

A Significant Negative Impact:

**Assessing the link between Historical Trauma, Indigenous Child
Removal Policies and the Disproportionate Number of Indigenous
Children in the Child Welfare System**

By

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Abstract

This thesis explores historical trauma in the context of two governmental policies of Indigenous child removal: Indian¹ Residential Schools (IRS) and the Sixties Scoop. Necropolitics, as theory, is addressed in relation to these policies. IRS and the Sixties Scoop contributed to intergenerational physiological and psychological trauma, including feelings of a loss of culture and language as well as historical trauma responses of depression and substance abuse. Nonetheless, there remains a spirit of individual and community resilience within many Indigenous communities in Canada. Through a critical discourse analysis and an historical trauma lens, the research examines how national governmental policies have contributed to a disproportionate number of Indigenous children in the child welfare system.

Keywords: Historical Trauma, Historical Trauma Responses, Residential Schools, Sixties Scoop, Necropolitics, Resilience, Child Welfare

¹ While the nomenclature of the term ‘Indian’ has been shifted to Indigenous, I have decided to use the widely accepted academic term of Indian Residential Schools (IRS) when discussing the residential schools and the Canadian residential school system.

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Great is Thy faithfulness, Lord, unto me

Dedication

I dedicate this thesis to my grandmother, Jacqueline Helena Sheridan.
She taught me to *climb every mountain & to feed the birds.*
She is a living saint & a light to all she meets.

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List of Abbreviations

| | |
|--|----------------|
| Indian Residential Schools | IRS |
| Missing and Murdered Indigenous Women and Girls | MMIWG |
| National Inquiry into Missing and Murdered Indigenous Women and Girls | NIMMIWG |
| Royal Commission on Aboriginal Peoples | RCAP |
| Truth and Reconciliation Commission | TRC |

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Introduction

Framing the Project

It is fitting that a statue of *Justitia*, the Roman Goddess of Justice, is found outside many courthouses. At the Supreme Court of Canada, the statue bares a different representation. As opposed to most depictions, this particular statue does not have a blindfold. Shrouded in a cloak and clutching a scepter, she serves as a reminder that actions have consequences and that actions can influence the development of our legal system. Could she be depicting the *state*? Perhaps the reason she does not have a blindfold is because she is overseeing a system of governance that is manifested in regimes of both disciplinary and sovereign power. These regimes are both seen and unseen. Modes of governance constitute the ways individuals are managed (or disciplined) to show the central power structure of the sovereign. This allows for the sovereign to create policies that target members of a society for the sole purpose of regulation and optimization.²

There are few more obvious or callous exercises of that power than in the historical relationship between the Crown and Indigenous peoples, especially in the policy of Indian Residential Schools (IRS). The legacy of IRS continues to rear its head as it has become deeply ensconced in Canadian government policy toward Indigenous peoples. This policy was described in 1920 by then-Deputy Minister of Indian Affairs Duncan Campbell Scott who, when asked about the goal of IRS, replied that he “[w]ants to get rid of the Indian

² In this context, I consider Michel Foucault’s writings on theories of power: “[T]he political investment of the body is bound up, in accordance with complex reciprocal relations, with its economic use; it is largely as a force of production that the body is invested with relations of power and domination, but on the other hand, its constitution as labour power is possible only if it is caught up in a system of subjection (in which need is also a political investment meticulously prepared, calculated and used); the body becomes a usable force only if it is both a productive body and a subject body”. Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1977) at 25-26. [Foucault, “Discipline”]. We see that the power structures exist in the polity for the purposes of individuals to be subjected and managed with rules of governance.

problem. Our objective is to continue until there is not a single Indian in Canada that has not been absorbed into the body politics and there is no Indian question and no Indian Department.”³ Scott’s position has echoed over the generations, perhaps nowhere more clearly in recent history than in the ‘Sixties Scoop’, and is reflected in the national internment of Indigenous⁴ children into a system⁵ whose sole purpose was to assimilate Indigenous communities into Canadian culture and suppress Indigenous languages, spirituality and cultural norms. This was also recognized at an international level when the United Nations Special Rapporteur found that:

Indigenous children were forced from their homes into institutions, the explicit purpose of which was to destroy their family and community bonds, their languages, their cultures and even their names. Thousands of Indigenous children did not survive the experience and some of them are in unidentified graves. Generations of those who survived grew up estranged from their cultures and languages, with debilitating effects on the maintenance of their Indigenous identity. That estrangement was heightened during the ‘sixties scoop’, when Indigenous children were fostered and adopted into non-aboriginal homes, including outside Canada. The residential school period continues to cast a long shadow of despair on Indigenous communities, and many of the dire social and economic problems faced by aboriginal people are linked to that experience.⁶

³ David MacDonald & Graham Hudson, “The Genocide Question and Indian Residential Schools in Canada” (2012) 45:2, *Can J Political Science* 431 at 431.

⁴ Indigenous refers to First Nations, Métis and Inuit peoples. According to Dr. Maria Yellow Horse Brave Heart: “[I]ndigenous Peoples is the term endorsed by the United Nations Permanent Forum on Indigenous Issues. The term Indigenous Peoples of the Americas refers to the original inhabitants of the land area now known as the United States as well as Canada, Mexico, Central and South America and their descendants.” Maria Yellow Horse Brave Heart et al, “Historical Trauma Among Indigenous Peoples of the Americas: Concepts, Research and Clinical Considerations”, 43:4 *J Psychiatric Drugs* 282 at 288. It should be noted that throughout this thesis, I will be using ‘Indigenous’. However, if another term is utilized or referenced by an author, I will conform to their chosen term for the purposes of quoting their work.

⁵ The ‘system’ I refer to in this context is two-fold. In addition to the child welfare system, which this thesis examines, I also refer to the ‘system’ of colonizing Indigenous children. Insidious policies of Indigenous child removal from their family of origin were imposed to institutionalize them, suppress their language and culture, and assimilate them.

⁶ United Nations General Assembly, “Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya” (2014) GE, 14-07508; Human Rights Council at 5-6.

The title of this thesis is derived from a Canadian Human Rights Tribunal ruling, which chided the Canadian Government for its inaction in protecting Indigenous children.⁷ *A significant negative impact* resulted because of a set of colonial policies that fostered and reinforced intergenerational traumas that undermined Indigenous wellness and traditional parenting practices, resulting in a disproportionate number of Indigenous children in the child welfare system. The panel found the following:

The Tribunal was clear from the beginning of its decision that the Federal First Nations child welfare program is negatively impacting First Nations children and families it undertook to serve and protect. The gaps and adverse effects are a result of a colonial system that elected to base its model on a financial funding model and authorities dividing services into separate programs without proper coordination or funding and was not based on First Nations children and families' real needs and substantive equality. Systemic orders such as reform and a broad definition of Jordan's Principle are means to address those flaws.⁸

The Canadian Human Rights Tribunal determined that current systemic inequality among Indigenous children is historical in nature. Policies that failed to provide the same level of health and services towards Indigenous children were found to be discriminatory “[o]n the prohibited grounds of race and national or ethnic origins.”⁹ The historical nature of such determination also resides in the cumulative negative impacts of such policy approaches as that demonstrated in IRS and the cascading impacts of the schools on subsequent generations of Indigenous children and policies enacted in response to those impacts. The long-term effect of these policies has been studied in numerous commissions such as the

⁷ *First Nations Child and Family Caring Society of Canada & Assembly of First Nations and Canadian Human Rights Commission and Attorney General of Canada and Chiefs of Ontario and Amnesty International and Nishnawbe Aski Nation* T1340/7008, 2019 CHRT 39. This case was primarily focused on the equitable services provided to Indigenous children both on and off reserve.

⁸ *Ibid* at paras 4-5.

⁹ Cindy Blackstock, “The Complainant: The Canadian Human Rights Case on First Nations Child Welfare” (2016) 62:2 McGill LJ 285 at 288. [Blackstock, “Complainant”]

Truth and Reconciliation Commission (TRC)¹⁰ and the National Inquiry into Missing and Murdered Indigenous Women and Girls (NIMMIWG)¹¹, both of which have clearly documented deleterious transgenerational consequences. It is advantageous to note that “[a] truth commission cannot overcome a society’s division. It can only winnow out the solid core of facts upon which society’s arguments with itself should be conducted. But it cannot bring these arguments to a conclusion. All that a truth commission can achieve is to reduce the number of lies circulated in public discourse.”¹² Canada is the first Western Nation to accept a truth commission.

Overview of Research Question and Thesis

This thesis builds on past research examining the intergenerational effects of ‘Indian policies’ as expressions of historical trauma impacting Indigenous communities throughout Canada. As such, the thesis examines the following research question: *What is the link between residential schools, historical trauma, and historical trauma responses to the disproportionate number of Indigenous children in the child welfare system?* According to the most recent statistics, Indigenous children comprise 52.2% of the child welfare system, yet only account for 7.7% of the child population in Canada.¹³ In Manitoba, recent

¹⁰ The Truth and Reconciliation Commission refers to a long-term inquiry into the lasting impacts of the Residential Schools in Canada that lasted from 2008-2015.

¹¹ The scope of the NIMMIWG was trauma-informed through their mission statement: “[I]ncorporating knowledge of trauma into all policies, procedures and practices of solutions and services is crucial to the implementation of the Calls for Justice. It is fundamental to recognize the impacts of trauma and respond accordingly to signs of trauma”. National Inquiry into Missing and Murdered Indigenous Women and Girls, “Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls; Volume 1b” (2019) at 167. [MMIWG, “Volume B”]

The TRC, as one of their calls to action, requested that the Canadian government “[a]cknowledge that the current state of Aboriginal health in Canada is a direct result of previous Canadian government policies”. Truth and Reconciliation Commission of Canada, “Truth and Reconciliation Commission of Canada: Calls to Action” (2015) *Truth and Reconciliation Commission of Canada* [pdf] 1 at 2. [TRC, “Calls to Action”]

¹² Michael Ignatieff, “Articles of Faith” (1996) 25:5 *Index on Censorship* 110 at 113.

¹³ Canada, “Reducing the number of Indigenous children in care” (20 February, 2020), online: *Indigenous Services of Canada* <<https://www.sac-isc.gc.ca/eng/1541187352297/1541187392851>>. [Canada, “Reducing the number of Indigenous Children in Care”]

statistics indicate that out of the 11,000 children currently in care, 10,000 (or 90%) are Indigenous.¹⁴ The (former) Minister of Indigenous Services explained that “[w]e are facing a humanitarian crisis in this country where Indigenous children are vastly, disproportionately overrepresented in the child welfare system.”¹⁵ These statistics are rivalled only by their over-representation in the youth justice system. The province with the highest rates of incarcerated Indigenous youth is in Saskatchewan, where they make up 92% of incarcerated boys and 98% of incarcerated girls. Similar proportions can be found in Manitoba, where Indigenous boys and girls comprise 81% and 82%, respectively, of incarcerated youth.¹⁶

Roadmap

The thesis is presented in four chapters. Chapter One contextualizes both historical trauma theory and historical trauma responses. Historical trauma is analyzed through scholarly work and applicable studies to understand its application to the central research question. Chapter Two includes an analysis of two theoretical perspectives, biopolitics and necropolitics, as these relate to the research question. A theoretical approach can facilitate understanding of how power structures are centralized for specific populations. Chapter Three examines Indigenous Child Removal Policies, such as IRS and the Sixties Scoop, and includes the origins of the policies, residential school experiences and their connection

¹⁴ Ashifa Kassam, “Ratio of indigenous children in Canada welfare system is ‘humanitarian crisis’ (4 November 2017) online: *The Guardian*: <<https://www.theguardian.com/world/2017/nov/04/indigenous-children-canada-welfare-system-humanitarian-crisis>>.

¹⁵ *Ibid.* While this thesis focuses on the overrepresentation of Indigenous children in the child welfare system, we also consider that these children can also become entrapped in the criminal justice system.

¹⁶ Kelly Malone, “Nearly Half of Canada’s Incarcerated Youth are Indigenous, according to Statistics Canada” (24 June 2018) online: *The Canadian Press* <<https://www.cbc.ca/news/canada/manitoba/youth-incarcerated-indigenous-half-1.4720019#:~:text=Manitoba-,Nearly%20half%20of%20Canada's%20incarcerated%20youth%20are%20Indigenous%2C%20according%20to,shows%20unacceptable%20and%20systemic%20racism>>.

to historical trauma and historical trauma responses. Chapter Four examines the origins and policies of Indigenous child welfare and legislative remedies that seek to address inequality in services available to Indigenous children. Here the thesis also considers historical trauma responses as outcomes in the context of the research question. The conclusion presents analysis and opportunities for further research as they relate to the recurring themes in this thesis as well as a discussion on resilience amongst Indigenous communities.

Methodology

The methodology employed for this thesis is a mixed method that relies primarily on Foucauldian discourse analysis. Contextually, discourses as the “[g]eneral domain of all statements, sometimes as an individualized group of statements, and sometimes as a regulated practice that accounts for a number of statements.”¹⁷ Foucault theorized that: “[w]henver one can describe between a number of statements, such as system of dispersion between objects, types of statements, concepts or thematic choices, one can define a regularity, we will say, for the sake of convenience, we are dealing with discursive formation.”¹⁸ These discourses include a summary of the current body of research in this area and its relation to legislation, statistics and policies. Each of these discourses provide links between (harmful) policies and legislation imposed on Indigenous communities and historical trauma effects that led to the disproportionate number of Indigenous children in the child welfare system. In addition to discourse, this thesis presents a doctrinal¹⁹ approach

¹⁷ Michel Foucault, *The Archaeology of Knowledge and the Discourse on Language* (New York: Pantheon Books, 1972) at 8.

¹⁸ *Ibid* at 38.

¹⁹ In examining to doctrine as method, I turn to the following definition: “[d]octrinal or theoretical legal research can be defined in simple terms as research which asks what the law is in a particular area. The researcher seeks to collect and then analyse a body of case law, together with any relevant legislation. This

to law through examinations of governmental policies and legislative interpretation. This thesis examines and explores how the *Indian Act* has been amended in order to explore the far reaches of governmentality.

Contextually, the research is framed within an examination of colonial power structures that are directly implicated in the disproportionate number of Indigenous children in the child welfare system. As such, the thesis will assess how the overrepresentation of Indigenous children in child welfare is the result of Indigenous child removal policies such as IRS and the Sixties Scoop. Survivor testimony, scholarly research, jurisprudence as well as both entrenched and proposed legislation will elucidate the ways in which historical policies have led to significant trauma among Indigenous peoples in Canada. These historical traumas have resulted in transgenerational transmission of trauma which has contributed to a significant negative impact. The thesis will demonstrate how policy-generated intergenerational trauma among Indigenous communities has contributed to the growing crisis of the disproportionate number of Indigenous children in the child welfare system, thereby perpetuating the cycle of trauma in communities through the perpetuation of colonialist impulses revealed here as incidents of necropolitics and biopolitics.

is often done from a historical perspective and may also include secondary sources such as journal articles or other written commentaries on the case law and legislation. The researcher's principal or even sole aim is to describe a body of law and how it applies. In doing so, the researcher may also provide an analysis of the law to demonstrate how it has developed in terms of judicial reasoning and legislative enactment". Ian Dobinson & Francis Johns, 'Qualitative Legal Research' in Mike McConville & Wing Hong Chui (eds.), *Research Methods for Law*, (Edinburgh: Edinburgh University Press 2007) at 19.

Chapter One: Historical Trauma Theory

Introduction

Adam Capay is an Indigenous person who spent over four years (or 1,647 days) in solitary confinement while imprisoned and awaiting trial. Adam spent this time in a glass cell where the lights were never turned off. Renu Mandhane, former Ontario Human Rights Commissioner (now a Justice of the Ontario Superior Court) described him the following way: “[h]e just seemed like a broken individual, somebody who had suffered a lot. Those kinds of things - sensory deprivation is what it’s called legally - they aren’t techniques that you associate with a modern correctional facility.”²⁰ Judge Fregeau of the Superior Court of Ontario, while vacating the sentence, determined that Capay’s Charter rights were violated. In the written opinion, there was a detailed narrative about Adam’s life and youth which described the transgenerational effects of not only the residential school system, but of intergenerational trauma:

The accused is a 25 year old Indigenous man and a registered status member of the Lac Seul First Nation (“LSFN”), a First Nation community approximately 400 kilometres from Thunder Bay and 250 kilometres from Kenora. He is the oldest of seven children born to Glenda Brisket and Ransome Capay. The accused’s maternal grandmother and paternal grandparents attended residential schools. All became alcoholics. The accused’s parents both suffered sexual abuse and domestic physical violence while growing up. Both had very serious alcohol dependency issues with the result that the accused was exposed to parental alcoholism, marital discord, domestic violence, sexually promiscuous behaviour, and substance abuse throughout his life. The accused also suffered a number of significant traumas while growing up, including repeated childhood sexual abuse and physical assaults. When the accused was ten years old, his father attempted to solicit his assistance in committing suicide. While intoxicated, the accused’s father cut him with a knife. The accused’s father then put a loaded firearm either in his own mouth or to his own head and asked the

²⁰ Rhianna Schmunk, “Renu Mandhane, Ontario Human Rights Commissioner, Has History of Advocacy” (28 October 2016) online: *Huffington Post Canada* <https://www.huffingtonpost.ca/2016/10/28/renu-mandhane-adam-capay-human-rights-solitary-confinement_n_12674004.html>.

accused to pull the trigger. The accused reports that he continues to have nightmares and flashbacks in relation to this incident. The accused's parents have now overcome their dependency issues, are gainfully employed, and are very supportive of their son. The accused first drank alcohol at 7 years of age. He began using marijuana and inhaling solvents at 8 years of age. At 13 years of age, he began to experiment with hard drugs and became involved in the criminal justice system. The accused has only a Grade 7 or 8 education. His formal education ended when he was incarcerated for assaulting a teacher and police officer. He has never been employed but for a two week period at age 18 when he worked construction. He was terminated for being intoxicated on the job. The accused's involvement with the criminal justice system has always been precipitated by the excessive consumption of alcohol. The accused maintains that he became addicted to drugs, including morphine and heroin, while incarcerated.²¹

Capay's story is only one example of historical trauma where there are historical trauma responses of mental health challenges, substance abuse and lack of educational opportunities. Members of Indigenous communities, in particular their youth, continue to deal with systemic racism which adds significant pressures to their lives. These pressures can, at times, contribute to despair. If their support needs are not met, there is an increase in the probability of future health risks and challenges.²² In addition, the lack of access to clean water that many Indigenous communities experience as a result of continued water boil advisories contribute to a myriad of environmental concerns and childhood development alterations.²³

Studies have found that individuals who had previous generations of family members attend residential schools were more likely to have suicidal thoughts in comparison to those who did not attend residential schools.²⁴ This has caused a “[s]tate of

²¹ *R v Capay*, [2019] ONSC 535 at paras 8-14.

²² Reggine Halseth & Margo Greenwood, “Indigenous Early Childhood Development in Canada: Current State of Knowledge and Future Directions” (2019) online: *National Collaborating Centre for Aboriginal Health* <<https://www.nccih.ca/docs/health/RPT-ECD-PHAC-Greenwood-Halseth-EN.pdf>> [pdf] 1 at 5.

²³ *Ibid.*

²⁴ Brenda Elias et al, “Trauma and Suicide Behavior Among A Canadian Indigenous Populations: An Empirical Exploration of the Potential Role of Canada's Residential School System” (2012) 74 *Soc Science Medicine* 1560 at 1567.

emergency”²⁵ among Indigenous communities. This state of emergency can also be linked to instances of chronic sexual, physical and psychological abuse that were experienced by many of those who attended IRS.²⁶ As a result, there are implications of these traumas for their mental health and wellness which directly and negatively impacted subsequent generations.²⁷ It is also noted that strong cultural and community support are integral to the prevention of suicide ideation.²⁸ As the long-lasting effects of IRS, particularly high levels of suicide and suicidal ideation become apparent, there becomes an elevated requirement for earlier incorporation of available mental health programming for young people.²⁹

Historical Trauma

Adam Capay’s life history is representative of a greater area of study - historical trauma and historical trauma responses. Both of these terms were coined and developed through the work of Dr. Maria Yellow Horse Brave Heart, who defined and linked historical trauma and historical trauma responses the following way:

Historical trauma (HT) is the cumulative emotional and psychological wounding, over the lifespan and across generations, emanating from massive group trauma experiences. The historical trauma response (HTR) is the constellation of features in reaction to this trauma. The HTR may include substance abuse, as a vehicle for attempting to numb the pain associated with trauma. The HTR often includes other types of self-destructive behaviour, suicidal thoughts and gestures, depression, anxiety, low self-esteem, anger, and difficulty recognizing and expressing emotions. Associated with historical trauma is historical unresolved grief that

²⁵ Amy Bombay et al, “Suicidal thoughts and attempts in First Nations communities: link to parental Indian residential school attendance across development” (2019) 10:1 J Developmental Origins Health Disease 123 at 123. [Bombay, “Suicidal Thoughts and Attempts in First Nations Communities”]

²⁶ *Ibid.*

²⁷ Robyn Jane McQuaid et al, “Suicide Ideation and Attempts Among First Nations Peoples Living on Reserve in Canada: The Intergenerational and Cumulative Effects of Indian Residential Schools” (2017) 62:6 The Can J Psychiatry 422 at 422.

²⁸ *Ibid* at 429.

²⁹ Bombay, “Suicidal Thoughts and Attempts in First Nations Communities”, *supra* note 25 at 126.

accompanies the trauma; this grief may be considered impaired, delayed, fixated, and/or disenfranchised.³⁰

Brave Heart's research posited that colonial policies perpetuate historical trauma responses creating poor socioeconomic conditions, prejudice and persecution of Indigenous peoples which continue the intergenerational effects of historical trauma.³¹

Historical trauma, as theory, was first developed by Brave Heart in 1988 to describe the intergenerational traumatic experiences of her community, the Lakota.³² After visiting community after community, Brave Heart determined that the similar and consistent challenges facing her people resided in unresolved grief which was manifested in mental health challenges and substance abuse as responses to historical trauma.³³ In her research, Brave Heart determined that there were specific moments in history that were implicated in experiences of the chronic unresolved grief she observed among her people, including:

1. The assassination, in 1890, of Tatanka Iyotake (Sitting Bull) who personified Lakota resistance and traditional leadership.
2. The Wounded Knee Massacre of 1890 in which hundreds of Lakota were killed and their bodies thrown into mass graves.
3. The forced removal of children to boarding schools where youngsters experienced abuses such as being shackled and chained to bedposts for weeks at a time, starvation, and tragic death.
4. The overcrowding and deficient health standards at boarding schools that fueled a tuberculosis epidemic which contributed to an Indigenous tuberculosis death rate seven times the national average and which, between 1936 and 1941, resulted in the death of more than one third of the Lakota population over the age of one year.³⁴

³⁰ Maria Yellow Horse Brave Heart, "The Historical Trauma Response Among Natives and Its Relationship With Substance Abuse: A Lakota Illustration" (2003) 35:1 J Psychiatric Drugs 7. [Brave Heart, "The Historical Trauma Response"] Brave Heart's definition of both historical trauma and historical trauma responses form the basis of this thesis.

³¹ *Ibid* at 9.

³² Maria Yellow Horse Brave Heart, "The Return to the Sacred Path: Healing the Historical Trauma and Historical Unresolved Grief Response Among the Lakota Through a Psychoeducational Group Intervention" (1998) 68:3 Smith College Studies Soc Work 287 at 288. [Brave Heart, "The Return to the Sacred Path"]

³³ *Ibid* at 291.

³⁴ *Ibid* at 289.

Each of these events led to “[p]rofound, unsettled bereavement that results from generations of devastating losses which have been disqualified by prohibiting Indigenous ceremonies and by the larger society’s denial of the magnitude of genocidal policies.”³⁵ This speaks to the deviation of the study of ‘historical trauma’ as opposed to ‘trauma’ per se. Approaches to historical trauma are emblematic of large scale violence against communities. Comparatively speaking, approaches to the study of trauma are based on individual experiences.

Brave Heart’s research into historical trauma became evident in listening and studying the collective and shared experiences of the Lakota. For example, when studying the Wounded Knee Massacre, the following description was shared: “[s]o this thing I talked about, about man and woman, the mother and grandson, the mother-in-law... bodies on top of one another in death, but the spirit is still there. That feeling was shattered on that day, and that’s the feeling that most people can’t forget. They [non-Indians] don’t see it that way; all they see is corpses.”³⁶ The Massacre at Wounded Knee was one of the inflection events that Brave Heart described as foundational to her studies of historical trauma. Nonetheless, Brave Heart stressed that further empirical evidence was needed.

Brave Heart contextualized both historical trauma and historical trauma responses in the intergenerational transmission of grief and trauma, which is defined as “[t]he transfer of features or symptoms across generations, from the survivors to the descendants.”³⁷ Brave Heart’s model of historical trauma addressed the “[s]oul wound”³⁸ inflicted by a

³⁵ *Ibid* at 288.

³⁶ *Ibid* at 254.

³⁷ Maria Yellow Horse Brave Heart, *The Return to the Sacred Path and Historical Unresolved Grief Among the Lakota* (Doctor of Philosophy, Smith College Soc Work, 1995).

³⁸ Eduardo Duran et al, “Healing the American Indian Soul Wound” in *International Handbook of Multigenerational Legacies of Trauma*, edited by Yael Danieli (New York: Plenum Press, 1998) 341.

series of traumas perpetrated upon Indigenous communities. As a result, we see that the loss of land and nourishment, forced educational institutions and perpetual violence are the historical trauma responses.³⁹ These soul wounds impact not only the direct recipient of the harmful policy but resonate over the generations through the direct recipients' reactions to those wounds, for example through self-medication with alcohol or drugs, depression, difficulties expressing emotions and so on, which in turn negatively impact their children as direct recipients of these 'historical trauma responses'. Thus, impacted by historical trauma responses, the children also emerge as traumatized adults who visit those traumas on their children, perpetuating a cycle of transgenerational trauma.

Historical trauma is cumulative and elucidates the impacts of trauma across all the generations.⁴⁰ Substance abuse has been documented as a common historical trauma response and one that is directly implicated in the intergenerational transmission of trauma. Brave Heart explained that, “[a]lthough the problem of alcoholism is complex, there has been very little argument that genocidal legacy is a key factor in understanding it.”⁴¹ The stereotype of alcohol usage is one that must be approached with caution. Brave Heart described that the origin of alcohol usage commenced with the arrival of the trading industry, with alcohol being used to lubricate the exchanges of the fur trade.⁴²

Brave Heart's theory of Historical trauma has been further researched. Dr. Teresa Evans-Campbell wrote that “[o]ver successive generations, American Indian and Alaskan Native people have experienced a series of traumatic assaults that have enduring

³⁹ *Ibid* at 344.

⁴⁰ *Ibid* at 342.

⁴¹ *Ibid* at 346.

