CHAPTER 7

RESIDENTIAL SCHOOL HARM AND COLONIAL DISPOSSESSION

What's the Connection?

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The condemnation of the history of residential schooling in Canada is becoming well rehearsed—and rightly so. In the late nineteenth century many Aboriginal leaders were initially in favor of schooling for their children, although with varying stances on possible religious components. This willingness was often due to a mixture of pragmatic reasoning: desire for their children to have a life as advantageous as European settlers had, recognition that their way of life was disappearing, and sensitivity to the fact that American policy had often demonstrated a much more violent alternative to mere schooling (Miller 1996). In all seven treaties signed across western Canada in the 1870s, Aboriginal leaders stipulated that the government provide *day schools* on reserves so long as the band wanted them (Miller 1996; Milloy 1999).

Simultaneous to signing these agreements, however, the government and missionaries were hardening on the perceived need to isolate and control Aboriginal students for a more effective civilizational conversion. In 1879 the Canadian government sent Nicholas Flood Davin to the United States to investigate the American experience with industrial boarding schools—some of which were administered by churches under contract—under the aegis of President Ulysses S. Grant's "aggressive civilization" policy. Davin saw the American system as a success, and his report was very positive concerning the idea of church involvement in First Nations and Métis education in Canada. His argument was that something would be required to replace "simple Indian mythology" on the Indians' journey to civilization and that capitalizing on the schools already established by missionaries, as well as on their evangelical enthusiasm, would ultimately make the venture more cost effective (Miller 1996: 102; Titley 2011: 75–77). In 1883 Canada began funding a handful of new residential industrial schools to be run by various church denominations, while preexisting schools, including residential boarding institutions, gained government support. The larger institutions with the "industrial" designation were generally placed far from reserves in order to better isolate students from the influence of family and cultural community, while the smaller day and residential boarding schools were more often on or near reserves and housed younger students.

Many schools encountered Aboriginal resistance to the prolonged removal of children, however, and controversies quickly arose around inadequate clothing, inadequate nutrition, and widespread disease. With students' days divided between education and vocational work, questions of exploitation also shadowed these schools since their early history. To this controversial history one can add severe discipline, punishment, and cultural degradation, as well as a startling number of sexual and physical abuse allegations. It is estimated that more than 150,000 Aboriginal children were taken to residential schools; seventy thousand to eighty thousand First Nations, Inuit, and Métis survivors were still alive as of 2009 (Walker 2009). While the system was officially ended in 1969, several government-run schools continued on into the 1990s.

It would seem eminently sensible, then, that such a history would require some sort of reckoning or process of reconciliation. Spurred on by the legal actions of thousands of former students, the 2006 Indian Residential Schools Settlement Agreement (IRSSA) became the largest class action settlement in Canada's history. Under the auspices of the agreement came the Indian Residential Schools Truth and Reconciliation Commission of Canada (TRC). A number of critics suggest, however, that the IRSSA and the TRC are oriented toward promoting preemptive reconciliation while eliding underlying issues, the greatest of which is colonial dispossession and the struggle for decolonization and self-determination (Alfred 2009; Corntassel, Chaw-win-is, and T'lakwadzi 2009; Corntassel and Holder 2008; Green 2012; Henderson and Wakeham 2009; Jung 2011). This raises the question of the connection between the very real issue of harm caused by residential schooling and the historical political issues of dispossession and the denial of self-determination. Is there a connection, or should land and self-determination form the crux of another argument at another time?

My argument is that there is a connection. Although the history is complex and varies by region, changes in circumstances underlying the colonization of what is now Canada saw Aboriginal peoples increasingly cast as a *problem* to be solved. In effect less European interest in trade and alliance with Aboriginal peoples and a greater desire for the very land upon which they lived

underwrote the advent of the "Indian problem." One relation to be drawn between dispossession, the dismantling of traditional Aboriginal governance structures, and residential schooling is thus through their role as solutions to historical facets of the Indian problem. For a nascent, expansionist Canada, the elimination of Aboriginal possession of land to make way for settlement was a first order of business. Then, for a country that actually saw Aboriginal nations, Indian status, and the federal Indian department as temporary necessities on the road to complete assimilation, the subsequent policies demonstrated the rising tenor of solutions to a problem cast in increasingly social and cultural terms: the undermining and elimination of traditional Aboriginal governance structures and, in a *high modernist* historical moment, residential schooling.

