

## Reconciliation

### 10.1 INTRODUCTION

As an element of transitional justice, reconciliation aims for the transformation of relationships between victim-survivors, perpetrators, and wider society. In the context of historical-structural abuses, however, the practices and discourses of reconciliation have tended to operate as a form of inappropriate and premature settlement or closure of the grievances of victim-survivors and their descendants. Encouraging victim-survivors and a society to pursue reconciliation in the absence of addressing other elements of transitional justice may operate as a reaffirmation of the power structures of states and churches. While the experience of Canada and Australia contains an explicit reconciliation discourse and practice, in the absence of significant change in and imagination regarding power relationships in those societies, they join the United States, Ireland, and the United Kingdom in remaining deeply unreconciled societies. In addition, the reconciliation practice of the Catholic Church regarding historical abuse demonstrates its inability to effectively self-critique in its processes of reconciliation.

### 10.2 THE CONCEPT OF RECONCILIATION

Reconciliation is a concept that defies straightforward description and definition.<sup>1</sup> Reconciliation theories view reconciliation as a ‘scalar’ concept,

<sup>1</sup> Lorna McGregor, ‘Reconciliation: I Know It When I See It’ (2006) 9 *Contemporary Justice Review* 155; David Bloomfield, *On Good Terms: Clarifying Reconciliation* (Berghof Research Center for Constructive Conflict Management 2006); Johan Galtung, ‘After Violence, Reconstruction, Reconciliation, and Resolution: Coping with Visible and Invisible Effects of War and Violence’ in Mohammed Abu-Nimer (ed), *Reconciliation, Justice, and Coexistence: Theory & Practice* (Lexington Books 2001); Jeremy Sarkin and Erin Daly, ‘Too Many

which allows for minimal and maximal conceptions.<sup>2</sup> The contested nature of reconciliation creates risks that victim-survivors may interpret reconciliation as meaning they must unfairly relinquish some claims, accept imperfect justice, or be required to forgive perpetrators.<sup>3</sup> Ambiguity regarding reconciliation may also enable churches or governments to claim they pursue reconciliation but maintain an approach that fosters impunity, retains power, and ignores victims and the causes of conflict or violence.<sup>4</sup>

To mitigate these risks, we can first clarify the term. Reconciliation can be understood as not equivalent to impunity or a substitute for accountability.<sup>5</sup> Second, reconciliation should not be equated with forgiveness, expecting victim-survivors to personally forgive their perpetrators. Victim-survivors of gross violations of human rights would have good reasons to legitimately object to coerced or centrally organised forgiveness.<sup>6</sup> Third, we can distinguish between reconciliation and coexistence.<sup>7</sup> Crocker has suggested two levels of coexistence,<sup>8</sup> a thin conception of non-lethal coexistence and a thicker conception in which former perpetrators, victims, and bystanders respect each other as fellow citizens and participate in democratic decision-making. These conceptual caveats enable us to offer a negative definition of reconciliation that avoids the risks of equating it with other terms, suggesting it is more than mere non-violent coexistence but less than full interpersonal forgiveness and acceptance of past wrongdoings.

In the context of this book, it is helpful to examine reconciliation as a site of power across its role at interpersonal and societal levels.<sup>9</sup> First, reconciliation

Questions, Too Few Answers: Reconciliation in Transitional Societies' (2004) 35 Columbia Human Rights Law Review 101.

<sup>2</sup> David A Crocker, 'Reckoning with Past Wrongs: A Normative Framework' (1999) 13 Ethics & International Affairs 43.

<sup>3</sup> Bloomfield (n 1) 7.

<sup>4</sup> McGregor (n 1) 158.

<sup>5</sup> Christine Bell, 'Dealing with the Past in Northern Ireland' (2003) 26 Fordham International Law Journal 1095, 1095.

<sup>6</sup> Rebecca Saunders, 'Questionable Associations: The Role of Forgiveness in Transitional Justice' (2011) 5 International Journal of Transitional Justice 119; David A Crocker, 'Truth Commissions, Transitional Justice, and Civil Society' in Robert I Rotberg and Dennis Thompson (eds), *Truth v Justice. The Morality of Truth Commissions* (Princeton University Press 2000) 108.

<sup>7</sup> Louis Kriesberg, 'Changing Forms of Coexistence' in Mohammed Abu-Nimer (ed), *Reconciliation, Justice, and Coexistence: Theory & Practice* (Lexington Books 2001).

<sup>8</sup> David Crocker, 'Punishment, Reconciliation, and Democratic Deliberation' (2002) 5 Buffalo Criminal Law Review 509.

<sup>9</sup> Priscilla B Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (2nd ed, Routledge 2011) 155; Ernesto Verdeja, *Unchopping a Tree: Reconciliation in the Aftermath of Political Violence* (Temple University Press 2009) 20.

can be understood at an interpersonal level, as interactional reconciliation.<sup>10</sup> Such interactions will be affected by the risks of the use of violence or coercion, authority, and economic power. Second, structural reconciliation seems a critical component of responding to historical-structural injustices, where state and society take on responsibility for addressing harms and their reproduction over time. For Catherine Lu, structural reconciliation is necessary for ‘guiding genuine communication between agents about the terms of interactional reconciliation.’<sup>11</sup>

Bloomfield argues that national reconciliation extends beyond direct victims and perpetrators to incorporate a community- and society-wide dimension ‘that demands a questioning of the attitudes, prejudices and negative stereotypes that we all develop about “the enemy”’.<sup>12</sup> However, significant risks arise in expanding the idea of reconciliation from the interactive to structural dimension. Top-down reconciliation may stretch elements of reconciliation designed for individuals to inappropriately apply to the state or nation, which do not have psyches or operate as the objects of therapy as an individual or group may.<sup>13</sup> A distinctive approach to addressing structural reconciliation must attend to both the objective and affective elements of the process.

Third, reconciliation can be assessed on how it addresses prior epistemic injustice. Susan Dwyer conceptualised reconciliation as ‘bringing apparently incompatible descriptions of events into narrative equilibrium’, a process involving the articulation of a range of interpretations of those events and the attempt by the parties ‘to choose from this range of interpretations some subset that allows them each to accommodate the disruptive event into their ongoing narratives’.<sup>14</sup> Similarly, for Verdeja, political reconciliation should be rooted in mutual respect, ‘the inter-subjective recognition of the moral worth of others, including indigenous peoples; an acknowledgment, in other words, of the equal moral status of other people’.<sup>15</sup> It may be the case, however, that reconciliation practices are imposed on victim-survivors in a manner that

<sup>10</sup> Catherine Lu, *Justice and Reconciliation in World Politics* (Cambridge University Press 2017) 25.

<sup>11</sup> *ibid.* 20.

<sup>12</sup> David Bloomfield, ‘Reconciliation: An Introduction’ in David Bloomfield, Teresa Barnes and Luc Huyse (eds), *Reconciliation after Violent Conflict: A Handbook* (IDEA 2003) 13.

<sup>13</sup> Donna Pankhurst, ‘Issues of Justice and Reconciliation in Complex Political Emergencies: Conceptualising Reconciliation, Justice and Peace’ (1999) 20 *Third World Quarterly* 239; Verdeja *Unchopping a Tree* (n 9) 19.

<sup>14</sup> Susan Dwyer, ‘Reconciliation for Realists’ in Trudy Govier and Carol Prager (eds), *Dilemmas of Reconciliation: Cases and Concepts* (Wilfred Laurier University Press 2003).

<sup>15</sup> Ernesto Verdeja, ‘Political Reconciliation in Postcolonial Settler Societies’ (2017) 38 *International Political Science Review* 227, 231.

silences their articulated needs, visions, and views of reconciliation. Such approaches may cause fresh harms to survivors.

Finally, reconciliation that addresses settler colonial injustice must also confront the challenge of *existential reconciliation*, or the ‘disalienation of agents whose subjective freedom has been distorted by such injustice’.<sup>16</sup> Such a form of reconciliation relates to the ontological forms of power discussed in this book. In this context, the idea of reconciliation itself may prove problematic, particularly for settler colonial settings. Penelope Edmonds notes:

Conciliation was frequently invoked on unstable and violent frontiers in the establishment of nascent settler formations in the often-expedient establishment of a settler compact and was diplomatically marked by handshake or treaty. (Re)conciliation is a feature of the internal colonialism of late liberal settler democracies, post-frontier societies, where the state seeks to incorporate Indigenous within the idea of one nation, and where Indigenous people are often legally configured as non-sovereign in their own territories.<sup>17</sup>

Similarly, Verdeja notes ‘the term re-conciliation itself carries with it an idea of a return to a prior desirable state. Such narratives graft onto different societies a general moral story about harmony, rupture, and eventual reunion that risks ignoring important historical and political features’.<sup>18</sup> As a result, reconciliation discourses may merely be a modern adaption of historical interactions between settler forces and Indigenous peoples and nations and reflect a series of assumptions and preferences that will only ever benefit the processes of settlement.

