Time to Bury the Bulls of Donation

Douglas Farrow

From Tierra del Fuego to Ungava Bay
the history of betrayal continues to today
the spirit of Almighty Voice, the ghost of Anna Mae
call like thunder from the mountains – you can hear them say
It’s a stolen land […]

If you’re like me you’d like to think we’ve learned from our mistakes
enough to know we can’t play god with others’ lives at stake
so now we’ve all discovered the world wasn’t only made for whites
what step are you gonna take to try and set things right?
In this stolen land […]

Bruce Cockburn, “Stolen Land” (1986)

I could wish Cockburn, whose memoir, Rumours of Glory, I have been reading in spare moments, did not stray quite so confidently into theological territory. (Blame Thomas Merton or the United Church of Canada or the ambience in San Francisco, as you see fit.) But I recommend him to friends on both sides of the border who haven’t listened to him. Some will have heard on the radio “Rumours of Glory” or “Wondering where the Lions are” or “Lovers in a Dangerous Time” or “Waiting for a miracle,” or perchance his rendition of St Jean de Brébeuf’s Huron Carol. They may even have heard “If I had a Rocket Launcher” or one of his many protest songs. (He has been a diligent critic of American sins in Central America as of Canadian sins in Canada.) Whatever one makes of his politics or theology, he is without doubt a formidable composer, lyricist and guitarist, with many powerful albums to his credit, such as the The Charity of Night. Perhaps if he’d played the subtly autobiographical title song from that album when he performed in Montreal recently, I might have plucked up the courage to tell him how much his music has meant to me over the years – and that even my teen-aged children find it absorbing, though my students seem never to have heard of him.

I’m succumbing here, however, to the Turkish drummers syndrome (buy the album and listen to the opening lines of the second tune if you don’t know what I mean) and must come to the point. It’s really another Canadian, one who doesn’t
live in San Francisco like Cockburn but is welcome to, that I should be mentioning. His name is Justin Trudeau and he currently resides at Rideau Cottage in Ottawa, where he serves as Canada’s Prime Minister. And one step that he proposes, to help set things right in this stolen land, is a step by the Pope. The Economist explains:

For more than a century [1883–1996] the government of Canada ran a system of residential schools for indigenous children, taking them from their parents—by force if need be—and putting them into institutions where many were physically and sexually abused. Seven years ago Stephen Harper, then Conservative prime minister, apologised on the government’s behalf to the 150,000 children and their families for the brutal attempt to wipe out their cultures. On December 15th Justin Trudeau, the new Liberal prime minister, apologised again, saying the “abhorrent” system represented “one of the darkest chapters in Canadian history”. He then said he would ask Pope Francis to apologise too.

The proposed step, which was recommended by Canada’s Truth and Reconciliation Commission, is a literal one – Pope Francis to come to Canada, within one year of being summoned, to make the apology in person, “for the Roman Catholic Church’s role in the spiritual, cultural, emotional, physical, and sexual abuse of First Nations, Inuit, and Métis children in Catholic-run residential schools” (recommendation 58). Moreover, he is to do so, apparently, in the context of a royal proclamation that, inter alia, would “repudiate concepts used to justify European sovereignty over Indigenous lands and peoples such as the Doctrine of Discovery and terra nullius.” That’s in recommendation 45, and it is recommendation 45, together with its sister recommendations, 47 and 49, that I really want to talk about.

First, a disclaimer. I was not involved in the commission process, am still digesting its final report, and have no expertise to bring to bear on the residential school problem. Moreover, I deeply respect those who have helped to expose and where possible to redress the abuses suffered by First Nations families, to say nothing of the survivors with the courage to tell their stories. And at a first read, I am impressed by the commission’s desire to reach constructive solutions. So it is not my purpose to belittle the report, though I am going to challenge the thinking that underlies recommendation 45.