Residential schooling for Aboriginal peoples is particularly remarkable in that it represented a rationally planned form of social engineering that envisaged the elimination of *Aboriginal difference* itself. It is the insidiousness and multigenerational harm caused by such a highly interventionist "solution" that invites contemporary suggestions of genocide—especially those forms of it married to ethnic and cultural qualifiers. Yet I would also suggest that dispossession, the removal of self-determination, and residential schooling—more than simply being of like category or three facets of the Indian problem—should also be connected by the issue of causability. In effect the depredations of colonization—the despoilment of land and the means of survival on it, as well as the assumption of a plenary political bureaucratic control over First Nations—create the very conditions of possibility for tragedies such as Canada's history of residential schooling, such that any full reckoning with the latter cannot be dissociated from the former.[1]

The Several Historical Facets of the "Indian Problem"

The first volume of the *Final Report of the Royal Commission on Aboriginal Peoples* (Royal Commission on Aboriginal Peoples [RCAP] 1996), commissioned by the federal government in reaction to the Oka Crisis of 1990, invests a considerable amount of energy outlining and examining how European-Aboriginal relations in what is now Canada transitioned from an era of *contact and cooperation* to one of *displacement and assimilation*. Indeed the question is so fundamental that it should be a primary area of historical interest for all Canadians. While this chapter is not intended to give an exhaustive account of five hundred years of history, understanding the changing circumstances underlying the relationship will go some way toward establishing a context for the declining sense of moral obligation that the Crown felt toward

Aboriginal peoples in Canada, ultimately identifying indigeneity itself as a problem to be solved.

Initially First Nations were of far greater number than the arriving Europeans, and they possessed knowledge and skills critically useful to the latter. Relations were thus established "in a context in which Aboriginal peoples initially had the upper hand in population and in terms of their knowledge of the land and how to survive in it" (RCAP 1996: 100). The postcontact spread of disease was devastating for many Aboriginal populations, however. And while the alliances, competition, and hostilities between various European and Aboriginal groups during the fur trade era were not without grave consequences for many First Nations in North America—the chapters in this collection authored by Joseph Gone, Robbie Ethridge, and Jeff Benvenuto offer some striking examples from the United States, not shying away from outlining Aboriginal participation in such calamities—the role of Aboriginal peoples in the fur trade nevertheless made it in the best interests of the European powers to have many of them actually remain in possession of much of their lands. More important, such intersocietal commercial links "did not interfere in a major way with long-standing Aboriginal patterns of pursuing their livelihood and actually tended to build on Aboriginal strengths" (RCAP 1996: 101). In addition Aboriginal interests benefited for an extended period of time from a balance of power between two European nations that was not too much askew. According to Leonard Rotman (1996: 36), they knew "full well that they were the catalysts in the European struggle in North America" and "that their precarious interests were best served by maintaining the delicate balance of power between the two European nations."

These factors would change with time, however, and all with grave strategic consequences for Aboriginal peoples. The 1763 Treaty of Paris ended the Seven Years' War. Great Britain made significant gains as the French ceded the vast majority of its North American territory. General Thomas Gage encapsulated the significance of this to First Nations with his observation, "All North America in the hands of a single power robs them of their Consequence, presents, & pay" (cited in White 2011: 256). Yet if this was true after the Seven Years' War, it became all the more the case after the War of 1812, which was followed by a period of relative peace that eliminated Britain's need for military alliances with Aboriginal peoples (RCAP 1996: 138; Llewellyn 2002: 256). And while Aboriginal populations had been decimated by disease, the non-Aboriginal population would see dramatic increases, especially after the American Revolution and the arrival of United Empire Loyalists (RCAP 1996: 137). The fur trade, for its part, would rise and fall in different regions of the continent at different times, but its inevitable decline created a situation

> in which the economies of the two peoples were increasingly incompatible. More and more, non-Aboriginal immigrants were interested in establishing permanent settlements on the land, clearing it for agricultural purposes, and taking advantage of the timber, fish and other resources to meet their own needs or to supply markets elsewhere. . . . In something of a return to earlier notions of the "civilized" and "savage" uses of land, Aboriginal people came to be regarded as impediments to productive development. Moreover, as Aboriginal economies declined because of the loss of the land, the scarcity of game and the continuing ravages of disease, relief payments to alleviate the threat of starvation became a regular feature of colonial financial administration. In short order, formerly autonomous Aboriginal nations came to be viewed, by prosperous and expanding Crown colonies, as little more than an unproductive drain on the public purse. (RCAP 1996: 138)

In what is now Canada, early treaties between European and Aboriginal peoples were treaties of alliance, peace, and friendship, involving no purported "cession" or "surrender" of territory. Many of these took place around the St. Lawrence Valley and the Atlantic region in the eighteenth century (Sprague 1995: 341). The end of the Seven Years' War and the Treaty of Paris were followed by the Royal Proclamation of 1763, which, among other things, stated that the acquisition of lands was under the sole purview of the Crown and would be done in public meetings with representatives from Aboriginal groups arranged for that purpose.[2] This paved the way for treaties that envisaged the procurement of land for European settlement. The specific format of these later treaties evolved over time, but even the broad strokes concerning the fate of Aboriginal groups and their relationship with the Crown remain contentious issues in Crown-Aboriginal relations to this day.

