

**Templates and Exclusions: The Making of Cultural Genocide in Canada's Truth
and Reconciliation Commission on Indian Residential Schools**

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Introduction

Since the end of the Cold War, truth and reconciliation commissions (TRCs) have increasingly been used as a way to overcome the legacies of mass violence, usually committed by states toward their own citizens. Their goals are not only to redefine justice and recreate a socio-political order, but to do so by better understanding and coming to terms with the past, with a focus on testimony provided by individual victims and perpetrators of harm. The TRC that I will discuss here, Canada's Truth and Reconciliation Commission on Indian residential schools, illustrates how such reinterpretations of history can become sources of social belonging based on legal meaning, with the interconnected concepts of "survivor" and "cultural genocide" becoming reference points for much of the testimony that was presented and the way the schools were represented.

This conceptual focus was, as I will discuss here, pervasive throughout the activities of the Commission, culminating in the way that cultural genocide was forcefully introduced in the opening lines of the Commission's final report:

For over a century, 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. The establishment and operation of residential schools were a central element of this policy, which can best be described as "cultural genocide." (TRC 2015)

The report then elaborates on the concept of cultural genocide describing it as the state-sponsored destruction of the political and social institutions necessary for a group to continue as a group. This involves such acts seizure of land, forcible transfer of populations and restriction of their movement, banning of languages, persecution of spiritual leaders, confiscation and destruction of objects of spiritual value, and forbidding of spiritual practices. In light of the history of Indian residential schools, the most significant act of cultural genocide emphasized in the report was the disruption of families “to prevent the transmission of cultural values and identity from one generation to the next” (TRC 2015). The motivation for this nationwide catastrophe was simple, having to do with a dominant society’s push toward nation-building: “The Canadian government pursued this policy of cultural genocide because it wished to divest itself of its legal and financial obligations to Aboriginal people and gain control over their land and resources” (TRC 2015).

In presenting this conclusion, the Commission was continuing a campaign of public consciousness raising that shaped its work from the outset. Canada’s TRC is unique in the extent to which the harms of historical proportion for which the state was responsible were virtually unknown to the public at large, at least at the time of the Commission’s first National Event in Winnipeg in 2010. Canadians for the most part simply did not know about the existence of the schools for more than a century of Canada’s history, had heard little about the violence and sexual abuse that was pervasive in them (except perhaps having heard something about one or two prominent cases of pedophile priests) and were unaware of the approximately 150,000 students who attended them throughout their history, some 80,000 of whom are living school “survivors.”

Fewer knew about the ongoing trauma that many former students reported following from their childhood experience in the schools. Even the approximately \$5 billion in compensation regimes under the Indian Residential Schools Settlement of 2007 (the largest legal settlement in Canadian history and one of the largest in the world) flew under the radar and was not the focus of the kind of public discussion one might have expected following the government's liability for such an impressive sum. This lack of awareness would be unheard of in other circumstances in which other truth commissions have taken place (South Africa, Guatemala, Argentina, etc.), in which there was a basic public consensus on the historical circumstances that were the focal point of the state's transition and the subject matter of the truth commission.

This means that Canada's TRC is also unique in the extent to which it has assumed the task of public education and of reforming the dominant historical narrative of the state. The elaboration of publicly influential concepts of collective selves, historical trauma, and the crimes of the state occurred in a context of apathy and ignorance. The organizers and participants of the TRC were highly motivated in their efforts to create awareness and sympathy, making this aspect of the Commission's work similar to the lobbying activities of justice-oriented NGOs that seek to bring public attention to their chosen causes. In taking on this public awareness challenge, the Commission sought to establish a link between the most shameful crime in public life—the policy-driven elimination of a people—and the most shameful crime in private life—the sexual abuse of children.

The way that the Commission created this link tells us something about the relationship between subjectivity and the public life of the law. Human rights discourse

can be seen as creating conceptions of victimhood that erase the nuances of individual and collective experience, in which, in Marilyn Strathern's terms, "The victim is re-described in the kind of bare detail similar to a presumption of (human) equality before the law, the new social context being the universe of others who have suffered human rights abuse" (2004: 232). This raises the question of how such reduction to bare detail occurs. Truth Commissions are ideal settings to explore this question, serving as prominent venues for (re)conceptualizations of collective experience, the essence of groups or peoples as cultural communities, and the ideals of justice in relationships with states.

In this paper I want to explore some of the processes by which such subjectivity is formed. I situate these processes among the phenomenon in which the ideas associated with human rights have been generalized to the point of becoming a point of reference for widely popular understandings of injustice and remedy. The discourse of human rights in South Africa's benchmark TRC, for example, is described by Richard Wilson as illustrative of a growing phenomenon, in which human rights concepts are "detached from [their] strictly legal foundations and become a generalized moral and political discourse to speak about power relations between individuals, social groups and states" (Wilson 2001: xv). This introduces comparative questions that apply to other truth commissions in other contexts. How does this detachment occur? How might new moral and political discourses be actively promoted by truth commissions?

The connections between law and public discourse do not end here, however. In Canada's truth commission another possible influence of public outreach can be seen in emerging legal standards. As Klaus Günther (2008: 6) points out, the legislative powers

of international law have deformed and devolved during the post Cold War period, to the point of being taken up even by NGOs like Amnesty International, Greenpeace or Human Rights Watch. Such extensions of transnational legislating procedures to non-judicial bodies, Günther argues, “create new norms by their own practice which gain transnational binding force in the long run” (2008: 6). By extension, in Canada’s Truth and Reconciliation Commission we can see something more than a decoupling of human rights discourse from their legal foundations: we also see a reattachment of moral discourse into conceptual formalism, a remaking of law, evident in the creation of conditions in which the concept of cultural genocide became a reference point for the history of indigenous peoples and the state, possibly to serve as the foundation for new relationships between aboriginal peoples and the dominant society.

