

# “Reconciliation after Genocide? Reinterpreting the UNGC Through Indian Residential Schools”<sup>1</sup>

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“When a child was forcibly removed that child’s entire community lost, often permanently, its chance to perpetuate itself in that child. The Inquiry has concluded that this was a primary objective of forcible removals and is the reason they amount to genocide.”

*Final Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, 1995*

“But the reality is that to take children away and to place them with another group in society for the purpose of racial indoctrination was -- and is -- an act of genocide and it occurs all around the world.”

Murray Sinclair in February, 2012<sup>3</sup>

“I don’t see why a German who eats a piece of bread should torment himself with the idea that the soil which produced this bread has been won by the sword. When we eat wheat from Canada, we don’t think about the despoiled Indians.”

Adolf Hitler discussing German expansionism in *Table Talk*<sup>4</sup>

This paper is designed to be additive – that is, it builds on work I am doing on the genocidal implications of the Indian Residential School (IRS) system. My current work articulates the view that the federal government, in connection with the four mainstream churches involved in the creation and perpetuation of the IRS system, did commit genocide as defined under the United Nations Genocide Convention of 1948. Minimally, the case can be made that the IRS system was a violation of Article 2 (e) which prohibits the forcible transfer of children from one group to another. This constitutes a legal ground floor from

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<sup>2</sup> A brief note on my own cultural background in order to situate this article: I have a Trinidad East Indian mother and a Nova Scotia Scottish father raised in India and I have a New Zealand wife and a son born there too. I was raised in Regina Saskatchewan but was born in the UK where I later went to do my PhD. I have taught in France and NZ and now teach in Ontario in a city full of my Caribbean relations.

<sup>3</sup> CTV News 2012.

<sup>4</sup> Hitler 2000 75.

which others might build a more elaborated case for further violations of the UNGC. Other aspects of the UNGC may also have been violated as well, but this falls beyond the scope of this paper.

The first part of this paper sets out to define genocide and to apply that definition to the IRS system. This section however is brief, with the bulk of the paper given over to more substantive matters covered in two other sections: what are we to do now, in Canada, if we recognize that the IRS system was genocidal? What sort of restitution and reconciliation needs to occur between Aboriginal and Shognosh<sup>5</sup> (settler) peoples, and how much will this change Canada as it is now politically constituted? I offer a series of conclusions here for discussion, based in part on a comparative assessment of how restitution and reconciliation have worked in other contexts. I conclude with a brief discussion of what I call “syncretic democracy” and how it might look in action.

### **Section 1: Indian Residential School History**

Established under the auspices of the British North America Act (1867), the federal creation of the IRS system was strongly influenced by the US example, the Carlisle school in particular. Aboriginal education was first conceived in somewhat benignly paternalistic terms: helping Aboriginal people to better adapt to their inevitable submergence in a European-dominated country. Many treaties contained provisions for government funded on-reserve schools. The early focus on benefits to Aboriginal people and the balance between western and Aboriginal worldviews and languages soon gave way to a far more coercive system which entailed forced assimilation and cultural destruction. Residential schools were located off-reserve and children were separated from their families.

The federal government worked closely with mainline Canadian churches, who in many cases initiated the planning and construction of the schools, gathered suitable pupils, and then petitioned the government for funding. The Catholic Church ran approximately 60 percent of the schools, the Anglicans about 30 percent, with the Presbyterian, Methodist, and United Churches running most of the remainder. Until the 1950s, attendance for children aged five to sixteen was compulsory.<sup>6</sup>

At least 150,000 children passed through 125 schools.<sup>7</sup> Of these there are approximately 80,000 survivors alive today. As deputy minister of Indian Affairs Duncan Campbell Scott

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<sup>5</sup> Writing in Ontario near Six Nations territory I use the term “Shognosh” to refer to Canada’s European settler populations. NB this Anishinaabeg term can also refer to non-white people like me who are assimilated into European ways of thinking and acting. This is consistent with the use of “Pakeha” in New Zealand to designate those of European ancestry and others who are not Maori. Since it is reasonable in political science to refer to Aboriginal people we must in the interests of fairness be willing to categorise ourselves using Anishinaabeg, Cree, Haida and other languages of this country. The use of Shognosh throughout is in my view a crucial signifier in the interests of academic rigour.

<sup>6</sup> Milloy 1996; Miller 2004 84.

<sup>7</sup> Barkan 2003 130-31.

argued in 1920, in an oft quoted passage which is seen to signal intent to commit cultural genocide at least: "I want to get rid of the Indian problem ... Our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politics and there is no Indian question, and no Indian Department..."<sup>8</sup> 1920 was the year attendance at residential school was made compulsory for all Aboriginal children aged 7 to 15. Church officials, police and Indian agents were empowered to forcibly remove children.<sup>9</sup> The ideal of assimilation went back well before Scott however. In the 1890s, a senior departmental official, Hayter Reed, advocated for "every effort...against anything calculated to keep fresh in the memories of the children habits and associations which it is one of the main objects of industrial education to obliterate."<sup>10</sup>

The IRS system destroyed many indigenous cultures, and problems of intergeneration trauma remain extremely serious, since survivors learned few parenting skills, were often deracinated from their languages and cultures, resulting in a myriad of social problems.<sup>11</sup> George Erasmus, who headed the now defunct AHF put it this way in a regional gathering in 2000:

"some people lost their culture and language because they were denied the right to express it and were offered a new world view. Also, in isolation from home and family, individuals often couldn't speak to their own siblings in the same school, especially if they were of the opposite sex. No love of any kind or any concept of a loving family or community was offered. All this was completely denied in a cold, strict, foreign environment. This went on year after year. The better you became at being who you weren't, the more praise you received."<sup>12</sup>

This for me conveys the essence of the system: obliging children to renounce who they were, while rewarding them for allowing themselves to be transferred from their own group to that of the Shognosh populations.

Jim Miller notes how parents often strongly disapproved of the schools' "aggressively assimilative practices", and noted that these were "extremely dangerous places for young people", where diet and medical care were inadequate, discipline was harsh, verbal, physical and sexual abuse were not uncommon, while "disease and death were ever-present dangers".<sup>13</sup> The mortality rates were indeed very high for much of the early history of the schools. Dr Peter Bryce's now infamous report, submitted in 1907, presented some of the horrific death tolls to the department – some death rates as high as 47 percent in some schools. Indeed, the Report of the Royal Commission on Aboriginal Peoples quotes Scott to

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<sup>8</sup> Miller 2004 35.

<sup>9</sup> Remembering the Children 2008.

<sup>10</sup> Quoted in RCAP 1999 312.

<sup>11</sup> Woolford 2009 85.

<sup>12</sup> Notes AHF September 28 2000.