That said, it does worry me that the report receives in some circles, as I know from experience, near biblical adulation. It also worries me that Mr. Trudeau thinks it somehow redemptive to accept the TRC’s recommendations in whole and in part. As one McGill colleague (who was present at some of the hearings and has studied the commission’s work with the requisite expertise) observes, there were very real limits to the whole exercise, limits which were not properly respected in the report. Professor Niezen points out that the TRC had no judicial power, no free access to government archives, and no ability to name names or specify offences. It was not an exercise in the rigorous discovery of facts and weighing of evidence. Nor was it really an exercise in reconciliation, for which other truths are required than those
that appear in the vocalizations of victimhood that were its primary focus. Opportunity was provided for people to say the unsayable, writes Niezen, but only a certain sort of unsayable – that which provokes strong emotions. “Horrible, sorrowful, traumatizing experiences” were recalled and narrated. But the quite mundane stories remain untold.

Former students tend not to come forward to publicly narrate ordinary experience in residential schools, the more commonplace, quotidian indignities of excessive discipline and the shared, yet deeply individual, loneliness of removal from families. Those who think of themselves as having suffered only minimally or not at all also think of themselves as having nothing to say. The category of the unsayable extends to the perspectives of those once involved in the day-to-day operation of the institutions: the nuns, priests, and other clergy who once ran the schools. These perspectives are not meaningfully represented in the TRC’s witnessing activities, nor are those church members who remain disaffected with the accusations against them engaged in any form of encounter or exchange with those former students who are, in a sense, claimants and accusers in the process. In fact, the Oblate priests, brothers, and nuns with whom I conducted interviews often tell starkly different versions of suffering, particularly of the suffering they experienced personally through the structures and processes of accusation. This realm of experience rarely finds its way to the proceedings of the commission, and if it does, it is veiled, discreet, and indirect.

“More significantly,” says Niezen, “the federal government’s presence and participation at the TRC meetings has been, for the most part, formal and formulaic, this despite the fact that the government was primarily responsible for the residential school policy, their funding, and, ultimately, providing oversight of the operation of the schools themselves.” Not only do the commissioners not draw attention to this, “even when it is noted by survivors…, the focus of the hearings soon returns to the churches.”

It further worries me how little, even in educated circles, is known or recalled of ways in which the Catholic Church (and later other religious communities) have served aboriginal Canadians from the earliest days of its presence. Do people not know the biography of Brébeuf? Have they forgotten St François de Laval’s long and costly fight with Governor Frontenac to protect the natives from the ravages of the liquor trade? Do they think nothing of the arduous labours of so many others to teach natives to read and write and to cope with the changes being forced upon them by the arrival of Europeans? Do they not know that many converted willingly to Christianity, not merely because it seemed to be the wave of the future but because it brought them genuine peace and joy?

For that matter, it worries me how romantic and indeed naïve people are about the conditions that prevailed before the Europeans came. As if war and poverty and disease and brutality were somehow a European invention, rather than the universal condition of man! A pox, we may well say, on those who overlaid the aboriginal wars with the European wars and weaponry, on those who carelessly
and sometimes deliberately exposed the natives to diseases such as smallpox, on those who made and broke treaties in this stolen land. A pox, too, as Cockburn would say, on those who even today pollute the forests and rivers on which aboriginals have always depended for their lives and livelihood. A pox on those who have from the outset, and still do, sell them liquor. But who, I ask, other than Christians, generated any kind of truth and reconciliation between the Wendat and the Iroquois? Who learned their customs and languages and even laid down their lives for the natives if not Christians such as Brébeuf and his fellows? Has the irony of the Commission’s name not occurred to anyone? Is it not, in fact, quite a Christian name?

Let this also be said plainly: The residential schools did good things and not evil things only. And as dark as it is in places, the residential schools chapter is no darker than certain other chapters (still being written, as Cockburn observes in his memoir) about governmental mistreatment of natives, in league more often with big business than with religious organizations.

