

UNBOUND: ACTUALIZING *SOCIAL HEALING THROUGH JUSTICE* FOR NATIVE SURVIVORS OF FEDERAL INDIAN BOARDING SCHOOLS

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ABSTRACT

Former Secretary of the Interior Deb Haaland launched the first-ever investigation into the United States Federal Indian Boarding School Program to advance a long overdue healing process for Native communities. But without a multidisciplinary, dynamic, and pragmatic analytical framework guiding it, the reconciliation initiative circumvented a critical—and far more contentious—reparative step: returning Native lands to Native hands. The social healing through justice framework emerges at a time when the United States is flirting with electoral autocracy and forsaking its commitments to the rule of law and reparative justice. Drawing on insights from the international human rights reparative justice regime and Native reconciliation practices, social healing through justice can assess, guide, and recalibrate the initiative so it fosters genuine, comprehensive and enduring social healing. This Article provides a modest theoretical grounding in effective reconciliation efforts, detailing crucial tenets of social healing through justice—recognition, responsibility, reconstruction, and reparation. Against this

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theoretical backdrop, this comparative law Article analyzes Canada's Truth and Reconciliation Commission and attendant efforts to redress the harms of its residential schools. Its key part, however, describes and critiques the United States' budding reconciliation initiatives, including Secretary Haaland's investigation and the proposed Truth and Healing Commission on Indian Boarding School Policies Act. It ultimately posits that Canada's initiative and the United States' efforts as currently conceived will not meaningfully heal the persisting wounds the schools inflicted until the ancestral lands they helped take are returned.

*"Ke kala aku nei au iā 'oe a pēlā nō ho 'i 'au e kala ia mai ai, or, I unbind you from the fault, and thus may I also be unbound from it."*¹

— Mary Kawena Pukui

1. 1 MARY KAWENA PUKUI, E.W. HAERTIG & CATHERINE A. LEE, NĀNĀ I KE KUMU (LOOK TO THE SOURCE) 75 (1972) [hereinafter 1 NĀNĀ I KE KUMU] (modern orthography inserted by author).

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I.

INTRODUCTION: A TIME OF HULIHIA²

Kanaka Maoli artist, activist and scholar Dr. Jamaica Heolimeleikalani Osorio describes this time as one of huluhia.³ A time of overturning, of “chaos and creation and abundance and fear.”⁴ She thinks of the global pandemic (which leaves over seven million people dead at the time of this writing)⁵ and the attempted insurrectionist coup preceding President Biden’s 2021 inauguration.⁶ But, she notes, part of huluhia is also “all of the beautiful uprising” by Indigenous groups asserting their right to self-determination and by the Black Lives Matter

2. Some text from this Article appears in Holly K. Doyle, *Kala: Disentangling Kamehameha Schools from the 2022 Federal Indian Boarding School Initiative Investigative Report While Actualizing Social Healing Through Justice for its Kanaka Maoli Students*, 46 U. HAW. L. REV. 2 (2023).

3. Finding Our Way with Prentis Hemphill, *Aloha ‘Āina with Dr. Jamaica Heolimeleikalani Osorio*, at 02:41 (Aug. 1, 2022), <https://www.findingourwaypodcast.com/individual-episodes/s3e4> [<https://perma.cc/NPB8-BHDN> and <https://perma.cc/9AUC-LFB7>]; see generally Noelani Goodyear-Ka‘ōpua, *Kūoko‘a: Independence*, in THE VALUE OF HAWAI‘I 3: HULIHIA, THE TURNING (Noelani Goodyear-Ka‘ōpua, Craig Howes, Jonathan Kay Kamakawiwo‘ole Osorio & Aiko Yamashiro eds., 2020). I follow certain style conventions articulated by Dr. Goodyear-Ka‘ōpua and Dr. Jamaica Osorio respectively:

I use a number of terms interchangeably to refer to the indigenous people of Hawai‘i, people who are genealogically connected to Ka Pae ‘Āina ‘o Hawai‘i (the Hawaiian archipelago) since time immemorial: Kānaka Maoli, . . . ‘Ōiwi, . . . Hawaiian, and Native Hawaiian. Kānaka Maoli . . . refer[s] to the whole group as a singular class. [Kanaka Maoli or Kanaka is a descriptor.] In my usage of these terms, I refer to all Kānaka Maoli, without any blood quantum restriction. I do not italicize [‘ōlelo Hawai‘i or] Hawaiian terms in this [Article]. When terms are italicized, it is to emphasize their importance to my argument and analysis.

Noelani Goodyear-Ka‘ōpua, *Domesticating Hawaiians: Kamehameha Schools and the “Tender Violence” of Marriage*, in INDIAN SUBJECTS: HEMISPHERIC PERSPECTIVES ON THE HISTORY OF INDIGENOUS EDUCATION 16, 38 n.1 (Brenda J. Child, William J. Bauer Jr., Brian Klopotek, John Borrows, M. Bianet Castellanos & María Elena García eds., 2014).

Although ‘ōlelo Hawai‘i appears frequently throughout the course of this [Article], this [Article] does not include [translations]. The terms I [use] have many meanings and to reduce them to a single English gloss would be counterproductive Wehewehe.org is an appropriate source for the reader to consult for definitions of Hawaiian terms across multiple dictionaries.

JAMAICA HEOLIMELEIKALANI OSORIO, REMEMBERING OUR INTIMACIES: MO‘OLELO, ALOHA ‘ĀINA, AND EA xv (2021) [hereinafter OSORIO, REMEMBERING OUR INTIMACIES].

4. Finding Our Way with Prentis Hemphill, *supra* note 3, at 02:52.

5. WHO Coronavirus (COVID-19) Dashboard, WORLD HEALTH ORG., <https://data.who.int/dashboards/covid19/deaths> [<https://perma.cc/6HDL-UGGE>] (last visited Oct. 28, 2024).

6. *From ‘An Attempted Coup’ to Chaos, Searing Moments of Jan. 6*, ASSOCIATED PRESS (July 23, 2022, 8:09 AM), <https://apnews.com/article/Jan-6-hearings-key-moments-b374e48ab5a1a0a597fd5b6ec69048c2> [<https://perma.cc/9DND-PU52>]; Finding Our Way with Prentis Hemphill, *supra* note 3, at 03:53.

movement to end white supremacist violence against Black people globally.⁷ She observes that times of transformation are difficult and painful.⁸ They always have been.⁹ But she finds resolve in knowing “[t]his is what it feels like to tear down violent systems” and “create the world we deserve.”¹⁰

Former Secretary of the Interior Deb Haaland also knows that “work[ing] toward a future we are all proud to embrace” means braving the difficulty and pain of acknowledging historic injustice and its persisting wounds.¹¹ A member of the Pueblo of Laguna and the first Native American cabinet secretary,¹² Secretary Haaland lives with the intergenerational trauma caused by centuries of state-sanctioned physical and cultural genocide against Indigenous peoples.¹³ She is the

7. Finding Our Way with Prentis Hemphill, *supra* note 3, at 04:20; *see generally* BLACK LIVES MATTER, <https://blacklivesmatter.com/about> [<https://perma.cc/2SB9-SBTM>] (last visited Oct. 9, 2023).

8. Finding Our Way with Prentis Hemphill, *supra* note 3, at 04:49.

9. *Id.*

10. *Id.* at 05:01.

11. Memorandum from Deb Haaland, Sec’y of the Interior, to the Assistant Sec’ys, Principal Deputy Assistant Sec’ys, and Heads of Bureaus and Off. 2 (June 22, 2021) [hereinafter DOI Memo], <https://www.doi.gov/sites/doi.gov/files/secint-memo-esb46-01914-federal-indian-boarding-school-truth-initiative-2021-06-22-final508-1.pdf> [<https://perma.cc/B2LF-U9KH>]; *see generally* ERIC K. YAMAMOTO, HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE: UNITED STATES, SOUTH KOREA AND THE JEJU 4.3 TRAGEDY (2021) [hereinafter YAMAMOTO, HEALING THE PERSISTING WOUNDS].

12. Secretary Deb Haaland, U.S. DEP’T OF THE INTERIOR, <https://www.doi.gov/secretary-deb-haaland> [<https://perma.cc/5ADQ-C353>] (last visited Sept. 21, 2023). Secretary Haaland is one of the first two Native American women to serve in Congress, alongside Representative Sharice Davids of Kansas. Both were elected to office in 2018. Eli Watkins, *First Native American Women Elected to Congress: Sharice Davids and Deb Haaland*, CNN (Nov. 7, 2018, 12:01 AM), <https://www.cnn.com/2018/11/06/politics/sharice-davids-and-deb-haaland-native-american-women/> [<https://perma.cc/WHK8-7RV6>].

13. Deb Haaland, Opinion, *My Grandparents Were Stolen from Their Families as Children. We Must Learn About This History.*, WASH. POST (June 11, 2021, 9:00 AM), <https://www.washingtonpost.com/opinions/2021/06/11/deb-haaland-indigenous-boarding-schools/> [<https://perma.cc/3N8B-HJLE>]. Canada’s Truth and Reconciliation Commission defined physical and cultural genocide in its report on Canadian residential schools:

Physical genocide is the mass killing of the members of a targeted group
Cultural genocide is the destruction of those structures and practices that allow the group to continue as a group. States that engage in cultural genocide set out to destroy the political and social institutions of the targeted group. Land is seized, and populations are forcibly transferred and their movement is restricted. Languages are banned. Spiritual leaders are persecuted, spiritual practices are forbidden, and objects of spiritual value are confiscated and destroyed. And, most significantly to the issue at hand, families are disrupted to prevent the transmission of cultural values and identity from one generation to the next.

granddaughter of two generations of United States Federal Indian Boarding Schools survivors.¹⁴

These schools—one component of the federal government’s machination to acquire Native territories for United States expansionism—separated Native children from their families, severed Native cultural, physical and economic connection to the land and destroyed Native identity.¹⁵ “From the earliest days of the Republic,” the United States conspired to take Native land for the benefit of the growing country’s white inhabitants by kettling Indigenous peoples into nonmigratory lifestyles, orchestrating their fall into debt and holding out an expectant hand.¹⁶ Boarding schools advanced this effort. Canada did something similar.¹⁷ So when Secretary Haaland heard the news that Tk’emlúps te Secwepemc First Nation discovered the remains of 215 children at Kamloops Indian Residential

THE TRUTH & RECONCILIATION COMM’N OF CAN., HONOURING THE TRUTH, RECONCILING FOR THE FUTURE: SUMMARY OF THE FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION OF CANADA 1 (2015) [hereinafter HONOURING THE TRUTH, RECONCILING FOR THE FUTURE], https://irsi.ubc.ca/sites/default/files/inline-files/Executive_Summary_English_Web.pdf [<https://perma.cc/7FRD-3949>].

14. Haaland, *supra* note 13.

15. BRYAN NEWLAND, U.S. DEP’T OF THE INTERIOR, FEDERAL INDIAN BOARDING SCHOOL INITIATIVE INVESTIGATIVE REPORT 21, 37 (2022) [hereinafter NEWLAND REPORT], https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf [<https://perma.cc/QVS4-9HDM>]. I occasionally use “Native groups,” “Native children,” “Native territories,” and similar descriptors throughout the piece (rather than “tribal nations”) to refer to the Indigenous groups the Department of the Interior identified as harmed by the Federal Indian Boarding School Program. Many of these groups are federally-recognized tribal nations, but others, like Native Hawaiians, are not. Much debate exists within the ‘Ōiwi community regarding federal recognition’s benefits and limitations for Native Hawaiians. See PBS Hawai‘i, *What Would It Take to Achieve Hawaiian Sovereignty?*, YOUTUBE, at 05:30–13:00 (July 17, 2015), <https://www.youtube.com/watch?v=XbKMs1Ux3kk>. Similarly, discourse concerning the propriety of Hawai‘i’s inclusion in the report is developing. Maile Arvin, *Did Hawai‘i Have Native Boarding Schools?*, NĀ LEI POINA ‘OLE (THE CHILDREN NEVER FORGOTTEN) (Jan. 6, 2023), <https://naleipoinaole.com/blog/nwufzz6crape5o53oemoruxpl2odvk> [<https://perma.cc/7EE6-XD64>]; Doyle, *Kala*, *supra* note 3. For the purposes of this piece, it is necessary to keep in mind that critical historical, political and cultural differences among Indigenous groups shaped their experiences with the Federal Indian Boarding School Program.

16. NEWLAND REPORT, *supra* note 156, at 21–22, 93.

17. See *infra* Section III(B).

School in Canada,¹⁸ she felt “sick to [her] stomach.”¹⁹ A month later,²⁰ she launched an investigation into the system that stole her grandparents “from their families when they were only 8 years old”²¹

Canada’s federal government, like the United States, operated a boarding school system from 1883 to 1996 as part of its “policy of cultural genocide . . . to divest itself of its legal and financial obligations to Aboriginal people and gain control over their land and resources.”²² “Aboriginal children [were separated] from their families[] in order to minimize and weaken family ties and cultural linkages, and . . . indoctrinate[d] . . . into a new culture—the culture of the legally dominant Euro-Christian Canadian society.”²³ For these harms Canada’s government and churches “embarked on a far more extensive program of reconciliation with Canada’s stolen generations.”²⁴ Though not without significant shortfalls, the Canadian initiative—thanks to years of Indigenous advocacy—extracted formal apologies from the country’s highest officials and, most recently, from Pope

18. Amanda Coletta, *Remains of 215 Indigenous Children Discovered at Former Canadian Residential School Site*, WASH. POST (May 28, 2021, 1:19 PM), <https://www.washingtonpost.com/world/2021/05/28/canada-mass-grave-residential-school/> [https://perma.cc/BR6U-AFFP].

19. See DOI Memo, *supra* note 112, at 1; Haaland, *supra* note 134.

20. DOI Memo, *supra* note 11, at 1. Ground penetrating radar revealed the remains during the weekend of May 22–23, 2021, and Secretary Haaland announced the United States’ Boarding School Initiative on June 22, 2021. *Id.*; see Press Release, Rosanne Casimir, Kukpi7 (Chief), Tk’emlúps te Secwépemc (Kamloops Indian Band), Casimir Statement on Finding 215 Child Remains at Kamloops Indian Residential School (May 27, 2021), <https://tkemlups.ca/wp-content/uploads/05-May-27-2021-TteS-MEDIA-RELEASE.pdf> [https://perma.cc/WM4Y-J29Z].

21. Haaland, *supra* note 13.

22. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 134, at v, 3. Federal support for church-run boarding schools, however, began in 1867 after the Canadian state was established. *Id.* at 51; see Ian Austen, *Canada’s Grim Legacy of Cultural Erasure, in Poignant School Photos*, N.Y. TIMES (July 5, 2021), <https://www.nytimes.com/2021/07/05/world/canada/Indigenous-residential-schools-photos.html> [https://perma.cc/CFF7-E5DV]. A note on terminology: this quote uses the term “Aboriginal” to refer to First Nations, Inuit, and Métis peoples. Métis legal scholar Chelsea Vowel intentionally uses this term “only within its legal context because, although it is not offensive per se, its use is incredibly generic.” CHELSEA VOWEL, *INDIGENOUS WRITES: A GUIDE TO FIRST NATIONS, MÉTIS, & INUIT ISSUES IN CANADA* 10 (2016). In its place Vowel uses the term “Indigenous” because it “can be both a legal and colloquial term; like *Aboriginal*, it includes First Nations, Inuit, and Métis peoples.” *Id.* I follow Vowel’s example and use “Aboriginal” only in quoted text and official names (e.g., The Royal Commission on Aboriginal Peoples). See *infra* Section III(A). I also use “Native” as a catchall term because of its more popular usage in the United States.

23. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at v; Austen, *supra* note 22.

24. See Eric K. Yamamoto, Miyoko Pettit-Toldeo & Sarah Sheffield, *Bridging the Chasm: Reconciliation’s Needed Implementation Fourth Step*, 15 SEATTLE J. FOR SOC. JUST. 123, 165 (2016) [hereinafter Yamamoto, Pettit-Toledo & Sheffield, *Bridging the Chasm*] (describing failed or stalled reconciliation initiatives and calling for a workable “theoretical reconciliation framework to better account for on-the-ground realities”).

Francis.²⁵ Billions of dollars in economic capacity-building were transferred to Indigenous communities as key components of reparative justice.²⁶ “[S]ome progress has been made, [although] significant barriers to reconciliation remain.”²⁷

The United States, however, falls dispiritingly short of Canada’s imperfect standard. Promises of reconciliation made in the late 1980s through the new millennium remain largely unfulfilled. In 2000, for example, then-Assistant Secretary of the Interior Kevin Gover, a citizen of the Pawnee Tribe of Oklahoma,²⁸ apologized on behalf of the Bureau of Indian Affairs.²⁹ He expressed his “profound sorrow for what [the] agency ha[d] done in the past.”³⁰ For the “ethnic cleansing that befell” Native peoples “[a]s the Nation looked to the West for more land.”³¹ For the “devastation of tribal economies and the deliberate creation of tribal dependence on the services provided by [the] agency.”³² For the “futile and destructive efforts to annihilate Indian cultures.”³³ “Worst of all,” Gover lamented, “the Bureau of Indian Affairs committed these acts against the children entrusted to its boarding schools, brutalizing them emotionally, psychologically, physically, and spiritually.”³⁴

Speaking for 10,000 Bureau of Indian Affairs employees, Gover accepted “the moral responsibility of putting things right.”³⁵ But over twenty years passed before the Department of the Interior investigated the boarding schools with an eye toward social healing through reparative justice.³⁶ And up until President Biden’s formal apology in October 2024, Gover—himself a Native person—was

25. Nicole Winfield & Rob Gillies, *Pope’s Apology to Indigenous Peoples for Abuse at Residential Schools Insufficient, Canada Says*, PBS NEWSHOUR (July 28, 2022, 1:06 PM), <https://www.pbs.org/newshour/world/popes-apology-to-indigenous-peoples-for-abuse-at-residential-schools-insufficient-canada-says> [<https://perma.cc/3HPN-24WN>].

26. *Id.*

27. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 134, at 8.

28. Kevin Gover, SMITHSONIAN INSTITUTION, <https://www.si.edu/about/bios/kevin-gover> [<https://perma.cc/7SLK-AYJY>] (last visited Nov. 25, 2024).

29. Press Release, U.S. Dep’t of the Interior Indian Affs., Gover Apologizes for BIA’s Misdeeds (Sept. 8, 2000), <https://www.bia.gov/as-ia/opa/online-press-release/gover-apologizes-bias-misdeeds> [<https://perma.cc/DXJ8-BJ66>]; Kevin Gover, Assistant Sec’y of the Interior, Remarks at the Ceremony Acknowledging the 175th Anniversary of the BIA (Sept. 8, 2000) [hereinafter Gover Remarks], <https://www.govinfo.gov/content/pkg/CHRG-109shrg21531/html/CHRG-109shrg21531.htm> [<https://perma.cc/4UUC-CJ4F>].

30. Gover Remarks, *supra* note 29; Christopher Buck, “Never Again”: Kevin Gover’s Historic Apology for the Bureau of Indian Affairs, VIMEO (Sept. 8, 2000), <https://vimeo.com/404428918>.

31. Gover Remarks, *supra* note 29.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. Gover issued this apology on behalf of the BIA in 2000, and Secretary Haaland launched the boarding school program investigation in 2021. *Id.*; DOI Memo, *supra* note 11.

the only federal official to apologize to Native peoples.³⁷ Despite being “long-overdue,”³⁸ some Indigenous activists remarked that Biden’s “apology was monumental in the short history of the so-called United States, particularly for policy moving forward, and hopefully for the healing of the survivors and all of our descendants.”³⁹

In general, when Secretary Haaland was at the agency’s helm and President Biden was in office, the United States renewed its commitment to “put[ting] things right.”⁴⁰ Secretary Haaland embarked on a nationwide “Road to Healing” listening tour designed to collect and preserve survivors’ oral histories.⁴¹ The *Truth and Healing Commission on Indian Boarding School Policies Act* passed through the

37. Joseph R. Biden, President of the United States, Remarks by President Biden on the Biden-Harris Administration’s Record of Delivering for Tribal Communities, Including Keeping His Promise to Make This Historic Visit to Indian Country (Oct. 25, 2024) [hereinafter Biden Apology], <https://web.archive.org/web/20250109103305/https://www.whitehouse.gov/briefing-room/speeches-remarks/2024/10/25/remarks-by-president-biden-on-the-biden-harris-administrations-record-of-delivering-for-tribal-communities-including-keeping-his-promise-to-make-this-historic-visit-to-indian-country-lavee/> [https://perma.cc/2DPZ-DB6S]; Rob Capriccioso, *A Sorry Saga: Obama Signs Native American Apology Resolution; Fails to Draw Attention to it*, INDIAN LAW RESOURCE CENTER (Jan. 13, 2010), <https://indianlaw.org/node/529> [https://perma.cc/N5XJ-BVB5].

38. *Id.*

39. All My Relations, *Biden Apologized and the Women That Made It Happen*, at 00:03:30-00:03:47 (Nov. 15, 2024), <https://podcasts.apple.com/us/podcast/all-my-relations-podcast/id1454424563?i=1000677102412> [https://perma.cc/VSH7-DAT7]. Matika Wilbur (Swinomish and Tulalip), Temryss Lane (Lummi Nation), and Deb Parker (Tulalip, Yaqui, Apache) discuss “why this apology is so important coming from the commander-in-chief of the United States of America, a white man apologizing to Native people across the United States. . . . It was important that it came from a white man in a society built on white supremacy.” *Id.*

40. See Gover Remarks, *supra* note 29; Please, Go On with James Hohman, *Interior Secretary Deb Haaland on the Dark History of Indigenous Boarding Schools*, WASH. POST, at 14:16 (June 25, 2021), <https://www.washingtonpost.com/podcasts/please-go-on/interior-secretary-deb-haaland-on-the-dark-history-of-indigenous-boarding-schools/> [https://perma.cc/D3K9-WD3R]. Secretary Haaland described President Biden’s support of Indigenous tribes in conversation with James Hohman:

[W]ith respect to the leadership we have in The White House now, President Biden is wholeheartedly—He wants robust consultation with Indian tribes. He wants Indian tribes to have a seat at the table. He believes in us, you know, having an all-of-government approach, that we all need to work together to move our country forward. And I feel very strongly that his courageous leadership is something that we’ve needed, and I’m grateful for that.

Id.

41. Darren Thompson, *U.S. Department of Interior Halfway Through “Road to Healing” Tour*, UNICORN RIOT (Feb. 3, 2023), <https://unicornriot.ninja/2023/u-s-department-of-interior-halfway-through-road-to-healing-tour/> [https://perma.cc/A4W8-78NW]. Secretary Haaland completed the “Road to Healing” tour in late 2023. Press Release, U.S. Dep’t of the Interior Indian Affs., Secretary Haaland Announces Major Milestones for Federal Indian Boarding School Initiative (July 30, 2024), <https://www.doi.gov/pressreleases/secretary-haaland-announces-major-milestones-federal-indian-boarding-school> [https://perma.cc/S5MR-PJTC].

