

ACCOUNTABILITY FOR THE HARMS OF INDIGENOUS BOARDING SCHOOLS: THE CHALLENGE OF “HEALING THE PERSISTING WOUNDS” OF “HISTORIC INJUSTICE”

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I. INTRODUCTION

As the settler colonial nations that emerged from British colonization, the United States, Canada, and Australia share a dark history of forcible acculturation of Indigenous peoples. The histories of Canada and the United States, in particular, are closely linked.¹ The two countries share an international border that separated several Indigenous nations who once shared the same ancestral territory.² The two countries also crafted similar policy blueprints for the forcible acculturation of Indigenous people, which included displacement from their traditional territories and “relocation” to smaller “reserves” or “reservations,” as well as the removal of Indigenous children to government-sponsored boarding schools.³ These “residential schools” were often operated by religious organizations, which secured “civilization” contracts from the national governments to “educate”

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1. See ROBERT BOTHWELL, *YOUR COUNTRY, MY COUNTRY: A UNIFIED HISTORY OF THE UNITED STATES AND CANADA* 3 (2015).

2. See RACHEL ROSE STARKS ET AL., *NATIVE NATIONS AND U.S. BORDERS: CHALLENGES TO INDIGENOUS CULTURE, CITIZENSHIP, AND SECURITY* 1 (2011).

3. See David B. MacDonald & Graham Hudson, *The Genocide Question and Indian Residential Schools in Canada*, 45 *CANADIAN J. OF POL. SCI.* 427, 431 (2012).

Indigenous children.⁴ In many cases, parents were unable to see or communicate with their children while they were in school, and the children suffered grave abuse from the adults who were charged with their supervision and instruction.⁵

This essay draws on Professor Yamamoto's pathbreaking new book, *Healing the Persisting Wounds of Historic Injustice*, to explore what the framework of "social healing through justice"⁶ might look like for the survivors of residential boarding schools and their families, as well as the families who lost loved ones to the abuses of this system. This is a complex and painful topic to explore, and my essay is only preliminary in scope. This essay does not reach any conclusions about what ought to be done, but rather it raises some questions to consider. The only thing that is clear to me at this point is that "justice" for the harms of Indigenous boarding schools is long overdue.

II. THE HARMS OF RESIDENTIAL BOARDING SCHOOLS IN THE UNITED STATES AND CANADA

On July 25, 2022, Pope Francis apologized to Indigenous peoples in Canada for the Catholic Church's role in the "deplorable evil" of Canadian Indigenous boarding schools.⁷ The Pope had earlier apologized to a group of Indigenous peoples who visited the Vatican, but this was the "first apology on Canadian soil" by the Pope in his effort to "heal [the] deep wounds" that arose in 2021, after journalists reported that the remains of 215 Indigenous children had been discovered in unmarked graves at a former residential school in British Columbia.⁸ Since then, the "suspected remains" of hundreds of other Indigenous children have been located at several former boarding school sites in Canada.⁹ For every Indigenous person in Canada and the United States who attended a residential boarding school or had relatives who did, this was not surprising news, because many Indigenous children did not come home from boarding schools and were often not

4. See ANDREA SMITH, *INDIGENOUS PEOPLES AND BOARDING SCHOOLS: A COMPARATIVE STUDY* 7-8 (2009).

5. *Id.*

6. See generally ERIC K. YAMAMOTO, *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE: UNITED STATES, SOUTH KOREA AND THE JEJU 4.3 TRAGEDY* (2021).

7. Philip Pullella & Tim Johnson, *Pope Apologizes for 'Deplorable Evil' of Canadian Indigenous Schools*, REUTERS (July 26, 2022, 2:49 AM), <https://www.reuters.com/world/americas/pope-apologizes-canada-evil-residential-indigenous-schools-2022-07-25/> [<https://perma.cc/6LB5-QUPP>].

8. *Id.*

9. *Id.*

accounted for.¹⁰ Officials speculated that the children had “run away,” but no one really knew.¹¹ Some Indigenous children clearly died of diseases such as influenza and tuberculosis, and while in some cases their bodies were returned to their families, in other cases, the children’s bodies were buried on site.¹² Some cemeteries were marked and consecrated, and we might know the names or tribal identities of those children.¹³ Other graves were not marked and the bodies belonged to unnamed children.¹⁴ The discovery of the bodies in Canada triggered deep trauma, as individuals remembered the abuse their families suffered, and remembered those who never came home.¹⁵

From 1881 to 1996, over 150,000 Indigenous children in Canada were removed from their homes and sent to residential boarding schools.¹⁶ Many children were starved and forced to work as laborers for local non-Indian farmers, and some endured horrific physical and sexual abuse.¹⁷ 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.¹⁸

Witnessing overt harm and death is always difficult, but it is particularly disturbing when it happens to children. For example, this summer, parents across the United States listened to the news reports of the mass shooting in

10. See 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/N84H-EXHK>].

11. See Ian Austen, ‘Horrible History’: Mass Grave of Indigenous Children Reported in Canada, N.Y. TIMES (May 28, 2021), <https://www.nytimes.com/2021/05/28/world/canada/kamloops-mass-grave-residential-schools.html> [<https://perma.cc/9M4L-5K6H>].

12. See Austen, *supra* note 10; see also Brandi Morin, *These Indigenous Children Died Far Away More than a Century Ago. Here’s How They Finally Got Home*, NAT’L GEOGRAPHIC (Aug. 6, 2021), <https://www.nationalgeographic.com/history/article/these-indigenous-children-died-far-away-more-than-a-century-ago-heres-how-they-finally-got-home> [<https://perma.cc/EV7Y-ELZE>].

13. See THE TRUTH AND RECONCILIATION COMMISSION OF CANADA, HONOURING THE TRUTH, RECONCILING FOR THE FUTURE 99-101 (2015) (noting that the “burial spots of students were identified only by plain white crosses” and children who died at boarding schools “were buried in school or mission cemeteries, often in poorly marked graves”).

14. See Ian Austen, *The Indigenous Archaeologist Tracking Down the Missing Residential Children*, N.Y. TIMES (July 30, 2021), <https://www.nytimes.com/2021/07/30/world/canada/indigenous-archaeologist-graves-school-children.html> [<https://perma.cc/7GVR-M3WC>].