Legal conditions

More than in any other TRC, specific legal conditions can be seen behind the direction taken in the Commission’s work. One of these derives from the fact that the central interpretive concept on which it was based had insecure foundations in law. While broadly familiar as a term that designates the intentional elimination of distinct ways of life, the concept of cultural genocide lacks legitimacy in both state and international law. It is clear that Raphael Lemkin, the visionary jurist who coined the term “genocide” and who was instrumental in drafting the United Nations Convention on the Prevention of Genocide (UNGC), had a broad vision of what constituted a genocidal act or policy. To Lemkin, “the destruction of a nation . . . results in the loss of its future contributions to

the world. Moreover, such destruction offends our feelings of morality and justice in much the same way as does the criminal killing of a human being: the crime in the one case as in the other is murder, though on a vastly greater scale” (Lemkin 91). The means employed by states toward this collective murder according to Lemkin were highly variable, and included destruction of the cultural heritage of a targeted group. Against Lemkin’s intentions, however, the concept elaborated in the Genocide Convention concentrates on the biological forms of the eradication of peoples through such means as mass killing and forced sterilization, while omitting an entire range of techniques for the elimination of peoples through programs directed toward the destruction of language and culture.

The concept of *cultural* genocide has therefore not explicitly entered international law, certainly not in a way that has consequences for what we might call perpetrator states and the individuals who serve them. It is a “wannabe” concept, almost, but never quite, making it into law. During the 1990s, the cultural genocide concept found its way into the Draft Declaration on the Rights of Indigenous Peoples, which states in Article 7, “Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide,” followed by a list of acts, including deprivation of their cultural values and ethnic identities, dispossession from lands, territories and resources, population transfer, and subjection to propaganda. In the final version of the Declaration, however, the terms ethnocide and cultural genocide are removed, even though the concept of “genocide” in its biological sense remains (in Article 7.2: indigenous peoples “shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.”) “Ethnocide” and “cultural

genocide” have been retained only as shadows behind the more specific phenomena they describe, particularly the “forced assimilation or destruction of their culture.” (Article 8.1)¹ The terms that use the suffix “-cide,” with its implications of killing with reference to culture, were clearly unpalatable to states; and Lemkin’s broad conception of the genocide concept was again denied articulation in international law.

Attempts were also made to introduce the idea of cultural genocide to Canada’s courts by the survivor groups sponsoring lawsuits against the federal government and the churches in the late 1990s and early 2000s. Indian residential schools litigation involved efforts to argue that cultural genocide was a motive and partial outcome of the residential school system, connected to Canada’s push toward control of land and resources. The survivor-claimants thus intended to argue that “loss of culture” should be considered an actionable tort, listing among the harms they experienced “loss of aboriginal language, culture and family roots, a loss of self-esteem, an inability to complete their education, reduced earning capacity, physical pain and suffering, and psychological disorders” (*Cloud v. Canada* at para. 8). As with the cultural genocide concept in international law, this interpretation did not gain traction in Canada’s courts. The Ontario Superior Court, in *Cloud v Canada*, for example, found “no common issues” in the motion by former students of the Mohawk Institute Residential School near Branford, Ontario to certify a class action lawsuit,”² The class action was eventually certified in 2004 with a decision of the Court of Appeal for Ontario, which cited as common issues the breach of a duty to care and breach of fiduciary duty, with no direct mention of the applicants’ claims of cultural loss.³ With the establishment of Settlement Agreement in 2006, however, the class action claims were terminated and the acts associated with cultural genocide were

not argued or tested in court. In the record of legal decisions on residential schools that remains behind, the courts had a marked tendency to “sever sexual abuse from collective crimes such as genocide, and sever both sexual abuse and genocide from issues of land” (Thielen-Wilson 2014: 182).

The Commission would not have taken place, however, without eventual recognition by the courts of a common breach of law of historical proportions—this much is clear from the Ontario Superior Court (in *Baxter v. Canada*), in established the Settlement Agreement and the TRC, when it broke with the particularist rulings and affirmed that the schools were established by the government of Canada in order to accomplish “a radical re-socialization” aimed at instilling the children instead with the values of Euro-centric civilization.”⁴ It was up to the newly minted Commission to establish the nature of this common experience in a reframing of Canadian history.

There was at the same time a legal structure that oriented the Commission toward a particular kind of survivor narrative. The mandate of the Commission laid out in “Schedule N” of the Settlement Agreement favoured a “victim centrism” in which the concept of the residential school survivor was embodied and enacted, with only passive or publicly invisible opposition from “the accused,” the government and the churches. Under the terms of the Indian Residential Schools Settlement Agreement (IRSSA), the TRC is prevented from holding formal hearings, acting as a public inquiry, or conducting any kind of legal process. It does not have subpoena powers, and it has no other mechanism to compel attendance or participation in any of its events or activities. It is

prevented from identifying any person in any of its activities or reports without the consent of that individual—in other words, it cannot “name names” of perpetrators who have not yet been tried. TRCs that lack judicial authority tend to be oriented more exclusively toward the affirmation of victim experience and to shape testimony through a preferred kind of narrative.⁵ With perpetrators either excluded or able to opt out from the TRC process by the mandate, the emphasis tends to be on the individual victims or “survivors” who experienced harm.

This “non-judicial” aspect of the mandate may also serve to explain why Truth and Reconciliation Commission chose to champion the concept of cultural genocide over genocide plain and simple. A case could certainly be made to classify the schools as genocidal, particularly under Article 2(e) prohibiting the forced transfer of children from one group to another (MacDonald 2014). As a concept with legal force, however, the Genocide Convention was off-limits as a reference point for the Commission, limited as it was to “the principle of voluntariness” (Article 4[b]) and unable to act as a judicial tribunal or to make judicial findings (MacDonald 2015).