Not, mind you, that I am against popes apologizing, or for that matter Catholic primates or conference presidents apologizing, under the right circumstances. There are cases where this ought to be done, and many cases where it has already been done. And here I am reminded that St John Paul II, who came to Canada no less than three times, made a point on his first apostolic visitation in 1984 of embracing its indigenous peoples. (Indeed, he returned in 1987 primarily to fulfill a promise he had not been able to keep, because of weather, to visit natives in the Northwest Territories.) At Huronia, on 15 September 1984, he not only proclaimed that this was “truly the hour for Canadians to heal all the divisions that have developed over the centuries between the original peoples and the newcomers to this continent,” but also insisted that “Christ, in the members of his Body, is himself Indian.” Which is to say, whatever wickedness was or is done to the least of these brethren is done also to Christ. And for that matter to the saint (Brébeuf) over whose battered relics the Pope had come to pray. Back in Rome, in his Day of Pardon mass on 12 March 2000, John Paul confessed the failures of Catholics in various times and places through egregious violations of “the rights of ethnic groups and peoples, and contempt for their cultures and religious traditions.” The following year he send a message apologizing specifically for the “stolen generations” of aboriginal children in Australia. Would that he had done so with respect to Canada as well, though I don’t know how much he knew of the particular injustices of our residential school system. Perhaps not very much. But – the limitations of the TRC process and the withholding of government documents notwithstanding – we know enough now that specific apologies can and should be made by those who represent the Church and the relevant religious orders in Canada; this in the humble spirit of John Paul II, not the officious spirit of recommendation 58.
Let us come, then, to the business of recommendation 45. The first thing to be said here is that repudiating “concepts used to justify European sovereignty over Indigenous lands and peoples such as the Doctrine of Discovery and *terra nullius*” is something the Church, for its part, has already done, as the commission itself notes. What it says at p. 30f. is worth quoting in full:

In April 2010, the Permanent Observer Mission of the Holy See (the UN representative from the Roman Catholic Vatican) issued a statement regarding the Doctrine of Discovery at the ninth session of the UN Permanent Forum on Indigenous Issues. The statement noted that earlier papal bulls regarding territorial expansion and the forced conversion of Indigenous peoples had subsequently been abrogated or annulled by the Roman Catholic Church.

Regarding the question of the doctrine of discovery and the role of the Papal Bull *Inter Coetera*, the Holy See notes that *Inter Coetera*, as a source of international law ... was first of all abrogated by the Treaty of Tordesillas in 1494, and that circumstances have changed so much that to attribute any juridical value to such a document seems completely out of place.... In addition, it was also abrogated by other Papal Bulls, for example, *Sublimis Deus* in 1537, which states, “Indians and all other people who may later be discovered by Christians, are by no means to be deprived of their liberty or the possession of their property ... [S]hould the contrary happen, it shall be null and have no effect.” This view was expanded upon and reinforced in *Immensa Pastorum* of [Pope] Benedict XIV of 20 December 1741 and a number of other Papal Encyclicals, statements and decrees. If any doubt remains, it is abrogated by Canon 6 of the Code of Canon Law of 1983 which abrogates in general all preceding penal and disciplinary laws.... Therefore, for International Law and for the Catholic Church Law, the Bull *Inter Coetera* is a historic remnant with no juridical, moral or doctrinal value.... The fact that juridical systems may [31] employ the “Doctrine of Discovery” as a juridical precedent is now therefore a characteristic of the laws of those states and is independent of the fact that for the Church the document has had no value for centuries. The refutation of this doctrine is therefore now under the competence of national authorities, legislators, lawyers and legal historians.

For many, this Catholic statement was inadequate. The doctrine’s influence in Western law and its destructive consequences for Indigenous peoples have been well documented by scholars and other experts.

Now, what are we to make of all this? Let us underline first of all, in the commission’s favour, that it does take note of what the POMHS has to say. And second, that it does not, like propagandists and protest groups of one sort or another, trace the decidedly problematic *terra nullius* notion back to a putative papal bull by that name from AD 1095, a bull that no one can quote and that no one has ever read, because it was never written. (Who is responsible for its invention I have not yet managed to discover. As for Urban II’s speech at the Council of Clermont, perhaps *that* could serve as the prototype for a much-needed speech
calling on our own rulers to grind the Islamic State into the desert dust and bring a halt to its genocidal activities; it has no other relevance in the present context.) On the other hand, the commission does not appear to be fully cognizant of the fact that it is asking the Church to fight a battle that it fought long ago, as the POMHS statement makes clear. Nor does it seem to be aware that the C15 “bulls of donation” were primarily attempts to keep the peace between European powers – never an easy task, as the sack of Rome itself in 1527 testifies – and that they were really bulls of exclusion rather than of donation. One wonders, indeed, whether the commission is aware that the Church long ago abandoned the very notion that the pope has temporal authority of the kind invoked in those bulls. Or that by the beginning of the new century it was already turning its attention back to the defence of native peoples from these same European powers, thanks especially to the sacrificial labours, and hard work in law and theology, of Vitoria and Las Casas.

