

# Who's Sorry Now? Government Apologies, Truth Commissions, and Indigenous Self-Determination in Australia, Canada, Guatemala, and Peru

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**Abstract** Official apologies and truth commissions are increasingly utilized as mechanisms to address human rights abuses. Both are intended to transform inter-group relations by marking an end point to a history of wrongdoing and providing the means for political and social relations to move beyond that history. However, state-dominated reconciliation mechanisms are inherently problematic for indigenous communities. In this paper, we examine the use of apologies, and truth and reconciliation commissions in four countries with significant indigenous populations: Canada, Australia, Peru, and Guatemala. In each case, the reconciliation mechanism differentiated the goal of reconciliation from an indigenous self-determination agenda. The resulting state-centered strategies ultimately failed to hold states fully accountable for past wrongs and, because of this, failed to transform inter-group relations.

**Keywords** Indigenous peoples · Transitional justice · Apologies · Truth commissions · Human rights · Self-determination

## Introduction

Official apologies and truth commissions are distinct mechanisms for addressing past wrongs, but their goals are very similar. Both are intended to represent a step forward in inter-group relations by marking an end-point to a history of wrongdoing and allowing political and social relations to start anew. However, in practice, states tend to place rigid material and symbolic limits upon apologies and truth commissions to promote political and legal stability. These state-based strategies

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ultimately fall short of offering meaningful avenues for rectifying ongoing injustices centered on land dispossession and self-determination that impact some 350 million indigenous peoples residing in 70 states around the world. By failing to address the problems inherent in state-dominated reconciliation forums for indigenous communities, previous research examining truth commissions/apologies de-emphasizes the larger policy implications for indigenous communities and fails to promote a necessary balance between restitution and reconciliation strategies.

It is our contention that, if apologies and truth commissions cannot effectively address historic and ongoing injustices committed against indigenous peoples, then they are fundamentally flawed mechanisms for transforming inter-group relations. Indigenous peoples are disproportionately the target of state violence as well as neoliberal reforms. Therefore, an inability to address injustices against indigenous peoples reflects serious deficiencies in terms of addressing a large segment of the cases for which reconciliation mechanisms are required. Apologies and truth commissions are supposed to reconcile past injustices. The preponderance of cases in which indigenous peoples have been targets of violence and are now supposed to benefit from reconciliation makes their communities important tests for the general ability of apologies and truth commissions actually to accomplish what they set out to do. In this regard, two important questions emerge: Is either an official apology or a truth mechanism on its own a reliable path to address past and present injustices? Is the state an appropriate place to seek reconstituted forms of justice?

In what follows, we examine the use of apologies, and truth and reconciliation commissions in four countries with significant indigenous populations: Canada (approximately 4.4% of the overall population), Australia (approximately 2% of the overall population), Peru (approximately 47% of the overall population), and Guatemala (approximately 40.5% of the overall population).<sup>1</sup> Despite their promise for transforming inter-group relations, we find that these mechanisms addressed past and ongoing human rights abuses against indigenous peoples in a very limited way within these four ‘host’ countries.<sup>2</sup> In short, by differentiating state apologies/truth commissions from an indigenous self-determination agenda, the application of such state-centered strategies ultimately failed to hold states accountable for past wrongs or to establish a clean slate.

To conceive of an apology or a truth and reconciliation commission as a way for politics to neutralize a history of wrongs is to set it up to fail for indigenous peoples

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<sup>1</sup> There are approximately 24 truth commissions that have been documented by the United States Institute for Peace (<http://www.usip.org/library/truth.html#tc>). While South Africa’s Truth and Reconciliation Commission is often touted as a success, it was not chosen as one of our four comparative case studies for two reasons. First, because the 79% African majority in South Africa is a much higher percentage than Indigenous population estimates in Peru, Guatemala, Australia, and Canada, it is not directly comparable to the colonial experiences of these countries. Second, the South African TRC offered amnesty agreements to perpetrators who applied for it, which was not the policy for TRCs operating in Peru and Guatemala. In addition, the TRC in South Africa specifically excluded any possibility of restitution and property relations based on a 1993 political compromise, which runs counter to a conceptualization of genuine reconciliation that we develop in this article.

<sup>2</sup> The term “host” country or state is the most grammatically precise and widely used phrase describing those countries containing indigenous peoples within their borders. However, this term should not be construed to imply a sense of undue state cordiality, especially given the severe treatment that several indigenous populations have received at the hands of their “host” states.

and to neglect an opportunity for transforming existing relationships that go beyond hollow, symbolic gestures. Andrew Rigby, Director of the Centre for Peace and Reconciliation Studies, refers to these symbolic gestures as ‘cheap reconciliation,’ illustrating the logic of this strategy with a story by Reverend Mxolisi Mpambani:

There were two friends, Peter and John. One day Peter steals John’s bicycle. Then, after a period of some months, he goes up to John with outstretched hand and says ‘Let’s talk about reconciliation.’

John says, ‘No, let’s talk about my bicycle.’

‘Forget about the bicycle for now,’ says Peter. ‘Let’s talk about reconciliation.’

‘No,’ says John. ‘We cannot talk about reconciliation until you return my bicycle.’<sup>3</sup>

In the above example, ‘the victim is being asked to become reconciled to loss, and this is no basis for a sustainable settlement,’ which is one of the primary problems with the application of state-dominated reconciliation processes for indigenous peoples.<sup>4</sup> We contend that decolonization and restitution are necessary elements of reconciliation because these are necessary to transform relations with indigenous communities in the way justice requires. Whether the mechanism attempting to address injustice to indigenous peoples and remedy wrongs is an apology or a truth and reconciliation commission, it must begin by acknowledging indigenous peoples’ inherent powers of self-determination.

### Confronting Injustice: Reconciliation, Restitution, and Self-Determination

Offering apologies has become so commonplace in world politics that some have referred to this as the ‘Age of Apology.’<sup>5</sup> States are not the only ones tendering apologies either—corporate entities, non-governmental organizations, celebrities, and even religious figures, such as Pope Benedict XVI, have issued their own statements of apology.<sup>6</sup> What then are some of the political and moral dynamics of apologies and restitution? This section examines some of the current research in the apologies and reparations literature to identify key themes and conceptualizations around strategies of reconciliation, restitution, and other forms of reconstituted justice. We begin with a discussion of the apology paradox.

As one of the early researchers addressing the phenomenon of apologies, sociologist Nicholas Tavuchis highlights the paradoxical nature of an apology: ‘...an

<sup>3</sup> Andrew Rigby, *Justice and Reconciliation: After the Violence* (Boulder: Lynne Rienner Publishers 2001), p. 142.

<sup>4</sup> Ibid.

<sup>5</sup> Roy L. Brooks (ed), *When Sorry Isn’t Enough: The Controversy Over Apologies and Reparations for Human Injustice* (New York: New York University Press 1999), p. 3. Mark Gibney, Rhoda Howard-Hassman, Jean-Marc Coicaud, and Niklaus Steiner, eds., *The Age of Apology: The West Faces its Own Past* (Philadelphia: University of Pennsylvania Press 2007).

<sup>6</sup> Mark Gibney and Erik Roxstrom, ‘The Status of State Apologies,’ *Human Rights Quarterly* Vol.23 (2001), pp. 911–2.

apology, no matter how sincere or effective, does not and cannot undo what has been done. And yet, in a mysterious way and according to its own logic, this is precisely what it manages to do.’<sup>7</sup> It is the moral rather than political agency of an apology that Tavuchis is most interested in, which must go beyond a mere state exercise of ‘performative guilt.’<sup>8</sup> Furthermore, ‘...an authentic apology cannot be delegated, consigned, exacted, or assumed by the principals, no less outsiders, without totally altering its meaning and vitiating its moral force.’<sup>9</sup> The challenge then becomes to identify the conditions and requirements for generating a truly authentic apology. For Tavuchis, ‘things become much more complicated’ when one is offering an apology to ‘members of highly solidary groups and collectivities.’<sup>10</sup> One must consider the political, cultural, and social contexts of the group(s) being targeted for an apology.