In effect the report of the Royal Commission on Aboriginal Peoples (1996) states that it is unlikely, in many cases concerning the postconfederation numbered treaties,[3] that the participating First Nations knew of the significant discrepancies between the oral agreements they concluded and the corresponding written texts they signed. It characterizes the possibility that the parties acting on behalf of the Crown took advantage of the Aboriginal representatives' inability to read the written texts and their lack of understanding of the legal implications as "disturbing" (174). Terms such as "cede, surrender, extinguish, yield and forever give up all rights and titles appear in the written text of the treaties, but discussion of the meaning of these concepts is not found anywhere in the records of treaty negotiations" (175). The treaties are also replete with the language of subjection, referring to the Aboriginal peoples as subjects of the Crown and the Crown as having

dominion over the territories concerned, but the Commission's finding is that the patterning of First Nations' relationships along kinship lines means that they would have understood the relationship as something "more akin to 'brothers' or 'partners' of the Crown" and, since they were being asked for the land, "that they were the ones giving the land to the Crown and that they were the owners of the land" (175).

As for preconfederation treaties, such as many of the peace and friendship treaties around the Atlantic Coast, William Wicken (1994) recognizes that their present-day evaluation is complicated by the dearth of records detailing anything concerning the treaty negotiations themselves. Nonetheless he finds it unlikely that the Mi'kmaq and Wuastukwiuk (Maliseet) representatives would have willingly recognized the British Crown's "dominion" over their territories, or themselves as its subjects in their eighteenth-century treaties (250). There are records of Mi'kmaq leaders' expressions to the contrary, and the British had little military influence in the region until late in the eighteenth century (Wicken 1994). In addition Wicken looks to contemporaneous treaties that the British signed with the Penobscot people and the Abenaki people in the same region. Concerning the former, Loron, the speaker of the Penobscot, sent a letter to the lieutenant-governor of Massachusetts after the fact, stating, "Having hear'd the Acts read which you have given me I have found the Articles entirely differing from what we have said in presence of one another, 'tis therefore to disown them that I write this letter unto you" (cited in Wicken 1994: 251). Similarly French speakers present at the signing of the Abenaki treaty at Casco Bay wrote that the articles read to the Indians had not included references to submitting to the king, accepting responsibility for beginning hostilities with the English, or submitting to English law—despite the inclusion of these in the written text of the treaty (Wicken 1994).[4]

This aspect of the history is significant because "First Nations were assured orally that their way of life would not change unless they wished it to. They understood that their governing structures and authorities would continue undisturbed by the treaty relationship" (RCAP 1996: 174). From the perspective of First Nations, there was nothing in the formation of the nation-to-nation relations or in the promises made in treaty negotiations that would envisage or legitimate the invasive, assimilative, and paternalistic approach of nineteenth- and twentieth-century Indian policy. It represents such a comprehensive incursion into Aboriginal self-determination that Kiera Ladner (see her chapter in this collection) advocates the use of the term *political genocide* to refer to policies and practices designed to eliminate Aboriginal sovereignty and governments. And it was a body of policy whose statutes

would encompass even those First Nations with whom the Crown did not bother signing treaties—largely in the north and the west of Canada—and those whose older treaties of peace, friendship, and alliance had clearly not arranged for the cession of territory.

The Gradual Enfranchisement Act, enacted two years after confederation, permitted interference with tribal self-government, which was seen as a main impediment to the formal goal of assimilation.[5] The original Indian Act of 1876 coalesced and retained much of the assimilative policies that had been enacted until that point, and future amendments only continued further in the same direction with, among other things, the forcible enfranchisement of certain categories of Indian, prohibitions on certain cultural practices, artifacts, and dress, and the prohibition of raising funds to pursue issues of rights and title in the courts. In arguing in favor of Bill 14 in 1920, which would allow the forcible enfranchisement of any status Indian should an appointed civil servant recommend it, Duncan Campbell Scott said, "I want to get rid of the Indian problem. I do not think as a matter of fact, that this country ought to continuously protect a class of people who are able to stand alone. That is my whole point. Our objective is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic, and there is no Indian question, and no Indian Department and that is the whole object of this Bill" (cited in Neu and Graham 2004: 590). For an extended period of time, then, Indian policy had a certain provisional character underlying it. It was very much focused on the future, but it was a future with no distinct Aboriginal peoples, no Indian status, and therefore no Indian Department. More than just a manifestation of the European desire for Aboriginal lands, the Indian problem was now a question of the total assimilation of a people that remained intransigently *different*.

High Modernity and the Suppression of Aboriginal Difference

Duncan Campbell Scott's goal of eliminating the Indian question itself was the mark of a young, ambitiously expansionist nation-state, but also of what Zygmunt Bauman (1991: 37) would term the *modern spirit*, an Enlightenment-inspired hubris with a "vision of society as pliable raw material to be moulded and brought into proper shape by architects armed with a proper design." Yet while Bauman suggests that most genocidal campaigns against Aboriginal peoples were characteristically *premodern* in their simple motivations of hatred, heterophobia, or competitive gain, it is striking the extent to which the aspirations of Scott and the policies typical of his era mirror Bauman's (1989: 91, emphasis in original) notion of *modern genocide*: "*The end itself is a grand vision of a better, and radically different, society.* Modern genocide is an element of social engineering."