Do not misunderstand me. There is no denying that for every injustice the so-called bulls of donation sought to prevent, they lent themselves to far worse injustices. Or that they rested on a false understanding of the throne of Peter, advocated by Alanus Anglicus in C12 (whose ideas were taken up by Hostiensis in C13 and bolstered by the Donation of Constantine forgery). Or that the bulls in question served, unintentionally, the reprehensible political theologies later propounded by Sepúlveda and John Major, for example. But that line of argument, and that type of thinking, was relatively short-lived. It was overcome by the Vitoria–Las Casas corrective, which drew on the much sounder approach of Thomas Aquinas. This overcoming does not reverse the injustices that were done by European powers or by churchmen who condoned or even cooperated in their wickedness. The Church knows that and has exerted itself in all sorts of ways (albeit with the inevitable failures, compromises, and inconsistencies) to do what is right after having done what is wrong. It is silly, however, to ask it to repudiate misguided decrees that are no longer in force and have not been for centuries.

No doubt someone will say that it is only “silly” because the Church cannot do so without undermining its doctrine of infallibility. That too is a misunderstanding, however, since the doctrine of infallibility does not cover most of what appears in such documents and decrees. Infallibility extends to matters of faith and morals that belong either to the ordinary universal magisterium – what is taught by the Church, everywhere and always, in the ordinary course of its mission – or to the extraordinary magisterium of popes and councils when it solemnly addresses such matters in order to uphold, define, or clarify them. The doctrinal errors woven into the bulls of donation, or into any other document designed to address temporal matters in merely temporal or provisional ways, do not threaten the notion of infallibility because they do not come within its purview.

But back to my point, and to the most glaring problem with what the commission says or implies: The so-called “doctrine of discovery” is not a Church doctrine. It never was. Those who have tried to trace it back to Nicholas V’s
Romanus pontifex (1455) are not entirely mistaken, but they are nevertheless engaging in a falsification both of history and of that text. Romanus pontifex doesn’t teach doctrine at all, though of course it assumes – entirely correctly from the Catholic standpoint, then and now – that it is a good thing for people everywhere to come to the knowledge of God in Jesus Christ and to learn Christian faith and morals. (That’s just the Great Commission given by Jesus in Matthew 28. Would the TRC like the Church to repudiate that as well? If so, we need a different kind of discussion, one in which many indigenous people will side with the Church.) What Romanus does, building on Dum diversas, is grant political licence to particular princes to “restrain the savage excesses of the Saracens and of other infidels, enemies of the Christian name,” and “for the defense and increase of the faith [to] vanquish them and their kingdoms and habitations, though situated in the remotest parts unknown to us, and subject them to their own temporal dominion, sparing no labor and expense, in order that those kings and princes, relieved of all obstacles, may be the more animated to the prosecution of so salutary and laudable a work” – that is, of bringing the peoples of these remote kingdoms to faith and baptism and participation in the Church.

Again, I am not defending Romanus pontifex or the bulls usually mentioned along with it. In the last analysis, they are indefensible in certain of their theological presuppositions as in some of their prudential judgments. They ought never to have been issued, rather than to have been issued and set aside. But for all the dozens of times the word discover is to be found in Romanus, it teaches no “doctrine of discovery” such as some political historians, followed by lawyers and activists, have tried to find in it.

