

Recognition, Redistribution, and Representation: Assessing the Transformative Potential of Reparations for the Indian Residential Schools Experience

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As part of the broader spectrum of strategies to assimilate Indigenous people in Canada, the federal government developed the Indian residential school (IRS) system. The schools, which were funded by the government and managed by the churches, were designed to strip the children of all that was Indigenous, their traditions, customs, values, and languages. While attending the schools many children encountered rampant abuse and neglect, the legacy of which is apparent in the present day individual and community dysfunctions such as substance abuse, loss of languages, and inability to parent, as well as sexual, emotional, psychological, and behavioural problems.

Former students actively began to seek redress for the IRS experience by launching class action lawsuits against the churches and federal government¹ in the early 1990s. As a response to the lawsuits, the governments issued the Statement of Reconciliation in 1998 and a Statement of Apology in 2008. This paper employs Nancy Fraser's tripartite theory of justice to evaluate the transformative potential of these responses. I conclude that the federal government's responses to IRS serve only as case-specific surface remedies that fail to account for the range of deeper injustices that arise from the colonial project.

Introduction

Through treaty settlements reached with Indigenous² nations beginning in the 1800s, the government of Canada was invested with responsibility for the education of Indigenous children. Therefore, policies related to the education of Status Indians fell under the jurisdiction of the federal government and these policies were later expressed in the

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¹The churches were also the subjects of the class action lawsuits and many church staff were charged and convicted of criminal offenses. However, the federal government was always considered the main perpetrators because it failed to regulate the churches' actions.

²I acknowledge that there is no universally accepted definition of the term. In this paper I use the term "Indigenous" to refer collectively to the pre-Columbian inhabitants of Canada.

establishment of the Indian residential school (IRS) system (Episkenew 2009). During the residential school era, approximately from the 1830s to the 1990s, First Nations, Métis, and Inuit children, along with their relatives and communities, suffered wrongs committed against them by the Canadian government and churches. These wrongs include but are not limited to: widespread sexual, physical, emotional, and spiritual abuse; bullying (student-on-student abuse); the aggressive assimilation of Indigenous children into Euro-Canadian culture; substandard living conditions at IRS; and neglect resulting in death and disease (Milloy 1999). Various attempts at reconciliation, such as the 1998 Statement of Reconciliation, the Alternative Dispute Resolution Program, the Indian Residential School Settlement Agreement (IRSSA 2006), and the 2008 Statement of Apology, have been introduced to redress the IRS experience and acknowledge the harm done. The heretofore lack of conflict resolution success demonstrates the complexity and seriousness of the legacy of IRS, as well as the inadequacy of the previous processes to heal the resulting damage.

In the context of IRS reparations, of particular interest are the 1998 Statement of Reconciliation and the corresponding 1998 *Gathering Strength* report on the one hand, and the 2008 Statement of Apology and the IRSSA on the other. These are the primary focus of this paper because they embody the federal government's responses that, with varying success, have been directed at resolving the former IRS students' calls for reparations and could also be considered the major milestones in the history of IRS legal battles. By critically evaluating these responses, this paper seeks to assess their ability to address the issues that are at the genesis of the Indigenous-settler colonial state relations in the post-IRS era. More precisely, the question that I pose here is, "Do these mechanisms of redress have the potential to challenge and destabilize the foundations of colonialism?"

Scholars such as Taiaiake Alfred (1999; 2005; 2009), Matt James (2008), and Paulette Regan (2010) draw connections and critically evaluate the intersections between state-issued reparations such as apologies, monetary compensation schemes for historical injustices, and decolonization. Chrisjohn, Young, and Maraun (2006), for example, note that in order to right a historical wrong like IRS, a complete acknowledgement and recognition of the harm done must occur. Others advance that apologies must be coupled with monetary compensation or any appropriate type of reparations in order to be considered meaningful or risk being disregarded as empty words (see, for example, Corntassel and Holder 2008). Furthermore, Corntassel, Chaw-win-is, and T'lakwadzi (2009) observe that colonial injustices, such as IRS, are often intertwined and interrelated with other injustices, which must be resolved collectively. They go on to argue that in Canada, the IRS experience is often treated in isolation and separate from the issue of land and therefore "ignor[es] the fact that the issues [IRS] survivors³ contend with from the residential school era are rooted in the forced removal of entire families and communities from their homelands" (p.8).

Political theorist and philosopher Nancy Fraser suggests that in order to resolve systemic wrongs like colonialism, a theory of justice must first conceptualize them as unjust (Nelund 2011). As such, comprehensive and holistic remedies are required not only for

³I choose not to capitalize the term "survivor" and although it is sometimes capitalized in the literature (and in the Canadian Truth and Reconciliation Commission's mandate), I argue that assigning master status of victims and *only* victims to IRS survivors' may contribute to the solidification of their identity as passive and complacent, thus stripping them of power and agency to generate resistance to colonialism.

symptoms of systemic injustices such as the IRS system, but they must also address the deeper structural and institutional causes of these injustices.