15. See *id.*

16. See Adam Solomons, *Pope Francis Will Visit Canada This Week on ‘Pilgrimage of Penance’ to Offer Formal Apology for the Decades of Sexual Abuse at Schools Run by Catholic Church*, DAILY MAIL (July 24, 2022, 11:53 PM), <https://www.dailymail.co.uk/news/article-11043607/Pope-Francis-visit-Canada-pilgrimage-penance-decades-abuse.html> [<https://perma.cc/LAD8-Y45D>].

17. See Austen, *supra* note 10.

18. See *id.*

Uvalde, Texas, and related feeling overwhelming shock and sadness.¹⁹ Many also became angry, as they considered the vulnerability of children in public school classrooms, and as more details of the botched law enforcement operation were revealed.²⁰ Why did this mass murder occur? Who should be held responsible for the deaths of so many innocent children? The actual gunman is dead, but questions whether the authorities that could or should have intervened are still present, and the investigation is underway to determine the question of accountability.²¹

The deaths of the 215 unnamed Indigenous children that were discovered in 2021 are also tragic, but how do we understand accountability for this mass harm? We know that the authorities hid the deaths, and perhaps we will never know exactly what caused the death of each child.²² Each of those children had a life, an identity, parents, and other relatives. Each of them deserved a future. We are discovering who the victims were, but we are confused on who the perpetrators were: the administrators of the schools? The Canadian government? The religious institutions that received lucrative government contracts to “civilize and Christianize” Indigenous children?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.²⁴ In 2015, Canada’s Truth and Reconciliation Commission released its report on residential schools, along with recommendations for necessary actions to address the continuing inequities for Indigenous students within the

19. See Meridith Kohut, *Sympathy for the Victims’ Families Spurs Many to Aid a Blood Drive in Uvalde*, N.Y. TIMES (May 26, 2022, 9:00 PM), <https://www.nytimes.com/live/2022/05/26/us/texas-elementary-school-shooting/sympathy-for-the-victims-families-spurs-many-to-aid-a-blood-drive-in-uvalde?smid=url-share> [https://perma.cc/CK7R-K77S].

20. See Brad Brooks, *Uvalde Parents Filled with Angst, Anger as Kids Return to School*, REUTERS (Sept. 2, 2022, 8:15 AM), <https://www.reuters.com/world/us/uvalde-parents-filled-with-angst-anger-kids-return-school-2022-09-02/> [https://perma.cc/K8AB-EKWK].

21. See Edgar Sandoval, *Uvalde Fires Its School Police Chief in Response to Shooting*, N.Y. TIMES (Aug. 24, 2022), <https://www.nytimes.com/2022/08/24/us/uvalde-police-chief-fired.html> [https://perma.cc/BN9V-YNY2].

22. See Austen, *supra* note 11.

23. Virginia Arsenaault, *Resistance to the Canadian Truth and Reconciliation Commission: The Indian Residential School System*, SWISSPEACE 1, 5 (2015), https://www.swisspeace.ch/assets/publications/downloads/Working-Papers/ea7de6ed3b/Resistance-to-the-Canadian-Truth-and-Reconciliation-Commission-Working-Paper-15-swisspeace-virginia_arsenaault.pdf [https://perma.cc/N2M6-YJ5R].

24. See THE TRUTH AND RECONCILIATION COMMISSION OF CANADA, *supra* note 13, at v; see also *What Are the Truth & Reconciliation Commission’s 94 Calls to Action & How Are We Working Toward Achieving Them Today?* RECONCILIATION EDUC., <https://www.reconciliationeducation.ca/what-are-truth-and-reconciliation-commission-94-calls-to-action> [https://perma.cc/SL22-UMUP].

educational system.²⁵ Ultimately, the Canadian government agreed to pay the equivalent of \$31.5 billion in damages to the boarding school survivors in an effort to “fix the nation’s discriminatory child welfare system.”²⁶ The newly discovered graves have raised new concerns.²⁷ The forced acculturation was a “cultural genocide.”²⁸ However, the mass deaths look like physical genocide.²⁹

The United States is also being asked to acknowledge the harms of the Indian boarding schools.³⁰ Secretary of the Interior, Deb Haaland, who is herself a member of the Laguna Pueblo tribe, created the Federal Indian Boarding School Initiative in June 2021, shortly after the Canadian news story was released.³¹ Secretary Haaland ordered an investigation into the history of the Indian boarding schools in the U.S., which culminated in the release of a report by the Office of the Assistant Secretary for Indian Affairs on May 11, 2022.³² The report documents that between 1819 and 1969, thousands of Indigenous children in the U.S. were forcibly removed from their families and sent to boarding schools.³³ The boarding school policy had two purposes: cultural assimilation and land dispossession.³⁴ There were at least 408 U.S. government-supported boarding schools operating in at least thirty-seven states (or territories) across the country.³⁵ As the Native American Rights Fund emphasized, “[m]any children did not survive the boarding school era and many of those that returned to their communities had

25. See THE TRUTH AND RECONCILIATION COMMISSION OF CANADA, *supra* note 13, at 320-21.

26. Catherine Porter & Vjosa Isai, *Canada Pledges \$31.5 Billion to Settle Fight Over Indigenous Child Welfare System*, N.Y. TIMES (Jan. 4, 2022), <https://www.nytimes.com/2022/01/04/world/canada/canada-indigenous-children-settlement.html> [<https://perma.cc/D7GZ-XY83>].

27. See Austen, *supra* note 10.

28. THE TRUTH AND RECONCILIATION COMMISSION OF CANADA, *supra* note 13, at 1.

29. See *id.*

30. See Susan Montoya Bryan, *US to Review Native American Boarding Schools’ Dark History*, AP NEWS (June 22, 2021), <https://apnews.com/article/canada-government-and-politics-education-e9440169fde104df6fad6e0ba7128b0e> [<https://perma.cc/GG9Y-YP9Y>].

31. See Press Release, Nat’l Native Am. Boarding Sch. Healing Coal., Federal Indian Boarding School Initiative (May 11, 2022), <https://boardingschoolhealing.org/doireport/> [<https://perma.cc/SUX7-VK24>] [hereinafter DOI Press Release].

32. See generally BRYAN NEWLAND, FEDERAL INDIAN BOARDING SCHOOL INITIATIVE INVESTIGATIVE REPORT (2022) [hereinafter FEDERAL INDIAN BOARDING SCHOOL INITIATIVE INVESTIGATIVE REPORT].

33. *Id.* at 6, 93-94.

34. *Id.* at 37.