Let me elaborate on that. The concern of Dum diversas (1452) was that “those rising against the Catholic faith and struggling to extinguish Christian Religion must be resisted by the faithful of Christ with courage and firmness;” to be more specific, that the brutal imperial advances of Mehmed II and his allies, who a year later would sack Constantinople, must be countered with secular as well as religious means. This concern was reiterated in Romanus. “The savage excesses of the Saracens” were a real and present danger. Not everyone was like those whom Alexander VI, in Inter caetera (1493), described rather romantically as the “very many peoples living in peace … and seem[ing] sufficiently disposed to embrace the Catholic faith and be trained in good morals.” (Thankfully, they weren’t all like Alexander either, a man whose own moral training had quite spectacularly failed.) Nevertheless, when Nicholas adds in Romanus that he grants “free and ample faculty to the aforesaid King Alfonso to invade, search out, capture, vanquish, and subdue all Saracens and pagans whatsoever, and other enemies of Christ wheresoever placed, and the kingdoms, dukedoms, principalities, dominions, possessions, and all movable and immovable goods whatsoever held and possessed by them and to reduce their persons to perpetual slavery, and to apply and appropriate to himself and his successors the kingdoms, dukedoms, counties,
principalities, dominions, possessions, and goods, and to convert them to his and their use and profit,” he goes off the rails. Not simply because he acts with a notion of his own authority not actually proper to Peter or his successors, nor even because he speaks of reducing persons – which persons is not entirely clear – to perpetual servitude (a better rendering than “slavery”), but because he expands a licence for war and conquest against a specific enemy into a licence for action in other, as yet unknown, theatres and against unspecified “enemies.” And because there is much too much here of the theory of the pre-emptive strike, and much too little of Catholic “just war” theory, which Vitoria would have to revive and refine as an antidote.

Certainly this kind of licence, though designed to keep as much peace as possible between Christian princes and to help them achieve success (both secular and religious) elsewhere, ought not to have been granted. In the hands of ungodly men, what could it be but a cover for their own rapaciousness? Likewise when Nicholas threatens those who ignore the bull’s provisions with excommunication latae sententiae, he errs. His understanding of papal authority is mistaken, his political judgment is mistaken, and his prudential application of discipline (both ecclesial and political) is mistaken. We need not suppose that he meant to licence the slave trade, against which the Church was already taking a stand, as Sicut dudum illustrates. Moreover, we must make allowances for context. Yet we can see now that with Romanus pontifex a Pandora’s box was opened. Likewise, Inter caetera’s hope “that barbarous nations be overthrown and brought to the faith itself,” understood in terms of the reclaiming of Granada from its Muslim conquerors, makes some sense perhaps; viewed from the perspective, not of the reconquista, but rather of the conquista in South and Central America, it does not.

But I repeat: There never was a “doctrine of discovery” that in Catholic terms qualifies as doctrine, just as there never was a Catholic doctrine of geocentrism despite all the nonsense one hears about the Galileo affair; nor could there be. The “doctrine” in question was strictly a political one, a product of its time not touching faith or morals directly but tending to the corruption of both, by justifying both the justifiable and the unjustifiable in the exercise of armed force. Its subsequent development was almost entirely secular, and it grew in secular soil long after the Church tried to set the record straight. Without denying the Church’s complicity at its origin, or the heavy burden of guilt shared by Christian nations and peoples for its subsequent application, we ought to insist that responsibility for the popularity of such political or imperial “doctrine” always lies with those who appeal to it and make use of it. Hence the POMHS is quite right, even quite reserved, to say: “The fact that juridical systems may employ the “Doctrine of Discovery” as a juridical precedent is now … a characteristic of the laws of those states and is independent of the fact that for the Church the [papal] document has had no value for centuries. The refutation of this doctrine is therefore now under the competence of national authorities, legislators, lawyers and legal historians.”
The executive of the World Council of Churches, on the other hand, is rather irresponsible when it says that “a fundamental historical basis and legal precedent for these [abusive] policies and laws is the ‘Doctrine of Discovery’, the idea that Christians enjoy a moral and legal right based solely on their religious identity to invade and seize indigenous lands and to dominate Indigenous Peoples,” inasmuch as it neglects to identify this doctrine as something other than Church doctrine. Tl’ul’tut Robert Morales, who refers to “the principle of extinguishment” that is “at the core” of the doctrine of discovery, is still more irresponsible when he defines the doctrine thus: “The Doctrine of Christian Discovery and Domination refers to patterns of thought and dogma used to legitimize the domination of originally free and independent nations and peoples.” (This appears to be drawn from a 2012 paper for the Permanent Forum on Indigenous Issues, though mention is made of “Williams,” presumably Robert Williams.) Morales’ own presentation suffices to show how tendentious this is, not only because it is false to speak of Christianity, as opposed to the Spanish or Portuguese authorities, say, as having a dogma of discovery, much less a principle of extinguishment, but also because to illustrate these patterns of thought he himself turns, as he must, to the state.

