Les ateliers de l'éthique
The Ethics Forum

JUST AND UNJUST REALLOCATIONS OF HISTORICAL BURDENS: NOTES ON A NORMATIVE THEORY OF REPARATIONS POLITICS

SAM GREY

Volume 12, numéro 2-3, automne 2017

URI : https://id.erudit.org/iderudit/1051275ar
DOI : https://doi.org/10.7202/1051275ar

Aller au sommaire du numéro

Éditeur(s)

Centre de recherche en éthique (CRÉ)

ISSN

1718-9977 (numérique)

Découvrir la revue

Citer cet article

GREY, S. (2017). JUST AND UNJUST REALLOCATIONS OF HISTORICAL BURDENS: NOTES ON A NORMATIVE THEORY OF REPARATIONS POLITICS. *Les ateliers de l'éthique / The Ethics Forum*, *12*(2-3), 60–83. https://doi.org/10.7202/1051275ar

Résumé de l'article

Les connotations dominantes de la réconciliation gravitent autour de la concorde ou de la coexistence harmonieuse, signifiant que le souci de la justice est nécessairement subordonné à une paix plus pragmatique. Mettre les considérations de justice au premier plan implique de mettre l'accent sur les réparations comme un élément clé de la série d'activités de la réconciliation, mais les réparations sont nécessairement une question de processus, ce qui exclut de considérer ses éléments isolément, comme c'est le cas des critères évaluatifs traditionnels de motivation ou de proportion. En conséquence, cet article propose que les réparations sont mieux conçues comme une réaction réfléchie à l'attribution injuste des charges, de sorte que les réallocations ultérieures servent la justice en répondant aux besoins et aux exigences des survivants. S'inspirant d'une variété de sources à l'intérieur et à l'extérieur de la littérature sur la justice transitionnelle, le présent travail tente un tel recadrage rétrospectif en examinant un processus canadien de réparations récemment terminé : la Convention de règlement relative aux pensionnats indiens (CRRPI).

JUST AND UNJUST REALLOCATIONS OF HISTORICAL BURDENS: NOTES ON A NORMATIVE THEORY OF REPARATIONS POLITICS

SAM GREY
PHD CANDIDATE, DEPARTMENT OF POLITICAL SCIENCE, UNIVERSITY OF VICTORIA

ABSTRACT:

Prevailing connotations of reconciliation orbit concord or harmonious coexistence, meaning that concern for justice is necessarily subordinated to a more casually pragmatic peace. Bringing justice considerations to the fore means focusing on reparations as a key element of reconciliation's suite of activities—but reparations are necessarily a matter of process, which precludes considering elements of the "package" in isolation from one another, as is the case with traditional evaluative criteria of motivation or proportion. Accordingly, this article proposes that reparations are better framed as a considered reaction to the unjust allocation of burdens, so that subsequent reallocations serve justice by answering the needs and demands of survivors. Taking cues from a variety of sources both within and beyond the transitional justice literature, the work at hand attempts just such a retrospective reframing by looking at a recently completed Canadian reparations process: the Indian Residential Schools Settlement Agreement (IRSSA).

RÉSUMÉ :

Les connotations dominantes de la réconciliation gravitent autour de la concorde ou de la coexistence harmonieuse, signifiant que le souci de la justice est nécessairement subordonné à une paix plus pragmatique. Mettre les considérations de justice au premier plan implique de mettre l'accent sur les réparations comme un élément clé de la série d'activités de la réconciliation, mais les réparations sont nécessairement une question de processus, ce qui exclut de considérer ses éléments isolément, comme c'est le cas des critères évaluatifs traditionnels de motivation ou de proportion. En conséquence, cet article propose que les réparations sont mieux conçues comme une réaction réfléchie à l'attribution injuste des charges, de sorte que les réallocations ultérieures servent la justice en répondant aux besoins et aux exigences des survivants. S'inspirant d'une variété de sources à l'intérieur et à l'extérieur de la littérature sur la justice transitionnelle, le présent travail tente un tel recadrage rétrospectif en examinant un processus canadien de réparations récemment terminé : la Convention de règlement relative aux pensionnats indiens (CRRPI).

> I sit on a man's back, choking him, and making him carry me, and yet assure myself and others that I am very sorry for him and wish to ease his lot by any means possible, except getting off his back.
> - Leo Tolstoy, *What Then Must We Do?*

INTRODUCTION

Prevailing connotations of reconciliation orbit concord or harmonious coexistence, meaning that concern for *justice* is necessarily subordinated to a more casually pragmatic *peace*. Bringing justice considerations to the fore means focusing on reparations as a key element of reconciliation's suite of activities—but reparations are necessarily a matter of process, which precludes considering elements of the "package" in isolation from one another. Pablo De Greiff[1] argues that different reparations projects function differently depending on, in part, what he terms their "external coherence." On his view, reparations need to complement and interlink with other transitional justice measures (such as truth telling and institutional reform), and further, the sequencing of these interlinked efforts matters to the success of the programme as a whole. One way to think about the overall impact of reparations is to undertake what is herein termed a "burdening analysis."

Across the existing academic and practical work on transitional justice, it is common to equate reparation with some kind of *unburdening*. Speech acts are often characterized as bidirectional, simultaneous, even instantaneous unburdenings. Official mea culpas ostensibly remove the weight of historical injustice from both wrongdoer and wronged by creating a shared understanding of past events and an acknowledgment of responsibility. Truth telling restories the past to highlight wrongdoing, removing coincident burdens of secrecy and ignorance from the survivors, bystanders, architects, and beneficiaries of harm. Closer examination reveals, though, that reparations actually *reallocate* these historical burdens instead of lifting them, and that such reallocations can be either just or unjust. Repurposing this language of (un)burdening, an analytic framework is herein developed for both planning and evaluating reparations projects, based on the just reallocation of burdens between perpetrators and victims of historical wrongs. This framework is developed through a close reading of, and is recursively applied to, the Canadian Indian Residential Schools Settlement Agreement (IRSSA), where it uncovers obfuscated injustices, clarifies inherent tensions, and highlights the perpetuation of colonial relations within and through the reparations project itself. By demonstrating how certain historical burdens have been only partially reallocated, and why these reallocations have seldom been just, this theory articulates points where *reparations* are no longer *reparative*— which are the very nodes at which careful and conscious intervention might be directed in future.

BACKGROUND: RESIDENTIAL SCHOOLS, LITIGATION, AND SETTLEMENT

Between 1831 and 1996, approximately 100 000 Indigenous children passed through some 133 Canadian Indian Residential Schools (IRSs).[2] Legislated into existence as the Dominion began to shore up its sovereignty, these schools were intended not to solve, but to dissolve the "Indian problem"[3] by absorbing a troublesome colonial remainder into the Canadian mainstream. Under the *Indian Act* (1876), Indigenous persons in Canada become perpetual wards of the state, natural objects of a paternalistic, assimilative civilizing mission. This legislation justified the forcible removal of Indigenous children from their homes and authorized their incarceration in "instructional" facilities.

By 1920, school attendance was mandatory for all Indigenous persons between the ages of seven and fifteen.[4] Some children's time away from their communities extended to five years at a stretch, while dissenting parents faced fines and imprisonment.[5] Attendees' cultural and social identities were targeted through often violently enforced prohibitions of Indigenous languages, quotidian practices, physical appearances, spiritual observances, and even personal names. The major churches assumed day-to-day operations of many of the schools beginning in 1892, backed by the official oversight of the federal government and supported by the financial resources of the state.[6] The grave health problems and astonishingly high mortality rates that plagued Indian Residential Schools were known by at least 1907.[7] Indigenous children as young as three endured dangerously substandard housing; overcrowding; unpaid servitude; chronic malnutrition; insufficient medical care; routine physical, sexual, and emotional abuse; medical experimentation; and inadequate instruction.[8] Even in the "better" schools, academic curriculum and social instruction were designed to suppress Indigeneity; the worst were administered as little more than custodial facilities and supply houses for cheap labour and research subjects.[9] The Truth and Reconciliation Commission (TRC) estimates that some six thousand students died, most buried in unmarked graves to avoid the cost of sending their bodies home.[10] At least 33 children perished fleeing the schools, insufficiently clothed and supplied, usually in winter months (when the possibility of pursuit was at its lowest).[11]

Assembly of First Nations Grand Chief Phil Fontaine publicly detailed his own residential school experiences in 1990, just as the Royal Commission on Aboriginal Peoples (RCAP) was established to diagnose the ailing relationship between Indigenous Peoples and the Canadian state.[12] RCAP's 3 500-page *Final Report* included extensive commentary on the horrors of Indian-education policy and its ongoing effects on former students—yet its many recommendations for addressing this legacy failed to inspire a reparations process. As a result, some 15 000 individual legal claims sprang up across Canada, coalescing into twenty-three class-action suits against the government and various churches.[13] A single case—*Baxter v. Canada*, involving 90 000 residential school survivors—sought $200 billion in damages.[14] The financial and public-relations implications spurred offi-

cial interest in a settlement process, which evolved into the Indian Residential Schools Settlement Agreement and its constituent Truth and Reconciliation Commission (TRC), Common Experience Payment (CEP) scheme, Independent Assessment Process (IAP), and associated commemorative and healing initiatives.