<sup>13</sup> Miller 2004 183-4.

the effect that across the country “fifty per cent of the children who passed through these schools did not live to benefit from the education which they had received therein.” The problems Bryce identified were never corrected, and death rates did not improve after this time. Indeed, as RCAP argued, “[I]n those decades, almost nothing was done about tuberculosis in the schools” and “The department did not even launch a full investigation of the system.” Further, the funding for the IRS were shockingly low, a per capita rate of \$180 in 1938, one half to one third of what equivalent schools for the deaf and for boys were getting, and well below what orphanages were receiving per student. This chronic underfunding continued throughout the early life of these facilities.<sup>14</sup> Claes and Clifton observed that: “Death rates were up to five times higher than for non-native students attending provincial schools. Deaths were not discussed; most often the child simply disappeared, and other children were forbidden to ask questions. It could be months before parents were notified, often only finding out when a child did not return home at the expected time. The illegal pass system whereby adults could not leave reserves without permission, assisted in keeping parents ignorant of affairs in the schools.”<sup>15</sup>

Information about crimes committed within the IRS system came to public attention in 1990 when Assembly of First Nations leader Phil Fontaine publicly declared his history of physical and sexual abuse and encouraged others to come forward with their stories.<sup>16</sup> The aforementioned RCAP report highlighted four main types of harms committed during the colonization process. The report clearly stated problems of neglect, under-funding, and widespread abuse, as well as the “very high death rate” from tuberculosis, “overcrowding, lack of care and cleanliness and poor sanitation.” Overall, the Report was a damning indictment of the government’s treatment of Aboriginal peoples.<sup>17</sup> Many of the legacies of the IRS were not immediately obvious but were nevertheless deleterious. For example, the AHF found also that some 90% of Aboriginal prison inmates were “connected in one way or another to Residential Schools.”<sup>18</sup>

In 1998, the federal government released a “Statement of Reconciliation”, accompanied by a \$350 million “Healing Fund”. Churches involved had submitted apologies much earlier, beginning in 1986, with the United Church. In 2008, Prime Minister Harper formally apologized in Parliament, regretting that “mistakes” had been made, although he failed to reflect on the wider colonial social and institutional context which made the IRS possible. “Common experience payments” soon followed, as well as an Independent Assessment Process, designed to compensate survivors. Since 2009 Truth and Reconciliation Commission has been investigating the staggering array of crimes committed against

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<sup>14</sup> RCAP 1999 340; TRC Report 2012 29.

<sup>15</sup> Claes and Clifton 1998 40.

<sup>16</sup> AFN 1994 25; 30-31.

<sup>17</sup> MacDonald 2007 1002.

<sup>18</sup> “Notes AHF October 24 2001.

several generations of young Aboriginal children in Canada's extensive network of residential schools. Within its ambit are important nation-defining questions about the nature of restorative justice, indigenous self-government, and genocide.

## **Section 2: What is Genocide?**

Raphael Lemkin's original categories of political, social, cultural, economic, biological, religious, and moral genocide can in theory be used to describe the history of Aboriginal-Shognoh relations in Canada. Lemkin's definition in *Axis Rule in Occupied Europe* (1944) was expansive, outlining "a coordinated plan of different actions aiming at the destruction of the essential foundations of the life of national groups, with the aim of annihilating the groups themselves". Yet killing was not crucial: "The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups".<sup>19</sup>

The original May 1947 draft, authored by Lemkin and two others for the UN Secretariat, included cultural genocide as one of its three aspects. The cultural form enumerated five methods of attempting to destroy the specific characteristics of the group:

- (a) forcible transfer of children to another human group; or
- (b) forced and systematic exile of individuals representing the culture of a group; or
- (c) prohibition of the use of the national language even in private intercourse; or
- (d) systematic destruction of books printed in the national language or of religious works or prohibition of new publications; or
- (e) systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersion of documents and objects of historical, artistic, or religious value and of objects used in religious worship.<sup>20</sup>

Of these only (a) survived the vote of the Sixth Committee of the General Assembly. The remaining articles, which would have applied to Aboriginal people, were never adopted.<sup>21</sup> This was one of Lemkin's biggest personal failures, as he discussed in his autobiography, lamenting: "I defended it successfully through two drafts. It meant the destruction of the cultural pattern of a group, such as the language, the traditions, the monuments, archives, libraries, churches. In brief: the shrines of the soul of a nation. But there was not enough support for this idea in the Committee. ... So with a heavy heart I decided not to press for it."<sup>22</sup> The 1948 UNGC's Article 2, with much of cultural genocide omitted, defined genocide

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<sup>19</sup> Lemkin 1944 27-28.

<sup>20</sup> UN Secretariat 1947.

<sup>21</sup> Schabas 2008.

<sup>22</sup> Docker 2004 3.

as follows:

Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

The UNGC was the product of a political process, in which signatories rejected cultural genocide, and some other categories, while retaining prohibitions on the forced transfer of children and the prevention of births. Political, linguistic, and cultural groups were removed during bargaining sessions between the Soviet Union and various settler societies, including the US, Canada and Australia, leaving behind religious, national, and racial groups.<sup>23</sup>

### **Section 3: Genocide in the IRS?**

This section is not lengthy, as I have taken considerable space to consider the question of whether genocide occurred in the IRS system in other publications. My forthcoming article in *CJPS* lays out a more sophisticated legal argument, considering a wide variety of domestic and international precedents in terms of how genocide is defined and can be applied in Canada. I also in that article consider some of the strengths and weaknesses of the UNGC, and lay out some substantive recommendations for change.<sup>24</sup>

Certainly, both genocide and cultural genocide are enjoying widespread use in public discourse surrounding the IRS system and its legacies. At the TRC Forum in Vancouver in March last year, some TRC officials, including Commissioner Wilton Littlechild, and invited speakers like Stephen Smith of the Shoah Foundation, argued that genocide merited close attention as a descriptor for what happened in the IRS system. Speakers pointed to Section 2(e) of the UN Genocide Convention which refers to the forced transfer of children from one group to another.<sup>25</sup> Later that year, TRC Chief Commissioner Murray Sinclair argued on the CBC television documentary series *8<sup>th</sup> Fire* that genocide had been committed, saying as quoted at the start of this paper.<sup>26</sup> Gregory Younging, a faculty member at UBC Okanagan

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<sup>23</sup> Power 2002 67; Ronayne 2003 6-17.

<sup>24</sup> MacDonald and Hudson forthcoming 2012.

<sup>25</sup> MacDonald and Hudson forthcoming 2012.

