial attitudes. People seem to think that it is a chore. I don't believe that. But what it will take is for our hawiih to find out who they are and then stand up and assert who they are. One thing I have noticed, and I have told this to many chiefs, is that when you stand up and say you want to feed the people, others, without understanding why, will help you. People will come from all over the place.

We have become burdened with this idea that it is really tough. But the solution is really quite simple. If you start doing this, people will start to have pride, without preaching to people that you have to have pride. All this plays itself out in the support they give to the chief. Along with their support comes the preparation. The practice. People will have to go out and get the fish, and hunt. They will practise their songs and dances. All the chief has to say is "I want to feed the people."

Wickaninnish asked me to imagine the state of our people after ten years of feasting as he described. In doing so, I became convinced by his message. Clearly, immense mending potential would flow from this simple act of feeding. Feasting was not simply a means of sustenance for our people. It was a social institution. The work of preparing to eat, listening to our chiefly stories, and eating with each other would rebuild our connection to our stories and bring much sustenance to our collective and individual bodies. It would aid our efforts to resist hegemony by helping to identify our subjective contradictions and resolve them in favour of Nuu-chah-nulth stories rather than the imperial stories of the settler state and society.

One central theme in Wickaninnish's message above is *practice*: "Do it again and again. Ingrain it deeper and deeper." This is a common theme among our people, who tend to understand the world as a series of relationships between performative agents. We understand things through what they do rather than identifying any particular essences of their being.

Wickaninnish also spoke of bringing Nuu-chah-nulth political leaders out to the land, where they would *uusmach* before negotiations. Uusmach is a cleansing ritual, in which individuals go to the ocean or a creek at sunrise and wash themselves while in prayer. He also mentioned Canoe Journeys (a contemporary regenerative initiative in which paddlers from all over the Pacific Northwest travel to a Native community to be hosted in traditional fashion) and how helpful it is in embedding individuals in their indigenous story. But he referred to these practices as "spikes": people are momentarily raised up, but they return to their communities where the practices are not sustained. He suggests that we need to find ways to build these types of practices into our communal and individual everyday life.

Conclusion

One thing that really struck me was that Wickaninnish did not blame the leadership for our community's failings. I got the sense from him that our chiefs and political leaders are no more culpable than the rest of us for what is going on. They, like us, have not been raised in our practices or taught to walk in our stories. Those of us who grow frustrated with our leaders are not to respond by trashing them but by finding ways to elevate them. Wickaninnish says we have to lift them up. If our hawiih is not able or willing to host a feast, it is the responsibility of the ha'houlthee to host one for him or in his absence.

One of our core teachings as Nuu-chah-nulth is that everything is connected. In our language, the expression is heshook-ish tsawalk. Our chiefs'

actions are not disconnected from ours; nor are ours from theirs. People have often said that a hawiih is only as strong as his ha'houlthee. And the ha'houlthee is only as strong as its hawiih. We say that we are Nuu-chah-nulth and that there is a story to that identity. And that is a story of practice. I leave this discussion with a sense of optimism. I have often felt in a very real and deeply existential way that we are hoquotist, and that we are moving further and further away from our own canoe. And I felt entirely ill-equipped to perform the task of returning to that canoe and lamented even the notion of spending my life on board the liberal imperial vessel. However, I am beginning to understand that what was lost was not an essence or thing. Of course, we have lost a vast amount of knowledge, but that knowledge was acquired through practice. My sense now is that the knowledge will revive if we return to those practices collectively and as individuals. Thus, though we may not know how to build our canoes or paddle them now, we have reason to hope that this knowledge will return if we embed ourselves in the kinds of practices that generated it.

It seems to me that our best hope in resisting imperialism is not through negotiating complex treaty agreements, drafting a proper constitution, or securing a right to self-determination. Imperialism has shown itself quite adept at manipulating these structures toward its own ends. Our challenge is to thicken our connection to our stories through sustaining simple practices of, for example, feasting with our hawiih. It is not a matter of returning to an old and almost lost story. It is a matter of looking back to those stories through practice. These practices will provide the inspiration and instruction as we move to rebuild a canoe that can help us navigate the currents we encounter in the present.