35. *Id.* at 6, 82.

endured significant abuse.”³⁶ The investigation team discovered at least fifty-three burial sites designated for children within the boarding school system, and many more are anticipated to be found, according to the report, which is the first of several that are planned.³⁷ Some of these burial sites are marked, while others are not.³⁸

The trauma of the U.S. Indian boarding schools has never openly been addressed, and it persists as familial or individual “dysfunction” in Indigenous communities across the country.³⁹ In 2021, U.S. Senator Elizabeth Warren introduced the “Truth and Healing Commission on Indian Boarding Schools Policies Act,” which would establish a Truth and Healing Commission, similar to that used in Canada.⁴⁰ The Commission would have authority to hold hearings and assess the record to determine what further steps must be taken to ensure accountability for the harms, and take actions toward corrective justice.⁴¹ Among other things, the Act would (1) require protection for “unmarked graves” at the former boarding school sites, (2) seek to identify the various nations from which Indigenous children were taken, and (3) examine current practices, such as removal of Indian children for placement in foster care, that operate in a similar manner.⁴² In its findings, the Act notes that between 1941 and 1967, as many as 1/3 of Native children were removed from their families and adopted or placed in foster care.⁴³ The dynamic continues today, with evidence showing that in some states, over fifty percent of children placed in foster care are Native American, and in Alaska, a shocking sixty percent of children placed in foster care are Alaska Natives.⁴⁴ Although hearings were held and the Act was

36. Native American Rights Fund, *Federal Government Moves Forward in Boarding School Healing Journey*, NARF (May 11, 2022), <https://www.narf.org/doi-report-boarding-school/> [<https://perma.cc/QS66-FXXS>].

37. See FEDERAL INDIAN BOARDING SCHOOL INITIATIVE INVESTIGATIVE REPORT, *supra* note 32, at 86.

38. *Id.*

39. Melissa L. Walls et al., *Strain, Emotion, and Suicide Among American Indian Youth*, 28 *DEVIANT BEHAV.* 219, 224 (2007).

40. Truth and Healing Commission on Indian Boarding School Policies Act, S. 2907, 117th Cong. § 3 (2021) [hereinafter S. 2907] (the purpose of the Act was “to establish a Truth and Healing Commission on Indian Boarding School Policies in the United States,” among others).

41. *Id.* § 5.

42. *Id.* §§ 2, 5.

43. See *id.* § 2; see also Ainslie MacLellan, *Sixties Scoop Still Not Well-Recognized, Aboriginal Adoptees Say*, CBC NEWS (Mar. 16, 2016, 7:29 PM), <https://www.cbc.ca/news/canada/montreal/real-talk-on-race-sixties-scoop-not-recognized-1.3494343> [<https://perma.cc/GRD5-ZA-WP>].

44. S. 2907, § 5.

introduced in the House and Senate, as of June 2022, no meaningful action has been taken.⁴⁵

Framing accountability for the harms of Indigenous boarding schools in Canada and the United States engages what Professor Eric Yamamoto's book describes as "healing the persisting wounds of historic injustice."⁴⁶ Building on his prior work, Professor Yamamoto identifies the main components of a process of "social healing through justice."⁴⁷ In the global context, the process of healing from historic injustice moves from "Reparations" to "Reconciliation," and then to "Social Healing Through Justice."⁴⁸ This essay will explore how Professor Yamamoto's model of healing historical injustice might operate in the Indian Boarding School context. Before evaluating the framework, however, I will engage Professor Yamamoto's assertion that the framework will not work well unless several "preconditions" for "social healing through justice" are in place.⁴⁹

III. THE PRECONDITIONS FOR SOCIAL HEALING THROUGH JUSTICE

Professor Yamamoto outlines a preliminary set of practical conditions, or "principles," that must be in place before the framework for social healing can be invoked in an effective manner.⁵⁰ The first is that the entire society must share a mutual interest in establishing peaceful and productive relations in a reconstructed society.⁵¹ After the murder of George Floyd in 2020, there was a rare moment in United States history when many Americans across racial lines became united, calling for an end to the racist forms of policing that caused Floyd's death, as well as a collective commitment to end racism.⁵² However, that moment was short-lived. As the 2020 Presidential election geared up, racial hostility emerged in cities across the country.⁵³ The

45. See U.S. CONGRESS, *S.2907 - Truth and Healing Commission on Indian Boarding School Policies Act*, <https://www.congress.gov/bill/117th-congress/senate-bill/2907/all-actions#> (last visited Apr. 6, 2023).

46. See generally YAMAMOTO, *supra* note 6.

47. *Id.* at 9, 72-91.

48. *Id.* at 24.

49. *Id.*

50. *Id.* at 24-26.

51. *Id.* at 24.

52. See Michael Tesler, *The Floyd Protests Have Changed Public Opinion About Race and Policing. Here's the Data*, WASH. POST (Jun. 9, 2020, 7:00 AM), <https://www.washingtonpost.com/politics/2020/06/09/floyd-protests-have-changed-public-opinion-about-race-policing-heres-data/> [https://perma.cc/AM4H-SCWZ].

53. See John Blake, *How 'Good White People' Derail Racial Progress*, CNN (Aug. 2, 2020, 5:03 PM), <https://www.cnn.com/2020/08/01/us/white-liberals-hypocrisy-race-blake/index.html> [https://perma.cc/37UP-ZDV5].

collective sentiment to “heal” racism all but died the following year, after a white supremacist-led mob descended on the U.S. Capitol on January 6, 2021, seeking to “overturn” the election results that named Joe Biden as President.⁵⁴

In the aftermath of George Floyd’s murder, the new term—“BIPOC”—intended to link the struggles of Black people, Indigenous peoples, and other “People of Color.”⁵⁵ As of 2022, there is active retrenchment on racial justice or even the acknowledgement of race or racism, as state legislatures seek to ban “critical race theory” in public schools.⁵⁶ Legal challenges to “affirmative action” within institutions of higher education are pending in the U.S. Supreme Court,⁵⁷ and federal programs of the Biden administration intended to benefit “socially disadvantaged farmers” have been enjoined as “race-based” assistance.⁵⁸ This pushback against racial justice has inspired some Indigenous advocates to actively delink Indigenous peoples’ efforts to secure reparative justice from the claims of other racial groups.⁵⁹ These advocates contend that Indigenous people suffered a distinctive set of historical harms, both political and cultural, and in the U.S., federally-recognized Indian tribes share a common political identity as sovereign nations.⁶⁰ Due to the widespread societal confusion about “merit,” “race,” and “indigeneity,” it is not clear that the first precondition can be met at this time.