### 10.3 RECONCILIATION AND EMOTIONS

In assessing reconciliation practices, it is also important to assess the emotional dimension for victim-survivors and society. For Pablo de Greiff, an ‘unreconciled’ society is one in which ‘resentment characterises the relations between citizens and between citizens and their institutions. It is one in which people experience anger because their norm-based expectations have been threatened or defeated’.<sup>19</sup> De Greiff argues that if reconciliation is to have any substantial meaning, ‘it must refer to something individuals either experience or not’.<sup>20</sup> He cautions that law and policy can only make a modest contribution to reconciliation: ‘while transitional justice measures can

<sup>16</sup> Lu (n 10) 19–20.

<sup>17</sup> Penelope Edmonds, *Settler Colonialism and (Re)Conciliation: Frontier Violence, Affective Performances, and Imaginative Refoundings* (Palgrave Macmillan 2016) 23.

<sup>18</sup> Verdeja *Unchopping a Tree* (n 9) 17.

<sup>19</sup> Pablo de Greiff, ‘A Normative Conception of Transitional Justice’ (2010) 50 *Politorbis* 17, 25.

<sup>20</sup> *ibid* 26.

contribute to making institutions trustworthy, actually trusting institutions is something that requires an attitudinal transformation that the implementation of transitional justice measures can only ground but not produce'.<sup>21</sup>

In addition to the emotional dimension of interactive forms of reconciliation, there also remains a risk that elite-level practitioners focus on objective social conditions and neglect the subjective, emotional experience of individuals, and their attitudes towards one another regarding reconciliation.<sup>22</sup> Policy makers may overly privilege policy-driven initiatives and material and neglect the 'subjective' and lived experience of individuals subject to their policies. Michael Ure argues that 'the unfinished project of reconciliation hinges on transforming the way political and legal institutions respond to and incorporate emotional responses to injuries and loss'.<sup>23</sup>

Reconciliation at its epistemic and ontological or existential dimensions may also have a significant emotional impact. Edmonds notes the need to interrogate: 'the way statebased enactments may direct us towards a tidy politics of consensus, while others may unsettle us into a more creative, dissenting and unruly political place'.<sup>24</sup> Miranda Johnson argues reconciliation 'only re-entrenches settler belonging through an affective attachment to national renewal and has little to do with Indigenous conceptions of rights, reconciliation or sovereignties'.<sup>25</sup> She concludes: 'Having acknowledged and apologized for the injustices of the past, the settler state redefines postcolonial nationhood in terms of indigeneity appropriated from its former victims'.<sup>26</sup> By acknowledging the affective and emotional dimensions to reconciliation, it is possible to acknowledge the narration of reconciliation is not merely an exercise in state or institutional policy but also claims to address the national self-image and national self-founding.

#### 10.4 RECONCILIATION AND HISTORICAL-STRUCTURAL INJUSTICES

Although reconciliation forms a significant part of transitional justice, it requires thorough adaption to the context of addressing historical-structural

<sup>21</sup> *ibid.*

<sup>22</sup> Pablo de Greiff, 'The Role of Apologies in National Reconciliation Processes: On Making Trustworthy Institutions Trusted' in Mark Gibney and Rhoda Howard-Hassmann (eds), *The Age of Apology* (Pennsylvania State University Press 2008) 123.

<sup>23</sup> Michael Ure, 'Post-Traumatic Societies: On Reconciliation, Justice and the Emotions' (2008) 11 *European Journal of Social Theory* 283, 285.

<sup>24</sup> Edmonds (n 17) 25.

<sup>25</sup> Miranda Johnson, 'Reconciliation, Indigeneity, and Postcolonial Nationhood in Settler States' (2011) 14 *Postcolonial Studies* 187.

<sup>26</sup> *ibid.* 199.

injustices. For de Greiff, unreconciled societies are characterised by widespread and systematic failures to recognise individuals as subjects of fundamental value and dignity. Reconciliation processes can be seen as the responses to these failures, where citizens can trust one another again and share a sufficient commitment to the norms and values of their state's institutions.<sup>27</sup> Reconciliation on de Greiff's account is epiphenomenal, that is, it results indirectly from pursuing law and policy rather than being a goal to seek directly.<sup>28</sup> As a result, there are very few things that can be done to promote reconciliation independently of other transitional justice practices.<sup>29</sup> Rather, as Bloomfield and Philpott agree, reconciliation is the whole relationship-oriented process within which the diverse elements of transitional justice are the constitutive parts.<sup>30</sup> However, a purely epiphenomenal approach may fail to account for contestation regarding instances where states or churches engage in explicit reconciliation activities. Verdeja notes such approaches may risk 'treating significant differences as threats to the social order and thus inimical to reconciliation. The rejection of political disagreements leaves us with few conceptual tools to distinguish between acceptable political contestation and domination. Indeed, the tendency to equate reconciliation with consensus, if not deep harmony, means that other key aspects of politics – such as argument and disagreement – are erased'.<sup>31</sup>

Instead, in the context of the cases studied in this book, accounts that embrace the reality of radical political disagreement about the nature and legitimacy of state and church authority are necessary after recognition of historical-structural injustices. Reconciliation accounts in mainstream transitional justice speak about the need for mutual trust among citizens and between citizens and the state.<sup>32</sup> The background assumption is a shared willingness to operate within the political community constructed by a state; this assumption cannot hold in settler colonial contexts, where Indigenous sovereign nations problematise the idea of mutual trust within a single democratic community. Damien Short suggests that although citizenship rights may seek to acknowledge the distinctive nature of Indigenous nations, they 'emanate from an illegitimate settler state that has subordinated indigenous laws, autonomy and forms of government. From an indigenous perspective

<sup>27</sup> de Greiff 'A Normative Conception of Transitional Justice' (n 19) 26.

<sup>28</sup> de Greiff 'The Role of Apologies in National Reconciliation Processes' (n 22) 122.

<sup>29</sup> *ibid* 123.

<sup>30</sup> Bloomfield (n 1) 11; Daniel Philpott, 'An Ethic of Political Reconciliation' (2009) 23 *Ethics & International Affairs* 389.

<sup>31</sup> Verdeja 'Political Reconciliation in Postcolonial Settler Societies' (n 15) 229.

<sup>32</sup> de Greiff 'A Normative Conception of Transitional Justice' (n 19).

they are regarded as little more than acts of absorption'.<sup>33</sup> Similarly, Esme Murdock suggests reconciliation processes 'largely do not consider, honor, or involve Indigenous geographies, histories, philosophies, or land-based epistemologies'.<sup>34</sup> She suggests the need to interrogate 'what precisely is being reconciled and what precisely we are transitioning to when the outcomes of reconciliatory processes are not transforming colonial socio-ecological systems and structures'.<sup>35</sup> Courtney Jung suggests this logic of closure informs settler colonial approaches to reconciliation and reflects a desire not to have to deal with the 'Indian problem' any more.<sup>36</sup> Others concur that reconciliation is inherently assimilative or colonising.<sup>37</sup>

In contrast, Verdeja suggests meaningful reconciliation is still possible and argues that reconciliation as mutual respect in settler contexts includes three elements: '(1) *critical reflection* on the past; (2) *symbolic and material recognition*; and (3) securing the means for *political participation*. These elements reflect the ethical issues that continue to arise in these societies, give greater conceptual coherence to reconciliation, and assist in assessing the ways in which contemporary reconciliation politics remain inadequate'.<sup>38</sup> For Verdeja, critical reflection includes public challenges to popular accounts of the past, including critique of basic social values and the kind of society citizens want.<sup>39</sup>

Indigenous scholars in turn emphasise the need for Indigenous resurgence. Jeff Corntassel and Taiaiake Alfred argue that reconciliation must be predicated on meaningful restitution of Indigenous lands and reparations,<sup>40</sup> which would reflect a significant structural change in settler societies. In addition, reconciliation must operate to address prior epistemic and ontological injustices. Both Alfred and Kyle Powys Whyte emphasise the need for reconciliation to abandon notions of settler superiority as the basis

<sup>33</sup> Damien Short, 'Reconciliation and the Problem of Internal Colonialism' (2005) 26 *Journal of Intercultural Studies* 267, 273.