Senate and, at the time of this writing, awaits action by the House.⁴² In *Haaland v. Brackeen*, the United States Supreme Court upheld the constitutionality of the 1978 Indian Child Welfare Act (“ICWA”), and Justice Neil Gorsuch contextualized the Court’s decision by chronicling the historic events begetting ICWA’s enactment—namely the federal government’s “darker designs” to isolate and assimilate Native children through the boarding school program.⁴³ ICWA aimed to “promote the stability and security of Indian tribes and families”⁴⁴ given the “alarmingly high percentage of Indian families . . . broken up by the removal, often unwarranted, of their children . . . by nontribal public and private agencies.”⁴⁵ Challenging ICWA meant challenging Native people’s ability to do what they could not during the boarding school era: decide for themselves what is best for Native children.

Notwithstanding the Supreme Court’s stunning majority decision upholding ICWA’s constitutionality,⁴⁶ the case is part of “a terrifying pattern[] in which

42. Truth and Healing Commission on Indian Boarding School Policies Act, S. 1723, 118th Cong. (2023–2024) (proposing a formal Truth and Reconciliation Commission to investigate, document and acknowledge past injustices caused by the Federal Indian Boarding School System); Kalle Benallie, *Senate Bill Calls for Investigation into Indian Boarding Schools*, TRUTHOUT (June 10, 2023), <https://truthout.org/articles/senate-bill-calls-for-investigation-into-indian-boarding-schools/> [https://perma.cc/5J8H-EWJM].

43. *Haaland v. Brackeen*, 599 U.S. 255, 298 (2023) (Gorsuch, J., concurring); Amy Howe, *Supreme Court Upholds Indian Child Welfare Act*, SCOTUSBLOG (June 15, 2023, 3:27 PM), <https://www.scotusblog.com/2023/06/supreme-court-upholds-indian-child-welfare-act/> [https://perma.cc/PFB2-V8MN].

44. Indian Child Welfare Act of 1978, Pub. L. No. 95-608, § 3, 92 Stat. 3069, 3069.

45. *Id.* § 2(4). The Indian Child Welfare Act set minimum standards for child removal and required adoptive placement in homes “reflect[ing] the unique values of Indian culture.” *Id.* § 3.

46. *Haaland v. Brackeen*, 599 U.S. 255, 263 (2023); Strict Scrutiny, *Good News for the Indian Child Welfare Act*, CROOKED MEDIA, at 2:17 (June 19, 2023), <https://crooked.com/podcast/good-news-for-the-indian-child-welfare-act/> [https://perma.cc/UZS4-94UN]; Nina Totenberg, *The Supreme Court Is the Most Conservative in 90 Years*, NPR (July 5, 2022, 7:04 AM), <https://www.npr.org/2022/07/05/1109444617/the-supreme-court-conservative> [https://perma.cc/3SBA-P2GL]; Amy Howe, *Closely Divided Court Scrutinizes Various Provisions of Indian Child Welfare Act*, SCOTUSBLOG (Nov. 9, 2022, 6:02 PM), <https://www.scotusblog.com/2022/11/closely-divided-court-scrutinizes-various-provisions-of-indian-child-welfare-act/> [https://perma.cc/FW94-VLKA].

Congress enacted the Indian Child Welfare Act as a response to a long and tragic history of separating Native American children from their families. The law establishes minimum standards for the removal of Native American children from their families and establishes a preference that when Native American children are taken from their homes, they be placed with extended family members or with other Native families, even if the families are not relatives. Opponents of the law say it exceeds Congress’ power, violates states’ rights, and imposes unconstitutional race-based classifications.

Howe, *supra* note 46.

attacks on Native children are a prelude to broader attacks on tribal sovereignty.⁴⁷ Right-wing special interests⁴⁸ will likely continue their crusade against ICWA,⁴⁹ and “[t]he fear is that this case is like the first upright domino in a long row. If they can topple ICWA, they can topple everything else.”⁵⁰ We need only flip the page to the Court’s refusal to enforce federal treaty obligations in *Arizona v. Navajo Nation* to understand the extent to which sovereign tribal nations are subject to the whims of the Court, Congress and federal agencies.⁵¹

What happens next in the hotly divided present-day political milieu will determine if “our country is to heal from [the] tragic [boarding school] era.”⁵² Though the boarding school initiative is a necessary and historic first step toward reconciliation, the report’s current recommendations fail to address many of its critical key findings.⁵³ Will the boarding school initiative advance enduring and comprehensive social healing by revising and expanding its recommendations to specifically redress the harms of land dispossession? Or will it remain a half-baked restorative justice attempt that fails to meaningfully repair the damage and ultimately disserves Native communities and American society? Or will we, the American polity, allow yet another reconciliation initiative to languish into

47. Rebecca Nagle, *The Supreme Court Case that Could Break Native American Sovereignty*, ATLANTIC (Nov. 8, 2022), <https://www.theatlantic.com/ideas/archive/2022/11/scotus-native-american-sovereignty-brackeen-v-haaland/672038/> [https://perma.cc/PH7R-L26R].

48. This Land, 9. *Update: Supreme Court Decision*, CROOKED MEDIA, at 6:05 (June 23, 2023), <https://www.crooked.com/podcast/9-update-supreme-court-decision/> [https://perma.cc/2SUM-GSQM] (“An odd group of special interests, including adoption attorneys, corporate lawyers, and right-wing groups decided they wanted to strike ICWA down.”).

49. *Id.* at 26:33 (“If they think that the concurring opinion from Justice Kavanaugh is a signal to them that there is an audience for the equal protection argument, then they’ll keep going.”).

50. *Id.* at 9:29.

51. *Arizona v. Navajo Nation*, 599 U.S. 555, 574 (2023) (Gorsuch, J. dissenting). *See generally* Matthew L.M. Fletcher, *Supreme Court Rules 5-4 Against Navajo Nation in Water Rights Dispute*, SCOTUSBLOG (June 22, 2023, 5:17 PM), <https://www.scotusblog.com/2023/06/supreme-court-rules-5-4-against-navajo-nation-in-water-rights-dispute/> [https://perma.cc/TE9E-C23Y]. Justice Gorsuch cogently summarized the issue in his dissent:

In [the Navajo Nation’s suit], the Navajo sought to “compel the [Department of Interior] to determine the water required to meet the needs of the Nation’s lands in Arizona and devise a plan to meet those needs to fulfill the promise of the United States to make the Nation’s Reservation lands a permanent homeland for the Navajo people.” In other words, the Tribe asked the United States to assess what water rights it holds in trust on the Tribe’s behalf pursuant to the Treaty of 1868. And if it turns out the United States has misappropriated those water rights, the Tribe wants the federal government to come up with a plan to set things right.

Arizona v. Navajo Nation, 599 U.S. at 584.

52. Haaland, *supra* note 13.

53. *See infra* Section IV(E) for a thorough evaluation of the initiative’s salutary aspects and limitations.

oblivion?⁵⁴ What guidance exists for practically tailoring and strategically charting next steps and overall aims?

This piece endeavors to shape, guide, and, where needed, recalibrate the boarding school initiative by assessing its concepts and particulars through Professor Emeritus Eric K. Yamamoto's multidisciplinary *social healing through justice* analytical framework.⁵⁵ *Social healing through justice* offers pragmatic, dynamic and strategic processes to foster comprehensive and enduring healing for individuals, communities and societies harmed by historic injustice.⁵⁶ "The kind of 'justice' that activates social healing . . . cannot be merely an idea or words on paper. It must be experienced."⁵⁷ This Article seeks to actualize that experience.

Section II describes the working principles and four main inquiries forming the *social healing through justice* praxis framework. Section III recounts Canada's reconciliation efforts with First Nations, Inuit and Métis peoples. Section IV discusses how unfolding events in Canada catalyzed the United States' first-ever

54. To illustrate, "[r]econciliation has been an option thus far denied" to Kānaka Maoli. *Native Hawaiian Government Reorganization Act: Hearing on S. 147 Before the S. Comm. on Indian Affs.*, 109th Cong. 11 (2005) (written testimony of Chairperson Haunani Apoliona, Board of Trustees, Office of Hawaiian Affairs), <https://www.indian.senate.gov/wp-content/uploads/documents/CHRG-109shrg99723.pdf> [<https://perma.cc/59MV-C2DA>]. *Social healing through justice* scholars Eric Yamamoto and Ashley Obrey recounted the United States' waxing and waning commitment to reconciliation with Native Hawaiians. Eric K. Yamamoto & Ashley Kaiāo Obrey, *Reframing Redress: A "Social Healing Through Justice" Approach to United States-Native Hawaiian and Japan-Ainu Reconciliation Initiatives*, 16 *ASIAN AM. L.J.* 5, 44–51 (2009) [hereinafter, Yamamoto & Obrey, *Reframing Redress*]. Promisingly, the United States apologized to Native Hawaiians in its 1993 Congressional Apology Resolution for "the role America played in the 1893 'illegal overthrow' of the Hawaiian nation." *Id.* at 44. The Department of Interior and Department of Justice published a Joint Reconciliation Report in which it tethered the United States' moral responsibility for the harm inflicted before, during and after the overthrow to its recommendation that the United States reconstruct its relationship with Indigenous Hawaiians such that Kānaka Maoli might enjoy "semi-independence (similar to the status of Native Americans)." *Id.* at 45–46. "But then reconciliation efforts stalled." *Id.* at 47. A proliferating military presence and increasing, successful conservative opposition to "reparatory Native Hawaiian" federal and state programs undercut the aforementioned strides. *Id.* at 47–49. Today, the "United States' reparatory commitment teeters on the brink of overall failure despite initial progress." *Id.* at 49.

55. See *infra* Section II for a description of the *social healing through justice* framework's working principles and four main touchpoints: *recognition, responsibility, reconstruction* and *reparation*. See generally Chapters 3 and 4 of YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 11.

56. See generally Chapters 3 and 4 of YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 11.

57. YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 11, at 48.

Federal Indian boarding school investigation.⁵⁸ It details the report's key findings, conclusions and recommendations, assessing the latter through the *social healing through justice* lens. It gives credit where due, explores gaps in the initiative's recommendations and proposes next steps for the department as it pursues healing. Section V concludes by considering the current political climate and what might happen if the department's initiative or the *Truth and Healing Commission on Indian Boarding School Policies Act* stagnate yet again.

Braided throughout the piece are linkages to ho'oponopono, an ancient familial restorative justice practice for Kānaka Maoli.⁵⁹ The epigraph is one expression of kala, or release, that ho'oponopono participants invoke after the transgression is forgiven so that the wrongdoing no longer binds harmer and harmed together.⁶⁰ Indigenous groups—American Indians, Alaska Natives and Kānaka Maoli—are not yet in a place to speak this prayer of release for the damage wrought by Federal Indian Boarding Schools. The United States does not yet deserve it. I hope this Article will help change that.

II.

SOCIAL HEALING THROUGH JUSTICE: A MULTIDISCIPLINARY RECONCILIATION PRAXIS

We are entangled. Caught in a net of our own making. A net fashioned by this country's first settlers, first presidents and first departments with each unhealed transgression against this land's first peoples. In family conflict contexts Kānaka Maoli call this state of entanglement "hihia."⁶¹ What begins "as a cord that binds culprit, offense and victim" soon transforms into a "larger[] yet tighter network of many cords tied in numerous stubborn knots" as unhealed wounds fester.⁶²

For Kānaka Maoli, ho'oponopono empowers individuals and their families to loosen the ties that bind and heal.⁶³ How can reconciliation initiatives seeking to

58. Sections III and IV rely heavily on the official reports published by Canada's Truth and Reconciliation Commission and the United States Department of Interior because the piece critiques the recommendations and conclusions of each. Brenda Child (Red Lake Nation) explains that reports like these, while "indispensable to historians because they outline the broad contours of federal policy, . . . fall short of being able to explain the American Indian points of view." BRENDA CHILD, *BOARDING SCHOOL SEASONS: AMERICAN INDIAN FAMILIES 1900-1940* xii (1998). For this reason, Child prefers letters written by Indigenous people. *Id.* Time renders imperfect my effort to complement citations to the reports with Indigenous accounts and scholarship, but I believe the following precept: boarding school survivors and their communities know more about what occurred and what should happen next than any report ever will.

59. Interview with Kamana'opono M. Crabbe, Ka Pouhana-CEO, Pouhana Consultation Servs., in Mililani, Haw. (July 18, 2022) [hereinafter Crabbe Interview].

60. 1 NĀNĀ I KE KUMU, *supra* note 1, at 75.

61. *Id.* at 71–72.

62. *Id.* at 71.

63. Crabbe Interview, *supra* note 60.

heal the persisting wounds of mass historic injustice unbind not just individuals and families, but communities and societies?⁶⁴ Yamamoto's *social healing through justice* framework pursues the "unlocking of painful bondage, of mutual liberation"⁶⁵ by offering points of inquiry that can shape, implement, evaluate and retool healing initiatives "to repair the persisting damage to people, communities and society itself."⁶⁶

The quest for liberatory social healing is one of "pure, unadulterated struggle."⁶⁷ By incorporating this hard truth into its scaffolding, the *social healing through justice* framework "productively advances that pure, unadulterated

64. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 46; HARLON L. DALTON, RACIAL HEALING: CONFRONTING THE FEAR BETWEEN BLACKS AND WHITES 96–97 (1995); *see* ERIC K. YAMAMOTO, INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST-CIVIL RIGHTS AMERICA (2000) [hereinafter YAMAMOTO, INTERRACIAL JUSTICE].

65. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 112, at 49; YAMAMOTO, INTERRACIAL JUSTICE, *supra* note 64, at 174. *See generally* ELAZAR BARKAN, THE GUILT OF NATIONS: RESTITUTION AND NEGOTIATING HISTORICAL INJUSTICES (2000) (examining how restitution processes amplify and legitimize claims of past wrongs by studying struggles for restitution following World War II and western nations' colonization of Africa, Latin America, and Oceania); VAMIK D. VOLKAN, THE NEED TO HAVE ENEMIES AND ALLIES: FROM CLINICAL PRACTICE TO INTERNATIONAL RELATIONSHIPS (1988) (viewing the intricacies of international diplomacy following acts of terrorism and violence through a developmental psychology lens, and explaining humanity's developmental need to identify enemies and allies); DAVID W. AUGSBURGER, CONFLICT MEDIATION ACROSS CULTURES: PATHWAYS AND PATTERNS (1st ed., 1992) (exploring intercultural conflict processes, differences, styles, and patterns, and mediation's potential to "transform"); NICHOLAS TAVUCHIS, MEA CULPA: A SOCIOLOGY OF APOLOGY AND RECONCILIATION (1991) (analyzing the form and function of intergroup and interpersonal apologies through an inter-cultural and interdisciplinary lens); MICHAEL A. HOGG & DOMINIC ABRAMS, SOCIAL IDENTIFICATIONS: A SOCIAL PSYCHOLOGY OF INTERGROUP RELATIONS AND GROUP PROCESSES (1988) (unpacking intragroup dynamics and exploring how a collection of individuals coalesce and form a cohesive group "to the degree that they have needs capable of mutual satisfaction"); GEIKO MÜLLER-FAHRENHOLZ, THE ART OF FORGIVENESS: THEOLOGICAL REFLECTIONS ON HEALING AND RECONCILIATION (1997) (discussing forgiveness as a process of mutual liberation that attempts to unbind the future from dark legacies of the past); LARISSA BEHRENDT, ABORIGINAL DISPUTE RESOLUTION: A STEP TOWARDS SELF-DETERMINATION AND COMMUNITY AUTONOMY (1995) (proposing that reconciliation between Australian Aboriginal peoples and the non-Aboriginal community should use traditional Aboriginal methods to balance inequalities); BRANDON HAMBER, TRANSFORMING SOCIETIES AFTER POLITICAL VIOLENCE: TRUTH, RECONCILIATION, AND MENTAL HEALTH (Daniel J. Christie ed., 2009) (focusing on the South African Truth and Reconciliation Commission and the beneficial role mental health workers played in actualizing transitional justice for victims of profound political trauma following the end of apartheid); Harold Wells, *Theology for Reconciliation*, in THE RECONCILIATION OF PEOPLES: CHALLENGE TO THE CHURCHES 1, 1–14 (Gregory Baum & Harold Wells eds., 1997) (charting a Christian theological framework for reconciliation); Hiroshi Wagamatsu & Arthur Rosett, *The Implications of Apology: Law and Culture in Japan and the United States*, 20 L. & SOC'Y REV. 461 (1986) (comparing the role of apologies in dispute resolution in the United States and Japan).

66. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 46–47, 49, 61.

67. *Id.* at 46 (citing DALTON, *supra* note 64, at 97).

struggle.”⁶⁸ It recognizes that genuine social healing is not easy.⁶⁹ It takes time.⁷⁰ And reparative actions that “may be ideal theoretically may not be fully achievable practically (at least in the short-run).”⁷¹ Navigating the liminal “space Martha Minow identifies as ‘Between Vengeance and Forgiveness’”⁷² thus requires “messy, shifting, continual and often combined national and local efforts at reparative justice.”⁷³ *Social healing through justice* embraces the mess and meets initiatives where they are at by “illuminating both salutary prospects and limitations.”⁷⁴ Then it “[d]raw[s] on multidisciplinary insights” into “some of the dynamics of social healing” to unbind people, communities and society from past (yet persisting) harm.⁷⁵ Crucially, “[j]ustice [for Indigenous groups] will likely be unique for each community.”⁷⁶ Yamamoto crafts the framework with room to grow.⁷⁷ Other

68. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 46; see YAMAMOTO, INTERRACIAL JUSTICE, *supra* note 64.

69. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 57.

70. *Id.* at 55, 57.

71. *Id.* at 70; see YAMAMOTO, INTERRACIAL JUSTICE, *supra* note 64, at 133–34.

72. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 47 (citing MARTHA MINOW, BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE (1998) (describing various worldwide struggles to appropriately respond to historic injustice by falling between the article’s eponymous extremes)).

73. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 47.

74. *Id.*

75. *Id.* Notably, Yamamoto leaves room for the *social healing through justice* framework to grow, acknowledging that the six working principles “offer a rough, incomplete, yet nevertheless compelling picture of some of the dynamics of social healing.” *Id.* See generally Chapter 3 of YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, for a complete explanation of the framework’s working principles.

76. *The Impact of Federal and State Removal Policies and Indian Boarding Schools*, NATIVE AM. RTS. FUND (Aug. 11, 2022), <https://narf.org/healing-from-boarding-school-policy-2/> [<https://perma.cc/7AHK-BFX3>].

77. See YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 47 (“Drawing on multidisciplinary insights, . . . common points [are distilled] into working principles to offer a rough, incomplete, yet nevertheless compelling picture of some of the dynamics of social healing.”).

bespoke reparative justice frameworks designed by Native scholars for their communities can tailor it.⁷⁸ Together they can salve intergenerational wounds.⁷⁹

A. Social Healing Through Justice *Multidisciplinary Working Principles*

Six working principles distilled from commonalities shared by human rights law, theology, social psychology, political theory, economics and Indigenous conflict resolution methodologies (e.g., ho‘oponopono) assess whether a particular initiative is likely to foster the kind of justice that heals.⁸⁰ Mutual engagement, the first principle, sits both harmer and harmed down at the proverbial roundtable to collaboratively shape the healing effort.⁸¹ Solutions must center those harmed and

78. Yamamoto’s *social healing through justice* framework embraces Indigenous healing practices and concepts—notably the Native Hawaiian restorative justice practice of ho‘oponopono—but D. Kapua‘ala Sproat’s uniquely Maoli restorative justice framework more fully infuses Kanaka ‘Ōiwi values into the inquiry. To illustrate, Sproat articulates four restorative justice “realms . . . embodied in the human rights principle of self-determination” that form the framework: “mo‘omeheu (cultural integrity), ‘āina (land and natural resources), mauli ola (social determinants of health and well-being), and ea (self-determination).” D. Kapua‘ala Sproat & MJ Palau-McDonald, *The Duty to Aloha ‘Āina: Indigenous Values as a Legal Foundation for Hawai‘i’s Public Trust*, 57 HARVARD C.R.-C.L. L. REV. 525, 567 (2022); see also D. Kapua‘ala Sproat, *Wai through Kānāwai: Water for Hawai‘i’s Streams and Justice for Hawaiian Communities*, 95 MARQ. L. REV. 127, 173 (2011). Because *social healing through justice* means “restoring what was taken or repairing what was broken,” it follows that progress made in each of the realms (or values) indicates the reconciliation initiative’s vitality. See YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 68 (citing Thomas M. Antkowiak, *A Dark Side of Virtue: The Inter-American Court and Reparations for Indigenous Peoples*, 25 DUKE J. COMPAR. & INT’L L. 1, 1–80 (2014)).

79. I deploy an “Indigenized *social healing through justice*” framework in this article’s companion piece. Doyle, *supra* note 15.

80. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 46–47. Multidisciplinary praxes can often produce results valuable to the legal process. See Jeremy Rinker, *Narrative Reconciliation as Rights Based Peace Praxis: Custodial Torture, Testimonial Therapy, and Overcoming Marginalization*, PEACE RSCH.: CANADIAN J. PEACE & CONFLICT STUD. 121, 121 (2016) (“The testimonial therapy process is aimed at producing both legal testimony and cathartic release of suffering among torture survivors.”).

81. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 62–64. Not unlike a roundtable, Indigenous groups across the globe seek justice for harmed, harmer and communities through healing circles:

A better description of the horizontal [justice] model, and one often used by Indians to portray their thought, is a circle. In a circle, there is no right or left, nor is there a beginning or an end; every point (or person) on the line of a circle looks to the same center as the focus. The circle is the symbol of Navajo justice because it is perfect, unbroken, and a simile of unity and oneness. It conveys the image of people gathering together for discussion.

Robert Yazzie, *Life Comes from It: Navajo Justice Concepts*, 24 N.M. L. REV. 175, 180 (1994). Healing circles are used to address a range of harms from theft to child sexual assault.

[T]he Community Holistic Circle Healing (‘CHCH’) model of Hollow Water, Canada, . . . was formed in 1987 as the community began to learn that sexual victimization and intergenerational sexual abuse was at the core of the poor

responsible parties must realize they have “a broad interest in healing the wounds of those suffering by reallocating some important degree of power.”⁸²

Secondly, healing initiatives must aim to repair damage to individuals and communities simultaneously by helping both to recover emotionally and economically.⁸³ Because subsequent generations are harmed by inherited trauma, the third principle rejects formalistic notions of legal justice and mends intergenerational wounds by preventing their continued transmission.⁸⁴ The fourth principle recognizes healing “systemic discrimination, denials of self-determination, widespread past violence and culture suppression” requires economic justice measures that

wellbeing of many individuals and families. From their experience, the non-Indigenous adversarial legal system could not understand the complexity of this issue and what was needed for a community to break the cycle of abuse that impacted . . . so many of its members. They developed the model in an effort to take responsibility for what was happening in their community, to work to restore balance and make their community a safe place for future generations.

