

## SPECIAL ISSUE: TRUTH AND RECONCILIATION PRACTICES IN A COMPARATIVE PERSPECTIVE

### INTRODUCTION: THE “LEGITIMACY GAP” BETWEEN LAW AND CULTURE

Cheryl Suzack and Neil ten Kortenaar  
*University of Toronto*

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The typical reparations claim involves powerless victims in no way capable of contributing to the illegal acts. (Matsuda 383)

The overwhelming reality of the Indian residential school system confronts Canadians with a sobering task: how to engage in social acts of public mourning that acknowledge the widespread human rights abuses practiced against Aboriginal children while also enacting forms of reparation that allow us to rebuild our broken social relationships. The grim realities of the schools are conveyed in stark terms in the Commission’s summary report. Authorized to enact “hostility to Aboriginal culture and spiritual practice” (5) expressed through “institutionalized child neglect” (43), the schools’ agents participated in rampant physical and sexual abuse of children under the masquerade of providing culture and learning. More than 150,000 residents passed through the schools’ doors during the one-hundred-year period when they were in operation, with living victim-survivors numbering more than 86,000.

Initially condemned as enacting “genocide” against Aboriginal communities (Miller 235), the schools were subsequently redescribed as sites of “cultural genocide” in carrying out the government’s policy to achieve the “colonization and conversion of Aboriginal people” (43). This shift in terminology that J.R. Miller notes in *Residential Schools and Reconciliation: Canada Confronts Its History* brought the Commission’s

findings into alignment with the position of the former Chief Justice of the Supreme Court of Canada, who described Canada's policy as "a record of attempted 'cultural genocide'" (Miller 236). The modification of terms changes the victim from children to nations and forgets the bodies and their pain. "Genocide," as defined by the *United Nations Office on Genocide Prevention and the Responsibility to Protect*, involves acts of "killing," "causing serious bodily or mental harm," "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part," and "forcibly transferring children of the group to another group." In narrower terms, "cultural genocide," according to the summary report, represents "the destruction of those structures and practices that allow the group to continue as a group" (1).

546 If we accept that the harms directed against Aboriginal children were *structural* behaviours resulting in "cultural genocide," as conditions and experiences in an organized system that targeted Aboriginal culture, instead of practices designed to maim or kill people, we lose sight of the bodies that were the targets of the abuse, bodies of children who suffered helplessly at the hands of the church and state. Language becomes the means by which the human child's body fades from view while culture, as a substitute, stands in its stead. As the direct objects harmed through a form of "genocide," children's bodies represent an "incontestable reality" in the form of "bodies in pain, [...] bodies maimed, [...] bodies dead and hard to dispose of" (Scarry 62). The Aboriginal child's body is the object that we step across on our way to giving meaning to genocide as an act directed against culture, as the reality of genocide's violence is "[s]eparated from its source" in the body and meaning is "conferred [elsewhere]" (62). Because children's bodies were the sites upon which Canada enacted injustice towards Aboriginal communities in gross violation of their human rights,<sup>1</sup> keeping these bodies from fading from view represents the crucial task of preventing reenactments of violence and historical erasure that perpetuate the state's injustice by obscuring the victims that are its objects of harm.<sup>2</sup>

The interplay between language, law, culture, and injustice that permits children's bodies to fade from view through a political struggle over the meaning of genocide makes apparent the "legitimacy gap" that exists between law and culture. This gap occurs in countries, such as Canada, that have not undergone regime change or political reconstruction to alter the governing structures that put in place genocidal practices against Aboriginal peoples and used law to achieve violent and illegitimate ends. Other countries, such as South Africa after apartheid, have invoked transitional justice as part of a move from an old regime to a new one that needs to declare the former system of government definitively past. South Africa held its own Truth and Reconciliation Commission that produced a report in 1996. Unlike the Canadian TRC, the emphasis was on perpetrators and gross physical violations of human rights, including killing and torture. The intention was to make public the truth, even if that meant granting indemnity to perpetrators who testified, in the interests of marking a break with the old regime and instituting the groundwork for the new.

As the Canadian and South African examples demonstrate, such periods of “transitional legality” (Teitel 20) are rife with social and political uncertainty. According to Ruti Teitel, when a country enters a new legal phase, it must find a way to resolve the tension between law “as it is written” and law as it is “socially” understood (20). If law is to restore public confidence in governing political systems, it must overcome this gap; that is, it must find a way to “preserve some degree of continuity in legal form” while simultaneously expressing “a principled normative vision” of what law is, independent of its “governing politics” (21). Not to address this gap in the social meaning and public understanding of law is to narrow law and legal culture to a political standpoint, to meanings that constitute the administration of justice “purely as an exercise of political will” or governing power (21). Two consequences follow from a country’s failure in this regard: law, legality, and social legitimacy are folded together as objectives of governments that do not require public consent, and countries, such as Canada, that have engaged in genocidal acts are not required to understand themselves as “illiberal” regimes enacting ongoing oppressive legal cultures against their citizens (20). In this special issue, we aim to address both of these implications.