⁴² Teresa Evans-Campbell, “Historical Trauma in American Indian/Native Alaska Communities: A Multilevel Framework for Exploring Impacts on Individuals, Families and Communities” (2008) 23:3 *J Interpersonal Violence* 316 at 316.

consequences for families and communities.”⁴³ Evans-Campbell determined that historical trauma has multi-generational impacts for individuals, families and communities that contribute to the soul wound as described by Brave Heart.

Concurring with Brave Heart, Evans-Campbell discusses how trauma survivors experience mental health symptoms such as sadness, depression and sleep disorders, among others.⁴⁴ At a family level, children of trauma survivors take on the role of consoling victims of trauma and develop (almost) a “[p]reoccupation”⁴⁵ with not causing more distress in the lives of their parents. Communities are affected due to the violence perpetrated on a wide-scale, particularly violence and loss of the children of communities, through such colonial policies as internment of Indigenous children in boarding schools.⁴⁶

Evans-Campbell described three characteristics that shed light on the concept of historical trauma:

First: These events are generally widespread among American Indian and Alaska Native (AIAN) communities, and thus, at the time of the event, many people in the community experiences or were affected by the event.

Second: The events generate high levels of collective distress and mourning in contemporary communities. In some cases, the resulting distress has been empirically documented among contemporary populations, and in others the distress is visible in the narratives that communities share about the events.

Third: The events are usually perpetrated by outsiders with purposeful and often destructive intent.⁴⁷

Continued study of historical trauma theory by Evans-Campbell has yielded results similar to those of Brave Heart, particularly describing that events can have a ‘destructive intent’,

⁴³ *Ibid* at 321.

⁴⁴ *Ibid* at 323.

⁴⁵ *Ibid* at 324.

⁴⁶ *Ibid* at 327.

⁴⁷ *Ibid* at 321.

and which overlap with Brave Heart's four key events⁴⁸ that informed her initial iteration of Historical Trauma theory.

Evans-Campbell subsequently elaborated upon and further developed Brave Heart's understanding of historical trauma to frame the 'colonial trauma response' (CTR). In this theory, the concept of "[c]olonial trauma is used to encompass both historical and contemporary traumatic events that reflect colonial practices to colonize, subjugate and perpetrate ethnocide and genocide against contemporary American Indian and Alaska Native peoples and nations."⁴⁹ Brave Heart and Evans-Campbell have each contextualized trauma as both historical and intergenerational, recognizing that trauma is a systemic issue that does not solely affect the immediate survivors of residential schools, but also successive generations of their descendants. For example, in 2017, *The Cedar Project* connected rates of substance abuse with the higher rates of Indigenous children in the child welfare system.⁵⁰ The Project found that Indigenous youth who used drugs were 12.9% more likely to die when compared to non-Indigenous youth drug users.⁵¹ Researchers found that experiences of intergenerational trauma were linked to coping mechanisms such as substance abuse among the Indigenous youth and thus connected to transgenerational experiences of historical trauma and responses to that unique form of trauma.⁵²

To demonstrate the intersections in the work of both Brave Heart and Evans-Campbell, we consider a contemporary study of historical trauma and its responses. Dr.

⁴⁸ (1) The assassination, in 1890, of Tatanka Iyotake (Sitting Bull); (2) The Wounded Knee Massacre; (3) Forced removal of children to boarding schools and (4) The overcrowding and deficient health standards at boarding schools that fueled a tuberculosis epidemic. Brave Heart, "The Return to the Sacred Path", *supra* note 32.

⁴⁹ *Ibid* at 335.

⁵⁰ Kate Jongbloed et al, "The Cedar Project: Mortality Among Young Indigenous People Who Use Drugs in British Columbia" (2017) 189:44 CMAJ E1352. [Jongbloed]

⁵¹ *Ibid* at E1355.

⁵² *Ibid* at E1357.

Rachel Lev-Wiesel's study examined intergenerational trauma through three generations of families based on three different experiences of trauma.⁵³ Her methodology included interviewing families that experienced three specific and "[s]ignificant life trauma(s) - defined as a trauma acknowledged publicly as such."⁵⁴ The first family were Holocaust survivors, with the first generation interviewed being a survivor of concentration camps.⁵⁵ The second family experienced force dislocation from their homes by governmental decree.⁵⁶ The third family lived in a transit (or refugee) camp.⁵⁷ Each family was found to have experienced a different trauma. While the families of Holocaust survivors and refugee camps experienced both personal and collective losses as a result of their community, the family from transit camps indicated that their experience was more personal in nature.⁵⁸

It was found that each group experienced a form of psychological distress:

Holocaust Survivor's family: PTSD in the first generation, secondary traumatization in the second and third generations.

Ikrit Refugee's Family: Feelings of longing, pain, loss, yearning, frustration, anger, insult, mixed with self-determination

Transit Camp Family: Personal conflict between the desire to be appreciated by Westerners and loyalty to the family of origin.⁵⁹

Based on this study, it appears that first generation experiences of trauma are transgenerational. While a single study cannot substantially ground a theory, the work that has been completed by Brave Heart, Evans-Campbell and Lev-Wiesel appear to link the ways in which significant traumatic events can result in the multi-generational transmission

⁵³ Rachel Lev-Wiesel, "Intergenerational Transmission of Trauma Across Three Generations: A Preliminary Study" (2007) 6:1 Q Soc Work 75.

⁵⁴ *Ibid* at 79.

⁵⁵ *Ibid* at 80.

⁵⁶ *Ibid* at 81.

⁵⁷ *Ibid* at 82.

⁵⁸ *Ibid* at 83-84.

⁵⁹ *Ibid* at 89.

of historical trauma responses causing psychological distress and negatively impacting family relations.

Lev-Wiesel's study is adjunct to the focus of this research in the study of historical trauma. While Lev-Wiesel did not interview members of Indigenous communities for her study, the events described by the chosen families (Holocaust, refugee camps, forced displacement and transit camps) are similar to those of Indigenous families. A cultural genocide occurred as a result of national policies that imposed restrictions on language and spiritual practices. There has also been forced displacement with Indigenous children being removed from their homes into residential schools as well as removal from their family of origin into the child welfare system. Lev-Wiesel's study is linked to Brave Heart's research as each conducted studies that demonstrated the long-term and intergenerational effects of insidious policies that targeted specific populations.

Similarly, the findings of an additional study on historical trauma can also be applied to the experience of Indigenous communities in Canada.⁶⁰ Joseph Gone proposed the concept of Indigenous Historical Trauma (IHT) which he defined as “[o]riginating in the brutal process of colonization (e.g., conquest, plunder, impoverishment), which resulted in population decline and subsequent subjugation of Indigenous peoples.”⁶¹ Gone conducted a review of thirty-two studies that determined familial history with residential schools and experiences of loss.⁶² It was found that there were varying degrees of health implications of policies that contributed to IHT.⁶³ For example, “[e]ntrenched poverty”⁶⁴

⁶⁰ Joseph P. Gone et al, “The Impact of Historical Trauma on Health Outcomes for Indigenous Populations in the USA and Canada” (2019) 74:1 *American Psychologist* 20.

⁶¹ *Ibid* at 21.

⁶² *Ibid* at 23.

⁶³ *Ibid* at 33.

⁶⁴ *Ibid* at 32.

was a consistent marker of IHT. Gone recommended that further ethnographical studies be undertaken in order to avoid generalization of IHT.⁶⁵

Brave Heart triangulated (as in sectioning her research into three specific areas) the study of the long-term transmission impact of trauma amongst the Lakota.⁶⁶ These areas are as follows:

Trauma Testimony: Wounded Knee, Boarding School, Day School, Boarding School Descendent
Trauma Response: Trauma Identity, Carrying Trauma, Anger, Impaired Bonding, Transposition, Survivor Guilt, Suicide Ideation, Multiple Traumas, Somatic Symptoms
Transcending Trauma: Coping Strategies, Ideas about Healing, Transforming Past.⁶⁷

Brave Heart's findings are based on the collection of data through interviews with Lakota communities. As a result of her analysis, Brave Heart recommended that attention to both the traumatic history as well as understanding "[c]ultural relationships"⁶⁸ are necessary in order to work with communities affected by traumatic events.

Through her data collection, Brave Heart developed theories about "[c]oping strategies and ideas about healing to transform the past."⁶⁹ Her qualitative study included survival testimony such as:

At six years old when I first went to school, I had a ruler broken on my head because I couldn't speak English. This was my first contact with the Whites... Monday morning, I was sent into the bathroom – hot scalding water and [they'd] wash my hair with DDT. When I'd come back that evening, my mother would wash that DDT off... DDT permeates the skull and bones and eventually that's what kills all the brain cells... DDT was used at the schools on our reservations... At 16, I was beaten again at the day school by a Catholic priest.⁷⁰

⁶⁵ *Ibid.*

⁶⁶ Maria Yellow Horse Brave Heart, "*Wakiksuyapi: Carrying the Historical Trauma of the Lakota*" (2000) Tulane U School Soc Work 245.

⁶⁷ *Ibid* at 253.

⁶⁸ *Ibid* at 263.

⁶⁹ *Ibid.*

⁷⁰ *Ibid* at 255.

The aforementioned study was developed based on Brave Heart's interviews with the Lakota community to assess the intergenerational effects of trauma. What followed was the development of healing strategies in response to the development of the ways in which historical trauma translates to historical trauma response. It stressed the importance of further empirical evidence to determine how the "[t]rauma response can be quantified, measured, documented and healed"⁷¹ and stressed the importance of respecting both compassion and generosity among the Lakota people.⁷²

Building on Brave Heart, the first long-term study of historical trauma, historical trauma responses and intergenerational transmission of historical trauma was conducted by Dr. Les Whitbeck in 2004. Whitbeck interviewed Elders as well as parents of young children in four Indigenous communities in Upper New York and southern Ontario⁷³ in an attempt to ground Brave Heart's theory through addressing the lack of available "[e]mpirical evidence"⁷⁴ supporting her analysis. The purpose of this study was to examine the "[p]roximate and distal causes" of historical trauma in order to understand the "[m]echanisms of transmissions across generations" to ascertain "[t]he prevalence of historical trauma and grief" and symptoms thereof.⁷⁵ Whitbeck sought to determine whether and how historical trauma responses impact daily life, thereby confirming the importance of these events and their impacts for understanding current realities facing many Indigenous communities.⁷⁶ The methodological approach adopted by Whitbeck

⁷¹ *Ibid* at 264.

⁷² *Ibid* at 264.

⁷³ Les B. Whitbeck et al, "Conceptualizing and Measuring Historical Trauma Among American Indian People" (2004) 33:3/4 *American J Community Psychology* 119 at 120. [Whitbeck]

⁷⁴ *Ibid* at 121.

⁷⁵ *Ibid* at 119-120.

⁷⁶ *Ibid*.

emphasized the systematic collection of qualitative data to measure whether and to what degree communities continued to experience “[p]sychological distress”⁷⁷ from historically traumatic events and the reactions to these in preceding and current generations. To this end, Whitbeck organized focus groups with Elders of these communities and recorded their discussions of how historic losses impact their daily lives. Whitbeck also interviewed 143 parents of children aged ten to twelve to “[e]valuate the prevalence of thoughts concerning historical loss among American Indian people and possible consequences for emotional distress.”⁷⁸ Elders explained the ‘feeling’ of what happened before and how those feelings continue to the present day and contribute to ongoing grieving.

Foremost among these losses and grief was a loss of language, expressed by some elders as follows:

Then one day a school teacher came and said they had come to get me. They said come with us and we will bring you back tomorrow... They tricked me so I would go along with them. It took me a whole year to learn English ... all I talk now is English. I don’t know how to speak Indian.⁷⁹

When I was little, my mother and father didn’t speak it to us because they were brought up in boarding schools and when they went to boarding schools they were forced to go. They were beaten for speaking their native language at boarding schools. So, they thought we would be taken from home and forced to go to boarding school too. So, they didn’t want us to be brought up speaking our language and beaten if we talked in our language.⁸⁰

Resulting from his findings, Whitbeck developed two measures of trauma: *The Historic Loss Scale* and *The Historic Loss Associated Symptoms Scale*.⁸¹ *The Historic Loss Scale* (Table One, following page) described “[p]erceived losses and asked respondents how frequently these losses came to mind. Elements included in the scale were selected on the

⁷⁷ *Ibid* at 120.

⁷⁸ *Ibid*.

⁷⁹ *Ibid* at 122.

⁸⁰ *Ibid*.

⁸¹ *Ibid* at 119.

basis of the number of times we heard them mentioned in our discussions with the people. An item had to be mentioned at least two times in order to be included in the scale.”⁸² The findings indicated that historical trauma responses remain active among multi-generations as “[o]ne third has these thoughts daily or more.”⁸³

Table One: The Historic Loss Scale.⁸⁴

| | Never | Yearly or Special Times | Monthly | Weekly | Daily | Several times a Day |
|--|-------|----------------------------------|---------|--------|-------|---------------------------|
| Loss of our land | 25.2 | 32.7 | 13.8 | 10.1 | 10.7 | 7.5 |
| Loss of our language | 11.9 | 21.3 | 15.0 | 15.6 | 27.5 | 8.8 |
| Loss of our traditional spiritual ways | 11.3 | 18.9 | 15.1 | 21.4 | 25.2 | 8.2 |
| The loss of our family ties because of boarding school | 44.3 | 26.6 | 11.4 | 5.1 | 8.2 | 4.4 |
| The loss of families from the reservation to government relocation | 52.2 | 23.3 | 8.8 | 6.3 | 5.7 | 3.8 |
| The loss of self-respect from poor treatment by government officials | 29.1 | 22.2 | 19.6 | 7.0 | 14.6 | 7.6 |
| The loss of trust in whites from broken treaties | 28.7 | 28.7 | 12.1 | 7.6 | 15.3 | 7.6 |
| Losing our culture | 10.6 | 20.0 | 21.3 | 14.4 | 25.6 | 8.1 |
| The losses from the effects of alcoholism on our people | 7.5 | 13.2 | 15.7 | 17.6 | 30.2 | 15.7 |
| Loss of respect by our children and grandchildren for elders | 8.8 | 10.0 | 16.3 | 27.5 | 28.1 | 9.4 |
| Loss of our people through early death | 9.4 | 15.6 | 20.6 | 21.3 | 24.4 | 8.8 |
| Loss of respect by our children for traditional ways | 11.9 | 18.2 | 17.0 | 17.6 | 25.8 | 9.4 |

⁸² *Ibid* at 123.

⁸³ *Ibid* at 125.

⁸⁴ *Ibid* at 124.

The Historic Loss Related Symptoms Scale (Table Two) is Whitbeck’s second scale to measure historical trauma responses. He examined the emotional responses associated with the revisiting and re-experience of those losses. The most common feelings linked with historical losses and traumas were sadness, depression and anger, and distrust of white people.⁸⁵

Table Two: The Historic Loss Related Symptoms Scale.⁸⁶

| | Always | Often | Sometimes | Seldom | Never |
|---|--------|-------|-----------|--------|-------|
| Often feel sadness or depression | 4.4 | 11.3 | 44.0 | 22.0 | 18.2 |
| Often feel anger | 6.9 | 16.9 | 38.1 | 22.5 | 15.6 |
| Often feel anxious or nervousness | 1.3 | 8.1 | 23.1 | 24.4 | 43.1 |
| Uncomfortable around white people when you think of these losses | 11.3 | 10.1 | 22.6 | 20.1 | 35.8 |
| Shame when you think of these losses | 5.0 | 9.4 | 18.8 | 27.5 | 39.4 |
| Loss of concentration | 1.3 | 5.0 | 25.6 | 29.4 | 38.4 |
| Feel isolated or distant from other people when you think of these losses | 3.1 | 5.0 | 21.3 | 25.6 | 45.0 |
| A loss of sleep | 0.0 | 1.3 | 10.0 | 23.8 | 65.0 |
| Rage | 3.1 | 1.9 | 11.9 | 14.4 | 68.8 |
| Fearful or distrust of the intentions of white people | 8.8 | 6.9 | 18.9 | 20.8 | 44.7 |
| Feel like it is happening again | 5.0 | 3.8 | 22.6 | 17.0 | 51.6 |
| Feel like avoiding places or people that remind you of these losses | 3.8 | 4.4 | 22.8 | 15.2 | 53.8 |

The findings of Whitbeck’s study suggest that subsequent studies on historical loss and historical trauma would be beneficial because they would “[a]llow us to better ascertain prevalence” of unresolved grief and the impacts of historical trauma and trauma responses and confirm whether “[t]houghts about historical losses appear to be associated with

⁸⁵ *Ibid* at 125.

⁸⁶ *Ibid*.

symptoms of emotional distress.”⁸⁷ The researchers expressed that, “[a]lthough we have begun to identify symptoms associated with historical loss, we have yet to establish the severity of loss and of these symptoms for day-to-day life... and we don’t know the extent to which measures of this kind can be generalized among all American Indian cultures.”⁸⁸

Coincident to the consideration of historical trauma and historical trauma responses are experiences of proximate and distal trauma. Also known as *near* (proximate) or *far* (distal) trauma, these are personal experiences and occurrences that while different, are embedded within, and arising from the larger context of historical traumas and responses to these.⁸⁹ Brave Heart and Whitbeck describe distal traumatic events as experiences that are by their nature specific and individualized, but which also have long-term traumatic repercussions. For example, the Wounded Knee massacre is often cited by Brave Heart as an example of historical trauma for the Lakota. Brave Heart described this as “[h]undreds of Lakota were killed, and their bodies thrown into mass graves.”⁹⁰ While the deaths were individual, ‘distal trauma experiences’ of those present at the massacre and the massacre itself were trauma experienced both distally and communally - a distal trauma and a broader historical trauma. The intergenerational transmission of these simultaneous experiences of distal and historical trauma remains and is manifested intergenerationally as historical trauma responses. Proximate traumas are those that are bound up with historical trauma responses and include for example that Indigenous peoples are four times more likely to experience trauma such as assault, car accidents and suicide than non-Indigenous peoples.⁹¹

⁸⁷ *Ibid* at 127.

⁸⁸ *Ibid* at 127-128.

⁸⁹ Nancy Krieger, “Proximate, Distal and the Politics of Causation: What’s Level Got to Do With It?” (2008) 98:2 *American J Public Health* 221 at 222.

⁹⁰ Brave Heart, “The Return to the Sacred Path”, *supra* note 32 at 289.

⁹¹ Amy Bombay, Kimberly Matheson & Hymie Anisman, “Intergenerational Trauma: Convergence of Multiple Processes among First Nations Peoples in Canada” (2009) *J Aboriginal Health* 6 at 15.

As such, when traumas are not adequately addressed by a support system, the childhood experiences of one generation are repeated by the following generation.⁹² Examples include “[p]overty, poor mental health, substance abuse, childhood maltreatment, poor coping strategies, and physiological susceptibility to stressors.”⁹³

Limitations

Brave Heart’s concept of historical trauma was controversial at the time of its creation and there was little available research to ground her theory. While her research was built on by Evans-Campbell and studied by Whitbeck, there remain limitations that require further exploration. For example, smaller and specifically chosen sample sizes can limit the generalization of the research findings to other communities.⁹⁴ As community-wide experiences may differ, it is challenging to make broad conclusions without an array of empirical evidence.⁹⁵ Yet research has been consistent in the documentation of shared historical trauma responses among communities. With remarkable consistence communities demonstrate poor socioeconomic conditions, lack of access to health and wellness services, boil advisories and young people lost in the child welfare or criminal justice systems.

As such, the long-term effects of trauma pose a “[r]isk associated with historically traumatic events that can accumulate across generations.”⁹⁶ The Regional Health Survey was used to examine the health and wellness of Indigenous communities across Canada.

⁹² *Ibid* at 16.

⁹³ *Ibid* at 17.

⁹⁴ Amy Bombay, Kimberly Matheson & Hymie Anisman, “The Intergenerational Effects of Indian Residential Schools: Implications for the Concept of Historical Trauma” (2014) 51:3 *Transcultural Psychiatry* 320 at 332. [Bombay, Matheson & Anisman, “Intergenerational Effects”].

⁹⁵ *Ibid* at 322.

⁹⁶ *Ibid*.

The study found that “[26.3%] of First Nations youth with a parent who attended IRS had thoughts about suicide, whereas 18.0% of non-IRS youth reported suicide ideation.”⁹⁷ Similar to the Cedar Project study discussed earlier, the RHS results support Brave Heart’s theory and demonstrate the transgenerational persistence of historical trauma. Brave Heart’s theory analyzes how historical traumatic events cause historical trauma responses. The findings of the Cedar project show a trajectory between residential school attendance and entrance into the child welfare system and are representative of “[h]istorical injustices and elevated rates of substance abuse amongst young offenders.”⁹⁸

There exists a measured link between attendance at IRS and emotional imbalance that contributed to the greater probability of exposure to stressors for future generations. In addition, multiple generations of attendance at IRS increase stressor exposures at a higher rate than only one generation and thus reinforce “[t]he cumulative nature of historical trauma.”⁹⁹ Though further examination of this area is required, there is still evidence to support Brave Heart’s theory of how inflection traumatic events can have multi-generational effects on future generations.

Mental Health Implications of Historical Trauma

Historical trauma responses are experiences that are a result of intergenerational events and have long-term physiological and psychological consequences. Recent studies have found that “[h]aving a parent and/or grandparent who attended IRS has been associated with various negative health outcomes, including a greater risk for depressive

⁹⁷ First Nations Information Governance Centre (FNIGC), “First Nations Regional Health Survey (RHS) 2008/10: National report on adults, youth and children living in First Nations communities” (2012) Ottawa at 323. [FNIGC]

⁹⁸ Jongbloed, *supra* note 50 at 1353.

⁹⁹ FNIGC, *supra* note 97 at 332-333.

symptoms, psychological distress, suicidal ideation and attempts, and problematic substance abuse in various national and regional representative and non-representative samples of Indigenous peoples in Canada.”¹⁰⁰ In the context of the Indigenous communities, it has been documented that intergenerational transmission of historical trauma is an example of social epigenetics (defined below). For example, residential school attendees encountered wide-scale physical and psychological distress resulting in multigenerational epigenetic exposure. As such, intergenerational health and wellness among Indigenous communities can be linked to historically traumatic experiences. Intergenerational trauma thus may well be correlated with biological changes.¹⁰¹ These include:

Feelings of over-identification and fused identity with parents, impaired self-esteem stemming from minimization of offspring’s own life experiences in comparison to the parental trauma, tendency toward catastrophizing, worry that parental traumas would be repeated and behavioural disturbances such as experiences anxiety, traumatic nightmares, guilt and difficulties in interpersonal function.¹⁰²

The following demonstrates how childhood experiences are linked to multigenerational trauma:

Any relational trauma experienced by an individual may be replicated in their children via the attachment relationship due to the relational nature of early childhood neurobiological development. The uniqueness of intergenerational trauma therefore lies in its existence as a relational process. Rather than an event or events, intergenerational trauma is both an antecedent and outcome of traumatic attachment. It results in a disrupted construction of intersubjective self and identity, due to the blurring of self and other, where trauma experienced by the important other becomes incorporated into the self of the recipient. Once transmitted, the trauma has

¹⁰⁰ Amy Bombay et al, “Familial Attendance at Indian Residential School and Subsequent Involvement in the Child Welfare System Among Indigenous Adults Born During the Sixties Scoop Era” (2020) 15:1 First Peoples Child Fam Rev 62 at 64.

¹⁰¹ Rachel Yehuda & Amy Lehrner, “Intergenerational Transmission of Trauma Effects: Putative Role of Epigenetic Mechanisms” (2018) 17 World Psychiatry 243 at 243.

¹⁰² *Ibid* at 244.

its own consequences and individual effects as per all psychological and interpersonal developed traumas, including vulnerability for further transmission of trauma to subsequent generations.¹⁰³

The lasting effects of historical trauma have resulted in multi-generational historical trauma responses.

Historical Trauma has not only been examined from a psycho-social perspective, but it has also been genetically researched.¹⁰⁴ Traumatic events have been shown to “[i]nduce neuropsychiatric changes.”¹⁰⁵ For example, children of holocaust survivors had “[i]ncreased susceptibility to PTSD which could lead to increased anxiety symptoms.”¹⁰⁶ Similar psychiatric symptoms also occur for “[f]amilies subjected to forced displacement.”¹⁰⁷ However, questions remains as to the physiological as opposed to psychological expressions of both the individual and community response to trauma.¹⁰⁸ The study of epigenetics is an emerging field of research inquiring into the manifestations of trauma. According to the Centre for Disease Control: “[E]pigenetics is the study of how your behaviours and environment can cause changes that affect the way your genes work. Unlike genetic changes, epigenetic changes are reversible and do not change your DNA sequence, but they can change how your body reads a DNA sequence.”¹⁰⁹ To subcategorize further, social epigenetics is defined as “[t]he way experience and situations are

¹⁰³ Sophie Isobel et al, “Preventing Intergenerational Trauma Transmission: A Critical Interpretive Synthesis” (2019) 28:7-8 J Clinical Nursing 1100 at 1102-1103. [Isobel]

¹⁰⁴ Michele Dubois & Catherine Guaspare, “From Cellular Memory to the Memory of Trauma: Social Epigenetics and its Public Circulation” (2020) Soc Sci Information 144 at 151. [Dubois & Guaspare]

¹⁰⁵ Ali Jawaid, Martin Roszkowski & Isabelle M. Mansuy, “Transgenerational Epigenetics of Traumatic Stress” in *Progress in Molecular Biology and Translational Science: Neuroepigenetics and Mental Illness* by Bart P.F. Rutten ed. (Cambridge: Academic Press, an imprint of Elsevier, 2018) at 286.

¹⁰⁶ *Ibid* at 297.

¹⁰⁷ *Ibid*.

¹⁰⁸ *Ibid* at 292.

¹⁰⁹ Centers for Disease Control and Prevention, “Genomics and Precision Health: What is Epigenetics” (3 August 2020) online: *Centers for Disease Control and Prevention* <<https://www.cdc.gov/genomics/disease/epigenetics.htm>>.

biologically incorporated – meaning, how they may leave a biological marker on the body.”¹¹⁰ The study of epigenetics contextualizes how events can both “[p]ositively and/or negatively affect gene function.”¹¹¹ Research from Gone and Kirmayer considered the link, if any, between epigenetics and the intergenerational transmission of trauma.¹¹² They caution against the use of the study of epigenetics in order to reach conclusions about mental health implications of historical trauma.¹¹³ Gone and Kirmayer contend that reliance on epigenetics as explanatory can lead to “[c]onstruing Indigenous peoples as groups of dis-eased [sic] patients in need to better medical treatment rather than oppressed communities that struggle for social and economic justice”.¹¹⁴ Reliance on epigenetic explanations is part and parcel a focus on ‘harm’ as the genetic expression to be reversed with little care given to resilience.¹¹⁵

To address models for healing and resilience amongst the Lakota, Brave Heart developed the Historical Trauma and Unresolved Grief Intervention as a strategy for addressing persistent trauma in large group settings and communities. This model assists in the healing process across large communities. Braveheart has grounded her strategy in her experience as a social worker and psychologist in Lakota communities and has shown the following positive results, including:

1. Education about the historical trauma leads to an increased awareness about trauma, its impact, and the grief-related effects.
2. The process of sharing these affects with others of similar background and within a traditional Lakota context leads to a cathartic sense of relief.

