

COMMENTS

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Truth and Reconciliation: Restorative Justice, Accountability, and Cultural Violence

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Glen Jack's earliest memories are of living with his grandparents in British Columbia.¹ He remembers swimming in the river every morning with his grandfather and older brother and learning about the land in his Native Nlaka'pamux language.² When he was just five years old, everything changed.³ Jack remembers his grandmother crying the day she was told that her grandsons would be taken to a residential school.⁴ He remembers being led away from the family home in handcuffs and placed into the back of a waiting squad car.⁵

When they arrived at the school, the boys placed their clothing and everything they brought into brown paper bags.⁶ Their heads were shaved.⁷ Their names were stripped away.⁸ Jack was now "128."⁹ Jack recalls, "A guy was screaming in my face and I couldn't understand a word he was saying . . . [m]y brother had to explain it to me, what they wanted me to do. And that's when the beatings started, because we were speaking our own language."¹⁰

Jack was regularly beaten, sometimes for speaking Nlaka'pamux, sometimes for not completing his chores correctly, but often just for being "nothing but a heathen savage, and dirty, and stupid."¹¹ Within a matter of weeks, the assaults became sexual as well.¹² Jack remembers

¹ Andrea Woo, *Glen Jack Experienced the Horrors of the Kamloops Residential School. He's Been Trying to Get People to Listen for 50 Years*, THE GLOBE & MAIL (July 16, 2021), <https://www.theglobeandmail.com/canada/article-glen-jack-experienced-the-horrors-of-the-kamloops-residential-school/> [https://perma.cc/BVP2-4ER6].

² *Id.*

³ *See id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

lying in bed, listening with dread to the sound of the priest's footsteps coming down the hall, stopping outside his room "128, get up."¹³

Hundreds of thousands of Indigenous North American children were forcibly removed from their homes and held in large residential boarding schools to force tribal assimilation into White culture.¹⁴ Laws like the Indian Civilization Act Fund of 1819 in the United States compelled attendance for Native children, some as young as four years old, at year-round institutions far away from their homes and families.¹⁵ The children were systematically stripped of their culture and identities, forbidden to celebrate their own heritage, and prohibited from speaking their own Native languages.¹⁶ At many of these institutions, children were subjected to horrific abuse.¹⁷ Survivors of residential schools have detailed shocking accounts of physical, emotional, sexual, and cultural abuse.¹⁸ In recent years, mass graves have been unearthed on the grounds of residential schools in both Canada and the United States.¹⁹

The sociological impact of residential schools on tribal communities is ongoing and far-reaching. Many Native languages have become "critically endangered."²⁰ Native communities still suffer from generational trauma, poverty, substance abuse issues, and broken family ties as a direct result of these policies of family separation.²¹

The Truth and Reconciliation Commission of Canada (TRC), created as part of the settlement of Canada's largest class action lawsuit, was set up to address the cultural violence perpetrated by

¹³ *Id.*

¹⁴ See *US Indian Boarding School History*, THE NAT. NATIVE AM. BOARDING SCH. HEALING COAL., <https://boardingschoolhealing.org/education/us-indian-boarding-school-history/> [https://perma.cc/S2JN-GT2H].

¹⁵ See generally *id.* See also HONOURING THE TRUTH, RECONCILING FOR THE FUTURE: SUMMARY OF THE FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION OF CANADA 135 (2015), https://irsi.ubc.ca/sites/default/files/inline-files/Executive_Summary_English_Web.pdf [https://perma.cc/37S9-4UPK] [hereinafter TRC].

¹⁶ *Id.*

¹⁷ See *id.*

¹⁸ *Id.*

¹⁹ Ian Austen & Dan Bilefsky, *Hundreds More Unmarked Graves Found at Former Residential School in Canada*, N.Y. TIMES (June 24, 2021), <https://www.nytimes.com/2021/06/24/world/canada/indigenous-children-graves-saskatchewan-canada.html> [https://perma.cc/J6TS-MJ9C].

²⁰ TRC, *supra* note 15, at 135.

²¹ See generally *id.*

the residential school system.²² The TRC set up a claim system to compensate victims, to record statements and oral histories from survivors, and to culminate in a final report detailing ninety-four “calls to action.”²³ The TRC model of restorative justice attempts to provide accountability for past cultural violence by addressing the resulting individual and cultural injuries.

This Comment will focus on atrocities committed at residential schools for Native American children in Canada and the United States, the efficacy of the TRC in addressing these atrocities, and whether this model would be effective in the United States.

I

RESIDENTIAL SCHOOLS: COMPULSORY ASSIMILATION FOR INDIGENOUS CHILDREN

A. History

The history of residential schools in the United States and Canada begins with the Catholic Church.²⁴ In the early seventeenth century, White Catholic colonizers began a campaign to “civilize and Christianize” young Indigenous boys, setting up the first residential school near what is now Quebec.²⁵ While the first attempts at Native indoctrination were short-lived, with Native students tending to run away, by the 1800s several Catholic boarding schools for Indigenous children were operating in North America.²⁶ In the United States, beginning with the Indian Civilization Act of 1819, a new Indian boarding school policy was adopted at the urging of the Christian Church.²⁷ This policy was expressly intended to remove and reprogram American Indian and Alaskan Native children to dissolve tribal structures and dismantle Native culture.²⁸ The slogan of this new policy was “Kill the Indian, Save the man.”²⁹

In an effort to guarantee attendance, Congress provided funding to transport children from reservations to boarding schools and authorized

²² *See id.* at v.

²³ *See id.* at 319–37.

²⁴ *See id.* at 50.

²⁵ *Id.*

²⁶ *Id.* at 50–51.

²⁷ *US Indian Boarding School History*, *supra* note 14.