Nancy Fraser's tripartite theory of social justice

Fraser (1995; 2003; 2005; 2008) argues that groups in a society may suffer three distinct types of injustices: cultural/symbolic, socioeconomic, and political injustices. Cultural-symbolic injustices are associated with "representation, interpretation, and communication, [and manifest in] cultural domination, nonrecognition, and disrespect" (Fraser 1995:71). In other words, as Nelund (2011) points out, cultural/symbolic injustices can be conceptualized as "ideologies and norms that classify some groups of people as worth less respect than others" (p.63). In the case of IRS, for example, Indigenous cultures were misrecognized as primitive and destined for extinction, and thus needed to be "saved" in order for the people to survive (Milloy 1999). Socioeconomic injustices, on the other hand, are associated with unequal distribution of material resources between groups in a society, which Fraser (2008) often refers to as "maldistribution." Some of the examples of maldistribution include income inequality, capitalist exploitation, and substandard living conditions arising from inadequate material resources.

In her later work, Fraser (2008; 2009) acknowledges the inadequacy of the binary recognition/distribution paradigm to account for present day injustices and therefore seeks to develop a third pillar, which she calls "representation," to bolster her theoretical stance. She argues that representation-related injustices, or "political voicelessness," are becoming increasingly important to consider in struggles for justice and democracy in a globalizing world. The status model, as she calls it, is a lens through which we must examine recognition- and distribution-related injustices and is associated with social inequality or social status that prevents individuals or groups from "standing as full partners in social interaction [and rendering them unable] to participate as peers with others in social life" (Dahl, Stoltz, and Willig 2004:377).

Fraser argues that generally, the process of resolving representation-related injustices involves ensuring participatory parity in political claims-making, while remedies for recognition-related injustices entail granting due recognition to the previously misrecognized groups. Distribution-related injustices, in turn, can be remedied by redistribution of material resources. In Fraser's view, the three types of injustices may be resolved in one of two ways: affirmatively or transformatively. Transformative remedies are associated with "correcting inequitable outcomes precisely by restructuring the underlying generative framework" (Fraser 2005:73), while affirmative remedies tend to resolve only the "inequalities that arise from the organization of social relations without challenging these relations" (Woolford 2005:31).

In the case of affirmative redistributive remedies, the objective is to correct the existing income inequality by facilitating transfer of material resources to the maligned groups. However, these remedies tend to leave intact the conditions, such as the capitalist mode of production, that were responsible for generating income inequality. More precisely, they do not "challenge the deep structures that generate class disadvantage" (Fraser 1995:85). Thus, affirmative distributive remedies may serve only as a temporary means to a permanent problem that will continue to produce and reproduce distributive inequal-

ity in a society. Transformative redistributive remedies, on the other hand, are aimed at eradicating the origins of economic injustice and promoting distributive equality by eliminating the root causes of economic inequality. Fraser (1995) argues that transformative measures for effectively addressing distributive injustices include “redistributing income, reorganizing the division of labour, subjecting investment to democratic decision-making, or transforming other basic economic structures” (p.73).

Affirmative remedies for recognition-related injustices are associated with mainstream multiculturalism and seek “to redress disrespect by revaluing unjustly devalued group identities, while leaving intact both the contents of those identities and the group differentiations that underlie them” (Fraser 1995:82). The concern with affirmative cognitive remedies is that they tend to produce groups differentiation that could result in “repressive communitarianism” and lead to “right-wing nationalism, religious fundamentalism, and anti-immigrant movements” (Dahl et al. 2004:377). Transformative cognitive remedies, in turn, “consist in anti-racist deconstruction aimed at dismantling Eurocentrism by destabilizing racial dichotomies” (Fraser 1995:91). Unlike affirmative remedies, transformative remedies constitute a shift from defining group belonging in static terms and instead endorse the dynamic and continuous processes of collective identification that are an essential part of group membership. Although in her earlier work, Fraser defended the idea that transformative recognition required the demarcation of cultural identities, she later amended her argument to pay attention to the specific socio-historical context of misrecognition that had a crucial bearing on the elements that should make up transformative recognition.

The situation with respect to representation is more complex. Groups in a society may suffer two distinct levels of representation-related injustice: ordinary-political misrepresentation and misframing. As Fraser argues, injustices of ordinary-political misrepresentation are associated with barriers to equal political participation and relate to “intra-frame representation, [and] debates over the relative merits of alternative electoral systems” (Fraser 2005:8). These injustices may be resolved by applying affirmative remedies, which seek to provide protection to groups’ political rights while ensuring “a fair and equal voice for everyone” (Nelund 2011:65). What is neglected by these affirmative remedies is the global scale of injustices “in which the international system of supposedly equal sovereign states gerrymanders political space at the expense of the global poor” (Fraser 2008:408). The second level of injustice is metapolitical injustice, which Fraser refers to as “misframing.” These injustices are more subtle and can be defined as “polity’s boundaries [that] are drawn in such a way as to wrongly deny some people the chance to participate *at all* in its authorized contests over justice” (Fraser 2008:408, original emphasis). In contrast to ordinary-political injustices that require affirmative remedies, these injustices require transformative remedies that recognize and take into account the transnational nature of present-day politics and “reconfigure disputes about ... justice as a three-dimensional problem, in which redistribution, recognition, and representation must be integrated in a balanced way” (Fraser 2005:305).