¹¹⁰ Dubois & Guaspere, *supra* note 104 at 145.

¹¹¹ *Ibid* at 146.

¹¹² Joseph P. Gone & Laurence J. Kirmayer, “Advancing Indigenous Mental Health Research: Ethical, conceptual and methodological challenges” (2020) 57:2 *Transcultural Psychiatry* 235.

¹¹³ *Ibid* at 242.

¹¹⁴ *Ibid* at 243.

¹¹⁵ *Ibid*.

3. A healing and mourning process was initiated, relating in a reduction of grief affects, an experience of more positive group identity, and an increased commitment to continued healing work both on an individual and community level.¹¹⁶

Brave Heart's work is seminal to evaluate not only historical trauma responses that arise from historical trauma events, but also the steps in which modes of healing the 'soul wound' is instrumental in resilience.

Conclusion

In Whitbeck's study, he found that one of the most frequently reported responses to historical trauma was a distrust of white people.¹¹⁷ This is one example of the ways in which historical trauma and systemic racism are linked. Systemic racism is furthered through colonial policies such as IRS and the Sixties Scoop that separated Indigenous children from their families. Studies have consistently indicated that Indigenous children who had a parent attend a residential school reported symptoms of depression and a propensity to stressors.¹¹⁸ The thesis seeks to document factors that link, if any, historical trauma and the disproportionate number of Indigenous children in the child welfare system. As this is considered a large-scale social problem¹¹⁹, it is relevant to the ongoing reconciliation process with Indigenous communities.

This chapter introduced the case of Adam Capay and how his experiences were representative of historical trauma responses. As Brave Heart stated: "[t]he historical

¹¹⁶ Brave Heart, "The Return to the Sacred Path" *supra* note 32 at 351.

¹¹⁷ Whitbeck, *supra* note 73 at 125.

¹¹⁸ Amy Bombay, Kimberly Matheson & Hymie Anisman, "The Impact of Stressors on Second Generation Indian Residential School Survivors" (2011) 48:4 *Transcultural Psychiatry* 367 at 380.

¹¹⁹ I often wonder if the term 'problem' is appropriate. I don't wish to contribute to ongoing struggles that have been experienced by Indigenous communities. Yet, from perspectives of social science, I wonder if Stanley Cohen's concept of net-widening is also appropriate. Cohen proposed that there are various nets (wider, denser and different) in which individuals may become caught up in through mechanisms beyond their control.

trauma response (HTR) is the constellation of features in reaction to this trauma. The HTR may include substance abuse, as a vehicle for attempting to numb the pain associated with trauma.”¹²⁰ Historical trauma, as a theory, forms a foundation for discussions about policies that adversely affected Indigenous communities and more particularly Indigenous children. While further chapters will discuss these in greater detail, a grounding of historical trauma theory allows for an exploration into a wide-scale societal problem: the disproportionate number of Indigenous children in the child welfare system.

¹²⁰ Brave Heart, “The Historical Trauma Response”, *supra* note 30 at 7.

Chapter Two: Theoretical Approaches to Governance

Introduction

This chapter will describe two theoretical frameworks of governmental power: biopolitics and necropolitics. Each theory proposes how populations are systemically governed through mechanisms of power. Both of these theoretical considerations are useful tools to frame an issue and place it in the context of scholarly and societal importance. In academic writing, terminology is key because it explains how concepts are contextualized in their application. It is curious that the prefixes used in both theories describe the physical body. *Bios* is a shortened term for biology, which is the study of life. *Necro* is the Greek prefix for death or the study of the dead. The suffixes of power/politics can refer to the state or even to a specific population or polity. Both are systemic classification methods for technological governance of citizens.

The study of biopolitics and necropolitics provides a lens through which to view and elucidate counteractive state measures. For example, the *Indian Act* is an agency-led bureau that governs Indigenous communities in Canada.¹²¹ The intent of the *Indian Act* was to manage all aspects of lives of people in Indigenous communities in Canada. It defines who is and who is not an 'Indian' and the definition of 'band.'¹²² It manages the happenings and life of Indigenous communities from birth to death. The *Indian Act* remains in effect today and has been amended numerous times since its inception in regard to the administration of Status, treaties, movement, governance and culture, among others.

¹²¹ *An Act to amend and consolidate the laws respecting Indians* 3rd Sess, 3rd Parl, 1876. [Indian Act]

¹²² *Ibid.*

Biopolitics

Biopolitics, for the purpose of this thesis, is examined primarily through the work of Michel Foucault. Foucauldian theory is studied in the context of socio-legal theory. Anthropology, sociology, political science, law and legal studies each place reliance on how Foucault's genealogy and archaeology of knowledge shape law's relationship with society, insofar as: "[A] scholar as celebrated as Foucault, whose work deals primarily with power structures, their effect on the individual, critiques of the modern state and institutions that operate alongside it, must have some bearing on how the law evolves itself in the Twenty-First Century."¹²³ While Foucault built on previous research, his conceptualization of biopolitics has shaped studies in modern social science theory.¹²⁴ Thomas Lemke, a German sociologist and noted Foucauldian scholar wrote extensively about biopolitics and the ways in which populations are managed through state-informed policies:

One can criticize on the basis for example, of the consequences of the state of domination caused by an unjustified political situation, but one can only do so by playing a certain game of truth, by showing its consequences, by pointing out that there were other reasonable options, *by teaching people what they don't know about their own situation, their working condition and their exploitation.*¹²⁵

¹²³ Justin Woolhandler, "Toward a Foucauldian Legal Method" (2014) 76 University of Pittsburgh Law Review 131 at 131.

¹²⁴ Mbembe's evolution of biopolitics to necropolitics is one that has influenced the proposed theoretical framework and much of my own personal research. It presents a framework that also shows policies of colonization. For example, the *Indian Act* asserts national control of the way of life for Indigenous communities through governmental agencies. By controlling the Indigenous population, agencies sought assimilation into Canadian culture thus reifying 'take life or let live'. However, biopolitics evolves to necropolitics when the assimilationist policies have insidious purposes. For example, amendments to the *Indian Act* that sought to remove children from their families in order to attend residential schools with the purpose of indoctrination of Euro-centric teachings reify 'who may live and who must die'. The high levels of violence that occurred at residential schools towards the bodies of Indigenous children is necropolitics because it is state-sanctioned violence.

¹²⁵ Thomas Lemke, "Critique and Experience in Foucault" (2011) 28:4 Theory, Culture, & Society 26 at 36. [emphasis added].

The origin of biopolitics can be traced back to the early 20th century through the work of Rudolf Kjellén. Kjellén described “[s]tate as a form of life”¹²⁶ and theorized biopolitics the following way:

In view of this tension typical of life itself... the inclination arose in me to baptize this discipline after the special science of biology as biopolitics; in this civil war between social groups, one recognizes all too clearly the ruthlessness of the life struggle for existence and growth, while at the same time one can detect within the groups a powerful cooperation for the purposes to existence.¹²⁷

For Foucault, biopolitics is a mechanism by which “[p]ower, in this instance was essentially the right of seizure of things, time, bodies, and ultimately, life itself; it is culminated in the privilege to seize hold of life in order to suppress it.”¹²⁸ In this context, biopolitics is examined through the ways that state policies have governance over targeted populations. The body itself is docile and is something that “[m]ay be subjected, used, transformed and improved.”¹²⁹ As such, biopolitics was proposed and reflected on:

The basic phenomena of the nineteenth century was what might be called power’s hold over life. What I mean is the acquisition of power over man insofar as man as a living being, that the biological came under state control, that there was at least a certain tendency that leads to what might be termed state control over the biological.¹³⁰

Biopolitics is the manifestation of biopower. While biopower refers to sovereign and state control over the physical bodies of subjects, biopolitics is a system of classification by which individuals are governed. Foucault wrote that “[v]iewed in this way, the power of life and death was not an absolute privilege; it was conditioned by the defense of the

¹²⁶ Thomas Lemke, *Biopolitics: An Advanced Introduction* (New York and London: New York University Press, 2011) at 10.

¹²⁷ *Ibid.*

¹²⁸ Michel Foucault, *The History of Sexuality: Volume 1: An Introduction* (New York: Pantheon Books, 1978) at 136. [Foucault, “Sexuality”]

¹²⁹ Foucault, “Discipline”, *supra* note 2 at 5.

¹³⁰ Michel Foucault, *Society Must Be Defended: Lectures at the Collège de France* (New York: Picador, 1997) at 239-240. [Foucault, “Society”]

sovereign and his own survival.”¹³¹ These power structures were responsible for a key Foucauldian concept: the ability to “[t]ake life or let live.”¹³² Authorities with such power can present problems. They allow for the sovereign to decide which specific groups of citizens are deemed less worthy of protection. Foucault argued that the sovereign has tremendous power in affording certain citizens their rights (such as health and social services) as citizens and, by extension, withholding those rights from others.

Biopolitics can be found in the origins of legislation for Indigenous peoples in Canada. The *Act for the Better Protection of Lands and Property of the Indians in Lower Canada*¹³³ created a commission to determine which land could be appropriated to Indigenous communities. This was also the first *Act* to determine who could be considered an ‘Indian’:

First: All persons of Indian blood, reputed to belong to the particular Body or Tribe of Indians interested in such lands, and their descendants.

Secondly: All persons intermarried with any such Indians and residing amongst them, and the descendants of all such persons.

Thirdly: All persons residing among such Indians, whose parents on either side were or are Indians of any such Body or Tribe or entitled to be considered as such.

Fourthly: All persons adopted in infancy by any such Indians and residing in the Village or upon the lands of such Tribe or Body of Indians and their descendants.¹³⁴

The legal landscape can present a dichotomy of human rights approaches in which individuals are governed by separate rules based on a variety of reasons. In the case of

¹³¹ Foucault, “Sexuality”, *supra* note 128 at 135. As with some quotes, the masculine/feminine/non-binary terminology is specific to the author. In order to be true to text, I did not deviate from the primary source. Nonetheless, the ‘his’ would be aptly indicated as ‘their’.

¹³² *Ibid* at 136.

¹³³ *An Act for the Better Protection of the Lands and Property of the Indians in Lower Canada* S.C. 1850, c.42 (13 & 14).

¹³⁴ *Ibid*.

Indigenous peoples, the dichotomy separates Indigenous from non-Indigenous thrusting the former into a necropolitical state with lesser rights and fewer options.¹³⁵

This is found in boil water advisories. Access to clean water remains an ongoing crisis for many communities in Canada. There remain “[57] long-term drinking water advisories in effect in 39 communities across Canada.”¹³⁶ It is argued that this dereliction contributes to an ongoing crisis that Indigenous communities must face on a daily basis. A class action lawsuit with the purpose of determining whether these constant boil water advisories breach *Charter Rights* was launched. Plaintiffs in the case of *Tataskweyak Cree Nation and Chief Doreen Spence on her own behalf and on behalf of all members of Tataskweyak Cree Nation and Attorney General of Canada* are seeking to:

1. Obtain compensation for the individuals and communities that have suffered from unreliable access to clean water.
2. Obtain a declaration that Canada has an ongoing responsibility to work with First Nations to provide access to clean water. This includes requiring Canada to construct and fund appropriate water systems for First Nations communities.¹³⁷

In 2021, can the (in)accessibility to clean water be considered a human rights abuse? On its own, perhaps not. Yet when taken in context alongside a centuries-long perpetuation of colonialism, it is another reminder of the significantly negative impact on Indigenous communities of state laws and policy.

Geographical positioning is directly linked with socioeconomic development because there is a higher probability that these discriminatory practices occur in less accessible (fly-in) communities. This includes Indigenous historical spaces that are

¹³⁵ I would suggest: geographical location, ethnicity, religion, age, gender, sexual orientation, etc.

¹³⁶ Canada, “Ending long-term drinking water advisories” (26 January 2021) online: *Government of Canada* <<https://www.sac-isc.gc.ca/eng/1506514143353/1533317130660>>.

¹³⁷ *Tataskweyak Cree Nation and Chief Doreen Spence on her own behalf and on behalf of all members of Tataskweyak Cree Nation and Attorney General of Canada* [2019] CI 19-01-24661.

governed by “[t]hird world conditions of health (...) and the embodiment of inequality.”¹³⁸ In his examination of biopolitical power, Foucault argued that: “[p]ower would no longer be dealing simply with legal subjects over whom the ultimate dominion was death, but with living beings and the mastery it would be able to exercise over them and would have to be applied at the level of life itself; it was the taking charge of life, more than the threat of death that gave power its access even to the body.”¹³⁹ In considering its original intent, *The Indian Act* could be classified as biopolitics because it was a method of state-imposed governance of a group; it was an exercise of mastery over Indigenous nations, communities, families and individuals – a ‘taking charge’ of Indigenous lives.¹⁴⁰ The *Indian Act* outlined the rules for virtually every movement and space, moment and piece of each Indigenous person’s life and indeed in large measure continues to do so. This will be demonstrated in the next chapter, which details the origins and intent of the *Indian Act* and exemplifies how the *Act* is biopolitical in both intention and result, enabling the state to manage a specific population to conform with its interests and preferences.

¹³⁸ Sarah de Leeuw, Margo Greenwood & Emilie Cameron, “Deviant Constructions: How Governments Preserve Colonial Narratives of Addictions and Poor Mental Health to Intervene into the Lives of Indigenous Children and Families in Canada” (2010) 8 Intl J Mental Health Addiction at 284. [de Leeuw, Greenwood & Cameron]

¹³⁹ Foucault, “Sexuality”, *supra* note 128 at 143.

¹⁴⁰ Foucault described that individuals could (theoretically) be restricted through corrective discipline the following way: “[T]here was the scale of the control: it was a question not of treating the body, en masse, ‘wholesale’ as if it were an indissociable unity, but of working it ‘retail’ individually; of exercising upon it subtle coercion, of obtaining holds upon it at the level of the mechanism itself- movements, gestures, attitudes, rapidity: an infinitesimal power over the active body. Then there was the object of the control: it was not or was no longer the signifying elements of behaviour or the language of the body, but the economy, the efficiency of movements, their internal organization; constraint bears upon the forces rather than upon the signs; the only truly important ceremony is that of exercise.” Foucault “Discipline”, *supra* note 2 at 136-137.

Necropolitics

Just as Foucault theorized biopolitics to ‘live and let live’, Mbembe expanded this notion to acknowledge that, alongside the right to live and let live, there is a right to ‘kill and let live’.¹⁴¹ These two contrasting arguments anchor the ways in which these theorists approached methods of governance. Mbembe theorized necropolitics as the capacity of the state to not only create an exception over life, but also over death. If a state can allow a group of citizens to live, it can also create conditions within which a group of citizens will die. In those contexts, in which individuals are governed on the basis of ethnicity, there would be an increase in the possibility of classifying these communities along ethnic lines and delimiting some as less worthy of state protection because their ‘otherness’ constitutes a perceived threat to society. Prior to 1985, Indigenous peoples could lose their status for a number of reasons. Bonita Lawrence wrote that it is estimated that the “[m]ajority of the 25,000 Indians who lost status were forced to leave their communities between 1876 and 1985.”¹⁴²

Necropolitics represents the evolution of biopolitics.¹⁴³ Mbembe posited that the study of biopolitics does not go far enough when examining issues of racialized

¹⁴¹ Achille Mbembe, “Necropolitics” (2003) 15:1 *Public Culture* at 12. Another iteration of this statement is ‘live and let die’. It is indicative of systemic governance that allows state control over not only life, but also death. [Mbembe] I should also note that, aside from ‘necropolitics’, an additional iteration/current reading of biopolitics is ‘thanatopolitics’, which is described as “the politics of death”. Stuart Murray, “Thanatopolitics” in *Bloomsbury Handbook to Literary and Cultural Theory* ed. Jeffrey. Di Leo (London: Bloomsbury, 2018) 718. However, the choice and application of ‘necropolitics’ is based on the methodology of Mbembe, who intersected the work of Giorgio Agamben, Hannah Arendt, Frantz Fanon, Michel Foucault, Carl Schmitt and his own in order to determine that colonial policies that seek to harm individuals on the basis of race. As such, I would ascribe that Necropolitics, as theory, can be applied to assist in the understanding of reading of legal theory in consternations of historical trauma and the harmful policies directed towards Indigenous communities in Canada for the purposes of assimilation.

¹⁴² Bonita Lawrence, “Gender, Race, and the Regulation of Native Identity in Canada and the United States: An Overview” (2003) 18:2 *Hypatia* 3 at 9.

¹⁴³ I would argue that the evolution of biopolitics to necropolitics demonstrates the limitations of biopolitics to address issues of race and colonization in the management of death. However, this evolution also shows the strength of an original theory that can be built on to address not only the politics of life but also of death.

communities. He proposed that Foucauldian theories of biopolitics do not “[a]ccount for contemporary forms of subjugation of life to the power of death.”¹⁴⁴ Both theories address “state-subject relations.”¹⁴⁵ Foucault theorized that while biopolitics is the systemic management of life, Mbembe argued that necropolitics is the systemic management of death. As such, necropolitics is defined as follows:

The ultimate expression of sovereignty resides, to a large degree, in the power and the capacity to dictate who *may live and who must die*. Hence, to kill or to allow to live constitute the limits of sovereignty, its fundamental attributes. To exercise sovereignty is to exercise control over mortality and to define life as the deployment and manifestation of power.¹⁴⁶

Necropolitics is a theory of governance in which the sovereign decides the state of exception as to who can live and who must die. Impositions of necropolitics toward targeted communities is “[t]he practice of deciding who will be allowed to live and live well and who will be allowed to suffer death, deprivation, or disenfranchisement.”¹⁴⁷ As such, not only does necropolitics assert control over bodily death, but as it intersects with disenfranchisement, it can also assert control over social displacement.

Necropolitics orders societal divisions based on race and proposes that states assist in the creation of “[d]eath worlds” in which citizens become members of the “[l]iving dead.”¹⁴⁸ As this evaluation is significant, Mbembe theorized that biopower was

¹⁴⁴ Mbembe, *supra* note 141 at 40.

¹⁴⁵ Youjin B. Chung, “Governing a Liminal Land Deal: The Biopolitics and Necropolitics of Gender” (2020) 52:3 *Antipode* 722 at 727. [Chung]

¹⁴⁶ Mbembe, *supra* note 141 at 11 [emphasis added]. This evidenced in the midst of the COVID-19 pandemic. For example, Mbembe wrote a recent article entitled “The Universal Right To Breathe”. He wrote: “[I]t is one thing to worry about the death of others in a distant land and quite another to suddenly become aware of one’s own putrescence, to be forced to live intimately with one’s own death, contemplating it as a real possibility”. Achille Mbembe, “The Universal Right to Breathe” (2021) 47:52 *Critical Inquiry* 558 at 558. Necropolitics is achieved through a clear separation of rules and policy decisions for communities based on race.

¹⁴⁷ Ray Michalowski, “The Necropolitics of Regulation” (2020) 1:2 *Journal of White Collar and Corporate Crime* 83 at 84.

¹⁴⁸ *Ibid* at 40 [emphasis added].

insufficient in explaining the effects of racialized communities. As described by Chung, “[b]uilding on Foucault’s exploration of the relationship between biopower and racism and offering a critique of Eurocentric analysis, Mbembe argues that the sovereign right to kill based on naturalised notions of racial difference was at the forefront of politics in the plantation of the colonies.”¹⁴⁹ Through a racial lens, necropolitics elucidates “[r]ace, gender, class, sexuality, nationality, ethnicity, religion and location in determining which bodies come to matter to the state.”¹⁵⁰ For individuals who are colonized, there is a “[z]one where the violence of the state of exception is deemed to operate in the service of civilization.”¹⁵¹ Within necropolitics, we see systemic approaches to governance.

In addition to Foucault, Mbembe built on the research of scholars such as Frantz Fanon, Hannah Arendt and Giorgio Agamben to examine the ways in which sovereign control over populations can have dangerous consequences, particularly when this control leads to violence.¹⁵² Arendt wrote that “[t]here are no parallels to life in the concentration camps. Its horror can never be fully embraced by the imagination for the very reason that it stands outside of life and death.”¹⁵³ Arendt proposed that members of a society can be eliminated and subjugated, based on the rules of a governing society.¹⁵⁴ Mbembe also relied on Fanon’s theories of colonization, particularly found in *Wretched of the Earth*. For Fanon, colonized communities are “[a] world without spaciousness; men live there on top

¹⁴⁹ Chung, *supra* note 145 at 726.

¹⁵⁰ *Ibid.*

¹⁵¹ Mbembe, *supra* note 141 at 24.

¹⁵² In this context, I am applying Hannah’s Arendt’s definition of violence, which dealt with power relations between members of political classes. It was specifically state violence that can be applied. For example, she wrote that “power is indeed of the essence of all government, but violence is not. Violence is by nature, instrumental”. Hannah Arendt, “A Special Supplement: Reflections on Violence” (27 February 1969) online: *The New York Review*. Similar to Mbembe’s theory, Arendt considered violence as a tool of political power to gain control over subjected populations.

¹⁵³ Mbembe, *supra* note 141 at 12.

¹⁵⁴ Robert Nisbet, “Arendt on Totalitarianism” (1992) 27 *The National Interest* 84 at 88.

of each other. The native town is a hungry town, starved of bread, of meat, of shoes, of coal, of light. The native town is a crouching village, a town on its knees.”¹⁵⁵ Fanon described the destructive outcomes of colonized spaces, which Mbembe theorized became ‘death-world’. Agamben wrote the following regarding policies of colonization:

The correct question regarding the horrors committed..., therefore, is not the question that asks hypocritically how it could have been possible to commit such atrocious horrors against other human beings; it would be more honest, and above all more useful, to investigate carefully how – that is, thanks to what juridical procedures and political devices – human beings could have been so completely deprived of their rights and prerogatives to the point that committing any act toward them would no longer appear as a crime.¹⁵⁶

Through the incorporation of the existent theories of Agamben, Arendt, Fanon, Foucault and Schmitt, Mbembe evolved theories of biopolitics to propose how necropolitics can be imposed onto cultures where there is a state-sanctioned violence.

Mbembe argued that there are cultures in which there could be “[g]eneralized instrumentalization of human existence and the material destruction of human populations.”¹⁵⁷ He argued that “[i]n the interest of maximum destruction of persons and the creating of death worlds, new and unique forms of social existence in which vast populations are subjected to conditions of life conferring upon them the status of living dead.”¹⁵⁸ The epistemological manifestation of necropolitics is brought into existence when state-run conditions achieve a mechanism of power that causes harm. The creation of IRS falls into this definition. The origins of the policies that led to the creation and management of IRS will be discussed in the next chapter. They constitute the ‘maximum

¹⁵⁵ Mbembe, *supra* note 141 at 27.

¹⁵⁶ Giorgio Agamben, *Means Without End: Notes on Politics* (Minneapolis: University of Minnesota Press, 2000) at 41.

¹⁵⁷ Mbembe, *supra* note 141 at 14.

¹⁵⁸ *Ibid* at 34.

destruction of persons and the creating of death words’ as IRS policies constitute state-sanctioned violence (one of the hallmarks of necropolitics).

Theoretically, necropolitics is an evolution of biopolitics. Mbembe progressed Foucauldian theory to propose a system of governance that applied race as a motive that would change the narrative from power over *life* to power over *death*. Life and death are forces by which individuals may be governed. Mbembe’s theory of necropolitics evolves biopolitics into contextualized themes of domination and sovereignty as legitimate technologies¹⁵⁹ that give the right to kill. One of these technologies is that of systemic racism¹⁶⁰, which was explored in commissions of inquiry such as the Royal Commission on Aboriginal Peoples (RCAP), the TRC and the NIMMIWG. Each document examines national policies that contributed to a history of human rights abuses in Canada. In the NIMMIWG, the concept of genocide was explored. It was reported that “[t]his genocide has been empowered by colonial structures evidenced notably by the *Indian Act*, the Sixties Scoop, residential schools and breaches of human and Indigenous rights, leading directly to the current increased rates of violence, death and suicide in Indigenous populations.”¹⁶¹

¹⁵⁹ The term ‘technology’ in this context is a Foucauldian concept of critique towards power/knowledge. It signifies the ways in which governance systems assert control and supervision of individuals/groups.

¹⁶⁰ To contextualize this term, I turn once again to the explanation from the Ontario Human Rights Commission: “[R]esults from patterns of behaviour, policies or practices that are part of the social or administrative structures of an organization, and which perpetuate a position of relative disadvantage for Indigenous and racialized people. These policies or the behaviour may appear neutral, but nevertheless, have an exclusionary or adverse impact on Indigenous or racialized people. Policies or procedures may themselves be based on unconscious racial stereotypes. Systemic racial discrimination can overlap with and be in part reproduced through acts of racial discrimination by individuals. However, the focus of the analysis is on the outcome and effects of institutional policies, parties or procedures”. Ontario Human Rights Commission, “Interrupted Childhoods: Overrepresentation of Indigenous and Black Children in Ontario Child Welfare” (2018) online: *Ontario Human Rights Commission* <<http://www.ohrc.on.ca/en/interruptedchildhoods>> [OHRC].

¹⁶¹ MMIWG, *supra* note 11 at 40.

The sovereign ‘state of exception’¹⁶² assertion is codified through the manifestation of necropolitics utilized to systemically manage and govern Indigenous people. Mbembe goes a step further to indicate that there are “[z]ones of exception” where the “[t]echnologies of destruction have become more tactile, more anatomical and sensorial, in a context in which the choice is between life and death.”¹⁶³ These zones of exception are twofold: one seen and one unseen. A seen zone could be historical trauma responses and the unseen zone might be partially explained using the theory of historical trauma.

The seen zone is representative of historical trauma responses. We see this in the intergenerational effects of residential schools where corrective discipline specifically targeted the bodies of Indigenous children. The unseen zone is can be partially examined through historical trauma theory. Historical trauma, the soul wound, is the culmination of harm experienced by multiple generations as a result of events. We see this in the child welfare system itself by which Indigenous children were once again forcibly removed from their family of origin as result of colonial policies such as the Sixties Scoop.

Just as *The Indian Act* is an example of biopolitics, amendments that followed can be considered necropolitical through state-imposed governance in which specific populations are targets as a result of their ‘otherness’. As amendments developed regarding either residential schools or child welfare, policies that have insidious consequences evolve from biopolitics to necropolitics. The origins of IRS will be described in the next chapter, which detail a timeline of policies and reports that originated IRS.