²⁸ *Id.*

²⁹ *Id.*

the Commissioner of Indian Affairs to make the rules.³⁰ Enthusiastic kidnapping of Native children by White authorities was the result.³¹ Widely referred to as “child snatching,” police and child welfare agents would sometimes round up children, chasing and capturing them “like so many wild rabbits.”³² Hundreds of thousands of Native American children in total were placed in boarding schools far away from their homes and their families.³³ By the year 1900 there were more than twenty thousand children in Native American residential schools, and by 1925 the number was more than sixty thousand.³⁴ A shocking 83% of Native school-aged children in the United States were enrolled in boarding schools by 1926.³⁵

In Canada, residential schools followed a similar trajectory. Christian residential schools for Native children expanded and found a foothold in the mid-1800s with per-student funding from the Canadian government.³⁶ As Canadians settled deeper into tribal territories, treaties were made with tribes that included education.³⁷ Like many of the government obligations in those treaties, the education offered to Native children was neither beneficial nor one they would have chosen.³⁸ In addition to supporting Catholic residential schools, new industrial residential schools were built and funded, again to be operated by church officials.³⁹ The model for these new schools came from reformatories and industrial schools for juvenile delinquents in Europe and North America.⁴⁰ Between the opening of the industrial residential schools around 1883 and their closing in 1996, Canada’s one hundred and fifty residential schools housed an estimated one hundred and fifty thousand Indigenous children.⁴¹

³⁰ Ann Murray Haag, *The Indian Boarding School Era and Its Continuing Impact on Tribal Families and the Provision of Government Services*, 43 TULSA L. REV. 149, 153 (2007).

³¹ *Id.*

³² *Id.* (quoting Linda J. Lacey, *The White Man’s Law and the American Indian Family in the Assimilation Era*, 40 ARK. L. REV. 327, 360–61 (1986)).

³³ *US Indian Boarding School History*, *supra* note 14.

³⁴ *Id.*

³⁵ *Id.*

³⁶ TRC, *supra* note 15, at 51.

³⁷ *Id.* at 53.

³⁸ *Id.*

³⁹ *Id.* at 57.

⁴⁰ *Id.*

⁴¹ Austen & Bilefsky, *supra* note 19.

In both the United States and Canada, residential school attendance was first coerced and then mandated. Laws in the early 1800s allowed Canadian officials to remove children from Native parents and send them to boarding schools.⁴² Food rations and assistance were sometimes withheld from families to force parents to send their children away to school to avoid starvation.⁴³ Most parents acquiesced, believing that they had no choice, that their children would be gone only a short time, or that they would be receiving an education that would help them to deal with the White man in the future.⁴⁴ Upon enrolling their children in the residential schools, however, parents could be required to sign an admission form stating that their children could not be discharged from the school until the school released them and that “the Principal or head teacher of the Institution for the time being shall be the guardian” of their child.⁴⁵ Administrators would sometimes simply sign the forms when parents refused.⁴⁶

B. Forced Assimilation

The stated governmental purpose of Native residential schools was the assimilation of Indigenous tribes into White culture. The TRC states that “the central goals of Canada’s Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada.”⁴⁷ To this end, residential schools separated Aboriginal children from their families, weakening cultural ties and indoctrinating children into Euro-Christian Canadian culture.⁴⁸ Children were forbidden from speaking their Native languages and subjected to abuse at the hands of their instructors.⁴⁹

Schools sought to erase Native children’s personal and cultural identities in the name of assimilation. Survivor Doris Young attended

⁴² TRC, *supra* note 15, at 60.

⁴³ Haag, *supra* note 30, at 153.

⁴⁴ *Id.*

⁴⁵ TRC, *supra* note 15, at 61.

⁴⁶ *Id.*

⁴⁷ *Id.* at 1.

⁴⁸ *Id.* at v.

⁴⁹ Michael Potestio, *Survivors of Kamloops Indian Residential School Share Their Stories*, KAMLOOPS THIS WEEK (July 18, 2021, 1:38 PM), <https://www.kamloopsthisweek.com/local-news/survivors-of-kamloops-indian-residential-school-share-their-stories-4449001> [https://perma.cc/6PBT-LAW8].

the Elkhorn Residential School in Manitoba.⁵⁰ She describes a systemic attack on her personal and cultural identity.

Those schools were a war on Aboriginal children, and they took away our identity. First of all, they gave us numbers, we had no names, we were numbers, and they cut our hair. They took away our clothes, and gave us clothes . . . we all looked alike. Our hair was all the same, cut us into bangs, and straight short, straight hair up to our ears . . . They took away our moccasins, and gave us shoes. I was just a baby. I didn't actually wear shoes, we wore moccasins. And so our identity was immediately taken away when we entered those schools.⁵¹

C. Abuse

In addition to the loss of identity, Canadian survivors say that they were beaten severely for speaking their Native languages, for not understanding instructions given in English, and for attempting to contact family members.⁵² According to survivor Fred Bass, his time at the residential school in Kamesack, Saskatchewan was “the hellish years of [his] life.” Bass stated, “You know to be degraded by our so-called educators, to be beat by these people that were supposed to have been there to look after us, to teach us right from wrong. It makes me wonder now today a lot of times I ask that question, who was right and who was wrong?”⁵³ Geraldine Bob, who attended Kamloops school, said that staff members would lose control when punishing students: “They would just start beating you and lose control and hurl you against the wall, throw you on the floor, kick you, punch you.”⁵⁴ It was common practice to shave students’ heads to humiliate and to mark them if they ran away.⁵⁵ Survivors also spoke of being forced to sit or stand barely clothed in the snow as a form of punishment.⁵⁶ The residential schools were unsanitary, with a lack of indoor toilets, poor ventilation, and exposed electrical wiring, exposing the children to a variety of fire and health hazards.⁵⁷ Many residential schools fed children a low-grade diet and kept food rations small, while also

⁵⁰ TRC, *supra* note 15, at 145.

⁵¹ *Id.* (quoting Doris Young’s statement to the Truth and Reconciliation Commission of Canada, June 22, 2012).

⁵² Woo, *supra* note 1.

⁵³ TRC, *supra* note 15, at 103.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 104.