The second precondition is that social healing for historic harm must not supplant the struggle of contemporary justice advocates to secure the end of oppressive structures.⁶¹ Systemic forms of racism run deep, and the past is

54. See Michael Biesecker et al., *Records Show Fervent Trump Fans Fueled US Capitol Takeover*, AP NEWS (Jan. 10, 2021), <https://apnews.com/article/us-capitol-trump-supporters-1806ea8dc15a2c04f2a68acd6b55cace> [<https://perma.cc/TKA8-R9CL>].

55. Chevaz Clarke, *BIPOC: What Does it Mean and Where Does it Come From?*, CBS NEWS (Jul. 2, 2020, 10:04 AM), <https://www.cbsnews.com/news/bipoc-meaning-where-does-it-come-from-2020-04-02/> [<https://perma.cc/KVQ2-J4UA>].

56. See Rashawn Ray & Alexandra Gibbons, *Why Are States Banning Critical Race Theory?*, BROOKINGS (Nov. 2021), <https://www.brookings.edu/blog/fixgov/2021/07/02/why-are-states-banning-critical-race-theory/> [<https://perma.cc/AQ9S-2ZVJ>].

57. See e.g., *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 397 F.Supp.3d 126 (D. Mass. 2019), cert. granted, 142 S. Ct. 895 (2022) (No. 20-1199).

58. Michael Levenson, *Judge Blocks \$4 Billion U.S. Debt Relief Program for Minority Farmers*, N.Y. TIMES (Jun. 23, 2021), <https://www.nytimes.com/2021/06/23/us/politics/biden-debt-relief-black-farmers.html> [<https://perma.cc/5Y63-QZ6K>].

59. See Addie C. Rolnick, *Indigenous Subjects*, 131 YALE L. J. 2652, 2721, 2750-51 (2022); see also Susan K. Serrano, *A Reparative Justice Approach to Assessing Ancestral Classifications Aimed at Colonization’s Harms*, 27 WM. & MARY BILL RTS. J. 501, 504 (2018).

60. See Otis B. Grant, *Policing Jurisdiction in Native American Sovereignty*, 15 JUST. PROF. 313, 313-14 (2002).

61. YAMAMOTO, *supra* note 6, at 24.

often present. Senator Warren's Truth and Healing Commission Bill explicitly outlines the continuing harms to Indigenous people and attempts to secure additional investigation into those forms of injustice, so there is at least a baseline for this precondition in the proposed legislation.⁶²

The third principle is that the effort to heal must address both "emotional and material" aspects of the healing process.⁶³ Presumably, boarding school survivors and their families must be able to tell the stories of the trauma they suffered, and there must be some form of material redress, including monetary damages. The process of making historical injustice visible is quite challenging. Boarding school survivors have tried to tell their stories in the past, but they have not been able to do so in any sustained or public manner in the U.S.⁶⁴ Instead, Church officials often assert an exalted status that obscures their internal, systemic abuses, and government officials fear that acknowledging the harms will lead to financially devastating lawsuits.⁶⁵ Many of the abuses against Native children took place in the 1950s and 1960s.⁶⁶ To the extent that the victims and the perpetrators are still alive, a tort lawsuit is possible. The State of South Dakota actually passed legislation to shorten the statute of limitations so that claims against the church members who served as boarding school officials could not be litigated.⁶⁷

The fourth principle is that there must be a commitment to restructure "social, economic and political relationships" to protect against recurring forms of injustice.⁶⁸ This principle also requires us to identify systemic forms of racism and injustice, as well as restructure institutions and relationships. This will be quite difficult to do in the U.S. because many citizens dispute that "systemic injustice" even exists, given the alleged identity of the U.S. as a "constitutional" and "multicultural democracy."⁶⁹ Of course, the federal

62. See generally S. 2907, 117th Cong. (2021).

63. YAMAMOTO, *supra* note 6, at 25.

64. See FEDERAL INDIAN BOARDING SCHOOL INITIATIVE INVESTIGATIVE REPORT, *supra* note 32, at 92 (noting that the "Federal Government has not provided a forum or opportunity for survivors or descendants of survivors of Federal Indian boarding schools, or their families, to voluntarily detail their experiences in the Federal Indian boarding school system").

65. See Brad Brooks, *Native American Survivors of Alleged Boarding School Sex Abuse Want Justice*, REUTERS (July 27, 2020), <https://widerimage.reuters.com/story/native-american-survivors-of-alleged-boarding-school-sex-abuse-want-justice> [<https://perma.cc/CH28-ZPW9>].

66. See Ann Piccard, *Death by Boarding School: The Last Acceptable Racism and the United States' Genocide of Native Americans*, 49 GONZ. L. REV. 137, 153, 167 (2013); see also Eric Hanson et al., *The Residential School System*, INDIGENOUS FOUND. (2020), <https://indigenousfoundations.arts.ubc.ca/residential-school-system-2020/> [<https://perma.cc/8KM7-NJXN>].

67. See Brooks, *supra* note 65.

68. YAMAMOTO, *supra* note 6, at 25.

69. See Adrian Florido & Marisa Peñaloza, *As Nation Reckons with Race, Poll Finds White Americans Least Engaged*, NPR (Aug. 27, 2020, 5:00 AM), <https://www.npr.org/2020/08/27/906329303/as-nation-reckons-with-race-poll-finds-white-americans-least-engaged>

judiciary, Congress, and the Executive branch are currently dealing with many political pressures and the American public is outraged about many things, so it is always possible that there will be some social will for “change.”⁷⁰

The fifth principle is related to the fourth practical principle outlining the need for “changes in social structures,” because there must be action and not just “words.”⁷¹ People must see “*justice done*.”⁷²

Finally, the sixth working principle is really a “cautionary” note that requires us to understand the “darkside of reparative justice,” namely that social justice initiatives sometimes stall out or are otherwise incomplete or unsatisfactory.⁷³ To the extent that there is an “apology” but no offer to make material amends, this would likely be viewed as unsatisfactory. If a bill is introduced in Congress that would require tangible action, but the Bill fails to pass into law, is that a step toward reparative justice or is it a failure of justice? Americans are notoriously unwilling to acknowledge their complicity in crimes against humanity, and they resent any effort to put money toward “historical” injustices when they fail to see that there is any “living” perpetrator.⁷⁴ There might be a great deal of “pushback” to reparative justice efforts, and a step toward justice might trigger several steps back. Can we deal with this uncertainty without moving into negative emotions or losing hope?

