

Political Apologies and their Challenges in Achieving Justice for Indigenous Peoples in Australia and Canada

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Abstract

In the last 25 years we have witnessed the rise of official apologies. These apologies can advance national reconciliation and justice for victims. They also require the introduction of other reparative measures to overcome the practical effects of past injustices and ensure against their repetition.

Unfortunately, however, this is not how these apologies usually work in practice. As the article argues, state apologies function in a paradoxical way. In making apologies states seek to acknowledge and accept responsibility for past wrongs; at the same time, states use them to limit their liability. The apologies made in Australia and Canada to Indigenous peoples in 2008 will be examined in view of this analysis. Ultimately, the article argues that while these apologies seem to be addressing past wrongs, they have done little to change the *status quo*. In advancing these claims, the article emphasizes the importance of history to the apology-making process.

Key words

Colonization; Indigenous peoples; political apologies; reparative justice; reconciliation

Resumen

En los últimos 25 años ha aumentado el número de peticiones de perdón oficiales. Estas disculpas pueden promover la reconciliación nacional y la justicia para las víctimas. También es necesario introducir otras medidas reparadoras para superar las consecuencias prácticas de injusticias pasadas y evitar su repetición.

Lamentablemente sin embargo, no es así como habitualmente funcionan en la práctica estas peticiones de perdón. Como se defiende en el artículo, las disculpas estatales funcionan de forma paradójica. Al pedir perdón, los Estados buscan reconocer y aceptar su responsabilidad por errores del pasado; pero al mismo tiempo, buscan limitar su responsabilidad. A partir de este análisis, se estudiarán

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las peticiones de perdón hechas en Australia y Canadá a los pueblos indígenas en 2008. Finalmente, se argumenta que aunque estas disculpas parecen estar abordando los errores del pasado, han hecho poco para cambiar el *statu quo*. Al plantear estas cuestiones pendientes, se hace hincapié en la importancia de la historia en el proceso de petición de perdón.

Palabras clave

Colonización; personas indígenas; disculpas políticas; petición de perdón; justicia restaurativa; reconciliación

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1. Introduction

In the last 25 years we have witnessed the rise of official apologies as a popular mechanism used by governments in responding to revelations of human suffering caused by injustices of the past. In theory these apologies can serve a range of functions. In the political context this may include facilitating a process of reconciliation of history and of relationships marred by the infliction of past injustices on oppressed groups in society. These apologies may also serve as a form of reparative justice. As a show of respect to victims, an apology can help restore the dignity of victims violated by past wrongdoing. To be meaningful, the making of an apology would also entail the introduction of other reparative measures aimed at overcoming the practical effects of past injustices and ensuring against their repetition in the future.

Unfortunately, however, this is not how these apologies usually work in practice. As argued in this article, state apologies function in a paradoxical way. In making apologies states seek to acknowledge and accept responsibility for past wrongs; at the same time, states use apologies as a way of limiting their liability for past injustices. The 'Apology to Australia's Indigenous Peoples' delivered in Australia in 2008 by former Prime Minister Kevin Rudd (the 'Rudd Apology') and the 'Apology to Former Students of Indian Residential Schools' delivered in Canada, also in 2008, by former Prime Minister Stephen Harper (the 'Harper Apology') will be examined in view of this analysis. Both apologies are focused on specific periods in history when each nation was pursuing racist policies of assimilation that authorized the forcible removal of Indigenous children from their families, creating what is now commonly referred to as the Stolen Generations in Australia, and the Indian Residential Schools system in Canada. In acknowledging the harms suffered by the Stolen Generations and the survivors of the Residential Schools system, both Rudd and Harper appeared to convey an understanding that the race-based practice of separating Indigenous children was wrong. In these respects both apologies appear to be positive steps in addressing past wrongs. But a closer analysis will reveal that they are fatally flawed in failing to address the history of colonization as the source of injustices experienced by Indigenous peoples.

In reaching this conclusion, the paper illuminates the importance of history in the apology-making process in providing the basis for understanding the nature of past injustices and ways of overcoming them. However, the problem continues to be one where a disjuncture exists in the states' interpretation of history when compared to Indigenous perspectives. In this respect, the reconciliation of history may be a vital function of these apologies, but in failing to achieve this they have also failed in achieving justice for Indigenous peoples.

2. The functions of apologies: interpersonal and political apologies compared

Discussions of interpersonal apologies often start by recounting the genesis of the modern-day act of apologizing as a speech act which is constituted by the expression of sorrow in response to a wrong (Tavuchis 1991 pp. 22, 109, Govier and Verwoerd 2002, p. 68). In line with Austin's 'speech act' theory on performatives, apologies have been categorized as 'behabitives' whereby the speaker expresses sorrow and regret for moral wrongdoing and seeks forgiveness from the wronged party (Austin 1975, p. 160-161, Tavuchis 1991, p. 22). According to this understanding, the sincere expression of sorrow is essential for making a genuine interpersonal apology. In making a genuine apology the relationship between the parties may be restored. The 'wider social web' in which the parties are enmeshed may also benefit from an apology (Tavuchis 1991, p. 13, Coicaud 2009). Essential to achieving these ends is forgiveness. According to Tavuchis, a striking feature of an apology is its power to inspire forgiveness on the part of the person wronged: 'the helpless offender, *in consideration for nothing*

more than a speech, asks for nothing less than the conversion of righteous indignation and betrayal into unconditional forgiveness and reunion' (Tavuchis 1991, p. 35). According to this understanding of the workings of an apology, the victim is positioned as the central figure of the apology. Only the victim can decide whether to forgive or not, and it is not always certain that an apology will be greeted with forgiveness (Minow 1998, p. 115). To apologize, as Trudy Govier claims, involves a shift in power. The 'one who had power to harm is now opening himself or herself to the other', leaving him or her 'vulnerable to the responses of the other' (Govier 2006, p. 70). Accordingly, 'survivors secure a position of strength, respect, and specialness (Minow 1998, p. 115).

However, if an apology is to work its power and achieve 'forgiveness and a restored relationship between two parties', it would essentially be by making *moral amends*: 'To make moral amends, we may apologize, expressing *other-oriented moral regret* and appealing for forgiveness from the person whom we have injured' (Govier and Verwoerd 2002, pp. 68-69, cf Taft 2000, p. 1137). As Govier and Verwoerd argue a sincere 'I'm sorry' is a sign of acknowledgment: first, the offender is acknowledging that the act was wrong and they are responsible for it; second, the offender is acknowledging '*the moral status of the victim(s), the primary person(s) to whom he [sic] apologizes*', namely, that the victim did not deserve to be ill-treated by the offender; and third, the offender is acknowledging the legitimacy of the victim's feelings of resentment and anger (Govier and Verwoerd 2002, p. 69).

Notably, however, of all the things an apology can do, Govier and Verwoerd place most significance on the power of an apology to 'unsay' the original message of insult (Govier and Verwoerd 2002, p. 72). To succeed in this aim, the offer of an apology would need to be motivated by the offender's empathy with the person wronged and seeing the wrongful actions in the same way. As Govier and Verwoerd have put it:

apology presupposes moral agreement between the wrongdoer and the [wronged person]: *the act or acts were wrong*. By renouncing his [sic] own act, the wrongdoer joins the victim in condemning it and others of its kind. One might think here of the wrongdoer as taking the initiative, moving to stand next to the victim so as to look through his [sic] eyes at the wrongful actions (Govier and Verwoerd 2002, p. 70).

The remorseful acknowledgment of wrongful acts in an apology has moral value for victims by helping them restore their sense of self-worth and self-respect (Gill 2000, p. 16). In return, the victim may become open to forgiving the wrongdoer, improving, if not restoring, relations between them (Gill 2000, p. 17, Coicaud 2009). Indeed, though there is no obligation for victims to forgive, they may in fact develop a sense of moral duty to respond positively to the apology and accept it (Funk-Unrau 2004, p. 3).

Viewed in this way, the importance of the role of the victim in the apology process comes clearly into view. In making moral amends through an apology, the wrongdoer is seeking the victim's forgiveness. The potential for forgiveness is made possible by the apologizer's demonstration of remorse for the wrong — through the expression of other-oriented regret the victim becomes the primary consideration.