⁵⁷ Haag, *supra* note 30, at 154.

subjecting children to labor-intensive work.⁵⁸ These conditions made children in Canada's residential schools especially vulnerable to death and disease.⁵⁹

In addition to widespread physical, emotional, and cultural abuse, many students—like Glen Jack—experienced sexual abuse as well.⁶⁰ New students, already traumatized by the separation from their families and the foreign world of the residential school, were often the most vulnerable to abusive staff members.⁶¹ Seemingly kind adults offered a shoulder to cry on and perhaps an extra treat, but this attention was often a precursor to sexual assault, leaving the vulnerable students even more frightened and confused.⁶² Survivors of all genders reported sexual assault by staff at residential schools.⁶³ Some survivors described the trauma of witnessing the bodies of babies born to students impregnated by priests and monks being thrown into the incinerator.⁶⁴

Despite widespread knowledge of the abuse occurring at Canada's residential schools, there were very few consequences for perpetrators until very recent history.⁶⁵ Complaints by parents and students were improperly investigated.⁶⁶ Church and school officials consistently failed to report abuse cases to the Department of Indian and Northern Affairs, and Indian Affairs also failed to report cases of abuse brought to its attention by families.⁶⁷ In 1968, after more than one hundred years of abuse, Canada's Department of Indian and Northern Affairs began to compile a list of accused staff members who were not to be rehired.⁶⁸ Even then, however, both the church and state remained reluctant to invoke consequences for perpetrators, and prosecutions were rare.⁶⁹

D. Mass Graves

Beginning in 1975, chilling discoveries have been made on the grounds of many former residential schools in Canada.⁷⁰ The remains

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ TRC, *supra* note 15, at 107.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Austen & Bilefsky, *supra* note 19.

⁶⁵ TRC, *supra* note 15, at 106.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Austen & Bilefsky, *supra* note 19.

of hundreds of people, mostly Indigenous children, have been found in unmarked graves at Native American residential schools.⁷¹ While some died of tuberculosis and other diseases, most of the causes of death are unclear.⁷² The TRC estimated in its report that about 4,100 children disappeared from Canadian residential schools, but Murray Sinclair, an Indigenous former judge and leader on the Commission, recently stated that he now believes the number to be “well beyond 10,000.”⁷³ With the advanced technology of ground-penetrating radar and renewed interest generated by the activities of the TRC, 2021 brought a wave of new discoveries, including 215 bodies found at the former Kamloops Indian Residential School in British Columbia and the remains of as many as 751 individuals at the former Marieval Indian Residential School in Saskatchewan.⁷⁴

While mass graves have not yet been uncovered at residential schools in the United States, there is little doubt that they exist.⁷⁵ At least one researcher estimates that as many as forty thousand Native American children died while in the care of residential schools.⁷⁶ But without a large federally funded effort like Canada’s TRC, the families of those children may never know what happened to their missing family members.⁷⁷

II CULTURAL GENOCIDE: THE SOCIOLOGICAL IMPACT OF CULTURAL ERASURE

Cultural genocide, as defined by the TRC, fundamentally means the “destruction of those structures and practices that allow the group to continue as a group.”⁷⁸ A state that engages in cultural genocide will take actions that intentionally interfere with and destroy the social and

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Brad Brooks, *Native Americans Decry Unmarked Graves, Untold History of Boarding Schools*, REUTERS (June 22, 2021, 2:29 PM), <https://www.reuters.com/world/us/native-americans-decry-unmarked-graves-untold-history-boarding-schools-2021-06-22/> [https://perma.cc/5SX2-3WB8].

⁷⁶ *Id.*

⁷⁷ *Id.* Researcher Marsha Small stated, “Until we can find those kids and let their elders come get them or know where they can pay respects, I don’t think the native is going to heal, and as such I don’t think America is going to heal.” *Id.*

⁷⁸ TRC, *supra* note 15, at 1.

political institutions of the group being targeted.⁷⁹ The state will seize land and forcibly remove populations.⁸⁰ The state will ban languages and spiritual practices, persecute spiritual leaders, and destroy objects of spiritual and cultural value.⁸¹ Most importantly, the state will disrupt family structures, thereby impeding the transmission of cultural values to the next generation.⁸² In Canada, residential schools were a central component of the policies labeled by the TRC as “cultural genocide.”⁸³

These policies were adopted because of a combination of racism and practicality. White lawmakers believed that Canada’s Indigenous children would be better off leaving their cultural traditions behind and also wished to free the Canadian government of legal and financial obligations to Native people.⁸⁴ Addressing the House of Commons in 1883, Canada’s first prime minister, Sir John A. Macdonald said,

When the school is on the reserve the child lives with its parents, who are savages; he is surrounded by savages, and though he may learn to read and write his habits, and training and mode of thought are Indian. He is simply a savage who can read and write. It has been strongly pressed on myself, as the head of the Department, that Indian children should be withdrawn as much as possible from the parental influence, and the only way to do that would be to put them in central training industrial schools where they will acquire the habits and modes of thought of white men.⁸⁵

The “Kill the Indian, Save the man” approach of the late 1800s resulted in generations of Indigenous families being stripped of their authority to raise and educate their own children and generations of children never being able to experience the love and support of their immediate families.⁸⁶ Indigenous and Native American children sent away to residential schools were robbed of the opportunity to learn about their own culture, traditions, and way of life from elders in the community.⁸⁷ Many Native American cultures value traditions and beliefs that were passed by elders to younger generations through oral storytelling, with the responsibility traditionally falling on the youth to

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *See id.* at 2–3.

⁸⁵ *Id.* at 2.

⁸⁶ Amy Anderson et al., *Canada’s Residential Schools and the Right to Family Integrity*, 41 DALHOUSIE L.J. 301, 307 (2018).

⁸⁷ *Id.*

seek out cultural knowledge from community elders.⁸⁸ The psychological and sociological impacts of the boarding schools on the youngest generation, together with the loss of Native language, made this far more difficult.⁸⁹ As a result, in both the United States and Canada, Indigenous communities today still face social and familial challenges inherited from the legacies of residential schools.⁹⁰

A. Tribal Languages

To advance Canada's assimilation goals, staff at residential schools were instructed to prohibit the use of Indigenous languages and promote the use of English and French.⁹¹ Commissioner Edgar Dewdney of Indian Affairs gave instructions in 1883 to the newly opened Battleford school that it should put its efforts "towards imparting a knowledge of the art of reading, writing and speaking the English language rather than that of Cree."⁹² The 1893 "Programme of Studies for Indian Schools" published by Indian Affairs advised that "every effort must be made to induce pupils to speak English, and to teach them to understand it; unless they do the whole work of the teacher is likely to be wasted."⁹³ Mary Angus, a survivor of the Battleford school, said that students caught speaking their own language would have their hair cut off.⁹⁴ Survivor Pierrette Benjamin was forced to ingest soap after being caught speaking her Native language at the La Tuque residential school: "The principal, she put it in my mouth, and she said, 'Eat it, eat it.'"⁹⁵

By the time survivor John Kistabish was allowed to leave the residential school at Amos, Quebec, he was unable to speak Algonquin, the language of his parents.⁹⁶ Upon returning home, Kistabish found that his parents were unable to understand him either, making it nearly impossible to communicate with them or tell them about the abuse he endured at the school while he was away.⁹⁷ "I had tried to talk with my

⁸⁸ Haag, *supra* note 30, at 155.