Hannah McGlade, *Justice as Healing: Developing Aboriginal Justice Models to Address Child Sexual Assault*, 7 INDIGENOUS L. BULL. 10, 11–12 (2007), <https://www.ilc.unsw.edu.au/sites/ilc.unsw.edu.au/files/mdocs/ILBv7n01-McGlade.pdf> [https://perma.cc/BZJ6-R52B]. Similar principles regarding participation of all those impacted by the injustice undergird the strength of truth and healing commissions. Kim D. Ricardo (née Chanbonpin) writes, “The conciliatory power of a truth commission comes from the participation of all affected parties: those who were directly victimized, those who perpetrated the abuses, and even those who continue to be affected by the enduring legacy of the abuses.” Kim D. Chanbonpin, *We Don’t Want Dollars, Just Change: Narrative Counter-Terrorism Strategy, an Inclusive Model for Social Healing, and the Truth About Torture Commission*, 6 NW. J. L. & SOC. POL’Y 1, 31 (2011).

82. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 63. See Chapter 12 of YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, for a cogent discussion of Derrick Bell’s interest-convergence thesis. See also Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 522 (1980) (observing that those with entrenched power usually recognize the rights of vulnerable groups only when doing so serves their interests); Huma Haider, *Breaking the Cycle of Violence: Applying Conflict Sensitivity to Transitional Justice*, SWISSPEACE (2017), available at <https://www.swisspeace.ch/articles/breaking-the-cycle-of-violence-applying-conflict-sensitivity-to-transitional-justice> [https://perma.cc/H2P8-GFSC] (articulating a conflict sensitive transitional justice praxis that promotes widespread participation, resonance with local actors, social cohesion, public outreach, cross-sector collaboration and appropriate sequencing); Verlyn F. Francis, *Designing Emotional and Psychological Support Into Truth and Reconciliation Commissions*, 23 WILLAMETTE J. INT’L L. & DISP. RESOL. 273, 273–96 (2016) (describing the South Africa Truth and Reconciliation Commission’s failure to include the communities harmed by apartheid at the process design table and the ensuing re-traumatization).

83. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 64–66.

84. *Id.* at 66–67. See generally Michelle R. Ancharoff, James F. Munroe & Lisa M. Fisher, *The Legacy of Combat Trauma: Clinical Implications of Intergenerational Transmission*, in INTERNATIONAL HANDBOOK OF MULTIGENERATIONAL LEGACIES OF TRAUMA 257 (Yael Danieli ed., 1998) (discussing the “survivor’s child complex” and historical trauma suffered by generations of Native children following the American Indian holocaust); Natan P. F. Kellermann, *Transmission of Holocaust Trauma – An Integrative View*, 64 PSYCHIATRY 256 (2001); John H. Ehrenreich, *Understanding PTSD: Forgetting “Trauma,”* 3 ANALYSES SOC. ISSUES & PUB. POL’Y 15 (2003) (arguing the importance of using different terms to distinguish between circumscribed traumatic events versus collectively experienced mass violence).

rebuild the capacity of those harmed so they can once again thrive.⁸⁵ Next, initiatives that genuinely heal the wounds of people and communities are marathons, not sprints, with achievable goals and workable processes tailored to ever-shifting political landscapes.⁸⁶

The final working principle cautions against the *darkside* of the reparative process—internal and external threats that, if ignored, derail restorative justice initiatives.⁸⁷ It anticipates (1) the ways in which healing efforts become lip service; (2) the danger of adopting formalistic framings of the injustice oft-deployed by opponents; and (3) the political backlash reconciliation initiatives inevitably face.⁸⁸ Acknowledging these potential pitfalls “counsels strategic framing of debate and action,” *not* the abandonment of healing efforts altogether.⁸⁹

Each of these working principles is further coalesced into four points of inquiry crystallizing the *social healing through justice* analytical framework.⁹⁰

85. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 68–69; *see* Eric K. Yamamoto & Brian Mackintosh, *Redress and the Salience of Economic Justice*, 4 F. ON PUB. POL’Y 1 (2010); Martha Nussbaum, *Human Rights and Human Capabilities*, 20 HARV. HUM. RTS. J. 21, 23–24 (2007). Nussbaum defines the “Human Development Approach” or “Capability Approach” as a type of human rights approach that seeks to help people function in ten key areas: life; bodily health; bodily integrity; development and expression of senses, imagination and thought; emotional health; practical reason; personal and political affiliation; interacting with the environment and other species; play; and material and social control over one’s environment. Nussbaum, *supra*, at 23–24; *see also* Koushik Ghosh, *Culture, Government and Markets*, 2 F. ON PUB. POL’Y 1 (2009). *See generally* EMMA COLEMAN JORDAN & ANGELA P. HARRIS, *ECONOMIC JUSTICE: RACE, GENDER, IDENTITY AND ECONOMICS* (2005).

86. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 112, at 69–70; *see* YAMAMOTO, *INTERRACIAL JUSTICE*, *supra* note 64, at 133–34 (approaching an initiative pragmatically means taking stock of specific and contextual influencing factors); Collette Rausch, *Reconciliation and Transitional Justice in Nepal: A Slow Peace*, 227 PEACEBRIEF 1 (2017) (explaining that incremental, piecemeal transitional justice steps can foster peace).

87. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 70–71; *see* Eric K. Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 40 B.C. L. REV. 477, 483 (1998) [hereinafter Yamamoto, *Racial Reparations*] (drawing out three darksides (formerly the “underside, the risks”) of reparations efforts: the distorted legal framing of reparations claims; dilemma of reparations process; and the ideology of reparations).

88. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 70–71; *see* Yamamoto, *Racial Reparations*, *supra* note 87, at 487–88, 494; *see also* JOHN DAWSON, *HEALING AMERICA’S WOUNDS: DISCOVERING OUR DESTINY* 164–65 (1995); Eric K. Yamamoto, Sandra Hye Yun Kim & Abigail M. Holden, *American Reparations Theory and Practice at the Crossroads*, 44 CAL. WEST. L. REV. 1, 23–26 (2007).

89. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 71; Yamamoto, *Racial Reparations*, *supra* note 87, at 487 (explaining that reparations’ attendant darksides should not lessen their significance when achieved nor preclude future redress efforts, but instead illuminate an effort’s potential pitfalls requiring careful navigation).

90. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 71.

B. *Four Social Healing Through Justice Analytical Inquiries: Recognition, Responsibility, Reconstruction and Reparation*

Social healing through justice offers four guideposts—*recognition, responsibility, reconstruction and reparation*—that “aim[] to shape, assess and recalibrate social healing initiatives to foster the kind of reparative justice that heals.”⁹¹

Recognition asks harmer and harmed to “see into the woundedness of self and others (then and now).”⁹² Participants who humanize and empathize with each other are better positioned to critically and “fairly assess the specific circumstances and larger historical context of the justice grievances undergirding present-day tensions,”⁹³ all with the goal of developing a “newly framed collective memory of the injustice [to serve] as a foundation for collaborative efforts to repair the damage.”⁹⁴

Responsibility invites those involved in the healing effort to acknowledge the injustice’s attendant harms and accept responsibility for healing persisting individual and collective wounds.⁹⁵ Certain legal and/or ethical norms derived from the level of participation in the wrongdoing generate responsibility.⁹⁶ Guilt,

91. *Id.* at 72. Initially called “interracial justice,” the first iteration of Yamamoto’s framework “mainly targeted grievances and reconciliation efforts among communities of color in the United States.” *Id.* at 72 n.1; see YAMAMOTO, *INTERRACIAL JUSTICE*, *supra* note 64, at 175–85. “The framework and its 4Rs, though, were broadly cast, drawing from a range of international initiatives and related theorizing. [Yamamoto’s] subsequent works expanded and refined the framework to expressly encompass a wide ambit of reparative justice initiatives, renaming the approach ‘social healing through justice.’” YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 11, at 72 n.1. See Yamamoto, Pettit-Toledo & Sheffield, *Bridging the Chasm*, *supra* note 24; Eric K. Yamamoto, Miyoko Pettit & Sara Lee, *Unfinished Business: A Joint South Korea and United States Jeju 4.3 Tragedy Task Force to Further Implement Recommendations and Foster Comprehensive and Enduring Social Healing Through Justice*, 15 *ASIAN-PAC. L. & POL’Y J.* 1, 57, 58 (2014); Eric K. Yamamoto & Sara Lee, *Korean “Comfort Women” Redress 2012 Through the Lens of U.S. Civil and Human Rights Reparatory Justice Experiences*, 11 *J. KOREAN L.* 123, 138–39 (2012); Yamamoto & Obrey, *Reframing Redress*, *supra* note 54, at 5, 33.

92. YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 11, at 78; see Rachel Lopez, *The (Re)collection of Memory After Mass Atrocity and the Dilemma for Transitional Justice*, 47 *N.Y.U. J. INT’L L. & POL.* 799 (2015); Sharon K. Hom & Eric K. Yamamoto, *Collective Memory, History, and Social Justice*, 47 *UCLA L. REV.* 1747 (2000).

93. YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 112, at 74, 78.

94. *Id.* at 78.

95. *Id.* at 79–82. Joseph V. Montville, *The Healing Function in Political Conflict Resolution*, in *CONFLICT RESOLUTION THEORY AND PRACTICE: INTEGRATION AND APPLICATION* 112 (Dennis J.D. Sandole & Hugo van der Merwe eds., 1993). See also Sovann Mam, *Beyond the Khmer Rouge Tribunal: Addressing a Lack of Reconciliation at the Community Level* 26, (Swisspeace, Working Paper 7/2019), <https://www.swisspeace.ch/assets/publications/downloads/Working-Papers/a7e5743d3e/WP-5-Cambodia-Series-v2.pdf> [<https://perma.cc/K76K-CRV8>] (identifying the Khmer Rouge perpetrators’ failure to confess wrongdoing or to accept responsibility as key hindrance to reconciliation efforts in Cambodia); YAMAMOTO, *INTERRACIAL JUSTICE*, *supra* note 645, at 185; Yamamoto, Pettit & Lee, *Unfinished Business*, *supra* note 91, at 20.

96. YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 11, at 119–36.

shame, remorselessness, threats of punishment or retribution and western cultural and legal norms obstruct efforts to take responsibility.⁹⁷ But we all benefit from “facing history, facing ourselves” and disentangling each other from the net of historic injustice.⁹⁸ Ho‘oponopono principles, for example, recognize that “[e]ven the ‘innocent bystander’ is part of *hihia*,” meaning everyone in the group “must find ways to *kala* (free) themselves.”⁹⁹ Democratic governments are interested in “reclaiming legitimacy as a society actually committed to civil and human rights.”¹⁰⁰ Members of democratic societies who did not directly participate in the injustice are obligated to help repair damage to the community because “[a]n injury to anyone in the polity also damages the community itself.”¹⁰¹ Often the inquiry is “*how* am I responsible?” rather than “*am I* responsible?”¹⁰² We all can help heal persisting wounds.

Reconstruction is where the rubber meets the road. Where talk becomes walk. Apologies must be made and accepted.¹⁰³ In ho‘oponopono processes “[t]he culprit must confess, repent and make restitution. The one who was wronged must forgive.”¹⁰⁴ Places for people to learn about the injustice must be built, and messages sharing the new, collaboratively framed collective memory of the harm

97. *Id.* at 81–82.

98. *See id.* at 48.

99. 1 NĀNĀ I KE KUMU, *supra* note 1, at 72.

100. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 48. Canada’s Truth and Reconciliation Commission articulated the country’s stake in restoring its legitimacy and stature within the global community in its 2015 report on Canadian residential boarding schools:

In 2015, as the Truth and Reconciliation Commission of Canada wraps up its work, the country has a rare second chance to seize a lost opportunity for reconciliation. We live in a twenty-first-century global world. At stake is Canada’s place as a prosperous, just, and inclusive democracy within that global world.

HONOURING THE TRUTH, *supra* note 13, at 7.

101. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 80; YAMAMOTO, INTERRACIAL JUSTICE, *supra* note 64, at 125. *See also* Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC 54–71 (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/> [<https://perma.cc/6ZKF-L6HP>] (chronicling four centuries of racial terror and injustice suffered by enslaved Africans, their descendants and Black people generally to cogently articulate the need for reparations).

102. I first heard this “not if, but how” concept articulated by Sonya Renee Taylor. Taylor is a “renowned activist and thought leader on racial justice, body liberation and transformational change, international award winning artist, and founder of The Body Is Not an Apology (TBINAA), a global digital media and education company exploring the intersections of identity, healing, and social justice through the framework of radical self-love.” *About*, SONYA RENEE TAYLOR, <https://www.sonyareneetaylor.com/about> [<https://perma.cc/Z3KQ-QA75>] (last visited Nov. 25, 2024).

103. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 82–83. Different cultures shape steps of *recognition* and *reconstruction* differently. *See, e.g.*, Hiroshi Wagatsuma & Arthur Rosett, *supra* note 59 (exploring an apology’s significance and role in dispute resolution in Japan and the United States).

104. 1 NĀNĀ I KE KUMU, *supra* note 1, at 75.

must be crafted and disseminated.¹⁰⁵ A final and crucial facet of *reconstruction* is restructuring institutions to “prevent ‘it’—the injustice and the social, economic and political conditions giving rise to it—from happening again.”¹⁰⁶ Institutional restructuring must transform the legal system, political and governmental apparatuses, education, economics and health care.¹⁰⁷

Reparation is, at base, about rebuilding the capacity of harmed individuals and communities to once again “function productively and peaceably.”¹⁰⁸ While this may include individual payments to “partially compensate for property or financial loss or psychological trauma,” *reparation* digs deeper.¹⁰⁹ It uproots disabling structural conditions, making the necessary shifts to build out educational opportunities, job skills training, government and community support, and access to capital and health care.¹¹⁰ But calls for *reparation*—and particularly for

105. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 83–84. Hom & Yamamoto, *Collective Memory*, *supra* note 92, at 1756 (drawing upon multidisciplinary insights to illustrate how collective memory and perceptions of injustice each shape the other); *see also* Joshua F. J. Inwood & Derek Alderman, *Taking Down the Flag Is Just a Start: Toward the Memory-Work of Racial Reconciliation in White Supremacist America*, 56 SE. GEOGRAPHER 9, 10–12 (2016) (devalorizing and delegitimizing white supremacist symbols should accompany a broader call for a Truth and Reconciliation Commission tasked with critically examining white supremacy’s historical and current impacts).

106. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 84; *see* Nicole Summers, *Colombia’s Victims’ Law: Transitional Justice in a Time of Violent Conflict?*, 25 HARV. HUM. RTS. J. 219, 221–234 (2012) (assessing both salutary provisions and gaps in Colombia’s 2011 Victims’ Law and exploring legislation as an effective transitional justice tool).

107. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 84.

108. *Id.* at 89. Ho‘oponopono, too, emphasizes the importance of reparation: The requirement of reparation is especially wise. For until stolen property, for example, is restored or replaced, the thief remains burdened with guilt and social discomfort. The victim, though he forgives, continues to feel the loss of possessions. Neither is free of the hala or wrong, and the attitudes and emotions the wrong engendered.

1 NĀNĀ I KE KUMU, *supra* note 1, at 75.

109. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 87.

110. *See* YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 86–88; *see* Coates, *supra* note 101, at 70; AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999); *see* Martha C. Nussbaum, *Capabilities and Human Rights*, 66 FORDHAM L. REV. 273 (1997); *see also* Martha C. Nussbaum, *Human Capabilities, Female Human Beings*, in WOMEN, CULTURE AND DEVELOPMENT: A STUDY OF HUMAN CAPABILITIES 61 (Martha C. Nussbaum & Jonathon Glover eds., 1996).

reparations (with an “s”)—are routinely met with vitriolic backlash.¹¹¹ As the *darkside* working principle counsels, those at the healing initiative’s helm must strategically anticipate and proactively respond to the obstacles claims for economic justice face.¹¹²

Together these four starting points of inquiry (*recognition, responsibility, reconstruction and reparation*) endeavor to shape or reconfigure reconciliation initiatives to “bridge the justice chasm between aspiration and realization.”¹¹³ Since the turn of the twenty-first century, Canada has attempted to bridge that chasm with its First Nations, Inuit and Métis peoples.

III.

CANADA’S INDIAN RESIDENTIAL SCHOOLS SETTLEMENT AGREEMENT AND TRUTH AND RECONCILIATION COMMISSION

Yaqui scholar Rebecca Tsosie describes the histories of the United States and Canada as closely linked.¹¹⁴ Both are settler colonial nations born of British colonization.¹¹⁵ Both alienated Indigenous nations from the whole of their ancestral territories when drawing the international border now dividing them.¹¹⁶ And both

111. See YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 89. See generally ALFRED BROPHY, REPARATIONS: PRO AND CON (2006). Reparations receive much backlash because polling research suggests that two-thirds of people in the United States with an “even higher share among white people” do not believe that descendants of those who were enslaved deserve reparations. *How Do You Put a Price on America’s Original Sin?*, CONSIDER THIS FROM NPR (Mar. 27, 2023, 5:10 PM), <https://www.npr.org/2023/03/27/1166353772/how-do-you-put-a-price-on-americas-original-sin> [<https://perma.cc/H2AA-QGBK>]. “This is not a question of logistics or economics. It’s a question of deservedness.” *Id.* It is also an issue of “collective, willful ignorance” by (white) people who are “not just unaware, but somehow avoiding information on how Black people still face discrimination in the labor market, housing and banking.” *Id.* Most people who participated in a racial wealth gap survey believe that for “every \$100 white families have, Black families have about \$90,” when in reality, the wealth gap is much larger and continues to grow. *Id.* But the prevailing core narrative in the United States is that everyone can pick themselves up by their bootstraps if they just work hard enough. *Id.* This is out of touch with the realities of the global majority.

112. See YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 89–90.

113. *Id.* at 73. See *id.* at 91 (summarizing the collective goals of recognition, responsibility, reconstruction and reparation).

114. Rebecca Tsosie, *Accountability for the Harms of Indigenous Boarding Schools: The Challenge of “Healing the Persisting Wounds” of “Historic Injustice,”* 52 SW. L. REV. 20, 20 (2023).

115. Tsosie, *supra* note 108, at 20.

116. *Id.* The Ojibwe people, for example, historically occupied land in the northeastern quadrant of North America in portions of what is now known as the United States (Michigan, Wisconsin, Minnesota, and North Dakota) and Canada (Quebec, Ontario, Manitoba, Saskatchewan, and Alberta). See generally WILLIAM W. WARREN, HISTORY OF THE OJIBWAY NATION 37 (Ross & Haines 1957) (1885):

The O-jib-ways are scattered over, and occupy a large extent of country comprising all that portion of the State of Michigan lying north of Green Bay and west of the Straits of Michilimackinac, bordering on Lake Superior, the northern

devised policies for the “forcible acculturation of Indigenous people, which included displacement from their traditional territories . . . as well as the removal of Indigenous children to government-sponsored boarding schools.”¹¹⁷ Reconciliation is the point at which Canada and the United States diverge.¹¹⁸

A. Origins of Canada’s Truth and Reconciliation Commission

For nearly three decades the Canadian government disserved Indigenous groups with half measures toward reconciliation.¹¹⁹ In the mid-1990s the Royal Commission on Aboriginal Peoples published a five-volume, 4,000-page report with over 440 recommendations for “fundamentally changing the very foundations of Canada’s relationship with Aboriginal peoples.”¹²⁰ The report “opened people’s eyes and changed the conversation about the reality for Aboriginal people in [Canada].”¹²¹ But the effort stagnated. Without implementing most of the report’s recommendations, the country failed to foster “a mutually respectful relationship” between Indigenous and non-Indigenous groups.¹²²

Meanwhile, Native peoples pursued alone what healing they could.¹²³ Nora Bernard interviewed fellow residential school survivors in her kitchen in the late 1980s, and later “formed the Shubenacadie Indian Residential School Survivors

half of Wisconsin and the northeastern half of Minnesota Territory. Besides this they occupy the entire country lying from the Lake of the Woods, over the entire north coast of Lake Superior, to the falls of St Mary’s. and extending even east to this point into Upper Canada.

117. Tsosie, *supra* note 114, at 20.

118. Tsosie, *supra* note 114, at 23 (“Canada’s experience is distinctive because the country engaged earlier in a Truth and Reconciliation process, which enabled survivors and family members to share the truth of what happened in those boarding schools.”).

119. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 6–7; *The Indian Residential Schools Settlement Agreement: Timeline*, INDIAN RESIDENTIAL SCH. HIST. & DIALOGUE CTR. COLLECTIONS [hereinafter *Canada Settlement Timeline*], <https://collections.irshdc.ubc.ca/index.php/Gallery/345> [<https://perma.cc/23Q7-NFJN>] (last visited Sept. 22, 2023).

120. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 134, at 7, 183; Mary C. Hurley & Jill Wherett, *The Report of the Royal Commission on Aboriginal Peoples* (Oct. 1999) [hereinafter RCAP REPORT], <https://publications.gc.ca/Collection-R/LoPBdP/EB/prb9924-e.htm> [<https://perma.cc/2AHN-QP4Q>].

121. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 7.

122. *Id.* at 7.

123. *Id.* at 129–30.

Association, and started registering survivors.”¹²⁴ Other Indigenous groups organized themselves regionally and nationally to aver their rights (including the right to self-government) in the courts and legislatures.¹²⁵ “[T]hey placed the settling of land claims on the national agenda, ensured that Aboriginal rights were entrenched in the Constitution, and saw the creation of a new jurisdiction within Canada—the territory of Nunavut—with an Inuit majority population.”¹²⁶ Survivors engaged the criminal penal system to prosecute the residential school officials who abused them.¹²⁷ And they filed nearly 20,000 lawsuits against the federal government, churches, and affiliated organizations that operated the schools.¹²⁸

In 2006, residential school survivors, the Assembly of First Nations, and Inuit representatives reached a class action settlement—the largest class action lawsuit in Canada’s history¹²⁹—with the federal government and religious organizations

124. *Id.* at 129; *International Women’s Day 2019 – Nora Bernard*, JFK L.:BLOG (Mar. 8, 2019), <https://jfkclaw.ca/international-womens-day-2019-nora-bernard/> [<https://perma.cc/A8CH-6XE4>] (“In 1995, Bernard began an organization to represent survivors of the Shubenacadie school. She subsequently convinced Halifax lawyer John McKiggan to represent the Shubenacadie survivors in a class-action suit.”). Nora’s tragic death is emblematic of the insidiousness of intergenerational residential school trauma. Frances Willick, *Man Who Killed Mi’kmaq Activist Nora Bernard Back in Custody After Release*, CBC NEWS (June 27, 2018), <https://www.cbc.ca/news/canada/nova-scotia/james-douglas-gloade-nora-bernard-statutory-release-back-in-custody-1.4723592> [<https://perma.cc/WYV2-HKN8>]. The man who killed her—her grandson—suffered domestic, emotional and sexual abuse as a child and struggled with severe substance use disorder at the time of her death. The parole board recognized that his “family and community continue to suffer the systemic negative impact of the residential school system.” It further acknowledged that his life experience, shared “by many Aboriginal people” informed his behavior. *Id.* “That said, this [did] not mitigate the risk that [he] pose[d] for future violent behavior.” *Id.*

125. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 129.

126. *Id.*

127. *Id.* at 129.