The official apologies from churches and government were not formally part of the IRSSA, but the two are strongly conceptually linked, both in the minds of former students and in the public consciousness. The language employed in these apologies offers an ideal anchor for the undertaking at hand, which begins with a defence of idiosyncratic terminology.

ASSEMBLING THE ANALYTIC COMPONENTS

Justifying the Term

In an argument for adopting the term "burden," particularly against the backdrop of so recent a reparations project, the most obvious starting point is the mechanisms already unfurled. In the Canadian government's 2008 *Statement of Apology*, Prime Minister Stephen Harper told IRS survivors: "The burden of this experience has been on your shoulders for far too long. The burden is properly ours."[15] The earlier, less enthusiastic apology issued by the Minister of Indian Affairs and Northern Development also made multiple references to "burdens," describing Canada as being "burdened by past actions that resulted in weakening the identity of Aboriginal peoples" and survivors as "carr[ying] this burden believing that in some way they must be responsible."[16] The apology from the United Church employed remarkably similar language: "Our burdens include dishonouring the depths of the struggles of First Nations Peoples and the richness of your gifts."[17] The summary final report of the Canadian TRC also contains surprisingly wide-ranging recourse to the language of burdening: from the government so characterizing its court-odered obligation to provide vital documentation, to the portrayal of the particular process undertaken by former students attempting to rediscover and reclaim their Indigenous names.[18]

"Burdens" as descriptors of some aspect of the Indigenous-Settler state relationship also appear at key points in the historical record. In the landmark *Delgamuukw* case of 1997, the Canadian Supreme Court defined Aboriginal title and rights as "a burden on the Crown"—a phrase that has since proliferated in the legal literature.[19] An entire chapter of the final RCAP report was devoted to disproportionate "burden of ill health" borne by Indigenous groups in Canada.[20] The *Statement of the Government of Canada on Indian Policy, 1969* refers to the differential incorporation of Indigenous groups into the Canadian mainstream as the "burden of separation." This perhaps most infamous use of "burden" ravelled out of the earlier *Indian Act* (antiquated, racist legislation that authorizes the federal government to "regulate and administer in" the lives of Indigenous persons and communities)—yet the proposed abolition of the Act triggered a backlash that became the contemporary Indigenous rights movement in Canada. Most recently, one of the recommendations of the Canadian TRC was that the

"burden of proof" of Aboriginal title lie with "those who object to such claims."[21] As these examples attest, some burdens are not easily understood, and their removal is not necessarily seen as a blessing by those who bear their weight. What is clear, though, is that Canada has a long history of concern with, variously, the burden of its "Indian problem" and the burdens borne by the Indigenous Peoples within its borders. The discursive framing of colonialism in this country has always referenced burdens, with—tellingly—the "who" and "what" of burdening shifting over time.

Time magazine summoned a different use of the word in a 1948 article, "The Dominion: White Man's Burden." Appealing to both interpretations of Kipling's infamous poem, the anonymous author cautions that supporting tens of thousands of "primitive … poor and backward" charges of the Canadian state is "a heavy burden [that] may soon cost more than the country can afford."[22] This attitude still enjoys purchase, evidenced at both ends of the publishing spectrum by commentary in print and online media,[23] as well as in books intended for both scholarly and lay audiences.[24]

Of course, the weight of prior usage, alone, does not endorse favouring "burden" over other terms. Why not "responsibility," "obligation," "debt," or "duty," all terms with which the reparations literature is suffused? These are synonyms, more or less, and all describe actions that are justifiably binding, so that the outcome of an obligation fulfilled, duty honoured, or responsibility met is fair (meaning equitable) and/or reasonable (connoting both moderation and soundness). "Obligation" and "responsibility" come closest to being fully interchangeable, and do appear as such in the academic and practical work on reparations. Yet, despite their consistent semantic content, it is difficult to conceive of "positive responsibilities" or "positive obligations" without legalistic overtones, since this specific language is strongly associated with contract law. "Debt" suffers from a similar association with a separate paradigm—that of economics. For its part, "duty" brings with it unsuitable overtones of control and discipline: duty and obedience are frequently (even naturally) paired, creating a preeminent "duty to obey."

In addition to shedding these problematic connotations, "burden" has a strong phenomenological appeal. While some alternatives are capable of bridging moral, legal, and political discourses, a term able to link these to experiential accounts of historical injustice would hold an advantage. It is interesting to note that a sense of being "burdened" or "a burden" permeates testimonials of trauma, including those of IRS survivors. Richard Wagamese recounts that "all the members of my family attended residential school [and] returned to the land bearing psychological, emotional, spiritual, and physical burdens that haunted them."[25] Gregory Younging describes how his parents "did not want to burden [him]" with their residential school experiences.[26] "The Survivors are tired of thinking about residential school and they do not want to live with the burden on their soul anymore," reported Susan Hare of the Aboriginal Healing Foundation.[27] And at the dedication of a stained-glass window commemorating IRS

survivors, Métis artist Christi Belcourt pleaded with the government: "We need action, and where we need action, don't meet us with silence. Where we need support, don't accuse us of being a burden."[28]

The centrality of empathy in reparations also advocates for a phenomenological term. Because literal and metaphorical burdens are part of our everyday reality, they aid, however meagrely, in conveying the effects of trauma. Furthermore, it is possible to summon the idea of a positive burden, which distinguishes "burden" from "responsibility" and "obligation;" ordinary life is replete with examples of burdens willingly assumed, whether positive or negative.[29]

"Burden" does come with its own negative associations, though, some of which can be pressed into service. The concept could evoke a tragic narrative in the cause of awakening empathy, recasting "survivors" of harm as "victims." This has been a hallmark of the Canadian state's discourse, seen with fair consistency in its portrayal of Indigenous Peoples, nations, and individuals as both "burdens" and "burdened." A disruptive deployment of this narrative—a reframing, using the same language—thus becomes resonant. Similarly, critical disability studies highlights the social rendering of disability as a burden and those so "burdened" as inherently inferior ("handicapped" literally means "additional burden"). There are shades of dependency, injury, or weakness in "burden," then, which risk reframing empathy as pity and justice as charity. This necessitates care in developing an analytic framework based on "burdening."[30]

Fleshing out the Concept

We are all burdened; from a certain perspective, this is what it is to be connected to one another. Relationships are formed by, or may actually be defined as, social processes that allocate burdens and benefits between and among individuals and groups. Iris Marion Young[31] argues that duties or obligations—terms earlier established as near synonymous with "burdens"—arise directly from such social processes. Theoretically, our social burdens are negotiated, with moral concerns inclining us toward a just equilibrium. Social-contract theory sees the political order founded on just such a germinal debate. For John Rawls, the arrangement of the major social and political institutions is the very location of justice because these are the bodies distributing the burdens (and benefits) of social life.[32] Both Immanuel Kant[33] and Thomas Aquinas[34] maintain that the fair distribution of societal burdens is a central concern in rational consensus and the common good—Aquinas, in fact, famously described the unfair allocation of necessary burdens as acts of violence "in the forum of reasonable conscience."

A maldistribution of burdens, particularly if it mirrors a similar inequity in the allocation of benefits, constitutes a prima facie injustice. The social allocation of burdens is not always negotiated, though, and, in many cases, there is simply an assumption that burdens are shared equitably and voluntarily—or, indeed, that they are "shared" at all. Civic duties, for example, are spread out across a citizenry so that members each hold an equal responsibility for their perform-

ance, and membership itself connotes the willing assumption of this burden. Practically, the initial allocation and subsequent reallocation of burdens not only reflect, but also reinforce existing power relations, while simultaneously establishing a site of contestation of those arrangements. In other words, (re)burdening is one of the ways that power manifests. Thus, the allocation of burdens provides a window into relationships, a means by which to improve our understanding of social conflicts.