⁸⁹ *Id.*

⁹⁰ Anderson et al., *supra* note 86, at 308.

⁹¹ TRC, *supra* note 15, at 80.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 81.

⁹⁵ *Id.* at 82.

⁹⁶ *Id.* at 83.

⁹⁷ *Id.*

parents,” Kistabish said, “I knew that they were my parents, when I left the residential school, but the communication wasn’t there.”⁹⁸ Residential schools had an enormous impact on Indigenous language use. Where once more than three hundred tribal languages flourished, now only 169 are still spoken.⁹⁹ Of those 169 spoken languages, however, less than twenty languages have over twenty thousand speakers.¹⁰⁰ Even with recent renewed interest in Native languages, researchers have seen a long-term decreasing trend in Indigenous language use.¹⁰¹ Only one in five Native Americans over age sixty-five spoke a Native language in a recent study.¹⁰² Alarming though, only one in ten Native American children between five and seventeen spoke a Native language in the same study.¹⁰³ These numbers suggest that Native languages are not being passed down to younger generations, which may result in the extinction of some of those languages.¹⁰⁴

B. Poverty

One of the most harmful legacies of Native American residential schools has been their impact on the academic and economic success of Native American people. Even aside from the emotional and psychological damage inflicted by state policies and school staff, the inadequate teachers’ curriculum and learning environment left students woefully unprepared for success.¹⁰⁵ Instructed in an unfamiliar language, homesick, hungry, and often terrified, students were set up for academic failure.¹⁰⁶ Even students who attended residential schools for eight or more years often left with only a third-grade education, some without even the ability to read.¹⁰⁷

Although Native American academic success rates have seen some improvement, Indigenous people in both Canada and the United States still have dramatically lower academic and economic achievements than their peers.¹⁰⁸ Even today, in Canada, around 70% of Indigenous

⁹⁸ *Id.*

⁹⁹ *Census Shows Native Languages Count*, LANGUAGE MAG., <https://www.language-magazine.com/census-shows-native-languages-count/> [<https://perma.cc/HHH2-XNRD>].

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ TRC, *supra* note 15, at 145.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

students living on reservation do not complete high school,¹⁰⁹ and in the United States, 17% of American Indian students attend postsecondary institutions compared with 60% among the total U.S. population.¹¹⁰ This lack of education has led to unemployment, poverty, poor housing, and lack of healthcare for a significant portion of the Indigenous and Native American community.¹¹¹

Indigenous people in the United States and Canada experience very high levels of poverty as a direct result of past policies. In the United States, the average income for Native Americans is less than half of the national average,¹¹² with 26.8% of Native Americans living in poverty as compared to the national average of 14.6%.¹¹³ Similarly, 25% of Indigenous peoples and 40% of Indigenous children in Canada live in poverty.¹¹⁴

C. Substance Abuse and PTSD

Trauma experienced early in life can affect the development of the brain, damaging an individual's ability to have healthy relationships and leading to unhealthy coping mechanisms, like substance abuse.¹¹⁵ Childhood sexual assault, in particular, has been shown to be significantly correlated with increased substance abuse.¹¹⁶ Many survivors of the residential school systems developed addictions as a means of coping with the trauma they experienced.¹¹⁷ According to a recent study, rates of post-traumatic stress disorder (PTSD) are also very high among Native American adults, who suffer from PTSD at a

¹⁰⁹ *State of the World's Indigenous Peoples: Regional Facts and Figures*, U.N. DEP'T OF PUBLIC INFO. (Jan. 2010), <https://www.un.org/esa/socdev/unpfii/documents/SOWIP/regional%20highlights/north%20america/sowip-regionals%20facts-north%20america-en.pdf> [<https://perma.cc/379S-W68M>] [hereinafter SOWIP].

¹¹⁰ *Demographics*, NAT'L CONG. OF AM. INDIANS, (June 1, 2020), <https://www.ncai.org/about-tribes/demographics> [<https://perma.cc/4EHS-4ZEB>].

¹¹¹ TRC, *supra* note 15, at 145.

¹¹² SOWIP, *supra* note 109.

¹¹³ *Demographics*, *supra* note 110.

¹¹⁴ *Poverty in Canada*, CANADIAN POVERTY INST., <https://www.povertyinstitute.ca/poverty-canada> [<https://perma.cc/DBV7-NJY7>].

¹¹⁵ *Substance Use Disorders and Nursing Care*, RRC POLYTECH (Oct. 12, 2022, 10:53 AM), <https://library.rrc.ca/substance-use/Indigenous> [<https://perma.cc/G26D-RUCH>].

¹¹⁶ Jane Liebschutz et al., *The Relationship Between Sexual and Physical Abuse and Substance Abuse Consequences*, 22 J. SUBSTANCE ABUSE TREATMENT 121, 121 (2002).

¹¹⁷ See Teresa Evans-Campbell et. al., *Indian Boarding School Experience, Substance Use, and Mental Health Among Urban Two-Spirit American Indian/Alaska Natives*, 38(5) AM. J. DRUG ALCOHOL ABUSE 421, 421 (2012).

rate of 22% compared with 8% in the general population.¹¹⁸ Study respondents who were boarding school survivors, predictably, were found to be significantly more likely to have a diagnosis of alcoholism and to report using illegal drugs.¹¹⁹ They were also almost 50% more likely to report suicidal thoughts and attempts than the general population.¹²⁰ Study participants who were raised by someone who had attended boarding school also showed significantly higher rates of general anxiety disorder and PTSD as well as increased suicidal thoughts.¹²¹ Surveys show that, in general, Native American people begin drinking younger, drink in larger quantity, and experience more legal and health consequences from drinking than other groups.¹²² They are also five times more likely than non-Natives to die of alcohol-related causes and have the highest rate of drug use of any racial or ethnic group.¹²³

D. Generational Trauma

Many parents of residential school attendees found that the children they had raised were not the same as the ones who came home from the boarding schools. The abusive and racist education system taught children to hate the culture and language of their parents.¹²⁴

In the midst of challenges like poverty, lack of education, substance abuse, and PTSD, generations of Native American and Indigenous Canadian parents lost the right to raise their own children. Survivor Florence Horassi said,

When I was in residential school, then they told me I'm a dirty Indian, I'm a lousy Indian, I'm a starving Indian, and my mom and dad were drunkards, that I'm to pray for them, so when they died, they can go to heaven. They don't even know my mom had died while I was in there, or do they know that she died when I was in there? I never saw my mom drink. I never saw my mom drunk. But they tell me that, to pray for them, so they don't go to hell.¹²⁵

Canadian residential school survivor, Agnes Moses, said,

¹¹⁸ *Id.* at 424.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Anderson et al., *supra* note 86, at 333.