128. *Id.* at 130. “By October 2001, more than 8,500 residential school Survivors had filed lawsuits By 2005, it was estimated that the volume surpassed 18,000 lawsuits.” *Id.* But courts, likely ascribing to rigid, formalistic tort models of recovery, often rejected Indigenous peoples’ right to pursue compensation claims for loss of language, culture, and abuse. *See id.* For example, compensation did not cover “claims for loss of parental love, family life, language, culture, religion and discriminatory inadequate food, health and education,” nor could the children of survivors recover. Thomas L. McMahon, “*And Then the Pope Died*” – *The Timeline for how Canada Reached a Settlement Agreement on Indian Residential Schools*, INDIAN RESIDENTIAL SCH. HIST. & DIALOGUE CTR. COLLECTIONS 42 (July 5, 2017), <https://collections.irshdc.ubc.ca/index.php/Detail/objects/11196> [<https://perma.cc/QCF2-52RU>]; *see also Canada Settlement Timeline*, *supra* note 119. The “Cloud case” passed through the legal sieve, however, and “[w]ithin months, the federal government agreed to enter into a process intended to negotiate a settlement to the growing number of class-action suits.” HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 131; *see also Cloud v. Canada* (2004) 73 O.R. (3d) 401 (Can. Ont. C.A.).

129. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at v.

to address and repair the harm inflicted by the schools.¹³⁰ Five restorative justice measures constitute the Indian Residential Schools Settlement Agreement (IRSSA).¹³¹ First, Common Experience Payments strove to compensate former students for the general harm of being forced to attend the schools.¹³² Second, students who were physically and sexually abused by school officials and staff adjudicated their claims and received additional compensation through the Independent Assessment Process.¹³³ Third, the Aboriginal Healing Foundation “support[ed] initiatives addressing the residential school legacy.”¹³⁴ Fourth, the federal government agreed to “fund[] initiatives . . . commemorat[ing] the residential school experience.”¹³⁵ And the agreement’s fifth and final component mandated the creation of a Truth and Reconciliation Commission tasked with both “inform[ing] all Canadians about what happened in residential schools”¹³⁶ and “guid[ing] a process of reconciliation.”¹³⁷

Following Court of Queen’s Bench Justice Dennis Ball’s approval, the agreement took effect in 2007.¹³⁸ A year later, standing before Canada’s Indigenous leaders and residential school survivors on the House of Commons floor, then-Prime Minister Stephen Harper apologized for “Canada’s role in the Indian

130. See generally *Indian Residential Schools Settlement Agreement*, INDIAN RESIDENTIAL SCHOOLS SETTLEMENT – OFF. CT. NOTICE (May 8, 2006), <https://www.residentialschoolsettlement.ca/IRS%20Settlement%20Agreement-%20ENGLISH.pdf> [<https://perma.cc/DGG8-9SRN>]. The Métis nation was not a party to the settlement agreement, nor were they reflected in the prime minister’s 2008 apology, facts that then-President of the Métis National Council Clement Chartier addressed before the Truth and Reconciliation Commission. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 13.

131. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 130.

132. *Id.* at 106, 130. “The CEP recognized the claims of 78,748 former residential school students. . . . This number does not include those former students who died prior to May 2005.” *Id.* at 106. Claimants received \$10,000 for the first year of residential school attendance, and an additional \$3,000 for every subsequent year (or partial year) of attendance. *Id.* at 131.

133. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 130.

134. *Id.*

135. *Id.*

136. *Truth and Reconciliation Comm’n of Canada*, NAT’L CTR. FOR TRUTH & RECONCILIATION, <https://nctr.ca/about/history-of-the-trc/truth-and-reconciliation-commission-of-canada/> [<https://perma.cc/UC74-8JUE>] (last visited Mar. 3, 2024).

137. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 130. The IRSSA also directed the commission to establish a publicly accessible, permanent national research center (the National Centre for Truth and Reconciliation, or NCTR) to house and preserve the commission’s materials created during the investigation. *Indian Residential Schools Settlement Agreement*, *supra* note 130.

138. *Canada Settlement Timeline*, *supra* note 119.

Indigenous leaders took the floor shortly after to respond.¹⁴⁷ Many commended survivors' bravery, resiliency and strength and duly credited them with the "achievement of the impossible."¹⁴⁸ Phil Fontaine, then-National Chief of the Assembly of First Nations described how survivors "stripped white supremacy of its authority and legitimacy" by "speaking truth to power."¹⁴⁹ And Mary Simon, then-President of the Inuit Tapiriit Kanatami, called for collaboration as the work of reconciliation began in earnest: "Let us now join forces with the common goal of working together to ensure that this apology opens the door to a new chapter in our lives as aboriginal peoples and in our place in Canada."¹⁵⁰

The stage was set for the Truth and Reconciliation Commission to fulfill its mandate.

B. The Truth and Reconciliation Commission's Key Findings

Six years of investigation by Canada's Truth and Reconciliation Commission elucidated the residential schools' intergenerational impacts on Indigenous peoples.¹⁵¹ The executive summary of the commission's final report¹⁵² chronicles the schools' historical context.¹⁵³ Like the United States, Canada "chose to invest in residential schooling"¹⁵⁴ because it advanced the country's underlying aim to legitimate the taking of Native lands for (white) settlers.¹⁵⁵

After the Canadian state was established in 1867, the federal government began making small per-student grants to many of the church-run boarding schools. Federal government involvement in

147. See *Canadian Prime Minister Apology*, *supra* note 139, at 56:06–1:25:20.

148. *Id.* at 56:30–56:35.

149. *Id.* at 58:33–58:50. Fontaine is Ojibwe and was born in Sagkeeng First Nation on the Fort Alexander Reserve in Manitoba. Tabitha de Bruin, *Phil Fontaine*, CAN. ENCYC. (Jan. 29, 2019), <https://www.thecanadianencyclopedia.ca/en/article/phil-fontaine> [<https://perma.cc/3E3B-L72D>]. He was one of the first survivors to speak publicly (in a callously conducted interview) about the physical, psychological and sexual abuse and deprivation he and his classmates at Fort Alexander Residential School experienced. *Phil Fontaine's 1990 Account of Physical and Sexual Abuse at Residential School*, CBC ARCHIVES (1990), <https://www.cbc.ca/player/play/1776926760> [<https://perma.cc/3R6V-B9KB>].

150. *Canadian Prime Minister Apology*, *supra* note 139, at 1:09:23–1:10:03.

151. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 25, 135–36.

152. The final report consists of six volumes and is roughly 3,231 pages long. The first volume has two parts and chronicles the history of the residential schools from their origins to the year 2000. Volumes two and three examine the specific experiences of Inuit and Métis groups respectively, and the fourth concerns missing children and unmarked burials. The fifth volume describes the legacy of the residential schools and the sixth explores reconciliation. *Truth and Reconciliation Commission Reports*, NAT'L CTR. FOR TRUTH & RECONCILIATION, <https://nctr.ca/records/reports/#trc-reports> [<https://perma.cc/W4DZ-2BSF>] (last visited Mar. 4, 2024).

153. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 37–134.

154. *Id.* at 58.

155. *Id.* at 51.

residential schooling did not begin in earnest until the 1880s. The catalyst for this expansion was the 1870 transfer of much of contemporary Alberta, Saskatchewan, Manitoba, northern Québec, northern Ontario, the Northwest Territories, and Nunavut from the Hudson's Bay Company to the Canadian government. . . .

Canadian politicians intended to populate the newly acquired lands with settlers from Europe and Ontario. . . . Settling the "Northwest"—as this territory came to be known—in this manner meant colonizing the over 40,000 Indigenous people who lived there.¹⁵⁶

Canadian officials believed the schools would disarm Native groups by stripping them of their Indianness and transforming them into white Christians.¹⁵⁷ "From 1881 to 1996, over 150,000 Indigenous children in Canada were removed from their homes and sent to residential boarding schools."¹⁵⁸ Executed in the hope that Indigenous peoples would forfeit their identities, families and territories,¹⁵⁹ the Canadian government attempted to diffuse Indigenous resistance to its expansion and authority.¹⁶⁰

As the executive summary demonstrates, the fallout devastated Indigenous individuals and communities for generations.¹⁶¹ It draws a straight line from the brutality of land dispossession and the violence of the schools to the current problems plaguing Indigenous communities.¹⁶² Fred Kelly, an Anishinaabe Elder and residential school survivor, put it plainly: Indigenous peoples' lifeways (language, culture, identity, spirituality and health) are indivisible from the land.¹⁶³

To take the territorial lands away from a people whose very spirit is so intrinsically connected to Mother Earth was to actually dispossess them of their very soul and being; it was to destroy whole Indigenous nations. Weakened by disease and separated from their traditional foods and medicines, First Nations peoples had no defence against further government encroachments on their lives.¹⁶⁴

156. *Id.* at 51. A key strategy behind Canada's land grab was to destroy its government-to-government relationship with Indigenous groups by assimilating them so that Native peoples no longer "existed," extinguishing its attendant commitments to provide for First Nations, Inuit, and Métis peoples. *See id.* at 55, 58.

157. *Id.* at 58.

158. Tsosie, *supra* note 114, at 22.

159. *See HONOURING THE TRUTH, RECONCILING FOR THE FUTURE*, *supra* note 13, at 58.

160. *Id.*

161. *See id.* at 135–82.

162. *See id.*

163. *Id.* at 225.

164. *Id.*

These encroachments included the child welfare system,¹⁶⁵ the prison industrial complex,¹⁶⁶ and discriminatory health and education policies.¹⁶⁷ Today, Native groups are overrepresented (child-welfare, prison, poor health outcomes), underrepresented (media, positions of power) and underserved (education, health care, social welfare programs).¹⁶⁸ They grapple with individual and systemic racism, and struggle to revive their enervated languages and cultures.¹⁶⁹

The legacy from the schools and the political and legal policies and mechanisms surrounding their history continue to this day. This is reflected in the significant educational, income, health, and social disparities between Aboriginal people and other Canadians. It is reflected in the intense racism some people harbour against Aboriginal people and in the systemic and other forms of discrimination Aboriginal people regularly experience in this country. It is reflected too in the critically endangered status of most Aboriginal languages.

Current conditions such as the disproportionate apprehension of Aboriginal children by child-welfare agencies and the disproportionate imprisonment and victimization of Aboriginal people can be explained in part as a result or legacy of the way that Aboriginal children were treated in residential schools.¹⁷⁰

The executive summary documents how residential school officials abused children physically, sexually and emotionally.¹⁷¹ “As the cliché goes,” said Ojibwe leader Phil Fontaine, “the abused becomes the abuser.”¹⁷² Many survivors numbed

165. *See id.* at 135–37.

166. *See id.* at 135–36. *See generally* ANGELA Y. DAVIS, ARE PRISONS OBSOLETE? (2003) (revealing how private corporations seeking to exploit prison labor to increase their profits partner with government, correctional communities and media to fill prisons by targeting communities of color).

167. *See* HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 135.

168. *Id.* at 135–82.

169. *Id.*; Tsosie, *supra* note 114, at 22 (citing Ian Austen, *How Thousands of Indigenous Children Vanished in Canada*, N.Y. TIMES (June 7, 2021), <https://www.nytimes.com/2021/06/07/world/canada/mass-graves-residential-schools.html> [<https://perma.cc/EJ6Q-6R93>]) (“Most children suffered severe emotional abuse due to the forced assimilation program, which included separation from their families and punishment for any attempt to speak their languages or practice their cultures.”).

170. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 135 (emphasis added).

171. *Id.* at 107; Tsosie, *supra* note 114, at 22; CELIA HAIG-BROWN, GARRY GOTTFRIEDSON (SECWÉPEMC), RANDY FRED (TSÉSHAHT), & THE KIRS SURVIVORS, TSQELMUCWÍLC: THE KAMLOOPS INDIAN RESIDENTIAL SCHOOL—RESISTANCE & A RECKONING 69 (2022) (“A number of people mentioned sexual overtures made to them during their time at school.”).

172. Phil Fontaine, *supra* note 149 at 04:34–05:18.

their brutal realities through substance use.¹⁷³ Some left the punishing confines of residential school only to be incarcerated by another racist system.¹⁷⁴ Deprived of “positive parenting, worthy community leaders, and a positive sense of identity and self-worth,” adult survivors struggled to give their children what they never received at residential school: love, compassion, care, attention and consolation.¹⁷⁵ Cue the interference of Canada’s child-welfare system which “simply continued the assimilation that the residential school system started.”¹⁷⁶

Not only did residential schools impair students’ future parenting ability, but they also hampered students’ potential for educational achievement and economic success.¹⁷⁷ Despite attending residential schools for nearly a decade or longer, many students “left with nothing more than Grade Three achievement, and sometimes without even the ability to read.”¹⁷⁸ This devastated the earning potential of residential school survivors *and* their children.¹⁷⁹ Consequently, Indigenous workers’ median income today is thirty percent lower than non-Indigenous workers,

173. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 136.

174. *Id.*

175. *Id.* at 135–36, 138. “Today, the effects of the residential school experience and the Sixties Scoop [a national child-welfare policy that removed thousands of Aboriginal children from their families and communities and placed them in non-Aboriginal homes] have adversely affected parenting skills and the success of many Aboriginal families.” *Id.* at 138. Denise Lajimodiere (Turtle Mountain Band of Pembina Chippewa (Ojibwe)) writes that, in the United States, the “damage from boarding school abuse, loneliness, lack of affection, and subpar parenting is seen as a major factor in the ills that trouble tribes today.” Denise Lajimodiere, *A Healing Journey*, 27 WICAZO SA REV. 5, 6 (2012).

176. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 138. To paraphrase Old Crow Chief Norma Kassi, the residential school doors may have closed, but doors to foster homes swung wide open. *Id.*

177. *Id.* at 144–45.

178. *Id.* at 145. At Kamloops Indian Residential School (“KARS”), for example, Indigenous children received academic instruction for two hours a day, compared to five hours a day in public schools. HAIG-BROWN, GOTTFRIEDSON, & FRED, *supra* note 171, at 55–56.

[This] resulted in the inability of most residential school students to transfer into public school if they chose to continue their education after grade 8. In most cases, continuation was not encouraged and was considered inappropriate and unnecessary for Indigenous people. The governments and the missionaries had decided that Indigenous people should be farmers or farmers’ wives, not scholars or professionals.

Id. at 66.

179. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, 145–46. Children of residential school survivors also experience significantly lower rates of educational attainment. *Id.*

and this “income gap is pervasive: non-Aboriginal Canadians earn more than Aboriginal workers no matter” where they work.¹⁸⁰

Residential schools irrefutably functioned to destroy Indigenous languages, cultures and identities through harsh assimilationist policies with the end goal of capturing Native land for westward expansion.¹⁸¹ Students who returned home sometimes brought their indoctrinated, internalized racism and disdain for their languages, cultures and parents.¹⁸² As healthy relationships with their cultures and loved ones deteriorated, so too did Indigenous children’s physical health.¹⁸³

Unsanitary, overcrowded and shoddy living conditions at the schools coupled with little to eat or wear¹⁸⁴ contributed to repeated bouts of pneumonia that permanently scarred their lungs.¹⁸⁵ Tuberculosis claimed their lives.¹⁸⁶ Rampant sexual and physical abuse traumatized their minds and bodies.¹⁸⁷ Anti-Indigeneity denied children “access to traditional foods[,] . . . traditional healers, and communities” that could have helped them recover “physical[ly], mental[ly],

180. *Id.* at 147. Little data on the wealth gap between Indigenous families and non-Indigenous families exists. The Canadian Centre for Policy Alternatives authored a report on Canada’s racial income and wealth disparities, but because “census variables used in [the report] do not include data for Indigenous peoples,” the “racism they experience in the labour market [was] not captured [in the report].” The authors noted that “[t]his [wa]s a gap in [their] research.” SHEILA BLOCK, GRACE-EDWARD GALABUZI, & RICARDO TRANJAN, CANADIAN CTR. FOR POL’Y ALTS., CANADA’S COLOUR CODED INCOME INEQUALITY 7 (2019), <https://policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2019/12/Canada's%20Colour%20Coded%20Income%20Inequality.pdf> [<https://perma.cc/P7W6-GN4F>] .

181. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 58. Language and culture connect people to their families, their communities, their worldviews and their homelands. *Id.* at 152–54. “Aboriginal languages are a ‘tangible emblem of group identity’ that can provide ‘the individual a sense of security and continuity with the past . . . maintenance of the language and group identity has both a social-emotional and a spiritual purpose.’” *Id.* at 152 (quoting RCAP REPORT, *supra* note 120). Suppression of Native languages means that Indigenous children today frequently learn English before they learn their ancestral languages (if ever). *See id.* at 154. *See also* HAIG-BROWN, GOTTFRIEDSON, & FRED, *supra* note 171, at 50 (“At the Indian residential school, we were not allowed to speak our language; we weren’t allowed to dance, sing, because they told us it was evil. It was evil for us to practice any of our cultural ways.”).

182. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 154; *see also* HAIG-BROWN, GOTTFRIEDSON, & FRED, *supra* note 171, at 54 (“They started talking to us about sin, about what sin was. . . . I felt really dirty ‘cause this [sexual abuse] happened to me . . . They said, ‘Anybody that doesn’t go to church is a pagan.’ I started thinking, ‘Hey, my parents don’t go to church all the time. They must be pagans.’”).

183. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 158–60.

184. *Id.* at 158–59.

185. *Id.*

186. *Id.* at 158.

187. *Id.* at 205–06 “The effects of this trauma were often passed on to the children of the residential school Survivors and sometimes to their grandchildren.” *Id.*

emotional[ly] and spiritual[ly].”¹⁸⁸ Poor physical and mental health outcomes persist.¹⁸⁹

Justice for enduring harm caused by residential schools often eludes the survivors who seek it.¹⁹⁰ At the time the commission issued its report, Indigenous peoples were nearly sixty percent “more likely to be victimized by crime.”¹⁹¹ Yet Indigenous adults and youth are overrepresented in Canada’s penal system—a cruel irony.¹⁹²

For the above findings, Canada’s Truth and Reconciliation Commission interwove ninety-four corresponding calls to action to facilitate reconciliation by improving Canada’s child welfare, education, health care and justice systems and supporting the proliferation of Indigenous languages and cultures.

C. *Ninety-Four Calls to Action*

Housed within the categories of “Legacy” or “Reconciliation,” the ninety-four calls to action are designed to either redress the persisting repercussions of residential schools on Indigenous child welfare, education, language and culture, health and justice or to advance reconciliation measures in (among other sectors)

188. *Id.* at 159. Moreover, the schools’ geographic isolation prevented access to western medical care. *Id.* at 207. “This double denial of health care, based in government policy, continues to this day, due to the relative isolation of many Aboriginal communities, many of which have no road access, and limited access to local health resources.” *Id.* at 207. *See also* HAIG-BROWN, GOTTFRIEDSON, & FRED, *supra* note 171, at 50 (“Some of the girls would get some Indian food. . . . They’d take it away from us and just to be mean, they’d destroy it right in front of us.”).

189. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 207–09.

190. *Id.* at 213–14 For example, the commission identified “fewer than fifty convictions” out of “nearly 38,000 claims of sexual and serious physical abuse.” *Id.* at 213.

191. *Id.* at 225 (citing STATS. CAN., VIOLENT VICTIMIZATION OF ABORIGINAL PEOPLE IN THE CANADIAN PROVINCES, 2009 <https://www150.statcan.gc.ca/n1/pub/85-002-x/2011001/article/11415-eng.htm> [<https://perma.cc/6VL5-NFY9>]). Indigenous women and girls fare even worse as they are “more likely than other women to experience risk factors for violence.” *Id.* at 226. In the United States, “[a] 2016 study by the National Institute of Justice also found that 84.3 percent of American Indian and Alaska Native women have experienced violence in their lifetime, including 56.1 percent who have experienced sexual violence.” Al Jazeera Staff, *US, Canada Commemorate Missing and Murdered Indigenous Women*, AL JAZEERA (May 5, 2022), <https://www.aljazeera.com/news/2022/5/5/us-canada-commemorate-missing-and-murdered-indigenous-women> [<https://perma.cc/6JQQ-7MTX>]. One thousand and seventeen Indigenous women and girls were killed between 1980 and 2012, and 164 were reported missing. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 227.

192. *Id.* at 217, 224. From 2011 to 2012, despite comprising four percent of Canadian adults, Indigenous peoples accounted for nearly thirty percent of those sentenced to custody. *Id.* at 217. The rates worsen among Indigenous youth. Forty-nine percent of youth admitted to custody are Indigenous girls and thirty-six percent are Indigenous boys. *Id.* at 224.

government, law, media and business.¹⁹³ Some incorporate *reconstruction* and *reparation* principles by calling for the transformation of Canadian institutions and the growing of Indigenous groups' capacity to "function productively and peaceably"¹⁹⁴ so the harm never recurs.¹⁹⁵

To illustrate, the commission called upon the "federal government to enact Aboriginal child-welfare legislation" establishing "national standards for Aboriginal child apprehension and custody cases" that require agencies (1) to consider the residential schools' persisting impacts when deciding whether to remove Indigenous children from their parents and communities and (2) to place Indigenous children into culturally appropriate care whether it is temporary or permanent.¹⁹⁶ This call to action also asks the federal government to "[a]ffirm the right of Aboriginal governments to establish and maintain their own child-welfare agencies."¹⁹⁷

The commission also requested legislation to close educational achievement gaps and preserve, revitalize and strengthen Indigenous languages and cultures.¹⁹⁸ And it petitioned the federal government and medical community (1) to fund and promote Indigenous healing practices at Indigenous healing centers and within the Canadian health care system, (2) to ensure medical professionals provide Indigenous patients with culturally competent and anti-racist care, and (3) to increase the number of Indigenous medical professionals working in health care.¹⁹⁹

To expand access to justice for Indigenous peoples, the commission entreated each level of Canadian government to introduce, review and amend policies that choke off court access (e.g., narrow statutes of limitation) and contribute to disproportionate Indigenous representation in Canada's penal system (like mandatory minimum sentences and a lack of alternatives to incarceration.)²⁰⁰

Recognizing that genuine and enduring reconciliation can only be achieved through institutional and systemic change, the commission then identified specific ways Canada might restructure its systems and institutions to center justice for Indigenous peoples.²⁰¹ In particular, it called upon all levels of the Canadian government to deploy the United Nations Declaration on the Rights of Indigenous

193. *Id.* at 364. For up-to-date progress on each of the ninety-four calls to action, refer to *Delivering on Truth & Reconciliation Commission Calls to Action*, GOV'T OF CAN. (July 10, 2023) <https://www.rcaanc-cirnac.gc.ca/eng/1524494530110/1557511412801> [https://perma.cc/C876-YZ3V].

194. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 89.

195. See HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 319–37.

196. *Id.* at 191.

197. *Id.*

198. *Id.* at 320–21.

199. *Id.* at 322–23.

200. *Id.* at 167, 172, 323.