Yet, while an apology may be inadequate as an indication of regret, ‘... forgiveness, while compelled by apology, may depend on it.’<sup>11</sup> Gibney and Roxstrom argue that a process of forgiveness often perpetuates the power imbalances that led to the violence in the first place, especially when the process is state-dominated: ‘The powerful state not only decides if and when an apology will be given (or whether a near apology will be provided instead), but also the manner in which all this will be done.’<sup>12</sup> This is especially the case when the state pursues a policy of affirmative rather than transformative repair.<sup>13</sup> In affirmative repair, the primary problem to be addressed is conceived of as the wrongs and not the relationships that have given those wrongs their shape and allowed them to proceed. Woolford notes that, in such repair, it is often the case that ‘...a dominant group places assimilative pressures on a less powerful group,’ thus eliminating even a semblance of justice from the reconciliation process.<sup>14</sup>

How can indigenous peoples within a settler-colonial state address these historic and contemporary power imbalances and frame a discourse that confronts colonial injustices on their own terms? One answer might be to differentiate between authentic, quasi- and non-apologies using specific criteria. In his review of the apology literature, political scientist Matt James finds that an authentic political apology tends to have eight requirements:

1. Recorded officially in writing
2. Names the wrongs in question
3. Accepts responsibility

<sup>7</sup> Nicholas Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation* (Stanford: Stanford University Press 1991), p. 5.

<sup>8</sup> Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (New York: W.W. Norton & Company 2000), p. 323.

<sup>9</sup> Tavuchis, p. 49.

<sup>10</sup> *Ibid.*

<sup>11</sup> Martha Minnow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press 1998), p. 114.

<sup>12</sup> Gibney and Roxstrom, p. 935.

<sup>13</sup> Andrew Woolford, ‘The Limits of Justice: Certainty, Affirmative Repair and Aboriginality,’ *Journal of Human Rights* Vol.3 No.4 (2004), pp. 429–30.

<sup>14</sup> *Ibid.*, p. 430.

4. States regret
5. Promise non-repetition
6. Does not demand forgiveness
7. Is not hypocritical or arbitrary
8. Undertakes—through measures of publicity, ceremony, and concrete reparation—to engage morally those in whose name the apology is made and to assure the wronged group that the apology is sincere<sup>15</sup>

These criteria will be revisited later in the paper as an important road map for pursuing strategies of restitution.

Apologies are just one possible mechanism that can promote reconciliation. Another increasingly important mechanism for addressing human rights violations is the truth and reconciliation process. Indeed, since 1975, truth commissions have become a preferred process for states to address large-scale violence and move forward collectively. Unfortunately, these commissions have not lived up to their potential for transforming inter-group relations when applied in 24 different countries around the world.<sup>16</sup> Most of the truth commissions examined by scholar Priscilla Hayner emphasized reparations, reform of the armed forces/police, and prosecution of the perpetrators responsible. While five countries (out of 24 total) did attempt to make moral compensation to the victims in the form of an apology or acknowledgment to the victims as part of the recommendations stemming from the truth commissions (Chile, El Salvador, Chad, South Africa, Guatemala), these were selectively and unsuccessfully applied. In fact, of the 21 truth commissions examined by Hayner, only three of these commissions actually had measures that were intended to advance reconciliation: Chile, El Salvador, and South Africa.<sup>17</sup> Given that so few truth commissions or apologies succeed in bringing about genuine reconciliation, it is important to step back and ask what a process of reconciliation actually entails and whether it is a useful goal for the purpose of decolonizing indigenous/state relations.

At the core of any reconciliation process is a ‘...preparedness of people to anticipate a shared future,’ which entails not only a forgiveness of the past but shared strategies for moving forward collectively to decolonize existing relationships.<sup>18</sup> Scholars have noted that regardless of which truth-seeking strategy is chosen, one must come to terms with ‘the unavoidable tensions, the lack of tidiness involved in any response to large scale evil.’<sup>19</sup> When that ‘large-scale evil’ involves the

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<sup>15</sup> Matt James, ‘Wrestling with the Past: Apologies, Quasi-Apologies, and Non-Apologies in Canada,’ in Mark Gibney, Rhoda Howard-Hassman, Jean-Marc Coicaud, and Niklaus Steiner (eds), *The Age of Apology: The West Faces its Own Past* (Tokyo: United Nations University Press 2007), p. 5.

<sup>16</sup> Over 24 truth commissions have been enacted since 1975. Based on estimates from the United States Institute of Peace’s *Truth Commissions Digital Collection*, <http://www.usip.org/library/truth.html#tc>, accessed 1 March 2006.

<sup>17</sup> Priscilla B. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge 2001), pp. 310–11.

<sup>18</sup> Rigby, p. 12.

<sup>19</sup> Wilhelm Verwoerd, ‘Toward a Response to Criticisms of the South Africa Truth and Reconciliation Commission,’ in Carol A.L. Prager and Trudy Govier (eds), *Dilemmas of Reconciliation: Cases and Concepts* (Ontario: Wilfrid Laurier University Press 2003), p. 265.

perpetration of and complicity with violence against indigenous peoples, these tensions are distinctive. For example, one important element noted by Paulette Regan is ‘unsettling the settler within.’<sup>20</sup> For Regan, in a genuine process of reconciliation ‘...a truth and reconciliation commission may be one small window of opportunity for Settlers and indigenous peoples to begin using our moral imaginations to begin the long process of transcending cycles of violence—restoring our shared history in decolonizing, transformative ways.’ What, then, makes a reconciliation process genuine as well as transformative?

For Hayner, the term ‘reconciliation’ implies ‘...rebuilding relationships today that are not haunted by the conflicts and hatreds of yesterday.’<sup>21</sup> To assess whether reconciliation is occurring, Hayner poses three questions: (1) How is the past dealt with in the public sphere? (2) What are the relationships between former opponents? (3) Is there one version of the past, or many?<sup>22</sup> Similarly, Minnow claims that ‘... restoring dignity to victims would be part of the process, but so would dealing respectfully with those who assisted or were in complicity with the violence.’<sup>23</sup> It also means striking an appropriate balance between ‘reparations as justice-making’ and ‘reparations as certainty making’ during a reconciliation process, although, in practice, the mandates of truth commissions tend to focus on one or the other.<sup>24</sup>

Although the above strategies might apply in general terms to countries in transition or recovering from intrastate warfare, it is difficult to imagine how they could address the deeper self-determination claims of indigenous nations. Kanien’-kehaka (Mohawk) scholar Taiaiake Alfred contends that there is a hidden agenda present in state reconciliation frameworks that previous discussions of truth commissions mask: ‘The logic of reconciliation as justice is clear: without massive restitution, including land, financial transfers and other forms of assistance to compensate for past harms and continuing injustices committed against our peoples, reconciliation would permanently enshrine colonial injustices and is itself a further injustice.’<sup>25</sup> As in Reverend Mxolisi Mpambani’s previously mentioned story of bicycle theft, for indigenous nations, anything short of substantive restitution is an example of ‘cheap reconciliation.’ As a part of a broader indigenous self-determination strategy, substantive (versus symbolic) restitution has to occur before any discussion of rebuilding relationships or restoring dignity takes place, which involves either homeland return and/or material/monetary recompense. Only then can indigenous peoples forge ‘...a new socio-political relationship based on the Settler state’s admission of wrongdoing and acceptance of the responsibility and obligation to engage Onkwehonwe peoples in a restitution–reconciliation peace-building process.’<sup>26</sup>

<sup>20</sup> Paulette Regan, *Unsettling the Settler Within: Canada’s Peacemaker Myth, Reconciliation and Transformative Pathways to Decolonization* (Ph.D. dissertation. University of Victoria 2006), p. 205.

<sup>21</sup> Hayner, p. 161.

<sup>22</sup> *Ibid.*, pp.161–2.

<sup>23</sup> Minnow, p. 23.

<sup>24</sup> Woolford, p. 430.