<sup>26</sup> 8th Fire 2012

and the assistant research director for the TRC put it this way in a recent AHF publication: “There is ample evidence that the residential school system clearly committed all acts of genocide listed above between 1831 and 1998, and more evidence is sure to emerge during the term of the Truth and Reconciliation Commission.”<sup>27</sup>

AFN Grand Chief Shawn Atleo made a similar argument around the same time, saying “I, along with so many of our people, feel if you consider what the term genocide means ... It references to the killing of people. Our people died in residential schools...the residential school was cultural genocide; the attempt to, over the course of history, to kill the Indian in the child. And that has been the experience of our people.”<sup>28</sup> They are hardly alone. A number of academics assert that the UNGC does indeed apply to Aboriginal experiences, and I concur with the tenor of much of what is being asserted.<sup>29</sup> I also agree with the argument that cultural genocide should be included as part of the UNGC. In 1973, Davis and Zannis called for a wider definition to include not just “mass homicide” but cultural destruction, characterized by “warping and mutilating the lives of groups of people”.<sup>30</sup> Chrisjohn and Young (1997) as well as Therrien and Neu (2003) see the differences between “genocide” and “cultural genocide” as semantic rather than substantive, arguing instead for the original 1947 draft to be considered as the *real* standard by which genocide should be judged.<sup>31</sup>

One of the distinguishing features of genocide is the importance of a specific intent or *dolens specialis* to “destroy, in whole or in part, an identifiable group of persons”. With the slight exception of complicity, this requires prosecutors to prove, both, that the accused committed the underlying offence, and, that they did so with the specific intent to destroy a protected group. In practice, genocide is defined not so much by the crime itself or its aftermath, but by the intention which brought that crime into being.<sup>32</sup> This is problematic in cases of colonial genocide, where cultures were destroyed over long periods of time. Neu and Therrien put it this way: “Which is worse – the murdering of millions of human beings over a short period of time, or slowly dissolving their existence through dehumanization and disease and coercion over several generations?”<sup>33</sup> Multiple changes of government continued the same policies, sometimes more benignly, sometimes more brutally. Because genocide was much slower and incremental, intent did not need to be explicitly stated.

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<sup>27</sup> Younging 2009 331.

<sup>28</sup> APTN 2011.

<sup>29</sup> Davis and Zannis 1973 175–76; Chrisjohn and Young 1994 2-6 33-35; Therrien and Neu 2003; Cardinal 1969/1999; Grant 1996 69 270-271; Haig-Brown 1988 11; Woolford 2009 81-97; Powell 2011; Ladner 2009; and this list is hardly exhaustive.

<sup>30</sup> Davis and Zannis 1973 175–76.

<sup>31</sup> MacDonald 2007 1006.

<sup>32</sup> MacDonald and Hudson forthcoming 2012.

<sup>33</sup> Neu and Therrien 2003 23

Understandably, there is dissonance between many genocide scholars and international jurists over *dolens specialis*.<sup>34</sup> Many argue for an emphasis on “relations of destruction” – the outcome on colonization for the victims rather than the ideology or the specific intent.<sup>35</sup> This would involve the removal of the current “emphasis on policy and intention which brought it [a genocidal situation] into being”.<sup>36</sup> To this Smith adds that even if there is no genocidal intent initially, once a government recognizes that its policies are genocidal, and does nothing, genocidal intent is clearly inferred since, “to persist is to intend the death of a people”.<sup>37</sup> Changes in the UNGC to “restore” cultural genocide, while reducing the impact of *dolens specialis* would have a marked impact on how Aboriginal history in Canada would be reinterpreted, both legally, and morally. These changes would provide wider legal scope for reassessing the IRS system and the nature of truth and reconciliation.

I have argued in favour of reducing the focus on *dolens specialis*, in cases of colonial domination, given the very different nature of the way genocide was planned, and given the way the UNGC was prepared. We need to understand that Canada’s role in this process was not benign. Canada’s contribution to the UNGC as evidenced in the *Travaux Préparatoires*, was to actively work to exclude cultural genocide, while at the same time (and not without irony) stressing the English and French heritage of the country. For example, the Canadian delegate Lapointe, disagreed with the provision for cultural genocide, but then stated that “The people of his country were deeply attached to their cultural heritage, which was made up mainly of a combination of Anglo-Saxon and French elements, and they would strongly oppose any attempt to undermine the influence of those two cultures in Canada, as they would oppose any similar attempts in any other part of the world.”<sup>38</sup> Lapointe signally rejected the need to have cultural genocide kept in the 1947 draft, while similarly denying that Canada had an Aboriginal heritage in dire need of protection.

Further, when Canada did ratify the UNGC in 1952 after lengthy debate in Parliament, it did so highly selectively and disingenuously. Portions of the Convention were excluded from the Criminal Code, such that genocide means only “(a) killing members of the group; or (b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.”<sup>39</sup> The official reasons given to Parliament by the *Report of the Special Committee on Hate Crimes in Canada* (also known as the *Cohen Report*) was that portions of the UNGC “intended to cover certain historical incidents in Europe that have little essential

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<sup>34</sup> Barta, Finzsch and Stannard 2008.

<sup>35</sup> Bischooping and Fingerhut 1996 487.

<sup>36</sup> Chalk 1994 54.

<sup>37</sup> cited in Moses 2005 28.

<sup>38</sup> *Travaux Préparatoires* Volume II 1509.

<sup>39</sup> Criminal Code PART VIII OFFENCES AGAINST THE PERSON AND REPUTATION Hate Propaganda R.S. 1985 c. C-46 s. 318; 2004 c. 14 s. 1.

relevance to Canada” could safely be omitted. They even asserted that “mass transfers of children to another group are unknown ... in Canada”.<sup>40</sup> These deliberate omissions have important ramifications for what Aboriginal peoples can claim as genocide in Canadian courts.

Of particular interest is how and when the full UNGC definition can apply. Ironically, the full definition can only be used to keep refugee claimants out of Canada! Section 35 of the Immigration and Refugee Protection Act makes it clear that claimants who have contravened any provision of the UNGC are inadmissible to Canada. So Canada selectively uses the full UNGC to keep potential genocidaires *out* of the country, but has no means to punish those guilty of UNGC genocide *within* the country. In practice, this narrow interpretation has been predominant and Aboriginal people have not found the courts particularly useful. In 2005, in the case of *Malboeuf v. Saskatchewan*, Aboriginal plaintiffs filed civil actions over abuses at residential schools, alleging breaches of the UNGC. Their claims were deemed inadmissible because the crimes occurred prior to 1948. In a second case, *Re Residential Schools*, the court struck down claims of genocide, focusing on the narrow definition in the Criminal Code which does not recognize forcibly transferring children.<sup>41</sup>

Should the TRC invoke the UNGC in their 2014 Final Report, Canada may then be in a similar position to that of Australia in 1997, when the Australian Human Right’s Commissions’ report, *Bringing them Home*, argued that the UNGC Article II (e) was indeed violated in the colonization of Australia. The report advanced that somewhere from 10-30 per cent of Aboriginal children had been forcibly separated from their families between 1910 and 1970.<sup>42</sup> The Report also staked out a strong position and was clear on several substantive definitional points in its interpretation of the UNGC and its application to Australia, all of which are relevant to the Canadian case:

- First: “Forcible transfer of children can be genocide ... Genocide does not necessarily mean the immediate physical destruction of a group or nation.”
- Second: “Plans and attempts can be genocide ... Not all Indigenous children were removed. Yet it would be erroneous to interpret the Convention as prohibiting only the total and actual destruction of the group. The essence of the crime of genocide is the intention to destroy the group as such and not the extent to which that intention has been achieved. Genocide is committed even when the destruction has not been carried out.”