201. See *id.* at 8, 325.

Peoples (UNDRIP)²⁰² as its “framework for reconciliation.”²⁰³ The commission defined the “reconciliation framework [a]s one in which Canada’s political and legal systems, educational and religious institutions, the corporate sector and civic society function in ways that are consistent with the principles set out in the [UNDRIP], which Canada has endorsed.”²⁰⁴ Moreover, it impetrated the Canadian government and polity to take up the “pure, unadulterated struggle”²⁰⁵ of social healing: “Together, Canadians must do more than just talk about reconciliation; we must learn how to practise reconciliation in our everyday lives To do so constructively, Canadians must remain committed to the ongoing work of establishing and maintaining respectful relationships.”²⁰⁶

But a glaring lacuna exists in the calls to action. Despite repeatedly acknowledging that the residential school system was built on a bedrock of Native land acquisition (or theft) for Canadian westward expansion, the commission does not entreat local, state or federal governments or private businesses to return land to Native groups in any meaningful way.²⁰⁷ Certain calls to action encourage the government and corporate sector to honor existing treaties by consulting with Indigenous groups before developing land or resources.²⁰⁸

In the Commission’s view, sustainable reconciliation on the land involves realizing the economic potential of Indigenous communities in a fair, just, and equitable manner that respects their right to self-determination. Economic reconciliation involves working in partnership with Indigenous peoples to ensure that lands and resources within their traditional territories are developed in culturally respectful ways that fully recognize Treaty and Aboriginal rights and title.²⁰⁹

Yet respecting Native people’s fundamental human right to self-determination is better accomplished by “tailoring the reparative acts so that they correlate

202. *For reference*, G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007) [hereinafter UNDRIP], https://www.justice.gc.ca/eng/declaration/un_declaration_EN1.pdf [<https://perma.cc/6LG2-QMUN>].

203. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 325.

204. *Id.* at 21. Key tenets of the UNDRIP include Indigenous peoples’ right to self-determination (Article 3) and autonomous self-government in internal and local matters. UNDRIP, *supra* note 196, at 8. Article VII explicitly proclaims Indigenous peoples’ right to be free of “genocide or any other act of violence, including forcibly removing children of the group to another group.” *Id.* at 9.

205. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 46.

206. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 21.

207. *Compare* NEWLAND REPORT, *supra* note 15, at 95–99 (neglecting to make specific recommendations regarding land) *with id.* at 300–06, 319–37 (affirming that reconciliation between Indigenous groups and the government and corporate sectors with regard to land involves respecting Indigenous groups’ right to self-determination).

208. *Id.* at 300–02.

209. *Id.* at 353 (emphasis added).

with the kind and degree of harms suffered—restoring what was taken.”²¹⁰ Dispossessing Native peoples of their ancestral lands “dispossess[ed] them of their very soul and being.”²¹¹ Only land repatriation can heal this soul wound.²¹² Lands within Indigenous peoples’ original territories should once again be stewarded by Indigenous groups. Little else—likely nothing else—will ensure those lands and resources are developed in culturally respectful and sustainable ways. Like its neighbor to the South, however, Canada sidestepped land repatriation and repeated its call for the corporate sector to adopt the UNDRIP as a framework for corporate policies, activities and economic development projects.²¹³

Still, “some progress has been made.”²¹⁴ Since the commission published its report in 2015, the Canadian government has answered several of the ninety-four calls to action.²¹⁵ For example, the first five calls to action concern child welfare.²¹⁶ The commission entreated all levels of government to decrease the number of Indigenous children in care in part by “[p]roviding adequate resources to enable Aboriginal communities and child-welfare organizations to keep Aboriginal families together where it is safe to do so, and to keep children in culturally appropriate environments, regardless of where they reside.”²¹⁷ In response, Canada “co-developed with Indigenous partners” *An Act respecting First Nations, Inuit and Métis children, youth and families*, which took effect on January 1, 2020.²¹⁸

Under the act Canada strives to reduce the number of Indigenous children in the child welfare system by “reforming child and family services,” shifting programmatic focus to prevention and early intervention and “set[ting] out a *unique, holistic, community-driven process* for . . . *Indigenous governing bodies to develop their visions and models* by, among other measures, *committing to fiscal arrangements that are sustainable, needs-based and consistent with the principle of substantive equality*.”²¹⁹ Additionally, Indigenous Services Canada virtually

210. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 68. *See generally* Antkowiak, *supra* note 78, at 1–80.

211. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 225.

212. *See generally* EDUARDO DURAN (TIOSPAYE TA WOAPIYA WICASA), HEALING THE SOUL WOUND (2nd ed. 2021) (linking the Indigenous concept of soul wound to the concepts of historical and intergenerational trauma).

213. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 306.

214. *Id.* at 8.

215. *Delivering on Truth & Reconciliation Commission Calls to Action*, *supra* note 193.

216. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 319–20.

217. *Child Welfare*, GOV’T OF CAN., <https://www.rcaanc-cirnac.gc.ca/eng/1524494379788/1557513026413> [https://perma.cc/R4G9-8ZT6] (last updated Jan. 26, 2024).

218. *Id.*; *see An Act respecting First Nations, Inuit and Métis children, youth and families*, S.C. 2019, c 24 (Can.). (current through Feb. 22, 2023).

219. *An Act respecting First Nations, Inuit and Métis children, youth and families*, S.C. 2019, c 24 (Can.) (current through Feb. 22, 2023) (emphasis added).

“doubled the First Nations Child and Family Services budget since 2016 from \$676 million to \$1.2 billion annually.”²²⁰

Calls to action sixty-two through sixty-five concern educating Canadians of all ages about reconciliation and addressing educational disparities among Indigenous groups.²²¹ Again the Canadian government committed to investing “approximately \$1.1 billion over five years for communities to implement education programs” supporting First Nations students’ academic success.²²² In partial response to the language and culture calls to action, Immigration, Refugees and Citizenship Canada implemented a five-year window in June 2021 for all Indigenous peoples, including residential school survivors and their families, to “reclaim their Indigenous names on replacement passports, travel documents, citizenship certificates and permanent resident cards” without charge.²²³

To close health gaps and address unique health concerns threatened by climate change and COVID-19, the Canadian government addressed calls to action eighteen through twenty-four²²⁴ by investing “\$2 billion over 10 years through a new Indigenous Health Equity Fund to address unique challenges Indigenous Peoples face when it comes to fair and equitable and quality and culturally safe health care services.”²²⁵ Indigenous Services Canada also “launched [an] engagement process on Indigenous health legislation” in collaboration with First Nations, Inuit, and Métis peoples to increase health care access and confront anti-Indigenous racism in medicine.²²⁶

And roughly twenty-five calls to action pertain to access to justice within the Canadian legal system.²²⁷ Canada took up the charge posed by calls to action forty-three and forty-four to fully adopt and implement an action plan operationalizing

220. *Child Welfare*, *supra* note 211; *Mandate*, GOV’T OF CAN.: INDIGENOUS SERVS. CAN., <https://www.sac-isc.gc.ca/eng/1539284416739/1539284508506> [https://perma.cc/F56Y-BZJN] (last updated May 20, 2022) (Indigenous Services Canada is a department within Canada’s federal government responsible for providing “high quality services for First Nations, Inuit and Métis” by “empower[ing] Indigenous peoples to independently deliver services and address the socio-economic conditions in their communities.”).

221. *Education for Reconciliation*, GOV’T OF CAN., <https://www.rcaanc-cirnac.gc.ca/eng/1524504501233/1557513602139> [https://perma.cc/ZD6W-E7SH] (last updated Jan. 19, 2024).

222. *Id.*

223. *Language and culture*, GOV’T OF CAN., <https://www.rcaanc-cirnac.gc.ca/eng/1524495846286/1557513199083> [https://perma.cc/X7GT-RLGA] (last updated Jan. 16, 2023).

224. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 322–23.

225. *Health*, GOV’T OF CAN., <https://www.rcaanc-cirnac.gc.ca/eng/1524499024614/1557512659251> [https://perma.cc/CH79-YZ32] (last updated Feb. 25, 2024).

226. *Health, Delivering on Truth & Reconciliation Commission Calls to Action*, *supra* note 193.

227. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 323–25, 327–28.

the UNDRIP by enacting *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*.²²⁸ The legislation recognized the need for “concrete measures to address injustices, combat prejudice and eliminate all forms of violence, racism, and discrimination, including systemic racism and discrimination, against Indigenous peoples and Indigenous elders, youth, children, women, men, persons with disabilities and gender-diverse persons and two-spirit persons.”²²⁹ It required Canadian states to “consult and cooperate in good faith with the indigenous peoples concerned . . . before adopting and implementing legislative or administrative measures that may affect them.”²³⁰ And in 2022, Canada funded “Indigenous governments, organizations, and groups” with “\$37 million . . . over 5 years to support” their “core capacity . . . to contribute meaningfully to the implementation of the” Act.²³¹

While Canada’s progress is commendable, experts involved in other reconciliation initiatives (including South Africa’s Truth and Reconciliation process following apartheid’s end in 1991) caution that addressing the harms caused by the residential schools will not—by itself—lead to genuine and enduring healing for Indigenous groups.²³² Because the residential school system is one facet of settler colonialism’s awful face, some Indigenous individuals believe the “full extent of the brutality during early contact, the signing of treaties, and the reservation system” must also be confronted.²³³ The work continues. For the United States, however, it is just beginning.

IV.

A SOCIAL HEALING THROUGH JUSTICE ASSESSMENT OF THE UNITED STATES’ FEDERAL INDIAN BOARDING SCHOOL INITIATIVE

Prompted by Canada’s Tk’emlúps te Secwepemc First Nation’s unearthing of the remains of 215 Indigenous children at Kamloops Indian Residential School, United States Department of Interior Secretary Deb Haaland launched the Federal Indian Boarding School Initiative on June 22, 2021.²³⁴

228. *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*, S.C. 2021, c 14 (Can.) (current through Jan. 22, 2025).

229. *Id.*

230. *Id.*

231. *Canadian Governments and the United Nations Declaration on the Rights of Indigenous Peoples, Delivering on Truth & Reconciliation Commission Calls to Action*, *supra* note 193.

232. Andrea Huncar, *Residential School Legacy Not ‘Whole Story’: Global Experts Warn of Gaps in Canada’s Reconciliation Efforts*, CBC NEWS (July 2, 2017, 9:13 AM), <https://www.cbc.ca/news/canada/edmonton/reconciliation-edmonton-nelson-mandela-dialogues-1.4187911> [<https://perma.cc/435F-P9E9>].

233. *Id.*

234. DOI Memo, *supra* note 112, at 1; Coletta, *supra* note 18.

A. The Initiative's Origins

As the granddaughter of Federal Indian boarding school survivors and the United States' first Indigenous cabinet secretary, Secretary Haaland lives with the intergenerational harm caused by the schools.²³⁵ Two generations of her grandparents were taken from their families and forcibly enrolled in federally supported programs designed to strip them of their Native identities.²³⁶ In an editorial she penned for *The Washington Post* two weeks before announcing the initiative, Secretary Haaland wrote of a conversation she had with her grandmother about the schools.²³⁷ "It was the first time I heard her speak candidly about how hard it was—about how a priest gathered the children from the village and put them on a train, and how she missed her family. She spoke of the loneliness she endured. We wept together."²³⁸

From 2021 to 2025, Secretary Haaland led the department "responsible for operating or overseeing Indian boarding schools across the United States and its territories" and believed the agency was therefore "uniquely positioned to assist in the effort to recover the histories of these institutions."²³⁹ The primary goal of the ten-month-long initiative was to "identify all boarding schools that participated in the Program and the students enrolled in each, along with each student's Tribal affiliation" with a "particular emphasis . . . on any records relating to cemeteries or potential burial sites associated with" the residential facilities.²⁴⁰ The department leaned heavily on records already compiled by The National Native American Boarding School Healing Coalition ("NABS").²⁴¹ Like Nora Bernard, who pursued healing for herself and her community roughly three decades before Canada's Truth and Reconciliation Commission completed its mandate,²⁴² Indigenous people created NABS a decade before the Department of Interior launched its current initiative.²⁴³

235. See Haaland, *supra* note 13.

236. *Id.*

237. *Id.*

238. 13 *Id.*

239. DOI Memo, *supra* note 11, at 1–2.

240. DOI Memo, *supra* note 11, at 2.

241. NEWLAND REPORT, *supra* note 156, at 5, 82. See generally *History of the National Native American Boarding School Healing Coalition*, NAT'L NATIVE AM. BOARDING SCH. HEALING COAL. [hereinafter *NABS History*], <https://boardingschoolhealing.org/about-us/history/> [<https://perma.cc/DV59-EZ4P>] (last visited Sept. 20, 2023).

242. HONOURING THE TRUTH, RECONCILING FOR THE FUTURE, *supra* note 13, at 129. See *supra* Section III(A) for a short description of Nora Bernard's organizing activities for and with Canadian residential schools survivors.

243. *NABS History*, *supra* note 241 (stating that NABS was formed after a 2011 symposium and incorporated as a 501(c)3 nonprofit in 2012).

Native groups in the United States are (and have been) pursuing healing on their own.²⁴⁴ By joining them and shedding light on what has been buried for so long, Secretary Haaland sought to scale up the healing her grandmother experienced after she reclaimed her truth and spoke openly about what she survived.²⁴⁵ “It was an exercise in healing for [my grandmother] and a profound lesson for me . . . about how important it is to reclaim what those schools tried to take from our people.”²⁴⁶

B. Critical Investigative Report Findings

The report’s preliminary findings confirm that the expansive Federal Indian boarding school system traumatized multiple generations of American Indian, Alaska Native, and Native Hawaiian children who “the United States coerced, induced, or compelled” to attend the schools as part of its “twin Federal policy of Indian territorial dispossession and Indian assimilation through Indian education.”²⁴⁷

As the United States emerged in the latter half of the eighteenth century, the country’s founding fathers and first presidents were particularly concerned with

244. See, e.g., Lajimodiere, *supra* note 175, at 13 (describing the interviews that Lajimodiere (Turtle Mountain Band of Pembina Chippewa (Ojibwe)) conducted for the National Boarding School Healing Project (“NBSHP,” now known as the National Boarding School Healing Coalition), a “coalition of several Native organizations” that “document[s] boarding school abuses and their impact on individual [sic] and communities” and “demand[s] justice from the U.S. government”).

245. Haaland, *supra* note 13.

246. *Id.*

247. NEWLAND REPORT, *supra* note 15, at 36, 91. “[T]he Department operated or supported 408 Federal Indian boarding schools across 37 states or then-territories, including 21 schools in Alaska and 7 schools in Hawaii. Given that an individual Federal Indian boarding school may account for multiple sites, the 408 Federal Indian boarding schools comprised 431 specific sites.” *Id.* at 82. The investigation documented over 1,000 institutions that did not meet the Federal Indian boarding school criteria, but that “may have involved education of Indian people, mainly Indian children,” including day schools, sanitariums, asylums and orphanages. *Id.* at 87. The National Native American Boarding School Healing Coalition (“NABS”) “identified 115 more institutions” run primarily by religious groups and churches, increasing the total to 523. Dana Hedgpeth (Haliwa-Saponi) & Emmanuel Martinez, *More Schools that Forced American Indian Children to Assimilate Revealed*, WASH. POST (Aug. 30, 2023, 5:00 AM), <https://www.washingtonpost.com/nation/2023/08/30/indian-boarding-schools/> [<https://perma.cc/HE6K-JZT9>].

acquiring land for the growing nation and its white inhabitants.²⁴⁸ They set their sights on the “extensive forests” Native groups cared for and controlled.²⁴⁹ But how could they wrest these territories from Native populations as cheaply as possible while preserving (white) life?²⁵⁰ In part by “advanc[ing] an assimilation policy directed at Indian children.”²⁵¹

From the beginning, Federal policy toward the Indian was based on the desire to dispossess him of his land. . . . Beginning with President Washington, the stated policy of the Federal Government was to replace the Indian’s culture with our own. This was considered “advisable” as the cheapest and safest way of subduing the Indians, of providing a safe habitat for the country’s white inhabitants, of helping the whites acquire desirable land, and of changing the Indian’s economy so that he would be content with less land. Education was a weapon by which these goals were to be accomplished.²⁵²

The United States weaponized education by focusing boarding school instruction on manual labor and vocational skills with limited value to the developing industrial economy.²⁵³ Deemphasizing textbook instruction foreclosed many relevant employment opportunities to Native groups, further hampering their economic capacity-building ability.²⁵⁴ Centering agricultural, domestic and vocational training enabled the federal government to more easily pen Native groups into ever-diminishing territories by “discourag[ing] nomadic practices and [encouraging] . . . sedentary practices dominated by western agriculture

248. NEWLAND REPORT, *supra* note 156, at 21; EDWARD M. KENNEDY, COMM. ON LAB. & PUB. WELFARE, INDIAN EDUCATION: A NATIONAL TRAGEDY—A NATIONAL CHALLENGE, S. REP. NO. 91-501, at 142–43 (1969) [hereinafter KENNEDY REPORT]; Letter from George Washington to James Duane (Sept. 7, 1783), in DAVID H. GETCHES, CHARLES F. WILKINSON, ROBERT A. WILLIAMS, JR., MATTHEW L.M. FLETCHER & KRISTEN A. CARPENTER, CASES & MATERIALS ON FEDERAL INDIAN LAW 99, 100 (7th ed. 2016) (“[P]olicy and [economy] point very strongly to the expediency of being upon good terms with the Indians. . . . In a word there is nothing to be obtained by an Indian War but the Soil they live on and this can be had by purchase at less expense. . . .”).

249. Letter from Thomas Jefferson to William Henry Harrison (Feb. 27, 1892), in 39 THE PAPERS OF THOMAS JEFFERSON, 13 NOVEMBER 1802 TO 3 MARCH 1803, 589–93 (Barbara B. Oberg ed., 2018); NEWLAND REPORT, *supra* note 156, at 21–22.

250. See KENNEDY REPORT, *supra* note 248, at 142.

251. NEWLAND REPORT, *supra* note 156, at 21.

252. KENNEDY REPORT, *supra* note 248, at 142.

253. NEWLAND REPORT, *supra* note 156, at 8.

254. See NEWLAND REPORT, *supra* note 15, at 8, 59–61. “Training for jobs that didn’t exist left many young adults with an inability to gain employment in the newly industrialized American society. . . . The resulting poverty of American Indian families was used as a justification for removing native children from their homes.” KATHRYN E. FORT, AMERICAN INDIAN CHILDREN AND THE LAW: CASES AND MATERIALS 8 (2019).

development.”²⁵⁵ Concomitantly, the United States pushed Native groups to “purchase goods on credit so as to likely fall into debt,” knowing they would have to pay the debt through land concessions.²⁵⁶ In a letter to William Henry Harrison, President Jefferson wrote:

[W]e wish to draw them to agriculture, to spinning & weaving. . . . when [sic] they withdraw themselves to the culture of a small piece of land, they will percieve [sic] how useless to them are their extensive forests, and will be willing to pare them off from time to time in exchange for necessities for their farms & families. to [sic] promote this disposition to exchange lands which they have to spare & we want, for necessities, which we have to spare & they want, *we shall . . . be glad to see the good & influential individuals among them run in debt, because we observe that when these debts get beyond what the individuals can pay, they become willing to lop th[em off] by a cession of lands.*²⁵⁷

No holds were barred in the United States’ crusade to capture Native land. Not only were boarding schools weaponized to disrupt Tribal economies and sever the physical connection Native groups had with their ancestral lands, they also destroyed familial and cultural connections within Native communities.²⁵⁸ “Federal records indicate that the United States viewed official disruption to the Indian family unit as part of Federal Indian policy to assimilate Indian children.”²⁵⁹ Early and modern reports reveal how the boarding school system “produced intergenerational trauma by disrupting family ties in Indian Tribes, Alaska Native Villages,

255. NEWLAND REPORT, *supra* note 156, at 21–22, 59–60.

256. *Id.* at 22.

257. JEFFERSON, *supra* note 250, at 590 (emphasis added); NEWLAND REPORT, *supra* note 156, at 21. “In 1803 Harrison also became special commissioner charged with negotiating with Native Americans ‘on the subject of boundary or lands.’ Succumbing to the demands of land-hungry whites, he negotiated a number of treaties between 1802 and 1809 that stripped Indians of millions of acres of land.” *William Henry Harrison*, ENCYC. BRITANNICA, <https://www.britannica.com/biography/William-Henry-Harrison> [<https://perma.cc/RXW6-7MZ3>] (last updated Feb. 25, 2024).

258. See NEWLAND REPORT, *supra* note 156, at 37–39. The first Federal Indian boarding school opened in 1801 and the last in 1969. *Id.* at 6. Schools were financed through congressional appropriations and, most insidiously, through funds “from Tribal trust accounts for the benefit of Indians.” *Id.* at 92.

259. NEWLAND REPORT, *supra* note 156, at 38.

and the Native Hawaiian Community.”²⁶⁰ Young children were pried from their parents’ arms, shipped off to schools in unfamiliar places sometimes hundreds of miles away from home, and then deliberately grouped with children from different tribes to “disrupt Tribal relations and discourage or prevent Indian language use.”²⁶¹ Upon arrival, “systematic militarized and identity-alteration methodologies” deployed by the school system stripped children of their names, hair, clothing, language, cultural practices and religions.²⁶²

Boarding school officials physically, sexually and emotionally abused Native children.²⁶³ Children were publicly humiliated, beaten, starved and isolated in solitary confinement for failing to follow puritanical boarding school rules.²⁶⁴

260. NEWLAND REPORT, *supra* note 156, at 39. *See also id.* at 38. In 1928 the Brookings Institution published what is colloquially known as the Meriam Report upon the Department of the Interior’s request. LEWIS MERIAM, INST. FOR GOV’T RSCH., *THE PROBLEM OF INDIAN ADMINISTRATION* (1928) [hereinafter MERIAM REPORT]. The study investigated and documented the economic and social conditions of Native groups and determined that the Federal Indian boarding school system was the primary culprit in the disruption of family and Tribal relations.

[O]n the whole government practices may be said to have operated against the development of wholesome [Indian] family life.

Chief of these is the long continued policy of education the [Indian] children in boarding schools far from their homes, taking them from their parents when small and keeping them away until parents and children become strangers to each other. The theory was once held that the *problem of the [Indian] could be solved by educating the children, not to return to the reservation, but to be absorbed one by one into the white population.* This plan involved the *permanent breaking of family ties*, but provided for the children a *substitute for their own family life by placing them in good homes of whites* for vacations and sometimes longer, the so-called “outing system.” . . . Nevertheless, this worst of its features still persists, and *many children today have not seen their parents or brothers and sisters in years.*

NEWLAND REPORT, *supra* note 156, at 38–39 (emphasis added) (quoting MERIAM REPORT, *supra*, at 573–74).

261. NEWLAND REPORT, *supra* note 156, at 40. “The Department acknowledged that ‘[i]nter-marriage by the young graduates of different nations would necessitate the use of the English language, which their offspring would learn as their mother tongue.’” *Id.* (citation omitted). Enslavers used the same tactic of mixing individuals who spoke different languages so they could not communicate or organize with each other. DAVID CRYSTAL, *LANGUAGE DEATH* 82 (2002) (“The powerful role of language as a way of fomenting revolution was recognized by the first slave traders, who deliberately mixed people with different language backgrounds in the ships bound for America, so that they could not communicate effectively with each other.”).

262. NEWLAND REPORT, *supra* note 156, at 7, 51, 53, 92.

263. *Id.* at 56.