¹⁶² The term ‘state of exception’ is in accordance with Carl Schmitt’s assertion that the “Sovereign is [he] who decides on the exception”. Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Chicago and London: University of Chicago Press, 1985). For Schmitt, the exception applied to the ways in which those in power are able to use in times of crisis. However, I would argue that the state of exception can also be aptly applied to situations in which a government thinks they are also supporting ‘the best interest’ or incorporating policies to advance a specific agenda.

¹⁶³ *Ibid* at 34.

Application to Research Question

The thesis research question is as follows: *What is the link between residential schools, historical trauma, and historical trauma responses to the disproportionate number of Indigenous children in the child welfare system?* Foucault's theory of biopolitics and Mbembe's theory of necropolitics are expositions on the ways in which the body can be malleable and disciplined. The creation of residential schools under the *Indian Act* was designed to foster cultural assimilation. The removal of children from their communities, the forbiddances of speaking their language or cultural practices and corrective disciplinary behaviour towards them are indicative of a necropolitical system of governance in the form of cultural genocide.¹⁶⁴

There are similarities in the concept of 'genocide' and 'cultural genocide'. Genocide¹⁶⁵ has different iterations and has created confusion as there are numerous applications of the concept. However, for the purpose of this thesis, the definition applied

¹⁶⁴ I have wondered if necropolitics, which is specifically concerned with the management of bodily death, can also be applied to a cultural genocide? Necropolitics, as a concept, is a systemic management of death. If it is a 'management', then by its own conceptualization, there is a bureaucracy. If there is a bureaucracy, then there are policies and a government agency. As such, state-imposed necropolitics on a group (in this case, communities) that are destructive, would also fall under the category of bodily death of an individual. Cultural genocide, as described not only by the TRC, but in additional writings, is the product of policies that are aimed at the destruction of the very way of life, the elimination of norms and values. Policies that are backed by state-led governmental agencies are thus sanctioned. As such, there has been given a 'right' to kill.

¹⁶⁵ The *Convention for the Prevention and Punishment of the Crime of Genocide* described genocide the following way: "[k]illing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the groups; and forcibly transferring children of the group to another group". The *Convention for the Prevention and Punishment of the Crime of Genocide* 9 December 1948, 78 UNTS 277 Article 2 (entered into force 12 January 1951, ratified by Canada 3 September 1952) [*Convention*]. Raphael Lemkin was an early adopter of the theoretical concept of genocide and advocated and originated the term prior to debates at the United Nations. He concluded that genocide has two phases: one, destruction of the national pattern of the oppressed group: the other, the imposition of the national pattern, in turn, may be made upon the oppressed population, which is allowed to remain, or upon the territory alone, after removal of the population and the colonization of the area by the oppressor's own nationals". [Raphael Lemkin, *Axis Rule in Occupied Europe* (Washington DC: Carnegie Council, 1944) at 79].

from Brave Heart and DeBruyn is applicable to the experiences of Indigenous communities:

Coerced abandonment of religious and cultural underpinning of the subject society, pre-emption or destruction of resources necessary to Native populations have inadequate immunity, disruption of kinship and familial relations basic to the native social structure, treatment based on modes of definition that obliterate a group's identity and finally outright extermination of native populations.¹⁶⁶

While the Brave Heart's description most succinctly applies, characterisations of genocide represent longstanding the effects of policies that contributed to historical and intergenerational trauma within Indigenous communities.

Though cultural genocide has been found to be the end result of colonial policies, we also see how the origins of genocide clarify this result. Cultural genocide was described the following way in the final report of the TRC:

Cultural genocide is the destruction of those structures and practices that allow the group to continue as a group. States that engage in cultural genocide set out to destroy the political and social institutions of the targeted group. Land is seized, and populations are forcibly transferred, and their movement is restructured. Languages are banned. Spiritual leaders are persecuted, spiritual practices are forbidden, and objects of spiritual value are confiscated and destroyed. And, most significantly to the issue at hand, families are disrupted to prevent the transmission of cultural values and identity from one generation to the next. In its dealing with Aboriginal peoples, Canada did all these things.¹⁶⁷

State-led management of a targeted group of citizens constitutes biopolitics. This becomes necropolitics when the purpose¹⁶⁸ of bureaucratic management appears to foster

¹⁶⁶ Maria Yellow Horse Brave Heart & Lemyra M. DeBruyn, "The American Indian Holocaust: Healing Historical Unresolved Grief" (1998) 8:2 American Indian Alaska Native Mental Health Network 60 at 62.

¹⁶⁷ Truth and Reconciliation Commission of Canada, "Final Report of the Truth and Reconciliation Commission of Canada: Volume One: Summary: Honouring the Truth, Reconciling for the Future" (Toronto: Lorimer, 2015) at 1. [TRC, "Final Report"]

¹⁶⁸ While I selected *purpose* in this description, I also considered using the term *intention*. Intention is a strong word that can yield challenging assertions. Intention implies specific malice. Archival evidence shows different outcomes. At the time, some advocated that policies regarding residential schools (also known as Industrial schools) hoped to provide Indigenous communities with education that would be provided by the

a system that attempts to destroy, or to kill, these citizens. Regimes of disciplinary power are found within the military, hospitals/asylums, schools and prisons/institutions. Each element of a member's life is closely managed, monitored and regulated. In fact, Foucault's writings were influenced by Léon Faucher's 'rules for the House of young prisoners in Paris'.¹⁶⁹ These rules involved work schedules, prayers, education, mealtime, recreation, workshops and reading. In his description, Foucault wrote: "[t]he workshops, the school, the army were subject to a whole micropenality of time (lateness, absences, interruptions of tasks), or activity (inattention, negligence, lack of zeal), of behaviour (impoliteness, disobedience), of speech (idle chatter, insolence), of the body (incorrect attitudes, irregular gestures, lack of cleanliness) and of sexuality."¹⁷⁰ While Foucault wrote extensively about rules in prison, much has also been written on the similarities between residential schools and those of prisons. For example, it has been described that "residential schools had 'institutionalized' young people and thereby prepared them better for jail than for life on the outside".¹⁷¹ Contextualizing biopolitics and necropolitics as theoretical lenses adjuncts the policies that will be addressed in regard to the IRS and Indigenous child welfare. Canada, throughout its national history of colonization, imposed necropolitics as the primary system of governance for Indigenous communities.

state. Yet, at the same time, residential schools were designed with the purpose of cultural assimilation, with residential schools becoming mandatory in 1920.

¹⁶⁹ Foucault, "Discipline", *supra* note 2 at 6.

¹⁷⁰ An example of institutionalized disciplinary power can be found in a term that has become synonymous with educational facilities: a ruler. The ruler is a tool that is used to measure objects to determine lengths, widths and heights. The term 'ruler' can also refer to a sovereign authority such as a King or Queen. A physical ruler was also used as a mechanism of disciplinary power within residential schools themselves. *Ibid* at 178.

¹⁷¹ J.R. Miller, *Shingwauk's Vision: A History of Native Residential Schools* (Toronto, Buffalo, London: University of Toronto Press, 2012) at 387. [Miller]

Foucault wrote that “[t]here was an explosion of numerous and diverse techniques for achieving the subjugation of bodies and the control of populations.”¹⁷² Legal and social theory is often proposed as part of data collection, which is then grounded with empirical evidence. For example, we can see the theory of biopolitics grounded in the reports of high levels of physical and sexual abuse that occurred within the residential schools that targeted and subjugated/exploited the bodies of Indigenous children. The Ontario Human Rights Commission (OHRC) directly connected this history of subjugation with the disproportionate number of Indigenous and racialized children in the Ontario child welfare system:

This severe disproportionality is a continuation of Canada’s colonial past. Canada’s history of assimilationist policies, including residential schools, resulted in Indigenous children being uprooted from their families and communities and being disconnected from loving child-rearing practices, parental role models, their cultures and identity. These inequalities continued as residential schools began to close. Starting in the 1950s, child welfare authorities removed Indigenous children from their families and communities in great numbers. Known as the “Sixties Scoop”, children were sent to be fostered or placed for adoption in mostly non-Indigenous families. Formal inquiries into these policies and practices have concluded that the residential school system and Sixties Scoop constituted forms of cultural genocide against Indigenous families and communities.¹⁷³

Successive generations of Indigenous children were subjected to bodily forms of discipline that were aimed at assimilation in order to *kill the Indian*. Historical Trauma Responses are a result of insidious national policies of assimilation. The findings presented by the OHRC are representative of those policies.

¹⁷² Foucault, “Sexuality”, *supra* note 128 at 140.

¹⁷³ OHRC, *supra* note 160.

Conclusion

Each of these theories (biopolitics, necropolitics and historical trauma) intersect. In the context of this thesis, it is argued that, taken together, these theories can provide an effective and compelling critical lens demonstrating the role of colonial policies in perpetuating a cultural genocide of Indigenous communities first through child apprehension first through IRS and successively through the Sixties Scoop, child apprehension and insertion into the foster system and, today, through ‘child protection’. This research examines how policies of Indigenous child removal contributed to the disproportionate number of Indigenous children in the child welfare system. Foucault’s theory biopolitics is rooted in a management of life¹⁷⁴; Mbembe’s theory of necropolitics is rooted in the management of death.¹⁷⁵ Historical trauma theory is approached as the “[c]umulative emotional and psychological wounding, over the lifespan and across generations, emanating from massive group trauma experiences.”¹⁷⁶ As such, theoretical concepts of *death world* and *living dead* proposed by Mbembe, below, are representative of the governing techniques of colonization:

I have put forward the notion of necropolitics [and necropower] to account for the various ways in which, in our contemporary world, weapons¹⁷⁷ are deployed in the interest of maximum destruction of persons and the creation of *death-worlds*, new and unique forms of social existence in which vast populations are subjected to conditions of life conferring upon them the status of *living dead*.¹⁷⁸

¹⁷⁴ Foucault, “Society”, *supra* note 130 at 241.

¹⁷⁵ Mbembe, *supra* note 141 at 11.

¹⁷⁶ Brave Heart, “The Historical Trauma Response”, *supra* note 30.

¹⁷⁷ The word ‘weapons’ is an intriguing one. Typically, the term is used to reference physical objects that can cause harm. However, what is to say that harmful policies are not also tools of destruction? In the context of this thesis, I would argue that colonial policies and actions that caused grave harm towards a populations constitute as weapons. I would further argue that Indigenous child removal policies such as IRS and the Sixties Scoop also fall into the categories of weapons.

¹⁷⁸ Mbembe, *supra* note 141 at 40.

Necropolitics is a system of political authority that decides who can live and who must die. Mbembe evolved theories of biopolitics into necropolitics when he proposed that the former was insufficient to address the systemic authority of racism.

Necropolitics, therefore, contends that destructive policies and acts of violence perpetrated towards Indigenous peoples was (and are) in fact a systemic approach to governance in which political authority sought (and continues to seek) the demise of Indigenous cultures and communities.¹⁷⁹ The evolution of ‘take life and let live’ to ‘who can live and who must die’ reifies the discursive study of historical trauma theory through examinations of policies that are aimed at systemic governance. While biopolitics normalizes policies concerned with the management of life, necropolitics normalizes policies in which there is a subjugation to violence. As such, historical trauma theory studies the trajectory of how certain insidious events are felt throughout generations as a result of policies that are aimed at the destruction of a particular group or society. For the purposes of this thesis, the primary examinable policies are systemic removal of children and placing them in residential schools and the child welfare system as a means of corrective behaviour and cultural assimilation.

¹⁷⁹ In describing this policy, I found the following quotation in a dissertation I read. In fact, it was one that I thought about often during my grad studies. Though the dissertation in question examined the genocide in Rwanda, similar themes are described in this research. The quote is as follows “[T]he government’s long history of necropolitics started during colonial times (...) laid out a clear picture of how genocide occurred. In a society where the state of exception is the norm, where a minority people are considered people without biopolitical power, where necropolitics is the preferred solution for the sovereign’s troubles, genocide is no surprise. What is concerning is when we choose not to notice” [Kyrsten Sinema, “Who Must Die: The State of Exception in Rwanda’s Genocide” (Dissertation, Arizona State University, 2012)]. In consideration of theories of biopolitics and necropolitics, policies can create almost stateless people; being subjected to policies with the purpose of cultural elimination (assimilation). Based on this notion, the rights of individuals can be summarily removed based on policies, with little regard for the person.

Chapter Three: Indigenous Child Removal Policies

Introduction

This chapter examines Indigenous child removal policies in their origin through the Canadian Residential School system as well as the apprehension¹⁸⁰ policy known as Sixties Scoop. IRS operated from the mid 1800s until the final school closed in 1996.¹⁸¹ Multiple generations of Indigenous peoples were affected by the systemic suppression of language and culture integral to the ‘civilization and assimilation’ policies of which the schools were a key component, and the abuse and violence that informed the approach taken in many schools. The experiences of IRS survivors had devastating impacts on Indigenous communities over the generations, undermining individual, family and community wellness and setting the stage for extreme and ongoing state involvement in Indigenous lives. The Sixties Scoop is an exemplar of that involvement; it refers to a period in the 1950s-1980s during which thousands of Indigenous children were systematically removed from their homes and placed into the care of child welfare services.

Theories of historical trauma will show how the IRS treatment of Indigenous children caused widespread trauma experiences that have reverberated across the generations, perpetuating the violence in residential schools and its intergenerational effects.¹⁸² Here, the analysis will focus on the link between historical trauma, historical

¹⁸⁰ Apprehension, as a term, has multiple meanings that I think are relevant to this area of research. For example, apprehending refers to taking ownership of something. Apprehension also refers to elevated levels of anxiety or a sense of foreboding of an event that will cause distress. The removal of Indigenous children from their homes into residential schools would suffice both delineations.

¹⁸¹ Truth and Reconciliation Commission of Canada, “Residential School Locations” online: *Truth and Reconciliation Commission of Canada*

¹⁸² In different iterations, researchers and authors may use different terms to describe the institutionalization of Indigenous children within residential schools. Research has emerged which indicates that the most widely used identification is Indian Residential Schools (IRS). *Canadian Residential School System* could also be applied in the scope of this project because it specifically refers to the national internment of racialized children into a system in which the sole purpose was to remove their culture to achieve assimilation. The

trauma responses and intergenerational effects, and the removal of Indigenous children from their family of origin and communities.

Origins of Policies of Indigenous Child Removal

In 1894, amendments to the *Indian Act* were introduced to ensure “[c]ompulsory school attendance of Indian children, and for industrial or boarding school for Indians, particularly in the North West. Previous policies had proven insufficient in reach and the new legislation enabled the Department to educate Indian children without either their consent or the consent of their parents.”¹⁸³ Compulsory education at IRS for Indigenous children became mandated with the 1920 amendments to the *Indian Act*.¹⁸⁴ It is not the compulsory educational mandate itself, but the compulsory attendance at residential schools that led to the historical trauma responses that affected multiple generations of Indigenous families. Attendance at IRS led to cultural suppression in the form of disuse of language, spiritual practices, garments and ethnic practices.

legacy of residential schools will be discussed throughout this chapter. However, I thought it was pertinent to include the mission statement of (a now dissolved) foundation that provided healing and hope for survivors, The Aboriginal Healing Foundation. The mission statement is as follows: “Our vision is for all who are affected by the legacy of physical, sexual, mental, cultural, and spiritual abuses in the Indian residential schools having addressed, in a comprehensive and meaningful way, unresolved trauma, putting to an end the intergenerational cycles of abuse, achieving reconciliation in the full range of relationships, and enhancing their capacity as individuals, families, communities, nations and peoples to sustain their well-being” [Aboriginal Healing Foundation, “Vision, Mission, Values: The Aboriginal Healing Foundation” (2020), *online*: The Aboriginal Healing Foundation <<http://www.ahf.ca/about-us/mission>>. The materials from this foundation now reside at the Shingwauk Residential School Centre at Algoma University. The university’s main hall is comprised of the Shingwauk Residential School. As such, the centre is tasked with preserving the legacy and archival materials of residential schools. The concept of genocide in its different iterations was described. If we were to examine genocide in the context of residential schools, Lemkin also states that “[T]he crime of genocide involves a wide range of actions, including not only the deprivation of life, but also the prevention of life and also devices considerably endangering life and health (artificial infections, working to death in separate camps, *deliberate separation of families for depopulation purposes* and so forth. All these actions are subordinated to the criminal intent to destroy or to cripple permanently a human group”. Raphael Lemkin, “Genocide as a Crime Under International Law” (1947) 4:1 *American J Intl L* 1147 at 1147 [emphasis added].

¹⁸³ John Leslie, *The Historical Development of the Indian Act* (Ottawa: Department of Indian Affairs and Northern Development, Treaties and Research Branch, 1978) at 98. [Leslie]

¹⁸⁴ Thomas Mulvey, *Dominion of Canada Annual Report of the Department of Indian Affairs For The Year Ended March 31, 1920* (Ottawa: Order of Parliament, 1921) at 13.

In an interview regarding experiences in residential schools, (former) Senator Murray Sinclair stated that: “[I]n residential school, what they told us was if we want to live in this world, we have to become like the white man. We have to learn what it means to be a white man.”¹⁸⁵ Figure One is a visual example of IRS policies. It is an image of Thomas Moore Keesick¹⁸⁶, an Indigenous child, before he entered into a residential school and during his time at Regina IRS.

Illustration One: Thomas Moore at Regina Residential School.¹⁸⁷



In the photograph on the left, Thomas is dressed in his traditional Indigenous clothing, which reflects his culture. His traditional and cultural educational experience may have

¹⁸⁵ Ian Austen, “He Almost Quit the Law. Instead, He Rest Canada’s Indigenous Dialogue” (5 February 2021) online: *The New York Times* <<https://www.nytimes.com/2021/02/05/world/canada/canada-indigenous-people.html>>. Recently (in April of 2021), we continued to see how necropolitics continues to be applied to survivors of residential schools. The federal government is currently seeking an independent review to determine whether or not claims of torture (in the form of a makeshift electric chair) at St. Anne’s residential school occurred. As such, we continue to see how, even after multiple commissions and survivor testimony, the experiences of Indigenous children at IRS continue to be questioned.

¹⁸⁶ Multiple sources, including the Library of Archives, name him as ‘Thomas Moore’. However, further research indicated accredited his name as Thomas Moore Keesick. The removal of ‘Keesick’ as name was an assimilationist policy.

¹⁸⁷ Library and Archives, “Thomas Moore as he appeared when admitted to the Regina Industrial School and after tuition”. 1896. Department of Indian Affairs Annual Report for the Year ended 30th June 1896. Library and Archives Canada, NL-022474.

As noted, Thomas’ last name is Keesick. However, I used the name as it appears in the historical document. In order to remain consistent with historical documents, I have titled the figure based on the archival photograph.

also included a vision quest, a rite of passage for males into adolescence.¹⁸⁸ However, the image on the right demonstrates his experience at IRS - his hair has been cut and his clothes are uniformist and represent traditional westernized school attire. The first image has him in traditional clothing that represents the Indigenous culture of hunting and the trade. The second image is symbolic of western culture, with clothing to represent Canadian school clothing (uniform). We see that his hair in the first image mirrors Indigenous cultures that favours braids and longer hair. The shorter hair is more representative of Euro-centric fashion.

Thus, we see that one of the assimilationist policies was to dress Indigenous children like white children in order to “[c]ivilize and Christianize¹⁸⁹ Aboriginal children.”¹⁹⁰ The assimilationist policies are also found in these images: “[i]n both historic and contemporary readings, the photos are said to indicate Keesick’s assimilation through a powerful colonial institution. The omission of Keesick’s last name in the captions and reference to the child by his more Anglicized name, ‘Moore’ also connote his assimilation.”¹⁹¹ We saw similar practices of cultural removal (i.e., targeted bodily changes [hair cutting] and being given new clothing) documented in the TRC:

And then, they took my braids, and they chopped my, they didn’t even cut it, they are just I mean style it or anything, they just took the braid like that, and just cut it straight across. And I remember just crying and crying

¹⁸⁸ Miller, *supra* note 171 at 33.

¹⁸⁹ A memorandum for the Convention of Catholic Principles decreed that: “[A]ll true civilization must be based on moral law, which Christian religion alone can give. Pagan superstition could not... suffice to make the Indian practise the virtues of our civilization and avoid its attendant vices. Several people have desired us to countenance the dances of the Indians and to observe their festival; but their habits, being the result of free and easy mode of life, cannot conform to the intense struggle for life which our social conditions require” John S. Milloy, *A National Crime: The Canadian Government and the Residential School System, 1879-1986* (Manitoba: University of Manitoba Press, 1999) at 36-37. [Milloy]

¹⁹⁰ Piotr Wilk, Alanda Maltby & Martin Cooke, “Residential Schools and the Effects on Indigenous Health and Well-Being in Canada – A Scoping Review” (2017) 38:8 Public Health 1 at 2.

¹⁹¹ Miranda J. Brady & Emily Hitz, “The Archaeology of an Image: The Persistent Persuasion of Thomas Moore Keesick’s Residential School Photographs” (2017) 37:61 Ca J Cultural Studies at 64.

because it was almost like being violated, you know, like when you're, when I think about it now it was a violation, like, you're your braids got cut, and it, I don't know how many years you spent growing this long hair.¹⁹²

In 1920 testimony before a committee in the House of Commons, (former) Deputy Minister of Indian Affairs Duncan Campbell Scott stated the following:

*I want to get rid of the Indian problem. I do not think as a matter of fact, that this country ought to continuously protect a class of people who are able to stand alone. That is my whole point. I do not want to pass into the citizens' class people who are paupers. This is not the intention of the bill. But after one hundred years, after being in close contact with civilization, it is enervating to the individual or to a band to continue in that state of tutelage, when he or they are able to take their position as British citizens or Canadian citizens, to support themselves and stand alone. That has been the whole purpose of Indian education and advancement since the earliest times. One of the very earliest enactments was to provide for the enfranchisement of the Indians. So, it is written in our law that the Indian was eventually to become enfranchised. *Our object is to continue until there is not a single Indian question, and no Indian Department. That is the whole object of this Bill.*¹⁹³*

We see here callous and targeted necropolitics. Scott's assimilation proposals are necropolitical as they target specific populations through the use of state and political power to achieve the erase of the Indigenous population.

Milloy described how two reports were vital for the creation of IRS, the *Bagot Commission Report* of 1842 and the 1879 *Report on Industrial Schools for Indians and Half-Breeds*. Milloy summarized them the following ways:

The Bagot Commission advocated for residential and industrial schools, proposing that only through industry and education, settlement and agriculture, could Indian communities convert, progress, and become civilized. Nearly forty years later, the *Report on Industrial Schools*

¹⁹² Truth and Reconciliation Commission of Canada, *The Survivors Speak: A Report of the Truth and Reconciliation Commission of Canada* (Ottawa: Library and Archives, 2015) at 41. [TRC, "Survivors"].

¹⁹³ Leslie, *supra* note 183 at 114 [emphasis added]. The emphasis is on the often-quoted parts of Scott's recommendations for the creations of IRS. However, the speech in its entirety is representative of Mbembe's theory of necropolitics as it illustrated that policies sought to use state power to govern targeted populations.

concluded that separating children from their parents was the best means of educating them.¹⁹⁴

In his report entitled *Report on Industrial Schools for Indians and Half-Breeds*, Davin recommended that:

These schools should be utilized as much as possible, both on grounds of efficiency and economy. The missionaries' experience is only surpassed by their patient heroism and their testimony, like that of the school teachers, like that of the authorities in Washington is, that if anything is to be done with the Indian, we must catch him very young. The children must be kept constantly within a circle of civilized conditions.¹⁹⁵

Davin's recommendations included missionary control over schools to indoctrinate Christian teachings onto Indigenous communities.¹⁹⁶ Davin indicated that this was essential to an "[a]tmosphere charged with Christian ideals."¹⁹⁷ However, one of Davin's recommendations did not come to fruition, and that was the recommendation of regular inspection.¹⁹⁸ In fact, Dr. Peter Bryce, a medical officer with the Department of Interior, found that roughly one quarter of Indigenous children who attended residential schools contracted tuberculosis, among a myriad of other health concerns.¹⁹⁹

Known as one of the originators of the IRS, Davin's policies were instrumental in developing a system that institutionalized Indigenous children into schools for forced assimilation under the authority of the Catholic Church.²⁰⁰ An 1887 memo from Lawrence

¹⁹⁴ Milloy, *supra* note 189 at xvii.

¹⁹⁵ Nicholas Flood Davin, *Report on Industrial Schools for Indians and Half Breeds* (Ottawa, 1879) at 12. [Davin].

¹⁹⁶ *Ibid* at 13.

¹⁹⁷ *Ibid* at 14.

¹⁹⁸ *Ibid* at 15.

¹⁹⁹ Travis Hay, Cindy Blackstock & Michael Kirlew, "Dr Peter Bryce (1853-1932): whistleblower on residential schools". (2 March 2020) online: *Humanities Medicine and Society* <<https://www.cmaj.ca/content/cmaj/192/9/E223.full.pdf>> .

²⁰⁰ Nishnawbe Aski Nation, "The Davin Report, 1879" (2020), online, *Nishnawbe Aski Nation* <<http://rschools.nan.on.ca/article/the-davin-report-1879-1120.asp>>.

Vankoughnet, an agent in the Department of Indian Affairs written in response to the Davin Report, states:

Give me the children and you may have the parents, or words to that effect, were uttered by a zealous divine in his anxiety to add to the number of whom his Church called her children. And that principle laid down that astute reasoner is an excellent one on which to act in working out to the most difficult problem – the intellectual emancipation of the Indian, and its natural sequel, his elevation to a status equal to that of his white brother. This can only be done through education... only by a persistent continuance in a thoroughly systemic course of education (using the word in its fullest and most practical sense) the children, will the final hope and long striven for result be attained.²⁰¹

While Sir John A. Macdonald is widely regarded as a Father of Confederation in Canada, it is also clear that he can be considered the ‘Father of Cultural Genocide’ insofar as his policies and statements in the House of Commons represent a stark example of Canada’s historical approach to the ‘Indian Problem’. Nowhere is that approach clearer than in MacDonald’s enthusiastic embrace of the residential school system:

When the school is on the reserve, the child lives with its parents, who are savages; he is surrounded by savages, and though he may learn to read and write, his habits and training and mode of thought are Indian. He is simply a savage who can read and write. It has been strongly pressed upon myself, as the head of the Department, that Indian children should be withdrawn as much as possible from the parental influence, and the only way to do that would be to put them in central training industrial schools where they will acquire the habits and modes of thought of white men; so that after keeping them a number of years away from parental influence until their education is finished, they will be able to go back to their band with the habits of mind, the education, and the industry which have they learned at these schools.²⁰²

Macdonald was also supportive of the development of what became known as the pass system. This policy meant that “[n]o outsider could come onto a reserve to do business with an Aboriginal resident without permission from an Indian Agent. In many places, the

²⁰¹ Milloy, *supra* note 189 at 7.