Through the systematic efforts of the Commission, the connections between violence, neglect, and sexual abuse and efforts to eliminate the cultures of aboriginal peoples were reinforced. The commission and its participants translated the concept for a national and global public with reference to their own language, testimony, symbols, and rituals. Cultural genocide was therefore championed by those designated as survivors in a way that made it more widely understood and palatable as a reference point for aboriginal peoples’ senses of historical injustice and trauma. As I will now show, through

the work of the Commission, idea of cultural genocide was given a reality in testimony and publicity that it did not have in the law.

Templates and Testimony

Together with a team of research assistants (numbering between one and five in each event), I took part in all seven of the Commission's National Events (in Winnipeg, Halifax, Inuvik, Saskatoon, Vancouver [which I followed through the TRC's live-stream on the Internet], Montreal, and Edmonton), as well as a regional event (Victoria), two community events (Iqaluit and Ottawa), and the closing ceremonies (Ottawa). My assistants and I recorded and transcribed many of the official speeches and hundreds of the statements made at these events. I also interviewed sixteen Oblate priests and brothers in their residences in Montreal, Albertville (near Edmonton, Alberta) Ottawa, Iqaluit, and Winnipeg, as well as eleven grey sisters in two group interviews in Winnipeg.⁶ My assistants and/or I completed a dozen interviews with school survivors and seven interviews with employees of the Commission, including those responsible for "health support" during the National Events.⁷

Our focus was on the organization and delivery of "statements," starting with meetings held on the first day of each National Event titled "How to Share Your Truth" in which the process of bearing witness was discussed with would-be participants. The Commissioner's Sharing Panel, chaired by at least one of the three commissioners, was the largest venue, sometimes reaching a thousand audience members in convention centre ballrooms. This was the focus of the Commission itself, with cameras recording the sessions, which were available to media, live-streamed on the Internet, preserved for a

future research centre, and occasionally selected for posting on line or edited into “highlight reels” to be screened in future events. Testimony was also given in smaller Sharing Circles with the Survivor Committee, chaired (as its title suggests) by a member of the Indian Residential Schools Survivor Committee, with ten to twenty participants sitting with their chairs in a circle taking turns to tell their stories, again with cameras present, but with audiences numbering no more than fifty. Private statement gathering was available for those who did not want to appear publicly, with an option for the session to be video and/or audio recorded.

Throughout this exposure to the work of the Commission the most salient feature was the prevalence of testimony focusing on violence, including sexual abuse, in the schools and the ongoing trauma lasting into adulthood resulting from these experiences. There were, of course, stories of personal courage, resilience, and rediscovery of language and tradition, but by far the dominant themes of the sharing circles were sexual aggression, sadistic regimes of discipline, cultural and racial denigration and humiliation, spoken in ways that were charged with emotion, through tears, quavering voices, trembling hands, with pauses for water, for breath, or for comfort from a “helper.”

This trend toward narrations of horror is not an inevitable feature of truth commissions, despite their common starting point in overcoming legacies of violence. The problem in South Africa’s TRC was encouraging witnesses to reveal “unspeakable truths.”⁸ The same reluctance was observed by Coxhall in her study of Peru’s Truth Commission, in which the Andean villagers were indifferent to the commission and had difficulty narrating their experience of *la violencia*. Instead, silence, particularly women’s silence, was a protective substitute for self-revelation. Coxhall concludes from this

difficulty that, “Concealing personal pain by refusing to speak and share this knowledge is a means of both self-protection and preserving one’s personal integrity” (2005: 213). There is, in other words, nothing natural about publicly narrating experiences of violence, grief, and pain, and there may in fact be strong inhibitions to doing so. This inhibition also applies to former residential school students who experienced abuse, for whom suppression of emotion and self-expression was a predictable outcome of the harrowing circumstances of their early lives (Gone 2013: 691).

Yet, the tendency in Canada’s hearings was the opposite, toward a privileging of the worst abuses, recounting of the most revolting acts of violence toward children: “Sometimes at night all you smell is bad breath and all you see is these big hands . . . there are parts I can’t even remember . . . years I don’t even know about . . . Years after I quit drinking, I still felt a lot of shame . . . I eventually found my culture that was taken away . . . Our proudest achievement is none of our kids is baptized.” Trauma lasting into adulthood (and often through generations) was consistently connected to experience in the schools in deeply personal, disturbing narrations:

To this day I suffer anxiety problems. I am claustrophobic. I was not old enough when I first started school so when they sent the kids off to classes, the nuns would put me in a locker and take me out at lunch to go and eat and then when the kids would go back to school I would be locked back into that locker. And when I first got there they scrubbed me raw. They cut my hair. I slept on a bed, I couldn’t move. I had to sleep like I was on the cross. My skin was so sore. I had blisters, I

bled. To this day I still have nightmares—a certain nightmare. I am floating in the air, I see my dad taking this little girl in and I’m saying « don’t take her, it’s a bad place ». But he goes in with her. As he goes up the stairs he turns and looks at me, he knows I’m there and they take me, they are all nice at first. They say they are going to take care of me, and as soon as they close the door that’s when it starts.

Statement after statement recounted experiences of rape, brutality, humiliation and their lasting effects into adulthood and through generations, usually ending with some form of redemption, a recovery from addiction, rediscovered faith, or renewed attachment to tradition.