<sup>25</sup> Taiaiake Alfred, *Wasáse: Indigenous Pathways of Action and Freedom* (Ontario: Broadview Press, Ltd 2005), p. 152.

<sup>26</sup> *Ibid.*, p. 154.

Historian Elazar Barkan sees an emerging moral trend of restitution in world politics but finds that ‘Its focus is on economic damages and rarely directly addresses the loss of political freedom, personal liberty, cultural identity, or human rights.’<sup>27</sup> In his own analysis, Barkan emphasizes a legal, rights-based approach rather than homeland return or granting indigenous peoples permanent sovereignty over their natural resources. In contrast, Torpey came to a different conclusion in his global survey of restitution claims: ‘the chief aspect of the demands for the restitution of land is the economic viability of Aboriginal communities and their right to control their own resources.’<sup>28</sup> The importance of restitution is that it establishes a foundation for long-term and lasting self-determination strategies for indigenous nations. Such a strategy runs counter to Barkan’s findings, who contends that official apologies often lead to a broader consciousness of the issue and establish a semi-official acknowledgment of guilt that may lay the groundwork for more substantive remedies and gestures, symbolic, rights-oriented framing, etc. from which such further actions develop.<sup>29</sup>

The return of homeland and permanent sovereignty over natural resources are critical to any discussion of indigenous restitution and, by extension, reconciliation. In her comprehensive United Nations’ report entitled *Indigenous Peoples’ Permanent Sovereignty over Natural Resources*, Special Rapporteur Erica-Irene Daes states that ‘the right of permanent self-determination over natural resources was recognized because it was understood early on that, without it, the right of self-determination would be meaningless.’<sup>30</sup> Yet the cultural and physical homeland claims of indigenous peoples are rarely addressed by state restitution schemes, which tend to favor solutions that minimize settler-colonial territorial and material sacrifice while maximizing political/legal expediency.

How, then, do indigenous demands for justice and emancipatory self-determination apply to a reconciliation discourse? Political theorist James Tully argues that ‘the right of self-determination is, on any plausible account of its contested criteria, the right of a people to govern themselves by their own laws and exercise jurisdiction over their territories.’<sup>31</sup> In contrast, processes of colonialism are ways of disconnecting indigenous peoples from ‘...their histories, their landscapes, their languages, their social relations and their own ways of thinking, feeling and interacting with the world.’<sup>32</sup> According to Alfred and Corntassel ‘...there is a danger in allowing *colonization* to be the only story of indigenous lives. It must be recognized that colonialism is a narrative in which the Settler’s power is the

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<sup>27</sup> Barkan, p. 318.

<sup>28</sup> John Torpey (ed), *Politics and the Past: On Repairing Historical Injustices* (New York: Rowman & Littlefield Publishers, Inc. 2003), p. 15.

<sup>29</sup> Barkan.

<sup>30</sup> Erica-Irene A. Daes, *Indigenous Peoples’ Permanent Sovereignty over Natural Resources: Final Report of the Special Rapporteur, Erica-Irene A. Daes* (Commission on Human Rights. E/CN.4/Sub.2/2004/30, 13 July 2004), p. 7.

<sup>31</sup> James Tully, ‘The Struggles of Indigenous Peoples for and of Freedom,’ in Duncan Ivison, Paul Patton and Will Sanders (eds), *Political Theory and the Rights of Indigenous Peoples* (New York: Cambridge University Press 2000), p. 57.

<sup>32</sup> Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (New York: Zed Books Ltd. 1999), p. 28.

fundamental reference and assumption, inherently limiting indigenous freedom and imposing a view of the world that is but an outcome or perspective on that power.<sup>33</sup>

Modern truth commission strategies tend to be premised on the colonial narrative and engage in a ‘politics of distraction’—they shift the discourse away from restitution of indigenous homelands and resources and ground it instead in a political/legal rights-based process that plays into the affirmative repair policies of states and ultimately rewards colonial injustices.<sup>34</sup> This is clear in the cases of Peru and Guatemala, examined below, where ostensibly ground-breaking identification of deliberate state policies of genocide against indigenous communities has not only failed to translate into a rethinking of state–indigenous relations but has in some ways served as an excuse for inaction.

Countering this politics of distraction requires decolonization strategies centered on action via recovery of indigenous homelands and regeneration of cultures and community. Existing indigenous/state colonial relationships frame the state-based reconciliation discourses of state apologies and truth commissions in Canada, Australia, Guatemala, and Peru. Given this, an important question is whether the failures to bring indigenous peoples closer to meaningful restitution and reconstituted justice in these cases reflects the concept of reconciliation itself, at least as deployed in the apologies and truth commissions in question. We begin investigating this question by evaluating Canada’s 1998 apology to First Nations.

### Canada’s 1998 Statement of Reconciliation: An Authentic Apology?

Residential schools were first established in Canada during the late 1800s and resulted in the forced removal of over 90,000 indigenous children from their families and homelands. Once uprooted from their communities, indigenous children were sent to institutions that required them to unlearn their languages and cultural teachings in an effort to promote their assimilation into the dominant culture. The last residential school in Canada, which was located in Saskatchewan, did not close until 1996. That same year, the *Final Report of the Royal Commission on Aboriginal Peoples* (RCAP) called for a public investigation into the violence and abuses of residential schools. While the cultural and physical violence of residential schools was well-documented by numerous interviews and sources,<sup>35</sup> the Canadian government did not formally respond to these charges until 1998, shortly after the first 200 residential school survivors’ litigation claims were filed.<sup>36</sup>

<sup>33</sup> Taiaiake Alfred and Jeff Cornthassel, ‘Being Indigenous: Resurgences against Contemporary Colonialism,’ *Government and Opposition* Vol.9 (2005), p. 601.

<sup>34</sup> Woolford, p. 429.

<sup>35</sup> See, for example, *Report of the Royal Commission on Aboriginal Peoples*. 1996. Ottawa: Canada Communications Group, Volume 1, Chapter 10; Furniss, Elizabeth. 1992. *Victims of Benevolence: The Dark Legacy of the Williams Lake Residential School*. Vancouver: Arsenal Pulp Press; Fournier, Suzanne and Ernie Crey. 1997. *Stolen from Our Embrace: The Abduction of First Nations Children and Restoration of Aboriginal Communities*. Vancouver: Douglas and McIntyre Ltd; Law Commission of Canada. 2000. *Restoring Dignity: Responding to Child Abuse in Canadian Institutions*. Ottawa: Minister of Public Works and Government Services.

<sup>36</sup> Regan, p. 171.



In their 1998 response to the abuses of residential schools, the government of Canada rejected a truth commission strategy and focused instead on a set of policy recommendations designed to facilitate an end point to their historic and legal liabilities regarding residential school survivors. On 7 January 1998, Minister of Indian and Northern Affairs, Jane Stewart, and Member of Parliament of Regina-Wascana, Ralph Goodale, unveiled *Gathering Strength: Canada's Aboriginal Action Plan*, which was a policy-based approach intended to address Canada's culpability in the creation and administration of residential schools; the plan also earmarked \$350 million in funding to establish the Aboriginal Healing Foundation to support community-based residential school healing initiatives.

At a lunchtime ceremony held in a government meeting room in Ottawa, Jane Stewart read a short 'Statement of Reconciliation' to indigenous leaders and other government workers.<sup>37</sup> This carefully worded statement sought to close the book on the historical legacy of residential schools and '...to find ways to deal with the negative impacts that certain historical decisions continue to have in our society today.'<sup>38</sup> Using very nondescript and guarded language, the statement laid out what it considered to be historic harms to indigenous peoples while failing to account for ongoing effects of residential schools on the survivors and their families. The statement also offered an explicit apology but only to those who suffered the 'tragedy of sexual and physical abuse at residential schools'—apparently the residential school policy itself or other cultural, political, social, economic, and psychological impacts did not warrant an apology:

The Government of Canada acknowledges the role it played in the development and administration of these schools. Particularly to those individuals who experienced the tragedy of sexual and physical abuse at residential schools, and who have carried this burden believing that in some way they must be responsible, we wish to emphasize that what you experienced was not your fault and should never have happened. To those of you who suffered this tragedy at residential schools, we are deeply sorry.