Because some burdens are assumed to be either inevitable or bearable (or both), they become ineligible for reallocation in the name of justice—they are *reasonable*. Yet tolerability is mitigated, in exceedingly complex ways, by a burden's manner of assumption. Onerous burdens shouldered willingly appear to lose some of their unjustness, thanks to the centrality of choice in Euro-American accounts of freedom and equality. Unfortunately, choice is easily mired in issues of incentive and constraint, with the result that voluntariness becomes indeterminable. In reparations projects, a reallocation that is both unjust and foreseeable, along with any allocation that perpetuates, exacerbates, or propagates the original harms, can be considered an especially objectionable act of burdening. This follows logically from the principle that conscious, voluntary, or deliberate harms are more offensive than accidental, involuntary, or unforeseeable ones. Equally objectionable is obfuscation, or deliberate attempts to misrepresent burdens and burdening.

No particular set of intentions need steer reallocation. Burdens can shift through a lack, rather than an exercise, of will. The transit of domestic violence, where the abused may become the abuser, is an example of the reallocation of burdens in the absence of intentionality per se. Left unaddressed, the social manifestation of childhood trauma may be externalized, turned against others, or internalized as self-destructive behaviour. Either way, there is a shift toward increased rather than ameliorated injustice, without this being a conscious goal. Conversely, it is a common belief that the intensity of trauma lessens over time, thus certain burdens may positively shift in degree even in the absence of corrective intervention.

The fact that no particular will need steer a reallocation does not mean that the shifting of burdens cannot (or should not) stem from wilful acts, though—quite the opposite. The purposeful, just reallocation of burdens is, on the account being elaborated, what reparations actually are. Both modifiers in this statement must hold, however: a burden's reallocation must be both purposeful and just to qualify as reparative. A survivor who has independently recovered may have healed, but the wrong would not have been addressed in the requisite sense; *recovery* is not *reparation*. Both are desirable and laudable, and the survivor benefits by either, but there is no intentional reallocation of burden at all in this example, never mind a just one. On the other end of the spectrum, *reparations as justly reallocated burdens* is not synonymous with *reparations as a lack of burdens*. To advocate for complete unburdening is to search for territory outside the social; it reflects a desire to live free of all relationships, not merely harmful ones. Even the quest to have unjust burdening acknowledged or to have those burdens reallocated involves substantive interaction between wronged and wrongdoer.

Unfortunately, the outcomes of reparations projects may run directly counter to intentions. For example, an apology is meant to see a wrongful burden justly and voluntarily reallocated—ideally, to the wrongdoer and into a symbolic form. In many cases, though, it may only partially so transmute, the remainder being reallocated to the wronged party as a new psychological burden (an increased sense of vulnerability, via a passive obligation to forgive and trust again), along with a new cognitive burden (in needing to assess the apologizer's sincerity). An analogous burden of expectation occurs in relating narratives of historical injustice. The belief that corrective action naturally follows the revelation of past harm catalyzes a sense of hope that, left unfulfilled, can impose a terrible weight. Even material compensation can be unjustly burdening. This is particularly the case when the injured party has little say in the form, amount, or timing of payouts, or when those payouts privilege one survivor relative to another. In these cases, the burden is only partially assumed by the wrongdoer-as-payee—a just *but incomplete* reallocation.

By definition, no reparative measure can unduly burden those it is intended to benefit—such a measure would perpetuate, instead of addressing, historical injustice. *Reparations as the just reallocation of burdens* thus entails an interplay of shifting burdens, with an emphasis on their overall assumption by those most directly responsible for the initial (allocative) or subsequent (reallocative) injustice. Making such an assessment does not require tallying incoming against outgoing burdens, but rather critical vigilance in spotting overall movement *away from* or *toward* justice. That task begins with mapping out a typology of burdens and sketching the contours of an analytic framework.

DISTILLING A TYPOLOGY FROM THE CANADIAN CASE

Developing a typology of burdens and a theory of how they manifest and shift is an iterative and contextual exercise. In this instance, it meant examining the Canadian case against relevant sources in order to figure out exactly what kinds of burdens exist in reparations processes generally, which ones were at play in this process in particular, how they manifested initially among residential school survivors, and how they shifted in response to the Canadian reparations project. In addition to the transitional-justice literature broadly conceived, international and global legal instruments contained useful ideas.[35] Normative visions oriented around law construe barriers to flourishing as impediments to the realization of human rights, and many of these were decent candidates for "burdens" and "burdening." The focus here was on identifying democratic deficits and prescribing corrective and protective measures in the areas of representation, transparency, physical integrity, authority, capacity, freedom, equality, and participation. Visions of human well-being with psychology as their foundation drove in a slightly different direction. Here, identification, self-image, social relationships, beliefs, moral frameworks, cultural affiliation, history, and potentiality were central.[36] The most useful (and direct) source, though, was the testimony of IRS survivors themselves, along with studies of the effects of Indian Residential Schools. Applying these to the preliminary roster of criteria and char-

acteristics, above, refined and grounded the growing typology. Yet reading across disparate sources often revealed categories that hinted at, rather than actually illuminated, the kinds of burdens that IRS reparations imposed, disguised, or sublimated. Conceptualizing the latter entailed concerted excavation, comparative analysis, and bricolage. Some burdens were revealed only by looking at absences, inconsistencies, and contrasts in reparations processes: what could or should have happened, what unfolded in opposition to plans made and promises offered, and what available alternatives or prior lessons went unheeded.

Among the characteristics that change during reallocation, the most obvious malleable feature is *form*, or the type of burden at play. (A discussion of the various forms that burdens take follows, below.) Since one of the more obvious ways in which a burden might change over time is by increasing or decreasing, *scale* is a second applicable feature. *Scope*, or the distribution of a burden (for example, over time or across one or more subpopulations), and *aggregation* (whether a burden is borne by an individual or by a group) are distinct enough characteristics to warrant their own categories of analysis. Similar to scale, scope, and aggregation is a burden's *degree*, a quality more subjective and experiential, which might also be thought of as its tolerability. Since considerations of various phenomena often use the qualifiers "thick" versus "thin," or rhetorical/procedural versus substantive, the *depth* (or substance) of a burden should also factor into assessments. Perhaps the attribute most applicable to considerations of (re)allocation, though, would be a burden's *attachment*, or the actor who bears its weight.

Reallocation of burdens can take place within a single attribute or between two or more of these characteristics. For example, burdens may shrink or grow, indicating a shift in scale, or move from one individual to another, changing attachment. Burdens left unaddressed may become intergenerational, a description that indicates a coincident change in scope, aggregation, and attachment.

Regarding the issue of form, the clearest divisions occur along impact or effect, or what a burden is actually a burden of or a burden on. *Psychological* burdens increase the agent's sense of vulnerability (including the pressures levied by expectation or hope) and/or cause or exacerbate trauma (altering the depth or duration of the experience). Physical unwellness constitutes an obvious *bodily* burden, whether caused by injury or disease, while certain kinds of unwellness (such as addiction) merge psychological and bodily harms into a compound burden. Interpretation is a *cognitive* burden (for example, gauging consistency in, motivation for, or sincerity of the words or actions of another); as is choice, when the options or their implications are unclear. A more objective orientation allows *personhood* to command its own category, separate from emotional, bodily, and cognitive burdens. These are burdens that affect human dignity and its experiential corollary, pride (or honour).

Temporal impositions are burdens that invariably have a (de)forming effect on processes, including setting deadlines, plotting trajectories, and establishing

milestones for measuring progress. Even concepts common in reparations can impose temporal burdens, one of the most obvious being post-traumatic stress disorder, which, as the name suggests, sets an artificial or arbitrary outside limit to trauma, after which point the distress is labelled "post-traumatic." *Material* burdens demand resources, including economic ones, and therefore include the opportunity costs entailed in limiting their investment elsewhere. These burdens differ from those affecting what the management and development literature terms "human resources" or "human capital," which better qualify as burdens on facility or *capacity*. Straining the legitimacy, authority, or efficacy, or perverting the development of institutions and processes of governance constitutes a *political* burden. Judicial-legal tolls on an individual or group may coalesce political, material, and capacity-affecting burdens into a single, compound burden. *Relational* burdens primarily impact the social sphere within or across groups, weighing on inclusion and access, goodwill and trust, symbolism and ceremony, and discourse and diplomacy. Intransigence, for example, imposes a relational burden, albeit one that may also have political and psychological aspects.

In the context of developing a typology of burdens, gender and culture present certain problems. These foundations of identity and belonging feature in all of the aforementioned types of burdens—indeed, they are often referred to as "cross-cutting issues" for this very reason. Every burden classification identified above can, and often is, both cultured and gendered. Furthermore, both gender and culture appear in the categories of manifestation detailed above, most obviously in the agent to which a burden attaches, who will always already be both gendered and cultured. There is thus a compelling case to be made for an equally broad construction of these foundations, leaving them as key concerns across both the form and manifestation of a burden. Such an arrangement represents an inelegant compromise, though, such that certain problems will remain in the wake of this solution.