And yet it is important to point out, as some have done, that words alone may not be enough to appease the victim. Even the most sincere 'I'm sorry' will not be the end of the matter. Particularly in cases of serious wrongdoing an offer of repair has also been considered a necessary component of an apology. This is a conclusion that has been reached in the research across the social sciences and the humanities (Scher and Darley 1997, Govier and Verwoerd 2002, p. 72, cf Taft 2000, p. 1140). According to this view, any attempt at making moral amends must be supported by 'practical amends' if wrongdoers are to really *mean* they are sorry (Govier and Verwoerd 2002, p. 72). An apology that is not backed by concrete measures of reparation would, at best, seem hollow and insincere and, at worst, likely add

further insult to the original wrongdoing. Thus an apology is more than a speech act if by that phrase it is understood as a 'one-off' event. Instead, an apology may be better understood as initiating a process of transformation that will extend into the future. As Govier has explained, an apology 'looks *backward* to what has been done and *forward* to commitment to reform, practical amends, and a better relationship' (Govier 2006, p. 69). In summary, then, the central aspects of a 'full-fledged moral apology' are: '*acknowledgment* to the person harmed that one is responsible for doing something that was wrong, the expression of *sorrow*, and a commitment to reform and practical amends' (Govier 2006, p. 69). The sincere acknowledgment and acceptance of responsibility for past wrongs, and the promises for reform and forbearance in the future are the key elements of a moral apology.¹

Similar observations have been made about state apologies (Tavuchis 1991, Gill 2000, Govier and Verwoerd 2002, Govier 2006, p. 68-69; Smith 2008, Thompson 2008, Coicaud 2009, cf Celermajer 2009). Most notably, the reconciliation of relationships has been identified as a key function of official apologies, as it has been for interpersonal apologies. For instance, in their discussion of group apologies, Elazar Barkan and Alexander Karn hark back to Nicholas Tavuchis' seminal work in the field to illuminate how political apologies — 'these delicate "speech acts"' — 'could repair damaged social relations and allow the parties to past injustices to go on with their lives'. In their view, an apology may help bridge the gap 'between the victim's need for acknowledgment and the perpetrator's desire to reclaim his humanity' (Barkan and Karn 2006, p. 5). Furthermore, they have claimed that the sincere expression 'I'm sorry' in an official apology may be appropriate in cases where conflict, distrust and misunderstanding can continue to impede the development and maintenance of co-operative partnerships. As they have argued:

A sincere expression of contrition, offered at the right pitch and tenor, can pave the way for atonement and reconciliation by promoting mutual understanding and by highlighting the possibilities for peaceful coexistence. ... By approaching their grievances through a discourse of repentance and forgiveness, rivals can explore the roots and legacies of historical conflict as a first step toward dampening the discord and frictions they produce (Barkan and Karn 2006, p. 7).

The effects could be far-reaching: '[i]n the best cases, the negotiation of apology works to promote dialogue, tolerance, and cooperation between groups knitted together uncomfortably (or ripped asunder) by some past injustice' (Barkan and Karn 2006, p. 7).

Evidently, in Barkan and Karn's view, a sincere expression of remorse in response to past wrongs in an official apology can engender mutual healing between groups, inspiring forgiveness amongst victims and reconciliation of the relationships between victims and wrongdoers. Support for these claims can be found in the responses of Indigenous peoples to the Rudd Apology. Stolen Generations survivor, Murray Harrison, remarked: '[i]t's been absolute closure. I was taken when I was 10... This apology was something I really needed to hear' (Korff 2014). Similar sentiments were expressed in Canada in response to the Harper Apology. For instance, prominent Residential School survivor, Willie Blackwater, wept through much of the 10 minute speech made by Harper: "'If I am able to forgive my perpetrator, I can forgive Canada", Blackwater said after the apology he felt was sincere and very moving' (Ottawa Citizen 2008).²

¹ These appear to be the central elements of an interpersonal apology. However, different researchers have found some variation in the sorts of things that can be included in an apology (compare Govier 2006, p. 68-69; Gill 2000, p. 12-15; Smith 2008, p. 140-142).

² Willie Blackwater is best known for speaking out with other residential school survivors about the rape and beatings he suffered as a child at the Port Alberni Residential School on Vancouver Island in British Columbia. These revelations led to the criminal conviction of his former dormitory supervisor Arthur Plint who was sentenced to 11 years imprisonment: *R v Plint* [1995] BCJ No 3060. Civil proceedings in the Supreme Court of Canada were subsequently brought by a number of former students of the Alberni

And, like interpersonal apologies, the effects of official apologies may extend beyond the individuals involved and be felt throughout the broader community. An official apology delivered at the right pitch may soften the broader public's attitudes towards victim groups and vice versa. Indeed, the potential of official apologies to assist in promoting reconciliation is of particular importance in settler-colonized nations as far as race relations between Indigenous and non-Indigenous peoples are concerned. As Lise Balk Kin has observed in response to the 'Apology to Native Peoples of the United States' (the 'US Apology Resolution'), an apology 'could provide a much-needed shift in public attitudes toward tribes in the country, as well as attitudes of Native people toward the federal government' (Kin 2011).

But, in spite of the overlap in understanding of how interpersonal and official apologies can function, many factors have been identified that can make them distinct from one another, leading some to question the extent to which analyses of interpersonal apologies can effectively enhance our understanding of state apologies (Celermajer 2009, Smith 2008, Thompson 2008). As will become clearer below, their differences are explicable in terms of the functions they serve: the *moral* functions of an interpersonal apology on the one hand, and the *political* functions of a state apology on the other. In this sense, the value of official apologies rests on the functions they serve to enhance the political life of the nations in which they are made.

In examining the political aspects of official apologies it is first important to recognize that they are made in the political context where both the 'apologizer' and 'apologee' are collective subjects. The apology itself is responding to a public wrong or wrongs committed against specific members of a group in the past (Celermajer 2009, pp. 14-15). As a public act, the political nature of the apology has implications for the nation as a whole. In this respect the potential scope of the functions of a state apology could extend further than that of an interpersonal apology: not only relationships but the histories of entire nations are at stake. As Kathleen Gill has noted, these apologies have 'a role to play in the struggle to create history, to establish a certain version of events as the "official story"' (Gill 2000, p. 22). Others have gone so far as to claim that we live in 'a time that seeks to establish political truth ... [and] apology has become the West's own version of a truth commission' (Howard-Hassmann and Gibney 2008, p. 1).

Thus, if one of the functions of a state apology is to promote reconciliation, that may be as much about improving relationships marred by conflict as it is about reconciling the perpetration of past injustices in the present history of the nation (Weyeneth 2001). An apology for past injustices serves as acknowledgment of those injustices. As Tavuchis remarked, the 'principle function of [a collective apology] has little, if anything, to do with sorrow or sincerity but rather with putting things on a public record' (Tavuchis 1991, p. 117). In that regard, the official acknowledgment of historic injustices in a state apology may contribute to reconciling the past in the present and correct the historical record of a nation (Minow 1998, p. 116). Interconnected with this function is a state apology's ability to raise awareness in the general population of the facts of history as those who have suffered harm experienced them. Present generations of the survivors of historic injustices may also feel vindicated when their understanding of historical events — their truth about history — is officially honoured in an apology (Waldron 1992, p. 6, Minow 1998, p. 114, Celermajer 2006, pp. 174-175, Govier 2006, pp. 70-1, Nobles 2008, pp. 36-37).

Residential School. Though *Plint* was named as a defendant, the main issue turned on whether damages for sexual assault should be apportioned between the United Church and the federal government. The Court ultimately found the federal government wholly responsible for these harms: *Blackwater v Plint [No 1]* (1998) 52 BCLR (3d) 18; *Blackwater v Plint [No 2]* (2001) 93 BCLR (3d) 228; *Blackwater v Plint [No 3]* (2003) 235 DLR (4th) 60; *Blackwater v Plint [No 4]* (2005) 258 DLR (4th) 275. See Miller (2001).

However, it has generally been accepted that an official apology should not merely function to correct the historical record. And, if all that an apology did was raise awareness of events in a nation's history that up until that time had been repressed within the nation's collective memory then an apology may not be an appropriate gesture. Public statements of acknowledgment of these events would adequately fulfil this function (Thompson 2008, p. 33). Given the severity of the wrongdoing that these apologies are acknowledging, there can (and should be) more to an official apology than 'putting things on the public record'.