Professor Yamamoto suggests that we can, and his framework invokes a “transitional justice” methodology.⁷⁵ The wounds of historic injustice require collective action and a commitment to co-create a better future. This is not a “tort-based” model of reparative justice that looks “backward” at the harm to a “victim” caused by a “perpetrator” and posits what is needed to make the victim feel “whole.”⁷⁶ Using a transitional justice lens, we understand that the historical wounds harm the collective.⁷⁷ Some people will not see this and will prefer not to engage “the past.” Others will feel estranged from society because of the injustices that have occurred and

[<https://perma.cc/SKS9-2LCE>]; see also Thomas B. Griffith, *The Degradation of Civic Charity*, 134 HARV. L. REV. 119, 140 (2020).

70. See Victoria L. Spring et al., *The Upside of Outrage*, 22 TRENDS IN COGNITIVE SCIENCES 1067, 1067-69 (2018) (noting that public “outrage” may be “necessary to foment change”).

71. YAMAMOTO, *supra* note 6, at 25.

72. *Id.*

73. *Id.* at 25.

74. See W. Burlette Carter, *True Reparations*, 68 GEO. WASH. L. REV. 1021, 1028 (2000).

75. See YAMAMOTO, *supra* note 6, at 47.

76. *Id.* at 70-71.

77. See *id.* at 66.

continue to occur. So long as we tolerate that asymmetry and try to “normalize” it, we fail to set a coherent standard for justice that protects everyone in society. That is why George Floyd’s murder should not be understood as a random act of violence by a “rogue” officer. The resulting tragedy was the emblem of a law enforcement system that doesn’t adequately value human life or human dignity, and that is a problem for everyone.

IV. THE FRAMEWORK FOR SOCIAL HEALING

According to Professor Yamamoto, the process of social healing can be generational and often requires both individual and collective efforts as the active components of the framework process take place.⁷⁸ The active components are threefold: (i) analysis of the conflict; (ii) confrontation between the participants; and (iii) resolution of the grievance.⁷⁹ While the three steps seem fundamental, there are multiple levels of work and consciousness to engage with. This part of the essay analyzes Professor Yamamoto’s framework and explains how it might apply in the context of the Indian boarding schools issue. As this section demonstrates, we are at the initial stage of understanding the “conflict” and have not yet moved into the steps necessary to confront the issues or move into any form of “resolution.”

A. *The Analytical Framework of Social Healing*

Professor Yamamoto defines an analytical framework of the “4Rs” that entails a dynamic process of “*recognition, responsibility, reconstruction and reparation.*”⁸⁰ He defines “recognition” as requiring an assessment of the historic injustice, as well as the associated injustices that persist today.⁸¹ How does the “persistent wound” manifest in contemporary society? Can participants in the social healing process acknowledge and empathize with the anger and suffering of the aggrieved parties? The wounds may be material, emotional, or related to social exclusion or discrimination. Can members of the society “see” the wounds, or are they obscured and invisible?

The next phase of taking “responsibility” asks the participants to “carefully assess the dynamics of group power.”⁸² It is likely that some participants benefitted from the historical harm to the other group. Can they

78. *Id.* at 64-69.

79. *Id.* at 50.

80. *Id.* at 72.

81. *See id.* at 73.

82. *Id.* at 79.

acknowledge that and take responsibility for the past injustice? Or do they assess the harm as the act of a generation that is now passed, disclaiming any contemporary benefit or privilege that they might enjoy? Professor Yamamoto claims that in some cases “the *recognition* of historical events and grievances and acceptance of *responsibility* for the harms may be enough.”⁸³ In other cases, there is a need to move further into the process.⁸⁴

The next step in the framework is “reconstruction,” which means taking affirmative actions towards healing by “rebuilding relationships and remaking institutions.”⁸⁵ A first step is often the “apology,” followed by “concrete actions” to afford redress, the development of a “new narrative about the injustice” and its significance to “communities, institutions, and society,” and a process of “institutional restructuring.”⁸⁶ This process of restructuring can then move into a final phase of “reparation” as a transformative justice construct, where participants explore “realistic pathways to the future through capacity-building and ‘condemning exploitation, and adopting a vision of a more just world.’”⁸⁷

B. Application of the Framework to the U.S. Indian Boarding School Context

The United States is still in the early stages of its social healing process. The first step of “recognition” is underway, as indicated by the May 2022 Report of the Department of Interior, which made an official statement that acknowledges at least four critical features of this issue.⁸⁸ First, the Report reveals the essential fact that the United States government’s official policy from 1819-1969 was to remove Indian children from their families by coercion and force, and that the boarding schools operated on a “militarized” model that punished children for practicing their cultures, religions, or speaking their languages, and prepared them to be “laborers” for non-Indian citizens.⁸⁹ The federal team that investigated Indian boarding schools found that as of the 1930s, the use of child labor in boarding schools would violate

83. *Id.* at 82.

84. *Id.*

85. *Id.*

86. *Id.* at 82-84.

87. *Id.* at 90 (quoting ERIC K. YAMAMOTO, *INTERRACIAL JUSTICE: CONFLICT & RECONCILIATION IN POST-CIVIL RIGHTS AMERICA* 208 (2000)).

88. *See* FEDERAL INDIAN BOARDING SCHOOL INITIATIVE INVESTIGATIVE REPORT, *supra* note 32.

89. *See id.* at 6-8, 36.

child labor laws in most states.⁹⁰ The children's parents were punished if they resisted the removal of their children, and this was enforced by forfeiture of food rations and treaty annuities.⁹¹ The parents were forbidden from visiting or communicating with their children while they were in residential schools.⁹² The resultant pain and trauma to boarding school survivors is significant. The Report documents that survivors experience post-traumatic stress disorder and other chronic health problems at rates three times higher than the population at large, which is consistent with the experience of war veterans.⁹³

Second, the Report states that the reasons for the boarding school policy were to assimilate Indian children and facilitate the transfer of tribal land to non-Indian settlers.⁹⁴ The Report quotes founding father, Benjamin Franklin, who stated the federal government sought to “extirpate these savages in order to make room for the cultivators of the earth,” and felt that it was justifiable to use any means—including the provision of rum—to break down the Tribal Nations who resisted.⁹⁵ Cultural genocide and physical genocide worked in tandem to break down tribal societies, and the use of alcohol, disease, military aggression, and removal of children were each justified as a permissible means to a necessary end.⁹⁶ U.S. federal policy did not extend any moral value to Indigenous peoples or cultures, and it failed to recognize their human dignity. By understanding the link between dispossession of Native lands and removal of Native children, we see that it is impossible to neatly separate the historical harms to Indigenous peoples. Rather, the interactive nature of the harms to Indigenous peoples is a core revelation of this step of the framework.