While Bauman does not elaborate much on his categorization of colonial genocide as generally premodern, his brief sketch of it does seem inspired by a view of colonial violence that is largely familiar with certain aspects of American colonial history—namely, overt physical violence and extermination in the pursuit of Aboriginal lands. Tellingly, around the same time the once "quasi-diplomatic" responsibility of Indian affairs in Upper and Lower Canada was transferred from military to civil authorities (RCAP 1996: 138), the United States transferred that responsibility to its War Department (Miller 2000). When Canada was seeking to expand westward in the late nineteenth century, the Plains peoples of western Canada came into the treaty-making process weakened by disease, intertribal warfare, and the disappearance of the bison. They were also cognizant of the fact that, just to the south, the American cavalry was "inflicting enormous damage on any nations that resisted the assertion of American authority. In 1871, just as Canada was about to begin negotiating a series of western treaties, the United States turned its back on treaty making and began to use force to control Native Americans in the West" (Miller 2007: 22).

At the negotiations for Treaty Six, which was to span the mid-latitudes of Saskatchewan and Alberta, Cree leaders held a meeting among themselves in which senior chiefs such as Mistawasis, Ahtahkakoop, and Sweetgrass attempted to convince their younger colleagues, such as Poundmaker and the Badger, of the pragmatic need to sign a treaty with the British Crown. Mistawasis underscored their dire circumstances and, referring to the American cavalry with their long bayonets, told his fellow Cree to "look to the great Indian nations in the Long Knives' country who have been fighting since the memory of their oldest men. They are being vanquished and swept into the most useless parts of their country. Their days are numbered like those of the buffalo. There is no law or justice for the Indians in the Long Knives' country" (quoted in Miller 2007: 26). Yet if Canada can boast a lesser degree of physical destruction of Aboriginal peoples than that which occurred in the United States—be it by virtue of contentious treaties or the simple settlement of regions without treaty[6]—then it seems just as certain that, as a settler state that would inherit a significant internal minority of Aboriginal peoples, it would readily edge into the period, the spirit, and the perceived functional need for some form of what Bauman calls a modern genocide of social engineering. In short, doing away with the Indian problem would be about a *remaking* rather than a *removal*, and high modernity would be up to the task.

Thus from the advent of the Indian problem—that is, the moment when

the colonizers had no more use for Indians as *Indians*—the evolving practices and policies exacted against Aboriginal peoples in Canada can be understood as historical facets of the Crown's solution for it. The Crown has sought the elimination of Aboriginal possession of land for the sake of an expansionist Canada, as well as the elimination of traditional governance structures and Aboriginal self-determination, which it identified as a key impediment to achieving its assimilationist policy goals (RCAP 1996: 275). Residential schooling was the continuance of this process of attempting to solve the Indian problem, as Canada, like so many other nations in the nineteenth and twentieth century, sunk deeper into what James C. Scott (1998) terms "high-modernist ideology." Concomitant with the birth of the social sciences and their sometimes dangerously ambitious naïveté, high modernist ideology saw "an enlightenment belief in the self-improvement of man" become, "by degrees, a belief in the perfectibility of social order" (92–93). Stated otherwise, "industrial-strength social engineering was born" (91).[7] (In their respective chapters on Indian residential schools in this collection, both Andrew Woolford and David MacDonald touch upon this nineteenth- and early twentieth-century zeitgeist.) Although Scott mainly sees his work as useful for examining the histories of countries in Eastern Europe and the developing world, Western countries were by no means immune from the high modernist spirit. His observations on the authoritarian nature of high modernist ideology can easily be accommodated by the acutely asymmetrical relations that evolved between the colonizers and the colonized in nineteenth- and early twentieth-century Canada. Upon the assumption of sovereignty over Aboriginal territory, the federal government instituted in statute a plenary power for itself and its Indian agents over the lives, rights, and identities of First Nations peoples. As Kiera Ladner notes in her chapter, the Indian Act can affect every aspect of an Aboriginal person's life from conception to death. Scott's concern for how marginalized subpopulations "might be made the objects of the most intensive social engineering" is particularly fitting (92). This was, after all, the ideology of bureaucratic intelligentsia and planners such as Duncan Campbell Scott:

> The position accorded to them is not just one of rule and privilege but also one of responsibility for the great works of nation building and social transformation. Where this intelligentsia conceives of its mission as the dragging of a technically backward, unschooled, subsistence-oriented population into the twentieth century, its self-assigned cultural role as educator of its people becomes doubly grandiose. . . . One might in fact speculate that the more intractable and resistant the real world faced by the planner, the greater the need for utopian plans to fill, as it were, the void that would otherwise invite despair. The elites who elaborate such plans implicitly represent themselves as exemplars of the learning and progressive views to which their compatriots might aspire. (Scott 1998: 96)

Similarly Bauman (1989: 70) claims that "from the Enlightenment on, the modern world was distinguished by its activist, engineering attitude toward nature and toward itself." Attentive to the modern state's preoccupation with rationally designing society, Bauman employed the metaphor of the garden. The envisioned design "supplied the criteria to evaluate present-day reality. These criteria split the population into useful plants to be encouraged and tenderly propagated, and weeds—to be removed or rooted out" (1991: 20). The modern state, simply put, "was a gardening state" (20). While Bauman's interests bring him to consider the rational planning behind the Holocaust and the Iron Curtain, he lucidly observes that "there were also plants which turned into weeds simply because a superior reason required that the land they occupied should be transformed into someone else's garden" (29).