¹²⁵ *Id.* at 336.

The worst thing I ever did was I was ashamed of my mother, that honourable woman, because she couldn't speak English, she never went to school, and we used to go home to her on Saturdays, and they told us that we couldn't talk Gwich'in to her and, and she couldn't, like couldn't communicate. And my sister was the one that had the nerve to tell her. "We can't talk Loucheux [Gwich'in] to you, they told us not to."¹²⁶

Survivors reported having feelings of anger and shame toward family and traditions after spending time at the residential schools.¹²⁷ While some were eventually able to find a place within the Native community, many never felt at home with either the Native or non-Native populations.¹²⁸

As a result of these broken family ties, generations of residential and boarding school survivors were left without the skills to parent their own children.¹²⁹ Survivors reported feelings of shame and grief upon realizing that their own parenting reflected far too much of the angry and abusive treatment that they themselves had been subjected to.¹³⁰ Citing addiction, mental health problems, and a general lack of "parenting skills," Child Protective Services (CPS) officials perpetuated the cycle of broken family ties by removing Native American children from their parental homes and placing them into non-Native foster or adoptive homes at alarmingly high rates up until the 1970s.¹³¹

III

CANADA'S TRUTH AND RECONCILIATION COMMISSION: IS THIS WHAT ACCOUNTABILITY LOOKS LIKE?

A. IRSSA and the TRC

In 2007, Canada implemented the Indian Residential Schools Settlement Agreement (IRSSA) in an effort to formally apologize to former boarding school students and pay reparations to survivors.¹³² The IRSSA was made up of several components, including the

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Haag, *supra* note 30, at 161.

¹³⁰ *Id.* at 159.

¹³¹ *Id.*

¹³² Mary Annette Pember, *Death by Civilization*, THE ATL. (Mar. 8, 2019), <https://www.theatlantic.com/education/archive/2019/03/traumatic-legacy-indian-boarding-schools/584293/> [https://perma.cc/CD2B-X5YZ].

Common Experience Payment (CEP) and the Truth and Reconciliation Commission (TRC).¹³³ The Common Experience Payments of \$10,000 each, plus \$3,000 for each additional year of attendance, were made available to living survivors of residential schools, with larger payments available for more serious cases of abuse.¹³⁴ As part of the IRSSA, \$60 million was allocated for the TRC, which was set up in 2009¹³⁵ and began the process of collecting the oral histories of survivors and opening residential school records.¹³⁶

Under a mandate to “reveal to Canadians the complex truth about the history and the ongoing legacy of the church-run residential schools, in a manner that fully documents the individual and collective harms perpetrated against Aboriginal peoples . . . and guide and inspire a process of truth and healing, leading toward reconciliation,” the TRC established its head office in Winnipeg, Manitoba, retained a small Ottawa office, and opened satellite offices in Vancouver, British Columbia; Hobbema, Alberta; and Yellowknife, Northwest Territories.¹³⁷ The Indian Residential School Survivor Committee (IRSSC) of twelve survivors representing tribes across Canada provided advice and support to the TRC.¹³⁸ The TRC made commitments

to hold seven National Events; to gather documents and statements about residential schools and their legacy; to fund truth and reconciliation events at the community level; to recommend commemoration initiatives to the federal government for funding; to set up a research [center] that will permanently house the Commission’s records and documents, which the parties were obligated to provide to the Commission, thereby establishing a living legacy of the Commission’s work; and to issue a report with recommendations.¹³⁹

B. Documentation of Harms

From 2009 to 2015, the TRC held nearly nine hundred events in all parts of the country.¹⁴⁰ An estimated 155,000 people attended the seven

¹³³ *Id.*

¹³⁴ Indian Residential School Settlement, Court Notice 2006 4 (Can.), https://www.residentialschoolsettlement.ca/detailed_notice.pdf [<https://perma.cc/FMZ2-FCWS>].

¹³⁵ *Id.* at 5.

¹³⁶ Pember, *supra* note 132.

¹³⁷ TRC, *supra* note 15, at 23, 25.

¹³⁸ *Id.* at 23–24.

¹³⁹ *Id.* at 23.

¹⁴⁰ *Id.* at 25, 32.

national events.¹⁴¹ Public sharing panels, sharing circles, commission hearings, and community events were held to gather statements from survivors and their families.¹⁴² Recognizing the high incarceration rates of Native people, especially those who had experience in residential schools, the Commission also gathered statements in correctional institutions.¹⁴³ The TRC committed to offering all victims the opportunity to speak out.¹⁴⁴ At every event where the Commission gathered statements, cultural support workers, health support workers, and professional therapists were present to provide support.¹⁴⁵ In all, the TRC received over 6,750 statements from residential school survivors and their families.¹⁴⁶

C. Public Awareness

Seven four-day events helped to raise public awareness of the history and legacy of residential schools over the course of the Commission's six-year mandate. The events offered a forum for survivors and their families as well as information for the larger community.¹⁴⁷ Each of the seven events was based on one of the Seven Sacred Teachings of Anishinaabe: respect, courage, love, truth, humility, honesty, and wisdom.¹⁴⁸ Traditional themes and ceremonies played an important part in these national events.¹⁴⁹ Each day began with a ceremony and the lighting of sacred fires, following the cultural customs and traditions of the Natives on whose land the Commission was a guest.¹⁵⁰ Local schools were invited to take part in a day of learning at the events, and a stand-alone event for students was organized in Toronto.¹⁵¹ Students attended presentations, cultural performances, panel discussions, and workshops.¹⁵² More than fifteen thousand students participated in all.¹⁵³ The TRC also met with educators and Traditional

¹⁴¹ *Id.*

¹⁴² *Id.* at 26.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 25.