The obverse side of this tendency toward narrations of sexual abuse and its aftermath was the reluctance of students who did *not* have deeply traumatic experiences to appear before the microphone. This reluctance came out in interviews with former students, away from the microphones of the Commission: “I almost feel guilty because, I mean, I had it rough in residential school...Sister N wasn’t the nicest person in the world. I didn’t starve though. I had clothes. I had warm bed. I wasn’t abused physically you know or sexually abused . . . But my story compared to our elders . . . it almost seems insignificant, if I could say that.”⁹

The narration of the worst horrors of childhood experience was a tendency that the commissioners themselves noticed and tried without success to influence in the direction of a wider range of themes. Commissioner Sinclair, opening the National Event in Halifax, addressed those who were considering making statements with the advice that,

“it is not our intention to require you only to share your pain with us . . . We need you to look not only at the sadness and pain, but to talk about the good things that happened in the schools . . . It is important for your grandchildren to know why you survived.”¹⁰

The fact that such encouragement had little effect on the dominant themes of survivor testimony can be explained by other features of the Commission’s events. Testimony was framed, and narratives of suffering and intergenerational trauma encouraged, by structures and events that gave a positive value to particular forms of survivor experience. These structures of affirmation include the lobbying activities of survivor organizations, the presentation of model survivor testimony, the influence of guest speakers (particularly those who spoke about their experience with and recovery from genocidal killing), exhibits that presented the key evidence and experiences connected to cultural genocide, and artistic representation that symbolically represented and ritually formalized experiences of suffering and cultural rediscovery.

Survivor organizations: Testimony on residential schools was first influenced by organizational structures outside the meeting rooms of the Commission. This can be seen, for example, in the impact of survivor organizations, some of which began their existence premised on the tripartite connections between school violence, cultural genocide, and policies of dispossession from land and resources (Niezen and Gadoua 2014: 8). Phil Fontaine, former Grand Chief of the Assembly of First Nations, whose path breaking public narration of his experience of sexual abuse in residential school provided an example for others to follow, was instrumental in the creation of a national movement of survivors. As his statement to an organizational meeting of the TRC in Vancouver in 2011 indicates, these efforts were based on an understanding of the schools

as purpose-built for the eradication of distinct aboriginal peoples. The Canadian government, he said, “didn’t want to accept the fact that this was a mass violation of human rights, and the harm inflicted on individuals were really race-based and that the policy that made it possible for this horrible experience to descend upon us was really one that was designed to eradicate a sense of Indians in the country, it’s really about an attempt to kill the Indian in the child, and that’s what brought us this horrible and tragic experience.”¹¹

Survivor groups offered a sense of solidarity for those who might otherwise have been hesitant to appear before the large public venues of the Commission, as in offering information on the counselling services available to them before, during and after the event. Such encouragement, premised on the likelihood of “triggers” or flashbacks and re-traumatization, gave life to narratives of institutional crime in the context of a redefined history of the state.

Through the activities of these groups, the Commission became a vehicle for the enactment of the category of the residential school “survivor.” At the time of the lawsuits that led to the creation of the commission in the early 2000s, the word “survivor” was already used to designate (and self-designate) those who experienced mass horrors that reach the point of atrocity to become reference points for world history, things like the Holocaust and the Vietnam War. It had also extended from this usage to apply to the more personalized, stigma- and isolation-inducing traumas like rape and incest. In Canada’s TRC, the term “survivor” combined both of these meanings: it referred to those who experienced first hand a mass crime of cultural destruction, *and* those who experienced the crime of sexual violence, with a common identity deriving from a widely

shared individual experience.

In practice, the affirmation of survivor experience was not only manifested in particular structures and practices of encouragement; it pervaded the events and activities of the Commission, with phrases like, “for survivors only” (with reference to gift bags or refreshments), “Survivors registration,” or “Survivors rest area,” and so on. Even coffee urns and doughnuts situated outside the area designated for private statements, were off limits to anyone except self-designated survivors, with even the overworked “health supports” staff instructed to find their caffeine and sugar elsewhere— on one occasion creating a delicate situation (and a sharp retort: “*I am* a survivor”) when a mental health worker, who happened to also be a former residential school student, was stopped by a commission organizer while serving himself at the “survivors only” coffee urn.

Model testimony: From the start of its public activities in 2010, through to the presentation of its final report in 2015, the Commission made a link between the abuse of children in a state-sponsored institutional setting to the repulsion connected with the genocide concept, and by extension the cultural destruction of distinct ways of life. Such framing of the history of the schools took place most centrally in the context of the Commission’s “statement gathering.” Highlight reels from community hearings were screened in some of the events before the public statements took place, in which selected clips from previous survivor testimony were presented, clips that placed emphasis on the poignant and memorable moments, the stories of suffering, loss of language, pain, and, to conclude, some equally poignant statement of rediscovery and redemption.

Before giving the floor to those who had registered on the speaker’s list, each National Event also offered model testimonies by guest speakers, survivors who were

accustomed to telling their stories, who similarly offered templates for others to follow, which conveyed preferred messages with a certain balance of suffering and hope. These model testimonies were presented in an environment that was unfamiliar to the participants, in which the expectations of them were unknown or unclear. The experienced witnesses were there to provide encouragement, to make it safe to narrate painful memories before an audience of strangers. Of course, not every survivor followed the model that was offered. Some were silent at the microphone, mute with grief, unable to speak. Others went off the topic, preferring to talk about current injustices with no apparent connection with the schools. But the templates were there as points of reference, acting to encourage narratives that touched on unsayable memories and to give them voice.