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<sup>40</sup> Churchill 2004 9; 86.

<sup>41</sup> *Malboeuf v. Saskatchewan* 2005 para. 11; *Re Residential Schools* 2000; as discussed in MacDonald and Hudson forthcoming 2012.

<sup>42</sup> MacIntyre 2003 154.

- Third: “Mixed motives are no excuse.” The Inquiry grappled with the question of intent, and whether “child removal policies were intended to serve multiple aims, for example, giving the children an education or job training as well as removing them from their culture?” Despite the potentially benign intentions of some people involved in the removals, this did not change the applicability of the UNGC.
- Fourth: genocide did not end when the schools were closed down. The Inquiry argued that Australia’s version of Canada’s 60s scoop also violated the UNGC. Indeed: “The continuation into the 1970s and 1980s of the practice of preferring non-Indigenous foster and adoptive families for Indigenous children was also arguably genocidal. The genocidal impact of these practices was reasonably foreseeable.”<sup>43</sup>

All of these points in this interpretation arguably apply to the Canadian case, and it will be interesting to see whether a similar line of reasoning is pursued in the TRC *Final Report*.

#### **Section 4: Genocide and the Clash of Collective Memories**

While eschewing the word genocide, Canadian government officials *have* acknowledged the intentionality behind the forcible removal of Aboriginal children, which means they have little excuse to not recognize that intentional forced removal was not genocide. In his June 2008 apology, Stephen Harper was clear: “Two primary objectives of the Residential Schools system were to remove and isolate children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture. These objectives were based on the assumption Aboriginal cultures and spiritual beliefs were inferior and unequal. Indeed, some sought, as it was infamously said, ‘to kill the Indian in the child’.”<sup>44</sup> In their “Background” on the IRS system two years later, Aboriginal Affairs and Northern Development Canada made a similar statement: “In all, about 150,000 First Nations, Inuit and Métis children were removed from their communities and forced to attend the schools. All were deprived of the care and nurturing of their parents, grandparents and communities. First Nations, Inuit and Métis languages and cultural practices were prohibited in these schools.”<sup>45</sup> In other words, children were forcibly removed from their home group, and transferred to another, where their entire way of life was prohibited. While the government will admit to past wrongs, and will apologize for them, they refused to ground that discussion in the larger effects of colonialism on Aboriginal peoples.

Indeed, when pressed, the government has been loath to acknowledge that even cultural genocide was committed. Last year, Aboriginal Affairs Minister John Duncan refused to use

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<sup>43</sup> Australian Human Rights Commission 1995 236-38.

<sup>44</sup> Harper 2008.

<sup>45</sup> Aboriginal Affairs and Northern Development Canada 2010.

cultural genocide to describe the IRS system, instead arguing that the system was “education policy gone wrong.” He did acknowledge the following: “Two primary objectives of the residential school system were to remove and isolate children from their homes, families, traditions and cultures, and to assimilate them into the dominant culture.” He went so far as to conclude that the IRS were designed to “take the Indian out of the Child” and that had the system continued, it would have had lethal consequences for Aboriginal peoples.<sup>46</sup> This sort of leger-de-main seems illogical, unless one understands that in Canadian law certain types of crime such as IRS brutalities can violate the UNGC, but not violate the Criminal Code’s definition of genocide. This can create a confusing situation. For example, on 27 February this year, Murray Sinclair has a short exchange on Twitter with APTN over whether he was back-tracking on his conclusion of genocide. Sinclair tweeted the following to APTN: “IRS policy was an act of genocide under the UN Convention. Canada however cannot be convicted of the crime. Figure it out”.<sup>47</sup> He is relaying two arguments here: first that the full UNGC is not part of Canadian law, and second, the only way the government of Canada could be charged with genocide would be by being brought to the International Court of Justice by another state government.

We also need to understand that there are fundamental perceptive differences between many Aboriginal peoples and Shognosh Canadians. A central difference concerns perceptions of the country which are embedded in the collective memories of both peoples.<sup>48</sup> In a report prepared for the Law Commission of Canada in 1998, Claes and Clifton were clear that “Knowledge of the genocidal intent of the colonisers is well entrenched in aboriginal consciousness, but is still unknown and unrecognised by the larger Canadian public. That native people understand it clearly accounts for the unwillingness of many to deal with issues of abuse on a specific instance and case by case basis.”<sup>49</sup> A decade later, Keira Ladner noted a similar dissonance, despite the apology, the CEP, and the work of the TRC. Indeed:

“For Indigenous peoples, the story of Canada is one of myth, magic, deceit, occupation, and genocide. For Canadians, the story is one of discovery, lawful acquisition, and the establishment of peace, order, and good governance. These conflicting stories of Canadian history are representative of historical narratives of the colonized and the colonizer. But they are not just matters of historical perspective or concern: they define and frame how the colonized and colonizer explain the past, understand the present, and envisage the future.”<sup>50</sup>

The point here lies in what each group (however loosely or polyvalently defined) identifies as its collective memories about Canadian history. Ladner’s view encapsulated that of many

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<sup>46</sup> Kirton 2011.

<sup>47</sup> Murray Sinclair Twitter feed 27 February 2012 <https://twitter.com/#!/Sincmurr>

<sup>48</sup> On collective memory see Wilson (2005)

<sup>49</sup> Claes and Clifton 1998 30.

<sup>50</sup> Ladner 2009 279.