Fraser’s theory has not been without criticism. Young (1997), for example, argues that Fraser tends to ignore the influences of distribution on recognition and wrongly dichotomizes the two axes as mutually exclusive. Furthermore, Axel Honneth charges that recognition has recently displaced redistribution and that “recognition should be

the single master principle of a theory of social justice” (Thompson 2005:92). In other words, Fraser’s argument that the two play equal parts in the construction of injustices is inaccurate. Colish (2009), on the other hand, points out that Fraser’s theory “has manifested resistance to sanctioning group difference” and does not adequately account for the dynamic nature of group identities in society and their struggle for self-determination (p. iii).

Notwithstanding these critiques, Fraser’s theory presents a useful framework through which reparation mechanisms for historical injustices may be evaluated. The remainder of this paper discusses the ability of IRS remedies to promote systemic change, with a focus on their decolonizing potential, which I define as the ability to challenge and destabilize the dominant institutional arrangement and settler-colonial policies. I begin by assessing some of the factors that could be considered responsible for the failure of the 1998 Statement of Reconciliation and the *Gathering Strength* report to promote transformative redistribution, recognition, and representation. In doing so, I consider the specific provisions of these mechanisms that carry relevance to material, cultural, and political dimensions of colonialism. In the final part of the paper, I adopt a similar approach to examining the 2008 National Apology and the IRSSA and its components, but also discuss the ways in which these could be regarded as transformative remedies to IRS and deeper colonial injustices.

The Statement of Reconciliation and *Gathering Strength*

In 1991, the Royal Commission on Aboriginal Peoples (RCAP) was established to look into the abuse and neglect that took place within the walls of the residential schools. The RCAP produced its final report in 1996 that “has put beyond dispute the general historical facts of the residential school experiment” (O’Connor 2000:244). The report compelled the government and churches to recognize the damage the IRS system have caused to former students, their families, and communities. Also, the report’s findings gave the survivors’ civil lawsuits against the government new ammunition and the increasing numbers of successful legal claims were threatening to bankrupt the government and churches. Two years later, in January 1998, the Honourable Jane Stewart, Minister of the Department of Indian Affairs and Northern Development (DIAND), issued a Statement of Reconciliation⁴ (SoR) that acknowledged the role of the government in the “development and administration of [the] schools” (DIAND 1998).

The Statement of Reconciliation and affirmative/transformational recognition

The SoR was offered at a luncheon in a government room in Ottawa during a presentation to “indigenous leaders and other government workers” on January 7, 1998 (Corntassel and Holder 2008:9). Even though the SoR constituted an effort on the part of the government to reconcile the past, many residential school victims and political organizations in Canada, such as the Assembly of First Nations (AFN), considered it lip service and lobbied for a more sincere apology that would directly acknowledge the responsibility of

⁴Full text of the Statement of Reconciliation can be located here: <http://www.aadnc-aandc.gc.ca/eng/1100100015725>

Canadian government in the abuse and neglect. More precisely, O'Connor (2000) suggests that the 1998 Statement "was carefully worded to avoid making specific admissions that could be used against the government in the lawsuits" (p.249). The failure of the SoR is apparent in the immediate spike in the number of lawsuits that were fueled by its perceived inadequacy stemming in part from its lack of recognitive potential. As Phil Fontaine, former National Chief of the AFN and residential school survivor notes, the SoR resembles a "statement of regret, rather than a full sincere apology" (Canadian Broadcasting Corporation 2008:para 8). Younging, Dewar, and DeGagné (2009), in turn, argue that due to the use of vague language, the SoR succeeded only in disappointing survivors because it did not directly acknowledge the ongoing IRS legacies. Although the SoR led to the establishment of the Aboriginal Healing Foundation, "an organization designed to promote community-based healing and renewal initiatives," it did not result in any type of material compensation to survivors and led to it being regarded as empty words (Henderson and Wakeham 2009:10).

Scholars such as Corntassel and Holder (2008) argue that the SoR uses "very non-descript and guarded language, [when outlining] what it considered to be historic harms to indigenous peoples" (p.10). Similarly, Gerald Morin, president of the Métis National Council, problematized affirmative recognition in the context of IRS and highlights the need for transformative recognition of colonial injustices that Indigenous people are facing. He suggests that "the experience of Aboriginal people in residential schools is really just one very small aspect of our dealings with Canada" (cited in Barnsley 1998:para 34). More precisely, the Statement fails to acknowledge the factors that led to the subjugation and domination of Indigenous people by European settlers. Furthermore, the SoR's limited recognitive power is evident in its narrow framing, which effectively precludes extending an apology to those who have not attended IRS, but continue to suffer the negative impacts they produced. These include families and communities of former IRS students that continue to experience "cultural, political, social, economic, and psychological impacts" (Corntassel and Holder 2008:10). As James (2008) observes, the Statement "did not describe these in any detail [or] explain which institutions or policies might have been responsible for committing them" (p.140). Similarly, Regan (2010) notes that the SoR "refers only to the sexual and physical abuse that occurred [and not to] the policies and actions of the government" (p.181) and purposely avoids situating the IRS experiences in the colonial context.