In this encouragement, the concept of cultural genocide was occasionally replaced by genocide in the way that the Commission framed the history of the schools. Ostensibly this was to present examples of resilience, to argue for the possibility of recovery from profoundly traumatic experience. In reality, however, these presentations left open the possibility for a wider comparative understanding of the history residential schools—and personal experience within them—as genocidal. Invited speakers included (in Montreal) a survivor of the Rwandan genocide, who, in a public forum moderated by a news anchor, talked about the hate that was unleashed in a frenzy of killing, and of his recovery from the horror and trauma of this experience. These guests also included Holocaust survivor Robbie Waisman (born Romek Wajsman in Skarszysko, Poland, in 1931), a member of the group of 430 children known as the “Buchenwald boys,” who showed a film clip depicting the horror of the death camps, with images of bodies stacked

like cordwood and the cadaverous survivors pressing their gaunt faces against chain link fences at the moment of their rescue, images that brought moans and intakes of breath from the audience members in Iqaluit who had never before seen anything of the kind. He then spoke about his experience in the camp and finding friendship and common experience with the African American serviceman who rescued him.

The possible application of this narrative of genocide to the residential schools in Canada was not lost on his audiences. Following an “open mike” invitation to audience members to ask questions after his presentation, one school survivor commented: “Indian residential school is no different from what happened to Jews. Part of the European conquest! . . . We were physically and sexually abused in these residential schools! We were tortured for speaking our own language, a language that is so beautiful, so important, so expressive. So I don’t see no difference.”¹² The Commission’s intended message of resilience, of persistence and the possibility of happiness in the aftermath of profound trauma, was overlooked by some survivors in favour of a genocide-as-our-experience moment of insight, a conception of self as a surviving victim of genocide and a view of the Canadian state and the churches as the perpetrators of mass crime.

This personalization of genocidal experience was not an isolated perspective. When former Canadian Prime Minister Paul Martin took the stage in the Montreal National Event, he made headlines with the an explicit evocation of cultural genocide: “Let us understand that what happened at the residential schools was the use of education for cultural genocide, and that the fact of the matter is, yes it was. Call a spade a spade.” To this statement his listeners in the conference centre responded with loud applause (duly reported in newspapers the following day); but from where I was in the audience I

could also overhear someone say, “it was genocide!” with others within earshot nodding assent.

Exhibits: The concept of cultural genocide and the experiences associated with it were also promoted by pictorial displays and exhibits in a space referred to by the Commission as “The Learning Place.” The most prominent display that toured with the major TRC venues was that of the Legacy of Hope, self-described as “a national Aboriginal charitable organization dedicated to raising awareness and understanding about the legacy of residential schools.” This display took great care to present a range of material, supported with photographic and documentary evidence, assembled into timelines, and presented with brief, plain-language summaries presented under clear captions.

Prominent in the Legacy of Hope display were photographs and transcribed testimony from Survivors illustrating the connections between residential schools and territorial removal as well as the traumas associated with the school experience. In one section of the display, headings taken from survivor statements like “I learned to feel shame . . .” “I wanted to go home. . .” “I died in this place . . .” and “they cut my hair and burned my clothes” stood out prominently above explanations of the interruptions brought about by the schools. The messages conveyed by the Legacy of Hope in this touring exhibit paralleled those that it presented online, including the general finding that: “Generations of Aboriginal people today have memories of trauma, neglect, shame, and poverty. Those traumatized by their experiences in the residential school have suffered pervasive loss: loss of identity, loss of family, loss of language, loss of culture” (Legacy of Hope 2015).

Photographs could not, of course, depict the violence of the schools, other than vicariously, for example through the loneliness of faces of the children, and the severe

expressions of their caretakers. The regimentation and order of the schools, as in an image of girls kneeling in their beds, scrubbed and clean with hands folded in prayer, which was once used by the government to make an argument in favour of their good purpose and effects, stands in a new context to represent the oppressiveness of institutional discipline, imposed on people for whom it was alien and abhorrent.

Artistic representation: The pictorial representation of the schools also included an artistic form of testimony, expressed in works of art solicited by the Commission in furtherance of its goals of collecting and representing survivor experience. This can be seen online, in an “open call for artistic submissions” in which the TRC “invites artists to submit works relating to apology, truth, cultural oppression, cultural genocide, resistance, resilience, spirituality, remembrance, reconciliation, rejuvenation and restoration of Aboriginal culture and pride.” (TRC 2010)

Central among these artistic representations of school experience was a bentwood box by Coast Salish artist Luke Marsdon, which in one panel depicts his grandmother, a former residential school student at Kuper Island. The panel shows her bent and broken fingers raised beside her tearful face, fingers which, Marsdon explained, were crippled when as a child she was pushed down a flight of stairs by a nun and had never healed properly because of lack of care. The material representation of suffering, resilience, and recovery are, through the box, given sacred meaning in a “rituals of deposition” in the Commissioner’s Sharing Circles, in which participants deposit such things as items of clothing worn by students, books, documents, DVDs, and other items that recall or depict the history of the schools and the experience of students in them (Niezen and Gadoua 2014: 33). Through the bentwood box, key themes in survivor testimony were sacralized

in symbolic and ceremonial representations of school experience.

This kind of spiritual affirmation was present in different forms through the work of the Commission, with the opening National Event in Winnipeg in 2010 establishing the pattern that other events were to follow. In the Sharing Circle, in which a microphone (referred to as a “talking stick”) was passed clockwise from speaker to speaker, those in the circle or in the audience who emotionally broke down in the midst of the at times harrowing, sorrowful testimony were offered the consoling effects of burning sage, fanned by eagle feathers, and water blessed in a morning ceremony by women from the Three Fires Midewiwin Lodge, an Anishinabe medicine society. Blankets placed in the centre of the circle were used to collect tear-soaked tissues, later (the moderators explained) to be burned in a sacred fire, returned in gratitude to the Creator. The Sharing Circle was surrounded on all sides by other kinds of cultural performance: drumming, pipe and water ceremonies held at sunrise each morning; small venues such as Inuit sewing demonstrations, games, and throat singing; Métis fiddling and sash weaving; daily sweat lodge ceremonies; and on the last day a pow-wow, followed by a fireworks display, to close the event (Niezen 2013: 205).