Aboriginal peoples in this country, both in the sense of possessing negative, traumatic collective memories, as well as in the recognition that such collective memories are unacknowledged and certainly not shared by most Shognosh Canadians. For most Canadians, collective memory is positive. For many Aboriginal peoples, the reverse remains true. As Margaret Smith explains, victimized groups like indigenous peoples often “live with a twofold curse”: “First the substantive ills that they are forced to live with are at least in part the result of their traumatic or unjust history; but second, the very account of that past that has entered the memory of the majority of people in the society erases or obfuscates their trauma.”<sup>51</sup>

Ervin Staub, a major theorist of ethnic conflict and of reconciliation after genocide, observed recently that:

Anyone who has worked with survivors of genocide, or engaged with groups that have survived genocide ... will know that survivors desperately want to have the truth of what was done to them be established and their suffering acknowledged. Acknowledgement, especially when it is empathic, is healing. When the world (other groups, one’s society, other countries, the international community) acknowledge and condemn victimization of a group of people, this says that such violence is unacceptable. It tells survivors that the moral order is being reinstated and helps them feel safer. Truth and the acknowledgment of suffering may enhance diminished personal and group identity, by showing that the victims are innocent and not to be blamed for their victimization. Acknowledgment from the perpetrator group of their actions, expressions of regret and empathy, are of special importance to survivors.<sup>52</sup>

Staub observes that labels matter a great deal. If there is dissonance in understanding between the victimized group and the perpetrator group, this makes it “difficult for survivors to heal, look into the future, and move on psychologically.” Staub points in particular to the Armenian community, which “has greatly struggled with the absence of acknowledgment of the Turkish genocide against them, both by Turkey, and as a result of pressure by Turkey, which has used its political and financial influence on other countries, also by other nations of the world. A great deal of the Armenian community’s energy has focused on engaging with the issue of genocide denial which continues to traumatize the group.”<sup>53</sup>

We are at an early stage of the reconciliation process – bringing out the truth and promoting healing for survivors. Healing seems to be taking priority over other considerations. But collective memory is also crucial – how Shognosh and Aboriginal peoples will choose to remember and reflect on the collective memories of colonization and the IRS system in particular. Arguably this will be a difficult and painful process – and we

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<sup>51</sup> Smith 2005 15-16.

<sup>52</sup> Staub 2008 5.

<sup>53</sup> Staub 2008 6.

need to understand it as a sum-zero game, at least at the beginning. Every attempt to have Shognosh peoples fully engage with Aboriginal collective traumas will be a direct challenge to our positive myths of the nation. I mean here *fully engage*, because obfuscation will be the easy path – blaming a number of priests or administrators as demonic figureheads who represent the system. They become the scapegoats in much the same way German Historikerstreit historians sought to exculpate Germany by blaming Hitler and his entourage.<sup>54</sup> To fully engage means to not isolate the residential schools as some sort of aberration of Canadian history. A full engagement implies seeing the residential schools as embedded within the colonial history of the country, and contextualizing this engagement within the current relationships Shognosh and Aboriginal peoples maintain, including power and status differentials.

### **Genocide Happened**

First, we Shognosh peoples need to accept that both the principles and the practices inherent in the IRS system can be seen as genocide through the lens of the UNGC, in the precedents built up in international case law, and in the corpus of work produced by Lemkin and successive genocide scholars. Perhaps more importantly, we need to recognize that for many Aboriginal peoples, from Murray Sinclair, to our colleagues and friends in Indian country who are less well known, the state and the four mainline churches did commit genocide. Claes and Clifton in concluding their report in 1998, well before the CEP and the apology and the TRC, observed, “compensation is only a very small part of the issue; more important is recognition of genocide and the criminal existence of such total institutions.”<sup>55</sup>

At some stage, when recognition becomes a more central part of the process, Aboriginal and Shognosh collective memories may become more closely aligned. Warburg, commenting on the German case, observes that

“[T]hey have adopted an acute historical sensitivity, making expressions of genuine sorrow and shame longstanding fixtures of German identity. It is an identity dependent on a complex process of remembrance and contrition, both individually and representatively in books of history, in literature, and in the arts – in short, in all ways of cultural self-definition and self-interpretation. Portrayals of the Holocaust and both world wars permeate German television programming, consistently accompanied by in-depth analyses that are available at almost any given hour of the day or night.”<sup>56</sup>

These memories are experienced differently in each group but share commonalities: “The German people, not less than the Jews, have formed a collective and conscious memory of the genocidal events that terminated in 1945 with the end of World War II. They have

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<sup>54</sup> Hillgruber 1986.

<sup>55</sup> Claes and Clifton 1998 69.

<sup>56</sup> Warburg 2010 51.

absorbed the legacy of the Holocaust into their national identity, an impact, however, that continues to evolve in order to accommodate newer versions of that identity.”<sup>57</sup>

### **Canada Remains a Colonial Country**

We Shognosh peoples need to accept that Canada remains a colonial entity, comprised of primarily European institutions, and European cultural and discursive practices. These European practices and discourses are predominantly iterated. Colonialism is active, dynamic, and evolving. In claiming that Canada remains a colonial state (and one dominated by European settlers), I am departing from the traditional “blue water” thesis, a departure which is academically unproblematic I believe, since there are few theorists who still assert that the colony and the *metropole* must be divided by a body of salt water. Rather, “internal” or “settler” colonialisms in the Americas and the Antipodes are recognized as being as destructive as the more “classic” or “invaded” colonial models which applied to Asia, Africa, and the Middle East. This view of colonialism rejects the assertion that once a colony becomes a UN-recognized state in its own right, it then becomes, by some sleight of hand, “post-colonial”.<sup>58</sup> John Docker has described Canada alongside Australia, New Zealand, and the United States, as a “settler colony,” that is “a colonial society where the indigenous population was reduced to a small or tiny proportion of the overall population, whose majority population becomes composed of colonizers / migrants.”<sup>59</sup>

We need to recognize that the structures of the Canadian state remain colonial, despite the British North America Act, the Statute of Westminster, the Constitution, and other legislation. So what does colonialism mean in Canada? At the most obvious level, we have Queen Elizabeth II as our head of state, English as the primary official language, Westminster style legislatures at the federal and provincial levels, the British common law (except in Quebec), a European-derived educational system, towns, cities, rivers, streets, and so on named after their European counterparts (think of Stratford, on the Avon River for example, or London, on the Thames – previously known as Askunessippi, or “the antlered river,” before being renamed by John Graves Simcoe) and of course European-based culture as the norm, with the majority of active and assertive Canadians, in politics, the economy, education, and the arts coming from European Shognosh backgrounds.

That Canada remains a colonial entity is palpable in the contributions of recent Aboriginal theorists. Mi’kmaq scholar Marie Battiste uses of the term “cognitive imperialism,” to describe how Aboriginal peoples have been obliged to internalize the worldviews of the

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<sup>57</sup> Langenbacher and Shain 2010 52.

<sup>58</sup> Waever 2004 223-24.

<sup>59</sup> Docker 2004 2.