<sup>34</sup> Esme G Murdock, 'Storyed with Land: "Transitional Justice" on Indigenous Lands' (2018) 14 *Journal of Global Ethics* 232, 235.

<sup>35</sup> *ibid* 236.

<sup>36</sup> Courtney Jung, 'Reconciliation: Six Reasons to Worry' (2018) 14 *Journal of Global Ethics* 252, 260.

<sup>37</sup> Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (University of Minnesota Press 2014); Audra Simpson, *Mohawk Interruptus: Political Life across the Borders of Settler States* (Duke University Press 2014).

<sup>38</sup> Verdeja 'Political Reconciliation in Postcolonial Settler Societies' (n 15) 232.

<sup>39</sup> *ibid* 233.

<sup>40</sup> Jeff Corntassel, 'Cultural Restoration in International Law: Pathways to Indigenous Self-Determination' (2012) 1(1) *Canadian Journal of Human Rights* 93, 94; Taiaiake Alfred, *Wasá'we: Indigenous Pathways of Action and Freedom* (Broadview Press 2005) 152.

for any direct reconciliation activity or political action.<sup>41</sup> Murdock argues justice and reconciliation between Indigenous peoples and settler states should centre on 'Indigenous philosophies, collective capacities, and land-based epistemologies, and cannot temporalise injustice to the past as other frameworks of justice do', particularly transitional justice.<sup>42</sup> Maddison thus suggests competing goals for Indigenous peoples and settler states engaging in reconciliation. For Indigenous peoples, reconciliation may form an opportunity to highlight the ways in which contemporary policies reinforce historical-structural injustices. In contrast, settler governments may seek to use reconciliation as a means to settle and close the past as purely historical and not relevant to contemporary policy and politics – completing the colonial project once and for all.<sup>43</sup>

Beyond the settler context, reconciliation may be problematic for victim-survivors of harms perpetrated by religious actors or institutions. David Tombs suggests although there is extensive attention given to reconciliation in Christian doctrine, Christian churches and writers largely neglected the challenges of social reconciliation until the past few decades, due to the privatisation of religion in the public sphere and lack of churches' willingness to engage in political controversy.<sup>44</sup> Reconciliation from a religious foundation has featured in transitions and conflict resolution in recent decades. Processes of racial reconciliation are familiar to transitional justice, with significant emphasis on *ubuntu* and racial reconciliation in South Africa's approach to transitional justice,<sup>45</sup> and draw from the significant basis of reconciliation in religious and traditional thought.<sup>46</sup>

However, some traditional or religious approaches to reconciliation may marginalise the role of women or young people or be subject to political

<sup>41</sup> Kyle Powys Whyte, 'On Resilient Parasitisms, or Why I'm Skeptical of Indigenous/Settler Reconciliation' (2018) 14 *Journal of Global Ethics* 277, 288; Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (2nd ed, Oxford University Press 2009) 274.

<sup>42</sup> Murdock (n 34) 237.

<sup>43</sup> Sarah Maddison, *The Colonial Fantasy: Why White Australia Can't Solve Black Problems* (Allen & Unwin 2019) 189.

<sup>44</sup> David Tombs, 'Public Theology and Reconciliation' in Sebastian Kim and Katie Day (eds), *A Companion to Public Theology* (Brill 2017) 123.

<sup>45</sup> Josh Bowsher, 'The South African TRC as Neoliberal Reconciliation: Victim Subjectivities and the Synchronization of Affects' (2020) 29(1) *Social & Legal Studies* 41–64; PGJ Meiring, 'Bonhoeffer and Costly Reconciliation in South Africa: Through the Lens of the South African Truth and Reconciliation Commission' (2017) 38 *Verbum et Ecclesia* 18.

<sup>46</sup> Karl Barth, Geoffrey William Bromiley and Thomas F Torrance, *The Doctrine of Reconciliation: Church Dogmatics* (Continuum 2004); Meiring (n 45); Desmond Tutu, *No Future without Forgiveness* (Rider 2000); Miroslav Volf, *Exclusion and Embrace: A Theological Exploration of Identity, Otherness, and Reconciliation* (Abingdon Press 1996).

manipulation.<sup>47</sup> For instance, Kate Gleeson and Aleardo Zanghellini argue that ‘Catholic appeal to grace has the potential for turning into an extraordinary demand made of victims not only to rehabilitate offenders and the Church in the eyes of the community, but also to work towards the spiritual absolution of the abuser’.<sup>48</sup> On their account, such an approach creates risks of a gendered abuse of power within mediation processes for clerical child abuse and remains ‘incompatible with orthodox restorative justice’ theories.<sup>49</sup> Catherine Lu concludes that reconciliation strategies are problematic if they focus on an individual, de-politicised account that emphasises psychological healing and social unity at the expense of addressing structural sources of harm and injustice.<sup>50</sup>

As a result, existing accounts of reconciliation in transitional justice as settlement and as the restoration of civic trust and mutual respect within a liberal democratic paradigm may struggle in the contexts of settler colonialism, religious reconciliation, or racial reconciliation. Instead, it may be more profitable to think of reconciliation as a site of ongoing agonistic relationships. For Chantal Mouffe, it is necessary to transform antagonistic violence into agonistic relations, which enable a significant but shared contest between groups of different identities and values.<sup>51</sup> Verdeja notes that an agonistic approach centres on marginalised and excluded groups.<sup>52</sup> Paul Muldoon and Andrew Schaap argue that reconciliation politics ‘tend to be’ agonistic because they ‘open up a space of contestation and disagreement in relation to the claims identity groups make as victims of injustice’.<sup>53</sup> Schaap suggests: ‘reconciliation is not about settling accounts but remains as an unsettling experience since it seeks to enact a radical break with the social order that underpinned the violence of the past’.<sup>54</sup> Verdeja concludes based on these radical approaches that ‘no agreement on a morally satisfactory account of reconciliation can be developed prior to political struggle; and, reconciliation will remain incomplete, for new forms of contestation and

<sup>47</sup> Susanne Alden, ‘Internalising the Culture of Human Rights: Securing Women’s Rights in Post-Conflict East Timor’ (2007) 1 *Asia-Pacific Journal of Human Rights and the Law* 1–23.

<sup>48</sup> Kate Gleeson and Aleardo Zanghellini, ‘Graceful Remedies: Understanding Grace in the Catholic Church’s Treatment of Clerical Child Sexual Abuse’ (2015) 41 *Australian Feminist Law Journal* 219, 220.

<sup>49</sup> *ibid.*

<sup>50</sup> Lu (n 10) 183.

<sup>51</sup> Chantal Mouffe, *The Democratic Paradox* (Repr, Verso 2009) 80–8.

<sup>52</sup> Verdeja ‘Political Reconciliation in Postcolonial Settler Societies’ (n 15) 229–30.

<sup>53</sup> Paul Muldoon and Andrew Schaap, ‘Confounded by Recognition: The Apology, the High Court and the Aboriginal Embassy in Australia’ in Alexander Hirsch (ed), *Theorizing Post-Conflict Reconciliation: Agonism, Restitution and Repair* (Routledge 2012) 182.

<sup>54</sup> Andrew Schaap, ‘Agonism in Divided Societies’ (2006) 32 *Philosophy & Social Criticism* 255, 272.

negotiation over collective identity will always emerge due to the intrinsically agonistic nature of political life'.<sup>55</sup>

One feature under-emphasised from detailed consideration in existing agonistic accounts of reconciliation is the application of reconciliation to inter-generational wrongs. How do present-day survivors engage in reconciliation where wrongdoing forms part of wrongs against them directly, and against their ancestors, possibly over several decades or centuries? Henderson and Wakeham suggest that premature attempts at closure and reconciliation reflect settler anxieties regarding reconciliation: "The problem at the level of relations between Indigenous and non-Indigenous institutions in Canada is not one of inadequate closure, . . . but one of repeated, pre-emptive attempts at reaching closure and "cure".<sup>56</sup> As a result, it may be more valuable to envisage reconciliation as an inter-generational process, one continued across different political contexts, rather than a process that can be concluded or settled once and for all. Former Canadian Truth Commissioner Murray Sinclair concurs: 'Residential schools were with us for 130 years, until 1996. Seven generations of children went to residential schools. It's going to take generations to fix things.'<sup>57</sup> Similarly, James Tully has argued that 'reconciliation is neither a form of recognition handed down to Indigenous peoples from the state nor a final settlement of some kind. It is an ongoing partnership negotiated by free peoples based on principles they can both endorse and open to modification *en passant*'.<sup>58</sup> Such an approach is regrettably contrary to many of the national experiences of the states examined in this book.