NOTES

- 1 Wickaninnish spoke to this question at the University of Victoria's conference "Storied Communities: Narratives of Contact and Arrival in Constituting Political Community," Victoria, BC, 1-3 December 2006, which was hosted by the Consortium on Democratic Constitutionalism.
- 2 For a more developed elaboration of the imperial reasoning that supports the Canadian state's story, see Michael Asch's discussion in Chapter 2 of this volume.
- 3 In Indian country, the opinion that the settlers should be willing to leave is widely held. Among settlers, it is less common, but Asch refreshingly demonstrates that it can be found. Settler society, he states, "can become a part of this land" only if "we arrive open-handed and ask to enter into a relationship with those who already tell the stories of this land. It also demands that we be prepared to leave if that is what they say, especially after having experienced us for three hundred years and more" (*ibid.* at 37).

- 4 *Ibid.*; *Delgamuukw v. British Columbia*, [1997] 3 S.C.R 1010 at para. 186.
- 5 Balance is a core imperative that structures Nuu-chah-nulth social order. In choosing a title for his book on the Nuu-chah-nulth world view, Umeek (E. Richard Atleo) referred to “*heshook-ish tsawalk*,” Nuu-chah-nulth words that mean everything is connected. See E. Richard Atleo (Umeek), *Tsawalk: A Nuu-chah-nulth Worldview* (Vancouver: UBC Press, 2005). The Nuu-chah-nulth understood that all of life is connected and that actions performed in one sphere reverberate outward, affecting many other temporal and special spheres. To ensure that those reverberations bestowed positive effect, they attempted to approach all that they engaged with respect. Respect is thus another core concept for the Nuu-chah-nulth, and it is expressed with the world *eesok*.
- 6 Only two *Treaty Agreements* have been reached under the BC Treaty Commission. One of these is the *Maa-nulth First Nations Final Agreement*, which involves five Nuu-chah-nulth tribes that split away from the Nuu-chah-nulth Treaty Group in 2001, after the majority of Nuu-chah-nulth voted down an *Agreement in Principle*. The other is the *Tsawwassen First Nation Final Agreement*, involving only the Tsawwassen Nation. For a list of other First Nations negotiating under the BC Treaty Commission, and the stage of their progress, see the BC Treaty Commission’s website, online: BC Treaty Commission <http://www.bctreaty.net/files/first_nations.php>.
- 7 To be fair, there has been a move away from extinguishment of indigenous rights as a policy position. For example, in 2002, then British Columbia’s Minister responsible for Treaty Negotiations and Minister of the Attorney General, Geoff Plant, stated, “First nations have told us that they will not accept an extinguishment of rights to achieve certainty. We acknowledge the validity of this position. British Columbia therefore rejects the use of extinguishment or the technique known as cede, release and surrender.” See “Treaty Commission Update” (January 2003) at 4, online: BC Treaty Commission <http://www.bctreaty.net/files/pdf_documents/january03update.pdf>. Instead of extinguishment clauses, treaties now include non-assertion and exhaustion clauses stipulating that rights not elaborated within them will never be exercised. So, theoretically, rights not contemplated in the *Agreement* may still exist but cannot be enforced. See *Maa-nulth First Nations Final Agreement* (January 2003), ss. 1.11.1-1.11.10, online: BC Treaty Commission <<http://www.bctreaty.net/nations/maanulth.php>> [*Maa-nulth Final Agreement*] (for examples of treaty process non-assertion clauses, such as exhaustion, indemnity, and release, see the certainty provisions). *Tsawwassen First Nation Final Agreement*, c. 2, ss. 11-17, online: BC Treaty Commission <<http://www.bctreaty.net/nations/tsawwassen.php>> [*Tsawwassen Final Agreement*].
- 8 *Maa-nulth Final Agreement*, *ibid.*, ss. 1.8.0-1.8.11; *Tsawwassen Final Agreement*, *ibid.*, c. 2, ss. 19-29.
- 9 Preamble, *Maa-nulth Final Agreement*, *ibid.* at para. 6; Preamble, *Tsawwassen Final Agreement*, *ibid.* at para. I [emphasis added in both].
- 10 Robert Young, *Postcolonialism: An Historical Introduction* (Oxford: Blackwell, 2001) at 25.
- 11 In the Nuu-chah-nulth political order, the division of authority is between the *ha’houlthee* and the *hawiih*. The *hawiih* are the individuals who are responsible to

the ha'houlthee. The word "ha'houlthee," Wickaninnish tells me, refers to "the distinct boundaries of the tribe's territory and all the things contained in those boundaries, and all the people contained in those boundaries." Thus, a ha'houlthee encompasses people, animals, plants, and minerals. Each of these things comprising the ha'houlthee are intimately connected (see *supra* note 5 for a discussion of balance and heshook-ish tsawalk); the hawiih's responsibility was to engage in practices of listening and balancing the voices and concerns of the ha'houlthee.