²⁰² Canada, House of Commons, *House of Commons Debates*, 3rd Parl., 1st Sess., Volume 14 (20 April – 25 May 1883) at 1107-1008 (Sir John A. Macdonald).

directives were interpreted to mean that no Aboriginal person could leave the reserve without permission from the Indian Agent.”²⁰³ Supported by Indian Affairs Commissioner Hayter Reed, the Pass System was instrumental in preventing members of Indigenous communities from leaving reserves and remained in effect for sixty years.²⁰⁴ In the context of this research, the pass system also “[d]iscouraged parents from visiting their children in off-reserve residential schools and to give agents greater authority to prevent Indians from participating in banned ceremonies and dances on distant reserves.”²⁰⁵ As has been argued, this policy contributed to cultural genocide.

Herman Merivale, an administrator of the Indian Affairs Department and an Oxford Professor, made a series of strategic recommendations for addressing what Merivale described as “[t]he native question.”²⁰⁶ These proposals were classified as “[a]n imperial dilemma”.²⁰⁷ These would be systemically imposed with “[t]act, prudence and fairness (...) Ultimately, he believed the only solution (to what he deemed ‘the native question’) was the ‘euthanasia of savage communities’ by which the native peoples would suffer a gradual erosion of their culture by a process of amalgamation.”²⁰⁸ Merivale proposed three recommendations, which were “[e]xtermination, insulation (reserves) and amalgamation with the colonists.”²⁰⁹ Merivale’s preferred recommendation was amalgamation.²¹⁰

²⁰³ Canada, “Highlights from the Report of the Royal Commission of Aboriginal Peoples: People to People, Nation to Nation” (15 September 2010) online: *Crown-Indigenous Relations* <<https://www.rcaanc-cirnac.gc.ca/eng/1100100014597/1572547985018>>.

²⁰⁴ Stephanie Cram, “Dark history of Canada’s First Nations pass system uncovered in documentary” (19 February 2016) online: *CBC News* <<https://www.cbc.ca/news/aboriginal/dark-history-canada-s-pass-system-1.3454022>>.

²⁰⁵ Canada, Royal Commission on Aboriginal Peoples (Royal Commission on Aboriginal Peoples: Ottawa, 1996) at 272-273. [RCAP]

²⁰⁶ David McNabb, “Herman Merivale and the Native Question, 1837-1861” (1977) 9:4 *Albion: A Quarterly J Concerned With British Studies* 359.

²⁰⁷ *Ibid* at 359.

²⁰⁸ *Ibid* at 365.

²⁰⁹ *Ibid* at 368.

²¹⁰ *Ibid*.

Following Merivale's recommendation, the Bagot Commission (named for then Governor-General of Canada Charles Bagot) was established to address the assimilation and the education of Indigenous children. The Commission recommended that "[i]nstruction shall be given as well in the rudiments of education, in agriculture and some of the handicrafts, and the English and French languages taught and to give the gift of presents to Indians and their children, conditional on their attendance in these schools."²¹¹ The Bagot Commission led to a piece of legislation known as *An Act to Encourage the Gradual Civilization and the Indian Tribes in the Province* which was aimed at the assimilation and enfranchisement of Indigenous communities.²¹² As such, The Bagot Commission recommended that "[e]ducation was key to the entire enterprise; thus boarding schools were recommended as a way of countering the effects of young Indians of exposure to the more traditional Indian values of their parents. *Christianity was to be fostered.*"²¹³

Egerton Ryerson, the Chief Superintendent for Upper Canada, also advised the government on the creation of industrial schools.²¹⁴ The structure of the schools became of use as a blueprint for the residential schools. Ryerson recommended industrial schools for Indigenous children and explained his recommendation the following way:

The North American Indian cannot be civilized or preserved in a state of civilization (including habits of industry and sobriety) except in connection with, if not by the influence of, not only religious instruction but of religious

²¹¹ Charles Bagot, "Report on the Affairs of the Indians in Canada, Laid Before the Legislative Assembly" (1845). I should note that this report gives detailed information on different Indigenous communities and recommendations on locations for the schools.

²¹² *An Act to encourage the gradual Civilization of the Indian Tribes in this Province, and to amend the Laws Respecting Indians*, 3rd Sess, 5th Parl, 1857, (as passed by the Province of Canada on 10 June 1857).

²¹³ *RCAP*, *supra* note 205 at 246 [emphasis added]. I place emphasis on the final sentence as there is congruence with national governmental policies and religious affiliation regarding Indigenous communities, particular in regard to efforts geared towards assimilation.

²¹⁴ 'Industrial School' was the original name given to schools in England where children from poor families would attend as a means to address the growing problem of vagrancy. Industrial schools were legislated under the Ontario *Industrial Schools Act of 1847* [Ontario, *Statutes*, 1874, 37 Vict, c. 29]. Industrial schools, from an educational perspective, were the precursor to compulsory education.

feelings. (...) This influence must be superseded to all others to make the Indian a sober and industrious man. (...) The religious character of these contemplated schools and the religious influences which must pervade all departments of their immediate management, in order to their efficiency and permanent success, have been sufficiently remarked up in the former part of their communication.²¹⁵

This led to the policy of ‘aggressive assimilation’²¹⁶ as indicated in Davin’s report. As such, the 1894 *Indian Act* amendments included the following: “[A]ll Indian children between the ages of seven and sixteen shall attend a day school on the reserve on which they reside for the full term during which the school is open each year.”²¹⁷ In a report written by then Canadian Minister of Justice Alexander Campbell, the following was observed and conveyed:

The good conduct of these Indians during their stay in the institution goes to show that their offence was rather an act of bravado than a maliciously planned robbery. They were invariably docile and well-disposed. They were eager to learn the principles of a Christian life, and as far as it was possible, I grounded them thoroughly in the lessons I strove to impress on their minds. They understood that the whites were not their enemies; they understood that in every society, there are men who rule and others who are ruled; that if the law is not to remain a dead letter, it must be upheld; that respect for the law is to their own advantage, and its violation a cause of trouble, and that the welfare of all demands that its violators must be punished. Sir, that their stay in the institution will have been a real benefit to them. They have learned trades, and have been occupied at manual labor, and now that they are enjoying freedom on their reservation they will, I trust, continue to work, and thus help on the civilization of their own people.²¹⁸

The way in which this is described alludes to a purported cost-benefit analysis to justify the creation of the schools. The positive description seems to portray an almost enjoyable

²¹⁵ Egerton Ryerson, “Report of Dr. Ryerson on Industrial Schools” in *Statistics Respecting Indian Schools with Dr. Ryerson’s Report of 1847 attached* (Ottawa: Government Printing Bureau, 1898) 1 at 74-75.

²¹⁶ Davin, *supra* note 195 at 1.

²¹⁷ Truth and Reconciliation Commission, *Canada’s Residential Schools: Missing Children and Unmarked Burials: Volume Four: The Final Report of the Truth and Reconciliation Commission of Canada* (Montreal, Kingston, London & Chicago: McGill-Queen’s University Press, 2015) at 37. [TRC, “Missing Children”]

²¹⁸ Canada, Department of Justice, *Report of the Minister of Justice as to Penitentiaries in Canada for the Year Ended 30th June 1884*, (31 December 1884) at 80.

experience of those who attended the schools and who displayed only a modicum of gratitude.

Examining IRS in the context of the necropolitical assesses how actions (i.e., the cutting of hair) become a targeted form for colonized violence because of the representation of hair as culture. Earlier the ‘seen zone of exception’ espoused by Mbembe was described. A zone of exception is a physical manifestation of necropolitics. It is argued that the disciplinary power that targets the body is such a seen zone. The creation of IRS is representative of policies geared towards aggressive assimilation that contributed to transgenerational trauma.

Residential School Experience

One of the early champions for Indigenous children was Dr. Peter Bryce.²¹⁹ Serving as Chief Medical officer for the Department of the interior in 1919, Bryce was one of the first public officials to write about the maleficence of policies designed to ‘support’ Indigenous children at IRS. Through numerous letters that eventually formed reports, Bryce attempted to alert government leaders about the inadequacy of health services available for Indigenous children at IRS. In fact, in one of Bryce’s reports, he indicated the following: “[i]t appears that of 1537 pupils returned from 15 schools which have been in operation on an average of fourteen years, 7 per cent are sick or in poor health and 24 per cent are reported dead.”²²⁰ This, he wrote, is when “[s]uch cases, under the defective sanitary condition of many schools, especially in the matter of ventilation, have been the foci from which disease, especially tubercular, has spread through direct infection, from

²¹⁹ Dr. Bryce was the Chief Medical Officer for the Department of the Interior.

²²⁰ Peter Bryce, *Report on the Indian Schools of Manitoba and the North West Territories* (Ottawa: Government Printing Bureau, 1907) at 18.

person to person.”²²¹ The dereliction of the duty of oversight in IRS contributed to the ill health and death of children who attended these schools.

Though the reports were never published, Bryce wrote a publicly-distributed report in 1922 entitled *The Story of a National Crime: An Appeal for Justice to the Indians of Canada*.²²² The piece he wrote contained the following: “[I]n the schools, a trail of disease and death has gone almost unchecked by any serious effort on the part of the Department of Indian Affairs”.²²³ In addition, he wrote: “[I]n this particular matter, Duncan Campbell Scott is counting upon the ignorance and indifference of the public to the fate of these Indians; but with the awakening of the health conscience of the people, we are now seeing on every hand, I feel certain that serious trouble will come out of departmental inertia and I am not personally disposed to have any blame fall upon me.”²²⁴ Bryce informed his letters and reports with accounts of the multiple problems plaguing the schools, including for example, unsanitary and unhealthy conditions of IRS:

The condition of one little girl found in the infirmary is pitiable indeed. She lies curled up in a bed that is filthy, in a room that is untidy, dirty and dilapidated, in the northwest corner of the building, with no provision of balcony, sunshine or fresh air. Both sides of her neck and chest are swollen and five foul ulcers are discovered when we lift the bandages. This gives her pain, and tears from her fear of being touched, intensifies the picture of her misery.²²⁵

²²¹ *Ibid* at 17.

²²² Peter Bryce, *The Story of a National Crime: An Appeal for Justice to the Indians of Canada: The Wards of the Nations: Our Allies in the Revolutionary War: Our Brothers in Arms in the Great War* (Ottawa: James Hope and Sons, 1922). The dereliction in the lack of oversight, could, according to some researchers, constitute *intention*, a key marker in the crime of genocide. For example, MacDonald & Hudson wrote that “[t]he lack of oversight could be indicative of intention, which would increase the culpability of Canada in perpetuating this genocide”. *Supra* note 3 at 445.

²²³ *Ibid* at 14.

²²⁴ *Ibid* at 6.

²²⁵ Milloy, *supra* note 189 at 100.

Shingwauk's Vision: A History of Native Residential Schools is considered to be one of the preeminent monographs of dialogues in the IRS.²²⁶ It describes in detail the experiences of children who attended these schools, drawing on extensive archival and primary records. As IRS attendance became mandatory, Indigenous children were removed from their homes. If not willingly, they then by force. An example of the type of force used was described as follows:

The Indian agent instructs the RCMP constable to break down the door. They rush into the house, pry the frightened, screaming children from their parents arms and rush them to a holding area outside. The constable and agent go to the next house and the next and in the ensuing few days this scene is repeated many times on this reserve and on most reserves in Southern Manitoba. All children are assigned a number and unceremoniously herded into cattle cars for transport to the residential school in Winnipeg.²²⁷

As described by Dr. Bryce, IRS were not equipped to deal with infections. As there were no separate wards at some schools, all those who were at varying levels of illness, were kept together.²²⁸ The schools did not provide adequate sleeping quarters, and bedrooms were at times either in an attic or basement, neither of which adhered to adequate health and safety standards, which included a lack of heat in the winter months.²²⁹

The students also experienced grave abuses at IRS. These included “[h]air shearing, whipping, inadequate food and refusals to allow parents to see their children.”²³⁰ Students were burned with cigarettes and forced to consume their own vomit.²³¹ As a result of the abuse endured, students did try to run away, often with grave results. Students were found

²²⁶ Miller, *supra* note 171.

²²⁷ *Ibid* at 289.

²²⁸ *Ibid* at 303.

²²⁹ *Ibid* at 310-311.

²³⁰ *Ibid* at 357.

²³¹ *Ibid* at 423.

frozen to death or drowned in attempts to leave.²³² Miller concluded with message of resilience that is also linked to discussions of historical trauma:

Despite all attempts to dilute our native culture, we have proven to be remarkably resilience. We are now determined to pass on to our children any knowledgeable wisdom that we can glean from our elders, so that our children and grandchildren can once again learn to be proud of their cultural heritage. How sad that people like Great-Grandfather were not allowed to impart their wisdom and knowledge to us, so that we in turn could pass it along to our descendants. Now it is lost forever.²³³

The TRC noted a series of instances in which a lack of regulations and policy failures prevented action against instances of abuse that took place at IRS. Among these were the:

Failure to believe student and parental reports of abuse; failure to take action; failure to investigate complaints impartially; failure to report allegations of improper behavior to Indian Affairs or the police; government failure to report abuse to the police; failure to support police investigations; failure on the part of Indian Affairs field staff to report properly on the prosecution of residential school staff to senior officials; failure to screen effectively when hiring; failure to protect students from abuse by other students; failure to assist victims; and failure on the part of police to investigate properly.²³⁴

Indigenous children who attended residential schools were subject to numerous rules. Not only did this include the imposition of religious doctrine, but also physical and sexual violence. The TRC documented survivor testimony of students being assaulted by both staff and students alike, with little to no action being taken against the perpetrators. This type of violence was given credence due to the lack of oversight and safe places to speak out. No longer were Indigenous children members of a family or community – they were numbers and wards of the state. As wards of the state, representatives of the state had control over not only their daily activities, but also their bodies. Removed from their

²³² *Ibid* at 327.

²³³ *Ibid* at 439.

²³⁴ TRC, “Missing Children”, *supra* note 217 at 104-106. I should also note that included within each of these series of failure to adhere to regulations contains examples that occurs at various IRS.

families, many of these children were profoundly traumatized by attacks on their culture, language and spirituality, and by strict regimens of punishment and abuse.

Marie Knockwood attended the Shubenacadie Residential School in Nova Scotia. While there, she was a victim of both physical and sexual violence. In an interview regarding Sir John A MacDonal, she relayed how her experience was emblematic of this policy. She described her experience and the consequential manifestation of these policies the following way:

John A. Macdonald has been a thorn in the side of our people for many, many years. It fills me full of anger and bitterness, I get so angry because I know all the problems that he caused my people and me (...) Abducting the children, actually right in front of their parents. No matter, you know, how good a parent is, it didn't matter. He was determined to take the children away from the savages, It's a statement he made: 'savage parents'. I was raped at the residential school. I was beaten every day that I was there. I tried to protect others from being abused and I've seen a lot of abuse happening and I witnessed a lot of horrible, terrible things. I wake up in nightmares and it takes a while and I'm able to push that in the back again. But every time I talk about it, I think it doesn't bother me. It's when I sleep, when I'm half asleep. These memories haunt me. He tried to destroy a whole nation of natives. Not just us, but right across Canada.²³⁵

IRS is part of the history of colonization of Indigenous communities of Canada that resulted in systemic human rights abuses. Parliament's decision to grant Church control of IRS replaced democracy with theocracy. The goal of the policy was to integrate these children and all future generations into society as a pretense for contributing to Canada's economic agenda.²³⁶

²³⁵ Nicholas MacLeod, "Residential school survivor says P.E.I. John A Macdonald statue should be removed" (11 September 2020), online: *CBC News* <<https://www.cbc.ca/news/canada/prince-edward-island/pei-marie-knockwood-john-a-macdonald-statue-1.5719669>>.

²³⁶ Brenda Elias et al, "Trauma and Suicide Behavioural Histories Among a Canadian Indigenous Population: An Empirical Exploration of the Potential Role of Canada's Residential School System" (2017) 74 *Soc Science Medicine* 1560 at 1561.

The historically traumatic violence and abuse perpetrated within the IRS policy left many survivors deeply wounded and facilitated a range of destructive behaviours collectively known as historical trauma responses, which were in turn visited upon subsequent generations in the form of intergenerational effects.²³⁷ These effects, which include heightened incidence of substance abuse, emotional dysregulation, depression, anxiety, low self-esteem, suicidal ideation and completion of suicide, exposure to violence and fracturing of families and communities²³⁸, created a crisis in child welfare to which the state responded by visiting further intrusion and violence on Indigenous families and children. The most devastating expression of this violence was the Sixties Scoop (which will be discussed further below). The Sixties Scoop manifested itself in a codification of the words spoken by Macdonald and was based on the notion that Indigenous parents (or ‘savages’, as Macdonald indicated) were not fit to raise their children. It was designed around the notion that they would be better off raised in Euro-centric families to promulgate the forced assimilation.

Sixties Scoop

The Sixties Scoop refers to a 30 year period spanning the 1950’s to the 1980’s during which thousands of Indigenous children were systematically removed from their homes and placed into foster/child welfare care. The wording of ‘sixties scoop’ was developed by Patrick Johnston based on interviews with numerous social workers, as follows:

One long-time employee of the Minister of Human Resources in B.C. referred to this process as the “Sixties Scoop. She admitted that provincial

²³⁷ Bombay, Matheson and Anisman, “Intergenerational Effects”, *supra* note 94 at 323.

²³⁸ Brittany Barker et al, “Intergenerational Trauma: The Relationship between Residential Schools and the Child Welfare System Among Young People Who Use Drugs in Vancouver, Canada” (2019) 65 J Adolescent Health 248 at 249.

social workers would, quite literally, scoop children from reserves as the slightest pretext. She also made it clear that what they were doing was in the best interest of the children. They felt that the apprehension of Indian children from reserves would save them from the effects of crushing poverty, unsanitary health conditions, poor housing and malnutrition, which were facts of life on many reserves. Unfortunately, the long term effects of apprehension on Indian families and communities taken in account and some reserves lost almost a generation of their children as a result.²³⁹

Within a ten year period, starting in 1955, “[t]he representation of Native children in B.C.’s child welfare had jumped from almost a nil to a third.”²⁴⁰

At the time, the Canadian Government viewed Indigenous peoples as “[c]hild-like creatures in constant need of the paternal care of government. With guidance, they would gradually abandon their superstitious beliefs and barbaric behaviour and adopt civilization”.²⁴¹ Thousands of children were affected by this policy, and their systemic transfer not only included Canada, but also to the United States and overseas.²⁴² By “[1977], Aboriginal children accounted for 44% of the children in care in Alberta, 51% of the children in care in Saskatchewan, and 60% of the children in care in Manitoba.”²⁴³ Today, Indigenous children account for only 7.7% of the child population of Canada, but represent 52.2% of children in child welfare.²⁴⁴

The consequences of the Sixties Scoop are evident in testimony from a survivor reconnecting with his family: “[w]hen I found my people again it got better. Every ceremony, every ritual, every phrase I learned in my language eased that wound and

²³⁹ Patrick Johnston, *Native Children and the Child Welfare System* (Toronto: James Lorimer & Company, 1983) at 23 [Johnston].

²⁴⁰ *Ibid.*

²⁴¹ Emily Alston-O’Connor, “The Sixties Scoop: Implications of Social Workers and Social Work Education” (2010) 11:1 *Critical Soc Work* 53 at 53.

²⁴² *Ibid* at 138.

²⁴³ Holly A. Mackenzie et al, “Disrupting the Continuities Among Residential Schools, the Sixties Scoop, and Child Welfare: An Analysis of Colonial and Neocolonial Discourses” (2016) 7:2 *The Intl Indigenous Policy J* 1 at 6.

²⁴⁴ Canada, “Reducing the number of Indigenous Children in Care”, *supra* note 13.

eventually it became easier, more graceful to walk as an Indian person. I began to reclaim the history, culture, language, philosophy and way of being that the Sixties Scoop had deprived me of.”²⁴⁵ The foundation of the Sixties Scoop policy was that “[t]he placement of Indian children in white homes would be a low-risk for the children with regard to safeguarding their physical and emotional well-being.”²⁴⁶ The connections between the historically traumatic events associated with the residential schools policy, intergenerational effects, the growing marginalization of Indigenous families and communities and the Sixties Scoop are apparent and well-documented.

The 1985 *Review Committee on Indian and Métis Adoptions and Placements*, chaired by Judge Edwin Kimelman (and thus also known as *The Kimelman Report*) made clear the transgenerational connections and devastating impacts of the Scoop: “[I]n Manitoba, amid charges by Indigenous communities of cultural genocide and the selling of babies in the early 1980s, the province banned the adoption placement of Indigenous children outside of provincial boundaries and appointed a committee to address the situation in 1982.”²⁴⁷ The Kimelman Report found that “[N]ative families who approached childcare agencies in search of help for funds to supply food and shelter ended up losing their children. Often times they were only offered one option: to relinquish custody of the child.”²⁴⁸ Through a series of recommendations, Kimelman concluded that there was a

²⁴⁵ Richard Wagamese, “The Sixties Scoop, the Primal Wound and Home”, (7 June 2007) online: *Yukon News* <<https://www.yukon-news.com/letters-opinions/the-sixties-scoop-the-primal-wound-and-home>>.

²⁴⁶ David Fanshel, *Far From the Reservation: The Transracial Adoption of American Indian Children* (The Scarecrow Press; New York, 1972) at 339.

²⁴⁷ Samir Shaheen-Hussain, *Fighting for a Hand to Hold: Confronting Medical Colonialism Against Indigenous Children in Canada* (Montreal/Kingston, London, Chicago: McGill-Queen’s University Press, 2020) at 181.

²⁴⁸ Edwin Kimelman, “No Quiet Place: Review Committee on Indian and Métis Adoptions and Placements Final Report to the Honourable Muriel Smith: Ministry of Community Services” (1985) Manitoba Community Services at 196.

necessity for more oversight within the area of child protective services, with special attention to considerations of culture. One of his recommendations was that “[t]he legislative definition of the best interest of the child be amended to include the requirement that a child’s cultural heritage be considered in the determination of any plan for the child.”²⁴⁹ Kimelman concluded that the systemic removal of children through the Sixties Scoop and the IRS contributed to a cultural genocide. He stated that “[i]f one native child has been placed out of province where there was no need for it, then cultural genocide has occurred (...) Manitoba had all the resources to meet the needs of the children placed out of province in 1981.”²⁵⁰ The conclusion of cultural genocide by the TRC supports Kimelman’s claims.

Defined by Article 2(e) of the *United Nations Convention for the Prevention of Genocide* as “forcibly transferring children of the group to another group”²⁵¹, it is clear that the IRS policy and the Sixties Scoop comprise a genocide. While this finding has been the subject of some debate, especially as regards the definition of genocide, there can be little question that Indigenous children were, under both policies, ‘forcibly transferred’ from their families and communities into the care and control of institutions and non-Indigenous families, with long-term and devastating consequences for Indigenous people.²⁵²

²⁴⁹ *Ibid* at iv.

²⁵⁰ *Ibid* at 354.

²⁵¹ Convention, *supra* note 165 at 2(e).

²⁵² The meaning of this has been debated. This is vital to determine “whether the intent of this policy was to destroy the children’s ethnic group, in whole or in part”. For example, consider the following that has been used as reliance interest in case law, particularly: Evidence of transfer (e.g., from one camp to another); Evidence of transporting victims out of an area, which may include procuring, monitoring, or ordering transportation of victims out of an area, and evidence of convoys carrying victims out of an area; Evidence of transfer gathered from population dynamics, including evidence of total numbers of victims displaced; Evidence of publicly announcing transfer or calling out resident’s name for future transfer; Evidence of the creation of an infrastructure to facilitate transfer, including facilitation applications for transfer, setting up agencies to facilitate transfer and collection centers to oversee transfer; Evidence of forcible transfer using duress, trauma or coercion, including the illegal confinement of the adults, while the children were forcibly transferred out of the territory; evidence of transferred persons generally having no

Conclusion

This chapter has described the Residential Schools policy and the Sixties Scoop, highlighting the former as a ‘historical trauma’ that served as a catalyst for a series of historical trauma responses that laid the foundation for the more recent historically traumatic event of the latter. As such, we see that:

Rather than an event or events, intergenerational trauma is both an antecedent and outcome of traumatic attachment. It results in a disrupted construction of intersubjective self and identity, due to the blurring of self and other, where trauma experiences by the important other becomes incorporated into the self of the recipient. Once transmitted, the trauma has its own consequences and individual effects as per all psychological and interpersonal developed traumas, including vulnerability for further transmission of trauma to subsequent generations.²⁵³

Policies of Indigenous child removal such as IRS and the Sixties Scoop have their roots in historical trauma. We see that the necropower of the state codified an inflection point of historical trauma that has affected generations of Indigenous communities. It is the understanding of these events as expressions of biopolitics and necropolitics that will be related in Chapter Four of this thesis.

real choice but to leave, and evidence of the destruction of person or person’s home. Allard K. Lowenstein, “Genocide Reinterpreted: An Analysis of the Genocide Convention’s Potential Application to Canada’s Indian Residential School System” (Paper prepared for the Canadian Truth and Reconciliation Commission by Jayme Herschkopf and Julie Hunter, Yale Law School April 2011) at 2.

²⁵³ *Isobel*, *supra* note 103 at 1100.

Chapter Four: Overrepresentation of Indigenous Children in the Child Welfare System

Introduction

The Indian Act took an adverse systemic approach to the management of Indigenous communities.²⁵⁴ This extended from the creation of IRS through the experience of the Sixties Scoop, both of which resulted in a disproportionate number of Indigenous children in the child welfare system. The 1950s amendments to the *Indian Act* allowed for provinces to receive funding from the federal government for “[e]ach Aboriginal child apprehended by child protective agencies.”²⁵⁵ By the 1970s, 25% of Indigenous children could expect to be removed from their parents.²⁵⁶

Statistics have shown that of the children in the child welfare system, 52.2% are Indigenous, though they only account for 7.7% of the population in Canada.²⁵⁷ Numbers are only data; they do not capture the historical nature of this crisis, as has been written throughout this thesis. We can see also this in both data collected by an Ontario Human Rights Commission study:

Indigenous children were overrepresented in admissions into care at 93% of agencies we looked at, with many CASs [Child Support Agencies] showing extreme levels of disproportionality. Overall, the proportion of Indigenous children admitted into care was 2.6 times greater than their proportion in the child population. Overrepresentation can be described as the rate at which a racial group has a higher proportion than those of another group.²⁵⁸

²⁵⁴ Lawrence Kirmayer, Cori Simpson & Margaret Cargo, “Healing Traditions: Culture, Community & Mental Health Promotion with Canadian Aboriginal Peoples” (2003) 11 *Australasian Psychiatry* S15 at S.17.