## 10.5 NATIONAL EXPERIENCES OF RECONCILIATION

### 10.5.1 *Canada*

In Canada, there have been both political and legal expressions of reconciliation.<sup>59</sup> Antonio Buti notes: "The Canadian Supreme Court has essentially

<sup>55</sup> Verdeja 'Political Reconciliation in Postcolonial Settler Societies' (n 15) 230.

<sup>56</sup> Jennifer Henderson and Pauline Wakeham, 'Colonial Reckoning, National Reconciliation?: Aboriginal Peoples and the Culture of Redress in Canada' (2009) 35 ESC: English Studies in Canada 1, 7.

<sup>57</sup> Dan Rubenstein, 'Murray Sinclair, from Truth to Reconciliation: Murray Sinclair at Carleton University' (5 October 2016) <<https://newsroom.carleton.ca/story/truth-and-reconciliation-commission/>>.

<sup>58</sup> James Tully, *Public Philosophy in a New Key* (Cambridge University Press 2008) 223.

<sup>59</sup> Kim Stanton, 'Reconciling Reconciliation: Differing Conceptions of the Supreme Court of Canada and the Canadian Truth and Reconciliation Commission' (2017) 26 *Journal of Law and Social Policy* 21.

sought to resolve the underlying contradiction posed by white settlement of Indigenous lands by imposing a restrictive definition of Indigenous rights that construes them as derived from practices and traditions specific to Indigenous cultures rather than as “general and universal” rights.<sup>60</sup> This case law and its limits are discussed in Chapter 7.

In addition, reconciliation formed a considerable part of Canada’s transitional justice processes, in particular its TRC. The TRC’s mandate refers to reconciliation as ‘an ongoing individual and collective process’ emerging from ‘the truth of our common experiences’. The TRC involved the provision of individual testimony and public hearings, which are often framed as having a reconciliatory function for individuals. It hosted seven national truth and reconciliation events and seventeen community or regional hearings, where survivors and their families shared their truths in public or through private statements. The TRC also held or participated in regional events, outreach activities, and hearings, visiting over seventy communities. This amounted to over 300 events, drawing upward of 150,000 people.<sup>61</sup> Although the TRC intended to give survivors the opportunity for healing through truth telling,<sup>62</sup> some were critical of TRC processes. Glen Coulthard notes that formalised truth-telling processes exclude, evade, or dismiss ‘negative emotions’ like anger and resentment from the possible range of emotions felt and expressed by survivors. Those who ‘refuse to forgive and/or reconcile . . . are typically cast as being saddled by the damaging psychological residue of [the] legacy [of residential schools], of which anger and resentment are frequently highlighted’.<sup>63</sup>

The TRC report suggests that while some may view reconciliation as the re-establishment of a conciliatory state, the Commission viewed reconciliation as ‘about coming to terms with the events of the past in a manner which overcomes conflict and establishes a peaceful and healthy relationship among people going forward’.<sup>64</sup> The report emphasised reconciliation is not about ‘closing a sad chapter of Canada’s past’ and that reconciliation will never

<sup>60</sup> Antonio Buti, “Reconciliation”: Its Relationship and Importance to Law’ (2018) 43 *University of Western Australia Law Review* 107, 110.

<sup>61</sup> Truth and Reconciliation Commission of Canada, *Canada’s Residential Schools: The Final Report of the Truth and Reconciliation Commission of Canada, Volume 6* (McGill-Queen’s University Press 2015) 177.

<sup>62</sup> Matt James, ‘A Carnival of Truth? Knowledge, Ignorance and the Canadian Truth and Reconciliation Commission’ (2012) 6 *International Journal of Transitional Justice* 182, 195.

<sup>63</sup> Coulthard (n 37) 109.

<sup>64</sup> Truth and Reconciliation Commission of Canada (n 61) 3.

occur unless we are also reconciled with the earth.<sup>65</sup> The report identified ten principles to guide reconciliation in Canada, including that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was the framework for reconciliation; that First Nations peoples have rights in treaties, constitutional, and human rights settings that must be recognised and respected; and that reconciliation ‘requires constructive action on addressing the ongoing legacies of colonialism that have had destructive impacts on Aboriginal peoples’ education, cultures and languages, health, child welfare, administration of justice, and economic opportunities and prosperity’.<sup>66</sup> Their approach also emphasised epistemic justice by arguing that the perspectives of Aboriginal Elders and Traditional Knowledge Keepers on ‘the ethics, concepts, and practices of reconciliation are vital to long-term reconciliation’ and that ‘integrating Indigenous knowledge systems, oral histories, laws, protocols, and connections to the land into the reconciliation process are essential’.<sup>67</sup> This approach contrasts with the Canadian government’s response that largely affirms the status quo, discussed below. The TRC itself highlighted the difference between reconciliation viewed by the state and by Indigenous peoples, as reflecting competing views of sovereignty: the state asserting the supremacy of Crown sovereignty and Indigenous peoples seeking recognition of their own sovereignty.<sup>68</sup>

In addition, broader structural reconciliation forms a significant part of the TRC’s final report’s calls to action under two high-level headings: ‘Legacy’ and ‘Reconciliation’. ‘Legacy’ addresses the consequences of colonialism and ‘Reconciliation’ offers the principles for a shared future for Indigenous and settler peoples. The forty-two calls to action under ‘Legacy’ are divided into five subheadings: child welfare, education, language and culture, health, and justice.<sup>69</sup> ‘Reconciliation’, by contrast, includes fifty-two calls to action, ranging from the obligations arising under specific legal instruments to considering reconciliation as applied to museums, media, sport, and business, among others.<sup>70</sup> Under recommendation 45, the TRC calls on the government of Canada to ‘[r]enew or establish Treaty relationships based on

<sup>65</sup> *ibid* 7, 14.

<sup>66</sup> Truth and Reconciliation Commission of Canada, *What We Have Learned: Principles of Truth and Reconciliation* (Truth and Reconciliation Commission of Canada 2015) 3–4.

<sup>67</sup> Truth and Reconciliation Commission of Canada (n 61) 16.

<sup>68</sup> *ibid* 25.

<sup>69</sup> Truth and Reconciliation Commission of Canada, *Canada’s Residential Schools: The Final Report of the Truth and Reconciliation Commission of Canada, Volume 5* (McGill-Queen’s University Press 2015) 277–83.

<sup>70</sup> *ibid* 283–95.

principles of mutual recognition, mutual respect, and shared responsibility for maintaining those relationships into the future'. The same recommendation continues by asking Canada to '[r]epudiate concepts used to justify European sovereignty over Indigenous lands and peoples such as the Doctrine of Discovery and terra nullius'. The recommendations or calls also include healing relationships through 'public truth sharing, apology, and commemoration'; 'addressing the ongoing legacies of colonialism' and creating 'a more equitable and inclusive society by closing the gaps in social, health, and economic outcomes'; respecting and learning from the 'perspectives and understandings of Aboriginal Elders and Traditional Knowledge Keepers'; supporting cultural revitalisation, including 'integrating Indigenous knowledge systems, oral histories, laws, protocols, and connections to the land into the reconciliation process'; joint leadership, trust building, accountability, and resource investments; and 'sustained public education and dialogue . . . about the history and legacy of residential schools, treaties, and Aboriginal rights, as well as the historical and contemporary contributions of Aboriginal peoples to Canadian society'.<sup>71</sup>

Although highly ambitious, these calls have still been subjected to academic criticism. David MacDonald notes that the TRC's approach did not define self-determination or examine how it would affect Canadian sovereignty.<sup>72</sup> To date, of the ninety-four calls to action, nineteen remain un-started, thirty remain merely in proposal stages, thirty-two are underway and thirteen are complete.<sup>73</sup> Those completed include the inquiry into violence against Aboriginal women. Of those calls un-started, as of October 2022, most notably, the government of Canada has also not started a process of publishing its legal opinions regarding Aboriginal or treaty rights.

The selection of calls to action to pursue is inevitably a political choice reflecting cost and political will, among other factors. In 2018 the Canadian government published a 'Recognition and Implementation of Indigenous Rights Framework' and a set of ten principles aimed at 'transformative change' for a renewed relationship, which continues the supremacy of Canadian law and existing set of Indigenous rights, discussed in Chapter 7. Nagy suggests:

<sup>71</sup> Truth and Reconciliation Commission of Canada (n 66) 3–4.