Thus if previous practices and policies of the Crown saw the solution to the ongoing Indian problem in the elimination of Aboriginal lands and then the elimination of Aboriginal self-determination, residential schooling itself was a solution to the problem that envisaged the elimination of *Aboriginal difference itself.* It was among the most grandiose of Canada's social engineering projects, with a clear view to what was, for these planners, an ideal, "civilized" society. As stated in the *Annual Report of the Department of Indian Affairs* for 1895, "If it were possible to gather in all the Indian children and retain them for a certain period, there would be produced a generation of English-speaking Indians, accustomed to the ways of civilized life, which might then be the dominant body among themselves, capable of holding its own with its white neighbours, and thus would be brought about rapidly decreasing expenditure until the same should forever cease, and the Indian problem would have been solved" (quoted in Llewellyn 2002: 257). Indian residential schooling therefore *does* need to be understood within the larger context of dispossession and the coercive removal of the capacity for self-determination. However, this must go a step further than the simple recognition of residential schooling as one of several "solutions," or of its place as a modernist high-water mark in the attempts to eliminate the Indian problem. A full evaluation of the lessons learned and of the efforts at reconciliation in the wake of residential schooling needs to recognize that dispossession and subjugation were necessary in order to create the very conditions of possibility for something so acutely interventionist and misguided as the residential schooling debacle.

Initially the federal government used its vast resources to defend itself vigorously against contemporary legal claims launched by residential school survivors. While it was named in the actions, this was not always the case for the four most common church denominations—Roman Catholic, Anglican, Presbyterian, and Methodist, with many congregations of the latter two integrating into the amalgamated United Church in 1925—that helped to operate the residential schools. In the interests of reducing its potential liability, the government pursued a strategy of putting forth third-party claims against the church organizations in order to include them in the suits, claiming that they were in fact liable or, at the very least, that they shared liability and should be included in any findings of fault for damages.[8]

The *Final Report of the Royal Commission on Aboriginal Peoples* had recommended a full public inquiry into residential schooling, but in 1998, two years after the commencement of the first residential schools class action lawsuit of *Blackwater v. Plint*,[9] the federal government unveiled *Gathering Strength: Canada's Aboriginal Action Plan*, which put $350 million toward the establishment of the Aboriginal Healing Foundation. Jane Stewart, then minister of Indian and Northern Affairs, also read a "Statement of Reconciliation" to indigenous leaders and civil servants "at a lunchtime ceremony held in a government meeting room in Ottawa" (Corntassel and Holder 2008: 473). The statement was carefully worded so as to express that the federal government was "deeply sorry" to those individuals who suffered physical and sexual abuse at the schools, thereby circumventing any engagement with the issues of assimilation, cultural loss, and systemic harm caused by residential schooling as a whole. This did not stem the flow of lawsuits.

By the time the *Baxter* class action was being settled in 2006—the settlement that ultimately became the Indian Residential Schools Settlement Agreement—residential schools were the subject of around fifteen thousand ongoing claims in Canadian courts,[10] and many religious bodies had long been expressing fears of insolvency. Interestingly enough the sheer number of court claims related to specific instances of sexual and physical abuse may have ultimately paved the way, through the IRSSA, for *all* former students of federally funded residential schools who were alive as of May 30, 2005, to receive compensation in the form of a "common experience payment."[11] The prospect of a settlement that somewhat universalizes the denunciation of the residential school experience must have seemed to the government a more favorable option than contesting fifteen thousand court claims, despite the fact that, in its 2005 decision on the *Blackwater* class action, the Supreme

Court of Canada signaled its reticence to consider the larger issues of cultural and community harm as legally actionable wrongs:

> A more general issue lurks beneath the surface of a number of the specific legal issues. It concerns how claims such as this, which reach back many years, should be proved, and the role of historic and social science evidence in proving issues of liability and damages. For example, to what extent is evidence of generalized policies toward Aboriginal children relevant? Can such evidence lighten the burden of proving specific fault and damage in individual cases? I conclude that general policies and practices may provide relevant context for assessing claims for damages in cases such as this. However, government policy by itself does not create a legally actionable wrong. For that, the law requires specific wrongful acts causally connected to damage suffered. This appeal must be decided on the evidence adduced at trial and considered by the Court of Appeal.[12]

In the IRSSA the Independent Assessment Process has been designed—by itemizing and quantifying harm and, consequently, pecuniary liability through a points system—to respond to the cases of those students who can claim damages for the "legally actionable wrong" of abuse. In spite of the Supreme Court's prior inclination, it is the common experience payment for which all former students are eligible and the TRC that have helped push the common discourse in Canada further toward the wholesale acceptance of residential schooling as a *wrongful act*. But the TRC, while sealed off from the legalism of fault, liability, and the courts in its mandate, is an enclosure of legalistic negative space that is simultaneously constituted by it and through it. This is the exchange implicit in a TRC mandated by an out-of-court settlement: a space in which victims' voices are given free rein but with all legal risk defined out. Hence Canada's development of a TRC with a profoundly victim-centered, therapeutic ethos.