Thus, at best the SoR can only be considered an affirmative recognitive remedy to the injustices of IRS. By avoiding making specific claims about the government's responsibility for the injustices of inequality that Indigenous people are facing in the political, economic, and cultural spheres, it precludes fostering a debate regarding the avenues that may be pursued to comprehensively resolve colonial injustices. It does, however, incorporate the language of reconciliation, but only with the purpose of forgetting the past and moving on without looking back. Interestingly, some of the SoR's language reflects what could potentially be considered Fraser's (2005; 2008) transformative redistributive, recognitive, and representative remedies. Namely, it states that,

We must instead continue to find ways in which Aboriginal people can participate fully in the economic, political, cultural and social life of Canada in a manner which preserves and enhances the collective identities of Aboriginal communities, and allows

them to evolve and flourish in the future (DIAND 1998:para 25).

However, the above statement is made in reference to “find[ing] ways to deal with the negative impacts that certain historical decisions continue to have in our society today” (DIAND 1998: para 25)—a statement that is too vague and carefully worded to avoid implicating the government in other injustices to which Indigenous nations have historically been subjected. Regan (2010) draws on the work of Matt James to suggest that the SoR was not only deeply inadequate, but also “set the tone for subsequent dialogue with regard to the residential schools that...remained imbedded in the historical violence of colonial relationships” (p.182). This can be interpreted as a step back for decolonization and reconciliation of nations.

Having considered the recognitive potential of the SoR, the question now becomes, can *Gathering Strength*, which contains sections on Indigenous economic and political development, promote redistribution and representation?

Gathering Strength and redistribution/representation

Gathering Strength was unveiled on the same day as the SoR and served as the federal government’s response to the 1996 RCAP Report’s recommendations and was designed to fulfill the government agenda on Indigenous governance, IRS support services, “developing a new fiscal relationship,” a new focus on northern Canada, and promoting economic development. The Assembly of First Nations (2006) notes that many of the recommendations of the *Gathering Strength* report, which were intended to redefine and rebuild the relationships between Indigenous and settler-colonial governments, “have never been pursued” (p.3). Some of the report’s politically relevant recommendations are in the section “Strengthening Aboriginal Governance,” which outlines the programs to be developed “dedicated to enabling Aboriginal communities to make the transition to stable and accountable self-government” (DIAND 2000:8). However, if examined closely, all of the section’s recommendations are concerned with domestic relations between Indigenous nations and the federal government, which effectively precludes the possibility of the involvement of Indigenous nations in transnational politics as an equal partner with the federal government. This would be considered an affirmative and not transformative representative remedy. Indeed, reinstating self-government for Canada’s Indigenous people by reinscribing it within the existing colonial structures cannot be considered a sufficient or adequate means for self-determination in an increasingly transnational world. Thus, the *Gathering Strength* report appears to reproduce political inequality that characterized relations between Indigenous nations and the settler colonial state, in which Indigenous nations are merely nations within a nation.

The issue of whether *Gathering Strength* can be considered a transformative or affirmative redistributive remedy is complex. The report indicates that \$350 million will be allocated to establish the Aboriginal Healing Foundation (AHF) that would develop and implement “community-based Aboriginal directed healing initiatives which address the legacy of physical and sexual abuse suffered in [IRS]” (AHF 1998). In this respect, the AHF would be considered an affirmative distributive remedy since it focuses directly on the injustices committed in IRS and not on the broader colonial context. The need to develop a transformative remedy for addressing the residential school experience, be it distributive or otherwise, is apparent in the argument of Mohawk psychologist Rod Mc-

Cormick:

The process that created the [IRS] problem was not symbolic, it was quite systemic and the solution needs to be systemic as well ... There are a lot of resources that we as First Nations people have to facilitate our own healing. Our traditional ceremonies, our connection with our own cultural identity need to be given the credibility they deserve (quoted in Barnsley 1998:para 23).

However, not only is the AHF an affirmative distributive remedy, but it is also a *temporary* remedy because it was given an eleven year mandate that ended in 2010 and closed its doors in September 2012. Although some of the AHF's community-based initiatives will be transferred over to Health Canada, many Indigenous and non-Indigenous groups are protesting and criticizing this move on multiple grounds. National Democratic Party's Aboriginal Affairs Critic Jane Crowder notes that First Nations, Inuit and Métis leaders expressed concern that the government, who was in perpetrating residential school abuse, is now in charge of distributing healing money and that "[the leaders] cannot accept that government will now be in charge of deciding when and where healing should happen" (Crowder 2010; see also Standing Senate Committee on Aboriginal Peoples 2010). Charlene Belleau, manager of the IRS unit of the AFN, in turn, suggests that "[The Health Canada plan is] a government-driven process where they determine the criteria" so that not all previous AHF's clients may be eligible under the Health Canada plan (Pemberton 2010).