Such practices were not without purpose. The affirmation of survivor experience went further than the persuasion of reluctant witnesses to appear before the microphone. There exists a vast gulf between the occurrence of trauma and the capacity of victims to publicly narrate their experience of it. Canada’s TRC created conditions that encouraged the narration of traumatic experience, and in so doing made that experience emblematic of the residential schools and their lasting impacts on former students and their families. Unlike the variety of narrations in many other truth commissions, most notably that of

South Africa (see Ross 2003) Canada's TRC made this form of testimony not only sayable but predominant, to the point of excluding other forms of experience.

Exclusions and Contestations

Canada, as the main party responsible for the schools, was not entirely absent from the activities of the commission, but nearly so. There were ministers or deputy ministers at the opening sessions of the Commissioner's Sharing Circles, who usually said something supportive about the Commission's work and then left to catch a plane. But we never heard from the government people who ran the schools, the administrators, the inspectors, the school councillors, or people who filled other roles. There wasn't even a category for them in the form that had to be filled out before getting on the speaker's list. The government of Canada simply avoided the idea that there was any intention behind the residential schools to eliminate the distinct cultures and languages of aboriginal people. Instead, the messages it brought to the Commission events, in the brief appearances of its representatives before they left to catch a plane, were of noncommittal solidarity with the work of the Commission and occasional sympathy with the experience of aboriginal people, as those who do not fully benefit from the services of the state and the global economy.

Behind the scenes, the state did what it could to limit its cooperation with the Commission, particularly in restricting its access to archival records. The Canadian government therefore took an approach of minimal compliance with the Settlement Agreement—and occasional defiance of it—with a view to limiting its liabilities.

Commissioner Wilton Littlechild expressed to me his disappointment with this lack of cooperation, seeing it as creating a missed opportunity to give the residential school legacy the attention it deserved. “The message that’s being put out there is that this is not a Canadian issue, its an Aboriginal issue, when only the Minister of Aboriginal Affairs is sent there” to the opening ceremonies of Commission events. What is more, the government argued in court that some police records “weren’t necessarily relevant” to the research needs of the Commission.¹³

For the churches, the tension with the narrative of cultural genocide was deeper and more personal. Going a bit further than the government, the churches sent high-level representatives, acknowledged responsibility, delivered eloquent apologies and “gestures of reconciliation.” As was expected of them, they expressed contrition in Commission events from high levels in their hierarchies, with carefully crafted apologies, drawing from an already familiar language of self-examination and contrition. An apology by Anglican Archbishop Michael Peers offers an example:

I am sorry, more than I can say, that we were part of a system
which took you and your children from home and family.

I am sorry, more than I can say, that we tried to remake you in our
image, taking from you your language and the signs of your identity.

I am sorry more than I can say, that in our schools so many were
abused physically, sexually, culturally and emotionally.

On behalf of the Anglican Church of Canada, I present our apology
(cited in Niezen 2010: 200)¹⁴

To this form of contrition, however, some churches presented a counter argument, not in the main events of the Commission but quietly, on the side, attracting little notice. One manifestation of resistance to the dominant themes of the commission was expressed by selecting out of their archives those photographs that depicted moments of casual pleasure, activities of cultural meaning, or of deep educational purpose. Class photos with smiling faces were in abundance in church displays, including team photos (hockey in particular), creating an argument that the schools were places of learning and character building. As one priest, recalling his role in the **Lebrett** Residential School put it to me, “we gave them personalities!” An Anglican display in Halifax exemplified this resistance, with images that depicted the pleasure of learning, including one of girls wearing aprons holding fresh loaves of bread, a photo of a boy’s hockey team, in uniform with smiling faces, a boy shooting a bow and arrow, and another of two boys holding an impressive catch of lake trout—all arguments against the narrative of cultural genocide by depicting activities consistent with the pleasure of learning and the continuation of life on the land.

Outside the main gatherings of the TRC, some church archivists chafed at the dominant themes of the Commission. A librarian at the Deschatelets residence in Ottawa, on learning that I was doing research on the Commission, quietly took me and a research assistant aside to show us the library’s collection of dictionaries, in Blackfoot,

Cree, and Ojibwa, bound in leather, painstakingly handwritten with entries in neat rows. Missionaries with such dedication to aboriginal languages, he said, had no intention of eliminating the culture of the people among whom they lived and worked.

This counter narrative of the residential school experience and the schools' place in Canadian history was made explicit in conversation with Oblate priests, brothers, and nuns, in which they emphasized their positive experiences. "My stay in Labrette I would say was beautiful. I mean, I loved it. Loved it."¹⁵ Nuns fondly remembered teaching the girls practical things like cooking and sewing and priests had especially strong memories of playing hockey with the boys.

Following from these fond memories, they commonly felt a sense of betrayal at the (to them) inexplicable turn in the public understanding of the schools and their roles in operating them. What I also found from these interviews was an overwhelming sense of resentment toward the Commission and the compensation regimes of Indian Residential School Settlement Agreement. Members of the clergy reported on their experience of "shock" over the anger directed toward them from aboriginal people.