“dominant society”.<sup>60</sup> Elizabeth Furniss reasons that we cannot be post-colonial because we have not even tried to be. We have *not* attempted to decolonize; the culture remains predominantly Shognosh, as does the “structure of political authority” which assumes that predominantly Shognosh practices are the norm, the default position of society which needs little defence other than that it functions as the status quo.<sup>61</sup>

Yet while some Aboriginal people seek to resist the state, others have succumbed to the pressures exerted by Shognosh society. Since, as Alfred argues, colonialism implies not only imposed externalities but internalized forms of self-hatred and feelings of inferiority.<sup>62</sup> Operating under a form of false consciousness, where Aboriginal people seek “only to heal and live in peace with the settlers,” the core of Aboriginal identity is sacrificed in favour of “non-contentious, cooperative identities, institutions, and strategies for interacting with the colonizer”. Alfred instead urges Aboriginal peoples to stand up for their rights, and to not seek resolution on terms favourable to the colonial state.<sup>63</sup> Joyce Green, a prominent voice on these issues, has concluded:

“The answers lie in facing up to the colonial past, in taking responsibility for it, and in collective commitment to restitution and to a new non-colonial, mutual and negotiated relationship between Aboriginal and immigrant peoples. Facing up to the past means owning all of our history, rather than perpetuating the myth of white settlers creating civilization in uncharted wilderness.”<sup>64</sup>

How we might do this – to bring about reconciliation and restitution is a contested and complex process. And it may well take, as Murray Sinclair has argued, seven generations to accomplish.

### **Reflections on Reconciliation After Genocide**

Most Shognosh Canadians have supported Harper’s apology, but without action, without real change, the apology amounts to little. Chrisjohn and Wasacase are rightly frustrated by the fact that while the government admits wrong, the institutions which committed the crimes in the first place, from the mainline churches to the RCMP to the former INAC, remain intact and in positions of influence.<sup>65</sup> In a more global context, Gibney and Roxstrom, have observed that “The biggest problem with state apologies is that the apologizing state wants it both ways: it wants credit for recognizing and acknowledging a wrong against others, but it also wants the world to remain exactly as it had been before the apology was issued”.<sup>66</sup> So where do we need to go and how should we get there?

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<sup>60</sup> Rice and Snyder 2008 55.

<sup>61</sup> Furniss 1999 11-14.

<sup>62</sup> Alfred 2009b 44.

<sup>63</sup> Alfred 2009b 51.

<sup>64</sup> Green 1995.

<sup>65</sup> Chrisjohn and Wasacase 2009 219.

<sup>66</sup> Gibney and Roxstrom 2001 936.

This section argues for active reconciliation on the part of the government and all Canadians. What we have now is a passive process, driven almost entirely by IRS victims and their families. The process is short of money and has attracted relatively little media attention. Most Shognosh Canadians have acted primarily as passive observers, as if we have little to do with the process at all. How much has really changed since the IRS system was first created? Certainly a considerable amount, but Chrisjohn and Young are correct to point out that in many respects,

“The conceptual world-view that gave rise to the genocide of Aboriginal Peoples remains in place, unchallenged; its lineaments invade all aspects of present majority thinking about Indian Residential School. Unless this world-view is recognized, and the damage it has done and continues to do brought into focus, the long-term agenda of Indian Residential Schooling will succeed, even while we congratulate ourselves on having met it head-on and defeated it.”<sup>67</sup>

Alfred too argues that in light of the residential schools and myriad other abuses, reconciliation is not possible “without deconstructing the institutions that were built on racism and colonial exploitation.” He calls for “radical changes to the state itself.”<sup>68</sup> Following Alfred’s lead to some extent, this article moves to articulate what sort of changes could be desirable in an era of genuine reconciliation.

A “syncretic democracy “ as I conceptualize it, is a process of creating a balance between current institutional forms (European style parliamentary democracy) and traditional Aboriginal understandings of the world and methods of collective governance, as a fundamental precursor to integrating immigrants into dominant Canadian values. Used to describe forms of religious fusion, “syncretism” has wider applicability and can be used to better understand the blending together of different forms of culture and governance, in our case Shognosh and Aboriginal worlds. In contrast to “conversion,” which implies “missionary zeal” and dismissal of the belief-systems encountered, syncretism implies “mutual respect and reciprocal exchange of values and beliefs”, rather than the denigration of one by the other.<sup>69</sup>

Institutions can prove central to any process of societal change. Institutions and discursive practices can be said to be co-constitutive, that is, institutions can change behavior and beliefs, as well as perceptions of interests, while the reverse is also true. As Hodgson articulates: “In part, the durability of institutions stems from the fact that they can usefully create stable expectations of the behavior of others. Generally, institutions enable ordered

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<sup>67</sup> Chrisjohn & Young 1994 3.

<sup>68</sup> Alfred 2009 183-4.

<sup>69</sup> Balme 1996 10-12.

thought, expectation, and action by imposing form and consistency on human activities. They depend upon the thoughts and activities of individuals but are not reducible to them.”<sup>70</sup>

In what follows I want to explore a few ideas for how reconciliation might come about. Land, money, language, and healing, are right now the central focus of what restorative justice is about. It is about returning some lands to Aboriginal peoples, providing CEPs for residential school survivors, or forms of ADR and other compensation, promoting Aboriginal language and culture, while promoting healing institutions and processes based in part on western learning and indigenous knowledge. However, the next phase is institutional and cultural, not just for Aboriginal peoples but for all Canadians.

There is a moral imperative that we go back and ask ourselves – hypothetically, what would have happened if Aboriginal peoples had not been forcibly assimilated, if their cultures, languages, spiritual beliefs, family and community structures had not been shattered through genocidal state practices. What would have happened if indigenous families remained intact, learned to accommodate the rest of Canadian society on their own terms, retained their strong communities, and developed civil society institutions? What would have happened if Aboriginal Canadians did not dominate our prison populations, and the foster homes (so so-called Sixties Scoop), or the statistics for child abuse, spousal abuse, high school drop outs, alcoholism, suicide? What would have happened if they did not suffer from the aftereffects of genocide? Perhaps we might have had a very different Canada, one where Aboriginal peoples, and what they have to offer, would play a more central role in national culture, and political life. Perhaps there also would have been a lot *more* Aboriginal peoples. Perhaps they as collective groups would have presumed a greater degree of influence over Canadian government and society, one more like the relationship of Quebecois to the rest of Canada or Maori to Pakeha.

Rather than see Aboriginal peoples as a third founding pillar of Canada, we need to see them as the second but suppressed “partner”. A new version of biculturalism needs to be imagined. This is one where biculturalism is properly between Aboriginal peoples and Shognosh peoples. As Maaka and Fleras point out, a bi-national relationship will inevitably imply a reworking of dominant institutions and narratives, since bi-nationalism seeks to “restructure the constitutional core to foster power sharing;” “provides a constitutional framework for engaging indigeneity as a majority-to-majority partnership”; “is concerned with the sharing of sovereignty between two dominant cultures in complementary co-existence;” “focuses on a dualistic constitutional order involving a compact across a deep divide;” and finally, “acknowledges the necessity to stand apart before the possibility of

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<sup>70</sup> Hodgson 2006 2-3.

belonging together differently”.<sup>71</sup> It means we cannot create myths of biculturalism between two white European Shognosh cultures, then add multiculturalism to the mix and only later include Aboriginal peoples. We must recognize that our biculturalism as it now stands has the dominant pillar on top, crushing the other. Both pillars need to move, but the one on top needs to shift first, to get off the bottom pillar so that it can get up.