<sup>72</sup> David MacDonald, 'Paved with Comfortable Intentions: Moving beyond Liberal Multiculturalism and Civil Rights Frames on the Road to Transformative Reconciliation' in Paulette Regan and Aimee Craft (eds), *Pathways of Reconciliation: Indigenous and Settler Approaches to Implementing the TRC's Calls to Action* (University of Manitoba Press 2020) 12.

<sup>73</sup> <<https://newsinteractives.cbc.ca/longform-single/beyond-94?&cta=1>>.

“The degree to which this agenda will destabilize the constitutional framework explained above remains tenuous at best.”<sup>74</sup>

Some Canadian Indigenous scholars have rejected this approach to reconciliation, advocating for more profound land restitution, greater Indigenous nationhood, and the production of alternatives to modern Western capitalist societies.<sup>75</sup> Courtney Jung suggests: ‘Reconciliation may serve as a government project whose primary aim is to bolster state legitimacy. Reconciliation may reflect the desire, for settler-descendants, for expiation or a “move to innocence”’.<sup>76</sup> She concludes that reconciliation is a form of settler futurity: ‘Settler futurity is essentially a settlement of accounts, a moment when settler descendants can finally turn to Indigenous people and say “Okay, now we’re even”’. She continues: ‘[t]he “transition” is to an even playing field in which the government, and non-Indigenous Canadians, can no longer be held accountable for past wrongs’.<sup>77</sup>

Other scholars reject these criticisms. Paulette Regan argues that the commission’s vision of reconciliation is resurgent: ‘contingent on the land-based resurgence of Indigenous cultures, languages, knowledge systems, oral histories, laws, and governance structures . . . The commission’s work lays the foundation for a decolonizing paradigm shift in how reconciliation is conceptualized, negotiated, and practiced in formal and informal settings’.<sup>78</sup> James Tully and John Burrows suggest resurgence thinking that promotes radical separation from settlers is not indigenous to Turtle Island (North America) but rather draws from the decolonisation contexts of the 1950s and 1960s. They express concern that applying such a radical critique to settler colonial settings may result in viewing ‘the majority of Indigenous people as being co-opted’.<sup>79</sup> Sheryl Lightfoot equally emphasises that the pessimism traps developed by resurgence theorists ‘are diametrically opposed to the work and vision of Indigenous organizations who have been working on the ground for decades to assert Indigenous nationhood both domestically and internationally, in ways that often assertively and creatively challenge and shift the existing system

<sup>74</sup> Rosemary Nagy, ‘Settler Witnessing at the Truth and Reconciliation Commission of Canada’ (2020) 21 *Human Rights Review* 219, 226.

<sup>75</sup> Alfred (n 41) 183.

<sup>76</sup> Jung (n 36).

<sup>77</sup> *ibid* 261.

<sup>78</sup> Paulette Regan, ‘Reconciliation and Resurgence: Reflections on the TRC Final Report’ in Michael Asch, John Borrows and James Tully (eds), *Resurgence and Reconciliation* (University of Toronto Press 2018) 213.

<sup>79</sup> James Tully and John Borrows, ‘Introduction’ in Michael Asch, John Borrows and James Tully (eds), *Resurgence and Reconciliation* (University of Toronto Press 2018) 6.

of sovereign states'.<sup>80</sup> Even on these less radical terms, such accounts of reconciliation in settler colonial contexts reflect a profound redistribution of both material and ideational power, rather than an affirmation of the existing social order by victim-survivors and their descendants.

### 10.5.2 Australia

As in Canada, reconciliation in Australia has both legal and political expressions. Matilda Keynes notes that since the 1980s Australia has pursued an official reconciliation agenda 'that has produced limited structural reforms for Aboriginal people, and which continues to neglect First Nations people's own proposals for reconciliation and reform'.<sup>81</sup> Mark McMillan and Sophie Rigney concur that the Australian government's approach to reconciliation 'does not adequately acknowledge the harms of the state, and does not allow the capacity for Indigenous peoples to seek justice through reconciliation'.<sup>82</sup>

The Royal Commission into Aboriginal Deaths in Custody began the use of official reconciliation by emphasising the need for reconciliation between Aboriginal and non-Aboriginal communities in Australia.<sup>83</sup> In 1991, the Council for Aboriginal Reconciliation was established, to 'promote reconciliation between Aborigines and Torres Strait Islanders and the wider Australian community and by means that include the fostering of an ongoing national commitment to cooperate to address Aboriginal and Torres Strait Islander disadvantage'.<sup>84</sup> The twenty-five person council included representatives of government, business and academia, and high-profile Aboriginal people. Its advisory role included guiding the Minister on processes to further reconciliation, including community education. On Short's account, the council failed to see Indigenous people as nations, capable of

<sup>80</sup> Sheryl Lightfoot, Tim Stevens and Nicholas Michelsen, 'The Pessimism Traps of Indigenous Resurgence', *Pessimism in International Relations: Provocations, Possibilities, Politics* (Palgrave Macmillan 2020) 156–8.

<sup>81</sup> Matilda Keynes, 'History Education for Transitional Justice? Challenges, Limitations and Possibilities for Settler Colonial Australia' [2018] *International Journal of Transitional Justice* 114.

<sup>82</sup> Mark McMillan and Sophie Rigney, 'Race, Reconciliation, and Justice in Australia: From Denial to Acknowledgment' (2018) 41 *Ethnic and Racial Studies* 759, 769.

<sup>83</sup> James Muirhead, 'Royal Commission Into Aboriginal Deaths in Custody' (Commonwealth Government of Australia 1991) s 1.9.

<sup>84</sup> 'The Council for Aboriginal Reconciliation: Vision Statement' (The Council for Aboriginal Reconciliation) <[www.austlii.edu.au/au/orgs/car/council/spl98\\_20/council.htm#:~:text=The%20Council%20for%20Aboriginal%20Reconciliation%20was%20established%20by%20the%20Commonwealth,Islander%20and%20wider%20Australian%20communities](http://www.austlii.edu.au/au/orgs/car/council/spl98_20/council.htm#:~:text=The%20Council%20for%20Aboriginal%20Reconciliation%20was%20established%20by%20the%20Commonwealth,Islander%20and%20wider%20Australian%20communities)>.

negotiating a treaty with the state, and instead emphasised its role in promoting a single, united Australia.<sup>85</sup> The council emphasised eight issues as essential for reconciliation, with several identifying the need to educate non-Indigenous Australians regarding Australia's colonial history, the importance of Aboriginal and Torres Strait Islander relationships to land and sea, culture and heritage, and the current disadvantage and high levels of custody experienced by Indigenous peoples.<sup>86</sup>

The early efforts of the council contributed to a broader people's movement for reconciliation across different social groups.<sup>87</sup> The most significant grassroots reconciliation initiative was the National Sorry Day and the Sorry Book Campaign in 1998, in which over one thousand Sorry Books were signed by Australians throughout the country.<sup>88</sup> However, momentum for bottom-up reconciliation has since dissipated and been replaced with a focus on corporate initiatives to improve relationships between Aboriginal peoples and other Australians.<sup>89</sup> Maddison suggests that such strategies as community education and corporate-led reconciliation 'suggest that Australia has not pursued reconciliation as a path toward decolonising relationships between First Nations and the settler state'.<sup>90</sup> Short concludes: 'Both the Keating and Howard governments had the opportunity to give legislative effect to common law indigenous rights gains. Yet they bowed to the pressure of commercial interests, producing legislation that severely limited and reduced the gains'.<sup>91</sup>

These efforts at reconciliation were greatly influenced by legal and political developments regarding Aboriginal rights in the 1990s discussed in Chapter 7. The *Mabo* judgment, the Native Title Act 1993, and the Bringing Them Home report on the Stolen Generation 'marked the end of political bipartisanship over reconciliation and Indigenous policy more generally'.<sup>92</sup> As a result of the potentially profound impact of these processes and resistance to

<sup>85</sup> Damien Short, 'Reconciliation, Assimilation, and the Indigenous Peoples of Australia' (2003) 24 *International Political Science Review* 491, 496–7.

<sup>86</sup> Council for Aboriginal Reconciliation (Australia), *Reconciliation: Australia's Challenge: Final Report of the Council for Aboriginal Reconciliation to the Prime Minister and the Commonwealth Parliament* (Council for Aboriginal Reconciliation 2000) 13.