Although the government acknowledges that Indigenous nations "had ways of life rooted...in their responsibilities as custodians of the lands, waters and resources of their homelands" (DIAND 1998), *Gathering Strength* fails to explain whether the federal government is planning to re-evaluate the current land transfer agreements that scholars such as Alfred (2009) find deeply inadequate. Instead, the report uses passive language that works to conceal the direct involvement of the government as the land thief and the perpetrator and as Roland Chrisjohn argues, "when the minister talks about lost lands and lost cultures, it's easy to miss the reality that the lands and culture weren't lost—they were stolen" (cited in Barnsley 1998:para 10). As a result, the government has not yet formally accepted the responsibility for the land theft and is silent on future plans to return the lands. Without profound recognition of redistributive problems, land transfers will face infinite obstacles.

Furthermore, neither the report nor the SoR acknowledge the rationale behind the federal government's original intent to remove Indigenous children from their lands and place them in IRS. That is, the crux of the government's strategy to place Indigenous children in IRS consisted in converting Indigenous children into brown skinned Euro-Canadians by way of assimilation so that they would lose their relationship to their lands, forfeit them to the settlers, who, in turn, would prosper from the lands and resources. In so doing, both *Gathering Strength* and the SoR fail to make the connection between land dispossession and the IRS experiment, therefore masking the systemic nature of the material injustices that Indigenous people suffered as the result of the settler's drive to colonize Canada.

Much like the SoR, the *Gathering Strength* report has been criticized as inadequate to resolve the injustices of colonialism and to promote new relationships between Indigenous people and the Canadian government through redistribution (Serson 2009). The

AFN (2006) argues that *Gathering Strength* has failed in many ways to live up to the expectations of Indigenous leaders, specifically with respect to providing necessary funding to deal with the issues such as “family violence, whole health intervention and support, housing infrastructure, early childhood education, education for youth and adults, education to prepare for self-government, and the protection of cultural and linguistic heritage” (p.3) Instead of committing to fund the critical areas that the AFN outlines (many of which are related to the legacy of IRS), the federal government placed two percent caps on the growth of federal transfers to Indigenous communities. Serson (2009) argues that this move is highly problematic and creates economic gaps between Indigenous and non-Indigenous Canadians, since it does not even account for Indigenous population growth and inflation. He goes on to suggest that the federal government’s management styles of First Nations’ funding demonstrate that “historic patterns of this relationship...have not really changed” (p.168).

What constitutes transformative action?

In order to be considered an affirmative redistributive remedy, the SoR would need to, at the very least, make a commitment to provide compensation to individual IRS survivors. However, the Statement contains no provisions for any type of compensation and as Regan (2010) notes, “monetary reparations in the form of funding for the Aboriginal Healing Foundation were inadequate to meet the needs of survivors, their families, and communities” (p.181). By withholding compensation (and for various other reasons), the SoR was perceived to be meaningless by many Indigenous leaders who were in attendance at the ceremonial delivery of the Statement (James 2008). As Corntassel and Holder (2008) argue, “without first establishing meaningful forms of restitution and group compensation,” acknowledgements and apologies are inevitably destined for failure and will “not succeed in transforming existing colonial relationships with indigenous peoples” (p.22).

This raises the question: what type of reparations would be considered adequate for addressing harms associated with colonialism and to what extent could they be conceptualized in terms of Fraser’s social justice framework? According to Kanien’kehaka (Mohawk) scholar Taiaiake Alfred (2009), restitution must take the form of reinstating Indigenous rights to “land, transfers of federal and provincial funds, and other forms of compensation for past harms and continuing injustices committed against the land and Indigenous peoples” (p.181). In the sense, any type of restitution scheme, as Alfred argues, needs to look beyond IRS experiences and take into account the origins of colonialism, thus bringing under consideration the sustained and aggressive dispossession that Indigenous peoples have historically faced and continue to endure to this day. Bonner and James (2011), on the other hand, argue that there is a degree of agreement among Indigenous scholars as to what an adequate reparation model for IRS and broader colonial injustices would look like. More precisely, they point out that the process of “reframing” of IRS experiences into

Decoloniz[ing efforts] demands from non-Indigenous Canadians profound attitudinal change, a new sensitivity and openness to Indigenous cultures, a renunciation of paternalism, and a willingness to surrender some of the economic and political power unjustly seized through the colonizing process in which the residential schools policy played a central and longstanding part (p.20).

Chrisjohn et al. (2006) also suggest that any type of reparation scheme for IRS reparations must also address the roots of colonialism. Their argument is somewhat similar to Alfred's (2009) and focuses on the "immediate settlement of land and resource claims open-ended fund to be used by Aboriginal Nations to . . . reconstitute their societies [and] the replacement of the DIAND by institutions reflecting Aboriginal philosophies and under Aboriginal controls" (quoted in Claes and Clifton 1998:114).