In this respect, it is important to recall that a significant feature of an apology (whether at the interpersonal or political level) is the acceptance of responsibility for the harm done. As Minow put it: '[f]ull acceptance of responsibility by the wrongdoer is the hallmark of an apology' (Minow 1998, p. 115). However, this may prove to be the most challenging feature of an apology. In the case of an official apology for historic injustices, the acceptance of responsibility would entail nothing less than the acceptance of transgenerational responsibility for past wrongs, which may not be immediately forthcoming, as the history of the apology movement in Australia shows (Celermajer 2006, Thompson 2008). Moreover, the acceptance of responsibility for past wrongdoing implies acceptance of a duty to make amends for any harm caused, giving governments even more reason to resist the calls for an apology as the Australian context also shows. But when these obstacles are overcome the true value of official apologies in contributing to the just resolution of past wrongs may be finally realized (Coicaud 2009). According to this understanding it is their capacity to do justice which is the basis for their contribution in advancing national reconciliation — not the sincere expression of remorse as is the case for interpersonal apologies (Digeser 2001, pp. 4-6, Thompson 2008).

So understood, an official apology can be viewed as functioning as a measure of reparative justice in accordance with the international norms relating to the making of reparations for gross violation of human rights abuses (Bilder 2008). According to these norms, apologies are listed among those measures of reparation aimed at satisfaction and the non-repetition of harm. The way these measures have been separated from the other measures of reparation, such as restitution, compensation and rehabilitation, suggests that each measure fulfils different aims and expectations. As Thompson has claimed, drawing on Govier and Verwoerd's analysis of the 'moral apology': 'apology as part of reparative justice answers to the harm that injustice causes to the dignity of the victims' (Thompson 2008, p. 34).

Danielle Celermajer has offered an even broader understanding of the role of apology as a measure of reparative justice that takes account of the political context in which these apologies are being made. In her view, the reparative justice that an apology performs is connected 'to address the damage to the identity of the victim and more broadly the social and political messages about history, identity and right' (Celermajer 2006, p. 175). As Celermajer has explained, the inclusion of 'apology' in the list of measures aimed at satisfaction and non-repetition of harm suggests these measures 'operate within the *symbolic* or *discursive* dimension of harm' (Celermajer 2006, pp. 174-175). Thus, for instance, providing an official forum for the revision of national history and acceptance of the victims' version of historical facts, which has been historically denied, could be understood as one of the *symbolic* or *discursive* effects of making an apology.

However, the significance of Celermajer's observations may relate more to how an official apology could function politically as a discursive strategy for reconceptualizing the identities, not only of survivors, but also of the group or institution making the apology and the relationship that exists between them. From the standpoint of victims, an interpersonal apology may, through the demonstration of other-oriented regret, vindicate their moral worth, but a state apology could go

further. Understood as a strategy for identity transformation in the sphere of politics, an official apology:

makes clear that past treatment of the group never was morally justified. In an official apology, the highest political authorities acknowledge that the culture of the victim group is not now, and never was, morally inferior to that of the offender group. The very identity of the victim group may be reshaped in this process (Gill 2000, p. 23).

In particular with respect to Western nation states and their treatment of ethnic minority groups, wrongdoing against these groups was often legitimized on the basis of Western superiority and the corresponding inferiority — as the Other — of the non-Western cultural groups (Kymlicka 1995, pp. 5-6). Apologies for wrongdoing committed against these groups would signal that the superiority-inferiority dichotomy is no longer tenable. In these respects, the apology functions as a symbol of political inclusion — of belonging — for those to whom it is being addressed, with the potential of redefining the political membership of the nation through the validation of victims' understanding of history in the apology (Nobles 2008, Lofström 2011, p. 96).

In the context of settler-colonized nations, apologies that are made to Indigenous peoples would entail acceptance that colonization in its past and present manifestations is wrong. Notably, although Nobles is not explicit on this point, in advancing her 'membership theory of apology' in her book *The Politics of Official Apologies*, her theory reads as though she too considers that an apology to Indigenous peoples would respond to the history of colonization (Nobles 2008). Colonization, understood as a process aimed at eliminating Indigenous peoples through the persistent denial of their political autonomies, is generally accepted by settler colonial theorists to be the source of the injustices experienced by Indigenous peoples (Macoun and Stakosch 2013, p. 429). Thus, an apology to Indigenous peoples would signal that attempts at erasing their political autonomy and cultural identities on the basis of their 'purported cultural deficiencies and racial inferiority' have been wrong (Rose 1996, Nobles 2008, p. 29). Once that this history is acknowledged in an apology the obligations that states have towards Indigenous peoples would require reassessment (Nobles 2008, p. 33). An offer of an official apology would signify that the old way of doing things has failed, providing justifications for changes in the content and direction of state policies and laws in line with Indigenous peoples' demands for justice. This would lead to a change in direction in Indigenous policies and the introduction of new political arrangements that support Indigenous practices and ways of doing things (Nobles 2008, p. 29). As Nobles has pointed out with respect to apologies to Indigenous peoples: 'Apologies ... are admissions of past injustices that can be ... pressed into service, providing justifications for changes in the content and direction of state policies' (Nobles 2008, p. 29). This would entail recognition of Indigenous group based claims, and strengthening demands for new political arrangements that are better aligned with Indigenous peoples aspirations for political and cultural autonomy (Nobles 2008, pp. 29, 33). In these ways an apology could contribute to the establishment of 'nation-to-nation' arrangements in acknowledgement of Indigenous peoples' claims to sovereignty and unjust dispossession (Nobles 2008, p. 20). Indeed, some have claimed that state apologies to Indigenous peoples should act as a limit on state power, preventing them from misusing their powers in future, and opening up the possibility for the re-conceptualization of state sovereignty in ways that may better accommodate Indigenous conceptions of sovereignty and self-determination (Reilly 2008, see also Fagenblat 2008).

Specifically, with respect to settler-colonized nations, race relations between Indigenous and non-Indigenous peoples could be completely transformed not only at an attitudinal level as claimed by Kin (2011) above, but at the political level also. When once the state depended on 'the category of the uncivilised native to affirm its own claim to civil and sovereign legitimacy' (Celermajer 2006, p. 161), the

revelations of the history of colonization experienced by Indigenous peoples and acknowledged in an apology could provide a new foundation for the legitimacy of the nation through the accommodation of their conceptions of sovereignties and rights.

In this brief outline, it is evident that an apology to Indigenous peoples requires more than words - it would also require active change. In theory at least, any scope for change lies in the understanding of apology-making as signalling the acceptance of responsibility for past wrongs, requiring the state to engage in a process of reform and to refrain from repeating the wrongdoing in the future. In apology discourses the acceptance of responsibility in an apology is generally interconnected with the identification and affirmation of the norms breached. In an official apology it is said that the acceptance of responsibility could 'help reinforce acceptance of the violated standards' and 'raise the moral threshold' of society more broadly (Brooks 1999a, p. 3, Minow 1998, p. 116, Gill 2000, p. 20, Celermajer 2009). Specifically with respect to Indigenous peoples it has been argued that 'the apology officially delegitimizes a political cultural norm that says that treating Aboriginal people as less than full citizens and human beings is acceptable' (Celermajer 2006, p. 176). Presumably, reform would then be underpinned by norms that accord Indigenous peoples respect as Indigenous peoples and protection of their rights as Indigenous peoples also.

In these respects it is evident that the political effects of official apologies are significantly different (and can be far more profound) than interpersonal apologies, when understood in terms of the contributions they can make to processes of national reconciliation and advancing victim demands for justice. In both contexts, the acceptance of responsibility for past wrongs in an apology may serve to vindicate the victims understanding of the wrongdoing and deliver a measure of justice to them by conveying the message that they did not deserve to be treated unjustly. But the potential effects of a political apology are obviously more far-reaching. In political terms the understanding of the moral apology as demonstrating other-oriented regret would entail committing to a course of action whereby Indigenous claims for justice would be upheld. This would mean re-evaluating the nation's position on race relations and the rights of Indigenous peoples. Indeed, in this regard, the ideal would be for an official apology to signal a break from the past and start a completely new relationship between Indigenous and non-Indigenous peoples of those nations. An apology is 'the first step' — and not the end — of the process of reconciliation and would require future action in ensuring their political autonomy and protection of their rights if it is to be accepted as a genuine attempt at reconciliation.³

It is further evident that the effectiveness of a political apology seems to depend, not on the demonstration of remorse in seeking forgiveness, but on whether they have been offered in conjunction with other forms of redress (if they have not already been offered) and maintaining their assurances against the repetition of harm in the future. This seems to be especially true in the case of state apologies to Indigenous peoples.⁴

³ From the perspective of many members of the Stolen Generations the apology was seen as the first step on a long journey of healing. This was the message conveyed when, on the evening before the apology, candles spelling the words 'Sorry — the first step' were lit on the parliamentary lawn (Stolen Generations Victoria 2008, p. 7).