¹⁴⁵ *Id.* at 26.

¹⁴⁶ *Id.* at 25.

¹⁴⁷ *Id.* at 30.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 30–31.

¹⁵² *Id.* at 31.

¹⁵³ *Id.*

Knowledge Keepers, holding panel discussions and conferences on topics related to colonialism, residential schools, and healing.¹⁵⁴

The TRC encouraged Canadians from all cultural backgrounds to take part in the events and to learn more about the history of residential schools and their effect on Native culture.¹⁵⁵ Concerts, talent shows, and cultural performances were an important part of every national event, exposing thousands of event-goers to the rich culture of the local Indigenous people.¹⁵⁶ Canadians were also invited to make statements or expressions of reconciliation at many events.¹⁵⁷ More than one hundred eighty expressions of reconciliation were recorded by those who wished to publicly speak to their personal commitment to healing.¹⁵⁸

In keeping with Canadian Indigenous culture, respected guests were invited to each event to grant legitimacy to the proceedings.¹⁵⁹ The first honorary witness was Her Excellency, the Right Honourable Michaëlle Jean, who served as governor general of Canada.¹⁶⁰ Other honorary witnesses included an acting governor, judges, two former prime ministers, two Aboriginal leaders, and a number of other distinguished community members.¹⁶¹

D. Final Report

In its final report, the TRC listed ninety-four calls to action, organized under two main headings—“Legacy” and “Reconciliation”—and twenty-two subheadings.¹⁶² The first heading under “Legacy” is “Child Welfare,” which, among other calls to action, calls for reducing the number of Aboriginal children in foster care.¹⁶³ Under the “Education” heading are calls to improve education attainment levels and success rates, develop culturally appropriate curricula, and invest in early childhood education.¹⁶⁴ Calls for Aboriginal language preservation and revitalization are listed under “Language and

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 32.

¹⁵⁶ *Id.* at 31.

¹⁵⁷ *Id.* at 32.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *See id.* at 319–37.

¹⁶³ *Id.* at 319.

¹⁶⁴ *Id.* at 320–21.

Culture.”¹⁶⁵ The “Legacy” section also includes calls to close the gaps in health and in justice.¹⁶⁶ Under the “Reconciliation” heading, a number of calls to action dealing with public recognition and perception are addressed within the subheadings:

- Canadian Governments and the United Nations Declaration on the Rights of Indigenous People
- Royal Proclamation and Covenant of Reconciliation
- Settlement Agreement Parties and the United Nations Declaration on the Rights of Indigenous People
- Equity for Aboriginal People in the Legal System
- National Council for Reconciliation
- Professional Development and Training for Public Servants
- Church Apologies and Reconciliation
- Education for Reconciliation
- Youth Programs
- Museums and Archives
- Missing Children and Burial Information
- National Centre for Truth and Reconciliation
- Commemoration
- Media and Reconciliation
- Sports and Reconciliation
- Business and Reconciliation
- Newcomers to Canada¹⁶⁷

As of June 2021, fourteen of the ninety-four calls to action have been implemented or completed, while twenty-three are currently in progress—with projects already underway—and thirty-seven are considered in progress but still in the proposal stages.¹⁶⁸

¹⁶⁵ *Id.* at 321.

¹⁶⁶ *Id.* at 322–25.

¹⁶⁷ *Id.* at 314, 337.

¹⁶⁸ *94 Calls to Action*, BC TREATY COMM’N (June 30, 2021), <https://www.bctreaty.ca/94-calls-action> [<https://perma.cc/UR2D-QYDK>].

E. Truth and Reconciliation in Other Contexts

Canada is not the first to try its hand at restorative justice programs like the TRC. Several other nations have used similar commissions to address serious human rights violations, most notably South Africa and Rwanda. In South Africa, a Truth and Reconciliation Commission was created in December 1995 to investigate and address human rights abuses perpetrated during and under apartheid.¹⁶⁹ South Africa's Truth and Reconciliation Commission recommended a reparations program, including financial and community reparations, and proposed that each victim should receive approximately \$3,500 each year for six years.¹⁷⁰ The Commission also proposed reforms to South Africa's political system, sought prosecution for human rights abuses, and sought to preserve its work through the archiving of documents.¹⁷¹

The Commission's work yielded mixed results. Reparations were paid, but there were long delays in payments, and the payment amounts were far lower than the amount recommended.¹⁷² Amnesty was granted to some perpetrators who confessed their crimes, and, even for those without amnesty, few trials were actually held.¹⁷³ Despite efforts to preserve them, many records were destroyed.¹⁷⁴

While truth and reconciliation may not have been the only good answer in South Africa, the Commission set up in Rwanda is generally seen as having been successful. Unlike South Africa's long history with apartheid, the egregious human rights abuses that occurred in Rwanda occurred largely over the course of one year.¹⁷⁵ Up to one million people died in the 1994 genocide in Rwanda, and as many as 250,000 women were raped as a war tactic.¹⁷⁶ The citizens were left traumatized, and the Rwandan infrastructure was destroyed by this event.¹⁷⁷ Following the uprising, more than 120,000 people were detained in connection to the killings and rapes.¹⁷⁸ To deal with this overwhelming

¹⁶⁹ *Truth Commission: South Africa*, U.S. INST. OF PEACE, <https://www.usip.org/publications/1995/12/truth-commission-south-africa> [<https://perma.cc/9ZDR-3TUB>].

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *The Justice and Reconciliation Process in Rwanda*, U.N. DEP'T OF PUBLIC INFO. (Mar. 2012), <https://www.un.org/en/preventgenocide/rwanda/pdf/bgjustice.pdf> [<https://perma.cc/JP7U-FU59>].