Taking into account the apparent failure of the SoR and the *Gathering Strength's* recommendations to serve as meaningful gestures of reconciliation and to satisfy survivors' justice needs⁵, the Indian Residential Settlement Agreement (IRSSA) was negotiated in 2005, approved in every province and territory in 2006, and implemented in 2007, and a national apology was issued by the Prime Minister Stephen Harper on June 11, 2008. However, the question remains, do these recent attempts at reconciling the unsavoury past have the potential to serve as recognitive, redistributive, and/or representative remedies for the IRS experience? Moreover, could they be considered transformative and make a contribution to decolonization? Prior to attempting to answer these questions, it is of value to consider the IRS Alternative Dispute Resolution Program (ADRP).

The National Apology and the IRSSA

In response to the spike in IRS lawsuits in the post-SoR era, the federal government attempted to create an expedited alternative to the formal court proceedings by establishing the IRS ADRP. The process of submitting IRS claims to the ADRP was voluntary and one of its goals was to expedite the claims, thus providing a more speedy resolution alternative to civil courts (Stout and Harp 2007). The ADRP was also less formal in that an independent adjudicator, instead of a court judge, would consider the claims. Although it was a seemingly favourable option for survivors, the ADRP failed for various reasons.

Firstly, the ADRP was a creation of the government and established without input from or negotiation with Indigenous groups, such as the Assembly of First Nations (AFN). As a result, the government could unilaterally dismantle this system (Stout and Harp 2007). Secondly, the ADRP placed a cap on the amount of compensation that the claimant could receive and dealt only with claims related to physical and sexual abuse, while ignoring systemic and institutional issues of discrimination, racism, and emotional and spiritual abuse. In addition, the ADRP was replete with denial on the part of the federal government, which was evident in claimants being charged with the onus to prove that the abuse did, in fact, occur, and was intentional. Many survivors found the process overly complicated and unreasonably lengthy, alienating, and burdensome and for some survivors, fighting against the bureaucratic ADR machine simply was not worth the effort (Stout and Harp 2007).

The government felt the apparent failure of the ADRP and began seeking negotiations with the AFN to develop a new process to address the residential school experiences. This new concession, the Indian Residential School Settlement Agreement, was signed between Canadian and Indigenous governments and legal representatives for Survivors, Inuit, and

⁵Although not discussed at length in this paper, the ADRP's disadvantages and ultimate failure are accounted for and discussed in detail in Stout and Harp (2007) and Regan (2010).

church entities (Castellano, Archibald, and DeGagné 2008). The IRSSA adopted a multi-faceted approach, which included the establishment of a Truth and Reconciliation Commission (TRC), the compensation package consisting of Common Experience Payment (CEP) and the Independent Assessment Process (IAP), \$125 million in additional funding for the AHF, and commemoration initiatives for former IRS students. A national apology⁶ (also known as the Statement of Apology), in turn, was issued in the House of Commons and was intended to provide context for the IRSSA and acknowledge the residential school experience (Indian and Northern Affairs Canada [INAC] 2008).

The National Apology

The national apology appears, at least initially, to provide a deeper level of affirmative recognition to former students for the harm done than did the SoR. In particular, it directly acknowledges the role of the government in developing and maintaining the IRS system. In addition, the apology, in contrast to the SoR, is intended for all students who attended IRS, and not only those who suffered abuse. However, as Elgersma (2011) points out, the apology lacks transformative power as it situates the IRS system as an exception to an otherwise peaceful nation thereby concealing colonialism and “confining [IRS] to a past chapter that needs to be closed rather than to policies that are very much part of the present” (p.88). To this end, the apology casts the IRS system as the government’s *only* strategy of assimilation and ignores racist and capitalist ideologies behind such policies.

In its other aspects, the apology seems to be less comprehensive than the SoR in its acknowledging the colonial past. It does not make any references to the dispossession of Indigenous lands and destruction of Indigenous political systems that Indigenous nations continue to suffer to this day. Evidently, the apology asks all those affected by IRS to move toward “reconciliation and resolution of the sad legacy of Indian Residential Schools” (INAC 2008), while leaving colonial structures intact. To understand the language of the apology, it is important to consider the legal implication and the context under which the apology for the IRS experience was made. That is, the apology was offered at the time when the guilt of the Canadian government was already established and accounted for under the IRSSA. As a result, one must question the recognitive potential of the apology since an admission of a wrongful act in this case would not give way to further lawsuits as compensation processes had already closed those avenues.

In order to be considered transformative; that is, to challenge the misrecognition of Indigenous cultures and systemic racism that led to the creation of IRS, the apology would need to acknowledge the value of Indigenous cultures and affirm their worth to those of newcomers’. Although the national apology makes a reference to “rich and vibrant [Indigenous] cultures and traditions” (INAC 2008), it falls short of validating their uniqueness and importance. Instead, the apology uses the term “dominant culture” into which Indigenous children were assimilated, which locks Indigenous identities in a subaltern state. In addition, the apology needs to go broader than simply stating that IRS “policy of assimilation was wrong” (INAC 2008:para 2), and should instead identify the systemic issues and theories of racism that led to the beliefs that Indigenous cultures

⁶Full text of the national apology is available at <http://www.aadnc-aandc.gc.ca/eng/1100100015644/1100100015649>

were inferior. Although the TRC⁷ is charged with the task of educating the public about the impacts of IRS and sharing survivors' stories, its mandate does not include public education initiatives with respect to Indigenous cultures and their diversity, traditions, customs, and values. To challenge the firmly held beliefs of settler superiority and dominance, a transformative remedy would seek to enhance public education strategies that must be directed at dismantling racist ideologies.