Indigenous reactions to the statement were mixed, with several leaders immediately dismissing the statement as insincere. For most indigenous peoples reacting to the statement, nothing short of a full apology by the Prime Minister of Canada was adequate. Additionally, the Statement of Reconciliation did not form part of Canada's official parliamentary or legal record—it was merely posted on the Indian and Northern Affairs website.<sup>39</sup> After a careful analysis of the above-mentioned eight criteria for an authentic apology, Canada's Statement of Reconciliation was found to be a 'quasi-apology.'<sup>40</sup>

Canada's quasi-apology also failed to stave off additional litigation from residential school survivors. In seeking out a less costly and faster resolution to residential school survivor claims, the Department of Indian Affairs and Northern

<sup>37</sup> For a full text of the 1998 "Statement of Reconciliation," see the following website: [http://www.aainc.gc.ca/gs/rec\\_e.html](http://www.aainc.gc.ca/gs/rec_e.html).

<sup>38</sup> Statement of Reconciliation 1998.

<sup>39</sup> James, p. 7.

<sup>40</sup> James, p. 9.

Development (DIAND) sought to implement alternative dispute resolution (ADR) options.<sup>41</sup> Nine years later, ADR programs and other components of Canada's political/legal approaches to residential school survivors have bypassed real solutions involving restitution and indigenous self-determination. The 2005 testimony of Chief Robert Joseph (Kwagiulth Nation), representing the Indian Residential School Survivors' Society, highlights the continuing indigenous demands for restitution and justice while outlining a broader vision for decolonization:

For an apology to work, it must be understood and performed symbolically in terms of the ritual that it is. It must offer the potential for transformation of all involved. With a nationally imposed system like the residential school system, transformation cannot occur unless the key players in the ritual are involved—the apology, the Prime Minister, and the House of Commons... With respect to lump sum compensation, survivors are entitled to and want financial redress for the pain and suffering—loss of language and culture, loss of family and childhood, loss of self-esteem, addictions, depression and suicide—we've endured... By neglecting to address residential school survivors and forcing them through an onerous process like ADR, Canada accepts the risk of being accused of institutionalized racism yet again.<sup>42</sup>

Despite the eloquence and clarity of Chief Joseph and other indigenous survivors of residential schools, the demand for restitution continues to go unheeded as Canada has repeatedly favored expedient and symbolic policy solutions to address the shortcomings of ADR. However, Canada's official policy toward residential school survivors may be changing. On 8 May 2006, the Canadian parliament approved a final Indian Residential Schools Settlement Agreement, which included the establishment of a Truth and Reconciliation Commission to be established with a budget of \$60 million over 5 years. The TRC 'will be mandated to promote public education and awareness about the Indian Residential School system and its legacy, as well as provide former students, their families and communities an opportunity to share their Indian Residential School experiences in a safe and culturally appropriate environment.'<sup>43</sup> Additionally, a Settlement Agreement sets aside \$1.9 billion for survivors of residential schools—each eligible former student who applies receives \$10,000 as well as an additional \$3,000 for each year of residence beyond the first year. Other aspects of this agreement include:

- Additional compensation for claims based on sexual and physical abuse, as well as loss of language and culture
- Five-year funding for the Aboriginal Healing Foundation, totaling \$125 million
- An agreement that victims accepting compensation payments cannot sue the federal government and the churches running the schools except in cases of sexual and serious physical abuse

As the ongoing history of residential schools in Canada has been framed by a political/legal struggle for public perception and symbolic gestures, residential

<sup>41</sup> Regan, p. 172.

<sup>42</sup> Standing Committee on Aboriginal Affairs 2005, cited in Regan, p. 183.

<sup>43</sup> Indian Residential Schools Settlement Agreement 2006, p. 2.

school survivors have greeted the latest Canadian response to reconciliation with some suspicion. While these provisions have yet to be implemented, they have been criticized for limiting payments only to those residential schools students who were alive as of 30 May 2005—rather than also making payments to the families of numerous survivors who passed away before 30 May 2005.<sup>44</sup> Additionally, the established monetary payouts of \$10,000 plus \$3,000 for each additional year spent in residential school were deemed ‘unjust’ and ‘not enough to compensate for the pain’ that the survivors went through.<sup>45</sup> Finally, residential school survivors raised the issue of incomplete records of students who went missing after attending residential schools.<sup>46</sup> In sum, Canada’s efforts so far have not been extended beyond the symbolic gestures of the 1998 quasi-apology, and it remains to be seen whether the latest proposals for the establishment of a truth and reconciliation commission is a genuine attempt by Canada to transform inter-group relations.

What then can be learned from other countries in their approaches to restitution and indigenous injustices? Were there any notable differences that make the Australian response more authentic as an apology?

### **Sorry Days: Reconciliation as Symbolic Politics in Australia**

While land rights and indigenous self-determination were stressed in Australia during the 1970s and 1980s, these gave way to the language of reconciliation in the 1990s. Robert Tickner, the appointed Minister of Aboriginal Affairs from 1990–1996, outlined a comprehensive vision for reconciliation during his tenure in office:

The challenge was to devise a process that would enjoy the support of both indigenous and non-indigenous opinion leaders and would keep faith absolutely with indigenous aspirations.... I was also particularly committed to the view that the government should not at this time in the nation’s history close off options on the parameters or contents of some document of reconciliation or on the process itself. There had to be open and genuine consultation and negotiation.<sup>47</sup>

Tickner’s attempt at reconciliation, while constrained by the High Court’s decisions and the political maneuvering of the Prime Minister, intended to address some of the complexities of indigenous restitution and self-determination. As part of Tickner’s broader plan, the Council for Aboriginal Reconciliation (CAR) was formed in 1991, which was composed of 25 appointed members: 12 aboriginals, two Torres Strait Island, and 11 drawn from the ‘wider community.’<sup>48</sup> The early years of CAR were overshadowed by the High Court’s *Mabo* decision (1992), which rejected

<sup>44</sup> Marites N. Sison, ‘Former students urge fairness in settlement,’ *Anglican Journal* 1 October 2006 [accessed on 17 October 2006: <http://www.anglicanjournal.com/issues/2006/132/oct/08/article/former-students-urge-fairness-in-settlement/>].

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> Robert Tickner, *Taking a Stand: Land Rights to Reconciliation* (Allen & Unwin 2001), pp. 32–3.

<sup>48</sup> Will Sanders, ‘Journey Without End: Reconciliation Between Australia’s Indigenous and Settler Peoples,’ (Centre for Aboriginal Economic Policy Research. No. 237/2002), p. 2.

the colonial doctrine of *terra nullius* or ‘empty land’ and recognized a form of native title to the land.

By 1997, however, the Human Rights and Equal Opportunity Commission published a report on the forced relocation of indigenous children away from their homes and territories between 1910s and 1970s—the report entitled *Bringing Them Home* was widely read and directed Australia’s focus to the tragedies of the ‘stolen generation.’<sup>49</sup> Similar to the abuses and assimilative aims of residential schools in Canada, over 100,000 children had been removed from their homes and forced into either adoption or orphanages. As part of its recommendations, the commission had suggested implementing an annual day of national apology as a form of restitution but the general public was evenly divided on this issue—almost half supported the commission’s recommendations while the larger half opposed formal apology.<sup>50</sup> Prime Minister Howard utilized this division to conveniently frame the discourse on apology and reconciliation as historic ‘blemishes.’