To begin with, using cross-cutting categories as analytical tools has produced well-critiqued frameworks (like gender mainstreaming and cultural competency) for addressing the very problems they were meant to foreground. More importantly, culture is unshakably central to the case being discussed. Indigenous cultures were the ultimate target of residential schooling; they were the "ill" the policy was formulated to eradicate. Similarly, the fact that women bear a disproportionate weight of the social suffering catalogued in Indigenous communities and were specifically targeted in assimilationist policies like residential schools argues for gender appearing as a stand-alone burden.[37] Ultimately, though, invoking a separate category risks creating an artificial and, ironically, quite cultured and gendered compartmentalization. On such an account, culture can be teased out from, for example, economic or political practice, while women would be similarly disembedded and ghettoized. As a result, for the purposes of this analysis, gender and culture appear as considerations that weigh on every single type and every possible manifestation of burden.

The final typology, distilled from transitional-justice, legal, and psychological sources, as well as the testimonials of Indian Residential School survivors, thus consists of a constellation of interrelated burdens that might be (re)allocated to both persons and peoples. *Cognitive*, *psychological*, *personhood*, *temporal*, *relational*, and *bodily* burdens impact upon individuals, while their families, communities, and nations bear the weight of *material*, *capacity*, and *political* burdens, with gender and culture impacting the burdens themselves—and the acts of burdening—at every level and in every manifestation. Under a burdening analysis, it was the task of the IRSSA to justly reallocate historical burdens away from the survivors, steering that reallocation toward those most responsible for their unfair, initial imposition. Actually undertaking that analysis reveals a different outcome.

BURDENING IN AND THROUGH THE IRSSA

The purpose of reparations for Canadian residential schooling was to ameliorate the injustices visited on Indigenous persons through the state's Indian education policy. Evidence of the original wrongs is plentiful, while assessments of the enduring harms still inspire some debate. Precise causation is bedevilled by the inability to tease the schools out from the broader dispossession and assimilation project of which they are a part, and is further complicated by the restriction of reparations to specific, individualized harms. For example, loss of land, culture, or language, along with abrogation of treaty terms or abandonment of fiduciary duties, was expressly excluded—even though these were recognized in the case of the internment and deportation of Japanese-Canadians during World War Two.[38]

As Rosemary Nagy (2008) notes, reparations processes can confuse crime and context. In the Canadian case, colonialism is properly the harm, not merely the setting in which harm played out. Indian Residential Schools were not facilitated by colonialism; they were one of the forms that colonialism took. Supporters of the limited scope of the IRSSA demanded that these contested issues be bracketed in order to fairly judge the reparations mechanisms against their own mandates. Given that the schools have often been made to stand in for colonialism itself, without similar objections arising against the inverse substitution, such a rhetorical move is an attempt to unjustly reallocate burdens through sheer misclassification.

The timing of the reparations project itself is relevant. The seizure of Indigenous children and their dispatch to institutions in which they were severely emotionally, physically, and culturally wronged was certainly an act of burdening. In the years since the first students returned home, those harms spread out across communities and down through generations. Even official accounts mark these custodial experiences as major contributors to a variety of ills that now manifest at some distance from their source, including astonishingly high levels of self-harm and interpersonal violence in Indigenous communities. The original burdens did not pass away with survivors, then, nor did they lighten as years

ticked by and memories lengthened. Instead, they were passively, unjustly reallocated. They shifted in form, scope, scale, aggregation, and attachment, moving along almost every conceivable axis of social manifestation. The literature describes, for example, a "cycle of violence" and an "epidemic of suicide."[39]

This multiplication and transposition was facilitated by the fact that known suffering and calls for aid went purposefully unanswered. More than a decade lapsed between the publication of RCAP's findings and the drafting of the IRSSA. Those findings recommended expeditious investigation of institutional child abuse and related social suffering, yet, by the time the Settlement Agreement was rolled out, the number of living survivors had diminished by more than a third. As late as 2003 the government was described as "seem[ing] to prepare as much for legal war as for resolution" of abuse claims, while survivors were dying at a rate of four to five a day.[40] Only when court action seemed both inevitable and unwinnable did reparations appear on the government's agenda—and, even then, despite widespread recognition of intergenerational trauma, the families of survivors who died before 2005 were excluded from compensation. Indeed, the state's position always trailed behind the legal clout of the individuals seeking justice.[41] Once the TRC got underway, the government and churches repeatedly refused to honour their legal obligation, under the IRSSA, to provide relevant documentation, and their compliance had to be pursued in court.[42] These deliberate, ghoulish delays perform a profoundly unjust reallocation. Such tactics reburden survivors during their lifetimes—as they pursue, hope for, and are denied redress—after which the burden is reallocated to the surviving families, who must grapple with an injustice now made permanent by being rendered effectively unanswerable.

Even the character of the reparations mechanisms had a sizeable reburdening effect. Lack of transparency and poor navigability created tremendous uncertainty for former students and their families. This uncertainty was amplified by inconsistency between the words and the actions of state parties during the negotiations, right through the period of the apologies, and well past the signing of the IRSSA. Frustrations with the rollout of the CEP and IAP are key examples of this. Equivocation on key terms, alone, occupies a number of Indigenous critiques highlighting how fundamentally divergent understandings of "apology" and "reconciliation" reveal unshared norms and irreconcilable values.[43] These phenomena constitute entirely new, though interrelated, psychological, cognitive, and relational burdens imposed on Indigenous persons and Indigenous groups in Canada.

The false commonality of various "us" claims garnered similar attention. One such assertion ("our common experiences") was printed right on the TRC splash page, which occupied a well-indexed space on the internet even as the number of Indigenous children in contemporary state custody grew to far outpace that during the residential school era.[44] Interpreting this kind of incongruence while living in the indeterminate uncertainty it causes imposes a simultaneously cognitive and psychological burden. It weighs particularly heavily on those trying to

heal from historical injustice—an onerous task that would be eased by an increase in stability and predictability. It links with and reinforces a burden on personhood, which flows from generations spent articulating and rearticulating the harms of residential schools to an audience largely deaf to both moral and legal argumentation.

This particular burden is both echoed in and amplified by the string of apologies to survivors. The first governmental apology, issued in 1998 by the Minister of Indian Affairs and Northern Development, did not even merit space in the official parliamentary or legal record. By way of comparison, the official apology issued to Japanese-Canadians was seen as "fully detailed, properly recorded, and in many respects ceremonially adequate."[45] In the case of Indian Residential Schools, the spate of mea culpas by government representatives and church spokespersons culminated in a 2008 apology issued by Prime Minister Stephen Harper. This offering, however, was rendered conditional on its being made *after* a settlement had been reached, in order that the apology not compromise the government's bargaining strength.[46] In the apology text, the schools were finally identified as a key arm of Canadian assimilation policy—yet that admission was contradicted a mere fifteen months later, when the prime minister publicly denied any history of Canadian colonialism (reinforcing his earlier public comments about the British colonial process being "largely benign and occasionally brilliant").[47] Further, in 2015, the former head speechwriter for the Prime Minister's Office asserted that the 2008 apology was "a strategic attempt to kill the story."[48] Not only was the ideal reallocation of apology acts perverted in this case, but the potential increase in recipient vulnerability entailed in any apology was drastically heightened, as former students were obliged to parse and reparse sincerity as new facts emerged, and thus to continually vacillate between aspiration and disillusion.

Those residential school survivors who hoped for social change or substantive reparation did so at their own risk. Unfortunately, the IRSSA ratcheted expectations higher than reputations warranted, increasing the personhood, psychological, and cognitive burdens that claimants already bore. This reburdening was inadvertently spurred by the more enthusiastic (and even some of the more cautious) supporters of the TRC, particularly those who simultaneously engaged in moral critique and nonnormative pragmatism. Statements as to the Agreement being defensibly imperfect were surprisingly common in both the mainstream media and academic literature, and even emanated from Indigenous leaders.[49] This yielding of "aspiring to" to "settling for" has sobering implications for reallocation, since it reframes burdens as tolerable through ungrounded appeals to unexplored alternatives.