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

number of perpetrators, three levels of justice were set up: the International Criminal Tribunal for Rwanda, the national court system of Rwanda, and the Gacaca Courts.¹⁷⁹

The International Criminal Tribunal for Rwanda was given the mandate to prosecute those people who bore the greatest responsibility in the genocide and other serious international law violations.¹⁸⁰ The national court system of Rwanda handled the prosecution of citizens accused of planning and/or committing serious atrocities, including rape.¹⁸¹ Over the course of ten years, Rwanda's national courts tried over ten thousand suspects in connection with the genocide.¹⁸² Years after the atrocities, however, thousands of perpetrators still remained free and unprosecuted, so the Rwandan government reestablished the Gacaca court system.¹⁸³

The Gacaca Court heard accusations against suspects accused of all crimes except planning or coordinating the genocide.¹⁸⁴ Based on a traditional community court, the Gacaca Court began operating in 2005 in an effort to bring justice and reconciliation to the Rwandan citizens at a local level.¹⁸⁵ Community-elected judges had significant flexibility in sentencing.¹⁸⁶ Defendants in these courts were given a chance to confess their crimes, express remorse, and ask forgiveness from the victims and their families.¹⁸⁷ Because the ultimate goal was reconciliation with the community, repentant offenders were given lesser sentences, often receiving community service or no penalty at all beyond that public repentance.¹⁸⁸ The court system provided an important service to the community by allowing victims to have their day in court, air their grievances, and be heard, as well as providing a way for families to learn about the fates of their loved ones who went missing during the turmoil. In all, more than twelve thousand courts were set up under this system, allowing 1.2 million cases to be tried.¹⁸⁹

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *See id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

IV

ACCOUNTABILITY IN THE UNITED STATES:
APPLYING THE CANADIAN TRUTH AND RECONCILIATION MODEL*A. Reparations and the United States*

Historically, attempts in the United States to provide reparations for victims of Native American residential schools have failed at both the national and state levels.¹⁹⁰ In 2019, South Dakota's state legislature voted down a bill that would have extended the statute of limitations for survivors of boarding school abuse to file suits against the Catholic Church or similar organizations.¹⁹¹ Because statutes of limitations for criminal or civil charges will preclude any legal action in the United States, and lawsuits against the churches or denominations that might be found responsible would have to be brought in individual state courts and would be expensive and difficult,¹⁹² some activists in the United States are looking to the Canadian TRC as a possible solution to similar atrocities on this side of the border.

These ideas have been echoed, to some extent, by the current Secretary of the Interior for the United States, Deb Haaland.¹⁹³ After the remains of ten children and young adults were found in June 2021 at the former Carlisle Indian Industrial School in Pennsylvania, Secretary Haaland announced the Federal Indian Boarding School Initiative, which has been tasked with investigating residential schools in the United States.¹⁹⁴ Also in June 2021, the Truth and Healing Commission on Indian Boarding School Policy in the United States Act was introduced in the Senate to "investigate the impacts and ongoing effects of the Indian Boarding School Policies" on American Indian, Alaska Native, and Native Hawaiian children and

develop recommendations on ways (A) to protect unmarked graves and accompanying land protections; (B) to support repatriation and identify the tribal nations from which children were taken; and . . . (C) to prevent the continued removal of American Indian, Alaska Native, and Native Hawaiian children from their families and tribal

¹⁹⁰ Pember, *supra* note 132.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ Anna Sturla, *Remains of Native American Children to Be Exhumed at Site of Former Boarding School*, CNN (June 23, 2021, 3:01 PM), <https://www.cnn.com/2021/06/23/us/carlisle-indian-industrial-school-remains-exhumed/index.html> [https://perma.cc/7UZ2-SJYK].

¹⁹⁴ *Id.*

communities by State social service departments, foster care agencies, and adoption agencies.¹⁹⁵

As of the writing of this Comment, the Truth and Healing Commission Act has not received a vote in the Senate, but the first official report from the Federal Indian Boarding School Initiative was released in May 2022.¹⁹⁶

In a Department of the Interior press release announcing the publication of the investigative report, Assistant Secretary for Indian Affairs Bryan Newland said, “This report presents the opportunity for us to reorient federal policies to support the revitalization of Tribal languages and cultural practices to counteract nearly two centuries of federal policies aimed at their destruction.”¹⁹⁷ This first volume of the Federal Boarding School Initiative’s Investigative Report lays out important goals:

- Identifying Federal Indian boarding school facilities and sites;
- Identifying names and Tribal identities of Indian children who were placed in Federal Indian boarding schools;
- Identifying locations of marked and unmarked burial sites of remains of Indian children located at or near school facilities; and
- Incorporating Tribal and individual viewpoints, including those of descendants, on the experiences in, and impacts of, the Federal Indian boarding school system.¹⁹⁸

The report also outlines a modest plan of action to be implemented and recorded in a second volume as the initiative continues its investigation. Based on the current findings, the office of the Assistant Secretary of Indian Affairs provided eight specific recommendations for moving forward:

1. Continue full investigation.
2. Identify surviving Federal Indian boarding school attendees.

¹⁹⁵ Truth and Healing Commission on Indian Boarding School Policies Act, S.2907, 117th Cong. (2021).

¹⁹⁶ Press Release, U.S. Dep’t of the Interior, Department of the Interior Releases Investigative Report, Outlines Next Steps in Federal Boarding School Initiative (May 11, 2022), <https://www.doi.gov/pressreleases/department-interior-releases-investigative-report-outlines-next-steps-federal-indian> [https://perma.cc/FW6W-LQJ4].

¹⁹⁷ *Id.*

¹⁹⁸ U.S. DEP’T OF INTERIOR, FEDERAL INDIAN BOARDING SCHOOL INITIATIVE: INVESTIGATIVE REPORT 3 (May 2022), https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf [https://perma.cc/W6WU-T8J8].

3. Document Federal Indian boarding school attendee experiences.
4. Support protection, preservation, reclamation, and co-management of sites across the Federal Indian boarding school system where the Federal Government has jurisdiction over a location.
5. Develop a specific repository of Federal records involving the Federal Indian boarding school system at the Department of the Interior Library to preserve centralized Federal expertise on the Federal Indian boarding school system.
6. Identify and engage other Federal agencies to support the Federal Indian Boarding School Initiative, including those with control of any records involving the Federal Indian boarding school system or that provide health care to American Indians, Alaska Natives, and Native Hawaiians, including for the provision of mental health services to students attending Bureau of Indian Education (BIE) operated and funded schools.
7. Support non-Federal entities that may independently release records under their control.
8. Support Congressional action involving the following policies:
 - Native American Graves Protection and Repatriation Act (NAGPRA).
 - Advance Native language revitalization.
 - Promote Indian health research.
 - Recognize the generations of American Indian, Alaska Native, and Native Hawaiian children that experienced the Federal Indian boarding school system with a Federal memorial.¹⁹⁹

The Commission received a \$7 million investment from Congress for 2022 to work toward these goals.²⁰⁰

While these recent developments are encouraging for survivors, it is unlikely that the United States government will initiate a program on the scale of Canada's TRC for several reasons. First, the scope of boarding school policies in the United States was somewhat smaller than in Canada, and the number of gravesites discovered so far is much smaller.²⁰¹ Second, while the United States has long had an uneasy

¹⁹⁹ *Id.* at 95–99.