Without overlooking the altogether lamentable fact that it received a Christian baptism of sorts through these extremely short-lived papal bulls, it must be said that the so-called doctrine of discovery is as old as human history and as common across religions and cultures and continents as any doctrine could be. Every empire that has ever existed has had its own version, including those of the indigenous peoples of the Americas. That Christendom finally developed a version as well, in its struggle with the “Saracen” precedent, is not to be wondered at. But at least there were plenty of Christians in Christendom, including popes and bishops, who insisted that any mission of discovery and/or conquest, if it meant at all to be Christian, had to be a mission to rescue people from evils, not to inflict evils upon them. And it was just that kind of thinking, thinking that actually is based on Christian doctrine and dogma, that led to the development of legal schemes for protecting rights and dignity and to the very idea, eventually, of truth and reconciliation commissions.

Just here let me ask the members of the present commission a question: If the doctrine of discovery really is a theological doctrine, why, in recommendations 45.1 and 47, are they asking the Canadian state to issue a formal repudiation of it? Do they want the state to make its own theological or anti-theological decree? Or do they (as one hopes) want it rather to repent of its own theories, actions, and attitudes? And, again, why is there so little consideration of the state’s role in the residential school affair? This is a glaring weakness of the whole exercise, as has already been observed, particularly as the government has yet to come clean about a great deal of what it did and what it failed to do. While I’m at it, let me ask them a few more questions about their 94 recommendations (just one short, it may be noted, of Luther’s 95 theses, though unlikely to have the same epochal impact).
First, how is it that the commission regards itself as competent to determine all these recommendations, which far outstrip the evidence of the exercise it undertook and the research or expertise available to it? And why is it that it has encouraged such reverence for its own report? (Reverence, by the way, is just the right word; at a recent McGill event, a law professor from the University of Victoria encouraged the audience to read, learn, mark, and inwardly digest it; she held it up and all but kissed it, like the Holy Gospel.)

Second, how did it miss the irony in recommending that the Canadian state find a new way to interfere in family and community life by repealing section 43 of the Criminal Code (recommendation 6)? Because some schools misused corporal punishment on children taken out of homes, all forms of corporal punishment are to be banned, even in homes?

Third, did it not recognize the still deeper irony in mandating compulsory K–12 education programs (recommendation 62.1; cf. 64) as a way to fix – what? The evil effects of compulsory education programs! And did it not notice that history is already repeating itself, even without this kind of prodding? For the Canadian state (in defiance of the principle behind recommendation 10.6) is still busy forcing children to attend classes to which their families vigorously object, exposing them to programs or curricula that some, including many indigenous people, consider a serious form of child abuse. Why is the commission not fighting to limit compulsory education programs rather than to expand them? Why is it not concentrating consistently on the principle of parental and community rights? For surely the greatest evil of the residential school system was rooted in its attack on the family, and so on the safety, and the very childhood, of the children involved. That attack (though this must be the subject of another discussion) is being renewed today on a scale that, I dare say, will eventually dwarf the residential schools crisis.

Kidnap all the children, put ’em in a foreign system,
Bring them up in no-man’s land where no one really wants them,
It’s a stolen land…

Fourth, why is it that the commission is always asking the government, and communities other than the indigenous communities themselves, to take charge and to see that no effort is spared to effect change? Why is it not pressing instead, and pressing relentlessly, for the moral and cultural and geographical and financial space for those communities to take charge of their own affairs? How far did the commission think this matter through in crafting its recommendations?

If you’re like me you’d like to think we’ve learned from our mistakes…

This is no digression, for it goes to the heart of the question about who is responsible for what, and about the liberty of people from undue government intervention. It goes to the question of what is called subsidiarity, an absolutely
fundamental element of Catholic social and political doctrine – yes, *doctrine*, a doctrine the Church was seduced into violating in the residential schools affair. The principle of subsidiarity, which secular governments have been too slow and indeed disinclined to take up, though they have a moral obligation to do so, does not rule out the very idea of a residential school. It does, however, rule out the *kind* of residential school in which the abuses took place.

To develop the present point, however, requires another paper. In conclusion, I want to say only this: that it is high time to bury the so-called bulls of donation. Or rather, since they have long been buried, it is time to bury our blame-shifting discourse about “the doctrine of discovery,” the discourse that tries to pretend that the latter is basically a theological invention rather than a habit of fallen humanity.

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*Convivium*

20 January 2017

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