INDIVIDUALIZATION: THE THERAPEUTIC ETHOS

The nature of the TRC's mandate is indicative of the unique position of Canada's TRC as being the first truth commission to flow from an out-of-court settlement of civil litigation. As Jula Hughes (2012: 109–10) states, such settlements "are protected by a host of legal privileges, all of which operate to protect the integrity of the settlement process by excluding the prying eyes of the public. Secrecy and confidentiality are said to encourage settlement." In the section of the TRC's mandate entitled "Establishment, Powers, Duties and Procedures of the Commission," it is stated that participation in the Commission's activities is entirely voluntary and the commissioners "are authorized

to receive statements and documents from former students, their families, community," and, vaguely, "*all other interested participants*" (IRSSA 2006, emphasis mine). In addition the commission is neither a formal hearing nor a public inquiry nor a formal legal process. It shall therefore not name names, make any findings regarding the misconduct of any person, or make any reference "to the possible civil or criminal liability of any person or organization, unless such findings or information about the individual or institution has already been established through legal proceedings" (IRSSA 2006). It seems a safe assumption, then, that perpetrators of violence and abuse or those who had a hand in creating and running the schools will not be presenting before the TRC in large numbers—largely limiting purported processes of truth and reconciliation to victims alone.

Employing a therapeutic ethos is not new to the practice of transitional justice. With former students likely forming the vast majority of participants, however, Canada's current TRC is *particularly* reliant on mobilizing the trope of healing. In this way it is also able to have its work seen to coincide with traditional Aboriginal notions of healing, the implication being that it is more culturally appropriate and more restorative. Similarly Archbishop Desmond Tutu, chair of the South African TRC, repeatedly invoked the traditional southern African form of justice known as *ubuntu*, suggesting it "was profoundly anti-retributive and simultaneously pro-healing" (Moon 2009: 81).

Nevertheless the imprint of Aboriginal agency cannot be completely erased from this history. Robyn Green (2012) thus expresses misgivings about dismissing Canada's reconciliation process as a purely mechanistic form of domination, given that the IRSSA was negotiated with the churches and the government by Aboriginal organizations and residential school survivors themselves. In fact the broad strokes of the IRSSA—including a truth-sharing and reconciliation process—were taken from the recommendations of a 2004 report released by the Assembly of First Nations (Stanton 2011). Yet, for Jennifer Henderson and Pauline Wakeham (2009: 16), culturally mediated tropes such as "healing" that are repeated "on both sides of the settler-culture/Indigenous community distinction might produce a certain reconciliation effect—a semblance of common ground or shared understanding. However, the iteration of the trope of healing might mean different things in different contexts of utterance." For residential school survivors, then, healing may be about healing—perhaps even a more holistic healing that encompasses larger processes of decolonization that are lost on government and settler society—while for the state it may be a subtle claim to political legitimacy. Indeed despite its apparent humanism, critics of transitional justice see in the therapeutic ethos a radical new form of state legitimation (Humphrey 2003; Moon 2009), in that "the basis of the claim to govern made by some postconflict states, lies in their ability to lay national trauma to rest" (Moon 2009: 72).

But if some measure of healing takes place, does that alone make for reconciliation? Does reconciliation between the various parties occur, as the TRC's mandate seems to believe can happen, when residential school survivors do not necessarily find perpetrators, religious organizations, or governments present at the table? Or especially when they do not see the recognition of and a move to change the historical processes of dispossession, disempowerment, and marginalization that paved the way to the residential school in the first place? In this sense are they simply being reconciled to their own grief, suffering, and loss?

DEPOLITICIZATION: A RELATIONSHIP OF MANY WRONGS

Claire Moon (2009: 72) has observed that there is currently such power behind the notions of reconciliation and healing that they "appear, now, to be self-evidently right." Problematically, however, the notion of reconciliation is also quite *vague*. What reconciliation is, how it is achieved, and how we can know that it has been successfully achieved, are all unclear. For Richard Wilson (2003: 371), reconciliation is so abstracted that "'national reconciliation' is almost impossible to quantify or measure or assess in any meaningful way"—a quality, he suggests, that makes it suitable for nation-building projects. Such issues are not without mention in discussions of Canada's TRC. Matt James (2012: 196) writes that "the TRC's guidelines and funding criteria discuss the notion of reconciliation in quite general terms," while Courtney Jung (2011) has called the TRC's concept of reconciliation "underspecified." Keavy Martin (2009: 55) expresses concern "about the implications of reconciliation as an unproblematized objective."