²⁵⁵ Janet Smylie, “A Guide for Health Professionals Working With Aboriginal Peoples: The Sociocultural Context of Aboriginal Peoples in Canada” (2000) *The Can Institute Mental Health* 1 at 9.

²⁵⁶ *Ibid.*

²⁵⁷ Canada, “Reducing the number of Indigenous Children in Care, *supra* note 13.

²⁵⁸ OHRC, *supra* note 160 at 4.

These figures likely underestimate the proportions of Indigenous children admitted into care.²⁵⁹ One reason for this resides in the number of different homes the same child may be placed into at different point in their lives as well as provinces and territory have varying legislation to govern child welfare. Due to varied provincial legislation, reports have been released which indicate that as a result of legislative inconsistency, data which indicates the number children in care can also be fragmented.²⁶⁰ Children are placed into inter-provincial homes as well. For example, Inuit children are being placed into Ottawa homes at a high rate.²⁶¹ Due to structural funding, the number of social workers assigned to each of these children is sporadic. In addition, language barriers can prevent Inuit children, who only speak Inuktitut, from speaking to local workers and have to resort to calling social workers in Nunavut.²⁶²

Written accounts demonstrate how forced displacement of Indigenous children can affect mental health and translate to historical trauma responses. In a study conducted by Cindy Blackstock, one of those accounts is as follows:

‘Help Me’ wrote Richard Cardinal in his own blood while this 17-year old Métis boy committed suicide after spending 13 years moving in and out of 28 foster homes, group homes and shelters in Alberta. Although Cardinal’s death drew attention to the significant overrepresentation of Aboriginal children in state care, 20 years later, the problem has become far more serious, with Aboriginal children representing 40% or 76,000 children and youth placed in out-of-home care in Canada.²⁶³

²⁵⁹ *Ibid.*

²⁶⁰ Brittany Barker, Gerald Taiaiake Alfred & Thomas Kerr, “An Uncaring State: The Overrepresentation of First Nations children in the Canadian Child Welfare System” (2014) online: *CMAJ* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4188683/pdf/186e533.pdf>>.

²⁶¹ Kenneth Jackson, “Nunavut continues to leave foster kids in Ottawa group homes without local social worker” (3 May 2017) online: *APTN National News*, <<https://www.aptnnews.ca/national-news/nunavut-continues-to-leave-foster-kids-in-ottawa-group-homes-without-local-social-worker/>>.

²⁶² *Ibid.*

²⁶³ Cindy Blackstock & Nico Trocmé, “Community-Based Child Welfare for Aboriginal Children: Supporting Resilience through Structural Change” (2005) 24 Soc Policy J New Zealand 12 at 12.

To address systemic inequality, we not only consider statistics, but we also consider the lived experiences of these insidious policies.

This chapter will explore the growing crisis of the overrepresentation of Indigenous children in the child welfare system. To do so, this chapter addresses key policies that contributed to this crisis. This chapter also explores the national legislative impact of the Calls to Action of the TRC and the Calls for Justice in the NIMMIWG. This chapter will contextualize how recent rulings from the Canadian Human Rights Tribunal are responsible for addressing available services and programming for on-reserve and off-reserve Indigenous children.

Addressing the Crisis

Canada has engaged in numerous non-apologies and apologies for residential school policies. There have been apologies on the floor of the House of Commons from leaders of different parties and different governments, with the first apology given by Prime Minister Stephen Harper in 2008, a little over thirteen years ago at the time of this writing and twenty two years after the last residential school closed.²⁶⁴ Prime Minister Justin Trudeau also apologized for Canada's harmful colonial policies.²⁶⁵ Despite the work that has been done to move towards reconciliation, we continue to see how the necropolitics that occurred at the time of residential schools continues today.

Theoretically, we have discussed how biopolitics, as a standalone theory, is insufficient to discuss the national treatment of Indigenous peoples in Canada. Biopolitics

²⁶⁴ CBC Archives, "Government apologizes for residential schools in 2008" (25 June 2008) online: *CBC Archives* <<https://www.cbc.ca/archives/government-apologizes-for-residential-schools-in-2008-1.4666041>>.

²⁶⁵ Catherine McIntyre, "Read Justin Trudeau's apology to residential school survivors in Newfoundland" (24 November 2017) online: *Macleans's* <<https://www.macleans.ca/news/canada/read-justin-trudeaus-apology-to-residential-school-survivors-in-newfoundland/>>.

is about control, but necropolitics is about colonization. We see this in the high rates of child apprehension that continue to cause distress and displacement. We have seen how recent national statistics indicate a disparity in the number of Indigenous children in child welfare in compared to non-Indigenous children. The Ontario Human Rights Commission's report on the overrepresentation of Indigenous children in child welfare reflect national statistics while also providing historical context for this overrepresentation. We have also seen how national policies of Indigenous child removal have had long-term and transgenerational consequences:

The percentage of residential school children who were there for child-welfare reasons only increased in the 1960s. A 1966 study of nine Residential Schools in Saskatchewan concluded that 59.1% of the students enrolled were there for what was termed 'welfare reasons'. Due to federal/provincial/territorial funding disputes, apprehensions were usually the only child welfare service provided to Indigenous communities.²⁶⁶

As there were ongoing funding disagreements between the federal and provincial governments, it was found that apprehending Indigenous children was the primary child welfare service available to communities.²⁶⁷ Many Indigenous communities began to develop their own child welfare agencies in order to offer "[c]ulturally relevant child welfare services to children, youth and families both on and off reserves".²⁶⁸ The inclusion of varied sources of documentation (national statistics, long-term provincial studies, commissions of inquiry and survivor testimony) show both a pattern and documentation of how national policies have resulted in a significant negative impact for Indigenous communities in Canada.

²⁶⁶ National Collaborating Centre For Aboriginal health, "Indigenous Children and the Child Welfare System in Canada" (2018) online: *Child, Youth and Family Health Online*, [pdf] <<http://www.nccih.ca/docs/health/FS-ChildWelfareCanada-EN.pdf>> at 3.

²⁶⁷ *Ibid.*

²⁶⁸ *Ibid* at 4.

One of the first reports on the impacts of the disproportionate number of Indigenous children in the child welfare system is the Caldwell Report. Written by social worker George Caldwell in 1967, the Report provided recommendations for addressing the growing number of Indigenous children in the child welfare system by studying child welfare as a primary reason for attendance at a residential school. He noted that 80% of children placed into residential schools were there due to issues related to child welfare.²⁶⁹ However, this must be placed in context. Caldwell's report is selective in the inclusion of information to fit within a white colonial framework. Caldwell identifies and recommends that we must be "(...) sensitive to the special needs of the Indian child as he grows and develops into an adult Indian in Canadian society."²⁷⁰ It should also be noted that the report specifically identified a positive view of residential schools.²⁷¹ Specifically, Caldwell, a trained social worker, noted that the students indicated they enjoyed the residential school experience as opposed to integration. Though he made recommendations to improve IRS, he did not recommend closure. Cindy Blackstock was critical of such actions. She wrote that " '[i]f we had only known – we would have acted differently', which may provide some false comfort but in the case of social work – it did know, and it acted as it acted – largely in complicit support of the residential school system".²⁷²

²⁶⁹ Cindy Blackstock, "For Indigenous kids' welfare, our government knows better; it just needs to do better" (16 January 2019) online: *Globe and Mail Opinion*, <<https://www.theglobeandmail.com/opinion/article-for-indigenous-kids-welfare-our-government-knows-better-they-just/>>. When IRS began to shift from their mandate of civilizing and Christianising Indigenous children, they instead became centres for child welfare services.

²⁷⁰ George Caldwell, "Indian Residential Schools – A Research Study of the Child Care Programs of Nine Residential Schools in Canada" (1967) Department of Indian Affairs and Northern Development, Government of Canada, Ottawa at 4. [Caldwell].

²⁷¹ *Ibid* at 143.

²⁷² Cindy Blackstock, "The Occasional Evil of Angels: Learning from the Experiences of Aboriginal Peoples and Social Work" (2019) 14:1 *First Peoples Child Fam Rev* 137 at 144.

In actuality, we see how the historical trauma of IRS led to manifestation of historical trauma responses such as depression, suicide and suicidal ideation, among others. These are long-term ramifications of transgenerational trauma as a result of colonial policies that continue to exist. The child welfare system, for Indigenous children, has perpetuated a cycle of drastic harm as a result of these colonial policies where there is no longer is a growing crisis but is a crisis where 102 Indigenous children died from involvement in the child welfare system in the province of Ontario from 2013-2017.²⁷³ The leading cause of death was suicide.²⁷⁴

Nonetheless, Caldwell's report provided a set of recommendations to address reformations to the child welfare system. He recommended that one of the primary actions should be:

That family and child welfare services be established to aid and assist Indian families, and that these services be provided by the Child Welfare Division of the provincial Department of Public Welfare under the agreement in Part 2 of the Canada Assistance Act of the Parliament of Canada. Provision of family and child welfare services should not be restructured to the narrow definition of investigating allegations or evidence of neglect of children, but recognition should be given to prevention of family deterioration, and professional services given to strengthen and maintain family life. In families where the protection of children is an issue, all of the resources and authority of the child welfare legislation should be used.²⁷⁵

He found that entry into residential schools was a substitute for the child welfare system, and that the majority of children were transferred into the care of schools as opposed to the child welfare system.²⁷⁶ A consistent roadblock was that provinces retained control over

²⁷³ Kenneth Jackson, "Death as Expected: Inside a Child Welfare System where 102 Indigenous kids died over 5 years" (25 September 2019) online: *APTN News* <<https://www.aptnnews.ca/national-news/inside-a-child-welfare-system-where-102-indigenous-kids-died-over-5-years/>>.

²⁷⁴ *Ibid.*

²⁷⁵ Caldwell, *supra* note 265 at 148-149.

²⁷⁶ *Ibid* at 152.

child welfare services. As residential schools were federally governed, there were fewer regulations for children to be transferred into residential schools as opposed to child-care. This became an opportunity for the federal government to portray (false) sentiments of protecting the interests of Indigenous children.

Caldwell's report was followed by the Kimelman report (discussed earlier, in Chapter Three) and was also discoursed in the RCAP, which found that as residential schools began to close, the child welfare system perpetuated the colonial framework that begat the residential school system. It was found that there were many reasons for the high rates of children in care and most arose from the impacts of historical trauma, intergenerational effects, suspicion of governmental agencies and cultural loss.²⁷⁷

The number of Indigenous children that are currently within the care of child welfare services is comparable to the number of Indigenous children who attended residential schools. We cannot claim reconciliation if we substitute one system of internment for another. We continue to foster trauma by removing children from their family of origin by indicating that this is in the best interest of a child, especially as the state's reasons for the removal into care are same state colonial policies that contributed to transgenerational trauma caused by attendance at IRS. In both the findings of the TRC and the NIMMIWG, there was a concerted set of recommendations to address the crisis of the overrepresentation of Indigenous children in the child welfare system. Cindy Blackstock, in testifying NIMMIWG found that there is a "[d]irect link" between the child welfare system and MMIWG.²⁷⁸ Blackstock specifically cited the case and death of Tina Fontaine,

²⁷⁷ OHRC, *supra* note 160 at 28.

²⁷⁸ Jillian Taylor, "Tina Fontaine is that 'direct link' between MMIWG, child welfare system, advocate says at inquiry hearing" (3 October 2018) online: *CBC News*

who was a charge of Child and Family Services at the time of her death in 2014. Due to the high level of media attention that resulted from her death led to the commission into missing and murdered Indigenous women, which lead to the NIMMIWG.²⁷⁹

Historically, the responsibility for providing child welfare services to Indigenous children was jurisdictionally ambiguous as both Federal and Provincial governments could point to statutory provisions that absolved them from responsibility over Indigenous children - an ironic twist given the federal government's prior assertion of control over Indigenous children through its IRS policies. In stepping away from that responsibility, the Federal government relied on s.88 of the 1951 amendments to the *Indian Act*, which read:

Subject to the terms of any treaty and any other Act of the Parliament of Canada, *all laws of general application* from time to time in force of any province are applicable to and respect to Indians in the province, except to the extent that such laws are inconsistent with this Act or any order, rule, regulation or by-laws made thereunder, and except to the extent that such laws make provision for any matter for which provision is made under this Act.²⁸⁰

Drawing on this section, Federal governments argued that “[l]aws of general application were not consistent with the *Indian Act*”²⁸¹ and therefore the provincial governments’ general responsibility for child welfare services within the provinces extended to those Indigenous people within provincial boundaries, both on and off-reserve.²⁸² Provincial governments argued that responsibility falls to the Federal government, in accordance with the section 91.24 of the *British North American Act* which read:

<<https://www.cbc.ca/news/canada/manitoba/mmiwg-national-inquiry-cindy-blackstock-winnipeg-1.4848538>>.

²⁷⁹ Katie Dangerfield, “How the tragic death of Tina Fontaine helped spark the MMIWG Inquiry” (23 February 2018) online: *Global News* < <https://globalnews.ca/news/4043492/tina-fontaine-march-mmiwg-inquiry>>.

²⁸⁰ *Revised Statutes of Canada 1970*, C. 1-6, s.88 [emphasis, added]. [RSC]

²⁸¹ Johnston, *supra* note 239 at 5

²⁸² *Ibid.*

It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order and Good Government of Canada, in relation to all Matters not coming within the Classes of Subjects of this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming with the classes of Subjects next herein-after enumerated; that is to say... (24) *Indians, and Lands reserved for Indians*.²⁸³

Currently, each province/territory has their own laws regarding health and family services, which includes child welfare. As such, although many Indigenous communities have sought to develop culturally appropriate child welfare services, governmental regulations have greatly reduced their chances of success. There have been successes. For example, in 1980 the Spallumcheen Indian Band were successful in bringing forward a motion to “[t]ransfer complete authority to the Band for the care and protection of all Band children.”²⁸⁴ The Minister of Human Resources in British Columbia was supportive of this motion.²⁸⁵ This agreement gave way for Indigenous councils to determine the best interest of the child in question.²⁸⁶ The final (and last resort) option should be a non-Indigenous family living off the reserve. This was a hard-fought victory on the road for Indigenous community control over child welfare services as it highlighted the importance of cultural continuity for Indigenous children. There are also deviations in the services rendered to

²⁸³ RSC, *supra* note 280, Appendices No. 5 s.91.24.

²⁸⁴ John A. MacDonald, “The Spallumcheen Indian Band By-Law and Its Potential Impact on Native Indian Children Child Welfare Policy in British Columbia” (1983) 4:1 Can J Fam L 75 at 76.

²⁸⁵ *Ibid.*

²⁸⁶ The best interest of a child was determined by following a specific list in which the order of placement of Indigenous children would occur in cases of child welfare. (1) With one of the child’s parents; (2) With a member of the extended family living on the reserve; (3) With a member of the extended family living on another Indian reserve; (4) With a member of the extended family living off the reserve; (5) With an Indian living on a reserve; (6) With an Indian living off a reserve; (7) *As a last resort* with a non-Indian living off the reserve. *Ibid* at 89. [emphasis added].

Indigenous communities based on the bureaucratic structure of available programming. For example:

On reserves, Aboriginal Affairs and Northern Development Canada provides funds in accordance with agreements with provinces, territories or individual agencies, whereas off-reserves, provinces and territories provide funds in accordance with provincial or territorial budgeting processes.²⁸⁷

Ultimately, we see that, based on the modeling, the availability of services for communities differs for Indigenous peoples living on-reserve as opposed to off-reserve. We also find that two policy strategies, Jordan's Principle and Bill C-92, have endeavoured to bring about a national child welfare system.²⁸⁸ One of the primary barriers that exists is that each province in Canada governs child welfare services through different legislation. There remain deviations from the consultation practice with Bands/Communities into what is best for Indigenous children.

For Indigenous children, the child welfare system has been utilized as a continuation of the residential school for removal of children from their homes. Services vary for children on reserve as opposed to children off of reserve. Sinha and Kozlowski outlined key subsections that determined protocols for Indigenous children in child welfare: "[B]and notification of court of placement, Aboriginal involvement in case management, Aboriginal involvement in service planning or delivery, Prioritization of kinship care Band submission of cultural connection plan invited, Connection to aboriginal culture – best interest of the child."²⁸⁹ As each province/territory is responsible for the administration of health and social services, the legislation employed for child welfare

²⁸⁷ Vandna Sinha & Anna Kozlowski, "The Structure of Aboriginal Child Welfare in Canada" (2013) 4:2 Intl Indigenous Policy J 1 at 12.

²⁸⁸ *Ibid* at 16.

²⁸⁹ *Ibid* at 8.

varies. Table Three outlines the legislation used for each province/territory to govern their child welfare system as well as which of the key protocols, as described by Sinha and Kozlowski are utilized.

Table Three: Considerations for Aboriginal Children, Families and Communities in Primary Provincial or Territorial Legislation.²⁹⁰

| Province or Territory | Legislation | Protocols Used |
|-----------------------|---|--|
| British Columbia | <i>Child Family and Community Service Act</i> | <ul style="list-style-type: none"> • Band notification of court or placement • Aboriginal involvement in service-planning or delivery • Prioritization of kinship care • Band submission of cultural connection plan invited • Connection to Aboriginal culture – best interest of the child |
| Alberta | <i>Child, Youth and Family Enhancement Act</i> | <ul style="list-style-type: none"> • Band notification of court or placement • Aboriginal involvement in case management • Aboriginal involvement in service-planning or delivery • Band submission of cultural connection plan invited • Connection to Aboriginal culture – best interest of the child |
| Saskatchewan | <i>Child and Family Services Act</i> | <ul style="list-style-type: none"> • Band notification of court or placement • Aboriginal involvement in case management; |
| Manitoba | <i>Child and Family Services Act; Child and Family Services Authoritarian Act</i> | <ul style="list-style-type: none"> • Band notification of court or placement • Aboriginal involvement in case management • Aboriginal involvement in service-planning or delivery • Prioritization of kinship care |
| Ontario | <i>Child and Family Services Act</i> | <ul style="list-style-type: none"> • Band notification of court or placement • Aboriginal involvement in case management • Aboriginal involvement in service-planning or delivery • Prioritization of kinship care • Band submission of cultural connection plan invited • Connection to Aboriginal culture – best interest of the child |
| Quebec | <i>Youth Protection Act</i> | <ul style="list-style-type: none"> • Aboriginal involvement in service-planning or delivery • Prioritization of kinship care |

²⁹⁰ *Ibid* at 10.

| Province or Territory | Legislation | Protocols Used |
|--|---|--|
| Nova Scotia ²⁹¹ | <i>Child and Family Services Act</i> | <ul style="list-style-type: none"> • Band notification of court or placement |
| New Brunswick | <i>Family Services Act</i> | |
| Prince Edward Island | <i>Child Protection Act</i> | <ul style="list-style-type: none"> • Band notification of court or placement • Aboriginal involvement in case management • Band submission of cultural connection plan invited • Connection to Aboriginal culture – best interest of the child |
| Yukon | <i>Child and Family Services Act</i> | <ul style="list-style-type: none"> • Band notification of court or placement • Aboriginal involvement in service-planning or delivery • Prioritization of kinship care • Connection to Aboriginal culture – best interest of the child |
| Northwest Territories | <i>Child and Family Services Act</i> | <ul style="list-style-type: none"> • Band notification of court or placement • Band submission of cultural connection plan invited |
| Newfoundland and Labrador ²⁹² | <i>Child, Youth and Family Services Act</i> | |
| Nunavut ²⁹³ | | |

We also see how, despite protocols being followed, there are deviations in the experiences of Indigenous children in child welfare. As each province asserts control over their child welfare system, consultation practices with Indigenous communities are also varied. With this in mind, it is argued that there is also a greater propensity for children to not only fall through the system, but also become caught in it. Indigenous children in care in British Columbia are twice as likely to suffer injuries as opposed to white children. These children are also more likely to suffer sexual assault, suicide attempts and be the victims of caregiver

²⁹¹ “In Nova Scotia, the First Nations child welfare agency, which serves all First Nations (reserve) communities, is notified, as opposed to the child’s band” *Ibid.*

²⁹² The Labrador Inuit Land Claim Act takes precedents over the Child Youth and Family Services Act (no other special considerations)” *Ibid.*

²⁹³ “Because Inuit represent the majority ethno-racial group, the Aboriginal-specific provisions assessed here are not necessarily directly applicable to Nunavut Legislation” *Ibid.*

violence when compared to their white counterparts.²⁹⁴ We continue to see figures that point towards a disproportionate number of Indigenous children in child welfare. Indigenous children comprise roughly 7% of the child population in Canada, to be proportionality represented in the child welfare system, they should constitute no more than 7% of children in care; the fact that they comprise in excess of 50% of children in care reflect grossly disproportionate ‘over-representation’ of Indigenous children in the child welfare system. Funding shortfalls for services have resulted in Indigenous children being twelve times more likely to be in foster care than other children.²⁹⁵ Cindy Blackstock found that children may be removed from home due to structural reasons such as poverty. As such, she recommends that “[i]mpoverished families must be provided with the economic and social supports necessary for children and youth.”²⁹⁶ To that end, we also see that there are some federal programs that, while available, can present challenges in accessibility.

In a report from the Ontario Human Rights Commission (OHRC), Indigenous children are 168% more likely to be placed into child welfare than white children during an investigation.²⁹⁷ The OHRC report supported the current, and available, national statistic of Indigenous children representing 52.2% of the children in child welfare despite representing 7.7% of the child population nationally.²⁹⁸ OHRC also found that, in the province of Ontario Indigenous children comprise of 4.1% of the under-15 population yet

²⁹⁴ Jennifer Charlesworth, *Illuminating Service Experience: A Descriptive Analysis of Injury and Death Reports for First Nations Children and Youth in B.C., 2015-2017*, (British Columbia: Representative of Children and Youth, 2020) at 2.

²⁹⁵ Cindy Blackstock, Jennifer King & Jocelyn Wattam, “Reconciliation: The Kids are here! Child Participation and the Canadian Human Rights Tribunal on First Nations Tribunal on First Nations Child Welfare” (2016) 3:1 Can J Children’s Rights at 34.

²⁹⁶ *Ibid* at 9.

²⁹⁷ OHRC, *supra* note 160 at 17.

²⁹⁸ Canada, “Reducing the number of Indigenous Children in Care”, *supra* note 13.

represent 30% of the children in child welfare.²⁹⁹ These statistics are indicative of the necropolitical *death worlds* described by Mbembe whereby the *living dead* inhabit spaces in which there is destruction as a form of social existence.³⁰⁰ As there is a deviation in not only statistics of overrepresentation, but also of child removal as a result of race, we see this as necropolitics. Policies of apprehension and child removal contributed to the transgenerational effect of IRS.

Commissions of Inquiry and the Process of Reconciliation

To reconcile with past wrongs, the federal government launched national commissions of inquiry in order to achieve structural change. Both the TRC and the NIMMIWG reported on calls to action for the federal government to address changes to child welfare policy. The first five recommendations from the TRC specifically indicate that one of the prominent ways in which the federal government can enter into the phase of reconciliation is to address the impact of national policies on children being removed from their family of origin into ‘care’, either by IRS or the child care system. The NIMMIWG is a trauma-informed inquiry that also documents the harm caused by these policies on children, and specifically indicate that gaps in the child welfare system contributed to the high number of MMIWG. The NIMMIWG found that “[t]here is a direct link between current child welfare systems and the disappearance and murders of, and violence experienced by, Indigenous women, girls and 2SLGBTQQIA people.”³⁰¹ Both the TRC

²⁹⁹ OHRC, *supra* note 160 at 16.

³⁰⁰ Mbembe, *supra* note 141 at 40. While the term ‘destruction’ can be considered to be inflammatory, we see that the overrepresentation of Indigenous children in the child welfare system is necropolitics and continues insidious colonial policies of assimilation.

³⁰¹ Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls *Volume 1(a)*, at 355. Cindy Blackstock described how the overrepresentation of Indigenous children in the child welfare system is at the root of the intergenerational effects of trauma that were examined in the MMIWG Inquiry: “[T]he whole roots of colonialism, where you create this dichotomy between the ‘savages’, that being Indigenous peoples, and the civilized, that being the colonial forces (...) If

and the NIMMIWG reported that colonial policies, such as IRS, that fostered intergenerational trauma constituted a genocide, although their use of the term was debated within public discourse, with governmental leadership differing on applicable definitions and terminology. The NIMMIWG was the third major undertaking (after the 1996 RCAP and the 2015 TRC) by Canada's government to address past policies that caused a significant negative impact on Indigenous communities.³⁰²

Appendices 1 and 2 are illustrative of the series of recommendations made by the TRC and the NIMMIWG, specifically in regard to child welfare. As the Canadian Government speaks and directs attention to 'ongoing processes of reconciliation' the Calls to Action of the TRC and the Calls for Justice of the NIMMIWG provide opportunities to shift and develop policies in accordance with findings of national inquiries.

Legislative Progress

The calls to action for child welfare reforms from the TRC address how governmental policies contributed to the disproportionate number of Indigenous children in the child welfare system. As part of their commitment to table legislation to not only address this crisis, but also to respond to the Calls to Action of the TRC, the Canadian government began the necessary step of meeting with the leadership of Indigenous communities to seek input into legislation. National Indigenous leaders expressed support

you're a savage, you can't look after the land, and so the civilized have to take over. And if you're a savage, you can't look out for your children, and the civilized have to look after them (...) To give you a sense of the scale of it just for on-reserve, between 1989 and 2020, we've known that First Nations kids are 12 times more likely to go into child welfare care, primarily driven by poverty, substance misuse and poor housing".

³⁰² The approach adopted by the NIMMIWG was rooted in historical trauma: "[I]ncorporating knowledge of trauma into all policies, procedures and practices of solutions and services is crucial to the implementation of the Calls for Justice. It is fundamental to recognizing the impacts of trauma and to responding appropriately to signs of trauma. Interpretation and implementation of the Calls for Justice must include funding to ensure all necessary steps to create a trauma-informed approach to deliver trauma-informed services are viable." *MMIWG, supra* note 11 at 176.

for this legislation – at least insofar as they were invited to be actively involved in the development of these policies.³⁰³ For example, one of the commissioners who sat on the

TRC stated the following:

During the years spent as one of the Commissioners of the Truth and Reconciliation Commission, it became very clear what occurred intergenerationally when Indigenous children were removed from their families with the trauma that entailed and continues through the current child welfare system. Healing our families is of the utmost importance in keeping our Indigenous children within their own family units and our Nations. As a Commissioner but more importantly as a Grandfather, I strongly believe that our First Nations' inherent rights of self-determination as supported internationally through the Treaties, the UN Convention on the Rights of the Child, UN and OAS Declarations on the Rights of Indigenous Peoples, must be respected and recognized by all governments. No longer can legislation be made for us – we must be directly involved in the creation of our own Laws that are recognized and supported by Canada. – Dr. Wilton Littlechild.³⁰⁴

Bill C-92³⁰⁵, a Federal Bill passed by Canadian Parliament, responds to the fourth call to action from the TRC. This legislation provides Indigenous communities with more influence over child and family services. C-92 works to reduce the number of Indigenous children in care, allow Indigenous children to experience dignity by retaining their culture and provides remedies designed to prevent further harm.