A particularly pernicious form of unjust reallocation of preexisting, and imposition of new burdens occurred through changes to the funding schema of the IRSSA. A key part of the settlement package was support for the Aboriginal Healing Foundation (AHF) to "help Indigenous individuals and communities heal from, and process the effects of, the residential school system."[50] Yet this

organization was among the slew of Indigenous nonprofits that lost some $60 million in federal funding *while the TRC was still underway*. Swept out with the AHF's funding were 134 Indigenous community-based programmes. Of the $350 million allocated to the Aboriginal Healing Foundation in 1998, $199 million were redirected to Health Canada, curbing the resurgence of Indigenous autonomy in social and health governance, while straining communities' ability to cope with the effects of the reparations process itself.[51] These new material burdens demanded resources, including economic ones, and so include a sizeable opportunity cost. The related judicial-legal toll on communities constituted not only a material, but also a capacity and a political burden. Moreover, these are staggeringly unjust reallocations because they actually transferred an array of burdens in and of colonialism *onto* residential school survivors, their families, and their communities. In this so-called "discretionary budgeting" and repatriation of federal funding, some critics saw the IRSSA as part of "a broader strategy to get out of the business of federal responsibility."[52] Others saw a deeper, more historical, ideologically driven project unfolding—one that read less as neglect of, and more as active targeting of Indigenous groups, the "slow demise of Aboriginal civil society by government design."[53] A defunding spree also served as the aggressive defence of these other ambitions, cloaking them in (admirable) efficiency and (necessary) austerity. Again, a conscious obfuscation of historical burdens can be identified in the Canadian case, and is itself profoundly burdening.

Two components of the IRSSA performed unjust (re)burdening even when enacted exactly as envisioned. The Common Experience Payments scheme, a lump-sum financial compensation plan for survivors, was marked by a disinclination to shepherd survivors through the taxing qualifying process. It was inordinately difficult to navigate, requiring substantial, uncompensated administrative, financial, legal, psychological, and technical support; had a short timeframe for completion; imposed near-unattainable evidentiary standards (with documentary proof in the hands of the same churches and agencies responsible for the original harms, and who routinely denied access to, or outright destroyed records); and restricted to a short list of "approved" schools,[54] omitting a sizeable cohort of Indigenous students. These are all new burdens—psychological, material, cognitive, personhood, and relational—which additionally worsened the degree and depth of those already borne.

Just as relating narratives of historical injustice creates a psychological burden of expectation, when the narrative is met with disbelief that burden undergoes a significant adverse shift in both scale and degree. Tens of thousands of applications for monetary compensation were denied. A sizeable percentage of claimants abandoned the even more onerous "reconsideration process," in which they would be obliged to tell and retell their stories (in performances that are, by their very nature, cognitively, psychologically, and bodily burdening, and which have catalyzed self-harm, physical illness, addiction, and even suicide).[55] Those who won compensation fared little better, as the lump-sum payment triggered a wave of fraud, elder abuse, addiction, clinical depression, suicidal and vengeful

ideation, family breakdown, anxiety disorders, and elevated intergroup strife.[56] These effects were amplified as a whole industry of payday-loan-style businesses and predatory legal shops sprang up on the borders of Indigenous communities.[57]

Especially troubling was the way in which the harms of residential schooling were here, more than anywhere else, framed as individual rather than as common (ironically belying the scheme's own moniker). Worse, the CEP created not just an atomized mass of former students, but also a *hierarchy* of mutually estranged survivors, only some of whom were deemed credible and worthy of compensation. In creating such divisions within communities, the attempted reallocation constituted a new relational burden deeply resonant of the original wrongs. Furthermore, communities were again forced to shoulder new material, capacity, and political burdens, as the effects of the compensation scheme reverberated from member to member, family to family, quickly overwhelming both official and informal support systems. All of the issues with the Common Experience Payments scheme would recur with the Independent Assessment Process, a parallel settlement fund compensating survivors of sexual and serious physical abuse.

In the Canadian case, then, we find reallocations that are both unjust and foreseeable, along with new allocations that deepen, multiply, and propagate the original harms—in shifts that this paper has identified as especially objectionable acts of burdening. We also find misrepresentation, obfuscation, strategic delays, inconsistency, equivocation, and abandoned promises, while the language of closure and achievement attempts to cement the whole endeavour into the Canadian past (though arguably not into the Canadian memory). The acts of naming the types and following the trail of burdens, noting their allocation and reallocation, has yielded a typology and a nascent analytic framework for analyzing the reparations project itself. What remains is to assess the Canadian case overall, and to defend the development and deployment of a burdening analysis.

REFLECTION & DISCUSSION

Reparations, by definition, reallocate burdens; successful reparations processes will reallocate them *justly*. Also by definition, no reparative measure can unduly burden those it is intended to benefit, or else it not only perpetuates but may also exacerbate the original harm. A foundational point in this argument is that relationships are formed by, or can perhaps actually be defined as, social processes that allocate burdens (and benefits) between and among individuals and groups. Any new social processes, including reconciliatory and reparative ones, will fall under this conceptualization. In other words, in reparations projects, the creation of some new burdens will be unavoidable. Evaluating the Indian Residential Schools Settlement Agreement via a burdening analysis, then, is not about tallying incoming versus outgoing harms and hanging the Canadian state for a net total higher than absolute nil. The point is to look at overall movement *away*

from or *toward* greater justice in the allocation and reallocation of historical burdens—and to learn something not only from that final determination, but also from the process of undertaking the evaluation.

Not all burdens were unjustly (re)allocated in the Canadian case. The survivors asked for a victim-centred truth and reconciliation commission, which the Canadian TRC delivered.[58] Many testimony-givers felt substantively heard, or else found the process cathartic, and their experiences cannot be discounted.[59] The final report of the TRC also discusses the success of cross-country public events and the ways in which groups were brought together by attendance and/or participation in them. Indigenous persons in various locations have spoken eloquently about the resonance of symbolic reparations, artistic works, and ceremonial acts associated with the IRSSA. Some survivors might also take heart from the fact that the TRC's ninety-four *Calls to Action* are today influencing mandates, policy directives, agendas, and goal setting across government agencies, academic and professional bodies, and media organizations.

Thus, some of the burdens of residential schooling were reallocated justly—for some individuals. Because this individualization was hard coded into the IRSSA, it could not be transcended by its component activities. Moreover, the Agreement embraced only *certain* individuals—an atomization of an atomization—while even that group was diligently thinned. And whatever portion of the weight of residential schooling was justly reallocated, the process itself levied many new burdens and unjustly reallocated several already-existing ones. Both new and existing, these include, as discussed, various serious cognitive, psychological, personhood, temporal, relational, and bodily burdens on Indigenous persons and equally weighty political, material, and capacity burdens on Indigenous Peoples.

A key consideration is whether the unjust (re)burdening that occurred was unavoidable in this (or indeed, any) reparations process. This paper has rejected claims that the IRSSA was unavoidably, and thus justifiably, imperfect. Though not explicitly argued as such, these assertions rest on the fact that such imperfections stem from structural dilemmas, presenting a choice between equally objectionable alternatives. The best example of this is the Common Experience Payment Scheme and Independent Assessment Process, the architects of which faced a choice between a single, lump-sum payment and a points-granting, stepped scheme. The former option would have ignored critical differences in the experiences of survivors and vital distinctions among the types of wrongs committed against them. Accordingly, the drafters chose the individualist option, which at least honoured the unique histories of former students. That motivation cannot be dismissed out of hand. We are, indeed, obligated to treat people as individuals, for a wide variety of compelling reasons—but a burdening analysis urges us to remember that they are *embedded* individuals. And it is in this overlooked relationality that we find some of the most troubling, and most profoundly unjust, acts of burdening performed by the IRSSA: the reallocation of burdens down through generations, across families, and outward to commu-

nities; the new burdens imposed on these ineligible others and overlooked groups; and the relational burdens that were allocated to the survivors themselves.

Moreover, planning of reparations programs cannot focus on whether "option a" or "option b" is just in some absolute sense, or default to the least-degraded version of some ideal because absolute justice is unattainable in any case. The drafters of the CEP and IAP should have maintained a focus on what survivors had already endured and on the point of the process itself. A burdening analysis would have suggested just such an approach, precisely because it foregrounds structural dilemmas. In other words, because it considers (re)burdening as inherent to reparations processes, a burdening analysis allows us to file down the horns of the dilemma. By identifying the likely burdens in the case at hand—which is the central task of this approach—we would have revealed a need for targeted offsets. Funding and frameworks for these could have been built into the compensation schemes well in advance of their rollout. Furthermore, accepting that some new burdening was inevitable, and identifying these burdens during or prior to the drafting stage, we could have assessed whether they were excessive, avoidable, or misallocated, and undertaken corrective measures. The IRSSA is particularly vulnerable to such criticisms: because it was brokered by a retired Supreme Court justice, instead of being hashed out on the ground in a more overtly political process, there was a built-in, stable, central point from which the reallocation of burdens could have been considered up front. This is one of the key benefits of a burdening analysis: it lends itself to both *ex post* (backward-looking) and prophylactic (forward-looking) applications. We can evaluate a project in advance, in a targeted, deeply contextualized manner, as well as after-the-fact—and learn a great deal along either trajectory.