⁴ In that regard apology in the context of making reparations to Indigenous peoples tends to be treated as one of many of the measures of reparations required to address past wrongs. See generally the essays in Roy L. Brooks (1999b) and Federico Lenzerini (2008). However, by no means is it universally accepted that public apologies should be offered in conjunction with additional forms of reparations. For example, Michael Cunningham (1999, p. 291), in emphasizing the importance of sincerity and acceptance of the apology for improving relations between the parties, has argued that reparation in money or goods may follow, but can occur independently from apology. In contrast, for example, Susan Alter (1999) has claimed that some concrete form of reparation is one of the essential elements of the apology process. Danielle Celermajer (2006, p. 155) has adopted a different perspective altogether,

The emphasis on these factors may be explained by the fact that state apologies are delivered publicly by spokespersons (for example, heads of state) on behalf of collectives. Responsibility for wrongdoing, in an official apology, is not being accepted on behalf of the individual offering the apology but on the basis of responsibility accepted by the collective. In this respect it has been argued that the authenticity of a state apology does not depend on

the *individual agency* of the spokesperson and his or her *personal and tearfully expressed remorse*. Rather ... the apology requires a valid representational role based on consensus within the collective and the implementation by that collective of the commitments implied in the apology (Govier 2006, p. 73).

Thus, the emphasis is on the need for an appropriate official - an authoritative voice - who 'acknowledges and takes responsibility for an injustice committed (or allowed) by officers of the state, and commits governments to avoid such injustices in the future' (Thompson 2008, p. 36). As some have suggested, the significance of these apologies lies in the power of the authoritative voice delivering the apology to commit the nation to action and change (Celermajer 2006, p. 176).

The significance of the spokesperson role and the commitments that are made when offering an official apology has led some to reconsider the classification of these apologies in terms of Austin's speech act theory. In this regard, state apologies have been found to fit not within Austin's categories of performatives as 'behabitives' (the expression of emotion), but have been classed as *commissives*, which include promises, contracts and oaths (Austin 1975, pp. 157-158, Celermajer 2006, p. 176, cf Schmidt 2010, p. 61). Thus, unlike interpersonal apologies where emphasis is on the expression of remorse as essential for the reconciliation of relationships, political apologies have been understood as functioning to promote harmonious relationships through official acknowledgment of responsibility for past wrongs, and the making of commitments to avoid such injustices in the future (Thompson 2008). Political apologies provide opportunities for nations, through their spokesperson representatives, to reinvigorate their commitment to obligations that are considered essential for maintaining their national identities. So understood, a political apology may lead to 're-covenanting' the nation. According to Celermajer: 'the apology is ... an acknowledgment of a collective failure to live up to an ideal ethical principle and [acts as] ... a performative declaration of a new commitment, a new covenant for *now* and into the future' (Celermajer 2009, p. 247).

3. The Rudd and Harper apologies to indigenous peoples

At first glance, the Rudd and Harper apologies appear to follow the contours of the model for making apologies discussed above. Each of them is engaged in reconciling history and relations in settler-colonized nations. These reconciliatory aspects are interlinked with achieving justice for Indigenous people. Each of them in a way conveys an understanding of history that accords with the understanding of victim survivors. In this regard, each of them can be seen as showing respect to victims by vindicating their version of history and restoring their dignity through the acceptance of responsibility for the injustices they have experienced. And finally, they each outline an agenda for reform in ensuring against repetition of harm and forbearance in the future.

If the basis for reconciliation is 'the truth', we can see how each apology is engaged in advancing reconciliation in the way they substantiate the facts of past injustices inflicted on Indigenous peoples. The declaration in each apology that events in the past were wrong is important in this respect. In the Rudd Apology, the wrongfulness of past actions relate generally to the 'past mistreatment' of

arguing that an apology is less about sentiment and compensation and is more a means by which a nation can identify and reconsider the norms underpinning its political culture that supported the conditions for the wrongs to occur in the first place.

Australia's Indigenous peoples and more specifically 'on the mistreatment of those who were Stolen Generations - this blemished chapter in our nation's history' (Rudd 2008, p. 167). In this respect, he moves from acknowledging the wrongfulness of 'the laws and policies of successive Parliaments and governments that have inflicted profound grief, suffering and loss on these our fellow Australians' to acknowledging 'especially' the wrongfulness of the laws and policies that authorized 'the removal of Aboriginal and Torres Strait Islander children from their families, their communities and their country' (Rudd 2008, p. 167). In establishing the historical record of past wrongs inflicted on members of the Stolen Generations, he refers first to the personal experience of Stolen Generation survivor, Nanna Fejo, who, according to Rudd's account, had been wrongly removed from her warm and loving family at age four in 1932 (Rudd 2008, p. 168). The veracity of her story is further evidenced by Rudd who identifies it as one of the 'thousands, tens of thousands, of them: stories of forced separation of Aboriginal and Torres Strait Islander children from their mums and dads over the better part of a century' (Rudd 2008, p. 168). These stories are further substantiated by Rudd's reference to *Bringing Them Home* that contains first-hand testimonies of Stolen Generation survivors (Rudd 2008, p. 168).

In addition to these subjective accounts, Rudd presents objective criteria to measure the extent of the harm by referring to specific statistics that confirm the number of children removed between 1910 and 1970 to be in the vicinity of 'between 10 and 30 per cent', estimating the total number of children to be 50,000 (Rudd 2008, p. 169). Significantly, he also acknowledges the source of the wrongdoing 'as part of a broader policy of dealing with 'the problem of the Aboriginal population' (Rudd 2008, p. 169). He specifically condemns the fact that those responsible for the removal of Indigenous children held the view that by removing the children, 'the problem of our half-castes ... will quickly be eliminated by the complete disappearance of the black race ...' (Rudd 2008, p. 169).

The Harper Apology is specifically addressed to survivors of the Indian Residential Schools and in a similar vein to the Rudd Apology's acknowledgement of the harms suffered by the Stolen Generations, Harper identifies how the harms experienced by Residential School survivors stem from the policy of forcibly removing Indigenous children from their families. In providing an account of the harms suffered by these children he notes how:

Many were inadequately fed, clothed and housed. All were deprived of the care and nurturing of their parents, grandparents and communities. First nations, Inuit and Métis languages and cultural practices were prohibited in these schools. Tragically, some of these children died while attending residential schools, and others never returned home (Harper 2008, p. 6850).

He, too, also provides an objective measure of the extent of harm: 'For more than a century, Indian residential schools separated over 150,000 aboriginal children from their families and communities' (Harper 2008, p. 6849). Furthermore, Harper acknowledges the role of the Canadian government in the administration of the policy: 'The Government of Canada built an educational system in which very young children were often forcibly removed from their homes and often taken far from their communities' (Harper 2008, p. 6850). Harper expands on the government's involvement in the 'development and administration of these schools' that began in the 1870s, noting that there were 'one hundred and thirty-two federally supported schools located in every province and territory except Newfoundland, New Brunswick, and Prince Edward Island' (Harper 2008, pp. 6849-6850).

He also exposes the rationale for the policy was to fulfil 'two primary objectives' to 'remove and isolate children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture' (Harper 2008, p. 6850). He acknowledges that these assumptions were based on the understanding that 'aboriginal cultures and spiritual beliefs were inferior and unequal' (Harper 2008, p. 6850). Notably, he refers to the motivation behind the policy which was to

'kill the Indian in the child' and condemns it outright: 'Today, we recognize that this policy of assimilation was wrong, has caused great harm, and has no place in our country' (Harper 2008, p. 6850).

In establishing the historical record in these ways, both Rudd and Harper interlink their acknowledgement of the wrongdoing with their acceptance of responsibility for the harms suffered as a result of the state-sanctioned practice of forcibly removing Indigenous children from their families. In the Rudd apology, we see this occur immediately in the preamble, where, in listing the harms suffered sentence by sentence, Rudd punctuates each with the phrases 'we apologise' or 'we say sorry' (Rudd 2008, p. 167). But it is in the body of the apology that Rudd offers an unequivocal apology to the Stolen Generations for the harms they have suffered:

To the stolen generations, I say the following: as Prime Minister of Australia, I am sorry. On behalf of the government of Australia, I am sorry. On behalf of the parliament of Australia, I am sorry. I offer you this apology without qualification. We apologise for the hurt, the pain and suffering that we, the parliament, have caused you by the laws that previous parliaments have enacted. We apologise for the indignity, the degradation and the humiliation these laws embodied. We offer this apology to the mothers, the fathers, the brothers, the sisters, the families and the communities whose lives were ripped apart by the actions of successive governments under successive parliaments. In making this apology, I would also like to speak personally to the members of the stolen generations and their families: to those here today, so many of you; to those listening across the nation—from Yuendumu, in the central west of the Northern Territory, to Yabara, in North Queensland, and to Pitjantjatjara in South Australia (Rudd 2008, pp. 169-170).