CAR organized a convention in 1997 to address the implications of the *Bringing Them Home* report and Prime Minister John Howard was invited to speak. Having already stated that he would not offer either an apology or financial compensation to those subjected to Australia’s forced relocation policies, reaction to Howard at the convention was hostile at best.<sup>51</sup> By 1998, Howard changed his political position and offered a ‘personal apology’ instead of an official one to those who suffered the abuses of Australia’s stolen generations policies. Howard elaborated on his position in a 1997 BBC interview:

There have obviously been blemishes in Australia’s history and many of the things that were done to the indigenous people constitute one of the biggest blemishes in our history and I have not denied that but you have got to look at the totality of what we have done, particularly over the last 30 years, and there is a determination in Australia to focus on the present and the future rather than some kind of agonized debate about the past. Things were done in the past at the time in the belief that they were right, that they were of benefit to the people to whom those policies were directed and you cannot superimpose on the actions of the past the mores and the attitudes and the principles of current generations.<sup>52</sup>

Howard’s attempt to confine Australia’s genocidal policies solely to those of ‘the past’ illustrates the dangers of promoting a discourse on reconciliation without having first achieved some form of restitution. Any reparations or land title discussions were now off the table as an official apology would expose the current ‘blemishes’ in Australia’s ongoing colonial history. Despite not having offered an official apology, Howard was now ready to embrace the symbolic language of reconciliation and policies of affirmative repair. He began by appointing a new Minister of Reconciliation in 1998. As a response to the Prime Minister’s failure to apologize, a National Sorry Day was held in May 1998 and prompted several

<sup>49</sup> Barkan, pp. 245–6.

<sup>50</sup> *Ibid.*, p. 247.

<sup>51</sup> Sanders, pp. 3–4.

<sup>52</sup> BBC Television 1997.

apologies from the community service sector along with the signing of Sorry books.<sup>53</sup>

Ten months later, Howard introduced a 'motion of reconciliation' to the Commonwealth Parliament, which offered 'regret' to indigenous peoples for harmful Australian policies of the past but no authentic apology:

e) Acknowledges that the mistreatment of many indigenous Australians over a significant period represent the most blemished chapter in our international history;

f) Expresses deep and sincere regret that indigenous Australians suffered injustices under the practices of past generations, and for the hurt and trauma that many indigenous peoples continue to feel as a consequence of those practices.<sup>54</sup>

Clearly, this was not a complete apology, and the language of restitution and self-determination was purposely omitted from this document.<sup>55</sup> On 22 May 2000, Howard announced that a Reconciliation Square would be built as a national monument in the Parliamentary Triangle in Canberra, asserting that it would 'place the reconciliation process physically and symbolically at the heart of Australia's democratic life and institutions.'<sup>56</sup> At this point, Howard's empty gestures of reconciliation had overshadowed the substantive work of CAR, which issued a final report in December 2000.

The CAR's report, entitled *Reconciliation: Australia's Challenge*, stressed that reconciliation was an ongoing process and put forward new national strategies that warranted restitution and renewed treaty making. In response to the report, Prime Minister Howard noted that his government would consider its proposals but essentially dismissed any notion of offering an apology or treaty in keeping with his previously stated positions.<sup>57</sup> Howard also took the opportunity to promote the construction of his reconciliation monument, which was now to be known as Reconciliation Place rather than Reconciliation Square. Clearly, in the struggles over the politics of perception, the injustices of history were being memorialized on Australian government terms rather than on indigenous terms. Consequently, CAR's final report largely disappeared from the public discourse and was no longer considered a viable means for achieving a meaningful discourse on reconciliation.

Despite all of the language of regret and the institutionalization of a National Sorry Day, the actions of Prime Minister Howard were a clear example of a non-apology, using James' eight previously mentioned criteria. It also highlighted how politically charged terms like reconciliation can easily become co-opted by government officials, who diverted the discourse away from the substantive issues of homeland return and restitution.

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<sup>53</sup> Barkan, p. 247.

<sup>54</sup> Quoted in Sanders, p. 5.

<sup>55</sup> Sanders, p. 7.

<sup>56</sup> Quoted in Sanders, p. 9.

<sup>57</sup> Sanders, p. 11.

When Prime Minister Howard was defeated by the Labor Party's Kevin Rudd in November 2007 elections, some heralded it as "a new partnership on closing the gap" (i.e. life expectancy, education, economic opportunity) between indigenous and non-indigenous Australians. In his first official act as Prime Minister, Rudd offered a four-minute apology to aboriginals before Parliament on February 13, 2008. Rudd's eloquent call for turning a "new page in Australia's history by righting the wrongs of the past and so moving forward with confidence to the future" meets at least six of James' eight requirements for an authentic apology, including promises of non-repetition and accepting responsibility for "past mistreatment". However, while Rudd's apology was widely praised for its sincerity, it was criticized by some indigenous leaders for separating the act of apologizing from any concrete discussions of restitution or reparation for indigenous communities. Linking this historic apology to a longer-term process of decolonization and indigenous self-determination would further distinguish it from the 'cheap reconciliation' policies of the past and initiate a genuine process of reconstitutive justice.

In both Canada and Australia, apologies that were meant to serve as basic building blocks of reconciliation with indigenous peoples ultimately failed to succeed even as apologies, let alone as tools of reconciliation. In Canada, concern over the possibility of undermining the state's legal position caused officials to stop short of a full apology in their acknowledgement of the state's implication in the abuse of indigenous human rights. In Australia, attempts by a civil society movement to compensate for state officials' unwillingness to acknowledge state responsibility for injustices suffered by indigenous peoples failed to advance the project of reconciliation and may even have impeded it by fuelling a popular backlash. Prime Minister Rudd's 2008 apology, while offering a new opening for indigenous self-determination, has thus far de-linked the act of apologizing from any possibility of restitution or reparation. In each of these cases, the premium that state officials placed on maintaining absolute political and legal authority over indigenous peoples made it impossible for them to offer genuine apologies and so made it impossible for them to initiate a process of genuine reconciliation.

In fact, the conception of what reconciliation as initiated by official apologies would look like seems, in both cases, to have been incompatible with at least three of James's criteria for a genuine apology: accepting responsibility, not demanding forgiveness, and undertaking to engage morally with the wronged group. In both Canada and Australia, the apologies were supposed to initiate reconciliation by revisiting a past history of injustice. In this, the apology itself was treated as sufficient to discharge state officials' responsibilities and provoke a response of forgiveness by the wronged group. Given the shortcomings of apologies in Canada and Australia, what potential do truth commissions hold for promoting genuine reconciliation and making strides toward improving inter-group relations? We now proceed to examine case studies of truth commissions as they were implemented in Peru and Guatemala.

### **Truth Commissions as Tools of Neoliberalism: Peru and Guatemala**

Because of the extreme circumstances in which they are convened, truth commissions are not usually susceptible to the same politics of insincerity often

undertaken by state actors regarding what reconciliation entails as evidenced by the Canadian and Australian apologies. Truth commissions are often premised on the assumption that offices of the state have been deeply implicated in wrongdoing and that victims will not and should not forgive those who have wronged them. This more realistic view of violence and injustice might seem to offer a more promising path toward reconciliation. However, while truth commissions tend to adopt a more realistic understanding of the state's involvement in perpetrating injustice and of what may reasonably be expected of those against whom violence and injustice has been perpetrated, they tend to focus on reconciling perpetrators and victims as individual citizens within the state. In this, they place an in-principle limit on the extent to which the ideal of integration with national institutions may itself be implicated in violence and injustice, and, consequently, they place an in-principle limit on the potential for decolonization of relations with indigenous peoples. This was the case in both Peru and Guatemala, where the truth commissions' mandates to facilitate national unity compromised the potential of their analyses and final reports for indigenous peoples.

The cases of Peru and Guatemala differ in several respects. In Peru, gross violations of human rights were split between guerillas (46%), agents of the state (30%) and other groups (24%), whereas in Guatemala, 93% of violations were committed by agents of the state.<sup>58</sup> In Guatemala, the guerilla war followed a US-backed coup, the perpetrators of which used a scorched earth policy to consolidate and advance their long-term political goals.<sup>59</sup> In Peru, gross human rights violations were set off by a non-governing party, Sendero Luminoso (the Shining Path), whose increasing levels of violence against all those perceived as competitors to its doctrines was met by equally widespread and intense violence by the armed forces.<sup>60</sup> In Peru, the truth and reconciliation commission was established as part of a reconstruction of democratic institutions after the collapse of an autocratic regime; in Guatemala, the truth and reconciliation commission was established as part of a negotiated withdrawal from power of military forces.