One additional factor that had particular force in the Canadian case is teleology, a simultaneously psychological and temporal burden. Temporal impositions, such as setting deadlines and establishing milestones for measuring progress, ubiquitous and inevitable in official reparations projects, have a (de)forming effect on processes. But the TRC mandate went further, flatly stating a "desire to put the events of the past behind us."[60] Of course, the idea of a reparations process with no endpoint summons valid concerns about public investment. Given the difficulties associated with selling the public on the existing Truth and Reconciliation Commission, with its relatively short directive, it seems doubtful that Canadians have the stamina for unending reconciliation. Some critics roll this premature endpoint further back, rendering the outlook even less promising. Courtney Jung[61] asserts that most Canadians saw the years-earlier official apology as solving the problem, as marking the terminus of a troublesome historical period. Since remembering is anti-teleological,[62] it can be argued that to appeal to endpoints is to promote forgetting, while part of acknowledging the inherent impossibility of entirely repairing historical injustice is acceding to reparations as an ongoing process. This accords with Indigenous views of healing as a lifelong endeavour, described via metaphors of journeying in which "there seems to be no end point…. No one is ever completely healed. No one

speaks of being cured."[63] Such a narrative pattern exists in a lived, deeply cultured reality that the IRSSA never attempted to embrace. Furthermore, teleology gained added weight in the Canadian context thanks to the delay tactics employed by government and churches, which succeeded in shutting out countless claimants. A burdening analysis might not have been able to solve this issue, but it would have brought it to light sooner and with greater clarity, and in doing so would have pointed to ameliorative measures—even if only in the form of material or emotional support for those relegated to an anxious wait.

In undertaking a burdening analysis, there is no need for comparison to some alternative process that might have achieved more just reallocations and/or created fewer new burdens—though some promising candidates can be found in the literature on Indigenous community-based processes.[64] The point is to better understand our successes and shortcomings in order that we might, moving forward, build on the former and confront the latter. Yet this question of alternatives brings us to the central, resistant knot of reparations in nontransitional societies: the negotiation of these projects occurs on the same fields of power and ethics on which the original injustices were built, and the asymmetries so engendered levy costs, both for the planning and the "doing" of reparations. On some accounts, historical justice is thus unattainable until the system as a whole is dismantled; then and only then can we undertake reparations for its harms. This view, however, is untenable from a burdening perspective. As Michael Murphy[65] notes, it not only dismisses the possibility of answering the demands of survivors *while they still survive*, but it subsumes the specific injustices of residential schools within the larger project of decolonization—which is to focus on the bigger picture of colonialism, true, but in a way that arguably acts against justice in the here and now, and to do so on behalf of survivors who may not share that agenda.

But perhaps a burdening analysis is redundant. The IRSSA itself employed current, familiar, and well-grounded criteria, keystones of legal reasoning with strong analytic utility—namely, motivation and proportion. Most evaluations of reparations projects do the same. So, can we identify unjust (re)burdenings as failures on these grounds, negating the need for a new analytic framework? Looking at the Canadian case, we can certainly discern clear bad-faith motivations and/or obviously disproportionate responses. This is especially obvious in instances like the federal foot-dragging as survivors passed away, and in the prime minister's comments on colonialism. But this compartmentalization has consequences. Most importantly, it green-lights ignorance or deliberate obfuscation of that aforementioned bigger picture. Because a motivation-and-proportion analysis cannot avoid reducing the social landscape of reparations and reconciliation to the legalistic binary of victims and perpetrators, residential schooling easily becomes a misguided education policy, and the schools themselves float free of other colonial structures. This in turn, allows the uptake of a pernicious "some bad apples" and/or "what about the benefits?" view of the gross harms suffered in and through these institutions. Such opinions recently made headlines as the explicit position of Canadian Senator Lynn Beyak, who additionally claimed that "a silent majority" of Canadians shared her position.[66]

Being inherently processual, a burdening analysis rejects these rhetorical dodges. Urging us to consider reparations in both a holistic and relational way, it forecloses the inductive fallacies that minimize harm and muffle calls for justice. Furthermore, motivation and proportion are *encompassed* by a burdening analysis, since they affect the various characteristics of burdens: their scale, scope, aggregation, attachment, degree, and depth. The same encompassing does not happen in reverse, when we hold motivation or proportion as primary. The concepts of burdening and burden-bearing also tell us something quite different about our relationships than does the alternative. It is certainly relevant what we meant to do, and whether our actions were sufficient, but neither of these dimensions, either alone or in concert, captures the scope and scale of our mutual entangledness. Analyzing political and social action by means of a calculus of motivation and proportion thus pauperizes our understanding and, accordingly, undercuts our potential to act differently in the future—which is, in fact, a decent definition of "reconciliation."

CONCLUSION

Pablo DeGreiff[67] asserts the importance of a comprehensive and integrated approach to the success of reparations projects. One way to think about the overall impact of reparations, and to do so in a processual and holistic fashion, is to undertake a burdening analysis: the planning and/or evaluation of reparations projects based on the purposeful, just reallocation of burdens between perpetrators and victims of historical wrongs. The process of undertaking such analysis provides a window on the relationships that gave rise to the original harms and on the relationships that have allowed those burdens to endure. This is important not only because we should undertake reparations and reconciliation *processes* better moving forward, but also because all such processes come with a promise, whether explicit or implicit, that we will enact our *relationships* differently in the future. Reparations processes are thus, in no small part, meant to help us arrive at a different understanding of those relationships; in this task, the mechanisms of the IRSSA fell well short.[68] The claim here is that arriving at a different understanding of our relationality begins by connecting the experiences of burden-bearing and burden-imposition as they currently exist in our web of relationships. This holds particularly true when those relationships have been ones of profound and lasting harm. What is at stake, then, is not merely how we evaluate the Indian Residential Schools Settlement Agreement, but also what we do now, in its wake. Naturally, to a great extent our actions in the future will depend on our evaluation of the past… but seeing our entangled relationships through the lens of burdening helps us to better understand our past, and therefore allows us to "do" the future differently.

ACKNOWLEDGEMENTS

This paper benefitted greatly from the generous feedback of Barbara Arneil, Victoria Freeman, Matt James, and Hannah Wyile; it improved substantially through the review process at *Les Ateliers de l'éthique/The Ethics Forum*.

NOTES

[1] De Greiff, Pablo, *The Handbook of Reparations,* Oxford & New York, Oxford University Press, 2006; De Greiff, Pablo, "Justice and Reparations," in Miller, Jon, and Rahul Kumar (eds.), *Reparations: Interdisciplinary Inquiries*, Oxford, Oxford University Press, pp. 153-175.

[2] Milloy, John Sheridan, *A National Crime: The Canadian Government and the Residential School System, 1879-1986*, Winnipeg, University of Manitoba Press, 1999; Indian and Northern Affairs Canada, "List of Recognized Institutions," *Indian Residential Schools*, June 6, 2009, http://www.ainc-inac.gc.ca/ai/rqpi/cep/mp/index-eng.asp.

[3] This term is attributable to Duncan Campbell-Scott, head of the Department of Indian Affairs and one of the principal architects of the Indian Residential Schools system. Leslie, John, *The Historical Development of the Indian Act*, Ottawa, Department of Indian Affairs and Northern Development, Treaties and Historical Research Branch, 1978, p. 114.

[4] Carlson, Nellie, Linda Goyette, and Kathleen Steinhauer, *Disinherited Generations: Our Struggle to Reclaim Treaty Rights for First Nations Women and Their Descendants*, Edmonton, University of Alberta Press, 2013; *Baxter Sr. v. The Attorney General of Canada*, "Joint Factum of the Plaintiffs," Court File No. OO-CV-192059CP, Ontario Superior Court of Justice, 2006.

[5] Chrisjohn, Roland, Tanya Wasacase, Lisa Nussey, Andrea Smith, Marc Legault, Pierre Loiselle, and Mathieu Bourgeois, "Genocide and Indian Residential Schooling: The Past is Present," in *Canada and International Humanitarian Law: Peacekeeping and War Crimes in the Modern Era*, Halifax, Dalhousie University Centre for Foreign Policy Studies, 2002, pp. 229-266; Ing, Rosalyn, "The Effects of Residential Schools on Native Child Rearing Practices," *Canadian Journal of Native Education*, vol. 18, 1991, pp. 65-118; Milloy, *A National Crime*.

[6] Furniss, Elizabeth Mary, *Victims of Benevolence: The Dark Legacy of the Williams Lake Residential School*, Vancouver, Arsenal Pulp Press, 1995; Milloy, *A National Crime*.