It is also notable that his acceptance of responsibility extends to the intergenerational responsibility of former Australian governments, as he acknowledges that 'the forced removal of Aboriginal children was happening as late as the early 1970s' (Rudd 2008, p. 169). In this way, he implicates current members of Parliament who were first elected during that time. In establishing intergenerational responsibility, Rudd asserts the fact that: 'The uncomfortable truth for us all is that the parliaments of the nation, individually and collectively, enacted statutes and delegated authority under those statutes that made the forced removal of children on racial grounds fully lawful' (Rudd 2008, p. 169).

Harper also extends a rather lengthy apology to the Residential School survivors on behalf of 'the Government of Canada and all Canadians' in which he identifies the harms they have suffered and for which is now sorry:

I stand before you, in this chamber so central to our life as a country, to apologize to aboriginal peoples for Canada's role in the Indian residential schools system.

To the approximately 80,000 living former students and all family members and communities, the Government of Canada now recognizes that it was wrong to forcibly remove children from their homes, and we apologize for having done this.

We now recognize that it was wrong to separate children from rich and vibrant cultures and traditions, that it created a void in many lives and communities, and we apologize for having done this.

We now recognize that in separating children from their families, we undermined the ability of many to adequately parent their own children and sowed the seeds for generations to follow, and we apologize for having done this.

We now recognize that far too often these institutions gave rise to abuse or neglect and were inadequately controlled, and we apologize for failing to protect you.

Not only did you suffer these abuses as children, but as you became parents, you were powerless to protect your own children from suffering the same experience, and for this we are sorry.

...

We are sorry (Harper 2008, p. 6850).

Thus, in each apology the acceptance of responsibility is underlined by the repetition of the word 'sorry' for the harms suffered. The resolve of each leader is further evidenced by their commitments to forbearance in the future: Rudd declaring in the preamble that 'the injustices of the past must never, never happen again' (Rudd 2008, p. 167), and Harper announcing '[t]here is no place in Canada for the attitudes that inspired the Indian residential schools system to ever prevail again' (Harper 2008, p. 6850). Furthermore, with each wrong acknowledged, and acceptance of responsibility for the harms suffered, we can see both Rudd and Harper reinforce their understanding of the history of past wrongs by linking them to the understanding of survivors of the harms they have suffered. Notably, in this regard, their reactions appear, not to be motivated by feelings of guilt or shame as one might expect (cf Gaita 1999, p. 87-106) but may be better understood as an empathetic response to Indigenous peoples' suffering of harm (cf Muldoon 2009, pp. 3-4).

For instance, after Rudd gives his account of the facts of history (the Nanna Fejo story, the stories contained in the *Bringing Them Home* report, etc), he declares:

There is something terribly primal about these firsthand accounts. The pain is searing; it screams from the pages. The hurt, the humiliation, the degradation and the sheer brutality of the act of physically separating a mother from her children is a deep assault on our senses and on our most elemental humanity. ...These stories cry out to be heard; they cry out for an apology (Rudd 2008, p. 168).

Similarly, Harper's acknowledgement and acceptance of responsibility for past harms is expressed in ways that could appeal to survivors. Among these, he acknowledges how the Indian Residential Schools policy had a 'profoundly negative...lasting and damaging impact on aboriginal culture, heritage and language'; that any positive experiences of the Residential Schools have been 'far overshadowed by tragic accounts of the emotional, physical and sexual abuse and neglect of helpless children, and their separation from powerless families and communities'; and that 'the legacy of Indian residential schools has contributed to social problems that continue to exist in many communities today' (Harper 2008, p. 6850). Moreover, he appeals directly to Residential School survivors in acknowledging how, for instance: 'The burden of this experience has been on your shoulders for far too long. The burden is properly ours as a government, and as a country' (Harper 2008, p. 6850). Most significantly in this regard is his implicit acknowledgement of the role of survivors to the apology's ultimate success. As noted previously, it is common in apology discourse to measure the effectiveness of an apology according to whether victims forgive the wrongdoer or not. Harper appears conscious of this in stating: 'The Government of Canada sincerely apologizes and asks the forgiveness of the aboriginal peoples of this country for failing them so profoundly' (Harper 2008, p. 6850). This could be read as a willingness on his part to be open to the responses of survivors.

Through these displays of respect for the Indigenous peoples in the audience, we can see how national reconciliation and justice are inextricably linked in both the Rudd and Harper apologies through the acknowledgment of harm as seen through the eyes of the victims and survivors. However, they both refrain from presenting their respective apology as a form of compensation or as a way of undoing the harm done. Rudd seems clear about this when he addresses the Indigenous members in the audience by acknowledging: 'There is nothing I can say today that can take away the pain you have suffered personally. Whatever words I speak today, I cannot undo that. Words alone are not that powerful; grief is a very personal thing' (Rudd 2008, p. 170). But, in turn, he also addresses the non-Indigenous members of the audience to 'imagine if this had happened to us. Imagine the crippling effect. Imagine how hard it would be to forgive' (Rudd 2008, p. 170). In this way we can see Rudd looking at the situation from both sides -

from the point of view of the Stolen Generations and non-Indigenous Australians - and bridging the gulf between them by forging a shared understanding that what happened to the Stolen Generations was wrong. Thus, Rudd presents the Apology as though it is the missing link that will unite all Australians: 'My proposal is this: if the apology we extend today is accepted in the spirit of reconciliation in which it is offered, we can today resolve together that there be a new beginning for Australia. And it is to such a new beginning that I believe the nation is now calling us' (Rudd 2008, p. 170).

It is notable that in forging this new beginning for Australia, Rudd employs the metaphor of 'building a bridge between Indigenous and non-Indigenous Australia' and that by crossing that bridge together they will 'embrace a new partnership' between them (Rudd 2008, p. 170). It is at this moment that he outlines the practical measures of redress that will be implemented, noting that 'unless the great symbolism of reconciliation is accompanied by an even greater substance, it is little more than a clanging gong' (Rudd 2008, p. 170). The one he places most emphasis on is 'the closing the gap between Indigenous and non-Indigenous Australians on life expectancy, educational achievement and employment opportunities' (Rudd 2008, p. 170). In the language in which he speaks it seems logical that the building of a bridge between Indigenous and non-Indigenous peoples would translate into ensuring that all Australians enjoy equal opportunities. This also seems logical considering the way he has framed the wrongdoing as a violation of a core 'Aussie' value of the 'fair go' and that by implication the way to address the legacies of past wrongs is to ensure that all Indigenous peoples are guaranteed the same 'fair go' as other Australians in the future (Rudd 2008, p. 169).

Harper also seems to use his apology as a way of bridging the gulf that exists between Indigenous and non-Indigenous Canadians, acknowledging that 'the absence of an apology has been an impediment to healing and reconciliation' (Harper 2008, p. 6850). Like Rudd, Harper presents his apology as the beginning of something new for Canada, though in directly addressing Indigenous peoples in the audience he is cognizant of the fact that '[y]ou have been working on recovering from this experience for a long time, and in a very real sense we are now joining you on this journey' (Harper 2008, p. 6850). However, in likening the process to a 'journey', it is important to point out that Harper considered his apology as part of a broader process of 'healing, reconciliation and resolution' (Harper 2008, p. 6850). In this respect he also shows awareness that more than an apology will be needed to fulfil these goals. In his view, the Settlement Agreement that came into effect in 2007 will provide the roadmap for the future. As part of that process Harper looked to the establishment of the proposed Truth and Reconciliation Commission. According to Harper, '[i]t will be a positive step in forging a new relationship between aboriginal peoples and other Canadians, a relationship based on the knowledge of our shared history, a respect for each other and a desire to move forward with a renewed understanding that strong families, strong communities and vibrant cultures and traditions will contribute to a stronger Canada for all of us' (Harper 2008, p. 6851).

4. So what is wrong with this picture?

In each of these apologies, we can see how these leaders are pushing forward a reconciliation agenda whereby the future of each nation will depend upon a shared understanding of the history of injustices experienced by Indigenous peoples, notably that the forced separation of Indigenous children from their families was wrong, and of the need to overcome the legacies of these injustices in the future.