<sup>87</sup> *ibid.* 65.

<sup>88</sup> Paulette Regan, *Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada* (UBC Press 2010) 59.

<sup>89</sup> Maddison (n 43) 192.

<sup>90</sup> *ibid.*

<sup>91</sup> Short (n 85) 506.

<sup>92</sup> Jon Altman, 'Reconciliation and the Quest for Economic Sameness' in Sarah Maddison, Tom Clark and Ravi de Costa (eds), *The Limits of Settler Colonial Reconciliation* (Springer Singapore 2016) 218.

implementing the decisions discussed in Chapter 7, from 1998 the Australian government focused on ‘practical reconciliation’, to reduce material disadvantage in the areas of health, housing, education, and employment, but without specified targets, timeframes, or monitoring. This approach framed reconciliation as disconnected from historical abuses and settler colonisation: “The level of Indigenous disadvantage was deemed unacceptable, but was explained as a product of recent bad policy rather than a deeper history of colonial invasion and subsequent neglect.”<sup>93</sup> The practical reconciliation approach ignored Indigenous aspirations regarding land rights, cultural protection, and self-determination. Larissa Behrendt argues the clear agenda (of ‘practical reconciliation’) is one of assimilation and integration, reflecting the same logic as Welfare Boards and Aboriginal Protection Boards.<sup>94</sup>

In 1999, Prime Minister Howard made a Motion of Reconciliation to the federal parliament, which recognises ‘the achievements of the Australian nation’ and ‘that the mistreatment of many indigenous Australians over a significant period represents the most blemished chapter in our national history’. While the motion went on to express regret for past unspecified injustices suffered by Indigenous Australians, it ended by stating, ‘[W]e, having achieved so much as a nation, can now move forward together for the benefit of all Australians’. McMillan and Rigney note that ‘the emphasis of this motion on the nationhood of Australia and “the achievements of the Australian nation” explicitly uses reconciliation as a nation-building exercise for the Australian state, further denying Indigenous sovereignties’.<sup>95</sup> As a result, they conclude: ‘Reconciliation has been conducted on “white” terms.’<sup>96</sup> Similarly, Damien Short suggests the reconciliation process is hence best understood as ‘a stage in the colonial project rather than a genuine attempt at atonement’; especially by neglecting Indigenous claims to sovereignty, nationhood, or land and by focusing on modern-day assimilation and integration, it adopts the same agenda that motivated historical abuses such as child removal.<sup>97</sup> Henry suggests that, ultimately, the reconciliation policy has allowed a denial of the harms perpetrated by the state, and therefore has been used to ‘bolster the legitimacy, authenticity and stability’ of the

<sup>93</sup> *ibid* 219.

<sup>94</sup> Larissa Behrendt, “The Link between Rights and a Treaty: “Practical Reconciliation”” (2002) 4 *Balayi: Culture, Law and Colonialism* 21.

<sup>95</sup> McMillan and Rigney (n 82) 770.

<sup>96</sup> *ibid* 769.

<sup>97</sup> Damien Short, *Reconciliation and Colonial Power: Indigenous Rights in Australia* (Ashgate 2008) 170–171.

Australian state.<sup>98</sup> Maddison concludes: ‘reconciliation in Australia became a means of justifying colonial domination rather than transforming the relationship between Indigenous peoples and the settler state’.<sup>99</sup>

Short concludes: ‘From the outset reconciliation in Australia placed a “colonial ceiling” on Indigenous aspirations by emphasising nation-building and national unity over sovereignty or the negotiation of a treaty.’<sup>100</sup> Indeed, the Australian reconciliation process remained ‘extremely tightly controlled and managed within political boundaries acceptable to the settler colonial state’.<sup>101</sup>

Maddison and Nakata criticise Australian reconciliation for its focus on educating non-Indigenous people, ‘at the expense of addressing historical injustice or the negotiation of contemporary treaties’.<sup>102</sup> Maddison suggests that while the formal reconciliation process in Australia introduced a new moral language to address historical-structural injustice, it did not resolve any of the issues raised, such as reparations, a treaty, or the profound inequality between settler and Indigenous peoples.<sup>103</sup> Maddison concludes: ‘what settlers want from reconciliation, and what Indigenous peoples want in a transformed relationship with the settler, are profoundly, perhaps incommensurably different.’<sup>104</sup> Instead, she argues, ‘[W]hite Australia cannot solve black problems because white Australia is the problem’.<sup>105</sup> Palmer and Pocock suggest that ‘the burden of reconciliation falls differentially on Aboriginal people and white settlers in Australia’.<sup>106</sup> They suggest that ‘for settler Australia, a form of reparation – a reciprocal pain – might be found in a deep acknowledgement and acceptance of discomfiting post-colonization history, through the affective force of Aboriginal postcontact heritage sites such as massacre sites and former fringe camps; this force could be a source of “reparative discomfort” . . . non-Indigenous people, by experiencing and holding strong

<sup>98</sup> Nicola Henry, ‘From Reconciliation to Transitional Justice: The Contours of Redress Politics in Established Democracies’ (2015) 9 *International Journal of Transitional Justice* 199.

<sup>99</sup> Maddison (n 43) 193.

<sup>100</sup> Short (n 33) 274–5.

<sup>101</sup> Tom Clark, Ravi de Costa and Sarah Maddison, ‘Non-Indigenous People and the Limits of Settler Colonial Reconciliation’ in Sarah Maddison, Tom Clark and Ravi de Costa (eds), *The Limits of Settler Colonial Reconciliation* (Springer Singapore 2016) 4.

<sup>102</sup> Sana Nakata and Sarah Maddison, ‘New Collaborations in Old Institutional Spaces: Setting a New Research Agenda to Transform Indigenous-Settler Relations’ (2019) 54 *Australian Journal of Political Science* 407, 411.

<sup>103</sup> Maddison (n 43) 188.

<sup>104</sup> *ibid* 211.

<sup>105</sup> *ibid* 213.

<sup>106</sup> Jane Palmer and Celmara Pocock, ‘Aboriginal Colonial History and the (Un)Happy Object of Reconciliation’ (2020) 34 *Cultural Studies* 49, 53.

over time this new and potentially painful imaginary, might make some contribution to the process of makarrata or peace-making'.<sup>107</sup>

### 10.5.3 *United States*

Reconciliation does not form part of explicit government policy in the United States regarding either Native Americans or the slavery of African Americans. Modern efforts at reconciliation concerning race relations, slavery, and Jim Crow in the United States must reckon with the failure of one of the last nationwide attempts to address social division – Reconstruction.<sup>108</sup> After the Civil War, several constitutional amendments sought to ensure greater racial equality. The Thirteenth Amendment abolished slavery. The Fourteenth Amendment provided for the equal protection of all citizens. The Fifteenth Amendment barred racial discrimination in voting. Adam Serwer suggests, ‘The Reconstruction amendments to the Constitution should have settled once and for all the question of whether America was a white man’s country or a nation for all its citizens’.<sup>109</sup> However, as discussed in Chapter 2, by 1876, the withdrawal of federal troops in the South subjected African Americans in the South to a new reproduction of racial discrimination and violence in the Jim Crow era. Serwer concludes: ‘In the aftermath of a terrible war, Americans . . . purchased an illusion of reconciliation, peace, and civility through a restoration of white rule. They should never again make such a bargain.’<sup>110</sup>

Contemporary processes of racial reconciliation have proved challenging in the absence of national processes of truth telling and reparations. Eric Yamamoto asserts that interracial justice requires both ‘material changes in the structure of the relationship (social, economic, political) to guard against “cheap reconciliation,” [that is] just talk . . . [and] the kind of recognition and redress of deep grievances that sparks a joint transformation in consciousness, diminishes enmities, and forges new relational bonds’.<sup>111</sup>

In 1997, President Clinton created the President’s Initiative on Race by executive order 13050. Clinton appointed a seven-member advisory board with

<sup>107</sup> *ibid* 50.

<sup>108</sup> Eric Foner, *Reconstruction: America’s Unfinished Revolution, 1863–1877* (updated ed, HarperPerennial 2014).

<sup>109</sup> Adam Serwer, ‘Civility is Overrated’ (2019) *The Atlantic* <[www.theatlantic.com/magazine/archive/2019/12/adam-serwer-civility/600784/](http://www.theatlantic.com/magazine/archive/2019/12/adam-serwer-civility/600784/)>.

<sup>110</sup> *ibid*.