The fourth Call to Action from the TRC recommends the following actions be taken by the Federal government:

1. Affirm the rights of Aboriginal governments to establish and maintain their own child-welfare agencies.
2. Require all child-welfare agencies and course to take the residential school legacy into account in their decision making.

³⁰³ Canada, “Support for Child and Family Services Co-Developed Legislation” (30 November 2018) online: *Indigenous Services Canada* <<https://www.sac-isc.gc.ca/eng/1543584936789/1543585105080>>.

³⁰⁴ *Ibid.*

³⁰⁵ C-92, *An Act Respecting First Nations, Inuit and Métis Children, Youth and Families*, 1st Sess, 2nd Parl, 2019, (as passed by the House of Commons 21 June 2019). [C-92]

3. Establish, as an important priority, a requirement that placements of Aboriginal children into temporary and permanent care be culturally appropriate.³⁰⁶

In order to achieve these goals, the bill provides a framework to provide equitable health care for children while maintaining their culture.³⁰⁷ Bill C-92, similar to the framework of the By-Law introduced by the Spallumcheen Indian Band for the best interest of the child, includes the following factors to be considered for child welfare reformations:

1. The child's cultural, linguistic, religious and spiritual upbringings and heritage.
2. The child's needs, given the child's age and stage of development, such as the child's needs for stability.
3. The nature and strengths of the child's relationship with his or her parent, the care provider and any member of his or her family who plays an important role.
4. The importance to the child of preserving the child's cultural identity and connections to the language and territory of the Indigenous group, community or people to which the child belongs.
5. The child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained.
6. Any plans for the child's care, including care in accordance with customs or traditions of the Indigenous group, community or people to which the child belongs.
7. Any family violence and impact on the child, including whether or not the child has been directly or indirectly exposed to family violence as well as the physical, emotional or psychological harm or risk of harm to the child.
8. Any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.³⁰⁸

Yet there are shortfalls. Hadley Friedland from the University of Alberta indicated that while C-92 is a step in the right direction, there remains a lack of “[m]oney, implementation, and oversight.”³⁰⁹ By specifically claiming to act in the best interest of the

³⁰⁶ TRC “Calls to Action”, *supra* note 11.

³⁰⁷ C-92, *supra* note 305 at s.9.

³⁰⁸ *Ibid* at s. 10.3 (a-h).

³⁰⁹ Brett Forester, “Federal Indigenous child welfare Bill C-92 kicks in – now what?” (1 January 2020) online: *APTN National News*, <<https://www.aptnnews.ca/national-news/federal-indigenous--welfare-bill-c-92-kicks-in/>>.

child, this can lead to less Indigenous governance over child welfare cases.³¹⁰ It appears as though reception has been mixed in regard to this bill. Time will tell whether or not this legislation will present a shift from current policy the legislation sets out that Indigenous children in child welfare should maintain connection to their culture.³¹¹

Conclusion

Canada is a signatory on the *United Nations Convention on the Rights of a Child* (CRC).³¹² Article 30 indicates that “[I]n those states in which ethnic religious or linguistic minorities of indigenous origin exist, a child belonging to such a minority group or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her group, to enjoy his or her culture, to profess or practice his or her own religion or to use his or her own language.”³¹³ National policies of Indigenous child removal contravened the stipulations set out by Article 30. The last IRS closed in 1996, which indicates that these schools remained in operation in opposition to commitments of the best interest of the child through a respect of cultural rights. As Indigenous children are placed into care at a disproportionate rate, we also see how cultural language and heritage can be suppressed without being given the opportunity to practice their religious traditions.

The necropolitical policies that begat the residential school system have continued within the child welfare system for Indigenous children. While schools were to be located in communities to provide education for Indigenous children, what followed were calculated policies of assimilation by removing Indigenous children from their families.

³¹⁰ *Ibid.*

³¹¹ *Ibid.*

³¹² UN Commission on Human Rights, *Convention on the Rights of the Child*, 7 March 1990, E/CN.4RES/1990/74.

³¹³ *Ibid* at article 30.

This is in contrast to Treaty 4, which indicated that “[T]he Queen wishes her red children to learn the cunning of the white man and when they are ready for it, she will send schoolmasters on every Reserve and pay them”.³¹⁴ Further treaties were revised to deviate from the language in this treaty, along with the *Indian Act* being amended.

Indigenous children were subjected to torture spiritually, physically and sexually in order to ‘kill the Indian in the child’. In the last several years, Canada has publicly committed to reconciliation, but that does not appear to be reflected in policies regarding access to health and social services for Indigenous children. Children continue to be apprehended at an alarming rate and placed into a child welfare system that, perhaps despite the best intentions, fosters assimilation. The federal government, in a Canadian Human Rights Tribunal ruling, has also been found guilty of severely underfunding child welfare services for both on-reserve and off-reserve Indigenous children.³¹⁵

Historical trauma has a transgenerational affect and contributes to historical trauma responses. As such, when we consider the root cause of the disproportionate number of Indigenous children in child welfare, we see how insidious colonial policies of assimilation are contributing factors. There remains a correlation between the institutionalization of Indigenous children in the residential school system and the overrepresentation of Indigenous children in the child welfare system.

³¹⁴ Miller, *supra* note 171 at 98.

³¹⁵ *Supra* note 7.

Conclusion

Research Analysis

This thesis began with an analysis of historical trauma (as theory) and historical trauma responses, based on Dr. Maria Yellow Horse Brave Heart's work. Brave Heart's work in this area led to Dr. Teresa Evans-Campbell's development of the Colonial Trauma Response and Dr. Joseph Gone's theory of Indigenous Historical Trauma. This theory is foundational to understanding how colonial structures, in conjunction with policies of Indigenous child removal contribute to the overrepresentation of Indigenous children in the child welfare system. The historic trauma response is the manifested in the reaction to historical trauma. For example, we see high levels of suicide and suicidal ideation (historical trauma response) linked to survivors of IRS (historical trauma). Yet, there is a spirit of resilience amongst Indigenous communities as a result of collective and community healing.³¹⁶

Historical trauma is often linked to an inflection point. For Brave Heart, the massacre at Wounded Knee is cited as a marker of historical trauma for the Lakota. In Canada, we see how the residential school system and the Sixties Scoop are both emblematic of historical trauma. The policies of Indigenous child removal from their family of origin has been a focus of the RCAP, the TRC and the NIMMIWG, each of which detailed that the finding of a cultural genocide is a response to national governmental policies. The 'scooping' (as indicated in the work of Patrick Johnston) and apprehending

³¹⁶ One of the modes of healing that was discussed in this section is that of the seven generations of teaching that was described by Borrows. Borrows teachings on resilience stressed the holistic model of goodness to healing. It was a similar strategy that was imparted by in Brave Heart's teachings on resilience by healing the soul wound caused by historical trauma.

of Indigenous children from their family of origin substantially brought about a disproportionate number of Indigenous children in the child welfare system.

Theoretical approaches of biopolitics and necropolitics built a framework by which power structures are imposed by states that create a ‘state of exception’ by which governments can determine ‘who can live and who must die’. Colonial policies fostered an environment by which Indigenous children were systemically removed from their homes and were subjected to cultural genocide. Yet, we have also seen substantial movement in a positive direction.

The introduction and passing of Bill C-92, albeit with some rightful criticism, shows a commitment on the part of the federal government to address systemic inequities in the child welfare system. In addition, the rulings from the Canadian Human Rights Tribunal and Jordan’s Principle brought to public attention how there also remains a deviation in the accessibility of health and social services for on-reserve versus off-reserve Indigenous children. In December of 2020, as part of their commitment to reconciliation, the government of Canada introduced Bill C-15, which integrates the *United Nations Declaration on the Rights of Indigenous Peoples* into Canadian legislation. When we consider the purpose of this legislation, in accordance with this thesis, we see the prominence and commitment to the implementation of the Calls to Action from the TRC as well as the Calls for the Justice from the NIMMIWG. As this bill has not yet received Royal Assent, we cannot accurately assess the impact, but it does reflect a commitment to bring awareness to the centrality of the Crown’s relationship with Indigenous communities.

Historical Trauma and Resilience

Dr. Maria Yellow Horse Brave Heart described the historical trauma response (HTR) as “[t]he constellation of features in reaction to a traumatic event of a series of events has been called the trauma response and encompasses symptomatology.”³¹⁷ The HTR that is promulgated in the experiences of child welfare can be described as such:

Many students were permanently damaged by residential schools. Separated from their parents, they grew up knowing neither respect nor affection. A school system that mocked and suppressed their families’ cultures and traditions destroyed their sense of self-worth. Poorly trained teachers working with an irrelevant curriculum left students feeling branded as failures. Children who had been bullied and abused carried a burden of shame and anger for the rest of their lives. Overwhelmed by this legacy, many succumbed to despair and depression. Countless lives were lost to alcohol and drugs. Families were destroyed, children were displaced by the child welfare system.³¹⁸

Brave Heart’s theory of historical trauma is grounded in an approach that assesses the impacts of cumulative and intergenerational trauma. Based on Brave Heart’s work, this thesis has considered IRS as a national inflection point of historical trauma that caused transgenerational historical trauma responses. As such, the findings of the TRC is consistent with assessing the long-term impact of historical trauma.

There remain significant challenges in the area of mental health recovery, including most notably an over-reliance on mental health healing methods based on Western ideology. The holistic model (that is to say, body, mind and soul) for example, allows for practitioners to consider the Seven Generations Teachings.³¹⁹ The Seven Generations teachings contemplate the impact of decisions made that will affect not only the current

³¹⁷ Brave Heart, “The Historical Trauma Response”, *supra* note 30.

³¹⁸ Daniella Zalcman, “Kill the Indian, Save the man: On the Painful Legacy of Canada’s Residential Schools” (2016) 33:3 World Policy Institute at 81.

³¹⁹ *Ibid* at 274.

generations, but seven generations into the future. The holistic model considers: “[w]isdom, love, respect, bravery, humility, honesty and truth”.³²⁰ It is models such as these, along with a strong focus on Indigenous education, that are recommended for journeys of healing.³²¹ Culturally informed interventions are separate from traditional Western modes of recovery due to avoiding the spirit and body in order to offer a holistic approach to healing.³²² In addition, Kirmayer suggests that the continued usage of the Mi’kmaq language, which in spite of the intergenerational harm caused by IRS and policies of colonization, speaks to cohesiveness and strength of community bonds.³²³

Addressing intergenerational trauma is foundational to achieving resilience and foundational to Brave Heart’s theory. Brave Heart considered that historical trauma and historical trauma responses can be proximate and distal. For example, Brave Heart suggests that working to heal the trauma of boarding schools (a distal response: historical trauma) can assist in the healing of addictions to substances (proximal: historical trauma response).³²⁴ Brave Heart suggested that the holistic model works towards building relationships between parents and children as the Seven Laws teaching is both individual and community-based.³²⁵

³²⁰ In his paper, Borrows used the traditional Anishinabek names for each of these: “*Nbwaakaawin, Zaagidwin, Mnaadendemowin, Aakwade’ewin, Dbaadendiziwin, Gwekwaadziwin and Debwewin*” John Borrows, “Seven Generations, Seven Teachings: Ending the Indian Act” (Paper delivered for the National Centre for First Nations Governance, May 2008) at 31.

³²¹ *Ibid* at 279.

³²² Jessica Liddell & Catherine Burnette, “Culturally-Informed Interventions for Substance Abuse Among Indigenous Youth in the United States” (2017) 14:5 *J Evidenced-Informed Soc Work* 329 at 331.

³²³ Laurence J. Kirmayer et al, “Rethinking Resilience from Indigenous Perspectives”, (2011) 56:2 *Can J Psychiatry* 84 at 87.

³²⁴ Maria Yellow Horse Brave Heart, “*Oyate Ptayela: Rebuilding the Lakota Nation Through Addressing Historical Trauma Among Lakota Parents*” (1999) 2:1-2 109 at 118.

³²⁵ *Ibid* at 120.

Indigenous communities have found a way to integrate their cultural practices and beliefs into their shared collected experiences of healing.³²⁶ The collective experience of healing is a community-centered as opposed to an individualized mental health treatment program.³²⁷ Community-based models can lead to success and were found to be a “[d]efensive factor”³²⁸ against suicide. Communities that were self-governed experienced lower percentages of suicide as opposed to those that were not.³²⁹ Whitbeck’s long-term study on the persistence of historical trauma in Indigenous communities and its psychic impacts found that good treatment models “developed in consultation with tribal members and elders” will ensure that:

Measures contain many cultural components specific to both Native American and First Nations people and the traditional activities component includes a large variety of traditional activities that span across culture. In addition, the incorporation of elements that measure beliefs, actions and identification is a more holistic way of capturing cultural connection.³³⁰

Research on historical trauma has found that historical trauma responses are a result of inflection points in which Indigenous communities were subjected to both physiological and psychological wounds. As such, there is also a need to address resilience among Indigenous communities. Brave Heart’s work on resilience among Indigenous communities determined that:

Healing from generations of trauma and unresolved grief appears feasible. Neither Wounded Knee nor the generational boarding school trauma can be forgotten. However, the Lakota must shift from identifying with the victimization and massacre of deceased ancestors and begin to develop a constructive collective memory and a healthy collective ego which includes

³²⁶ Health Canada & Assembly of First Nations. *First Nations Mental Wellness Continuum Framework*. Ottawa (ON): Health Canada, 2015.

³²⁷ Lawrence Kirmayer, Cori Simpson & Margaret Cargo, “Healing Traditions: Culture, Community and Mental Health Promotion with Canadian Aboriginal Peoples” (2003) 11 *Australasian Psychiatry* S15 at S21

³²⁸ Elizabeth Fast & Delphine Collin-Vézina, “Historical Trauma, Race-based Trauma and Resilience of Indigenous Peoples: A Literature Review” (2010) 5:1 *First Peoples Child Fam Rev* 126 at 133.

³²⁹ *Ibid* at 134.

³³⁰ *Ibid* at 135.

traditional Lakota values and language, so the words of the Hunkpapa Elders Council will resound: (...) *Look at our children, they're going to live again, they're going to live again. Sitting Bull says this as he rides.*³³¹

For example, as previously discussed in Lev-Wiesel's study, there is a need for clinicians to take into account experiences of previous generations when working with clients.³³²

A Western approach to child welfare services for Indigenous children has proven inadequate in addressing systemic racism and historical trauma. Cindy Blackstock, in writing about opportunities to achieve reconciliation through the reform of child welfare approaches, found that “[r]esilience is part of an overall change process, and Jordan’s Principle is one vehicle for pioneering for change to enhance the resilience of under-served groups.”³³³

The commissions of inquiry that have been undertaken in Canada represented a commitment to evolve and to grow from policies that perpetrated harm. The TRC and NIMMIWG are representative of two such inquiries. They were born of acknowledgement, and to reconcile how harmful governmental policies contributed to intergenerational harm. For the context of this research, the prominent calls to action and calls for justice that were analyzed were those pertaining to the overrepresentation of Indigenous children in the child welfare system. The Calls for Justice from the NIMMIWG recognized how colonial policies of displacement and the high number of Indigenous children in the child welfare

³³¹ Brave Heart, “The Return to the Sacred Path”, *supra* note 32 at 301.

³³² As an example, the following comment is reflective of interviews and studies that I have come across: “[A] lot of pain and suffering our family has gone through. A lot of things that have happened to our family that were unjust, that were cruel, that were downright murderous, but we survived. My father would tell me many other stories about pain and suffering and unjust things that happened to our family. And he would always bring it back to the center and say, maybe the reasons for that was so you boys could make a better life for your family”. Aaron R. Denham, “Rethinking Historical Trauma: Narratives of Resilience”, (2008) 45:3 *Transcultural Psychiatry* 391 at 391.

³³³ Cindy Blackstock & Andrea Auger, “Pursuing Human Rights for Community-Level Resilience: The Jordan’s Principle Case, Process and Initiative as Resilient Community Action” (2013) 1:1 *Intl J Child Adolescent Resilience* 84 at 87.

system left them vulnerable to violence. The Calls to Action in the TRC proposed ways to address this growing crisis.

Opportunities For Further Studies

Former Chief Justice Beverly McLachlin wrote: “[w]hile I cannot predict the future I believe we are on the right road. There is no doubt that we have made progress in our quest for a country in which all peoples may live in dignity and respect. The law has played an important role in our journey thus far, and as a judge, I consider it my duty to ensure that it continues to do so.”³³⁴ McLachlin made this interesting observation about the role of law and how it functions in our society. When Prime Minister Justin Trudeau’s government came into power in 2015, the ministry mandates were made public. Two of these were as follows: “[S]et transparent services standards so that Canadians get timely access to the benefits to which they are entitled.”³³⁵ The second was: “[m]ake significant new investments in First Nations Education to ensure that First Nations children on reserve receive quality education while respecting the principle of First Nations control of First Nations education.”³³⁶

The research I undertook for this thesis is analytical and theoretical. As such, I remain interested in assessing further research opportunities in this area. The mechanics of such a study would need to be developed. The next stage of research to be built on would seek to answer a question along the lines of ‘where do we go from here?’ In the last several years, there have been substantial developments in the area of Indigenous child and family services. We have seen rulings from the Canadian Human Rights Tribunal that have sought

³³⁴ Beverley McLachlin, “Racism and the Law: The Canadian Perspective” (2002) 1:1 J L Equality at 19.

³³⁵ Canada, “Ministerial Mandate Letters: Relevance to Indigenous Child Welfare and Well-being” (2015) Information Sheet #168 E,1.

³³⁶ *Ibid.*

to address gaps in accessibility of funding for health and wellness services for both on-reserve and off-reserve children. Bill C-92 seeks to allow Indigenous communities to develop their own child and welfare agencies as opposed to reliance on provincial governments. Though in early stages of the legislative process, the introduction of Bill C-15, which implements the United Nations Declaration on the Rights of Indigenous Peoples, is a positive step in Crown-Indigenous relations.

Too often, the commitment to develop policy and then create legislation turns out to be nothing more than pettifogging. As moral failings occur, we call on our better angels to bend the arc of moral justice to ensconce these issues into a national dialogue. With great certainty, I surmise that it will not bend on its own.

Appendix One: Truth and Reconciliation Commission Calls to Action for Child Welfare.³³⁷

1. We call upon the federal, provincial, territorial, and Aboriginal governments to commit to reducing the number of Aboriginal children in care by: (1) monitoring and assessing neglect investigations, (2) providing adequate resources to enable Aboriginal communities and child-welfare organizations to keep Aboriginal families together where it is safe to do so, and to keep children in culturally appropriate environments, regardless of where they reside, (3) ensuring that social workers and others who conduct child-welfare investigations are properly education and trained about the history and impacts of residential schools, (4) ensuring that social workers and others who conduct child welfare investigations are properly educations and trained about the potential for Aboriginal communities and families to provide more appropriate solutions to family healing, (5) requiring that all child-welfare decision makers consider the impact of the residential school experience on children and their caregivers.

2. We call upon the federal government, in collaboration with the provinces and territories, to prepare and publish annual reports on the number of Aboriginal children (First Nations, Inuit, and Métis) who are in care, compared with non-Aboriginal children, as well as the reasons for apprehension, the total spending on preventive and care services by child-welfare agencies, and the effectiveness of various interventions.

3. We call upon all levels of government to fully implement Jordan's Principle

4. We call upon the federal government to enact Aboriginal child-welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases and includes principles that: (1) affirm the right of Aboriginal governments to establish and maintain their own child-welfare agencies, (2) Require all child-welfare agencies and courts to take the residential school legacy into account in their decision making, (3) Establish, as an important priority, a requirement that placements of Aboriginal children into temporary and permanent care be culturally appropriate.

5. We call upon the federal, provincial, territorial, and Aboriginal governments to develop culturally appropriate parenting programs for Aboriginal families.

³³⁷ TRC, supra note 11 at 1.

Appendix Two: National Inquiry into Missing and Murdered Indigenous Women and Girls Calls For Justice for Child Welfare.³³⁸

12.1: We call upon all federal, provincial, and territorial governments to recognize Indigenous self-determination and inherent jurisdiction over child welfare. Indigenous governments and leaders have a positive obligation to assert jurisdiction in this area. We further assert that it is the responsibility of Indigenous governments to take a role in intervening, advocating, and supporting their members impacted by the child welfare system, even when not exercising jurisdiction to provide services through Indigenous agencies.

12.2: We call upon all governments, including Indigenous governments, to transform current child welfare systems fundamentally so that Indigenous communities have control over the design and delivery of services for their families and children. These services must be adequately funded and resourced to ensure better support for families and communities to keep children in their family homes.

12.3: We call upon all governments and Indigenous organizations to develop and apply a definition of “best interests of the child” based on distinct Indigenous perspectives, world views, needs, and priorities, including the perspective of Indigenous children and youth. The primary focus and objective of all child and family service agencies must be upholding and protecting the rights of the child through ensuring the health and well-being of children, their families, and communities, and family unification and reunification.

12.4: We call upon all governments to prohibit the apprehension of children on the basis of poverty and cultural bias. All governments must resolve issues of poverty, inadequate and substandard housing, and lack of financial support for families, and increase food security to ensure that Indigenous families can succeed.

12.5: We call upon all levels of government for financial supports and resources to be provided so that family or community members of children of missing and murdered Indigenous women, girls and 2SLGBTQQIA people are capable of caring for the children left behind. Further, all governments must ensure the availability and accessibility of specialized care, such as grief, loss, trauma, and other required services, for children left behind who are in care due to the murder or disappearance of their caregiver.

12.6: We call upon all governments and child welfare services to ensure that, in cases where apprehension is not avoidable, child welfare services prioritize and ensure that a family member or members, or a close community member, assumes care of Indigenous children. The caregivers should be eligible for financial supports equal to an amount that might otherwise be paid to a foster family, and will not have other government financial supports or benefits removed or reduced by virtue of receiving additional financial supports for the purpose of caring for the child. This is particularly the case for children who lose their mothers to violence or to institutionalization and are left behind, needing family and belonging to heal.

³³⁸ MMIWG, supra note 11 at 194-196.

12.7: We call upon all governments to ensure the availability and accessibility of distinctions-based and culturally safe culture and language programs for Indigenous children in the care of child welfare.

12.8: We call upon provincial and territorial and child welfare services for an immediate end to the practice of targeting and apprehending infants (hospital alerts or birth alerts) from Indigenous mothers right after they give birth.

12.9: We call for the establishment of a Child and Youth Advocate in each jurisdiction with a specialized unit with a mandate of Indigenous children and youth. These units must be established within a period of one year of this report. We call upon the federal government to establish a National Child and Youth Commissioner who would also serve as a special measure to strengthen the framework of accountability for the rights of Indigenous children in Canada. This commissioner would act as a national counterpart to the child advocate offices that exist in nearly all provinces and territories.

12.10: We call upon the federal, provincial and territorial governments to immediately adopt the Canadian Human Rights Tribunal 2017 CHRT 14 standards regarding the implementation of Jordan's Principle in relation to all First Nations (Status and non-Status), Métis, and Inuit children. We call on governments to modify funding formulas for the provision of services on a needs basis, and to prioritize family support, reunification and prevention of harms. Funding levels must represent the principle of substantive equity.

12.11: We call upon all levels of government and child welfare services for a reform of laws and obligations with respect to youth "aging out" of the system, including ensuring a complete network of support from childhood into adulthood, based on capacity and needs, which includes opportunities for education, housing and related supports. This includes the provision of free post-secondary education for all children in care in Canada.

12.12: We call upon all child and family service agencies to engage in recruitment efforts to hire and promote Indigenous staff, as well as to promote the intensive and ongoing training of social workers and child welfare staff in the following areas: history of the child welfare system in the oppression and genocide of Indigenous Peoples, anti-racism and anti-bias training, local culture and language training, sexual exploitation and trafficking training to recognize signs and develop specialized responses.

12.13: We call upon all governments and child-welfare agencies to fully implement the Spirit Bear Plan.

12.14: We call upon all child welfare agencies to establish more rigorous requirements for safety, harm-reduction, and needs-based services within group or care homes, as well as within foster situations, to prevent the recruitment of children in care into the sex industry. We also insist that governments provide appropriate care and services, over the long-term, for children who have been exploited or trafficked while in care.

12.15: We call upon child welfare agencies and all governments to fully investigate deaths of Indigenous youth in care.

Bibliography

LEGISLATION

- An Act for the Better Protection of the Lands and Property of the Indians in Lower Canada* S.C. 1850, c.42 (13 & 14).
- An Act to amend and consolidate the laws respecting Indians* 3rd Sess, 3rd Parl, 1876.
- An Act to encourage the gradual Civilization of the Indian Tribes in this Province, and to amend the Laws Respecting Indians*, 3rd Sess, 5th Parl, 1857, (as passed by the Province of Canada on 10 June 1857).
- C-15, *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*, 2nd Sess, 43rd Parl, 2020 (first reading, 3 December 2020).
- C-92, *An Act Respecting First Nations, Inuit and Métis Children, Youth and Families*, 1st Sess, 42nd Parl, 2019, (as passed by the House of Commons 21 June 2019).
- Convention for the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 UNTS 277.
- Convention on the Rights of the Child*, 7 March 1990, E/CN.4RES/1990/74.
- Indian Act*, RSC 1985, c I-5.
- Industrial Schools Act of 1847* [Ontario, *Statutes*, 1874, 37 Vict, c. 29].
- Revised Statutes of Canada 1970*, C. 1-6, s.88.

JURISPRUDENCE

- First Nations Child and Family Caring Society of Canada & Assembly of First Nations and Canadian Human Rights Commission and Attorney General of Canada and Chiefs of Ontario and Amnesty International and Nishnawbe Aski Nation* T1340/7008, 2019 CHRT 39.
- _____, 2020 CHRT 36.
- R v Capay*, [2019] ONSC 535.
- Tataskweyak Cree Nation and Chief Doreen Spence on her own behalf and on behalf of all members of Tataskweyak Cree Nation and Attorney General of Canada*, [2019] CI 19-01-24661.

SECONDARY MATERIAL: MONOGRAPHS

- Agamben, Giorgio, *Means Without End: Notes on Politics* (Minneapolis: University of Minnesota Press, 2000).
- Blackstock, Cindy et al, *Keeping the Promise: The Convention on the Rights of the Child and the Lived Experiences of First Nations Children and Youth* (Ottawa: First Nations Child and Family Caring Society of Canada, 2004).
- Bryce, Peter, *Report on the Indian Schools of Manitoba and the North West Territories* (Ottawa: Government Printing Bureau, 1907).
- _____, *The Story of a National Crime: An Appeal for Justice to the Indians of Canada: The Wards of the Nations: Our Allies in the Revolutionary War: Our Brothers in Arms in the Great War* (Ottawa: James Hope and Sons, 1922).