264. *Id.* at 54. Dora Brought Plenty refused to hit her friend, Lucy, who was being punished for running away, with a hand towel soaked in hot water and studded with open safety pins. Dana Hedgpeth (Haliwa-Saponi), ‘12 Years of Hell’: *Indian Boarding School Survivors Share Their Stories*, WASH. POST (Aug. 7, 2023, 7:00 AM), <https://www.washingtonpost.com/history/2023/08/07/indian-boarding-school-survivors-abuse-trauma/> [https://perma.cc/YD38-ME2L]. “A matron grabbed Brought Plenty, ripped off her nightgown and pushed her into the gantlet [*sic*]. The other girls hit her.” *Id.*

Sometimes older children were ordered to punish younger children by court-martial.²⁶⁵ Insufficient federal funding meant the exploitation of child manual labor—disguised as vocational training—kept the schools operational.²⁶⁶ Worse still, millions of dollars held in trust for Indian Tribes comprised the majority of the scant funding schools received.²⁶⁷

Many children never saw their families while at the schools.²⁶⁸ Many children never returned home because they were placed with or adopted by non-Native (often white) families as part of the Indian Adoption Project.²⁶⁹ And many never saw their families again because they died while in the schools. At least 500 children perished.²⁷⁰ That number is expected to grow.²⁷¹ The initial investigation also identified fifty-three marked and unmarked burial sites.²⁷² That number is expected to grow, too.²⁷³ Determining the Tribal affiliation of students buried at residential facilities is complicated (or made impossible) by the fact that “some sites contain human remains or parts of remains of multiple individuals or human remains that were relocated from other burial sites.”²⁷⁴ For those who can be

265. NEWLAND REPORT, *supra* note 156, at 54–55. Denise Lajimodiere (Turtle Mountain Band of Pembina Chippewa (Ojibwe)) recounts her father’s horrific memories of discipline via court-martial at Chemawa Industrial School. “Following Pratt’s model, the military atmosphere of schools was reinforced by a strict discipline policy; corporal punishment was incorporated along with a court of older students to maintain adherence to the rules.” Lajimodiere, *supra* note 17576, at 10. Lajimodiere describes “the gauntlet,” in which a boy lay face down on a bed while his classmates pinned his arms and feet and whipped him with a “leather belt embedded with studs.” *Id.* Her father remembered a child who “died from the gauntlet—his kidneys had ruptured.” *Id.*

266. NEWLAND REPORT, *supra* note 156, at 63 (“[The schools] could not possibly be maintained on the amounts appropriated by Congress for their support were it not for the fact that students are required to do . . . an amount of labor that has in the aggregate a very appreciable monetary value.”) (quoting MERIAM REPORT, *supra* note 26061, at 376). *See also* Lajimodiere, *supra* note 17575, at 10 (“The [Chemawa Industrial School] was not given enough funds to support its size, so students were exploited to work large fields, gardens, and barns, and to build the buildings.”).

267. NEWLAND REPORT, *supra* note 156, at 44. “Congress further concluded that the . . . ‘land policy was directly related to the Government’s Indian education policy because proceeds from the destruction of the Indian land base were used to pay the costs of taking Indian children from their homes and placing them in Federal boarding schools—a system designed to dissolve the Indian social structure.’” *Id.* at 44–45 (quoting KENNEDY REPORT, *supra* note 249, at 143).

268. Haaland, *supra* note 13.

269. NEWLAND REPORT, *supra* note 156, at 97; Frances Madeson, *My Childhood Was Stolen, Says Linda Raye Cobe, Indian Boarding School Survivor*, TRUTHOUT (Oct. 10, 2022), <https://truthout.org/articles/my-childhood-was-stolen-says-linda-raye-cobe-indian-boarding-school-survivor/> [<https://perma.cc/69SB-38W3>]. The Indian Adoption Project was not “repudiated by Congress until the enactment of the Indian Child Welfare Act of 1978.” NEWLAND REPORT, *supra* note 156, at 97.

270. NEWLAND REPORT, *supra* note 15, at 9.

271. *Id.*; *see also* Hedgpeth (Haliwa-Saponi) & Martinez, *supra* note 247 (“Thousands are believed to have died, the [National Native American Boarding School Healing Coalition] said.”).

272. NEWLAND REPORT, *supra* note 15, at 86.

273. *Id.* at 86.

274. *Id.* at 92.

identified, practices among American Indian, Alaska Native, and Native Hawaiian groups regarding possible disinterment and repatriation of remains differ greatly. Some groups want the remains returned to their home territory while others wish to leave the remains in place undisturbed.²⁷⁵

Last, the investigation highlighted the federal government's failure to create a "forum or opportunity for survivors" or their descendants and families to tell these terrible truths about the schools.²⁷⁶

*C. Thieving Indigenous Life, Land, Wealth and Children: Investigative Report
Conclusions*

From the above findings, the report developed the following conclusions about the Federal Indian boarding school system. "From the earliest days of the Republic, the United States' official objective . . . was to sever the cultural and economic connection" Native groups had with the land.²⁷⁷ The federal government weaponized the schools to pilfer American Indian, Alaska Native and Native Hawaiian territories.²⁷⁸ At first Federal Indian boarding schools forcibly assimilated Native children to facilitate the United States' "broader goal of Indian territorial dispossession."²⁷⁹ Cultural assimilation quickly became its own Federal policy objective, however, and boarding schools remained integral to that effort.²⁸⁰

Being intentionally targeted and removed from their communities traumatized the children who survived the boarding school system, but many children never made it out alive.²⁸¹ Hundreds (but likely thousands or tens of thousands) of children died while at Federal Indian boarding schools.²⁸² They were often "buried in unmarked or poorly maintained burial sites" hundreds or thousands of miles away from home.²⁸³ This trauma and death destabilized individual family units

275. *Id.*

276. *Id.*

277. *Id.* at 93; Hedgpeth (Haliwa-Saponi) & Martinez, *supra* note 247 ("The [National Native American Boarding School Healing] [C]oalition's work comes amid a growing effort to expose the harmful legacy of the boarding school era on American Indian families and tribes as part of the federal government's broader, centuries-long policies to try to eradicate Native Americans and seize their land.").

278. NEWLAND REPORT, *supra* note 156, at 93.

279. *Id.*

280. *Id.*

281. *Id.*; see Donald Warne (Oglala Lakota) & Denise Lajimodiere (Turtle Mountain Band of Pembina Chippewa (Ojibwe)), *American Indian Health Disparities: Psychosocial Influences*, 9 SOC. & PERSONALITY PSYCH. COMPASS 567, 571 (2015) ("Many [children] never returned to their homes, and many died from disease and homesickness while in boarding school.").

282. NEWLAND REPORT, *supra* note 156, at 93.

283. *Id.*; Hedgpeth (Haliwa-Saponi) & Martinez, *supra* note 246.

and entire communities for almost two centuries as multiple generations of children suffered at the schools.²⁸⁴

The report confirms that “[s]urvivors of the traumas of boarding school policies carried their memories into adulthood as they became the aunts and uncles, parents, and grandparents to subsequent generations.”²⁸⁵ Their experiences impacted the way they parented,²⁸⁶ and the stress of unrelenting trauma seeped into their bodies, creating chronic physical and mental health conditions.²⁸⁷ The science of epigenetic inheritance suggests that their children’s biological systems may have also been altered.²⁸⁸ At base, “the legacy of Indian boarding schools remains, manifesting itself in Indigenous communities through intergenerational trauma, cycles of violence and abuse, disappearance, premature deaths, and other undocumented bodily and mental impacts.”²⁸⁹

Additional investigation is required to uncover the full extent of the harm inflicted by the boarding school system, but the report’s preliminary findings are enough to conclude that the schools destroyed lives, physical and mental health, territories and wealth, tribal and family relations, languages, and cultural and

284. NEWLAND REPORT, *supra* note 156, at 93–94; Warne (Oglala Lakota) & Lajimodiere (Turtle Mountain Band of Pembina Chippewa (Ojibwe)), *supra* note 281, at 572 (“Shoshan (1989) determined that the magnitude of individual trauma was closely related to the intensity of sudden violent separation from close family members. . . . Unresolved trauma has been found to be intergenerationally cumulative, compounding the subsequent health problems of the community.”) (citing Tamar Shoshan, *Mourning and Longing from Generation to Generation*, 43 AM. J. PSYCHOTHERAPY 193 (1989)).

285. Haaland, *supra* note 13.

286. FORT, *supra* note 254, at 7. Fort illustrates how Native children raised in the boarding school system and other non-Native environments did not receive traditional parenting knowledge and practices from their elders, and so could not raise their own children with those same techniques.

Children taken from their parents and raised in non-Native environments were unable to learn the parenting techniques practiced in their communities since time immemorial. Instead, these children only had experience with the western style of abusive discipline that was practiced in the boarding schools. When these boarding school children in turn had their own children, they lacked the necessary parenting skills to raise their own children into mentally and physically healthy adults.

Id.

287. NEWLAND REPORT, *supra* note 15, at 88–89. Boarding school survivors are more likely to have cancer, tuberculosis, high cholesterol, diabetes, anemia, arthritis, gall bladder disease, PTSD, depression, and unresolved grief than those who did not attend the schools. *Id.*; Ursula Running Bear, Zaneta M. Thayer, Calvin D. Croy, Carol E. Kaufman, Spero M. Manson & the AI-SUPERPPF Team, *The Impact of Individual and Parental American Indian Boarding School Attendance on Chronic Physical Health of Northern Plains Tribes*, 42 FAM. CMTY. HEALTH 1, 3–5 (2019).

288. NEWLAND REPORT, *supra* note 156, at 89.

289. Haaland, *supra* note 13; Hedgpeth (Haliwa-Saponi), *supra* note 264 (“[Donald Neconie] said he inflicted on [his kids] ‘the pain I’d brought from that boarding school. . . . [I] wasn’t always the kindest to my kids. I regret doing that to them.’”).

religious practices for generations.²⁹⁰ Moreover, the report's findings and conclusions make plain that the United States expressly pursued the boarding school policy to destroy Native groups' cultural connection to the land to render those lands ripe for the taking.²⁹¹ As explored further in Section IV(E)(3), healing land dispossession's attendant harms necessitates both land repatriation and an express policy of cultural revitalization.

D. Undertaking Reconciliation: The Report's Eight Recommendations

To heal the intergenerational harm caused by the United States' nearly two-centuries-long policy of forced assimilation targeting Native groups, the report first calls upon the Department of the Interior to "affirm an express policy of cultural revitalization."²⁹² This proposed cultural revitalization policy underpins each of the report's eight recommendations.²⁹³ The recommendations are designed to (1) fulfill the remaining objectives of the Federal Indian Boarding School Initiative, (2) "revitalize [the] languages, cultural practices, and traditional food systems [of Indian Tribes, Alaska Native Villages, and the Native Hawaiian Community] and (3) protect and strengthen intra-Tribal relations."²⁹⁴

First the report reiterates the need for further investigation and a comprehensive review of Department of Interior records.²⁹⁵ Understanding that limited time remains to record the stories of Federal Indian boarding school survivors as they age,²⁹⁶ the next two recommendations suggest developing systems and platforms for individuals to identify themselves and "formally document their historical accounts and experiences" in the schools.²⁹⁷ By

290. NEWLAND REPORT, *supra* note 156, at 94.

291. *Id.* at 20–22; KENNEDY REPORT, *supra* note 249.

292. NEWLAND REPORT, *supra* note 156, at 95.

293. *Id.*

294. *Id.* at 95–99.

295. *Id.* The National Native American Boarding School Healing Coalition ("NABS"), discussed *supra* note 241, leads the way in collecting and digitizing boarding school records. Luis Andres Henao, *Native American Group to Digitize 20,000 Archival Pages Linked to Quaker-Run Indian Boarding Schools*, AP NEWS: RELIGION (Aug. 23, 2023, 1:36 PM), <https://apnews.com/article/native-american-boarding-schools-quaker-digitize-records-37c2c3c56a8b369f7f8e7759b6592d21> [<https://perma.cc/KFL3-8UDN>]. The Department published the second and final report volume in July 2024, after much of the substance of this article was written. BRYAN NEWLAND, U.S. DEP'T OF THE INTERIOR, FEDERAL INDIAN BOARDING SCHOOL INITIATIVE INVESTIGATIVE REPORT VOL. II 103 (2024) [hereinafter 2 NEWLAND REPORT], https://www.bia.gov/sites/default/files/media_document/doi_federal_indian_boarding_school_initiative_investigative_report_vii_final_508_compliant.pdf [<https://perma.cc/3ATT-9P7V>]. It approximated the total number of children that attended the schools and the amount of federal support the schools received. *Id.*

296. Austin Cope, *The U.S. is Reckoning with Its Troubled Past of Indian Boarding Schools*, NPR (June 23, 2022, 9:41 AM), <https://www.npr.org/2022/06/23/1106944327/deb-haaland-indian-boarding-schools> [<https://perma.cc/S7H2-ZRCW>].

297. See NEWLAND REPORT, *supra* note 15, at 97.

documenting these accounts the department seeks to better understand the schools' present-day "impacts, such as health status, including substance abuse and violence."²⁹⁸ "[W]here the Federal Government has jurisdiction over a location," the report next recommends the "protection, preservation, reclamation, and co-management of sites across the Federal Indian boarding school system."²⁹⁹

Recommendations five, six and seven concern acquiring and preserving Federal Indian boarding school records. For example, the fifth recommendation seeks to preserve records and expertise on the Federal Indian boarding school system in a centralized repository at the Department of Interior Library.³⁰⁰ The report also encourages the Department of Interior to collaborate with other federal agencies, especially "those with control of any records involving the Federal Indian boarding school system or that provide health care to American Indians, Alaska Natives, and Native Hawaiians."³⁰¹ Next, the report recommends that the department "support non-Federal entities, such as States and religious institutions and organizations" that may choose to share their records regarding the school system.³⁰²

Finally, the report urges the department to back Congressional action regarding the Native American Graves Protection and Repatriation Act ("NAGPRA"), language revitalization, Native health research, and memorial construction.³⁰³ It specifically recommends shielding the locations of boarding school burial sites from Freedom of Information Act requests under NAGPRA to defend against "well-documented grave-robbing, vandalism, and other disturbances."³⁰⁴ Moreover, the report notes other laws may need amending to allow for the "reburial of remains of Indian children and funerary objects repatriated pursuant to NAGPRA[] and consistent with specific Tribal practices," possibly on Bureau of Land Management lands.³⁰⁵ And it recommends supporting proposed funding and staffing increases for agencies responsible for ensuring NAGPRA compliance.³⁰⁶

298. *Id.*

299. *Id.* at 98.

300. *Id.*

301. *Id.*

302. *Id.*

303. *Id.* at 98–99. The Department of Interior recently revised NAGPRA's implementing regulations to "strengthen the authority and role of Indigenous communities in the repatriation process." See *generally* Press Release, U.S. Dep't of the Interior, Interior Department Announces Final Rule for Implementation of the Native American Graves Protection and Repatriation Act (Dec. 6, 2023), <https://www.doi.gov/pressreleases/interior-department-announces-final-rule-implementation-native-american-graves> [<https://perma.cc/UMV5-DC6D>]. The revisions went into effect in January 2024. 43 C.F.R. § 10 (2023), <https://www.govinfo.gov/content/pkg/FR-2023-12-13/pdf/2023-27040.pdf> [<https://perma.cc/G6UF-KFT8>].

304. NEWLAND REPORT, *supra* note 15, at 98.

305. *Id.*

306. *Id.* at 99.

Similarly, the report supports Native language revitalization by encouraging increased funding for the “expansion and development of programs implementing or supporting Native language revitalization” in Bureau of Indian Education (BIE) schools, non-BIE schools, “language immersion schools and community organizations.”³⁰⁷ The report also encourages federally funded research into the boarding school system’s impact on American Indian, Alaska Native and Native Hawaiian health.³⁰⁸ Lastly, it recommends constructing a federal memorial to honor the generations of children traumatized by the school system.³⁰⁹

E. Fairly Critiquing and Recalibrating the Report’s Initial Recommendations

The Federal Indian Boarding School Initiative is in its nascency, an observation shared by department officials,³¹⁰ so it is impossible to evaluate its ultimate social healing impact fully and fairly. Nevertheless, the report reflects one of the critical first steps in the social healing process, and it is necessary to recognize what the initiative does well while exploring where it falls short. Assessed through the lens of the *social healing through justice* framework, the Federal Indian Boarding School Initiative by itself is unlikely to engender the kind of justice that will heal Native families and communities and repair the country’s social fabric.

1. A Social Healing Through Justice Overarching Assessment

Because the initiative is primarily an investigatory tool rather than an instrument for structural change, it is unlikely to heal Native groups’ individual and communal intergenerational wounds of land dispossession and cultural annihilation. Many of the report’s findings, conclusions and recommendations can and should inform additional justice initiatives. But on their own, they are half-measures that—taken alone—threaten to earn little more than “cheap grace” from generations of boarding school survivors and their descendants.³¹¹

Six working principles and four cornerstones of the *social healing through justice* framework identify the salutary aspects of the initiative while also highlighting what more is needed for both harmed and harmer to experience genuine

307. *Id.*

308. *Id.*

309. *Id.*

310. In his letter to Secretary Haaland accompanying the submission of the report, Assistant Secretary of the Interior for Indian Affairs Bryan Newland described the report as “only a first step to acknowledge the experiences of Federal Indian boarding school children” and recommended further investigation. NEWLAND REPORT, *supra* note 156, at i–ii.

311. *Id.* at 41 (“The sixth working principle is cautionary – *the darkside* of reparative justice process. It accounts for incomplete or stalled initiatives, calling out tepid or partial efforts as attempts to acquire ‘cheap grace’ or to deflect or even subvert organizing efforts for substantial changes in systemic power structures.”).

and enduring healing.³¹² For Indigenous peoples, “individual trauma reverberates across communities and through generations” in unique ways.³¹³ Many Indigenous groups heal trauma holistically by emphasizing “group-based spirituality and culture” and “community-based repair of the continuing damage.”³¹⁴ The “more” that is needed, then, is a bespoke, holistic and communitarian healing initiative that enables those involved to access “the deepest part of the self that has suffered and needs to be made whole again.”³¹⁵

Social healing through justice scholars explain that Indigenous peoples’ historical trauma is rooted in “colonial and post-colonial practices and policies” that stole children, stole cultural and spiritual knowledge, stole language, stole land, stole sovereignty and stole opportunities to thrive economically.³¹⁶ Still another facet of historical trauma for Native groups is the enduring psychological impact of colonization passed down from grandparent to parent and parent to child.³¹⁷ Scholars Linda Hasan-Stein and Valmaine Toki (Ngāti Rehua, Ngātiwai and Ngāpuhi) draw on Indigenous scholar Maria Yellow Horse Brave Heart’s description of historical trauma’s psychological effects:

Historical trauma (HT) is cumulative emotional and psychological wounding over the lifespan and across generations, emanating from massive group trauma experiences; the historical trauma response (HTR) is the constellation of features in reaction to this

312. See generally Chapters 3 and 4 in YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11.

313. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 53 (summarizing Linda Hasan-Stein and Valmaine Toki, *Reflections from the Roundtable—Access to Justice: How Do We Heal Historical Trauma?*, 15 N.Z. Y.B. JURIS. 183 (2017)).

314. *Id.* at 53–55 (distilling traditional approaches to healing as described by Linda Hasan-Stein, Valmaine Toki and other Indigenous scholars).

315. Linda Hasan-Stein & Valmaine Toki, *Reflections from the Roundtable – Access to Justice: How Do We Heal Historical Trauma?*, 15 N.Z. Y.B. JURIS. 197–99 (2017) (quoting TOM CALMA, AUSTL. HUM. RTS. & EQUAL OPPORTUNITY COMM’N, SOC. JUST. REP. 57 (2004)).

316. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 112, at 53 (quoting Hasan-Stein & Toki, *supra* note 317, at 187 (internal citation omitted)).

The root causes of this trauma stem from “colonial and post-colonial practices and policies,” including the removal of children, loss of cultural practices and forced learning of new languages. [Hasan-Stein and Toki] also highlight the taking of indigenous land – often through force or immoral laws – as a significantly harmful feature of colonization-induced trauma. This land-taking not only led to a loss of cultural connection and practices, it also deprived Indigenous peoples of opportunities to develop and manage the resources needed to foster self-governance and overall self-determination, exacerbating the trauma.

Id.

317. *Id.* (citing Hasan-Stein & Toki, *supra* note 315, at 186). Denise Lajimodiere (Turtle Mountain Band of Pembina Chippewa (Ojibwe)) echoes fellow Indigenous scholars in identifying this intergenerational, collective trauma as a “soul wound.” Lajimodiere, *supra* note 1756, at 6. See generally EDUARDO DURAN (TIOSPAYE TA WOAPIYA WICASA), HEALING THE SOUL WOUND (2d ed. 2021).

trauma. The HTR often includes depression, self-destructive behavior, suicidal thoughts and gestures, anxiety, low self-esteem, anger, and difficulty recognizing and expressing emotions. It may include substance abuse, often an attempt to avoid painful feelings through self-medication.³¹⁸

The trauma of the boarding schools, then, haunts not just the children who were terrorized by the schools, but the generations that came before (their parents) and after (their children). How do we heal harm that is not just individual but communal? That destroyed people's physical and mental health but also their ability to thrive economically? That took tangibles like land and intangibles like language? That harmed the children in the schools but also the generations that preceded and succeeded them? Through "pure, unadulterated struggle."³¹⁹

For Indigenous peoples especially, the "pure, unadulterated struggle" of healing spans "an average of 10 years ... for a community to 'reach out, dismantle denial, create safety and engage participants in therapeutic healing,' and this is just the beginning of the process."³²⁰ Healing must be considered in its "broadest terms"—the individual and communal, the immediate and long-term, the spiritual-cultural as well as material, the range of related harms, across generations."³²¹

As the *social healing through justice* framework illuminates, the Department of Interior's initiative lays much-needed groundwork by attempting to uncover the full breadth of the boarding school system and its machinations.³²² But knowing is not enough. *Recognition* and *responsibility* alone will not heal the intergenerational wounds suffered by Native groups as evidenced by generations of poor health, educational and economic outcomes.³²³ *Reconstruction* and *reparation* are needed to foster genuine healing.

The United States devised the boarding school system to more easily dispossess Native groups of their land by severing their connection to people and place.³²⁴ Genuine healing calls for both the return of land and the restructuring of legal, governmental and societal relationships between Native groups and the United States. And, as Kanaka Maoli scholar D. Kapua'ala Sproat notes, the

318. Hasan-Stein & Toki, *supra* note 315, at 186 (quoting Maria Yellow Horse Brave Heart, *The Historical Trauma Response Among Natives and Its Relationship With Substance Abuse: A Lakota Illustration*, 35 J. PSYCHOACTIVE DRUGS 1, 7 (2003)).

319. See *supra* Section II. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 46.

320. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 55 (quoting ABORIGINAL HEALING FOUND., SUMMARY POINTS OF THE AHF FINAL REP. 18 (2006), <https://www.fadg.ca/files/rapport-final-eng.pdf> [<https://perma.cc/VKC3-268J>]).

321. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 55 (quoting Hasan-Stein & Toki, *supra* note 317, at 200).

322. NEWLAND REPORT, *supra* note 156, at 95-97.

323. *Id.* at 87-90.

324. *Id.* at 21.