<sup>111</sup> Eric Yamamoto, *Interracial Justice: Conflict and Reconciliation in Post-Civil Rights America* (New York University Press 1999) 11.

an initial mandate of educating Americans regarding racial issues, promoting racial dialogue, and recommending solutions to racial divides and problems. He also pledged to meet with citizens and listen to their views in several ‘town-hall’ meetings, a format he had used successfully in his presidential campaigns. However, this initiative did not make a significant impact on race relations. Renée Smith suggests several reasons for this failure, including a limited and divided public buy-in on the need for the process, a lack of focus, and inability to engage in open dialogue as the advisory board was obliged to meet in public. Finally, and most critically, the initiative coincided with revelations regarding Clinton’s affair with Monica Lewinsky.<sup>112</sup> Smith suggests that the presidency is ‘not well suited for eliciting general public debate on complex and sensitive issues such as race relations. Nor is it well suited for coalescing diverse opinions on policy alternatives’.<sup>113</sup>

The initiative issued a report which recommended strengthening civil rights enforcement, improving data collection on racial and ethnic discrimination, and strengthening the laws and enforcement against hate crimes.<sup>114</sup> Sherrilyn Ifill suggests:

Imagining this kind of talk at a national level was, in retrospect, overly ambitious. The truth is that talking about race is challenge enough within families, within communities, and within cities. The idea of a conversation involving the entire nation, with communities from coast to coast grappling with the immensely complex and alienating topic of race (within one four-year presidential term, no less), was naively ambitious, although admirable.<sup>115</sup>

There are also religious dimensions to existing reconciliation processes in the United States. Anthea Butler notes that ‘the racial reconciliation movements of the 1990s between white evangelicals and African Americans took several forms and met with varying degrees of success. Before the 1990s, attempts at racial reconciliation often took the form of joint church services or days of visitation between churches’.<sup>116</sup> Andrea Smith states that such efforts ‘tended to focus on multicultural representation in congregations and denominations

<sup>112</sup> Renée Smith, ‘The Public Presidency Hits the Wall: Clinton’s Presidential Initiative on Race’ (1998) 28 *Presidential Studies Quarterly* 780, 782–3.

<sup>113</sup> *ibid* 784.

<sup>114</sup> ‘One America in the 21st Century: Forging a New Future’ (The President’s Initiative on Race 1998) 57–87 <<https://clintonwhitehouse4.archives.gov/media/pdf/PIR.pdf>>.

<sup>115</sup> Sherrilyn A Ifill, *On the Courthouse Lawn: Confronting the Legacy of Lynching in the Twenty-First Century* (Beacon Press 2007) 132–3.

<sup>116</sup> Anthea D Butler, *White Evangelical Racism: The Politics of Morality in America* (The University of North Carolina Press 2021) 86.

rather than on structural forms of white supremacy'.<sup>117</sup> State-level inquiries, such as the Greensboro Truth and Reconciliation Commission, reveal the potential for such inquiries to contribute to reconciliation at 'cognitive-affective, behavioural, and social' levels.<sup>118</sup> Some victim-survivors described the experience of humanising perpetrators through witnessing perpetrator testimony and engagement; however, others were critical of the limits or absence of new disclosures from perpetrators as a basis for reconciliation.<sup>119</sup> The most dramatic though rare example of reconciliation involved survivors who forgave a perpetrator for killing their family member.<sup>120</sup> The Greensboro commission reflects the potential for further transitional justice processes in the United States that could contribute to racial reconciliation but only in a context of some perpetrator involvement and, even in that rare context, with ambivalent results.

In considering the hesitancy of the United States to begin the process of racial reconciliation, Ifill suggests some whites do not see the contemporary relevance of historical abuses; others worry that addressing the past will challenge 'white innocence' and require them to take responsibility for a past they may be ignorant about. Finally, for racial crimes within lived memory, some whites may fear the potential for criminal accountability.<sup>121</sup> In the American context, Verdeja suggests that greater use of reconciliation discourse could 'mean going beyond discussions over the use of indigenous symbols for sports teams or the purported benefits of indigenous-owned casinos that have dominated recent debates'.<sup>122</sup> By requiring some critical self-reflection, a process of reconciliation could also critique the 'country's founding principles of self-rule and democracy' to the extent that they are implicated in the systematic exclusion and destruction of Indigenous and black communities.<sup>123</sup>

#### 10.5.4 Ireland

There is a lack of explicit reconciliation discourse in the context of Irish historical abuse. However, the discourse of reconciliation has played a

<sup>117</sup> Andrea Smith, *Unreconciled: From Racial Reconciliation to Racial Justice in Christian Evangelicalism* (Duke University Press 2019) 25.

<sup>118</sup> David Androff, "'To Not Hate': Reconciliation among Victims of Violence and Participants of the Greensboro Truth and Reconciliation Commission' (2010) 13 *Contemporary Justice Review* 269.

<sup>119</sup> *ibid* 277.

<sup>120</sup> *ibid* 281.

<sup>121</sup> Ifill (n 115) 134–5.

<sup>122</sup> Verdeja 'Political Reconciliation in Postcolonial Settler Societies' (n 15) 233.

<sup>123</sup> *ibid*.

significant role in Irish foreign policy regarding the Northern Irish peace process.<sup>124</sup> The combination of abuse by state and church authorities means that reconciliation could be differently experienced and conceived of by victim-survivors depending on whether they engage with state or church actors. In the absence of an explicit reconciliation policy towards survivors of various forms of historical abuses, it is possible to construct an epiphenomenal account of reconciliation across the other dimensions of transitional justice pursued by the Irish state, churches, and religious organisations.

While there is a rhetorical commitment to restoring the right relations with victim-survivors evident in the two-state apologies and several apologies from religious orders discussed in Chapter 9, these remain partial and piecemeal and are not predicated on the basis of recognition of citizens' status or rights or on recognition of the illegitimacy of institutionalisation as a process in twentieth-century Ireland. The lack of memorialisation in the Irish context also demonstrates a limited commitment to recasting the national self-image or national narrative to incorporate recognition of historical abuses. This suggests addressing historical abuses remains short term, exceptional, rather than constitutive of the Irish state and society. This framing of historical abuses' role in Irish society is also evident in the function of attempts to 'seal' access to survivor testimony and the archives of the Ryan Commission and the Residential Institutions Redress Board (RIRB) in late 2019.<sup>125</sup> At a process level, the lack of meaningful attempts to engage in reconciliation is also evident in the 'gag order' component of the Irish approach to inquiries and redress, prohibiting victim-survivors from speaking about their experiences with the state's transitional justice mechanisms as discussed in Chapter 8. These practices reflect attempts to 'settle' the past in a manner that causes epistemic and structural harm to survivors.

#### 10.5.5 *United Kingdom*

As in the case of Ireland, reconciliation with victim-survivors of historical-structural abuse does not form part of the approach taken in the United Kingdom. Apologies to victim-survivors are considered separately in Chapter 9. Again, reconciliation has formed part of British foreign policy

<sup>124</sup> Duncan Morrow, 'Reconciliation and After in Northern Ireland: The Search for a Political Order in an Ethnically Divided Society' (2017) 23 *Nationalism and Ethnic Politics* 98.

<sup>125</sup> Connall O'Fahartha, 'Abuse Survivors Concern over Plan to Seal Records' *Irish Examiner* Cork, (16 August 2019).

regarding Northern Ireland<sup>126</sup> but has been kept separate from its response to institutional abuses. Reconciliation with victim-survivors of historical abuse in the United Kingdom will point to the broader processes of reconciliation in a state divided by lines of class, region, ethnicity, and religion. More broadly, there is a lack of the language of reconciliation in British engagement with former colonial states and societies. Instead, British engagement in post-colonial contexts can often be framed in terms of international trade or economic and human development, rather than in terms of reparations or responsibility for the past.<sup>127</sup> In the absence of other elements of addressing an abusive past, it seems grossly premature to consider reconciliation discourses and practices for a broader British involvement in historical-structural injustices.