I never heard of the, [what] they call the physical, physical abuse and sexual abuse. I never heard of that. I heard that years after I left there, when they started to sue me. . . This is a bunch of lies, bunch of lies. I had to go to court at least half a dozen times for that, for people, ex-students who made allegations, mostly of sexual abuse [against] me.¹⁶

Another priest asked, "How come in my school in five years I never heard of physical

abuse and sexual abuse? How come years later they come and all of their studies find, my God, you're a criminal?"¹⁷ Listening to their understanding of the schools, it was clear that the priests were offering a rebuttal of each of the central themes of the Commission, including that of the schools' assimilative purpose: "They keep their culture with language, but give them the tools to survive in this new society where they're dominated by Europeans or whites and then, the times have changed now. You need new skills. Integration."¹⁸ The late father Heureux, in a steady flow of letters and documents from his office in the Maison Deschâtelets in Ottawa to the press and to the Indian Residential Schools Adjudication Secretariat, contemptuously referred to the compensation process as "parajudicial" and the Truth and Reconciliation Commission as a public "lynching." Others were more tempered in their views and chose to consider the TRC as a kind of divinely sanctioned suffering. A mother superior, on the way by car to interview the sisters who had been under her charge in a residential school, was silent for a long time, then sighed deeply and said: "it is truly difficult to do good in the world."¹⁹

These perspectives were almost never presented to the Commission, and on the rare occasions when they did, they were manifestly unwelcome. Not only did the emphasis on survivor experience make the priest, brothers and nuns feel unwanted, they were also inhibited by the compensation regimes of the Settlement Agreement, by which they felt they could easily be identified as abusers if they appeared in public before audiences of survivors. Their public profile was, as they saw it, taken over by the upper echelons of the Church hierarchy, which engaged in the politics of repentance and apology, leaving no room for their dissent. For these, largely structural reasons there was

little room in the Commission for contestation of the dominant narrative of suffering and loss as defining features of school experience, and the later rediscovery of tradition as a source of healing and restored dignity.

Only once did such views find their way explicitly into the testimony. This happened when Brother Cavanaugh, representing the Oblate order, made a presentation to the Commission in an event called “Expressions of Reconciliation,” before an audience of some 800 people, consisting mostly of survivors and their families and friends, in a large meeting room of the lavishly-appointed Fairmount Empress Hotel in Victoria, British Columbia. Here, rather than express the expected reconciliatory contrition, he spoke of his experience (which he introduced as “my truth regarding my experience”) as a young man, twenty-one years old, appointed as a supervisor of the senior boys in grades 5 to 8 in the Christie residential school at Kakawis on Meares Island (off the west coast of Vancouver Island), which he remembered as a place of love and dedication to learning, with the Sisters of the Immaculate Heart bearing a great responsibility for the education and welfare of the students, together with five Oblate Fathers and Brothers as well as eight First Nations support staff. When he said in passing that the 120 children in the school were “sent by their parents,” there was a murmur from the audience. He continued, “Was it a perfect situation? No,” and followed up with a statement that seemed to set things off: “there didn’t seem to be any other viable alternative in providing a good education for so many children who lived in relatively small, isolated communities.”

At this point there was a shout from the audience: “Truth! Tell the Truth! You’re not telling the truth!” From somewhere else in the room there was loud wail, followed by

agonized weeping. Cavanaugh persisted through the interruption:

The Native Staff who were related to a number of the children along with the other staff, I felt, provided a good education, as well as excellent care and guidance. Parents were encouraged to visit the School and rooms were available, if they wished to stay overnight to be with their children.

During this part of his speech a woman in the audience continued to shout, “Tell the truth! Shame on you! We never sent our children to residential school! Tell the truth!” Commissioner Sinclair then approached the microphone and called for “health supports” for the person who was still wailing and weeping loudly. He then made a brief statement in which he argued for Brother Cavanaugh’s right to be heard: “We must ask that you be respectful.” The presentation then continued without further interruption. Brother Cavanaugh presented a book about a Catholic-sponsored healing initiative, and placed it with hands joined with the commissioner into the bentwood box, followed by handshakes and scattered applause.

Such interruptions of the pattern, manifested in stress points or ruptures of uncharacteristic emotion, tell us more about the boundaries of testimony than does conformity to them. In this significant moment we have an audience rejecting a narrative truth (“my experience”) that makes a claim to correspondence with a historical truth that wilfully runs against the orthodoxy of survivor experience. What did Brother Cavanaugh say that offended and aggrieved his listeners so deeply?

The phrase “sent by their parents,” in effect, made aboriginal peoples co-conspirators in the establishment and operation of the residential schools. In doing so, he called into question the basic premise of the Commission, captured succinctly in the title of its interim historical report, “They Came for the Children.” By invoking the historical inevitability of the schools, he shifted the main source of moral responsibility and injury from the level of the institutions to the few individuals in authority within them who violated their trust—the pedophile priests. And by interrupting the narrative of genocide, Brother Caubanaugh by implication called into question the sincerity and integrity of those who reported on their experience of suffering in the schools, or at least in the one school in which he had experience.²⁰

The Commission’s final report recalls this event, and adds that later that same day, Ina Seitcher, who attended the Christie residential school that Brother Cavanaugh spoke about, had a different recollection of the experience: “That priest that talked about how loving that Christie residential school was—it was not. That priest was most likely in his office not knowing what was going on down in the dorms or in the lunchroom” (TRC 2015). The Commission’s report then attributes the absence of such direct exchanges between survivors and former school staff to the fact that for many, “the time for reconciliation had not yet arrived” (TRC 2015).

Conclusion

To say that cultural genocide was “made” or “constructed” through the Commission’s selections, representations and affirmations is of course not to deny that traumatic experience was a prevalent feature of residential schools or that they were part

of a policy that used education as an instrument of assimilation. It is rather to say that framing the history of the schools in this way is no different from making any other human rights claim, in which oversimplified messages arise almost naturally out of an effort to correct a condition of public ignorance. Accounts that frame indigenous oppression as equivalent to genocide have a tendency to reify notions of both culture and of traumatic experience (Kirmayer, Gone, and Moses 2014: 305). Correcting the historical narrative of the state calls for erecting and patrolling boundaries of experience, with images and testimony of survivors oriented toward the cultivation of public education, mass solidarity and pressure on the powerful. In particular, Canada's truth commission called for efforts to inform audiences in ways that would lend credibility to cultural genocide as an axial concept for the ordering of traumatic survivor experience.