“pursuit of justice [for Native peoples] is less about equality and more about self-determination, including the return and restoration of traditional lands and other resources.”³²⁵ Native groups were stripped of their lands, identities, cultures and right to self-determination by the boarding school system. The remedy must be to repair what was damaged and, as Secretary Haaland articulated after speaking with her grandmother, “reclaim what those schools tried to take from our people.”³²⁶ Hence, the importance of reparative measures targeting *reconstruction* and *reparation*.

2. *Salutary Aspects of the Initiative*

Facets of *recognition* and *responsibility* are reflected in the approaches and apologies of particular past and present Department of Interior officials. *Recognition* starts as an exercise in empathy.³²⁷ It then strives for a full and fair accounting of all the factors underlying the present justice grievance so that collaborative efforts to repair the damage possess a shared foundation.³²⁸ In 2000 then-Assistant Secretary of the Interior Kevin Gover, a citizen of the Pawnee Tribe of Oklahoma, offered a historic apology to Native peoples on behalf of the Bureau of Indian Affairs.³²⁹ He expressly named the boarding schools’ emotional, psychological, physical and spiritual brutalization of Native children, and the subsequent “trauma of shame, fear, and anger [that] has passed from one generation to the next . . . manifest[ing] itself in the rampant alcoholism, drug abuse, and domestic violence that plague Indian country.”³³⁰ He acknowledged that the agency “and the good people in it failed . . . to prevent the devastation.”³³¹

With a foot in both worlds, Gover empathized with the “unrelenting tragedy” experienced by many Indigenous peoples, and also with the “good people with good hearts” complicit in the agency’s genocidal missions.³³² Gover clearly and cogently described how the institution’s past terrible acts continue to “infect, diminish, and destroy the lives of Indian people decades later, generations later,” thus framing the justice grievance and its historical origins.³³³ The department’s 2022 investigative report also facilitates the creation of a shared narrative of the

325. Sproat, *supra* note 78, at 167 (“[I]nquiry into Native claims must ‘focus[] on the effects of land dispossession, cultur[al] destruction, loss of sovereignty, and, in turn, on claims to self-determination and nationhood.’”) (quoting Eric K. Yamamoto & Jen-L W. Lyman, *Racializing Environmental Justice*, 72 U. COLO. L. REV. 311, 344 (2001)).

326. Haaland, *supra* note 13.

327. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 74, 78.

328. *Id.* at 78.

329. Gover Remarks, *supra* note 29.

330. *Id.*

331. *Id.*

332. *See id.*

333. *Id.*

justice grievance by detailing the economic and expansionist underpinnings of the boarding school system, the ensuing trauma and its legacy impacts.³³⁴

Both Gover and Secretary Haaland accepted *responsibility* “for the historical conduct of [the] agency,” and in so doing rejected the formalist tort law paradigm pushed by politically conservative scholars, pundits and lawyers that so often suffocates reparations claims.³³⁵ Opponents to reparations raise a perennial question that obfuscates the fundamental purpose of reparations: why should I be punished when I personally did not colonize Native groups, take their lands or force them into boarding schools?³³⁶ “[W]hile the BIA employees of today did not commit these wrongs, we acknowledge that the institution that we serve did,”³³⁷ Gover explained. “We accept this inheritance, this legacy, of racism and inhumanity. And by accepting this legacy we also accept the moral responsibility of putting things right.”³³⁸ Secretary Haaland took up Gover’s mantle in her memorandum launching the initiative.

The Department of the Interior (Department) must address the intergenerational impact of Indian boarding schools to shed light on the traumas of the past. For more than a century, *the Department was responsible for operating or overseeing Indian boarding schools across the United States and its territories. The Department is therefore uniquely positioned to assist* in the effort to recover the histories of these institutions.³³⁹

334. See NEWLAND REPORT, *supra* note 15, at 93–94.

335. Eric K. Yamamoto, Sandra Hye Yun Kim & Abigail M. Holden, *American Reparations Theory and Practice at the Crossroads*, 44 CALIFORNIA WESTERN L. REV. 1, 7 (2007).

336. See YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 12, at 134. In the context of slavery, for example, most white people do not believe they have an obligation to engage in reparative action—particularly action that asks them to relinquish unearned privileges—because they did not personally enslave Black people. For some, neither did their ancestors. But “[w]hites need not have been slaveowners or proponents of Jim Crow segregation to have benefitted from systemic white supremacy—in the form of better schools and healthcare, expanded job prospects, increased homeownership, business financing and more.” *Id.* at 133. Moreover, homeownership and income level are two key contributors to wealth creation and generation. Benjamin Harris & Sydney Schreiner Wertz, *Racial Differences in Economic Security: The Racial Wealth Gap*, U.S. DEP’T OF TREASURY (Sept. 15, 2022), <https://home.treasury.gov/news/featured-stories/racial-differences-economic-security-racial-wealth-gap> [<https://perma.cc/TW39-M7MK>]; Tami Luhby, *White Americans Have Far More Wealth Than Black Americans. Here’s How Big the Gap Is*, CNN (Oct. 23, 2023), <https://www.cnn.com/2023/10/31/us/us-racial-wealth-gap-reaj/index.html> [<https://perma.cc/2X28-UD47>]. With lower incomes and rates of homeownership, “Black family wealth, on average, is less than one tenth that of white families. And long-standing discrimination shuts Black [people] out of housing, job and business finance opportunities available to whites.” YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 133.

337. Gover Remarks, *supra* note 29.

338. *Id.*

339. DOI Memo, *supra* note 11, at 1 (emphasis added).

The making of these apologies doubles as *reconstruction*'s first step which reiterates their importance to "restoring group membership."³⁴⁰ And the report correctly positions the need for continued investigation as its first priority.³⁴¹ Buried in 100 million sheets of paper within forty thousand boxes, the complete truth of the boarding school system remains unearthed.³⁴² As a result, all but two of the eight recommendations are information-seeking.³⁴³ Four are specifically concerned with acquiring, preserving and reviewing records from federal and non-federal entities alike.³⁴⁴ The other two seek information about the identities of boarding school survivors and what they endured.³⁴⁵

Gathering this information is critical to the initiative's overall success. Clarifying the historical record of "disabling constraints" and context undergirding present-day justice grievances will help to foster the *recognition* needed for enduring social healing.³⁴⁶ "Otherwise, social healing efforts can be undermined from the start because of misunderstandings about the nature of the harms and underlying causes."³⁴⁷ Given that the boarding school initiative is just beginning, these information-seeking recommendations are indispensable.

Answering *reconstruction*'s call to create physical or virtual spaces that educate the public about the injustice, the final recommendation encourages the federal government to construct a memorial honoring the American Indian, Alaska Native, and Native Hawaiian children who survived the boarding school system.³⁴⁸ Nevertheless, more remains to be done if Native populations and society are to experience comprehensive and enduring healing.

3. *Limited or Missing Recommendations*

Social healing through justice illuminates gaps in the initiative where more is needed and molds workable solutions. One serious void exists in the report's framing. It situates each recommendation within the pursuit of an express cultural revitalization policy to counteract the damage done by the department's earlier

340. See YAMAMOTO, *INTERRACIAL JUSTICE*, *supra* note 64, at 106 (explaining that apology is the first step in reconstruction, and "the main function of an apology" is "restoring group membership").

341. NEWLAND REPORT, *supra* note 156, at 95–97.

342. *Id.* at 95 ("The [Bureau of Trust Funds Administration] identified 39,385 boxes in [the American Indian Records Repository] with potentially responsive documents (approximately 98.4 million sheets of paper).").

343. See *id.* at 95–99. The fourth and eighth recommendations concern boarding school site management and congressional actions involving NAGPRA, funding for language revitalization and health research, and the construction of a memorial. *Id.* at 98–99.

344. *Id.* at 95–98.

345. *Id.* at 97.

346. YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 11, at 78.

347. *Id.* at 76.

348. NEWLAND REPORT, *supra* note 15 at 99.

forced cultural assimilation policy.³⁴⁹ Curiously, the preamble to the report's recommendations fails to mention—despite doing so repeatedly in other parts of the report—that the forced assimilation policy and boarding school system were intentionally created to advance the United States' ultimate expansionist objective to take land from Native groups.³⁵⁰ This is a grave omission. By naming cultural revitalization as the sole underpinning for the report's recommendations, the department mimics Canada and avoids addressing a necessary—though far more contentious—reparative step: returning Native land.³⁵¹

Indeed, the recommendations ignore the report's first conclusion that “[t]he United States’ *creation* of the Federal Indian boarding school system was part of a broader policy aimed at acquiring collective territories” from Native groups and individuals.³⁵² It is that which was taken that must be restored.³⁵³ As Ojibwe historian Brenda Child articulated, “We can’t change the past. We can’t change the experience of assimilation. But what we can do is restore land to Native people who were dispossessed. And if you would ask Indians, they would tell you exactly what land they want restored.”³⁵⁴

While the list of research priorities for the second (and final) volume is non-exhaustive, it overlooks assessing the lands the United States wrested from Native communities with the boarding school program's help.³⁵⁵ Not one of the recommendations contends with repairing the specific damage of land

349. *Id.* at 95.

350. *See id.* at 1, 21, 25, 37, 91, 93.

351. *See id.* at 95.

352. *Id.* at 93 (emphasis added).

353. YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 11, at 68.

354. Olivia B. Waxman, *The History of Native American Boarding Schools Is Even More Complicated than a New Report Reveals*, TIME (May 17, 2022, 12:42 ET), <https://time.com/6177069/american-indian-boarding-schools-history/> [<https://perma.cc/5ZK3-WM3E>]; Brenda J. Child, *Holding Our World Together: Ojibwe Women and the Survival of the Community*, KIRKUS REVS. (Dec. 4, 2011), <https://www.kirkusreviews.com/book-reviews/brenda-j-child/holding-our-world-together/> [<https://perma.cc/5YK2-ZWF4>].

355. *See* NEWLAND REPORT, *supra* note 15, at 95–97 (implying more priorities may exist despite their absence in the report by saying, “specific needs and priorities include, *but are not limited to*”) (emphasis added). The Department published the second volume of the report in July 2024, after much of the substance of this article was written. BRYAN NEWLAND, U.S. DEP’T OF THE INTERIOR, *FEDERAL INDIAN BOARDING SCHOOL INITIATIVE INVESTIGATIVE REPORT VOL. II 103* (2024) [hereinafter 2 NEWLAND REPORT], https://www.bia.gov/sites/default/files/media_document/doi_federal_indian_boarding_school_initiative_investigative_report_vii_final_508_compliant.pdf [<https://perma.cc/3ATT-9P7V>]. One of the recommendations included in the second volume says the “Department should conduct reviews, upon request of Tribes, of property and title documents for former Indian boarding school sites” and “work to facilitate the return of those Indian boarding school sites to U.S. Government or Tribal ownership.” *Id.* Though a complete *social healing through justice* analysis of the second report volume and its attendant recommendations is regrettably outside the scope of this article, the call to return land to Tribal ownership does not seem to go far enough, as it is limited to former Indian boarding school sites. *Id.*

dispossession.³⁵⁶ Not one of the recommendations confronts the economic motivations fueling the United States' land dispossession policy.³⁵⁷ And not one of the recommendations addresses the systemic economic disenfranchisement Native groups continue to experience after the land dispossession policy vitiated Native economies.³⁵⁸ But *reconstruction*'s principles indicate targeting the underlying policies (both institutional and political) giving rise to the "disabling constraints" (cultural destruction, economic disenfranchisement, "soul death") is key to their dismantling.³⁵⁹

Other dimensions of *reconstruction* emphasizing the importance of institutional restructuring reveal additional gaps in the initiative.³⁶⁰ *Reconstruction* strives to prevent the injustice (and the conditions that enabled it) from recurring.³⁶¹ It seeks to transform legal systems, political and governmental apparatuses, education, economies and health care.³⁶² Native groups therefore need more than the data gleaned from continued investigation.³⁶³ They need more than a forum where they can finally speak the unspeakable.³⁶⁴ They need more than mere support for increased funding for language revitalization programs and Indian health research.³⁶⁵

We must listen to Native groups first and foremost. We must center the most marginalized Native voices.³⁶⁶ Native people must shape reconciliation initiatives and the recommendations they propose. Beyond this, laws and political structures that separated Native families, destroyed Native languages and cultures, and snatched Native land must be dismantled. As Canada's Truth and Reconciliation Commission affirmed, "building a respectful relationship [between Indigenous groups and western governments] involves dismantling a centuries-old political and bureaucratic culture in which, all too often, policies and programs are still based on failed notions of assimilation."³⁶⁷

356. *See id.* at 95–99.

357. *See id.*

358. *See id.* at 8, 95–99.

359. YAMAMOTO, *INTERRACIAL JUSTICE*, *supra* note 64, at 98; Yamamoto, Pettit & Lee, *Unfinished Business*, *supra* note 91, at 21.

360. *See* YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 11, at 84.

361. *See* Yamamoto, Pettit & Lee, *supra* note 91, at 21 (explaining that the "[r]eallocation of power . . . aims to prevent repetition of the underlying abuses by addressing root causes").

362. YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 11, at 84.

363. *See* NEWLAND REPORT, *supra* note 16, at 95–97.

364. *See id.* at 97.

365. *See id.* at 99.

366. JUAN. F. PEREA, RICHARD DELGADO, ANGELA P. HARRIS, JEAN STEFANCIC & STEPHANIE M. WILDMAN, *RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA* 3 (3d ed. 2015) ("Consider the nature of the harm. Is it minimal or serious? Whose characterization rules? Be sure to listen to the voices of those most harmed.").

367. *HONOURING THE TRUTH*, *supra* note 13, at 21.

But the United States risks undermining efforts to create a respectful relationship that honors Indigenous self-determination. The Supreme Court, for example, entertained a constitutional challenge to ICWA brought by right-wing special interests that threatened Tribal governments’ “jurisdiction over decisions about the [foster or adoptive] placement of children who are members or eligible members of a tribe.”³⁶⁸ In short, *Haaland v. Brackeen* jeopardized once more Native peoples’ ability to make their own decisions about what is best for Native children.³⁶⁹ It is a motif—part of “a terrifying pattern[] in which attacks on Native children are a prelude to broader attacks on tribal sovereignty.”³⁷⁰ A many-headed Hydra, the crusade against tribal sovereignty will continue its march down the path Justice Kavanaugh charted in his concurrence.³⁷¹ And while the third iteration of the *Truth and Healing Commission on Indian Boarding School Policies Act* finally advanced through the Senate in December 2024, it now hangs in the balance, awaiting action by the House.³⁷²

Reparation’s aspects illuminate still more holes in the report’s recommendations. *Reparation* rebuilds individual and communal capacities to “function productively and peaceably” through education, job skills training, government and

368. Madeline Carlisle, *The Supreme Court Will Decide the Future of Native American Foster Children*, TIME (Nov. 9, 2022, 7:00 AM), <https://time.com/6229181/supreme-court-indian-child-welfare-act-future/> [<https://perma.cc/G87N-VKTY>].

369. See *Haaland v. Brackeen*, 599 U.S. 255 (2023).

370. Nagle, *supra* note 47.

371. This Land, *supra* note 48, at 26:33 (“If they think that the concurring opinion from Justice Kavanaugh is a signal to them that there is an audience for the equal protection argument, then they’ll keep going.”); *Haaland v. Brackeen*, 599 U.S. 255, 333 (2023) (Kavanaugh, J., concurring). Justice Kavanaugh writes:

In my view, the equal protection issue is serious. Under the Act, a child in foster care or adoption proceedings may in some cases be denied a particular placement because of the child’s race—even if the placement is otherwise determined to be in the child’s best interests. And a prospective foster or adoptive parent may in some cases be denied the opportunity to foster or adopt a child because of the prospective parent’s race. Those scenarios raise significant questions under bedrock equal protection principles and this Court’s precedents. See *Palmore v. Sidoti*, 466 U. S. 429 (1984). Courts, including ultimately this Court, will be able to address the equal protection issue when it is properly raised by a plaintiff with standing—for example, by a prospective foster or adoptive parent or child in a case arising out of a state-court foster care or adoption proceeding.

Id. at 333–34.

372. Truth and Healing Commission on Indian Boarding School Policies in the United States Act, S. 1723, 118th Cong. (2023) (proposing a formal Truth and Reconciliation Commission to investigate, document and acknowledge past injustices caused by the Federal Indian Boarding School System); Jenna Kunze, *Senator Warren Revives Indian Boarding School Legislation with Bipartisan Support*, NATIVE NEWS ONLINE (May 24, 2023), <https://nativenewsonline.net/sovereignty/senator-warren-reintroduces-indian-boarding-school-legislation-with-bipartisan-support> [<https://perma.cc/S8RN-8VC9>]; Kalle Benallie, *Senate Bill Calls for Investigation into Indian Boarding Schools*, TRUTHOUT (June 10, 2023), <https://truthout.org/articles/senate-bill-calls-for-investigation-into-indian-boarding-schools/> [<https://perma.cc/AW9D-VTMP>].

community support, and access to capital and health care.³⁷³ In truth, *reparation* is entirely missing from the department's report because it does not recommend any economic capacity building measures, individual subsidies or repatriation of land.³⁷⁴ This is an immense gap—perhaps better characterized as a gaping hole—in the boarding school initiative as thus far conceived and advanced.

In the context of Indigenous justice claims, *reparation* likely encompasses the returning of Native lands in some meaningful way, even if it is not currently practical or feasible to return land titles.³⁷⁵ *Social healing through justice* scholars observe that Indigenous justice claims are often “historically rooted grievances against the government over its taking of lands, destruction of culture and denials of self-governance over generations.”³⁷⁶ Money cannot heal these wounds. If reparative acts must be tailored to “correlate with the kind and degree of harms

373. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 87–89.

374. *Id.* Additional *reparation*-based recommendations might include closing the wealth gap, increasing opportunities to acquire assets and expanding access to banking or community assistance. “Much less is known about the wealth of Native Americans. . . . [I]n 2000, the median wealth for Native Americans in the survey was \$5,700 whereas the median wealth for the sample overall was \$65,000.” MARIKO CHANG, INSIGHT CTR. FOR CMTY. ECON. DEV., LIFTING AS WE CLIMB: WOMEN OF COLOR, WEALTH, AND AMERICA’S FUTURE (2010), https://static1.squarespace.com/static/5c50b84131d4df5265e7392d/t/5c5c7801ec212d4fd499ba39/1549563907681/Lifting_As_We_Climb_InsightCCED_2010.pdf [<https://perma.cc/GPB9-7ADA>]. This is roughly “8 cents of wealth for every dollar that the average white American household has, according to a study from 2000 – the last year Native wealth was measured systematically.” Becky Morgan, *Native Households Make 8 Cents for Every Dollar a White Household Has*, NAT’L INDIAN COUNCIL ON AGING, INC. (April 5, 2021), <https://www.nicoa.org/native-households-make-8-cents-for-every-dollar-a-white-household-has/> [<https://perma.cc/B4XJ-SNJ4>].

375. See Sproat, *supra* note 78, at 167.

376. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 75.

suffered”³⁷⁷ so that which was taken is restored, then returning Indigenous lands to Indigenous hands³⁷⁸ is a nonnegotiable reconciliatory step.³⁷⁹

Many Native groups, as a result, are angered by the “government’s insistence on monetary payments (“buy-outs”) as social healing.”³⁸⁰ Reparations (with an “s”) are undoubtedly a crucial aspect of economic capacity building, but they will not engender genuine and enduring social healing alone.³⁸¹

[A]n Indigenous people’s conflict with a national government may involve the misappropriation of specific sacred lands. The government’s insistence on resolving the conflict by paying “compensation” *rather than returning the lands* vastly heightens the sense of injustice – partly because of the government’s lack of cultural understanding of the land’s significance and partly because of other long-standing unresolved grievances.³⁸²

If meaningful return of Indigenous lands to Indigenous communities is not achievable in the short-term, then restoring Native access to or usage of ancestral lands or involving Native groups in the management of those lands may be stop-gaps.

Successfully restoring land access or control will ineluctably surface the *darkside* of the reconciliation process.³⁸³ The United States is typically loath to repatriate land to Native groups, and when it does, the land is often encumbered

377. *Id.* at 68. *See generally* Antkowiak, *supra* note 78, at 1–80.

378. *See generally* LANDBACK, <https://landback.org/> [<https://perma.cc/K2P4-HRNU>] (last visited Sept. 23, 2023) (explaining the LANDBACK movement’s goals of restoring Indigenous lands to Indigenous people’s control); Kayla Berkey, *Land Back to Indigenous Hands Must Be Collective Task, Advocates Urge*, UNITED CHURCH OF CHRIST (Feb. 13, 2023), <https://www.ucc.org/land-back-must-be-collective-task-webinar-speakers-urge/> [<https://perma.cc/JU7Q-WMNH>] (assuming responsibility for undoing in the name of Christ was done in Christ’s name); Kira Kay & Jason Maloney, *Why Native Americans Are Buying Back Land that was Stolen from Them*, PBS (Oct. 16, 2021, 4:13 PM), <https://www.pbs.org/newshour/show/why-native-americans-are-buying-back-land-that-was-stolen-from-them> [<https://perma.cc/5T32-RQ2P>] (noting examples of successful “land back” campaigns and how the apportioned land eventually ended up in the hands of private corporations leaving Indigenous peoples to buy it back); *In Brazil, Forests Returned to Indigenous Hands See Recovery, Study Finds*, YALE ENVIRONMENT 360 (Jan. 30, 2023), <https://e360.yale.edu/digest/brazil-atlantic-forest-indigenous-land-tenure> [<https://perma.cc/Z7HP-G5HM>] (recognizing the importance of legal land tenure for Indigenous groups who are often prevented from stewarding their ancestral lands due to political backlash despite universally contributing to reforestation).

379. YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 11, at 68. *See supra* Section III(C) for this same critique of the Canadian reconciliation initiative.

380. *Id.* at 76 (distilling Hasan-Stein & Toki, *supra* note 315, at 183).

381. *See id.* 75–76.

382. *Id.* at 75.

383. *See id.* at 41.

with marionette strings that restrict Indigenous autonomy.³⁸⁴ For example, Congress—upon witnessing the displacement and population decimation besieging Kānaka Maoli in the nineteenth and twentieth centuries—passed the 1920 Hawaiian Homes Commission Act (“HHCA”) to rehabilitate Native Hawaiians by returning them to the land.³⁸⁵ But “a goat couldn’t live on” much of the land base Congress apportioned for the program, let alone Native Hawaiians.³⁸⁶ Adding insult to injury, neither Congress nor the State of Hawai‘i has ever adequately funded the Department of Hawaiian Home Lands (“DHHL”), the state agency responsible for serving HHCA beneficiaries and administering

384. See Harmeet Kaur, *Indigenous People Across the US Want Their Land Back – and the Movement is Gaining Momentum*, CNN (Nov. 26, 2020, 6:24 PM), <https://www.cnn.com/2020/11/25/us/indigenous-people-reclaiming-their-lands-trnd/index.html> [<https://perma.cc/P48E-AJMK>] (“The return of Duluwat Island is perhaps the first time that a US municipality repatriated land to an indigenous tribe without strings attached.”). *But see* Kay & Maloney, *supra* note 378 (highlighting recent “land back” successes including the restoration of Montana’s National Bison Range to the Salish and Kootenai Tribes).