Distributive remedies under the IRSSA

Apologies are often combined with material reparations to demonstrate the perpetrator's willingness to make amends and as Galley (2009) argues, an apology "will be rendered meaningless without the appropriate actions on the part of the Government of Canada" (p.243). This raises the question: Can the IRSSA's CEP and IAP processes be considered to provide an affirmative or transformative distributive context for the apology? The CEP constitutes a "'global' LSP [lump sum payment] that would be extended to every former student, not just those able to prove specific incidents of physical/sexual abuse," (Stout and Harp 2007:6). It is intended to compensate survivors for general experiences of the residential schools, paying \$10,000 for the first year and \$3,000 for each subsequent year of residential school attendance. Although the CEP appears to be an affirmative distributive remedy for colonialism, it provides greater recognition than the failed ADR⁸ process in that by virtue of being a student in a government-recognized residential school, the claim is considered eligible. The IAP, in contrast, is designed with the purpose to settle survivors' claims of physical and sexual abuse, and is based on "a point system to award compensation," which is similar in structure to the ADRP (Stout and Harp 2007:7). While the CEP and IAP have their advantages, such as universal eligibility of survivors of residential schools, there are several problems with it.

Distributive/recognitive intersections

Although initially both the CEP and IAP appear to fall under distributive remedies, a closer examination reveals that they intersect with recognitive remedies. For example, the burden of proof is still on survivors to demonstrate their residential school attendance and if former residential school students are not listed on the schools' records *as* students, then they will not be eligible for the CEP. Secondly, by focusing on compensating only First Nations and Inuit students who attended residential schools, the CEP ignores experiences of many Métis and Inuit students who attended day schools⁹ and suffered abuse (Standing Senate Committee on Aboriginal Peoples 2010). As a result, a portion of former students is excluded from the compensation payments and therefore remains unrecognized as legitimate sufferers of the IRS experience. Lastly, many residential schools remain excluded

⁷I discuss the TRC in greater detail in my other work—see Petoukhov, K. 2012.

⁸In the ADRP, the onus was on the claimant to prove that the abuse did, in fact, occur, and was intentional. In addition, the ADRP did not compensate former students for the general residential school experience.

⁹Day schools were different from residential schools in that day schools were not total institutions. Nevertheless, the children suffered the abuse and neglect comparable to those in IRS (see, for example, King, 2006).

from the IRSSA and although the list of eligible schools is constantly being reevaluated, students who attended these schools are currently ineligible to receive compensation.,

The IAP process is also ridden with distributive/recognitive dilemmas. Federation of Saskatchewan Indian Nations' Chief Lyle Whitefish states that "the [IAP] application is so lengthy and convoluted ... it's very hard and difficult for these (former) students to begin to write down their abuses during the schools" (Fiddler 2010:2). Due to the technical language contained in the IAP, the necessity of hiring a lawyer becomes apparent, and, in doing so, survivors' testimonies of residential school experiences, including abuse and neglect, become translated into legalese that can be meaningfully used for the proceedings in the legal system, but may not accurately capture the full extent of survivors' experiences. In the process, survivors' testimonies become "itemized, calculated, and individualized, [and] monetary amount is assigned" based upon the perceived degree of harm suffered (Woolford 2010). To this end, the voices of survivors have now been transformed into manageable and convenient parcels of the residential school experience. As a result, the IAP tends to individualize survivors' experiences by implicitly denying the collective nature of abuse.

Decolonization and redistributive, recognitive, and representative remedies

Susan Crean (2009) criticizes the apology for its lack of transformative distributive, recognitive, and representative potential. She argues that the apology "was made to the sound of land claims stalling in the background atone for, much less change, the culture that produced the residential schools" (p.63). Scholars such as Ian MacKenzie (2009), in turn, point out that in order to promote decolonization, transformative recognition in government institutions must take place on an interpersonal level in the form of "in-depth cross-cultural workshop lead by Aboriginal people whose primary foundation is in the North American intellectual tradition" (p.91) in order to combat systemic racism and promote attitudinal change (see also Younging et al. 2009). For MacKenzie, much like for Alfred (2009), reparations for colonialism must go beyond what the apology is willing to offer and what the CEP and IAP processes are able to provide to former students, which is "significant program development and massive funding directed at settling the many challenges of land claims, treaty issues, lifestyle issues, and village infrastructure and the rapidly growing social challenge of Indians in the cities" (p.89). If these problems sound familiar today it is because many of them were outlined in the 1998 *Gathering Strength* report, but were never resolved appropriately.