Like the narration of trauma, the absence of dissident voices in the TRC was not a natural outcome of transitional justice processes. As Gerhard Anders and Olaf Zenker point out in their overview of recent truth and reconciliation commissions in Africa, the aftermath of violence is usually one in which the terms of new beginnings are negotiated, in which "former combatants and their leaders, politicians, civil society activists, village elders and ordinary people advance their views on how to realize justice or seek to secure a place in the new political system" (2014: 396). That no such negotiation took place in Canada's TRC is largely an outcome of its victim-centred mandate and its educational, publicity-oriented goals, which had the effect of reifying survivor experience, with a focus on sexual abuse and crises of cultural loss.

Despite (or because of) the specific legal conditions at its origin, particularly the limitations of its mandate, the Commission was able to promote the history of the schools

within a framework that connected sexual violence to the elimination of the cultures, and further, to the state's illegitimate goal of compromising the political autonomy and claims to territory of aboriginal peoples. It was therefore largely the rights claimants themselves—the survivors—who re-appropriated the term cultural genocide and breathed life into it. A concept that began its life in the writings of the jurist Raphael Lemkin and later excluded from the Genocide Convention was embodied in the tears and trembling hands of survivors who came to the microphone, made manifest in art, stories, performances, and displays and sacralized in ritual.

The cultural colour of the opening and closing ceremonies and the ritualization of statement gathering was an obverse side of a narrative of cultural destruction. The Commission made determined efforts to show that the program of forced assimilation did not achieve its ends and that the intended destruction of peoples was overcome by resilience. This part of the argument involved the revitalization of traditions, making distinct culture salient (if not reified) as a source of individual growth and wellbeing. To make the case that distinct cultures were targeted for elimination, one first has to show that they existed, that distinct traditions were a vital part of the aboriginal ways of life slated for destruction, that children were being removed and “educated,” not out of a condition of ignorance or liberation from featureless rural poverty, but out of vital, ancient ways of life with distinct languages, to which people had strong and enduring attachments.

There is a close connection between the Commission's affirmation of survivor subjectivity and its influence on legal conceptions of the crimes of states. We like to think of legal standards as emerging out of a process of rational doctrinal construction of

mechanisms and institutions oriented toward collective goals. In Canada's TRC, by contrast, we see conceptions of rights and historical rights violations that draw from the representation of traumatic experience. Whether intentionally or not, Canada's truth and reconciliation commission was not just guided by the existing ideals of human rights and models of truth telling; it was at the same time shaping them, oriented toward legal standard setting.

The way that the re-inscription of law took place in Canada's TRC is particularly clear and direct. The voluntary orientation of the Commission, built into its mandate, not only encouraged the affirmation of survivor experience, it at the same time tended to exclude or inhibit narratives from other sources, with other perspectives. The relative quiet that accompanied the Commission's promotion of cultural genocide in its framing of survivor experience—that is to say, the absence of a “history war” in public discussion of the schools—was partly a result of the difficulty faced by those who worked in the schools in appearing before the Commission and participating in its statement gathering. Under these circumstances, counter-narrative was oblique, as in the smiling faces of students in the photographs selected for display from Church archives.

Notes

¹ See Valentina Vadi (2014: 257-58) for a discussion of cultural genocide in international law.

² *Cloud v Canada* (Attorney General) 65 O.R. (3d) 492 [2003] O.J. No. 2698 Court File No. 1267, at para. 23.

³ *Cloud v. Canada* (Attorney General), [2004] Can LII 45444 (ON CA).

⁴ *Baxter v. Canada*. 00-CV-192059CP, 2006/12/15, at para. 3.

⁵ The consequences of “Victim-centrism” as a feature of some truth commissions are discussed by Nwogu (2010) and Robbins (2012).

⁶ Although my research focus was on the Oblate order, my assistants and I also had several informative conversations with members of the Anglican, United, and Presbyterian churches in each of the National Events.

⁷ The focus here is on the events sponsored by the TRC. Discussion of its history can be found in Milloy (1999). Connection to the compensation regimes of the Settlement Agreement can be found in Niezen (2013: Ch. 3).

⁸ The difficulties of “bearing witness” in South Africa’s TRC are discussed by Fiona Ross (2003).

⁹ Interview with Lucy Kuptana by Marie-Pierre Gadoua, Inuvik, [Date]

¹⁰ Commissioner Murray Sinclair, Commissioner’s Sharing Circle, Halifax. [date]

¹¹ Phil Fontaine, address to the TRC, Vancouver, 2 March 2011.

¹² Saskatoon, 23 June 2012.

¹³ Niezen interview with commissioner Wilton Littlechild, New York, [date].

¹⁴ This example of an apology, which was delivered at the National Native Convocation in Minaki, Ontario in 1993, shows that the churches were well ahead of the demands for repentance later called for by the TRC. A similar apology was delivered by Doug Crosby to a meeting of the Oblate Conference of Canada in 1991: “We apologize for the part we played in the cultural, ethnic, linguistic, and religious imperialism that was part of the mentality with which the peoples of Europe first met the aboriginal peoples and which has consistently lurked behind the way Native Peoples of Canada have been treated by civil governments and by the churches . . .” (The Missionary Oblates 1991).

¹⁵ Niezen interview with Oblate priests, Winnipeg.

¹⁶ Niezen interview with Oblate priests, Winnipeg, [date]

¹⁷ Niezen Interview with Oblate priests, Résidence Despins, Winnipeg

¹⁸ Niezen interview with Oblate priests, Résidence Despins, Winnipeg

¹⁹ “C’est vraiment difficile de faire du bien dans le monde.” Winnipeg, [date].

²⁰ I discuss this event more fully in *Truth and Indignation* (2013:).

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