In both cases, however, indigenous peoples were by far the most frequent targets of violence, and indigenous communities experienced a greater degree of devastation than did other communities. In Peru, almost 75% of the deaths registered by the Commission were persons from indigenous communities; in Guatemala, the figure is 83%.<sup>61</sup> This overrepresentation of indigenous persons was not accidental: In both Peru and Guatemala, indigenous communities were repeatedly identified as potential threats.<sup>62</sup>

In particular, in both cases, indigenous communities and leaders were targeted because of worries about what their indigeneity might lead to in terms of self-determination claims and opposition to state-favored modernization programs. These

<sup>58</sup> CVR 2003: Anexo 2, 17; CEH 2000: Conclusions, para. 15.

<sup>59</sup> Jonas 1991; CEH 2000: Conclusions, para. 24–25.

<sup>60</sup> Deborah Poole and Gerardo Rénique, 'Terror and the Privatized State: A Peruvian Parable', *Radical History Review* Vol.85 (2003), p. 153.

<sup>61</sup> Shifter 2004; CEH 2000: Conclusions, para. 1.

<sup>62</sup> Jim Handy, 'Reimagining Guatemala: Reconciliation and the Indigenous Accords' in Carol A.L. Prager and Trudy Govier (eds), *Dilemmas of Reconciliation: Cases and Concepts* (Ontario: Wilfrid Laurier University Press 2003), pp. 281–85; Poole and Rénique, p. 153.

concerns were in part motivated by racialized perceptions of indigenous communities as “backward” and in need of modernization. However, they were also motivated by the fact that indigenous communities were sites of political activity and organization that might compete with national models and institutions of citizenship.

### Peru’s Truth Commission

The central mandate of the truth commission in Peru was ‘clarifying the process, facts, and responsibilities of the terrorist violence and human rights violations produced from May 1980 to November 2000, whether imputable to terrorist organizations or State agents, as well as proposed initiatives destined to affirm peace and harmony amongst Peruvians.’<sup>63</sup> Another unique feature of the Comisión de la Verdad y la Reconciliación (CVR) was that the Peruvian military and other branches of government would not receive amnesty and were to be investigated fully by human rights groups. However, the overarching goal of restoring peace and harmony among Peruvians as the truth commission’s central mandate emphasizes the restoration of individual citizenship rights over larger issues of indigenous restitution and self-determination. This mandate reflects a state-centered conception of what is required for peace and harmony. In particular, the mandate reflects an assumption that successful political relations are not possible in the absence of centralized, exclusive control over decision-making, so that protecting the state’s claims to exercise political authority must be a priority in national politics, whatever our other goals.

Overall, the CVR addressed grievances in the absence of a formal apology, and, by framing the target of the investigation as a general phenomenon, visited upon Peruvians as citizens, it de-emphasized the extent to which human rights abuses targeted specific groups, especially indigenous peoples. For example, the Commission identified patterns in who was targeted for violence by looking at the distribution of victims by geography, by relationship to agriculture, by primary language spoken, and by education level.<sup>64</sup> When taken together, these distributions point to indigenous communities as the primary targets of violence for both non-state and state actors. The truth commission’s emphasis on socio-economic indicators obscured this. The CVR described the data as showing poverty and social marginalization to be important factors, stating in its final report that the ‘*peasant* (campesina) population was the principal victim of the violence.’<sup>65</sup> This interpretation characterized the victims as individual citizens who happened to speak Quechua and live in peasant villages rather than as individuals who were members of indigenous communities, depoliticizing the victims’ indigeneity and so excluding any meaningful discussion of the role that their group membership and rights might have played in decisions to target them.

The CVR reported that political violence caused 69,280 deaths between 1980 and 2000. Of these, 75% were Quechuan or Asháninka language speakers.<sup>66</sup> The

<sup>63</sup> Eduardo González Cueva, ‘The Contribution of The Peruvian Truth and Reconciliation Commissions to Prosecutions,’ *Criminal Law Forum* 2004 Vol.15, p. 58.

<sup>64</sup> CVR 2003: Capítulo 3, pp. 157–162.

<sup>65</sup> CVR General Conclusions 2003, emphasis added.

<sup>66</sup> CVR 2003: Anexo 2, p. 17.



majority of these deaths (70%) were caused by non-state actors; 30% of the deaths were caused by agents of the state. The biggest disparity in the involvement of state and non-state actors in perpetrating violence occurred between 1987 and 1993; during that time, non-state actors were responsible for almost double of the number of deaths as agents of the state. Among non-state actors, the group responsible for the greatest number of deaths was the Sendero Luminoso or Shining Path. Members of the Shining Path systematically targeted all sites of political and social mobilization that they perceived to be potential competitors, so that union leaders, neighborhood organizations, and especially villages in rural areas were frequent targets of violence and intimidation.

In the 1990s, President Alberto Fujimori pursued (among other strategies) a policy of developing and expanding armed self-defense committees in the countryside.<sup>67</sup> The empowerment of these committees was simultaneous with a weakening of local institutions through a revision of land laws and centralization of control in the President's office.<sup>68</sup> Indigenous communities were thus doubly affected by the violence of the period: first, by the violence directed against them as primary targets of the Shining Path and then by government manipulation of their local social and political structures as tools in the suppression of guerilla activity. Moreover, that these communities were for the most part indigenous peoples was not accidental either to their being targeted by members of the Shining Path or to the manipulation of their local relations and structures. In effect, the war between the Shining Path and the Peruvian state was a war between alternative visions of modernization and neoliberal reforms: Maoist versus first liberal and then neo-liberal visions of what must be done to turn Peru into a modern state. In none of these visions were indigenous communities to be left intact. The leadership of the Shining Path was most explicit about this: Indigenous communities must be eliminated as potential competitors for the loyalty of rural populations.<sup>69</sup> For the Fujimori regime, the relationships created by indigenous communities were a potential resource for state projects, but to mine that resource's potential, the internal structures of such communities must be transformed so as to be more susceptible to state control.<sup>70</sup> For the Belaúnde and García governments that preceded Fujimori, indigenous communities were vestiges of an outdated economic and social system that successful modernization would gradually supplant.<sup>71</sup> This last vision, although perhaps gentler than the Maoist and neoliberal visions in its aspirations, is continuous with them in viewing continued attachment to and vibrancy of indigenous communities as an impediment to a necessary modernization of Peruvian

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<sup>67</sup> Enrique Obando, 'Civil-Military Relations in Peru, 1980–1996: How to Control and Co-Opt the Military (and the Consequences of Doing So)', in S. Stern (ed), *Shining and Other Paths: War and Society in Peru, 1980–1995* (Duke University Press: Durham, NC 1998).

<sup>68</sup> Finn Stepputat, 'Marching for Progress: Rituals of Citizenship, State and Belonging in a High Andes District,' *Bulletin of Latin American Research* Vol.21 No.2, (2004), p. 257.

<sup>69</sup> Poole and Rénique, pp. 154–156.

<sup>70</sup> John Crabtree, 'The Collapse of *Fujimorismo*: Authoritarianism and its Limits,' *Bulletin of Latin American Research* Vol.20 No.3 (2001), pp. 296–7; Stepputat, pp. 256–7.

<sup>71</sup> Stepputat, pp. 255–6.

institutions and society. Moreover, viewing indigenous peoples as fundamentally threatened by the government's policies for neoliberalism caused members of the armed forces to treat indigenous communities as natural allies of the Shining Path in the early stages of the conflict and so target them for repression.<sup>72</sup> The ideological link between neoliberalism and the disappearance of indigenous communities was thus deeply implicated in the violence directed toward those communities from all directions.