Imagining what might have been is a normative project, an essential component for getting restorative justice on track. We need to imagine what might have happened if the steamrollers had not razed much of Aboriginal society. In Canada, we essentially eliminated from political competition a crucial pressure group which could have had enormous influence on Shognosh governance and culture, which could have helped develop a form of consociationalism, where different peoples rule together with shared institutions that represent a compromise of different cultural traditions of governance and philosophy.<sup>72</sup> So the exercise consists of taking First Nations not as they are now, as small proportion of the population, but taking them as they might have been, had the land thefts not occurred, and had the IRS system not been created; they would have a very different bargaining position. How could things change?

**A “National Day of Healing and Reconciliation in Canada”** on June 11<sup>th</sup> every year to mark the anniversary of the Harper apology. Based on the idea of Australian Sorry Day, this would be a start at least in schools and other civic institutions of remembering the ongoing legacies of the IRS system and its significance. The program was launched by Native Counseling Services of Alberta.<sup>73</sup> Currently, there is nothing approximating this.

**Recognize and promote Aboriginal languages:** A genuine recognition of bi-nationalism would insist that the diversity of Aboriginal peoples be acknowledged. Rather than talking about a “third founding people”, we need to recognize that relative to Aboriginal people, the differences between English and French cultures, and especially the languages, are not that different, *relative to the differences between Aboriginal peoples in Canada*. A genuine bi-nationalism would insist that Shognosh and immigrant peoples learn Aboriginal languages as well as European ones, taught in schools to all children. Such languages could also be made official languages in provinces and school children would learn *local* Aboriginal languages that were indigenous to their region. If a prospective governor general could speak Cree or Anishinabee, but was deficient in either English and French, this would not be a hanging matter. Unfortunately regarding Aboriginal languages, tolerance is about as far as federal and provincial governments are willing to go – the template for multiculturalism has been used to evaluate the rights of First Nations. Despite the Harper apology, little has

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<sup>71</sup> Maaka & Fleras 2005 275-276

<sup>72</sup> Lijphart 2004

<sup>73</sup> NDHR 2012.

been done to preserve First Nations languages, many of which are on the brink of collapse. Valery Galley writes: “Today, there is neither a piece of federal statutory legislation nor an overarching federal policy for the recognition and revitalization of Indigenous languages in Canada; there were no laws, policies, or programs that could have guaranteed Indigenous languages their rightful place within Canada ...”<sup>74</sup> By contrast, the government continues to promote French language education, which shows clearly that while we might be abandoning the myth of two founding European nations, in practical policy terms, this remains the focus of government efforts.

This is a major problem because Aboriginal culture has been largely transmitted through the language, which not only signifies what exists in the world, but frames how Aboriginal people should understand and relate to the world as well. Doug Cuthand ably conveys the implications of language loss, which is not only “a major blow to a culture”, because: “In many cases the culture ceases to exist. The oral history in the mother tongue disappears, the grandparents can no longer speak to their grandchildren, and the descriptive nuances and sense of humour change. What we end up with is a pan-Indian culture that has the English language at its base.”<sup>75</sup>

**Promote Aboriginal Self-Government:** This could include forms of dual citizenship, and passports, as well as other measures for Aboriginal entities seeking to assert their right to be recognized as self-governing nations. Alfred puts it that the best way to decolonize is for Aboriginal people to re-establish their ties to land, which will allow them to connect “to land-based cultural practices and the reestablishment of authentic indigenous community life”.<sup>76</sup> I support this goal. In practice, this would create forms of multi-layered and overlapping sovereignty, although pragmatically, most if not all of it would be within the Canadian state.<sup>77</sup> This is of course complicated, since the structures of tribal government are determined by the Indian Act, and not by the history of tribal entities. Further, the Indian Act mandates who does or does not have status, who is or is not an Indian.<sup>78</sup> And the lands themselves are contested, in that much of tribal land has been lost, either through manipulation of existing treaties, or through crown seizure of unceded land.

**Promote Aboriginal representation in existing institutions, while changing these institutions to better reflect Aboriginal governance traditions:** Alongside self-determination, increased representation and changes to existing institutions constitute a *complementary* process of empowering Aboriginal peoples using multiple channels. This reflects what Michael Murphy calls a “relational model of self-determination”. This can be

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<sup>74</sup> Galley 2009 243.

<sup>75</sup> Cuthand 2007 62.

<sup>76</sup> Alfred 2009b 43.

<sup>77</sup> Maaka and Fleras 2005.

<sup>78</sup> Furniss 1995 22-23.

described as having, “multiple points of access to political power and decision-making.” While autonomous self-government would help some Aboriginal peoples empower themselves, Murphy argues persuasively that “indigenous representatives may also need an effective voice in local, regional, and national institutions that have the capacity to influence their individual and collective futures”.<sup>79</sup> This is what I propose.

Halting Aboriginal sovereignty at the borders of reserves denies the reality that these lands represent only a small fraction of the land Aboriginal peoples once controlled. Anishinaabe legal theorist John Borrows makes the argument, and rightly, that control over Aboriginal lands was in many cases never ceded. That is, Aboriginal peoples still have rights to influence lands off their individual reserves, rights which self-determination on specific treaty-defined lands might make troublesome. As Borrows puts it, “Why should an artificial line drawn around my reservation bar me from a relationship with the vast areas my ancestors revered?” Further, there are growing numbers of urban non-status Aboriginal peoples, who are not tied to any specific reserve or treaty who also need representation as Aboriginal peoples in institutions.<sup>80</sup> Many have been subject to the “60s scoop”, with Aboriginal children put into institutional care and then adopted by white families. Currently, some 27,000 Aboriginal children are in institutional or foster care. It is clear that for the foreseeable future, urban Aboriginal people will be subject to Canadian and provincial laws and political decisions, whether or not they have any direct input.<sup>81</sup>

Some of these institutional changes could include first, adopting a form of proportional representation. This will most likely begin in the provinces and several have had failed referenda on the issue. PR is poorly understood in Canada, and the rejection of this process in Ontario is largely based on this fact. However as we can see in countries with coalition governments, the system is more representative, more transparent, and more progressive, for the most part and as Linz and Stepan note, “can facilitate representation of spatially dispersed minorities”.<sup>82</sup>

Second, we need guaranteed seats for Aboriginal peoples in both houses of Parliament. Three well known formulae include New Zealand’s separate Maori electoral districts with guaranteed Maori seats, separate chambers for indigenous peoples in Finland, Sweden, and Norway, and the example of the US state of Maine, where there are guaranteed seats for representatives of the Penobscot and Passamaquoddy its two largest Aboriginal peoples.<sup>83</sup> The RCAP in 1996 also outlined a blueprint for a “House of First Peoples” which would be comprised of Aboriginal representatives. This third level of government however, would act

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<sup>79</sup> Murphy 2008 197-200.