²⁰⁰ Press Release, U.S. Dep't of Interior, *supra* note 196.

²⁰¹ James McCarten, *Residential Schools: A Long-Awaited Report in the United States*, WORLD NATION NEWS (Oct. 4, 2022), <https://worldnationnews.com/residential-schools-a-long-awaited-report-in-the-united-states/> [<https://perma.cc/WB29-P9JM>]. In Canada, more than 1,300 unmarked gravesites have been discovered compared to fifty burial sites discovered in the United States. See Ian Mosby & Erin Millions, *Canada's Residential*

relationship with race and discrimination, Native American issues are often overshadowed in politics by other racial dynamics.²⁰² Some attempts have been made at similar commissions in American history, with varying degrees of success, but models that have been implemented or proposed in the United States have been very limited in scale.²⁰³

Congress set up the Commission on Wartime Relocation and Internment for Civilians in 1980 to address the wrongs perpetrated by the United States government on Japanese Americans during World War II.²⁰⁴ While the scope of community involvement was significantly more limited than the Canadian Commission, the 1980 Commission included education initiatives and a public apology from Congress as well as reparations of \$20,000 per survivor.²⁰⁵ In the city of Greensboro, North Carolina, a Truth and Reconciliation Commission was set up in 2004 to investigate the death of five protesters during a 1979 anti-Ku Klux Klan rally, but while the commission did provide survivors with a chance to be heard, the city of Greensboro ultimately rejected each of the proposals put forward by the commission.²⁰⁶ In 2019, Maryland established the Maryland Lynching Truth and Reconciliation Commission to investigate and expose racially motivated lynching crimes from the past and to allow those affected by those crimes to have a day in court.²⁰⁷ The Maryland Commission continues to hold regular meetings.²⁰⁸

Schools Were a Horror, SCI. AM. (Aug. 1, 2021), <https://www.scientificamerican.com/article/canadas-residential-schools-were-a-horror/> [https://perma.cc/9NEU-ZS75]; *U.S. Identifies More than 50 Native American Boarding School Burial Sites*, THE GUARDIAN (May 11, 2022), <https://www.theguardian.com/us-news/2022/may/11/native-american-children-schools-abuse-burial-sites> [https://perma.cc/HVZ8-987G].

²⁰² *Id.*

²⁰³ Sarah Souli, *Does America Need a Truth and Reconciliation Commission?*, POLITICO (Aug. 16, 2020, 7:00 AM), <https://www.politico.com/news/magazine/2020/08/16/does-america-need-a-truth-and-reconciliation-commission-395332> [https://perma.cc/GU5K-QLHU].

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ See MD LYNCHING TRUTH AND RECONCILIATION COMM., <https://msa.maryland.gov/lynching-truth-reconciliation/> [https://perma.cc/7EKC-MT5A].

B. Moving Forward: What Should the United States Do Now?

While a program on the scale of Canada's TRC would be unlikely to pass through today's divided United States Congress, a commission modeled after the 1980 Commission on Wartime Relocation and Internment for Civilians may be limited enough in scope to gain support. Ultimately, the poverty and education deficits that plague Native American communities in the United States can be directly traced back to the policies and actions of the United States government. Damages have certainly been incurred, and although legal obligations have been avoided up to this point—and could be avoided forever with enough political will—moral obligations remain.

The benefits of a restorative justice program, like Canada's TRC, to the affected community include visibility, closure, acknowledgment, and some degree of justice and accountability. Those benefits to the community do come at a cost to the individual, in the form of the lost ability to bring some individual suits and, typically, a significant reduction in recoverable damages. Because of statutes of limitations and the reluctance of state governments to step in, however, survivors of Native American boarding schools currently do not have any viable options for compensation. Consequently, even if the acknowledgment and compensation offered by a United States commission were nominal, it would still be more than victims are currently entitled to by law.

The United States government has a moral obligation to attempt to right the wrongs of the past. The genocidal actions of the previous centuries should not continue to dictate the attitudes of the future. Despite the “can of worms” that would inevitably be opened, restorative justice and monetary reparations would significantly benefit Native American communities. Studies show that giving funds directly to people and communities in need is one of the best ways to improve quality of life.²⁰⁹

Ideally, a United States commission should address more than just the distribution of funds to residential school victims and their families. Because the damage from residential schools was so much more than monetary, reparations should include a measurable commitment to supporting educational achievement for Native American youth, both in K–12 education and secondary education, through scholarships, school funding, and monetary incentives for Native teachers to teach in

²⁰⁹ See Francesca Bastagli et al., *The Impact of Cash Transfers: A Review of the Evidence from Low- and Middle-Income Countries*, 48 J. SOC. POL'Y 569, 594 (2018).

majority–Native American classrooms. A United States commission interested in counteracting the effects of residential schools would also invest in language and cultural education programs through public universities to encourage the preservation of language and culture as well as the development of new Native language speakers—and would offer those programs for free to tribal members. Most importantly, like the Canadian TRC, a United States commission should collect the responses of survivors and their families and turn that input into official calls to action, with the intention of implementing all practicable calls.

CONCLUSION

While truth and reconciliation efforts are historically imperfect, they can be a material step in the right direction. For five hundred years, the forces of colonialism have upended the lives of Indigenous peoples around the globe. In North America, colonial governments exerted control not just over Native people themselves but over their beliefs, traditions, rights, livelihoods, and languages. Residential and boarding schools in the United States and Canada operated as a particularly effective—and particularly cruel—method of control, forcing Native American and Indigenous parents to send their young children to state-sponsored boarding schools designed to force them to assimilate with White culture and leave their Native culture behind. Generations of Native American and Indigenous children endured physical, emotional, sexual, and cultural abuse at the hands of church-run, state-sponsored residential schools. By acknowledging this history through the TRC, Canada opened a dialogue between the colonizers and the colonized, a dialogue that had been a long time coming, and provided the United States with a template from which to build future restorative policy. It is incumbent upon policy makers in the United States follow suit.