As underspecified as it is, however, one observation seems warranted: the concept of reconciliation takes a *relationship* as its object. This is to say that violence, atrocity, and wrongdoing may be at the source of the rift between individuals or collectivities, and practices of repair for such wrongdoing may be deemed necessary to pave the way for some sort of reconciliation, but reconciliation itself speaks to *relationship*. This is reflected in the definitions of reconciliation offered up by proponents of transitional justice. At the center of any process of reconciliation, according to Andrew Rigby (2001: 12), is a "preparedness of people to anticipate a shared future." For Priscilla Hayner (2002: 161), reconciliation amounts to the "building or rebuilding of relationships today that are not haunted by the conflicts and hatreds of yesterday."

Yet if reconciliation has to do with relationship first and foremost, Hayner's (2002: 161) definition reminds us that "the conflicts and hatreds of

yesterday" at the source of the estrangement can be, and often are, multiple. This is precisely the case with Canada's relationship with Aboriginal peoples. From this perspective we can accommodate a multiplicity of historical policies and processes effected upon Indigenous groups in Canada: dispossession of land, dishonoring treaties, removal of self-determination and traditional forms of government, assimilative residential schooling, loss of language and culture, forced relocations, and the proscription of traditional forms of subsistence as well as practices such as the potlatch and Sundance, to name a few. However, settler society's lack of concern for the unsettled controversies and infamies that form the historical foundation of the contemporary political landscape—what Roger Epp (2008: 126) describes as "an almost willful amnesia about whatever might be divisive"—seem to make it unreceptive, even hostile to any sense of unsettlement, to expressions of difference, and to alternative nationalities in its midst. Taiaiake Alfred (2009: 181) laments that "the complete ignorance of Canadian society about the facts of their relationship with Indigenous peoples and the wilful denial of historical reality by Canadians detracts from the possibility of any meaningful discussion on true reconciliation."

Thus if reconciliation is predicated primarily on relationship—on the *dyadic*, in Nicholas Tavuchis's (1991) terms—then this merits an interrogation not only of the TRC's one-sided approach to reconciliation but also the limited purview over those elements of rupture in the relationship. In short, if there is something depoliticizing about limiting a TRC to individual talk therapy without the other side present, there is also something profoundly depoliticizing about structuring the conversation so that it tends only toward the personal experience of one historical controversy. It becomes less surprising, then, to find Aboriginal authors such as Alfred (2009: 181) so unrestrained in their criticism of our current notion of reconciliation: "I see reconciliation as an emasculating concept, weak-kneed and easily accepting of half-hearted measures of a notion of justice that does nothing to help Indigenous peoples regain their dignity and strength. One of my concerns in any discussion of reconciliation is finding ways to break its hold upon our consciousness so that we can move towards a true and lasting foundation for justice that will result in meaningful changes in the lives of Indigenous peoples and in the return of their lands."

Troubling the Performance of Reconciliation

Many authors express discomfort with the temporality implied by truth commissions and the language of the therapeutic. Truth commissions conflate process with product, their very being performatively declaring the transition that they are meant to bring about, and seek to "constitute a foreclosure on the past" (Green 2012: 130). In effect "the new national self is one which is forged in the suffering and violence of the past, but no element of that political past has entered into the present" (Wilson 2003: 370). Henderson and Wakeham (2009: 7) suggest that the tendency toward prematurely invoking resolution and reconciliation in Canadian politics has become chronic:

> The temporality and teleology of mourning and closure are not necessarily orientations to the past that should be carried into politics: they do not necessarily favour justice-seeking and the kind of profound political changes that national "reconciliation" could be made to mean, in a different model of time where history was acknowledged as persisting in the present. The problem at the level of relations between Indigenous and non-Indigenous institutions in Canada is not one of inadequate closure, as statements like the prime minister's 2008 apology might suggest, but one of repeated, pre-emptive attempts at reaching closure and "cure."

Such an issue again goes to the heart of what reconciliation can and should mean. According to Joanna Quinn (2009: 5), some in the field of transitional justice see reconciliation as "a process, or a series of actions that eventually lead to a conclusion," while others see it as "an end-point, the stage at which the relationship in question has been repaired." Both claims, however, still seem to harbor the notion of some sort of end point at which no liberal settler state can rightly claim to have arrived. Using the legal politics of Australia as his point of examination, and perhaps sensitive to the tendency of settler states to prematurely invoke closure and end point, Andrew Schaap (2004: 538) proposes what he calls an "agonistic reconciliation"—namely, one that "would be predicated on an awareness that community is always not yet. The end of political reconciliation, then, would not be to arrive at a common identity that could encompass former enemies. Rather, it would be to make available a space for politics within which citizens divided by the memories of past wrongs could debate and contest the terms of their political association." In short, academic commentators express misgivings over the settler state's "emerging and compelling desire to put the events of the past behind us" (IRSSA 2006), precisely because of what it elides and occludes.