Third, the Report recognizes that the federal government procured studies and was well aware of the extreme abuses of the Indian boarding school system, and yet it allowed the system to continue for 150 years, despite that knowledge.⁹⁷ The Report cites the Meriam Report of the 1920s

90. *Id.* at 59 (alteration in original) (quoting LEWIS MERIAM, INST. FOR GOV'T RSCH., THE PROBLEM OF INDIAN ADMINISTRATION 376 (1928)).

91. *Id.* at 35-36.

92. *See id.* at 38.

93. *Id.* at 88-89; *see also* Erin K. Dursa et al., *Prevalence of a Positive Screen for PTSD Among OEF/OIF and OEF/OIF-Era Veterans in a Large Population-Based Cohort*, 27 J. OF TRAUMATIC STRESS 542, 545 (2014).

94. *See* FEDERAL INDIAN BOARDING SCHOOL INITIATIVE INVESTIGATIVE REPORT, *supra* note 32, at 93.

95. *Id.* at 25 (quoting BENJAMIN FRANKLIN, AUTOBIOGRAPHY OF BENJAMIN FRANKLIN 225 (Frank Woodward Pine ed. 1916)).

96. *See id.* at 91-94.

97. *Id.* at 38-39, 54-57.

and the later Kennedy Report, which found that “[t]he Department has acknowledged ‘frankly and unequivocally that the provisions for the care of the Indian children in boarding schools are grossly inadequate’” and that “[r]ampant physical, sexual, and emotional abuse; disease; malnourishment; overcrowding; and lack of health care in Indian boarding schools are well-documented.”⁹⁸

Finally, the Report documents the complicity between the federal government and the religious denominations that secured contracts to “educate” the Native children.⁹⁹ The contracts were funded, in part, by Indian treaty annuities.¹⁰⁰ This was held not to violate the Establishment Clause because they were assisting in the “civilization” of Native children.¹⁰¹ Adding insult to injury, the monies used to compensate Native peoples for land cessions funded the abusive boarding school system that traumatized generations of Native people.¹⁰² Because Indigenous peoples were considered “wards” and non-citizens as of 1819, they had no civil or constitutional rights that would enable them to seek judicial relief.¹⁰³ The Department of War administered the U.S. government’s interaction with Native peoples until the Department of the Interior was created in 1849.¹⁰⁴ Thereafter, the Department of the Interior processed dispossession into law as the Agency that was “entrusted” with “assisting” American Indian nations.¹⁰⁵

In 2000, Assistant Secretary of Interior for Indian Affairs, Kevin Gover, apologized to American Indian and Alaska Native peoples for the dismal

98. *Id.* at 56 (quoting COMM. ON LAB. AND PUB. WELFARE, INDIAN EDUC.: A NATIONAL TRAGEDY—A NAT’L. CHALLENGE, S. REP. NO. 91-501, at 10-13 (1969)); *see also* Dean S. Seneca & Katherine E. Connelly, *Stolen Souls and Broken Promises: Boarding Schools Are a Continuing Crisis of Colonialism*, INDIAN COUNTRY TODAY (Oct. 13, 2021), <https://indiancountrytoday.com/opinion/stolen-souls-and-broken-promises-boarding-schools-are-a-continuing-crisis-of-colonialism> [<https://perma.cc/J6M9-UYXS>]; Bo Erickson & Cara Korte, *Report on American Indian Boarding Schools Reveals Horrible Treatment of Indigenous Children*, CBS NEWS (May 12, 2022, 7:40 AM), <https://www.cbsnews.com/news/indian-boarding-indigenous-school-children-treatment/> [<https://perma.cc/J7EQ-9NQ5>].

99. *See* FEDERAL INDIAN BOARDING SCHOOL INITIATIVE INVESTIGATIVE REPORT, *supra* note 32, at 48-49.

100. *Id.* at 43.

101. *Id.* at 45 (citing *Quick Bear v. Leupp*, 210 U.S. 50 (1908), which held that federal payments to religious institutions, while exhausting the funds the Indian Tribes were entitled to, did not apply to Indian treaty funds, did not violate existing Indian appropriation laws, and holding otherwise would violate the free exercise clause of the First Amendment).

102. *Id.* at 43.

103. *See id.* at 22, 35, 91.

104. *Id.* at 26, 28.

105. *Id.* at 28.

historical record of the Bureau of Indian Affairs (BIA).¹⁰⁶ Gover, a member of the Pawnee Nation and well-known attorney, took the opportunity to acknowledge the harms that occurred to Native peoples over 175 years of the BIA's history, and he looked ahead to what the Agency should do in the next millennium to promote the well-being of Native Nations.¹⁰⁷ Gover stated that it was not a time for "celebration," but rather a time for "contrition."¹⁰⁸ He claimed to be unable to apologize on behalf of the U.S. because that was the role of the country's elected leaders.¹⁰⁹ He said, however, that he could apologize on behalf of the Agency that he led, given the fact that the BIA was responsible for several of the most egregious harms, including the boarding school policy.¹¹⁰ Gover did not mince words, stating that the Agency's legacy was one of "racism and inhumanity."¹¹¹ Not only were there material consequences to Native people as they fought to keep their lands, food systems, governance systems, and religions, but there were "emotional" and "spiritual" consequences such as "trauma of shame, fear and anger [] pass[ing] from one generation to the next, and manifest[ing] itself in the rampant alcoholism, drug abuse, and domestic violence that plague Indian country."¹¹² Assistant Secretary Gover's apology was historic and identified the brutal history and cumulative federal policies that operated to effectuate cultural genocide and even "ethnic cleansing."¹¹³ Gover stated that these "wrongs must be acknowledged if the healing is to begin."¹¹⁴

Twenty-two years later, Secretary of the Interior, Deb Haaland, acknowledged and took responsibility for the Department's role in the Indian boarding school system tragedy, by stating:

The consequences of federal Indian boarding school policies—including the intergenerational trauma caused by the family separation and cultural eradication inflicted upon generations of children as young as 4 years old—are heartbreaking and undeniable. We continue to see the evidence of this

106. See generally 146 CONG. REC. 17979 (2000) (Assistant Secretary Kevin Gover's apology made on Sept. 8, 2000) [hereinafter *Gover Apology*]; see also Rebecca Tsosie, *The BIA's Apology to Native Americans: An Essay on Collective Memory and Collective Conscience*, in *TAKING WRONGS SERIOUSLY: APOLOGIES AND RECONCILIATION* 185-212 (Elazar Barkan & Alexander Karn eds., 2006).