<sup>80</sup> Borrows 2007 151; 157.

<sup>81</sup> Murphy 2008 185.

<sup>82</sup> Linz and Stepan 1996 33.

<sup>83</sup> Schmidt 2003 1-4.

only in an advisory capacity not unlike the Sami chambers in Nordic countries.<sup>84</sup>

None of these solutions are ideal, but of them, the NZ system appears the most progressive, since it has been followed with the introduction of MMP and the later rise of Maori-based political parties which have been in coalition with successive governments. For example, it was primarily because the National Party needed an alliance with the Maori Party to govern that NZ signed on to the UN Declaration on the Rights of Indigenous Peoples. In Canada, at the Senate level there is nothing to preclude the Governor General appointing additional (non-regional) Senators following the advice of the Prime Minister. There are precedents in other countries. In India, the President can appoint 12 Senators according to their contributions to art, literature, social sciences, or something else. Pacific Islands have chiefly representation, and of course the British have a House of Lords, where 26 Lords Spiritual are not representative of particular electoral regions, but dioceses of the Church of England.<sup>85</sup> As such there is nothing odd in our western democratic heritage about having spiritual advisors and traditional leaders in our democratic institutions. We just need to go a bit deeper to find the *obiter dicta*.

**Infuse the country with coherent Aboriginal worldviews and narratives:** we need to go further than simply ensure that Aboriginal peoples are represented in our primarily Shognosh colonial institutions. If Canada's political system is like a game of scrabble, we must do more than simply give Aboriginal people a few more letters. We need to deliberate over what game we should be playing and the parameters of that game. Eurocentric Shognosh institutions are not inherently bad (in fact they work rather well in practice according to the measure we political scientists use to evaluate them), but they are very different to what Aboriginal cultures have promoted for millennia. I don't feel it incumbent on me to describe what sort of "traditional" governance institutions should be established, although this is a topic I want to explore in future research. But I do feel that symbolic inclusion is extremely important.

In 2005, the Prime Minister Paul Martin did a smudging ceremony in the House of Commons. Elder Elmer Courchene of the Sagkeeng first nation, performed the ceremony. Martin argues that he wanted it to be more than "just symbolism". He writes in his memoirs that "I wanted Aboriginal Canadians to see that they were an integral and important part of our society", in a relationship based on "partnership". Martin recounts how in the aftermath of the smudging, he received "hundreds of appreciative letters" from Aboriginal school children.<sup>86</sup> Martin's short premiership was far from ideal, mired by scandal. But in this one

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<sup>84</sup> Schmidt 2003 5-6.

<sup>85</sup> May 1883 7-9.

<sup>86</sup> Martin 2008 256-7.

respect at least, his leadership marks an important symbolic contribution to reconciliation. Smudging, drumming, and other practices could be incorporated into Parliament as a first step towards a long journey of syncretism.

Another matter concerns Aboriginal views of leadership, which are not based on the principle of handing temporary near-absolute power to a handful of individuals. As Ross recalls of some traditional forms, “It was neither permanent nor constant for a chief – just as a leader who has authority over all things. Instead, it is a question of exercising leadership *skills* as the occasion demands, rather than having authority over others given to you for a set period of time. Finally, leadership is exercised in a way that does not involve chains of hierarchical command and obedience: Even when circumstances demand leadership, *the act of leading is without compulsion*. The followers follow freely and are at liberty to withdraw. When the flock arrives at its destination, the members disband and terminate the conduct of leadership...”<sup>87</sup>

Alfred too has noted the temporary nature of traditional leadership, which avoids centralizing authority and using coercion. Instead, “Leaders rely on their persuasive abilities to achieve a consensus that respects that autonomy of individuals, each of whom is free to dissent from, and remain unaffected by, the collective decision.”<sup>88</sup> Decisions are made collectively and for the good of the community with the consent of the community. Alfred has isolated six principles of indigenous governance: “the active participation of individuals”; balancing “many layers of equal power”; dispersal of authority, and governance which is “situational”, “non-coercive”, and which “respects diversity.”<sup>89</sup> While much of this might seem difficult to implement in practice in a large federal state, many of the principles are similar to forms of “deliberative democracy” as discussed in the works of Iris Marjan Young, James Tully, David Held, and others.<sup>90</sup>

Finally, Aboriginal views on the environment and our place within the natural world, as an interdependent part rather than as separate from it might help create a more ecologically stable society. Murray Sinclair has traced a fundamental difference between his people and those of European Shognoosh background. This has to do with different perceptions of “one’s relationship with the Creator.” The classic Judeo-Christian belief in humans occupying an exalted position “just below God and the angels, but above all other earthly creation” is anathema to traditional beliefs. Here, Aboriginal perceptions hold that “human beings are the least powerful and least important element in creation. They cannot influence events, and are disrespectful and unrealistic if they try. Human interests are not to

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<sup>87</sup> Ross 2006 58-59.

<sup>88</sup> Alfred 2009a 49-50.

<sup>89</sup> Alfred 2009a 50-5 ; for similar views see also Kidwell Noley and Tinker 2001 67-68.

<sup>90</sup> See Held 2006 241-44.

be placed above those of any other part of creation.” This puts indigenous and western traditions at opposite ends in terms of the “relative hierarchy and importance of being in creation”.<sup>91</sup> Sinclair has used this important distinction in drawing divergences between indigenous and western perceptions of the environment, crime, justice, politics, and hierarchy. These views are now concretely animating the work of the TRC into the legacies of Canada’s Indian residential schools.

## Conclusions

In terms of reconciliation, to twist Winston Churchill’s pithy conclusion that the tide had turned against the Axis powers in November 1942, we are neither at the beginning of the end, nor even the end of the beginning, but rather at the beginning of the beginning. Seven generations of work look at us right now. Reconciliation is unlikely to be something any of us will see in our lifetimes, but this should not deter us from initiating the process, by at the least identifying the problems and actively deliberating over potential solutions. At least when our grandchildren take over the running of the country, we will have a sense of moving forward.

For all of us treaty people, the future may lie in embracing the recognition that Canada needs to decolonize. Morally we need to work together to ensure that a genuine bi-nationalism between Aboriginal and Shognosh peoples recognizes the inherent rights of Aboriginal people, prior to Quebec or anyone else making collective claims against the state. This is only just. Aboriginal people know well that right conduct consists of ensuring that Elders are able to eat first before the younger members of the community proceed; or else those with the most to offer are left only with the scraps. We would do well to keep this custom in mind.

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<sup>91</sup> Sinclair 1994 22-23.

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