However, despite how the Rudd and Harper apologies appear to be great achievements, they share similar flaws. First of all, they have no legal effect. Both apologies were delivered in the House of Parliament and the House of Commons in

Australia and Canada respectively, which means that they would be protected by parliamentary privilege. Thus, each state has been able to structure their respective apology so they would have no legal consequences. Each apology is in effect a non-justiciable act of sovereignty. There would only be a moral imperative for these nations to uphold the promises in the future.

As 'speech acts' it would appear that these apologies can be understood in Austin's terms not only as a *behabitive* (the expression of emotion) and as a *commissive* (the making of a promise), but also as an *exercitive* which relates to speech used for 'exercising of powers, rights, or influence' (Austin 1975, pp. 151, 155-156). Indeed, both apologies may be categorized as exercitive insofar as they are performed as official acts of state: as motions passed within the respective parliaments of each nation. So understood, an exercitive would need to be made in a certain way to have validity and meaning. The procedures used in making these apologies require that certain official requirements are met in order for them to succeed in parliament. In settler-colonized nations the institutional structures for making apologies to Indigenous peoples have been inherited from the European societies that formally had engaged in the process of colonization (Veracini 2010, p. 105). Thus, in practice the political processes used for making these apologies (and for determining other measures of reparations more generally) have originated from the same institutional traditions and structures as the ones which had instituted the oppressive laws and policies that adversely affected Indigenous peoples in the first place. These apologies have been made according to political procedures over which Indigenous peoples exert little control. The passing of the apologies as motions in the parliaments of both nations, are valid whether Indigenous peoples accept them or not.

Their limitations do not end there. In this regard it is notable that both Australia and Canada have, to date, maintained the central promises that were made in their respective apologies. In Australia, the policy of 'closing the gap' between Indigenous and non-Indigenous peoples in the areas of health, education and employment that Rudd promised in his apology has continued to be pursued by successive Australian governments. Moreover, in Canada the promise to establish the Truth and Reconciliation Commission that Harper made in his apology has also been kept by his government. Nevertheless it would appear that instead of addressing the claims of Indigenous peoples for justice, these measures may have only compounded the issues facing them (Pholi *et al.* 2009, pp. 9-10, Flisfeder 2010).⁵ Evidently, ensuring that states keep the promises made in the apologies in the future may not be the problem with these apologies, but the actual promises that are made in them. In this respect the argument advanced by Constable with respect to law and language is instructive here to emphasize the importance of the choice of words that are used to convey meaning, and not only the manner and process that are used to articulate the words that are spoken (Constable 2014, p. 4). This is where it is vital for apologies to Indigenous peoples to provide an account of history that reflects an understanding of the wrongs perpetuated against them, and for these apologies to be delivered within political and legal frameworks that can serve to meet their claims for justice.

As noted in the previous section, state apologies function to uphold the norms violated by past injustices, providing states with the opportunity to renew their commitment to these norms. Consistent with this approach, Nick Smith has observed in his book *I Was Wrong* that an apology requires 'the offender to name each specific offense, identify the moral principle breached by each offense, and endorse this underlying principle'. Ultimately, in his view, these elements are linked

⁵ Though the situation remains unchanged in both nations, newly elected Prime Minister Justin Trudeau, has recently vowed to 'reset the country's relationship with its Indigenous people' and, among other things, implement all of the recommendations made by the Truth and Reconciliation Commission (NITV and Reuters 2015).

to each other. Depending on the principles which are identified in an apology, subsequent reform might shift accordingly' (Smith 2008, pp. 221, 224). Presumably, if the functions of official apologies to Indigenous peoples are, as discussed in the previous section, to validate Indigenous peoples' understanding of history of injustices and take responsibility for it by acknowledging that history is wrong, then arguably, an apology would use 'colonization' as the umbrella term for framing the harms suffered by Indigenous people. Focusing on past (and ongoing) processes of colonization as the source of the injustices would mean, in essence, recognizing that the imposition of foreign laws and sovereignty on Indigenous peoples was (and is) in violation of their laws and political autonomy. And as Smith points out, reform would follow accordingly. As settler-colonial theorists have shown, colonization has not come to an end and continues to be manifest in the present (Rose 1991, 1996, Wolfe 1999, 2001, 2006). Settler-colonial theory could provide the analytical tools for identifying the various forms of oppression experienced by Indigenous peoples throughout colonization and provide the ethical framework for addressing these injustices (Macoun and Strakosch 2013).

Notably, however, none of the apologies make the connection between the harms suffered by Indigenous peoples and the history of colonization in each nation. In fact, the comments made by Harper at the G20 Pittsburgh Summit in September 2009 (three months after his apology to residential school survivors) evidently show that an apology for the history of colonization of Indigenous peoples in Canada had not been on his agenda when he made the apology. In an interview at the time of the Summit, Harper presented this overview of the history of Canada:

We are one of the most stable regimes in history. There are very few countries that can say for nearly 150 years they've had the same political system without any social breakdown, political upheaval or invasion. We are unique in that regard. We also have no history of colonialism (Wherry 2009).

Instead, the wrongs acknowledged in each apology reflect their more immediate historical contexts: the debate over an apology to the Stolen Generations that grew in momentum after the Australian Human Rights and Equal Opportunity Commission tabled its report, *Bringing Them Home* in Parliament in 1997 and came to form part of the 'history wars' in Australia (Manne 2001, Macintyre and Clark 2003); and the push for an apology by Native Canadians which increased in momentum after the abysmal conditions in the Indian Residential Schools were made public in the 1990s and was accepted as part of the Settlement Agreement (Jung 2009a).

Of course, there was scope in these apologies to link the history of the forced removal of Indigenous children to the broader history of colonization because it was exemplary of the attempts made to eliminate the Indigenous other. Rudd, at times, appeared cognizant of this fact. For instance, he acknowledged that the state policy of forcibly removing Indigenous children was 'deliberate' and 'calculated' and was

taken to such extremes by some in administrative authority that the forced extractions of children of so-called 'mixed lineage' were seen as part of a broader policy of dealing with 'the problem of the Aboriginal population' (Rudd 2008, p. 169).

He also rejected the claim, often made by former Prime Minister John Howard during his term in office, that 'the policy ... was somehow well motivated, justified by its historical context' (Rudd 2008, p. 169). However, he never explicitly referred to the policy as 'assimilation' or condemned it as cultural genocide (see generally Moses 2004, pp. 29-35).⁶ In this respect, he appeared most prepared to concede that the operation of the laws and policies were racially discriminatory:

⁶ Indeed, although he estimates that 50,000 children were removed in the period from 1910 to 1970, others have estimated the number of children removed was 100,000 (Attwood 2001, pp. 255-6). Compare the estimates calculated by Robert Manne (2001, pp. 25-7) and Keith Windshuttle (2009, p.

The uncomfortable truth for us all is that the parliaments of the nation, individually and collectively, enacted statutes and delegated authority under those statutes that made the forced removal of children on racial grounds fully lawful (Rudd 2008, p. 169).

Instead, he confined the extent of harm suffered by the Stolen Generations to the impact on their familial ties and the personal effects of these losses: 'the hurt, the pain and suffering ... the indignity, the degradation and the humiliation these laws embodied' (Rudd 2008, p. 169). These are important to acknowledge, but by framing the harms in these terms Rudd evaded mentioning the more serious social and economic costs of this practice for the Stolen Generations: the malnourishment, maltreatment, emotional, sexual and physical abuse and labour exploitation which the children were often exposed to while in institutional care.

Furthermore, in confining the losses to personal ones, Rudd evaded expanding on the details of the ongoing cultural harms inflicted on the Stolen Generations and only made fleeting references in the preamble to the apology to the impact of the removal of Indigenous children 'from their families, their communities and their *country*' and to 'the indignity and degradation ... [the breaking up of families] inflicted on a proud people and a proud *culture*' (emphasis added) (Rudd 2008, p. 167). There was no mention of the ongoing individualized harms suffered by members of the Stolen Generations such as: the higher levels of abuse, mistreatment, poverty and dislocation from family ties than any other Indigenous peoples; and that they suffer more health problems and are more likely to be imprisoned than other Indigenous peoples. Nor was there mention of the ongoing group harms that they have suffered: that the dislocation from their communities has meant loss of culture, language and land for many; and that the cycle of removing Indigenous children from their communities continues (Human Rights and Equal Opportunity Commission 1997, ch 11). To point to these losses could have raised the issue of compensation that the Rudd government, prior to making the apology, had made clear would not be offered to the Stolen Generations (ABC 2008).