- 12 Many scholars have problematized the BC treaty process as an extension of imperialism. See e.g. Glen Coulthard, "Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition'" (2007) 6 *Contemporary Political Theory* 4; Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (Don Mills: Oxford University Press, 1999); James Tully, "Reconsidering the BC Treaty Process" in Roderick A. MacDonald, ed., *Speaking Truth to Power: A Treaty Forum* (Vancouver: Law Commission of Canada, 1999) 3.
- 13 See Coulthard, *ibid.*, for an excellent discussion of the interpolative force exerted by imperialism upon indigenous subjects.
- 14 See *supra* note 5 for a discussion of eesok and tsawalk.
- 15 We did not have surnames. We carried several names that had been given to us, and we would typically introduce ourselves by one name for a period of time. The early missionaries called my great-grandfather Captain Mack because he travelled in and out of Ucluelet in a distinctive canoe that had a sail mounted on it. His name was Mahk'ee, which was difficult for the missionaries to pronounce, so they called him Captain Mack.
- 16 This quote and all other references to Wickaninnish are drawn from a series of exchanges we had in July of 2008.
- 17 Leroy Little Bear, "Jagged Worldviews Colliding" in Marie Battiste, ed., *Reclaiming Indigenous Voice and Vision* (Vancouver: UBC Press, 2000) 77 at 84.
- 18 For me the word "bait" is helpful in its ambiguity. It has two meanings, both of which are metaphorically appropriate when considering the rights framework and indigenous people. Bait can be interpreted to have an alluring quality when used to entice something/one into a trap. It can also have a taunting quality, demonstrated in the European spectacle of baiting animals, such as bears and bulls. For example, a bear or bull would be either tied up or placed in an enclosed space and baited by a pack of dogs that it would fight until the point of death. Liberal rights and the liberalization of Aboriginal rights through treaty can be seen as having both an alluring and a taunting quality when considered from an indigenous perspective. However, my use of the word here refers to its alluring qualities.
- 19 For discussion of the *White Paper*, see Sally Weaver, *Making Canadian Indian Policy: The Hidden Agenda, 1968-1970* (Toronto: University of Toronto Press, 1981).
- 20 For a more optimistic perspective on the spaces that Canadian law has opened for a just reconciliation between indigenous peoples and Canada, see S. Ronald Stevenson's discussion in Chapter 15 of this volume.
- 21 Alan C. Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (Vancouver: UBC Press, 2000).

17

Proof and Narrative “Reproducing the Facts” in Refugee Claims

DONALD GALLOWAY

Early in the process of making a refugee claim in Canada, claimants appear to be thrust into the role of storyteller. Within twenty-eight days of initiating their claim, they must complete a Personal Information Form (PIF), section 31 of which is entitled “Narrative.”¹ It offers two blank pages, with the direction to use more if needed. Section 31 differs substantially from the previous thirty sections, which ask detailed questions mostly focusing on the claimant’s personal history, including work experience, education, criminal record, military service, and travel to Canada.

On first sight, the request for a narrative in the claimant’s own words appears to be a generous and respectful mode of ascertaining the relevant background information. It seems to allow claimants “free rein” in structuring their account of the situation that gave rise to their claim for Canada’s protection. It modifies the essence of the document by displacing the idea that it is a written interrogation that demands specific answers to someone else’s questions. Instead, it seems to give power, recognition, and voice to claimants, permitting them to define the issues that should be considered. Whereas the other questions in the PIF put claimants on the defensive, the call for a narrative reminds all involved that claimants are *asserting* a right rather than defending themselves. It also highlights the idea that personal experiences and perspective – the subjective element – play a critical role in determining whether that right exists.

The call for a narrative also implies that those who read it will bring the appropriate attitude to the task of appraising it: that, as readers, they will try to see the world through the eyes of the narrator, will try to understand and be empathetic to the perspective that is offered, and will be willing to be “captivated” by the language and personal style of the narrator.

In this chapter, I argue that the projected image of refugee claimants as storytellers is largely illusory. I show that the idea of claimants having free rein in writing the narrative is inaccurate and that, in any case, the written account is an inadequate medium for claimants to describe their personal experiences. Some of these deficiencies were recognized over twenty years ago by the Supreme Court of Canada, which decided in *Singh* that the only adequate remedy for the inadequacies of written submissions was to accord refugee claimants an oral hearing before their claims were determined.² However, over time, the written narrative has taken on a more prominent role in refugee determination. I argue that it has been transformed significantly from its original design: it is now widely used as a tool for cross-examining claimants.