A proper sense of temporality, though, will recognize that there was a road of dispossession and disempowerment that led to the residential school and that cannot be dissociated from it. That road follows the changing contours of what the colonizer called "the Indian problem," and the journey needs to be retraced. While any form of healing that does happen for survivors through

the TRC's activities would be most welcome, isolating residential school harm and imbuing it with a profoundly individualizing therapeutic ethos does not build the entire path to reconciliation between Canada and Aboriginal peoples. The reticence and the slow change concerning territory and self-government—and especially the utter dissociation of these issues from the history of residential schooling—is a far cry from the confessional and epiphanic catharsis sometimes associated with truth commissions. Indeed one of the ultimate lessons to be drawn from the history of residential schooling is that Aboriginal demands surrounding the restoration of land and self-determination are not just lofty, begrudging demands of principle. They are thoroughly and gravely entwined precisely because being subjected to genocidal institutional arrangements such as the Indian residential schools represents, par excellence, the disempowerment, dispossession, and loss of self-determination of a people. Consequently the restoration of self-government likely represents one of the most assured forms of inoculation against the possible repetition of paternalistic, destructive arrangements such as the residential schooling experience.

Notes

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1. As a caveat, one must be wary of excessively tidy forms of periodization. Because of the expanse of North America and the time necessary to colonize from shore to shore, dispossession, removal of self-determination, and residential schooling do not occupy distinct and exclusive moments in Canadian history but rather overlap significantly. One need only look to the fact that the historical treaties that the British Crown saw as extinguishing Aboriginal title to land throughout much of Canada were signed from 1764 to 1930. Nevertheless it still stands that the disempowerment and depredations of colonization served to create the conditions of possibility for the social engineering of residential schooling.
2. George R., Proclamation, October 7, 1763 (3 Geo. III), reprinted in Revised Statutes of Canada 1985, App. II, No. 1.
3. Confederation for Canada was in 1867, and in order to open up the West for agricultural settlement treaties 1 through 7 were signed in quick succession from 1871 to 1877. Treaties 8 through 10, in northern regions less suitable for agriculture, were signed from the turn of the twentieth century through the 1920s.
4. John Borrows (1997: 164) cites the superintendent of Indian Affairs at the time of the Royal Proclamation of 1763, Sir William Johnson, as expressing his own doubts about the terms of a treaty shortly after he had treated with the same group at Niagara: "By the present Treaty I find, they make expressions of subjection, which must either have arisen from the ignorance of the Interpreter or from some mistake; for I am well convinced, they never mean or intend anything like it."
5. The chiefs of the Haudenosaunee (Iroquois) Confederacy, who had been vocal since the nineteenth century about their sovereignty and independent governmental status, created a certain amount of anxiety in the Canadian government in the 1920s by sending a delegation to London and Geneva in order to make their case before the international community. Although they were unsuccessful, Duncan Campbell Scott, the deputy superintendent general of Indian Affairs, removed the confederacy council and had it replaced by one elected under the Indian Act. "Without prior notice to the chiefs, they were removed from office by an order-in-council," and the Royal Canadian Mounted Police "seized the wampum used to sanction council proceedings, and posted a proclamation on the doors of the council house" (Borrows and Rotman 2007: 39).
6. Governments in Canada also discontinued the treaty process before it was complete. This left large portions of British Columbia and the North claimed by the Crown without the benefit of treaty—not to mention large portions of the eastern third of the country whose earlier treaties were not land surrender agreements.
7. Relatedly Chrisjohn, Young, and Maraun (1997) reference Erving Goffman's concept of the total institution to examine the use of residential schooling in Aboriginal assimilation.
8. In the first class action of *Blackwater v. Plint* (1998), 52 B.C.I.R. (3d) 18, commenced by victims of sexual and physical abuse committed by the dormitory supervisor Arthur Henry Plint at the Alberni Indian Residential School, both the federal government and the United Church claimed that the other held sole vicarious liability for the actions of Plint. The trial judge apportioned 75 percent fault to the federal government and 25 percent to the United Church. While the United Church convinced the B.C. Court of Appeal that it should have charitable immunity for its status as a nonprofit organization doing good works, thereby passing all fault for damages to the government, the original apportionment of the trial judge was later upheld and reinstated by the Supreme Court of Canada.
9. *Blackwater v. Plint* (1998), 52 B.C.I.R. (3d) 18.
10. *Baxter v. Canada (Attorney General)* (2006), 83 O.R. (3d) 481 (O.S.C.J.) at para. 13.
11. Note the specific criteria set out in the IRSSA: students of residential schools that were funded either provincially or solely by a church organization are not eligible, just as students who attended Aboriginal day schools are not eligible.
12. *Blackwater v. Plint* [2005] 3 S.C.R. 3, 2005 SCC at para. 9.

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