385. The United States Congress apportioned “200,000 acres of former Crown and Kingdom lands for exclusive homesteading by Hawaiians of at least half Hawaiian ancestry.” Davianna Pōmaika‘i McGregor, *‘Āina Ho‘opulapula: Hawaiian Homesteading*, 24 HAWAIIAN J. HIST. 1, 30 (1990). But over 60,000 of these acres were either barren lava rock fields or undevelopable areas on steep mountain faces. *Id.* at 31. Congresspeople who supported Native Hawaiian homesteading opposed the HHCA because the unfarmable and undevelopable lands Congress set aside essentially destined the program to fail. *Id.* Moreover, the Hawaii Sugar Planters Associations lobbied Congress for the “best agricultural lands” which went to “sugar plantations and ranches.” *Id.* at 24, 31. United States capitlist interests and sugar barons tightened their stranglehold on Hawaiian lands by drastically reducing the number of Native Hawaiians eligible for the homesteading program. *Id.* at 25–26. Prince Kūhiō did not want a blood quantum restriction in the HHCA, and the “first version of the resolution made anyone of Hawaiian ancestry eligible to apply for a Hawaiian Homestead.” *Id.* at 27. Forced to make political compromises, later versions of the HHCA narrowed the pool of eligible homesteaders first to individuals with 1/32nd Native Hawaiian ancestry and then to one-half Native Hawaiian ancestry. *Id.* See also Paul Nāhoa Lucas, Alan T. Murakami & Avis Kuuipoleialoha Poai, *Hawaiian Homes Commission Act*, in NATIVE HAWAIIAN LAW: A TREATISE 179–263 (Melody K. MacKenzie, Susan K. Serrano, D. Kapua‘ala Sproat, Ashley K. Obrey & Avis K. Poai eds., 2015).

386. Lucas, Murakami & Poai, *supra* note 385, at 186. In the ensuing period, territorial leaders heatedly debated the bill’s merits. During this debate, Territorial Representative William Jarrett, accurately diagnosing the thrust of the bill, pointedly challenged Governor Charles McCarthy, one of the bill’s advocates: “They want to give the Hawaiians lands that a goat couldn’t live on. This whole thing is a joke. The real purpose of this bill is to cut out homesteading. If you want to cut out homesteading, then pass the bill.” *Id.* A goat literally could not live on thousands of acres of land set aside for DHHL, as tens of thousands of acres were lava rock fields or areas with little to no water. McGregor, *supra* note 385, at 37–38.

the trust lands.³⁸⁷ The result is over 28,000 Native Hawaiians on DHHL's waiting list, some of whom died never having received land.³⁸⁸

Without land repatriation, the Department of Interior initiative threatens to be an "incomplete[,] insincere acknowledgment[] and ameliorative effort."³⁸⁹ "[A]s theologians and political theorists observe, *delayed implementation of the full range of reconciliation measures 'inflicts the wounds of injustice.'*"³⁹⁰ It is incumbent upon the Department of Interior, then, to fill the glaring land repatriation lacuna—while strategically and proactively addressing backlash and administrative hurdles—to foster genuine social healing.

At bottom, achieving enduring and comprehensive healing for systemic cultural and economic harm requires systemic cultural and economic *reconstruction* and *reparation*. For centuries, the United States advanced a "twin Federal policy of Indian territorial dispossession and Indian assimilation through Indian education."³⁹¹ What if the federal government adopted a twin policy of repair? If the department's effort does not progress beyond the information-seeking stage to provide *reparation* to heal the trauma and *reconstruction* to ensure the same harms are not repeated, then it is reparative justice in name only. It is reconciliation's *darkside*.³⁹² But if land and economic issues are meaningfully addressed through congressional legislation including the *Truth and Healing Commission on Indian Boarding School Policies Act*, then this initiative holds considerable promise for a meaningful measure of *comprehensive* and *enduring* healing for some of America's Indigenous Peoples and America as a civil society.

F. Next Steps: The Truth and Healing Commission on Indian Boarding School Policies Act

Following the report's release on May 11, 2022, the Department of Interior embarked on "The Road to Healing," a year-long tour across the country during which department officials listened to survivor testimonies, entered them into the formal historical record for the first time, and connected individuals and

387. Jolanie Martinez, *With Thousands on Waitlist for Hawaiian Home Lands, State Pledges More Funding*, HAWAII NEWSNOW (Jan. 20, 2022, 10:36 PM), <https://www.hawaiinewsnow.com/2022/01/20/with-thousands-waitlist-hawaiian-home-lands-state-pledges-more-funding/> [<https://perma.cc/GSB5-M3C6>].

388. Rob Perez, *Promised Land: Native Hawaiians Waited Years for Homes on Their Ancestral Land. Then the Problems Began.*, HONOLULU STAR-ADVERTISER (Mar. 3, 2022), <https://www.staradvertiser.com/2022/03/03/hawaii-news/promised-land-native-hawaiians-waited-years-for-homes-on-their-ancestral-land-then-the-problems-began/> [<https://perma.cc/6FVN-LV8P>] ("[A]t least 2,000 beneficiaries have died while waiting.").

389. YAMAMOTO, *INTERRACIAL JUSTICE*, *supra* note 64, at 96.

390. *Id.* at 70 (emphasis added).

391. NEWLAND REPORT, *supra* note 15, at 91.

392. YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 11, at 41.

communities with trauma-informed support.³⁹³ Secretary Haaland and Assistant Secretary Newland heard heart-wrenching realities in each of the twelve locations they visited.³⁹⁴ Individual accounts collected on the tour were included in the investigation's second report volume and published on the Federal Indian Boarding School Initiative website.³⁹⁵

When she requested funding for the second report volume during a Senate Committee on Indian Affairs hearing, Secretary Haaland also advocated for the Truth and Healing Commission on Indian Boarding School Policies Act's passage.³⁹⁶ She introduced the bill in 2020 as a congresswoman with Senator

393. Press Release, U.S. Dep't of the Interior, Dep't of the Interior Releases Investigative Report, Outlines Next Steps in Federal Indian Boarding School Initiative (May 11, 2022) [hereinafter DOI Next Steps], <https://www.doi.gov/pressreleases/department-interior-releases-investigative-report-outlines-next-steps-federal-indian/> [<https://perma.cc/MPQ2-PFN8>]. The tour responds to the report's third recommendation to "[d]ocument Federal Indian boarding school attendee experiences [and] [d]evelop a platform for now-adult Federal Indian boarding school attendees and their descendants to formally document their historical accounts and experiences, and understand current impacts such as health status, including substance abuse and violence." NEWLAND REPORT, *supra* note 156, at 97; *id.*

394. Press Release, U.S. Dep't of the Interior, Secretary Haaland Announces Major Milestones for Federal Indian Boarding School Initiative (July 30, 2024), <https://www.doi.gov/pressreleases/secretary-haaland-announces-major-milestones-federal-indian-boarding-school> [<https://perma.cc/S639-Q259>]. Secretary Haaland visited with "members of the Native Hawaiian Community in Kailua, O'ahu on June 26, 2023, to learn more about Native Hawaiian experiences in historical boarding schools established by religious institutions and organizations across the Hawaiian Islands." 2 NEWLAND REPORT, *supra* note 355, at 79. The seven Federal Indian boarding schools the United States supported in Hawai'i between 1819 and 1969 are as follows: Hilo Boarding School, Industrial and Reformatory School (Kawailoa), Industrial and Reformatory School (Keone'ula, Kapalama), Industrial and Reformatory School (Waiale'e, Waialua), Industrial and Reformatory School for Girls (Keone'ula, Kapalama), Industrial and Reformatory School for Girls (Mō'ili'ili, Maunawili, Ko'olaupoko), Industrial and Reformatory School for Girls (Mō'ili'ili, Honolulu), Kamehameha Schools, Lahainaluna Seminary, Mauna Loa Forestry Camp School, and Molokai Forestry Camp School. NEWLAND REPORT, *supra* note 15, at 78. However, Dr. Maile Arvin notes that the report "makes some significant errors in reference to Hawaii – such as designating one school as located at 'Kawailou.' There is no such place as 'Kawailou.' This is likely a misrecognition of an actual place, Kawailoa." Maile Arvin, *Native Hawaiians Are Confronting the Legacies of "Indian Boarding Schools"*, TRUTHOUT (May 26, 2022), <https://truthout.org/articles/native-hawaiians-are-confronting-the-legacies-of-indian-boarding-schools/> [<https://perma.cc/CR6M-SL8Y>].

395. *Federal Indian Boarding School Initiative*, U.S. DEP'T OF THE INTERIOR, <https://www.doi.gov/priorities/strengthening-indian-country/federal-indian-boarding-school-initiative> [<https://perma.cc/F54C-L4BC>] (last visited Feb. 10, 2025).

396. Cope, *supra* note 296; Press Release, Senator Elizabeth Warren, Warren and 18 Colleagues Request Senate Committee on Indian Affairs Hold a Hearing on the Truth and Healing Commission on Indian Boarding School Policies in the United States Act (May 19, 2022) [hereinafter Warren Press Release],

<https://www.warren.senate.gov/newsroom/press-releases/warren-and-18-colleagues-request-senate-committee-on-indian-affairs-hold-a-hearing-on-the-truth-and-healing-commission-on-indian-boarding-school-policies-in-the-united-states-act> [<https://perma.cc/M8DG-8NQ5>].

Elizabeth Warren.³⁹⁷ Three months after Secretary Haaland announced in June 2021 that the Department of Interior would investigate the boarding schools, Senator Warren and Representative Sharice Davids, a member of the Ho-Chunk Nation, reprised the Act, aiming to “build on” Secretary Haaland’s efforts at the department.³⁹⁸ It went nowhere. Now, in its third iteration, the bill passed through the Senate in December 2024 and currently awaits action by the House.³⁹⁹

Following in Canada’s footsteps, the Act proposes to establish “a formal commission to investigate, document, and acknowledge past injustices” of the Federal Indian boarding school system.⁴⁰⁰ It recognizes Native communities “continue to experience intergenerational trauma” from the boarding schools⁴⁰¹ because “[t]he full effects” of past injustices “have never been appropriately addressed.”⁴⁰² The Act tasks the proposed commission with “develop[ing] recommendations for Congress to aid in healing . . . the historical and intergenerational trauma” suffered by Native families and communities, and with creating a forum where survivors can share their experiences.⁴⁰³

Moreover, the Act’s passage would advance or fulfill many of the report’s recommendations. For example, it would empower Congress to subpoena “non-federal entities to obtain more detailed information about the locations of the burial sites,”⁴⁰⁴ one of the second report volume’s research priorities.⁴⁰⁵ It would also aid efforts to identify child remains, to repatriate those remains in a culturally-appropriate manner, and to prevent further “removal of Indigenous children from their families by state adoption, social service, and foster care agencies.”⁴⁰⁶ “Haaland told the committee she hoped [the bill] could work alongside existing efforts by the Interior Department to help Native American communities heal from the impacts of the policies. . . . She emphasized the need for the federal government to act in a holistic way.”⁴⁰⁷

Some Indigenous supporters of the Act believe that a truth and healing

397. Cope, *supra* note 296; Warren Press Release, *supra* note 396.

398. Warren Press Release, *supra* note 396.

399. Truth and Healing Commission on Indian Boarding School Policies in the United States Act, S. 1723, 118th Cong. (2023) (proposing a formal Truth and Healing Commission to investigate, document and acknowledge past injustices caused by the Federal Indian Boarding School System); Benallie, *supra* note 42; Kunze, *supra* note 372.

400. Warren Press Release, *supra* note 396.

401. S. 1723, 118th Cong. (2023).

402. Elizabeth Warren, Sharice Davis & Tom Cole, *One Pager: Truth and Healing Commission on Indian Boarding School Policies in the U.S. Act* (Sept. 29, 2021), https://www.warren.senate.gov/imo/media/doc/One%20Pager_Truth%20and%20Healing%20Commission.pdf [<https://perma.cc/TX9V-6S33>].

403. Warren Press Release, *supra* note 396.

404. Cope, *supra* note 296.

405. NEWLAND REPORT, *supra* note 156, at 95–96; 2 NEWLAND REPORT, *supra* note 355, at 41.

406. Cope, *supra* note 296.

407. *Id.*

commission could amplify survivors' stories so that society at large will finally learn what nearly every Native person in the United States and Canada already knows.⁴⁰⁸ And they identify why it is essential that Congress enact the bill now. Many survivors are elders. "Time is of the essence. We cannot waste any more of their precious life [by] not giving them a forum to share their lived experiences."⁴⁰⁹

Yaqui scholar Rebecca Tsosie, in applying the *social healing through justice* framework, observes that the bill "[does] not supplant the struggle of contemporary justice advocates to secure the end of oppressive structures."⁴¹⁰ Rather, by "explicitly outlin[ing] the continuing harms to Indigenous people," and by "attempt[ing] to secure additional investigation into those forms of injustice," the bill engages in that "pure, unadulterated struggle" to identify the sources and manifestations of systemic oppression so they can be dismantled and rebuilt.⁴¹¹ All as a foundation for subsequent *reconstruction* and *reparation*.

The Republican Party controls all branches of the federal government at the time of this writing, portending delay if not obstruction.⁴¹² *Social healing through justice* accounts for this political reality through its realpolitik pragmatism.⁴¹³ The framework's fifth working principle embraces the practical and warns that ever-shifting "[n]ational politics . . . [and] geopolitical relationships may well dictate what is practically possible at a given moment – with over-arching financial, security and health considerations shaping what can be feasibly done and whether it is worth embracing (or rejecting)."⁴¹⁴ Those at the initiative's helm must consider conditions on the ground and make strategic decisions accordingly if they are to navigate past the ever-present obstacles.

V.

CONCLUDING THOUGHTS

Where does all this leave the United States in its incipient reconciliation process with Native groups for the dispossession of land, culture and life wrought by the Federal Indian boarding school program? It is clear that the United States and Canada share troubled twin histories regarding each country's treatment of its

408. Cope, *supra* note 296. See Haaland, *supra* note 13 ("Some studies suggest that by 1926, nearly 83 percent of Native American school-age children were in the [boarding school] system."); Tsosie, *supra* note 114, at 21–22 ("For every Indigenous person in Canada and the United States who attended a residential boarding school or had relatives who did, [the discovery of hundreds of child remains at boarding school sites] was not surprising news, because many Indigenous children did not come home from boardings schools and were often not accounted for.").

409. Cope, *supra* note 296.

410. See Tsosie, *supra* note 114, at 27–28.

411. See *id.*

412. Nik Popli, *Republicans Maintain House Majority, Clinching Trifecta of Government Control*, TIME (Nov. 13, 2024, 10:30 PM EST), <https://time.com/7174039/republican-house-majority-control-government-trifecta/> [<https://perma.cc/6ZT2-QGVP>].

413. See YAMAMOTO, *HEALING THE PERSISTING WOUNDS*, *supra* note 11, at 24.

414. *Id.* at 25.

Indigenous populations. Each tore Native children from the unwilling arms of their parents. Each embraced futile, racist pedagogies that attempted to “kill the Indian in the child”⁴¹⁵ and to “[k]ill the Indian in him, and save the man.”⁴¹⁶ Each deliberately destroyed Indigenous economies, languages, cultures, families and communities and cheated Indigenous people out of their territories as an integral part of colonialist westward expansion. And each possess lackluster reconciliation track records.⁴¹⁷

Yet Canada appears committed to fulfilling the ninety-four calls to action made by its Truth and Reconciliation Commission nearly a decade ago. In some important respects, reconstructive and reparative acts followed Canada’s *recognition* of the harm and its assumption of *responsibility*. Time will tell if the United States shares Canada’s commitment.

415. *Canadian Prime Minister Apology*, *supra* note 139.

416. Richard Henry Pratt, Captain, The Advantages of Mingling Indians with Whites, Address Before the National Convention of Charities and Correction (June 28, 1892), in *THE RED MAN*, at 2 (Aug. 1892).

A great General has said that the only good Indian is a dead one, and that high sanction of his destruction has been an enormous factor in promoting Indian massacres. In a sense I agree with the sentiment, but only in this: that all the Indian there is in the race should be dead. Kill the Indian in him and save the man.

Id. Pratt mistakenly believed “amalgamation,—killing the Indian and saving the man,” would lead to “health, self-help, economy, hope, increase in every way.” *Id.* He condemned President Jefferson’s genocidal removal policies and land grabbing, ostensibly believing that exposure to whiteness and “western civilization” would benefit Native groups.

At every period we have blindly and remorselessly followed Jefferson.

We have bought the Indians into moving, we have harassed them into moving, we have fought them into moving, and we have imprisoned them upon reservations and then most carefully guarded and hindered their intercourse in any way, shape or manner with us and our best civilization. . . .

Greater than all others combined, in cruelty, in destruction, in inhumanity, is the one particular feature of purchase in our Indian management, and this feature is of such a character as to be hidden from public notice and public criticism, and to be even paraded as a great benefit.

. . .

I wish, if I can, to make you see the Purchase system as I see it—to have you understand the enormous crime we have committed, and are committing against the Indians through this system.

Id. (emphasis added).

417. Yamamoto, Pettit-Toledo & Sheffield, *Bridging the Chasm*, *supra* note 24, at 129 (“Canadian indigenous groups characterized as insincere Canada’s comprehensive reconciliation initiative because of delayed implementation.”); see Biden Apology, *supra* note 37 (“I formally apologize, as president of the United States of America, for what we did. I formally apologize. And it’s long overdue. . . . It’s long, long, long overdue. Quite frankly, there’s no excuse that this apology took 50 years to make.”).

As *social healing through justice* scholars caution, “reconciliation initiated does not signal social healing achieved. Reconciliation is a long-term multi-faceted political, social, and economic process. It bears potential not only for significant benefits but also for incompleteness and regression.”⁴¹⁸

As currently conceived and advanced, the United States Federal Indian boarding school initiative is incomplete. Missing are crucial reconstructive and reparative measures targeting the underlying historical antecedents of present-day disparities suffered by Native groups. What are we—our federal, state and local governments and our community organizations—going to do to repair the persisting damage of land dispossession? Of cultural and physical genocide?

An irrefutably political and sharply divided Supreme Court will probably entertain future challenges to ICWA and tribal sovereignty. An even more fractionalized Congress will decide the fate of the *Truth and Healing Commission on Indian Boarding School Policies in the United States Act*, a bill with the potential to advance the “pure, unadulterated struggle” of *social healing through justice*.

How do we chart a path forward? This formidable question warrants nuanced, likely elastic, answers. I believe we must begin by shifting our collective mindset from “savior” or “ally” to “co-conspirator.”⁴¹⁹ I believe we must realize our own self-interest in repairing this damage.

A well-known appeal to the conscience of the American polity argues the “wrongful systemic exclusion of others” and the attendant “benefits or privileges accrued over generations . . . gives rise to an important degree of responsibility for participating in efforts to repair the damage through generations.”⁴²⁰ *Social healing through justice* scholars observe that democratic governments’ interest in “reclaiming legitimacy as a society actually committed to civil and human rights”⁴²¹ converges with the justice and healing interests of harmed groups.

Black researcher and scholar Heather McGee offers another “interest” for us to consider: *responsibility* to redress harm exists not only because members of a privileged group receive manifold benefits from mass injustice, but because we

418. *Id.* at 128.

419. See MYISHA T. HILL, HEAL YOUR WAY FORWARD: THE CO-CONSPIRATOR’S GUIDE TO AN ANTIRACIST FUTURE (2022) (reframing white folks’ antiracism work as intergenerational healing and thus revealing a white-specific motivation for engaging in interracial activism).

420. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 133–34.

421. YAMAMOTO, HEALING THE PERSISTING WOUNDS, *supra* note 11, at 48. Canada’s Truth and Reconciliation Commission articulated the country’s stake in restoring its legitimacy and stature within the global community in its 2015 report on Canadian residential boarding schools:

In 2015, as the Truth and Reconciliation Commission of Canada wraps up its work, the country has a rare second chance to seize a lost opportunity for reconciliation. We live in a twenty-first-century global world. At stake is Canada’s place as a prosperous, just, and inclusive democracy within that global world.

HONOURING THE TRUTH, *supra* note 13, at 7.

too are harmed by policy-making rooted in white supremacy.⁴²² Take for example the community pool that permanently closes rather than desegregate.⁴²³ Every child and every family loses out.⁴²⁴ The interests of harmer and harmed converge.⁴²⁵

I believe the path forward demands endurance. I believe we should treat reconciliation as a discipline.⁴²⁶ Reconciliation takes time. It asks much of its participants. It is a daily, ongoing practice requiring adaptability and resiliency. And it is how many of the first peoples, first nations and first kingdoms of the so-called United States and Canada redressed harm. Little else can fundamentally heal individuals, communities and societies, both past and present.

The United States faces an opportunity to release itself and the first peoples of this land from the painful bonds ensnaring them. I hope it will rise to the challenge and actualize *social healing through justice* for untold generations of Native survivors of Federal Indian Boarding Schools and their families. As it unbinds Indigenous groups from the harm through land restoration and cultural and economic revitalization, may the United States also be unbound from its damning legacy. May it never perpetuate the same harm again. Ke kala aku nei au iā ‘oe a pēlā nō ho‘i ‘au e kala ia mai ai.

422. Heather C. McGhee, *Racism Has a Cost for Everyone*, TEDWOMEN (Dec. 2019), https://www.ted.com/talks/heather_c_mcghee_racism_has_a_cost_for_everyone [<https://perma.cc/4PYZ-V57A>] (“This zero-sum thinking that what’s good for one group has to come at the expense of another is what has gotten us into this mess. I believe it’s time to reject that old paradigm and realize that our fates are linked. An injury to one is an injury to all.”). Take Gary, for example, a white man whose self-admitted “prejudice has caused him to suffer fear, anxiety, isolation. . . . [I]s it possible that our society’s racism has likewise been backfiring on the very same people set up to benefit from privilege?” *Id.*

423. *See generally* HEATHER MCGHEE, *THE SUM OF US: WHAT RACISM COSTS EVERYONE AND HOW WE CAN PROSPER TOGETHER* (2021); *see also* McGhee, *Racism Has a Cost for Everyone*, *supra* note 422 (“This destruction of public goods was replicated across the country. . . . Towns closed their public parks, pools, and schools all in response to desegregation orders all throughout the 1960s. In Montgomery, they shut down the entire parks department for a decade. . . . Racism has a cost for everyone.”) *Id.*

424. *See* McGhee, *Racism Has a Cost for Everyone*, *supra* note 422.

425. *See id.*

426. As Abolitionist Mariame Kaba opines, “[h]ope isn’t an emotion [nor a sense of] optimism . . . hope is a discipline.” Beyond Prisons Podcast, *Hope is a Discipline with Mariame Kaba* (Jan. 5, 2018), <https://towardfreedom.org/story/archives/activism/hope-is-a-discipline/> [<https://perma.cc/3TVK-YZCA>]. She explains the spiritual origins of the phrase and defines it as “believ[ing] that there’s always a potential for transformation and for change” in any direction, and often “in spite of the evidence and watching the evidence change.” *Id.* Kaba reiterates the idea that change takes time and collective action; she takes the long view of changemaking and situates her organizing work in the issue’s timeline, rendering the pressure more manageable. *Id.*