To a large extent, the decision in *Singh* has been superseded by institutional changes. Although originally the oral hearing was provided in order to remedy deficiencies, I argue that it too has evolved into a forum where an interrogation takes place – where claimants are challenged to explain the defects in the written format, placing the PIF and its requirement to provide a narrative at the centre of the refugee determination process. The dominant consequence of these transformations is that they increase the difficulty of making a successful claim. The oral hearing now places claimants in a defensive stance, requiring them to corroborate evidence already supplied, rather than providing an opportunity to communicate more effectively through a different medium. Although the Immigration and Refugee Board of Canada (IRB) continues to promote its hearings as “informal” and “fair,” they subject claimants to an amplified level of stress. I also argue that recent reconfigurations of the oral hearing in Canada have increased the constraints, dilemmas, and challenges that face claimants in the construction of the written narrative.

The Inadequacies of the Written Narrative

When composing the written narrative, claimants are given instructions such as this one:

On the following 2 pages, set out in chronological order all the significant events and reasons that have led you to claim refugee protection in Canada. Indicate the measures taken against you and members of your family, as well as against similarly situated persons, and by whom these measures were taken. Include dates wherever possible.

These directions create some serious dilemmas. The most significant hinges on the fact that the instructions imply that a particular form of narrative is required, one that is, as I shall show, sadly inadequate to the task. Thus, the dilemma is whether to obey the instructions or not. Those who choose to follow them run the risk of being misunderstood or disbelieved. For those who do not, a double risk arises: first, parts of their narrative may be discounted as irrelevant; second, they may fail to communicate because of the limitations inherent in the written form. This quandary is the focus of the following discussion.

Events versus Experiences

As noted above, the PIF requires claimants to set out the “events and reasons” that have led them to seek Canada’s protection. The message seems to be “Just give us the facts,” with the dates of the events and chronological order being spotlighted for particular attention. No room is made available for interpretation or contextual commentary. Nor is there encouragement to describe subjective experiences or the emotional impact of events. These could be regarded as out of order, since they lack the objective grounding that the word “events” connotes.

Thus, it is unsurprising that PIF narratives tend to closely resemble police reports – listing discrete events tied to dates and times. They tend to be written with a veneer of detachment, as if the events were experienced from the outside rather than the inside, focusing on the factors that affected the claimant rather than on the manner in which they were experienced.³

To make use of a distinction developed by Clifford Geertz and Michael Walzer, the instruction in the PIF seems to call for a “thin” rather than a “thick” description of events.⁴ Whereas thick descriptions refer to the local or personal significance of acts, thin descriptions will filter out nuances and reduce the complex, layered, and multi-dimensional occurrence to a prosaic stab at objectivity. The notion that the PIF is looking for thin descriptions is bolstered by the fact that two pages are regarded as sufficient in most circumstances to accommodate the whole story. Although claimants are encouraged to use other blank sheets should the need arise, the implicit

message is that a barebones account is the norm and is expected. This conclusion is also reinforced by the fact that the PIF requires a signed declaration that the information provided is “complete, true and correct.” The ideal of completeness may be possible in the realm of the thin description, but it seems unattainable in that of thick descriptions, which may defy completeness and may hinge on belief rather than truth.

A number of problems are inherent in the instruction to set out events and reasons. First, the full meaning and intensity of what occurred may be diluted in a skeletal version of the story. Where claimants attempt to harmonize hermeneutic horizons by reducing the story to that which is thought to be relevant to the reader, important details may be omitted. For example, the date on which government officials took a certain action (such as breaking up a political demonstration) may have historical or social significance. The action in question may allude to historical events, or claimants may understand them to resonate with or refer to these events. The PIF instruction does not encourage claimants to be expansive on such matters. They may believe quite reasonably that reference to such allusions, resonances, or connotations would be regarded as irrelevant.

Second, claimants who present their story as a detached report of events and reasons may be misinterpreted by the reader as untrustworthy or unreliable. A narrative that refers to the event but not to its subjective impact may be perceived as a concoction. The decision maker charged with assessing the credibility of the narrative may regard it as a fabrication for the precise reason that it lacks experiential reference. The very format of an incident report may encourage the finding that the claim is fabricated formulaic boilerplate.