Although the truth commission documented the systematic targeting of rural, Quechuan, and Asháninka communities in the perpetration of violence, its documentation of that violence and recommendations for redress focused on individual cases and experiences. For example, the CVR's efforts to identify and punish the human rights offenders of 1980–2000 overshadowed all other aspects of its mandate. Consistent among the testimonies of victims, which were held as public hearings beginning in 2002, criminal justice and punishment of human rights violators were considered the most important components of the CVR process before other forms of reparation could be requested.<sup>73</sup> In general, public opinion also mirrored the demands for criminal justice first and restitution later during the implementation of the CVR. In a public opinion poll taken in Lima, the public ranked their preferences for CVR outcomes:

1. Punishing the criminals, 60.1%
2. Anti-poverty programs, 44.6%
3. Reparations for victims, 41.5%
4. Human rights education, 38.6%<sup>74</sup>

This emphasis on justice for *individuals* was prioritized to the exclusion of questions about justice for indigenous *communities*. Although indigenous communities had been, in effect, a theater of operations within which both sides deployed a series of evolving strategies and tactics, commissioners paid very little attention to documenting this aspect of the violence.

The CVR did note 'the seriousness of ethno-cultural inequalities that still prevail in the country. According to the analysis of the testimonies received, 75% of the victims who died in the internal armed conflict spoke Quechua or other native languages as their mother tongue.'<sup>75</sup> However, the reparation measures recommended did not address the need to strengthen indigenous governance and institutions nor did it address the attitudes toward indigenous communities that caused both the Shining Path and the army to focus on their leadership and internal structures. Moreover, although the CVR report succeeded in uncovering the need for indigenous restitution, the adoption of reparation measures is still a pending issue and has yet to be prioritized on the agenda of indigenous President Alejandro Toledo. Overall, the focus was on criminal prosecution of the offenders and restoration of individual citizenship rights rather than recognizing communal grievances and a restoring communal independence.

<sup>72</sup> Obando; Poole and Rénique, p. 153.

<sup>73</sup> González Cueva, p. 62.

<sup>74</sup> Ibid.

<sup>75</sup> CVR General Conclusions 2003.

## Clarifying History in Guatemala

In Guatemala, the Commission for Historical Clarification (CHC) was established as part of the Oslo peace agreement between the army and guerilla groups in 1994. It began its work in 1997 and issued its Final Report in 1999. The Commission's operating rules were such that it could not name individual perpetrators and was not permitted to share the information it gathered with criminal prosecutors or the public. Although the Commission's findings initially seemed to have promise for generating criminal investigations, few trials have been attempted, and those that have proceeded have been accompanied by harassment and death threats for those involved.<sup>76</sup>

The primary value of the Commission's report has been as a public record of what happened and a source of information about massacres, gravesites, and abusive practices. As a public record, the report was distinguished from those of other truth commissions in the region by two features. First, it deviated from other Commissions in examining systemic causes, including the institutionalized racism that allowed members of the armed forces to target indigenous persons and communities for especially brutal treatment.<sup>77</sup> Second, it used the term 'genocide' to describe the violence visited upon Mayan communities and explicitly made the case for the appropriateness of such a description.<sup>78</sup>

In theory, the Commission's discussion of state building, institutionalized racism, and the genocidal nature of the violence against Mayan communities marked a break in public discourse with exclusionary models of citizenship and opened the door to prosecution of politicians and members of the armed forces as the amnesty accords specifically excluded acts of genocide. In practice, there has been vehement opposition to the 'new national project' proposed in the Accord concerning the identity and rights of indigenous peoples, and former military officers who were intimately involved in the planning and execution of the violence continue to participate in national politics.<sup>79</sup>

What explains this failure to realize the promise of the Commission's final report, especially in relation to the rethinking of Guatemalan state building? Much of the explanation lies in the governing elite's lack of support for the Commission's findings. At the time of the report's presentation the President refused to receive the document himself, sending a low-ranking official to the stage in his place; now, 6 years later, virtually none of its recommendations have been adopted.<sup>80</sup> However, another important part of the explanation is the Commission's own treatment of the issue, in particular, the way in which its mandate to promote national unity precluded an

<sup>76</sup> Jonathan D. Tepperman, 'Truth and Consequences,' *Foreign Affairs* Vol.81 No.2 (2002); Susan Kemp, 'The Inter-Relationship Between The Guatemalan Commission For Historical Clarification And The Search For Justice In National Courts,' *Criminal Law Forum* Vol.15 (2004), pp. 67–103.

<sup>77</sup> Greg Grandin, 'The Instruction of Great Catastrophe: Truth Commissions, National History, and State Formation in Argentina, Chile, and Guatemala,' *The American Historical Review* Vol.110 No.1 (2005), pp. 46–67.

<sup>78</sup> CEH 2000: Conclusions pp. 31–32, pp. 84–88.

<sup>79</sup> Handy.

<sup>80</sup> Tepperman; Handy; Kemp; Grandin.

examination of how the very ideal of national unity, even understood multi- or pluriculturally, may make the persistence of Mayan communities a problem to be solved.

The scorched earth policy pursued with respect to Mayan communities was, at its heart, an exceptionally ruthless and brutal attempt to secure the conditions that Guatemala's elite had since the nineteenth century taken to be an essential element of political modernization: national unity, understood as the identification of all segments of the population with a single, European-inspired, ideal.<sup>81</sup> Racialized conceptions of indigenous peoples as pre-modern and an ideology of 'capitalist fundamentalism' that cast communism as a dangerous infection provided a psychological distance from those to be murdered and a sense of exceptional moral circumstances that contributed to the brutality with which the project of eliminating indigenous communities was pursued. But it was the ruthlessness and brutality with which the project was undertaken and not the project itself that distinguished state-indigenous relations in the 1980s and 1990s. The ruthlessness and brutality of the 1980s and 1990s matter: They explain what made the governments of that era monstrous and not only unjust. However, the post-war continuity with prior conceptions of indigenous peoples, as evidenced during the truth and reconciliation process, is crucial to understanding the institutional intractability of state violence directed at indigenous persons and the critical role indigenous decolonization efforts might play in this discussion.

The Commission recognized this continuity between the army's scorched earth policy with respect to Mayan communities and the traditional belief of Guatemalan political elites that political modernization was premised on the disappearance of Mayan identity. The decision to eliminate physically Mayan communities as such was a decision to use extreme and brutal tactics in the pursuit of a long-standing goal of Guatemalan nationalism. But for the Commission, the mistake made was not adopting nationalism as a goal but rather adopting a mistaken view of what nationalism requires. Rather than explicitly recognize Mayan nationhood and identity, agents of the state focused their efforts on promoting state ideals of national unity and citizenship. In place of this problematic, unitarian model of national unity, the Commission proposed an alternative, pluricultural model. Within the alternative model, Mayan identity as such need not be problematic, so long as it is incorporated into the state on terms that make being Mayan compatible with democratic constitutionalism.

It is true that an emphasis on unity as uniformity was an important element in the reasoning that made it appear that the destruction of Mayan communities was necessary for the long-term success of the Guatemalan polity. But so too was an emphasis on unity as vertical integration. Mayan communities were perceived to be potential threats to the Guatemalan state in part because their identification as Mayan set them apart from other Guatemalans but also, and perhaps more importantly, because it served as an independent basis for political action. The attachment of Mayans to rural communities left Mayan individuals at best partially integrated into the national political structure and so, at least, partially available for other forms or bases of political organization. Under conditions of civil war, especially a civil war in which the opposition's ideology was perceived to be more congruent with Mayan culture, this availability for mobilization

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<sup>81</sup> Handy.

made the mere fact of a Mayan community's existence threatening. For so long as the Mayan community continued to exist, indigenous individuals who retained attachments to it, even if they no longer lived on site, would remain partially available for forms of political organization other than the state's.

The Commission's diagnosis of the problem in traditional conceptions of nationalism did not contest the ideal of national unity itself; what it contested was the form that national unity was said to have to take: monoculturalism. In particular, the commission did not contest the assumption that there must be national unity in the form of vertical integration for the Guatemalan polity to function. For example, although the commission recommended recognizing communities as victims and recommended establishing reparations for victims, the terms on which reparations are to be made available to individuals and the terms on which reparations are to be made available to communities were distinguished. In particular, it was recommended that reparations to victimized communities should not distinguish among those covered by a community's geographic area and should operate to the benefit of all of an area's population. Otherwise, it was argued that communal reparations had the potential to be divisive and to perpetuate old antagonisms.