- Canada, *Royal Commission on Aboriginal Peoples* (Ottawa: Royal Commission on Aboriginal Peoples, 1996).
- Charlesworth, Jennifer, *Illuminating Service Experience: A Descriptive Analysis of Injury and Death Reports for First Nations Children and Youth in B.C., 2015-2017*, (British Columbia: Representative of Children and Youth, 2020).
- Davin, Nicholas Flood, *Report on Industrial Schools for Indians and Half Breeds* (Ottawa, 1879).
- Dobinson, Ian & Francis Johns, ‘Qualitative Legal Research’ in Mike McConville and Wing Hong Chui (eds.), *Research Methods for Law*, (Edinburgh: Edinburgh University Press, 2007).
- Duran, Eduardo et al, “Healing the American Indian Soul Wound” in *International Handbook of Multigenerational Legacies of Trauma*, edited by Yael Danieli (New York: Plenum Press, 1998).
- Fanshel, David, *Far From the Reservation: The Transracial Adoption of American Indian Children* (The Scarecrow Press; New York, 1972).
- Foucault, Michel, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1977).
- _____, *Society Must Be Defended: Lectures at the College de France* (New York: Picador, 1997).
- _____, *The Archaeology of Knowledge and the Discourse on Language* (New York: Pantheon Books, 1972).
- _____, *The History of Sexuality: Volume 1: An Introduction* (New York: Pantheon Books, 1978).
- Fournier Suzanne, Ernie Crey & David Neel, *Stolen From Our Embrace: The Abduction of First Nations Children and the Restoration of Aboriginal Communities* (Vancouver: Douglas and McIntyre, 1998).
- Jawaid, Ali, Martin Roszkowki & Isabelle M. Mansuy, “Transgenerational Epigenetics of Traumatic Stress” in *Progress in Molecular Biology and Translational Science: Neuroepigenetics and Mental Illness* by Bart P.F. Rutten ed. (Cambridge: Academic Press, an imprint of Elsevier 2018).
- Johnston, Patrick, *Native Children and the Child Welfare System* (Toronto: James Lorimer and Company, 1983).
- Kimelman, Edwin, *No Quiet Place: Review Committee on Indian and Métis Adoptions and Placements Final Report to the Honourable Muriel Smith: Ministry of Community Services* (Manitoba: Manitoba Community Services, 1985)
- Lemke, Thomas, *Biopolitics: An Advanced Introduction* (New York and London: New York University Press, 2011).
- Lemkin, Raphael, *Axis Rule in Occupied Europe* (Washington DC: Carnegie Council, 1944).
- Leslie, John, *The Historical Development of the Indian Act* (Ottawa: Department of Indian Affairs and Northern Development, Treaties and Research Branch, 1978).
- Miller, J.R., *Shingwauk’s Vision: A History of Native Residential Schools* (Toronto, Buffalo, London: University of Toronto Press, 2012).
- Milloy, John S, *A National Crime: The Canadian Government and the Residential School System, 1879-1986* (Manitoba: University of Manitoba Press, 1999).

- Mulvey, Thomas, *Dominion of Canada Annual Report of the Department of Indian Affairs For The Year Ended March 31, 1920* (Ottawa: Order of Parliament, 1921).
- Murray, Stuart, "Thanatoplitics" in *Bloomsbury Handbook to Literary and Cultural Theory* ed. Jeffrey. Di Leo (London: Bloomsbury, 2018).
- Ryerson, Egerton, "Report of Dr. Ryerson on Industrial Schools" in *Statistics Respecting Indian Schools with Dr. Ryerson's Report of 1847 attached* (Ottawa: Government Printing Bureau, 1898).
- Schmitt, Carl, *Political Theology: Four Chapters on the Concept of Sovereignty* (Chicago and London: University of Chicago Press, 1985).
- Shaheen-Hussain, Samir, *Fighting for a Hand to Hold: Confronting Medical Colonialism Against Indigenous Children in Canada* (Montreal/Kingston, London, Chicago: McGill-Queen's University Press, 2020).
- Sinha, Vandna et al, *Kiskisik Awasisak: Remember the Children: Understanding the Overrepresentation of First Nations Children in the Child Welfare System* (Ontario: Assembly of First Nations, 2011).
- Truth and Reconciliation Commission, *Canada's Residential Schools: Missing Children and Unmarked Burials: Volume 4: The Final Report of the Truth and Reconciliation Commission of Canada* (Montreal, Kingston, London & Chicago: McGill-Queen's University Press, 2015).
- _____, *Final Report of the Truth and Reconciliation Commission of Canada: Volume One: Summary: Honouring the Truth, Reconciling for the Future* (Toronto: Lorimer, 2015).
- _____, *The Survivors Speak: A Report of the Truth and Reconciliation Commission of Canada* (Ottawa: Library and Archives, 2015).

SECONDARY MATERIAL: ARTICLES

- Alston-O'Connor, Emily, "The Sixties Scoop: Implications of Social Workers and Social Work Education" (2010) 11:1 *Critical Soc Work* 53 at 53.
- Barker, Brittany et al, "Intergenerational Trauma: The Relationship between Residential Schools and the Child Welfare System Among Young People Who Use Drugs in Vancouver, Canada" (2019) 65 *J Adolescent Health* 248.
- Blackstock, Cindy, "The Complainant: The Canadian Human Rights Case on First Nations Child Welfare" (2016) 62:2 *McGill LJ* 285.
- _____, "The Occasional Evil of Angels: Learning from the Experiences of Aboriginal Peoples and Social Work" (2019) 14:1 *First Peoples Child Fam Rev* 137 at 144
- _____, "When Everything Matters: Comparing the Experiences of First Nations and Non-Aboriginal Children Removed From Their Families in Nova Scotia From 2003 to 2005" (Doctor of Philosophy, University of Toronto, 2009) [unpublished].
- Blackstock, Cindy & Andrea Auger, "Pursuing Human Rights for Community-Level Resilience: The Jordan's Principle Case, Process and Initiative as Resilient Community Action" (2013) 1:1 *Intl J Child & Adolescent Resilience* 84.
- Blackstock, Cindy, & Nico Trocmé, "Community-Based Child Welfare for Aboriginal Children: Supporting Resilience through Structural Change" (2005) 24 *Soc Policy J New Zealand* 12.

- Blackstock, Cindy, Jennifer King & Jocelyn Wattam, "Reconciliation: The Kids are here! Child Participation and the Canadian Human Rights Tribunal on First Nations Tribunal on First Nations Child Welfare" (2016) 3:1 Can J Children's Rights.
- Blackstock, Cindy, Nico Trocmé & Marilyn Bennett, "Child Maltreatment Investigations Among Aboriginal and Non-Aboriginal Families" (2004) 10:8 Violence Against Women 901.
- Bombay, Amy et al, "Familial Attendance at Indian Residential School and Subsequent Involvement in the Child Welfare System Among Indigenous Adults Born During the Sixties Scoop Era" (2020) 15:1 First Peoples Child Family Rev 62.
- _____, "Suicidal thoughts and attempts in First Nations communities: link to parental Indian residential school attendance across development" (2019) 10:1 J Developmental Origins Health Disease 123.
- Bombay, Amy, Kimberly Matheson & Hymie Anisman, "Intergenerational Trauma: Convergence of Multiple Processes among First Nations Peoples in Canada" (2009) J Aboriginal Health 6.
- _____, "The Impact of Stressors on Second Generation Indian Residential School Survivors" (2011) 48:4 Transcultural Psychiatry 367.
- _____, "The Intergenerational Effects of Indian Residential Schools: Implications for the Concept of Historical Trauma" (2014) 51:3 Transcultural Psychiatry 320.
- Borrows, John, "Seven Generations, Seven Teachings: Ending the Indian Act" (Paper delivered for the National Centre for First Nations Governance, May 2008).
- Brady, Miranda J., & Emily Hitz, "The Archaeology of an Image: The Persistent Persuasion of Thomas Moore Keesick's Residential School Photographs" (2017) 37 Can J Cultural Studies 61.
- Brave Heart, Maria Yellow Horse, "The Historical Trauma Response Among Natives and Its Relationship With Substance Abuse: A Lakota Illustration" (2003) 35:1 J Psychiatric Drugs 7.
- _____, "*Oyate Ptayela: Rebuilding the Lakota Nation Through Addressing Historical Trauma Among Lakota Parents*" (1999) 2:1-2 J Human Behaviour in the Soc Environment 109.
- _____, "The return to the sacred path: Healing the historical trauma and historical unresolved grief response among the Lakota through a psychoeducational group intervention" (1998) 68:3 Smith College Studies in Soc Work at 289.
- _____, "*The Return to the Sacred Path and Historical Unresolved Grief Among the Lakota* (Doctor of Philosophy, Smith College for Soc Work, 1995).
- _____, "*Wakiksuyapi: Carrying the Historical Trauma of the Lakota*" (2000) Tulane School Soc Work 245.
- Brave Heart, Maria Yellow Horse et al, "Historical Trauma Among Indigenous Peoples of the Americas: Concepts, Research and Clinical Considerations" 43:4 J Psychiatric Drugs 282.
- Brave Heart, Maria Yellow Horse, & Lemyra M. DeBruyn, "The American Indian Holocaust: Healing Historical Unresolved Grief" (1998) 8:2 American Indian Alaska Native Mental Health Network 60.
- Caldwell, George, "Indian Residential Schools – A Research Study of the Child Care Programs of Nine Residential Schools in Canada" (1967) Department of Indian Affairs and Northern Development, Government of Canada, Ottawa.

- Canada, House of Commons, *House of Commons Debates*, 3rd Parl., 1st Sess., Volume 14 (20 April – 25 May 1883) at 1107-1008 (Sir John A. Macdonald).
- _____, Department of Justice, “Report of the Minister of Justice as to Penitentiaries in Canada for the Year Ended 30th June 1884”, (31 December 1884).
- Chung, Youjin B., “Governing a Liminal Land Deal: The Biopolitics and Necropolitics of Gender” (2020) 52:3 *Antipode* 722.
- De Leeuw, Sarah, Margo Greenwood & Emilie Cameron, “Deviant Constructions: How Governments Preserve Colonial Narratives of Addictions and Poor Mental Health to Intervene into the Lives of Indigenous Children and Families in Canada” (2010) 8 *Intl J Mental Health Addiction*.
- Denham, Aaron R., “Rethinking Historical Trauma: Narratives of Resilience”, (2008) 45:3 *Transcultural Psychiatry* 391.
- Department of Indian Affairs Annual Report for the Year ended 30th June 1896. Library and Archives Canada, NL-022474.
- Dubois, Michele & Catherine Guaspere, “From Cellular Memory to the Memory of Trauma: Social Epigenetics and its Public Circulation” (2020) *Soc Science Information* 1.
- Elias, Brenda et al, “Trauma and Suicide Behavior Among A Canadian Indigenous Populations: An Empirical Exploration of the Potential Role of Canada’s Residential School System” (2012) 74 *Soc Science Medicine* 1560.
- Evans-Campbell, Teresa, “Historical Trauma in American Indian/Native Alaska Communities: A Multilevel Framework for Exploring Impacts on Individuals, Families and Communities” (2008) 23:3 *J Interpersonal Violence* 316.
- Fast, Elizabeth & Delphine Collin-Vézina, “Historical Trauma, Race-Based Trauma and Resilience of Indigenous Peoples: A Literature Review (2019) 14:1 *First Peoples Child Family Rev* 166.
- Gone, Joseph P. et al, “The Impact of Historical Trauma on Health Outcomes for Indigenous Populations in the USA and Canada” (2019) 74:1 *American Psychologist* 20.
- Gone, Joseph P., & Laurence J. Kirmayer, “Advancing Indigenous Mental Health Research: Ethical, Conceptual and Methodological challenges” (2020) 57:2 *Transcultural Psychiatry* 235.
- Ignatieff, Michael, “Articles of Faith” (1996) 25:5 *Index on Censorship* 110.
- Isobel, Sophie et al, “Preventing Intergenerational Trauma Transmission: A Critical Interpretive Synthesis” (2019) 28:7-8 *J Clinical Nursing* 1100.
- Jongbloed, Kate et al, “The Cedar Project: Mortality Among Young Indigenous People Who Use Drugs in British Columbia” (2017) 189:44 *CMAG* E1352.
- Kirmayer, Laurence J. et al, “Rethinking Resilience from Indigenous Perspectives” (2011) 56:2 *Can J Psychiatry* 84 at 87.
- Kirmayer, Lawrence, Cori Simpson & Margaret Cargo, “Healing Traditions: Culture, Community & Mental Health Promotion with Canadian Aboriginal Peoples” (2003) 11 *Australasian Psychiatry* S15.
- Krieger, Nancy, “Proximate, Distal and the Politics of Causation: What’s Level Got to Do With It?” (2008) 98:2 *American J Public Health*
- Kulusic, Tamara, “The Ultimate Betrayal: Claiming and Reclaiming Cultural Identity” (2005) 29:2 *Alantis* 23.

- Lavallee, Lynn F., & Jennifer Poole, "Beyond Recovery: Colonization, Health and Healing for Indigenous People in Canada" (2010) 8 Intl J Mental Health Addition 271.
- Lawrence, Bonita, "Gender, Race, and the Regulation of Native Identity in Canada and the United States: An Overview" (2003) 18:2 Hypatia 3.
- Lemke, Thomas, "Critique and Experience in Foucault" (2011) 28:4 Theory, Culture, & Society 26.
- Lemkin, Raphael, "Genocide as a Crime Under International Law" (1947) 41:1 American J Intl L 1145.
- Lev-Wiesel, Rachel, "Intergenerational Transmission of Trauma Across Three Generations: A Preliminary Study" (2007) 6:1 Q Soc Work 75.
- Library and Archives, "Thomas Moore as he appeared when admitted to the Regina Industrial School and after tuition". 1896. Department of Indian Affairs Annual Report for the Year ended 30th June 1896. Library and Archives Canada, NL-022474.
- Liddell, Jessica & Catherine Burnette, "Culturally-Informed Interventions for Substance Abuse Among Indigenous Youth in the United States" (2017) 14:5 J Evidenced-Informed Soc Work 329 at 331.
- Lowensten, Allard K., "Genocide Reinterpreted: An Analysis of the Genocide Convention's Potential Application to Canada's Indian Residential School System" (Paper prepared for the Canadian Truth and Reconciliation Commission by Jayme Herschkopf and Julie Hunter, Yale Law School April 2011).
- MacDonald, David and Graham Hudson, "The Genocide Question and Indian Residential Schools in Canada" (2012) 45:2, Can J Political Science 431.
- MacDonald, John A., "The Spallumcheen Indian Band By-Law and Its Potential Impact on Native Indian Children Child Welfare Policy in British Columbia" (1983) 4:1 Can J of Fam L 75
- Mackenzie, Holly A. , et al, "Disrupting the Continuities Among Residential Schools, the Sixties Scoop, and Child Welfare: An Analysis of Colonial and Neocolonial Discourses" (2016) 7:2 Intl Indigenous Policy J 1.
- Matheson, Kimberly et al, "Intergenerational Communication Regarding Indian Residential Schools: Implications for Cultural Identity, Perceived Discrimination and Depressive Symptoms" (2020) 57:2 Transcultural Psychiatry 304.
- Mbembe, Achille, "Necropolitics" (2003) 15:1 Public Culture.
- _____, "The Universal Right To Breathe" (2021) 47:52 Critical Inquiry 558.
- McLachlin, Beverley, "Racism and the Law: The Canadian Perspective" (2002) 1:1 JL & Equality.
- McNabb, David, "Herman Merivale and the Native Question, 1837-1861" (1977) 9:4 Albion: A Q J Concerned With British Studies.
- McQuaid, Robyn Jane et al, "Suicide Ideation and Attempts Among First Nations Peoples Living on Reserve in Canada: The Intergenerational and Cumulative Effects of Indian Residential Schools" (2017) 62:6 Can J Psychiatry 422.
- Michalowski, Ray, "The Necropolitics of Regulation" (2020) 1:2 J White Collar Corporate Crime 83.
- National Inquiry into Missing and Murdered Indigenous Women and Girls, "Reclaiming Power and Place: Supplemental Report on Genocide" (2019).

- _____, “Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls; Volume 1a” (2019).
- _____, “Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls; Volume 1b” (2019).
- Nisbet, Robert, “Arendt on Totalitarianism” (1992) 27 *The National Interest* 84.
- Sinema, Kyrsten, “Who Must Die: The State of Exception in Rwanda’s Genocide” (Dissertation, Arizona State U, 2012).
- Sinha, Vandna, & Anna Kozlowski, “The Structure of Aboriginal Child Welfare in Canada” (2013) 4:2 *Intl Indigenous Policy J* 1.
- Smylie, Janet, “A Guide for Health Professionals Working With Aboriginal Peoples: The Sociocultural Context of Aboriginal Peoples in Canada” (2000) *Can Institute for Mental Health* 1.
- United Nations General Assembly, “Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya” (2014) GE, 14-07508; Human Rights Council.
- Whitbeck, Les B et al, “Conceptualizing and Measuring Historical Trauma Among American Indian People” (2004) 33:3/4 *American J Community Psychology* 119.
- Wilk, Piotr, Alanda Maltby & Martin Cooke, “Residential Schools and the Effects on Indigenous Health and Well-Being in Canada – A Scoping Review” (2017) 38:8 *Public Health* 1.
- Woolhandler, Justin, “Toward a Foucauldian Legal Method” (2014) 76 *U Pitt L Rev* 131.
- Yehuda, Rachel, & Amy Lehrner, “Intergenerational Transmission of Trauma Effects: Putative Role of Epigenetic Mechanisms” (2018) 17 *World Psychiatry* 243.
- Zalcman, Daniella, “Kill the Indian, Save the Man: On the Painful Legacy of Canada’s Residential Schools” (2016) 33:3 *World Policy Institute*.

SECONDARY MATERIAL: ELECTRONIC SOURCES

- Aboriginal Healing Foundation, “Vision, Mission, Values: The Aboriginal Healing Foundation” (2020), online: *The Aboriginal Healing Foundation*, <<http://www.ahf.ca/about-us/mission>>.
- Arendt, Hannah, “A Special Supplement: Reflections on Violence” (27 February 1969) online: *The New York Review*, <http://www2.kobe-u.ac.jp/~alexroni/IPD%202019%20readings/IPD1%202019%20No.8/A%20Special%20Supplement_%20Reflections%20on%20Violence%20by%20Hannah%20Arendt%20_%20The%20New%20Yor.pdf>.
- Austen, Ian, “He Almost Quit the Law. Instead, He Rest Canada’s Indigenous Dialogue” (5 February 2021) online: *The New York Times*.
- Barker, Brittany, Gerald Taiaiake Alfred & Thomas Kerr, “An Uncaring State: The Overrepresentation of First Nations children in the Canadian Child Welfare System” (2014) online: *CMAG* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4188683/pdf/186e533.pdf>>.
- Blackstock, Cindy, “For Indigenous kids’ welfare, our government knows better; it just needs to do better” (16 January 2019) online: *Globe and Mail Opinion*, <<https://www.theglobeandmail.com/opinion/article-for-indigenous-kids-welfare-our-government-knows-better-they-just/>>.

- Canada, “Ending long-term drinking water advisories” (26 January 2021) online: *Government of Canada* <https://www.sac-isc.gc.ca/eng/1506514143353/1533317130660>.
- ___, “Highlights from the Report of the Royal Commission of Aboriginal Peoples: People to People, Nation to Nation” (15 September 2010) online: *Crown-Indigenous Relations* <https://www.rcaanc-cirnac.gc.ca/eng/1100100014597/1572547985018>.
- ___, “Jordan’s Principle”, (27 February 2020), online: *Government of Canada* <https://www.sac-isc.gc.ca/eng/1568396042341/1568396159824>.
- ___, “Ministerial Mandate Letters: Relevance to Indigenous Child Welfare and Well-being” (2015) Information Sheet #168 E,1.
- ___, “Reducing the number of Indigenous children in care” (20 February 2020), online: *Indigenous Services of Canada* <https://www.sacisc.gc.ca/eng/1541187352297/1541187392851>.
- ___, “Support for Child and Family Services Co-Developed Legislation” (30 November 2018) online: *Indigenous Services Canada* <https://www.sac-isc.gc.ca/eng/1543584936789/1543585105080>.
- CBC Archives, “Government apologizes for residential schools in 2008” (25 June 2008) online: *CBC Archives* <https://www.cbc.ca/archives/government-apologizes-for-residential-schools-in-2008-1.4666041>.
- Centers for Disease Control and Prevention, “Genomics and Precision Health: What is Epigenetics” (3 August 2020) online: *Centers for Disease Control and Prevention* <https://www.cdc.gov/genomics/disease/epigenetics.htm>.
- Cram, Stephanie, “Dark history of Canada’s First Nations pass system uncovered in documentary” (19 February 2016) online: *CBC News* <https://www.cbc.ca/news/aboriginal/dark-history-canada-s-pass-system-1.3454022>.
- Dangerfield, Katie, “How the tragic death of Tina Fontaine helped spark the MMIWG Inquiry” (23 February 2018) online: *Global News* <https://globalnews.ca/news/4043492/tina-fontaine-march-mmiwg-inquiry>.
- First Nations Information Governance Centre (FNIGC), “First Nations Regional Health Survey (RHS) 2008/10: National report on adults, youth and children living in First Nations communities” (2012) Ottawa.
- Forester, Brett, “Federal Indigenous child welfare Bill C-92 kicks in – now what?” (1 January 2020) online: *APTN National News*, <https://www.aptnnews.ca/nationalnews/federal-indigenous--welfare-bill-c-92-kicks-in/>.
- Halseth, Reggine, & Margo Greenwood, “Indigenous Early Childhood Development in Canada: Current State of Knowledge and Future Directions” (2019) online: *National Collaborating Centre for Aboriginal Health* <https://www.nccih.ca/docs/health/RPT-ECD-PHAC-Greenwood-Halseth-EN.pdf>.
- Hay, Travis, Cindy Blackstock & Michael Kirlaw, “Dr. Peter Bryce (1853-1932): Whistleblower on Residential Schools” (2020 March 2) online: *CMAJ* <https://www.cmaj.ca/content/192/9/E223>.

- Human Rights Watch, “My Fear Is Losing Everything” (21 October 2020) online: *Human Rights Watch* <<https://www.hrw.org/report/2020/10/21/my-fear-losing-everything/climate-crisis-and-first-nations-right-food-canada>>.
- _____, “Canada: Blind Eye to First Nation Water Crisis: Neskantaga Community Needs Compensation, Assistance” (2 October 2019) online: *Human Rights Watch* <<https://www.hrw.org/news/2019/10/02/canada-blind-eye-first-nation-water-crisis>>.
- Institute of Fiscal Studies and Democracy and the University of Ottawa, “Funding First Nations Child and Family Services (FNCFS): A Performance Budget Approach to Well-Being” (2020) online: *IFSD* <https://www.afn.ca/wp-content/uploads/2020/09/2020-09-09_Final-report_Funding-First-Nations-child-and-family-services.pdf>.
- Jackson, Kenneth, “Death as Expected: Inside a Child Welfare System where 102 Indigenous kids died over 5 years” (25 September 2019) online: *APTN News* <<https://www.aptnnews.ca/national-news/inside-a-child-welfare-system-where-102-indigenous-kids-died-over-5-years/>>.
- _____, “Nunavut continues to leave foster kids in Ottawa group homes without local social worker” (3 May 2017) online: *APTN National News*, <<https://www.aptnnews.ca/national-news/nunavut-continues-to-leave-foster-kids-in-ottawa-group-homes-without-local-social-worker/>>.
- Kassam, Ashifa, “Ratio of indigenous children in Canada welfare system is ‘humanitarian crisis’” (4 November 2017) online *The Guardian*: <<https://www.theguardian.com/world/2017/nov/04/indigenous-children-canada-welfare-system-humanitarian-crisis>>.
- MacLeod, Nicholas, “Residential school survivor says P.E.I. John A Macdonald statue should be removed” (11 September 2020), online: *CBC News*, <<https://www.cbc.ca/news/canada/prince-edward-island/pei-marie-knockwood-john-a-macdonald-statue-1.5719669>>.
- Malone, Kelly, “Nearly Half of Canada’s Incarcerated Youth are Indigenous, according to Statistics Canada” (24 June 2018) online *The Canadian Press*, <<https://www.cbc.ca/news/canada/manitoba/youth-incarcerated-indigenous-half-1.4720019#:~:text=Manitoba,Nearly%20half%20of%20Canada's%20incarcerated%20youth%20are%20Indigenous%2C%20according%20to,shows%20unacceptable%20and%20systemic%20racism>>
- McIntyre, Catherine, “Read Justin Trudeau’s apology to residential school survivors in Newfoundland” (24 November 2017) online: *Macleans*’s <<https://www.macleans.ca/news/canada/read-justin-trudeaus-apology-to-residential-school-survivors-in-newfoundland/>>.
- National Collaborating Centre For Aboriginal health, “Indigenous Children and the Child Welfare System in Canada” (2018) online: *Child, Youth and Family Health Online*, [pdf] <<http://www.nccih.ca/docs/health/FS-ChildWelfareCanada-EN.pdf>>.
- Nishnawbe Aski Nation, “The Davin Report, 1879” (2020), online: *Nishnawbe Aski Nation*, <<http://rschools.nan.on.ca/article/the-davin-report-1879-1120.asp>>.

- Ontario Human Rights Commission, “Interrupted Childhoods: Overrepresentation of Indigenous and Black Children in Ontario Child Welfare” (2018) online: *Ontario Human Rights Commission* <<http://www.ohrc.on.ca/en/interruptedchildhoods>>.
- Schmunk, Rhianna, “Renu Mandhane, Ontario Human Rights Commissioner, Has History of Advocacy” (28 October 2016) online: *Huffington Post Canada*, <https://www.huffingtonpost.ca/2016/10/28/renu-mandhane-adam-capay-human-rights-solitary-confinement_n_12674004.html>.
- Taylor, Jillian, “Tina Fontaine is that ‘direct link’ between MMIWG, child welfare system, advocate says at inquiry hearing” (3 October 2018) online: *CBC News* <<https://www.cbc.ca/news/canada/manitoba/mmiwg-national-inquiry-cindy-blackstock-winnipeg-1.4848538>>.
- Truth and Reconciliation Commission of Canada, “Truth and Reconciliation Commission of Canada: Calls to Action” (2015) online: *Truth and Reconciliation Commission of Canada*.
- _____, “Residential School Locations” online: *Truth and Reconciliation Commission of Canada*.
- Wagamese, Richard, “The Sixties Scoop, the Primal Wound and Home”, (7 June 2007) online: *Yukon News* <<https://www.yukon-news.com/letters-opinions/the-sixties-scoop-the-primal-wound-and-home>>.