107. *Gover Apology*, *supra* note 106.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*; see also Christine Diindiisi, *We Have a Right to Know the Truth*, NAT'L NATIVE AM. BOARDING SCH. HEALING COAL. (Mar. 25, 2021), <https://boardingschoolhealing.org/we-have-a-right-to-know-the-truth/> [<https://perma.cc/W68E-VF3M>].

113. *Gover Apology*, *supra* note 106.

114. *Id.*

attempt to forcibly assimilate Indigenous people in the disparities that communities face. It is my priority to not only give voice to the survivors and descendants of federal Indian boarding school policies, but also to address the lasting legacies of these policies so Indigenous peoples can continue to grow and heal.¹¹⁵

The current Assistant Secretary for Indian Affairs, Bryan Newland, framed the investigative report as an “opportunity to reorient federal policies to support the revitalization of Tribal languages and cultural practices.”¹¹⁶ Secretary Haaland announced several “next steps,” commencing with the launch of “The Road to Healing,” a year-long tour across the country, which will allow American Indian, Alaskan, and Hawaiian Native survivors of the federal Indian boarding school system to share their stories, help “connect communities with trauma-informed support and facilitate collection of a permanent oral history.”¹¹⁷ The “next steps” will also include another report that will produce “a list of marked and unmarked burial sites at federal Indian boarding schools and an approximation of the total amount of federal funding used to support the federal Indian boarding school system, and further investigation in order to determine the legacy impacts of the school system” on Native American communities today.¹¹⁸

Congressional appropriations to the Department of the Interior (DOI) will support some of this work. In preparing the first report, the DOI entered a Memorandum of Understanding with a Native-led non-profit organization, the National Native American Boarding School Coalition (NABS), which had already assembled a great amount of archival and documentary records.¹¹⁹ Presumably, this partnership will continue into the next phases of the initiative, and this seems like a positive step because it is a collaborative effort between an institution representing the government and an

115. DOI Press Release, *supra* note 31.

116. See Nicole Chavez, *Interior Department says Native American children were forced into assimilation at 408 federal boarding schools*, CNN (May 11, 2022), <https://www.cnn.com/2022/05/11/us/indigenous-boarding-schools-interior-report/index.html> [<https://perma.cc/6C57-3Y83>].

117. *Interior Dept. Investigation Identifies 21 Federal Indian Boarding School Sites In Minnesota*, CBS MINN. (May 13, 2022), <https://www.cbsnews.com/minnesota/news/interior-dept-investigation-identifies-21-federal-indian-boarding-school-sites-in-minnesota/> [<https://perma.cc/59KU-728Z>].

118. DOI Press Release, *supra* note 31.

119. See Memorandum of Understanding between U.S. Dep’t of Interior and Nat’l Native Am. Boarding Sch. Healing Coal. (Dec. 7, 2021) [hereinafter MOU]; see also *Resources*, NAT’L NATIVE AM. BOARDING SCH. HEALING COAL., <https://boardingschoolhealing.org/education/resources/> [<https://perma.cc/B9QB-CVNT>].

organization representing the survivors.¹²⁰ Using Professor Yamamoto's framework, it seems that the stage is set to identify the "conflicts" and introduce a "confrontation" between the "perpetrators" and the "victims." The next steps of the process will be telling.

If Congress enacts the Truth and Healing Commission on Indian Boarding Schools Policies Act, this will also signal a broader commitment to accountability. The DOI was discharging the will of the Executive and Legislative branches during the 19th and 20th centuries.¹²¹ The accountability extends from the government to its agencies, and to all religious organizations that were complicit in these harms. It is one thing for an agency to acknowledge the historical harms. It is quite another thing for a national government to acknowledge the harms and hold itself accountable.

In the final part of this paper, I will link the Indian boarding school issue with other contemporary global and national movements to heal the historical injustices experienced by Indigenous people.

V. INDIGENOUS PEOPLE AND REPARATIVE JUSTICE: WHAT DOES THE FUTURE HOLD?

In July 2019, the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) released its human rights accountability study examining how the nation-states had implemented the norms of the United Nations Declaration on the Rights of Indigenous Peoples since its adoption in 2007.¹²² Notably, the Declaration expressly protects Indigenous cultures and Indigenous children.¹²³ The Report is organized around three main themes, which track several concepts within Professor Yamamoto's framework for social healing: recognition, reparation, and reconciliation.¹²⁴ The Report links "reparation" with compensatory justice, including economic or material awards.¹²⁵ The Report links "reconciliation" with a process of "healing" relationships that includes "public truth sharing, apology and commemoration," addressing ongoing legacies of harm to Indigenous peoples (including harm to Indigenous cultures and children), and tangible efforts to "close the gaps" in

120. Press Release, Dep't of the Interior, Interior Department Announces Collaborative Effort to Support Federal Indian Boarding School Initiative (Dec. 7, 2021).

121. See MOU, *supra* note 119, at 1.

122. Rep. of the Hum. Rts. Council, *Efforts to Implement the United Nations Declaration on the Rights of Indigenous Peoples: Recognition, Reparation and Reconciliation*, at 1-2, U.N. Doc. A/HRC/EMRIP/2019/3 (Sept. 2, 2019).

123. See *id.* at 19.

124. *Id.* at 2.