The emphasis on the personal losses suffered by the Stolen Generations also detracted from the implications of the apology for the exercise of state power and the limits on that power the making of an apology implies. As Alex Reilly (2008, p. 14) has argued: 'to be genuine, the apology requires a certain *loss* of sovereignty'. This seems to be a logical conclusion to be drawn from the apology process as one requiring reform and forbearance in the future. However, at 'no time does the apology resile from the power of the State to enact laws of removal or its power to enforce them. In fact, the apology confirms the power of the State to pass the laws (Reilly 2008, p. 14). As Rudd made clear in the apology (and quoted above) 'the forced removal of children on racial grounds [was] fully lawful'. In making this claim, Rudd exposed a serious deficiency in Australian law: 'put simply, the laws that our parliaments enacted made the stolen generations possible ... The problem lay with the laws themselves' (Rudd 2008, p. 169). However, at no time in the apology does he consider how state power could be curtailed to ensure against the making of similar laws in the future. Indeed, in finding that the forced removal of Indigenous children was fully lawful according to Australian law he omitted to add that this practice was in direct conflict with Aboriginal and Torres Strait Islander customary laws relating to children and their care (Human Rights and Equal Opportunity Commission 1997, ch 22). Evidently the polarity that continues to exist between the two systems of laws remains intact. The fact that Indigenous child welfare continues to be administered in ways that undermine Indigenous child rearing practices further supports this claim (Cripps 2012, p. 28). Indeed, Rudd's references to a proud people and culture echo romantic notions of the noble savage

17). However, the destruction of records and poor record keeping has made it difficult to accurately assess how many children were removed.

and the implications of these constructions in perpetuating the terra nullius doctrine and the understanding that Indigenous peoples do not have their own laws and social organization that the doctrine implies. Though the doctrine was presumably overturned by the High Court in *Mabo v Queensland [No. 2]*, it continues to underpin Australian law through the non-recognition of Aboriginal sovereignty and laws on their own terms. In not acknowledging these facts of history in the apology, Rudd is repeating mistakes made in the past (and present) by neglecting to mention that Indigenous peoples have their own conceptions of sovereignty and laws.

By comparison, Harper seemed to be prepared to accept responsibility for a broader range of harms in his apology than Rudd. Harper referred not only to the personal losses caused by the separation of children from their families, but also the neglect, abuse and cultural harms inflicted on them in the schools, as well as the ongoing social and intergenerational effects of the system on survivors, and their families and communities.

Nevertheless, the Harper apology has similar limitations to the Rudd apology in failing to make the connections between the harms suffered by residential school survivors and their broader legal and political implications for Indigenous peoples in Canada in the past and present. For instance, Harper may have apologized for separating children from their homes and 'from rich and vibrant cultures and traditions, that ... created a void in many lives and communities' (Harper 2008, p. 6850), but he, like Rudd, did not go so far and acknowledge the interconnectedness between the residential school system and the dispossession of lands and how these measures were vital to the colonizing process. And in focusing solely on the direct effects of the residential school on Indigenous peoples, he ignored other ways in which cultural harms were inflicted on them throughout the history of colonization, such as the process of compulsory enfranchisement that was designed to strip them of their Indian status under the Indian Act 1876 and which continues to support assimilation despite recent changes to the Act (Gehl 2000, p. 65).

The limitations of the Canadian apology are further evident in the way that Harper framed the harms suffered by residential school survivors. Even though Harper acknowledged that the underlying intention of forcibly removing of Indigenous children was 'to kill the Indian in the child' - he elided claims that the residential school system was cultural genocide (Chrisjohn and Young 1997, ch 4). Instead, Harper identified the policy of assimilation, supported by assumptions about Indigenous peoples' inferiority and inequality, as the motivating force behind the residential school system (Harper 2008, p. 6850). Notably, this understanding was not challenged by any of the leaders of the other political parties in Canada who also offered apologies to the survivors of the residential school system in the House of Commons that day. Each of them took turns in condemning the underlying rationale of the system 'to kill the Indian in the child', but none of them deviated from the official line that assimilation - and not genocide - underpinned the operation of the residential school system.⁷

⁷ For example, in his apology, Mr. Gilles Duceppe (Laurier—Sainte-Marie, BQ) quoted astonishing facts that would support the claim of genocide. However, he also concludes that the aim was assimilation (Harper 2008, p. 6852):

Nearly 150,000 people have waited their whole lives for this day of truth and reconciliation; 90,000 of them are still with us. These 90,000 are true survivors. Over 100 years ago, the Bryce report revealed that the mortality rate in residential schools was close to 25%. In the Old Sun's residential school in Alberta, the death rate was as high as 47%. That is why I consider these former students to be survivors.

These 150,000 people were abducted from their mothers and fathers. They were separated from their sisters and brothers. They were forcibly uprooted from their communities and their traditional cultures. For those who cannot imagine the impact that residential schools had on aboriginal peoples, picture a small village, a small community. Now picture all of its children, gone. No more children between 7 and 16 playing in the lanes or the woods, filling the hearts of their elders with their laughter and joy. Imagine the ever-present fear of watching their children disappear when they reached school age.

Nevertheless, Harper's political conservatism remains clearly evident in the limitations of the apology that he did make. Notwithstanding Harper's acceptance of the underlining rationale of the system was assimilation, for the remainder of the apology he repeatedly makes the point that it is only 'now' that it has become obvious 'that it was wrong to separate children ...' (Harper 2008, p. 6850). This contrasts starkly with the history of Indigenous peoples' opposition to the system which was adamant then as much as it is now. The logical inference that has been drawn from Indigenous resistance to the residential school system was that it was in direct violation of Indigenous peoples' sovereignty and self-determination (Henderson and Wakeham 2009, p. 8). So understood, the limited acknowledgment in Harper's apology of the impact of the residential school system on Indigenous traditions, culture, heritage and language becomes evident and the consequences of the system upon Indigenous peoples' sovereignty and self-determination comes into full view. In this respect, Harper's claim in the apology that '[t]here is no place in Canada for the attitudes that inspired the Indian residential schools system to ever again prevail' (Harper 2008, p. 6850), may at most be signally the end of racist attitudes towards Indigenous peoples in Canada, but whether that is a true possibility remains doubtful as long as colonial attitudes continue to prevail in Canada (Henderson and Wakeham 2009, p. 2). Whether he means that racist attitudes no longer have a place in Canada is also ambiguous. Earlier in his speech he announced that 'we recognize that this policy of assimilation was wrong, has caused great harm, and has no place in our country' (Harper 2008, p. 6850). Arguably, the phrase 'this policy of assimilation', however, suggests that his promise of forbearance in the future relates only to ensuring against re-introducing the practice of forcibly removing Indigenous children. His choice in words suggests that other forms of assimilation could be acceptable. In this regard it is important to note that there have been claims in Canada, similar to those made in Australia, that current Indigenous child welfare policies are a continuation of project of assimilation which the residential school system left incomplete (Jung 2009b, p. 3).

It may well be that it is only *now* that the Canadian government has accepted that the system was wrong - the success of claims made by residential school survivors in the Canadian courts were vital in this regard. In accepting these claims and not others - for land rights and cultural rights more generally - the impression given by the apology is that the residential school system has been the only aberration in government laws and policy which has affected and continues to affect Indigenous peoples in Canada.

In this regard, the apology suffers from the same shortcomings as the Rudd apology. In both, the recognition of the injustices caused by the forcible removal of Indigenous children is treated as though *now* each government has recognized the errors of its ways, and the path has *now* been set for healing and reconciliation. But in confining their apologies to the harms suffered as the result of the forced separation of Indigenous children from their families, these nations have left many of the claims of Indigenous peoples for justice unanswered. Indeed, in confining the harms suffered to their personal and social effects, these states have evaded the broader implications the state sanctioned practice of forcibly removing Indigenous children has had for Aboriginal sovereignty and laws. In these ways, each nation has left the scope of their powers in making policies and laws with respect to Indigenous peoples unchallenged. In turn, each nation has maintained the legitimacy of its own sovereign power in determining the course of action to pursue in Indigenous affairs in future. Each leader may imagine that their respective apology has created the conditions for a new partnership with Indigenous peoples,

Rumours abounded about what happened to the children. All these years later, it is still horrifying to think of these things. Children were torn from their parents' arms to be assimilated. They were taken away and raised by people who had but one goal: to "kill the Indian in the child". Forced to unlearn their languages, these children could no longer communicate with their own parents. All of these things really happened, and they are a part of our collective history.

but the terms of this new relationship will remain in the control of each state. In this respect, the perceived values underpinning each nation will serve as a beacon in determining their on-going obligations to their respective Indigenous populations. Thus, the more general observation that Short has made with respect to the reconciliation movement in Australia can be applied with respect to these apologies insofar that both appear to impose a 'colonial ceiling' on Indigenous peoples' political aspirations (Short 2008, p. 162). That this remains the problem even after the making of the apologies is troubling, particularly from the point of view of the argument advanced in this article that the lifting of that ceiling is what an apology to Indigenous peoples demands.