Given these features, the Commission's proposed alternative to uniculturalism and pluriculturalism not only fails to contest traditional nationalists' insistence on vertical integration but actively to reproduce that insistence. The difference in pluriculturalism is not that it permits indigenous persons to remain only partially integrated with state institutions but that the manner of integration may be communal, as well as individuated. National unity in this vision need not require individuals integrate into state institutions only as individuals to the exclusion of their communal identities. Instead, both individuals and their communities are integrated. Ultimately, however, state-based political organization is still exhaustive of individuals' political possibilities; the difference is that individuals are now permitted to have two identities through which to engage those possibilities<sup>82</sup> (interestingly, this is the model that the Peruvian state ultimately offered to Mayan communities in contrast to the Shining Path guerrillas).

To the extent that Mayan communities' failure fully to integrate into national institutions was part of what led to their being deemed politically unsafe, the Commission's proposed alternative fails to acknowledge the full range of factors that contributed to the genocide. More disturbingly, its acceptance in its own mandate of national unity as an important goal may reproduce some of the elements of the reasoning by which Mayan communities became targets of violence.

## Conclusions

Having examined apologies in Canada and Australia, and truth commissions in Peru and Guatemala, we can again ask: Are apologies and truth commissions effective

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<sup>82</sup> Charles Hale, 'Neoliberal Multiculturalism: The Remaking of Cultural Rights and Racial Dominance in Central America,' *PoLAR* Vol.28 No.1 (2005), pp. 10–28; Charles Hale, 'Does Multiculturalism Menace? Governance, Cultural Rights and the Politics of Identity in Guatemala,' *Journal of Latin American Studies* Vol.34 No.3 (2002), pp. 485–524.

mechanisms to address past wrongs and reinterpret historical and contemporary injustices? In particular, are state-oriented mechanisms like apologies and truth commissions appropriate places to seek reconstituted forms of justice?

It is generally recognized that truth commissions involve a trade-off between justice for victims and national healing.<sup>83</sup> What we have uncovered in this analysis are some of the ways that this trade-off may frame the discourses of truth and of justice so as to de-emphasize restitution to and for indigenous communities and emphasize forms of repair that are conducive to state building. In particular, we have noted how the very conception of national healing may orient reconciliation processes toward symbolism and individual reparations and away from material restitution and reparations to communities. Based on our survey of four countries, policies that favor state agendas such as affirmative repair<sup>84</sup> rather than sustainable restitution and justice-building initiatives appear to dominate the discourse of truth commissions and apologies.

In Canada and Australia, official apologies/acknowledgments did not succeed in transforming existing colonial relationships with indigenous peoples. Rather, the experiences of these two countries illustrate the dangers of co-opting the language of reconciliation without first establishing meaningful forms of restitution and group compensation. The incremental, policy-oriented forms of justice practiced in Canada and Australia first and foremost sought to limit governmental liability and political culpability rather than truly engaging in a dialogue geared toward transforming indigenous-state relations. Analyzing these events from a vantage point of indigenous self-determination and decolonization exposes the 'politics of distraction' strategies practiced by policy elites in framing the discourse of reconciliation. Additionally, utilizing a framework, such as the eight requirements of an authentic political apology as identified by James<sup>85</sup>, yields insights into state policymakers' actions and words and whether their apologies signal a genuine, comprehensive shift toward reconciliation or merely convey the symbolic gestures of the status quo and affirmative repair. For example, it makes clear why, as Regan notes, the Canadian apology was doubly inadequate, failing to meet indigenous criteria for apology and restitution, as well as being a quasi-apology in James's sense.<sup>86</sup> Given the centrality of state priorities, it is virtually inevitable that both apologies and truth commissions will fall short both in their own terms and from indigenous perspectives even when sincere.

In Peru and Guatemala, truth and reconciliation commissions were not enough to bring restitution or remedial justice for those wronged nor did they mark new beginnings in inter-group relations. Instead of new beginnings, the commissions have offered new ways to avoid a full accounting for violence against indigenous peoples. In fact, the case studies examined above suggest that the trade-off between justice and national healing poses distinctive problems when the victims include communities as well as individuals. For example, when communities as such have been targeted by political violence, a truth commission's mandate to record events as a means to national healing and reconciliation may result in silence about key

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<sup>83</sup> Minnow.

<sup>84</sup> Woolford.

<sup>85</sup> James.

<sup>86</sup> Regan, p. 32.

elements of the structure and motivation of violence. Because commissions in Peru and Guatemala failed to interrogate the very ideals of neoliberalism and national unity, they reproduced part of the logic by which communities as such became targets in the first place and ignored the importance of indigenous political autonomy as a means of addressing the conditions that facilitated the systematic use of terror as a political tactic.

Host state concerns of promoting neoliberal reforms and national unity often displace genuine attempts at indigenous restitution and applying justice to inter-group relations. In Canada and Australia, this has manifested itself in concerns about the legal and economic ramifications of acknowledging responsibility for massive violation of indigenous peoples' human rights. In Peru, commissioners emphasized non-state actors and targeted communities' rural and agrarian way of life, and obscured the fact that these rural and agrarian communities were also indigenous, and the violence directed against them reflected a war between neoliberal and Maoist models of modernization.

The shortcomings of these four case studies reflect profound defects in mechanisms like apologies and truth and reconciliation commissions as designed and implemented by state institutions. Genuine movement toward recognizing indigenous human rights and self-determination requires action by governments that systematically examines the past, initiates a process of homeland restitution, and holds institutions, as well as individuals accountable. In all four instances, the denial of indigenous self-determination undermined the potential for this and so for reconstituted justice with indigenous peoples that the mechanism otherwise might have offered. For example, only one of the above-mentioned four countries (Guatemala) utilized strategies that integrated *both* apologies and truth and reconciliation commissions.<sup>87</sup> Neither an apology alone nor a truth commission alone can accomplish genuine reconciliation and even when they are combined genuine reconciliation may be hindered by a refusal to go beyond ideals of national unity and modernization. In isolation, each of the processes allow governments to continue dictating the overall goals as well as the terms of redress. Ideals of national unity and modernization similarly allow state priorities to dominate.

As our analysis of Canada, Australia, Peru, and Guatemala illustrates, truth commissions and government apologies tend to construct indigenous identities in terms of individual, state citizens, or as part of a larger fabric of 'pluricultural' society rather than indigenous nations within the state. As Regan points out, 'Settlers must confront our own duplicity and hypocrisy—our denial and guilt about the past that is not really past, but continues to define our relationship with indigenous peoples today.'<sup>88</sup> An important element of that confrontation is assuming the right of

<sup>87</sup> Canada recently agreed to create a truth and reconciliation commission to answer for the abuses of residential schools. On 30 May 2005, Assembly of First Nations' National Chief Phil Fontaine signed a political agreement with the government of Canada to address the harms caused by Canadian residential school policies and their lasting impacts on Indigenous communities. According to the agreement, a process of reconciliation will be established that includes monetary payments to former residential school students as well as the development of "truth and reconciliation processes, commemoration and healing elements." "Political Agreement, May 30, 2005." Indian Residential Schools Resolution Canada. [http://www.irsr-rqpi.gc.ca/english/news\\_30\\_05\\_05b.html](http://www.irsr-rqpi.gc.ca/english/news_30_05_05b.html), accessed 31 July 2005.

<sup>88</sup> Regan, p. 3.

indigenous peoples to self-determination and preceding any discussions of reconciliation with genuine acts of restitution to establish a clear break from the continuation of a state-centered discourse. Promoting awareness about indigenous histories, ongoing relationship to their homelands, and self-determination strategies should be part of a larger insurgent education movement that counters state-based strategies of promoting unity, prioritizing citizenship and implementing 'cheap reconciliation' strategies.

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