[7] Erasmus, George, "Notes on A History of the Indian Residential School System in Canada," paper presented at the *Tragic Legacy of Residential Schools: Is Reconciliation Possible?* Conference, Calgary, University of Calgary, 2004.

[8] Chrisjohn et al., "Genocide and Indian Residential Schooling"; Chrisjohn, Roland, Michael Maraun, and Sherri Lynn Young, *The Circle Game: Shadows and Substance in the Indian Residential School Experience in Canada*, Penticton, Theytus Books, 1997; Hackett, Paul, "From Past to Present: Understanding First Nations Health Patterns in a Historical Context," *Canadian Journal of Public Health*, vol. 96, 2005, pp. S17-21; Ing, Rosalyn, "Canada's Indian Residential Schools and Their Impacts on Mothering," in Cannon, Martin John, and Lina Sunseri, (eds.), *Racism, Colonialism, and Indigeneity in Canada: A Reader*, Don Mills, Oxford University Press, 2011, pp. 120-127; Milloy, *A National Crime*.

[9] Gresko, Jacqueline, *The Qu'Appelle Industrial School: White 'Rites' for the Indians of the Old Northwest*, Ottawa, Institute of Canadian Studies, 1970; Trevithick, Scott, "Native Residential Schooling in Canada: A Review of Literature," *Canadian Journal of Native Studies*, vo. 18, no. 1, 1998, pp. 49-86; CBC News, "Aboriginal Children Used In Medical Tests, Commissioner Says," *CBC Secure Drop*, July 31, 2013, http://www.cbc.ca/news/politics/aboriginal-children-used-in-medical-tests-commissioner-says-1.1318150.

[10] Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report*, Winnipeg, TRCC, 2015; Schwartz, Daniel, "Truth and

Reconciliation Commission: By the Numbers," *CBC News: Indigenous*, June 2, 2015, http://www.cbc.ca/news/indigenous/truth-and-reconciliation-commission-by-the-numbers-1.3096185.

[11] Friscolanti, Michael, "The Runaways Project," *Maclean's*, October 20, 2016, http://www.macleans.ca/news/canada/the-runaways-project-help-us-tell-these-stories.

[12] Frum, Barbara, "Phil Fontaine's Shocking Testimony of Sexual Abuse," *The Journal*, CBC Television, 1990.

[13] Barnsley, Paul, "ADR Process Slammed: Ontario Class Action Lawsuit Can Proceed," *Windspeaker,* January 1, 2005.

[14] Thielen-Wilson, Leslie, "White Terror, Canada's Indian Residential Schools and the Colonial Present: From Law towards a Pedagogy of Recognition," PhD dissertation, Toronto, Ontario Institute for Studies in Education, 2012.

[15] Prime Minister of Canada, *Statement of Apology to Former Students of Indian Residential Schools*, Ottawa, Aboriginal Affairs and Northern Development Canada, 2008, http://www.aadnc-aandc.gc.ca/eng/1100100015644.

[16] Aboriginal Affairs and Northern Development Canada, *Notes for an Address by the Honourable Jane Stewart Minister of Indian Affairs and Northern Development on the Occasion of the Unveiling of "Gathering Strength—Canada's Aboriginal Action Plan"*, Ottawa, AANDC, 1998, http://www.aadnc-aandc.gc.ca/eng/1100100015725.

[17] Phipps, Bill, "United Church of Canada Apology to First Nations (1998)," in Younging, Gregory, Jonathan Dewar, and Mike DeGagné (eds.), *Response, Responsibility and Renewal: Canada's Truth and Reconciliation Journey*, Ottawa, Aboriginal Healing Foundation, 2009, pp. 375-376, at p. 375.

[18] Truth and Reconciliation Commission of Canada, *Honouring the Truth*.

[19] Hurley, Mary C., *Aboriginal Title: The Supreme Court of Canada Decision in Delgamuukw v. British Columbia*, Ottawa, Library of Parliament Parliamentary Research Branch, 2000.

[20] RCAP, *Report of the Royal Commission on Aboriginal Peoples—Volume III: Gathering Strength*, Ottawa, Indian and Northern Affairs Canada, 1996.

[21] Truth and Reconciliation Commission of Canada, *Honouring the Truth*, p. 215.

[22] Editors, "The Dominion: White Man's Burden," *Time*, 52, 1, 1948, p. 33.

[23] For a sample of such opinions, see the comments thread on the CTV story, "Judge Calls Residential Schools a Form of Genocide" (Canadian Press 2012).

[24] See, for example, Widdowson, Frances, and Albert Howard, *Disrobing the Aboriginal Industry: The Deception behind Indigenous Cultural Preservation*, Montréal and Québec, McGill-Queen's University Press, 2008; and Flanagan, Thomas, *First Nations? Second Thoughts*, Montréal, McGill-Queen's University Press, 2000.

[25] Wagamese, Richard, "Returning to Harmony," in Younging, Gregory, Jonathan Dewar, and Mike DeGagné (eds.), *Response, Responsibility and Renewal: Canada's Truth and Reconciliation Journey*, Ottawa, Aboriginal Healing Foundation, 2009, pp. 141-146, at p. 141.

[26] Younging, Gregory, "Inherited History, International Law, and the UN Declaration," in Younging, Gregory, Jonathan Dewar, and Mike DeGagné (eds.), *Response, Responsibility and Renewal: Canada's Truth and Reconciliation Journey*, Ottawa, Aboriginal Healing Foundation, 2009, pp. 325-336, at p. 325.

[27] Quoted in Llewelyn, Jennifer, "Bridging the Gap between Truth and Reconciliation: Restorative Justice and the Indian Residential Schools Truth & Reconciliation Commission," in Castellano, Marlene Brant, Linda Archibald, and Mike DeGagné (eds.), *From Truth to Reconciliation: Transforming the Legacy of Residential Schools*, Ottawa, Aboriginal Healing Foundation, 2008, pp. 183-204, at p. 191.

[28] Truth and Reconciliation Commission of Canada, *Honouring the Truth*, pp. 287-288.

[29] Love, on many accounts, is a positive burden, as is investment in a future goal.

[30] Thanks to Barbara Arneil for this insight.

[31] Institutions, on Young's "social connection model," are an effect (rather than the cause) of the obligations we have to one another. Young, Iris Marion, "Responsibility and Global Justice: A Social Connection Model," *Social Philosophy & Policy*, vol. 23, no.1, 2006, pp. 102-130.