#### 10.5.6 *Reconciliation and the Catholic Church*

As a concept with a significant basis in religion and theology, reconciliation is significant in the thought if not practice of churches in addressing historical-structural injustices. In 'Memory and Reconciliation: The Church and the Faults of the Past', the Holy See distinguishes between the infallible character of the church and the potential for sin in its members.<sup>128</sup> Contrary to the theological history of sin and repentance in Christian churches outlined by Celestine, the document asserts: 'Sin is therefore always personal, even though it wounds the entire Church.' Situations of 'social sin', which could be read as structural injustices, are always 'the result of the accumulation and concentration of many personal sins ... the imputability of a fault cannot properly be extended beyond the group of persons who had consented to it voluntarily, by means of acts or omissions, or through negligence'.<sup>129</sup> However, the document notes that the Biblical tradition of social repentance involved a systemic admission of fault. The document calls for a particular historical interpretation, noting that in judging historical abuses it must be remembered that historical periods are different, that the sociological and cultural times within which the church acts are different, and so, the standards by which the

<sup>126</sup> Robbie McVeigh, 'Between Reconciliation and Pacification: The British State and Community Relations in the North of Ireland' (2002) 37 *Community Development Journal* 47.

<sup>127</sup> Itay Lotem, *The Memory of Colonialism in Britain and France: The Sins of Silence* (Palgrave Macmillan 2021) 295–300.

<sup>128</sup> 'Memory and Reconciliation: The Church and the Faults of the Past' <[www.vatican.va/roman\\_curia/congregations/cfaith/cti\\_documents/rc\\_con\\_cfaith\\_doc\\_20000307\\_memory-reconc-itc\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20000307_memory-reconc-itc_en.html)>.

<sup>129</sup> *ibid.*

church are judged should be different, recognising diversity in historical and geographical situations.

Without naming specific time periods or geographical locations, the document acknowledges the role of the church in 'forms of evangelization that employed improper means to announce the revealed truth or did not include an evangelical discernment suited to the cultural values of peoples or did not respect the consciences of the persons to whom the faith was presented, as well as all forms of force used in the repression and correction of errors'. It then acknowledges that 'attention should be paid to all the failures, for which the sons and daughters of the Church may have been responsible, to denounce injustice and violence in the great variety of historical situations', including express reference to situations of human rights violations and to the historical treatment of Jews by Christians. In addition, the document offers some limited potential acknowledgement of the need to end patterns of religious alienation: 'it is important to avoid perpetuating negative images of the other, as well as causing unwarranted self-recrimination, by emphasising that, for believers, taking responsibility for past wrongs is a kind of sharing in the mystery of Christ, crucified and risen, who took upon himself the sins of all'. The document notes that acts of addressing historical abuses 'can increase the credibility of the Christian message, since they stem from obedience to the truth and tend to produce fruits of reconciliation'. However, the practice of the church evidenced in other chapters tends to be lawyer-led, with an engagement with survivors that reflects the church's rights as a legal actor to safeguard its own assets, information and members. An exception to a legalistic approach is the church's use of restorative justice programmes. Gleeson and Zanghellini note that in the context of historical abuses, restorative justice programmes have been used for survivors and offenders in the United States, New Zealand, Australia, the Netherlands, and elsewhere,<sup>130</sup> despite the lack of evidence of the suitability of such approaches to address historical and sexual abuse. They note that due to the absence of sufficient publicly available data on the nature and processes of these initiatives, '[i]t is not apparent to what extent church-led processes abide by restorative justice standards or provide a sense of justice for survivors and offenders'.<sup>131</sup> They conclude: "The Catholic doctrine of grace entails that in the context of Catholic restorative justice the goal of restoring justice to victims who have not lapsed into unbelief would take second place to the goal of restoring justification to the offender."<sup>132</sup>

<sup>130</sup> Gleeson and Zanghellini (n 48) 225.

<sup>131</sup> *ibid* 226.

<sup>132</sup> *ibid* 235.

While reconciliation may form a central part of Catholic theology, a practice that does not include corporate and institutional responsibility for past wrongdoing, particularly the cover-up or facilitation of such wrongdoing, as identified in Chapter 6, seems ill-suited to provide an effective form of engagement with victim-survivors and instead serves as another inappropriate form of settlement.

### 10.5 CONCLUSION

Across diverse contexts, a range of levels of interest from state and church leadership in reconciliation is evident. In addition, there persists ongoing scepticism about the nature and potential for reconciliation for historical abuses, especially for inter-generational abuses in the context of settler democracies. The persistence of this disagreement raises concerns about the very possibility of reconciliation. Strakosch notes: 'As a polity, we see ourselves formulating transformative strategies, but these remain our solutions to our problems. We see ourselves engaging in profound political debates about possible ways forward, but these "good colonist/bad colonist" debates remain circumscribed by liberal categories.'<sup>133</sup> To truly enter into that shared space is to 'attend to what is irreconcilable within settler colonial relations' rather than to force reconciliations.<sup>134</sup>

The reality for reconciliation regarding historical abuse is that a society will never be fully reconciled to itself. There are historical wrongs that cannot be undone, divisions and grievances that are generations deep. The challenge for societies addressing historical abuse is not to achieve a perfect and final form of reconciliation but instead to acknowledge and name the challenge of reconciliation in each successive government and for each successive generation. Reconciliation is the grammar of an ongoing conversation. It may be necessary to start the conversation or it may be necessary to refute the premises on which the conversation rests. As Tuck and Yang argue: 'to be part of this process of mutual imagination, we as settlers must first give up the fundamental desire to attach these futures to the project of legitimising our current privileges once and for all'.<sup>135</sup> This aligns with Edmonds who conceives of reconciliation as 'symbolic negotiations, forms of mythic exchange that reflect

<sup>133</sup> Elizabeth Strakosch, 'Beyond Colonial Completion: Arendt, Settler Colonialism and the End of Politics' in Sarah Maddison, Tom Clark and Ravi de Costa (eds), *The Limits of Settler Colonial Reconciliation* (Springer Singapore 2016) 17.

<sup>134</sup> Eve Tuck and K Wayne Yang, 'Decolonization Is Not a Metaphor' (2012) 1 *Decolonization: Indigeneity, Education & Society* 1, 4.

<sup>135</sup> *ibid* 28–36.

the struggle at the heart of the postcolonial condition itself.<sup>136</sup> For Edmonds, ‘Reconciliation narratives involve the invention of new postcolonial socialities and imagined futures, as well as the creative reinterpretation of past events’.<sup>137</sup> These accounts ‘can be contrasted with the false ideals of reconciliation as an overcoming of negative sentiments or the creation of deep social harmony’.<sup>138</sup> In suggesting that reconciliation can offer an alternative to colonial modernities, Lu notes,

Reconciled individuals may still hold resentment against perpetrators, and reconciled societies may still be marked by difference, disagreement and conflict . . . progress toward reconciliation in any society involves addressing the alienation not only of those oppressed in various ways by contemporary structured and structural injustice, but also of those whose identities and beliefs about themselves, others, and the world are called into question in the process of decolonization.<sup>139</sup>

The state foregoes the path of seeking to control, dominate, or further realign individuals to a new, post-historical abuse conception of state–citizen relationships but instead embraces a reality and set of lived experiences, where allegiance and support remain necessarily contested, challenged, and complex. These forms of relationship are sufficient, even if they do not comply with traditional liberal conceptions of citizenship. The same too can be said regarding reconciliation with churches and Christianity. Institutionally and theologically, both need to commit to the proposition that their role is not to constitute patterns of inclusion or membership of the ‘saved’ but instead to provide one among many possible mechanisms for individuals to pursue their own non-violent conception of their relationship to existence (and/or the divine).

The approaches of the states and churches studied in this book are either too small or seek to use reconciliation as a form of settlement, for what Indigenous peoples, African Americans, and victim-survivor groups may prefer to frame as an ongoing form of non-violent political contestation. Muldoon notes: ‘Reconciliation – or the reconciled state – seems destined to remain an incomplete project; the always deferred “not yet” of the receding post-colonial horizon.’<sup>140</sup> Reconciliation depends upon recognition as equals – this is what

<sup>136</sup> Edmonds (n 17) 185.

<sup>137</sup> *ibid* 187.

<sup>138</sup> Lu (n 10) 212.

<sup>139</sup> *ibid*.

<sup>140</sup> Paul Muldoon, ‘Indigenous Reconciliation Is Hard, It Re-opens Wounds to Heal Them’ *The Conversation* (10 May 2016) <<http://theconversation.com/indigenous-reconciliation-is-hard-it-re-opens-wounds-to-heal-them-5951>> (accessed 20 September 2022).

states are not willing to do for Indigenous nations and what empires and churches are not willing to do with survivors – to admit they are not exceptional, but in fact we are all warranted an equal stake in dialogue that extends to challenge the foundations of state and church authority and the existing distributions of power and wealth. Without addressing these foundations, reconciliation will remain in the service of existing structures.