This can occur because refugee claims are rarely unique. The objective problems suffered by one claimant are usually shared by others. The methods employed by government officials or others engaged in human rights abuse generally follow established patterns and show little imagination. Yet, repetitive claims from unrelated claimants can give rise to suspicions of collaboration and concoction.

An extreme example of such suspicion is found in *Zhang*, where a Board member was presented with a PIF narrative that was identical to one submitted by other individuals.⁵ The Board member regarded the narrative as a fabrication because it was “insufficiently *personal* to be credible.”⁶ The Federal Court overturned this decision and ruled that it was improper for the Board member to decide that the narrative was a concoction *solely* because another identical narrative existed. However, less extreme approaches

have received the Court's approval. On several other occasions, the Court has concluded that similarity in PIF narratives, though insufficient in itself, is not a prohibited factor when an assessment of credibility is being made.⁷ The underlying message appears to be that a Board member is entitled to suspect that claimants were not personally involved if they do not try to offer a unique perspective on the occurrences in question. Absence of any reference to subjective experience suggests falsity.

Empirical findings corroborate such suspicions. In a detailed investigation of the differences between truthful and fictitious reports, Stephen Porter, Kristine Peace, and Kelly Emmett reveal a number of distinctions between the two.⁸ First, they note the different levels of attention to detail:

[A]ttention to specific types of details in the narratives helped to discriminate honesty from deception. When relating a fabricated experience, participants were unable to provide the same level of contextual information as when relating a genuine experience. They provided fewer time and location details and their reports were abbreviated overall, despite our prediction that they may be more detailed in an attempt to make their trauma stories more credible and to elicit sympathy. However this does corroborate a general finding in research on deception showing that deceptive accounts tend to be less rich in detail than truthful accounts.⁹

Although this endorses the PIF's demand for specific reference to dates, it goes further to suggest that more detailed evidence of context will be important. More significantly, the authors also find that truth tellers and fabricators describe the emotional impact of trauma differently:

Further, the self-reported emotional intensity ratings of the false events were higher. Thus, malingerers exaggerated the severity of the trauma when asked direct questions about the event but were unable to reflect this extreme distress in the stories themselves.¹⁰

By implying that an incident report rather than an emotional or phenomenological account is being sought, the PIF removes an important source of evidence of the narrative's trustworthiness.

The Written Medium

Even where claimants are not dissuaded from referring to the subjective significance of events, they face the problem of reducing the complexity of

such matters to writing.¹¹ They may have difficulty in articulating their motivations or their own responses to events. Refugee stories frequently pivot on the claimant's feelings of shame or humiliation or a persecutor's capacity to diminish a person's self-esteem by degradation. Claimants will struggle to express such matters, and, as discussed in more detail below, that struggle is only rarely apparent in the written word. If the decision maker's own comprehension of the experiential is incomplete, the written word is unlikely to convey a clear account. Claimants are also unlikely to have much practice using the medium of writing to express emotions, motivations, reactions, or other subjective aspects that may be crucial to understanding the story. Such inexperience is likely to reduce its persuasiveness or plausibility.

Further, claimants write for a reader who is an unknown stranger. Even where claimants are content with their own understanding of their feelings, reactions, and motivations, the written word may be an insufficient medium to allow their two worlds to conjoin. The written form presents no cues to allow the writer to gauge whether the reader is following or believing the story, or whether there are interpersonal or cross-cultural gaps that require attention.

I shall consider these issues in greater detail. At this point, it is sufficient to note the difficulty in communicating highly personal, emotionally charged episodes to an audience whom one has never before encountered. The pernicious consequence of attempting to provide an enlarged account is that it may fail because of the problems inherent in the written medium.

Testimonial Capacities and the Weight of the Evidence

A third and independent deficiency in the PIF is also worthy of note. Two challenges face refugee claimants when completing section 31 of the PIF. The first is to construct a narrative from which the reader may infer that they have a right to Canada's protection on account of the risks faced in their country or countries of origin; the second is to construct an account that will be accepted as autobiography rather than fiction or the biography of a third party.

Success in each will depend on the reader's favourable assessment of the author's credibility. For the first, claimants will need to persuade the reader that the sources on which they are relying are sound and trustworthy. Where claimants rely on observation, they must persuade the decision maker that they have sufficient skills of perception, of memory, of language, and of understanding the meanings of social interaction to ground adequately the conclusion that their beliefs about what happened actually do match