Viewed in this way, the treatment of a state apology as a 'speech act' whereby the head of state accepts responsibility and offers measures of redress for past injustices may assume too readily that the state is conveying a common understanding of the history of past injustices, the norms that were violated in causing the harm and are now to be upheld in introducing measures of redress and ensuring against the repetition of harm in the future. The emphasis is on the importance for the head of state to make the apology, but the effect of him/her doing so may merely obscure the history of past injustices as victims understand it.

In this regard, the acceptance of responsibility for past injustices in these apologies confirms the understanding that history lives on in the present insofar that the legacies of past injustices continue to exist in the present. But the acceptance of responsibility also reiterates state sovereignty and the history of denial of Indigenous sovereignty and laws. The apologies are made within this historical context and within their more immediate legal and political contexts where Indigenous sovereignty and laws continue to be denied. Viewed in this way we can see how the injustices acknowledged in the apologies and the measures of redress offered in response to these harms reflect only what each state leader was prepared to accept was wrong. In the Rudd Apology, the acceptance of responsibility for past injustices undoubtedly would have been informed by the immediate historical context: most notably, the 'history wars' that raged on during the heated debate over whether an apology was warranted. The history wars permeated law and policy throughout former Prime Minister John Howard's term in office and, ultimately, resulted in an undermining of the gains made by Indigenous peoples' in previous decades. Indeed, if the Harper Apology went further than the Rudd Apology in acknowledging harm that could be attributed to the success of residential school survivors in the Canadian courts and in securing the Settlement Agreement from the former Martin government. Unfortunately, these were successes that eluded Indigenous peoples in Australia.

Even so, these developments fall short of meeting Indigenous peoples' demands for justice. Ultimately, as the politics of making these apologies is played out, Indigenous perspectives on the injustices caused and the reparations needed continue to be compromised as the treatment of these apologies as 'speech acts' enables the governments which make them to tailor their understanding of these matters in ways which are consistent with their own ideological outlooks and are appealing to a broad cross-section of voters - of which Indigenous peoples only comprise a small number. Thus, the transformative power of these apologies in raising awareness and greater acceptance of Indigenous perspectives on the injustices and how to address them is undermined by the understanding of the states of these issues and ways of doing things.

5. The way forward ...

State apologies made in response to past wrongs could help illuminate the values of the societies in which they are made. As became apparent in the above discussion, the harms acknowledged in an apology form the basis for determining the norms infringed. The measures of redress follow accordingly. Once this is accepted, it

becomes obvious that getting history right is crucial to justice. Implicit in the Australian example was the understanding that the state-sanctioned practice of forcibly removing Indigenous children from their families was racially discriminatory. But in constructing this wrong as the social wrong 'of physically separating a mother from her children' (Rudd 2008, p. 168), the response has been to introduce measures aimed at alleviating the legacies of social disadvantage in the form of the adoption of the Closing the Gap policy in areas of health, education and employment. In constructing the wrong as creating social harms, Rudd elided the issues of genocide and compensation for the Stolen Generations and the issue of colonization for Indigenous peoples more broadly. Moreover, in adopting this approach, Rudd upheld the notion of the 'fair go' and the principle of equality of opportunity 'a core value of our nation'. In this way he constructs the achievement of reconciliation and justice as the same thing:

reconciliation is in fact an expression of ... a fair go for all. There is a deep and abiding belief in the Australian community that, for the stolen generations, there was no fair go at all. There is a pretty basic Aussie belief that says it is time to put right this most outrageous of wrongs (Rudd 2008, p. 169).

The logic of this reasoning is that Indigenous peoples in the past were denied the same opportunities as other Australians by the operation of laws and policies authorizing their children to be taken from them. The trouble with this approach is that it does not depart from the policy of assimilation that underpinned the removal of Indigenous children in the first place. The rationale of the policy authorizing the removal of children was to extend the benefits of Western civilization to them. And it would seem that the Closing the Gap policy has been fashioned along these lines as well, especially when its implementation has not included state recognition of their political autonomy and protection of their cultural rights (Pholi et al. 2009, p. 3). In fact, the Northern Territory Emergency Response that was in force at the time of the apology (and continues to be in force) was just one of many other direct attacks on Indigenous law and cultural identities as Indigenous peoples (Howard-Wagner and Kelly 2011).

In Canada, Harper may have gone further than Rudd to acknowledge that 'this policy of assimilation was wrong', although he, like Rudd, evades linking the policy to the broader process of colonization. In any case, he made it clear that the Settlement Agreement has set the parameters for the resolution of the legacies of the Residential School system. These measures, like those in Australia, have not extended to guaranteeing the rights of Indigenous peoples. For example, as a consequence of the apology, the Truth and Reconciliation Commission was established in Canada, however, it was criticized for focusing on emotional and physical harm experienced by Residential School survivors, and failing to address 'the dispossession of Indigenous nations' lands, nor the negative impact on communities' identity, languages, culture, custom and traditional governance' (Kontinóhstats - The Mohawk Language Custodians 2012, p. 4; see also James 2012).⁸

It may be that it was inevitable that these apologies would turn out this way. Ultimately, as the examination of the apologies in this article has shown, the injustices being acknowledged in each of them have been framed by reference to

⁸ But the situation may change in Canada. Notably, in the Summary of the Final Report of the Truth and Reconciliation Commission of Canada (2015), *Honouring the Truth, Reconciling for the Future* found that the residential school system amounted to cultural genocide. In response, it found that 'the United Nations Declaration on the Rights of Indigenous Peoples is the appropriate framework for reconciliation in twenty-first-century Canada (p. 190). But it expressed concern over whether the Declaration enjoys government acceptance (p. 188). It also recommended the repudiation of all vestiges of colonization in law and policy that justified, and may continue to justify, European sovereignty over Indigenous lands (e.g. the Doctrine of Discovery and terra nullius) through the nationwide adoption of a Royal Proclamation of Reconciliation and, specifically for Residential School survivors, a Covenant of Reconciliation.

the norms that have official acceptance. In these respects, these apologies can be celebrated as a triumph for liberal-democracy that has historically been adverse to protecting cultural differences.

Apparently, then, a disjuncture in understanding of history continues to exist even after the apologies have been made. Indeed, the apologies themselves perpetuate this problem primarily because of their focus on past acts of injustice and not on past and present manifestations of colonialism. Supporters of state apologies for past injustices may think they can work to change the content and direction of state laws and policies in the future. But that is not how they seem to work in practice. As the analysis of the apologies in this article has shown, focusing on the past may bring into view the legacies of past injustices for Indigenous peoples, but simultaneously they perpetuate the historical injustices of colonialism. They do so by continuing to deny the normative systems of Indigenous peoples and to present state norms and governance structures as the only legitimate framework for resolving the issues now facing Indigenous peoples. It would appear that apologies to Indigenous people are, above all else, inherently paradoxical. The source of their power lies in the head of state saying sorry and committing the nation to reform and forbearance in the future. But the power to make them and determine their content remains squarely in the hands of the state. By minimizing the extent of harm suffered, the apologies were able to continue to contain the threat posed by Indigenous peoples' claims on state sovereignty; and, in giving the appearance that the state was finally addressing the past injustices inflicted on Indigenous peoples, state authority could be reasserted. In apologizing, the state could claim that it now knows what it did wrong, and by extension of this logic, it now knows what is best for Indigenous peoples in the future. The processes of colonization which should be the focus of the apologies remain intact.

In view of this discussion, an apology to Indigenous peoples in the form discussed in the first part of this paper may only become possible once we embark on a process of decolonization that would involve incorporation of Indigenous norms and practices within the system of government of the state as they are understood by Indigenous peoples. Only then may the injustices committed against them be understood as infringing their laws and customs, providing the framework for redress, and tailoring these measures in ways that meet their claims for justice.

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