With respect to affirmative/transformative representation, the national apology, along with the IRSSA, leaves in the shadows the true nature of political changes required for taking "a positive step in forging a new relationship between Aboriginal peoples and other Canadians" (INAC 2008). For Nadine Changfoot (2011), the IRS apology serves as an inadequate remedy for the current political injustices Indigenous people are facing. For example, she notes that "aboriginal peoples' key demands for nation-to-nation recognition and negotiation, while constitutionally recognized, continue to be ignored by the Canadian state" (p.5). Henderson and Wakeham (2009), in turn, argue that Canadian government apologies, including the 2008 apology, leave unaddressed the issues associated with self-determination, both domestically and internationally. For example, they refer to the lack of Indigenous control over Indigenous child welfare and education and the exclusion of

Indigenous nations from political decision making in an increasingly globalizing world. Rebecca Tsosie (2007) adds that reparations for colonial injustices must inevitably be connected to sovereignty and that “Native peoples are asserting claims for recognition of cultural and political rights, as separate governments, which distinguishes their claims for reparations from those of any other group” (p.44; cited in Henderson and Wakeham 2009:4). Thus, an apology or any other type of mechanism of redress that leaves the deeper political injustices intact will be inadequate for challenging the colonial project.

James Igloliorte (2009) observes the importance of examining representation-related remedies through a redistributive and recognitive lens in the colonial context. In reference to Labrador Inuit, for example, he argues that redistributive and recognitive reparations for colonialism, which include transfers of lands and recourses, and may help strengthen Indigenous governments and foster “a real sense of accomplishment and transition to greater autonomy in determining Inuit affairs and, over time, will result in self-governance and sovereignty that could reverse the unsettling negative consequences to Inuit families” (p.54). A similar argument is advanced in the 2004 report of the UN Commission on Human Rights’ Special Rapporteur Rodolfo Stavenhagen, which states that,

While Aboriginal persons may eventually attain material standards of living commensurate with other Canadians, the full enjoyment of all their human rights, including the right of peoples to self-determination, can only be achieved within the framework of their reconstituted communities and nations, in the context of secure enjoyment of adequate lands and resources (p.22).

Scott Serson (2009), in turn, points out that political injustices associated with colonialism can only be overcome through the redistribution of the stolen lands, treaty processes, and expedition of land claims. He argues that currently, “efforts of First Nations to move toward self-government are given minimal support,” which is evident in the imposition of federal government’s “unilateral policies” such as the implementation of Bill C-44 that would remove the exemption for band governments and weaken their powers, thereby impeding First Nations’ advances on the path to self-government (p.245; see also Secretariat of the Assembly of the First Nations of Quebec and Labrador 2007).

Conclusion

This paper employed Nancy Fraser’s tripartite theory of justice to assess the transformative potential of the mechanisms of redress for the Indian Residential School experiences. In particular, it considered the extent to which the 1998 Statement of Reconciliation, along with the *Gathering Strength* Report, and the 2008 Statement of Apology, accompanied by the Indian Residential School Settlement Agreement, could serve as recognitive, redistributive, and representative remedies for colonial injustices.

Although each of these mechanisms of redress approaches the issue of residential schooling from a different angle, none of them alone constitute an adequate means to challenge the policies that led to the establishment of IRS. At best, they serve as affirmative remedies. This includes, for example, acknowledging the harm done by the IRS system, providing compensation to the victims, and asserting the place of Indigenous nations place within Canada’s ethnically diverse population. At worst, they entrench colonialism and situate the residential school system as an isolated injustice, an exception,

in an otherwise healthy relationship between Indigenous peoples and the settler-colonial state. In doing so, they tend *only* to reaffirm the identity of former students as victims and to solidify their status as survivors. This does not, however, empower Indigenous peoples socio-economically, politically, or culturally. Instead, these remedies appear to contextualize IRS injustices within a single policy of assimilation, thus denying colonial ideologies that gave rise to multiple injustices, one of which is the residential school system.

The aspect of Nancy Fraser's theory that the current mechanisms of redress seem to neglect the most is transformative representation, which involves providing Indigenous nations with opportunities to engage in transnational politics as Canada's equal partner. Because transformative representation serves as a medium through which socio-economic and cultural injustices may be resolved, withholding transformative representation from Indigenous nations allows the Canadian government to effectively preclude the debates about transformative redistribution and recognition in a globalizing world. Developing an effective remedy against colonial injustices would require the Canadian government to recognize, fully acknowledge, and commit to eradicate colonialism, legacies of which continue to produce profound negative impacts on the lives of Indigenous people.

I hope to have demonstrated the extent to which current mechanisms of reconciliation and redress fail to serve as adequate responses to the Indian residential school experience. This paper has the potential to contribute to debates around decolonization and could provide the impetus for building and strengthening relationships between Indigenous and non-Indigenous peoples and governments. I propose that gaining a deeper insight of the importance and necessity of recognition, redistribution, and representation may lead to policy changes and subsequently to a shift in the institutional arrangement in Canada.

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