[32] Rawls, John, *Justice as Fairness: A Restatement*, Cambridge, Harvard University Press, 2001.
[33] Kant, Immanuel, *Political Writings*, 21st ed., Cambridge, Cambridge University Press, 2009.
[34] Aquinas, Thomas, "Summa Theologica," in Dyson, R.W. (ed.), *Political Writings*, Cambridge and New York, Cambridge University Press, 2002.
[35] See, for example, the United Nations' *International Covenant on Civil and Political Rights* and *International Covenant on Economic, Social and Cultural Rights*, Geneva, United Nations General Assembly, 1966.
[36] See, among others, Nussbaum, Martha, and Amartya Sen, *The Quality of Life*, Oxford, Clarendon Press, 1993; and Seligman, Martin, *Flourish: A New Understanding of Happiness and Well-Being—and How to Achieve Them*, Boston & London, Nicholas Brealey, 2011.
[37] Grey, Sam, and Alison James, "Truth, Reconciliation, and 'Double Settler Denial': Gendering the Canada-South Africa Analogy," *Human Rights Review*, vol. 17,no. 3, pp. 303-328; RCAP, *Report of the Royal Commission on Aboriginal Peoples—Volume IV: Perspectives and Realities*, Ottawa, Indian and Northern Affairs Canada, 1996.
[38] Desmoulin, Andrew, *Residential School Claims: A National Class Action*, Thunder Bay, Nishnawbe-Aski Legal Services Corporation, 2005; International Center for Transitional Justice, *Submission to the Universal Periodic Review of the UN Human Rights Council, Fourth Session*, New York, ICTJ, 2008.
[39] Frideres, James, and René R. Gadacz, *Aboriginal Peoples in Canada: Contemporary Conflicts*, 6th ed., Toronto, Prentice Hall, 2001.
[40] Ha-Redeye, Omar, "Iacobucci: Recognizing History of Residential Schools a 'Necessary Step'" (Notes from a Keynote Speech by Justice Iacobucci at the Federation of Asian Canadian Lawyers Fall Conference), *Law Is Cool*, November 8, 2009, http://lawiscool.com/2009/11/08/iacobucci-recognizing-history-of-residential-schools-a-necessary-step/; "Time Magazine Article on Residential Schools," *Turning Point: Native Peoples and Newcomers Online*, August 26, 2003, http://www.turning-point.ca/?q=node/274>.
[41] For an account of how this is inevitably the case when social movements with political identities enter processes of negotiation, see Barkan, Elazar, *The Guilt of Nations: Restitution and Negotiating Historical Injustices*, Baltimore & London, Johns Hopkins University Press, 2001.
[42] See Fontaine v. Canada 2013 ONSC 684; Fontaine v. Canada 2014 ONSC 4584; and Fontaine v. Canada 2014 ONSC 283.
[43] Chrisjohn, Roland, and Tanya Wasacase, "Half-Truths and Whole Lies: Rhetoric in the 'Apology' and the Truth and Reconciliation Commission," in Younging, Gregory, Jonathan Dewar, and Mike DeGagné (eds.), *Response, Responsibility and Renewal: Canada's Truth and Reconciliation Journey*, Ottawa, Aboriginal Healing Foundation, 2009, pp. 217-232; Waziyatawin, "You Can't Un-Ring a Bell: Demonstrating Contrition through Action," in Younging, Gregory, Jonathan Dewar, and Mike DeGagné (eds.), *Response, Responsibility and Renewal: Canada's Truth and Reconciliation Journey*, Ottawa, Aboriginal Healing Foundation, 2009, pp. 191-202.
[44] Jung, Courtney, *Canada and the Legacy of the Indian Residential Schools: Transitional Justice for Indigenous People in a Non-Transitional Society*, New York, Social Science Research Network, 2009.
[45] James, Matt, "Wrestling with the Past: Apologies, Quasi-Apologies, and Non-Apologies in Canada," in Gibney, Mark, Rhoda E. Howard-Hassmann, and Jean-Marc Coicaud (eds.), *The Age of Apology: Facing Up to the Past*, Philadelphia, University of Pennsylvania Press, 2008, pp. 137-153, at p. 149.
[46] Ha-Redeye, "Iacobucci: Recognizing History of Residential Schools a 'Necessary Step'".
[47] Ibbitson, John, "Empire Strikes Back in Harper's Rhetoric," *The Globe and Mail*, July 27, 2008, http://www.theglobeandmail.com/news/national/empire-strikes-back-in-harpers-rhetoric/article1106773/; Aaron Wherry, "What He Was Talking about When He Talked about Colonialism," *Maclean's*, October 1, 2009, http://www.macleans.ca/politics/ottawa/what-he-was-talking-about-when-he-talked-about-colonialism.

[48] Barrera, Jorge, "Harper's 2008 Residential School Apology Was 'Attempt to Kill the Story,' Says Ex-PMO Speechwriter," *APTN National News*, September 10, 2015, http://aptn.ca/news/2015/09/10/harpers-2008-residential-school-apology-was-attempt-to-kill-the-story-says-ex-pmo-speechwriter/.

[49] Coast, Kerry, "UN Report Misses the Mark on Indian Residential Schools Settlement Agreement, Truth and Reconciliation Commission," *Vancouver Media Co-op*, June 29, 2014, http://vancouver.mediacoop.ca/story/un-report-misses-mark-indian-residential-schools-s/31058; Mackenzie, Megan, "The Canadian Truth and Reconciliation Commission: An Outlier in the International Transitional Justice Industry," *Duck of Minerva*, June 15, 2011, http://duckofminerva.com/2011/06/canadian-truth-and-reconciliation.html; Niezen, Ronald, *Truth and Indignation: Canada's Truth and Reconciliation Commission on Indian Residential Schools*, Toronto, University of Toronto Press, 2013; Saganash, Romeo, "Keynote Address to the University of Ottawa, Faculty of Law, Common Law Section," *Grand Council of the Crees*, September 2, 2008, http://www.gcc.ca/newsarticle.php?id=149.

[50] Voices-Voix, *Dismantling Democracy: Stifling Debate and Dissent in Canada*, Ottawa, Voices-Voix, 2015.

[51] Voices-Voix, *Profile: Aboriginal Healing Foundation*, November 1, 2012, http://voices-voix.ca/en/facts/profile/aboriginal-healing-foundation.

[52] Galloway, Gloria, "Budget Watchdog Takes Feds to Court," *The Globe and Mail*, October 21, 2012, http://www.theglobeandmail.com/news/politics/budget-watchdog-takes-feds-to-court/article4626742/; Orsini, Michael, and Martin Papillon, "Death by a Thousand Cuts: On the Slow Demise of Aboriginal Civil Society by Government Design," *The Mark News*, April 25, 2012, http://pioneers.themarknews.com/articles/8446-death-by-a-thousand-cuts/.

[53] Harrison, Sarah, "Why Harper Silenced Sisters in Spirit," *The Mark News*, November 29, 2010, http://pioneers.themarknews.com/articles/3171-why-harper-silenced-sisters-in-spirit/; Orsini and Papillon, "Death by a Thousand Cuts"; Wells, Paul, "Harper's Very Political Budget," *Maclean's*, March 29, 2012, http://www.macleans.ca/politics/ottawa/harpers-very-political-budget/#more-249520.

[54] Institutions operated by provincial, private, or religious organizations, and nonresidential institutions (including so-called "day schools"), were struck from the official list. Similarly, students who attended recognized residential schools but boarded elsewhere—often a necessity, due to overcrowding—were disqualified. Reimer, Gwen, Amy Bombay, Lena Ellsworth, Sara Fryer, and Tricia Logan, *The Indian Residential Schools Settlement Agreements, Common Experience Payment, and Healing: A Qualitative Study Exploring Impacts on Recipients*, Ottawa, Aboriginal Healing Foundation, 2010.

[55] Dion, Madeleine, and Rick Harp, *Lump Sum Compensation Payments Research Project: The Circle Rechecks Itself*, Ottawa, Aboriginal Healing Foundation, 2007.

[56] Reimer et al., *A Qualitative Study.*

[57] Mercer, Rian, "Resurrection, Re-Victimization, and Re-Colonization: The Common Experience Payment Process and the Survivors of Indian Residential Schools", MA thesis, University of Victoria, 2011; Galloway, Gloria, "Lawyers Who Overcharged in Residential-School Cases Have Fees Reduced," *The Globe and Mail*, April 14, 2017, https://www.theglobeandmail.com/news/politics/adjudicators-remedy-overcharging-done-by-lawyers-in-residential-school-cases/article34042623.

[58] James, Matt, "A Carnival of Truth? Knowledge, Ignorance and the Canadian Truth and Reconciliation Commission," *International Journal of Transitional Justice*, vol. 6, no. 2, pp. 182-204.

[59] Truth and Reconciliation Commission of Canada, *Honouring the Truth*.

[60] Indian Residential Schools Settlement, "Schedule 'N': Mandate for the Truth and Reconciliation Commission," *IRSS—Official Court Website*, 2010, http://www.residentialschoolsettlement.ca/SCHEDULE_N.pdf.

[61] Jung, *Canada and the Legacy of the Indian Residential Schools.*

[62] Edkins, Jenny, *Trauma and the Memory of Politics*, Cambridge & New York, Cambridge University Press, 2003.

[63] Waldram, James B., *Aboriginal Healing in Canada: Studies in Therapeutic Meaning and Practice*, Ottawa, Aboriginal Healing Foundation, 2008, p. 6.

[64] See, for example, Napoleon, Val, "Who Gets To Say What Happened? Reconciliation Issues for the Gitxsan," in Bell, Catherine, and David Kahane (eds.), *Intercultural Dispute Resolution in Aboriginal Contexts: Land Claims, Treaties, and Self-Government Agreements*, Vancouver, UBC Press, 2004, pp. 176-195.

[65] Murphy, Michael, "Apology, Recognition, and Reconciliation," *Human Rights Review, vol.* 12, no. 1, 2011, pp. 47-69.

[66] CTV News, "'She's Made a Fool of Herself': Senator Stands by Residential School Comments," CTV News, March 28, 2017, https://www.ctvnews.ca/politics/she-s-made-a-fool-of-herself-senator-stands-by-residential-school-comments-1.3343936.

[67] De Greiff, *The Handbook of Reparations*; De Greiff, "Justice and Reparations".

[68] Grey and James, "Truth, Reconciliation, and 'Double Settler Denial'"; Niezen, *Truth and Indignation*; De Costa, Ravi, "Discursive Institutions in Non-Transitional Societies: The Truth and Reconciliation Commission of Canada," *International Political Science Review, vol.* 38, no. 2, 2017, pp. 185-199; Henderson, Jennifer, "Residential Schools and Opinion-Making in the Era of Traumatized Subjects and Taxpayer-Citizens," *Journal of Canadian Studies, vol.* 49, no.1, 2015, pp. 5-43.