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The workshop from which these essays emerge is part of a conversation about truth and reconciliation held between the Centre for Humanities Research at the University of the Western Cape in South Africa and the Jackman Humanities Institute at the University of Toronto in Canada. Representing a “south-north dialogue” on “aesthetic education,” conference participants met at the Woodland Cultural Centre, a site that sits on the lands of the Six Nations of the Grand River, to address questions of truth and reconciliation. The location includes the historic Mohawk Institute that operated as a residential school from 1828 until 1970, housing Aboriginal children from all over Ontario, which workshop participant Carol Drumm described as a “reminder of Canada’s harrowing colonial history” (n.p.). Participants moved through the school’s space, observing the concrete floors, drafty rooms and hallways, and basement “mush hole” where children were fed. As we did so, we were confronted by the metonymic implications of “memory justice” (Booth 778) upon which the school’s attendants now focus their energy, through practices of historical recovery, preservation, and memorialization to which this upsetting space has now been dedicated. Objects in the form of candy wrappers and personal items that children hid in the walls to escape detection by school authorities reside on display alongside a growing archive of books and research materials about the school’s history. These mementos and commemorative documents concretize the Centre’s broader task of engaging in “Indigenous storywork” by conceptualizing “how a story fits within a people’s belief system” (Archibald 26) and how “cultural knowledge, traditions, and healing” lessen the impact of colonization by enacting power to “bring storied life back to [Indigenous peoples]” (Archibald 139). Their activities give “remembrance and dignity to those who were not granted it in their time” (Booth 778) by maintaining sites within our culture where law’s illegality is made known and preserved.

The work undertaken by the Centre's staff and the school's haunting presence inform the essays assembled here. They form a through-line in each author's individual contribution and in the collective task of showing us how cultural texts move us closer to the bodies of victims and to the state's unjust practices. As Jill Carter observes, the school represents a "colonial centre" that "stand[s] as [a] mute accuser [...] to imperial hubris." "Its citizens, its religious leaders, its legislators, and its researchers," she states, "justified unconscionable crimes against Indigenous humanity." Jennifer Orange echoes this claim. In her essay "The Work that Remains," she asserts that to recover from this legacy of violence requires that we lay bare the depth of personal experience to "speak [...] the whole truth" within legal and cultural institutions in order to complete the "project of knowing our history and preventing the repetition of harm." Such practices of reckoning with the past and the meaning of silence illuminate the political stakes of truth commissions explored by Aidan Erasmus. Focusing on the event and aftermath of the tragic death of political activist Lungile Tabalaza, his essay explores the meaning of silence at work in reckoning with the tragic that contextualizes this event. Lauren van der Rede also explores the status of the event: focusing on the Rwandan genocide, her essay analyzes the emotional and ethical restrictions imposed by legal terms. Legal accounts, she argues, "flatten many of the textures of the genocide." Not only are they "too narrow" by definition, they are also undertaken to "treat the symptom" and to ignore interconnected and latent violences and traumas. In complex ways, Emma Minkley undertakes an equally challenging task by inviting us to enter into "The Museum of Truth and Reconciliation." Exploring how truth is linked to reconciliation, her essay reflects on what it means to materialize or imagine the life and afterlife of objects. She explores how objects take on life and tell stories, returning us to our experience of the Mohawk Institute, where we were forced to encounter objects that lacked a human centre. Together, these essays engage our imaginations in coming to grips with the challenges of representing a voice to speak to an event for which an end is not prefigured, despite our commitments to reconciliation. By aligning voices from Canada and South Africa, the special issue make sense of how cultural practices may engage with voices and issues that legal mechanisms violate, overlook, and neglect.

## NOTES

1. The exact number of children who died at the schools is unknown. In some cases, records were not kept; in others, they were destroyed (Canada, TRC, *What We Have Learned* 60).
2. Victim-survivors of physical and sexual abuse could not restore their bodies through subsequent legal claims outside of the terms of the Indian Residential Schools Settlement Agreement once they had accepted compensation, since to do so would violate the terms of the out-of-court settlement (Jung 232). They also could not require that the Canadian TRC "name names" or deploy "powers of subpoena" to identify perpetrators (Nagy 355).

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