125. See *id.* at 10.

equity with respect to “social, health and economic outcomes.”¹²⁶ The need to heal the harms caused by the Indian boarding school system is fundamentally related to the Declaration’s call to acknowledge historic injustices, engage in reparative justice, and work toward reconciliation. Professor Yamamoto’s framework also engages many of these components, and he demonstrates how they are interlinked and the need to set appropriate goals and achieve the desired outcomes.¹²⁷

A minimal framework for reparative justice already exists in the U.S. It is helpful to use Professor Martha Minow’s account of “restorative justice” to understand that the effort is a combined product of making amends for past injustice, while also instituting changes that will correct injustice in the present and future.¹²⁸ Minow distinguishes different forms of reparative justice for historical wrongs, including “reparations,” understood as “offer[ing] money or resources in symbolic redress of violations;” “restitution,” that “returns wrongly appropriated property, artifacts, and human remains;” and “apologies,” which offer verbal acknowledgment of responsibility for wrongdoing, and “afford victims the chance to forgive or to refuse to forgive.”¹²⁹

Since the mid-20th century, the U.S. and its constituent entities have made efforts on all three levels. In addition to Assistant Secretary Gover’s 2000 apology, the U.S. Congress issued a 1993 Joint Resolution apologizing to the Native Hawaiian people for its role in the 1893 overthrow of their internationally recognized Kingdom.¹³⁰ In 2010, President Obama signed an appropriations bill that had a few sentences apologizing “on behalf of the people of the United States” for historic “violence, maltreatment, and neglect” to Native peoples by American citizens.¹³¹ This indirect “apology” presented a number of problems, not the least of which was that it was not communicated to Native people and they found out only *after* the bill was passed into law.¹³²

126. *Id.* at 11.

127. YAMAMOTO, *supra* note 6, at 72.

128. MARTHA MINOW, BETWEEN VENGEANCE AND FORGIVENESS 91 (1998).

129. *Id.* at 117; Rebecca Tsosie, *Acknowledging the Past to Heal the Future: The Role of Reparations for Native Nations*, in REPARATIONS: INTERDISCIPLINARY INQUIRIES 43, 51 (Jon Miller & Rahul Kumar eds., 2007).

130. S.J. Res. 19, Pub. L. No 103-150, 107 Stat. 1510, 103d Cong. (1993).

131. Department of Defense Appropriations Act, Pub. L. No 111-118, § 8113, 123 Stat. 3409 (2010).

132. See Rob Capriccioso, *A Sorry Saga: Obama Signs Native American Apology Resolution; Fails to Draw Attention to It*, INDIAN L. RES. CENT. (Jan. 13, 2010), <https://indianlaw.org/node/529> [<https://perma.cc/CRF6-JPCG>].

There are two federal statutes that effectuated some form of “reparations” to Native peoples in the United States. The Indian Claims Commission Act of 1946¹³³ provides five statutory claims that could be justiciable before the Commission, including claims arising under the U.S. Constitution, laws, or treaties, tort and equitable claims arising from fraudulent conduct by government officials, takings of tribal land without compensation, and claims based upon “fair and honorable dealings that are not recognized by any existing rule of law or equity.”¹³⁴ The statute also grants American Indian and Alaska Native Nations standing to bring suits for future rights deprivations into the U.S. Court of Claims, which they could not do prior to 1946 without express congressional action.¹³⁵ This statute is often associated with “reparative justice” for the massive land dispossession of the 19th and early 20th centuries.¹³⁶ The purpose of the statute was to extinguish all historic land claims, establishing a statute of limitations that would foreclose future actions for historical wrongs.¹³⁷ The common practice was to “offset” any judgments with the costs that the government expended on the tribe.¹³⁸ In this regard, the statute has been criticized as a procedural barrier to justice because it operated at a time when tribal governments lacked the right to hire attorneys on their behalf, and the attorneys who specialized in this field worked under lucrative government contracts that gave them a significant statutory share of the damages awards.¹³⁹

The 1990 Native American Graves Protection and Repatriation Act (NAGPRA)¹⁴⁰ is the best example of “restitution,” aside from very limited cases where the U.S. government returned land to the Indigenous owners, such as the return of Taos Pueblo’s sacred Blue Lake under the Nixon administration.¹⁴¹ NAGPRA required federal agencies and federally-funded museums to prepare inventories of Native American human remains and associated funerary objects in their possession as of 1990, as well as summaries of other protected cultural items (sacred objects and objects of

133. Indian Claims Commission Act, 25 U.S.C. § 70 (repealed 1978).

134. *See id.*

135. *See id.*

136. *See* Nell Jessup Newton, *Compensation, Reparations, and Restitution: Indian Property Claims in the United States*, 28 GA. L. REV. 453, 466 (1994).

137. *United States v. Dann*, 470 U.S. 39, 45 (1985).

138. John R. White, *Barmecide Revisited: The Gratuitous Offset in Indian Claims Cases*, 25 ETHNOHISTORY 179, 182 (1978).

139. *See* Nancy Oestreich Lurie, *The Indian Claims Commission Act*, 311 ANNALS AM. ACAD. POL. AND SOC. SCI. 56, 57-58 (1957).

140. *See generally* Native American Graves Protection and Repatriation Act, 25 U.S.C.A. § 3001.

141. *See* Press Release, Dep’t of the Interior, The White House H.R. 471 Declares Certain Lands in Carson Nat’l Forest are Held in Trust for the Pueblo de Taos (Dec. 15, 1970).

cultural patrimony).¹⁴² The agencies and museums were then required to repatriate the cultural items to affiliated tribal governments or Native Hawaiian organizations, upon completion of a statutory identification process.¹⁴³ The repatriation process was highly contested for many years, with museums arguing that they would lose their “collections” and scientists claiming that this would prevent them from studying human remains to secure knowledge.¹⁴⁴ Thirty years later, all parties agree that many benefits emerged from the tribal consultation and repatriation process, and the resultant relationships often created important new knowledge for both sides.¹⁴⁵

Both statutes effectuated some form of “restorative justice” that was not available before, but they are relatively narrow in focus, and there is currently no federal law that addresses the harms of the Indian boarding school system. It is possible that Senator Warren’s bill will be passed into law, but at this juncture, there is no official statement of U.S. accountability for the harms of the Indian boarding school system.

VI. CONCLUSION

Professor Yamamoto’s *Healing the Persisting Wounds of Historic Injustice* framework aligns with the contemporary movement to expand the notion of restorative justice from the frame of “reparations” for past injustices to a human-rights-based notion of “accountability.” In Canada and the United States, this will likely require partnerships to co-create more just institutional structures that enable Indigenous people to reshape the dynamics of law, social policy, economics, and cultural revitalization into a vibrant society where Indigenous children thrive and are secure in their identities and in their futures. That vision may seem distant, but it really is the only way to achieve “justice,” given the severity of the harms and their continuing legacy for Native people.

142. See 25 U.S.C.A. § 3003.

143. See *id.* § 3005.

144. See Ann M. Kakaliouras, *An Anthropology of Repatriation: Contemporary Physical Anthropological and Native American Ontologies of Practice*, 53 CURRENT ANTHROPOLOGY 210, 211 (2012).

145. See *id.*