



# UNIVERSITY OF CALGARY

University of Calgary

**PRISM: University of Calgary's Digital Repository**

---

University of Calgary Press

University of Calgary Press Open Access Books

---

2006

## A common hunger: land rights in Canada and South Africa

Fairweather, Joan G.

University of Calgary Press

---

Fairweather, Joan G. "A common hunger: land rights in Canada and South Africa". Africa, missing voices series 1703-1826; No. 3. University of Calgary Press, Calgary, Alberta, 2006.

<http://hdl.handle.net/1880/49483>

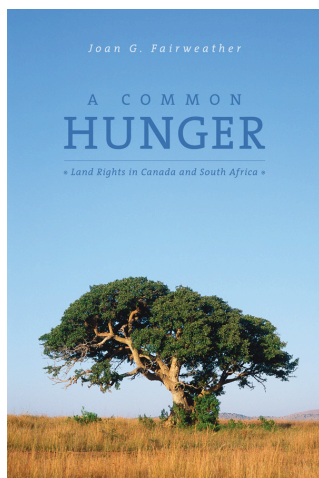
book

---

<http://creativecommons.org/licenses/by-nc-nd/3.0/>

Attribution Non-Commercial No Derivatives 3.0 Unported

Downloaded from PRISM: <https://prism.ucalgary.ca>



## A COMMON HUNGER: LAND RIGHTS IN CANADA AND SOUTH AFRICA

by Joan G. Fairweather

ISBN 978-1-55238-573-9

**THIS BOOK IS AN OPEN ACCESS E-BOOK.** It is an electronic version of a book that can be purchased in physical form through any bookseller or on-line retailer, or from our distributors. Please support this open access publication by requesting that your university purchase a print copy of this book, or by purchasing a copy yourself. If you have any questions, please contact us at [ucpress@ucalgary.ca](mailto:ucpress@ucalgary.ca)

**Cover Art:** The artwork on the cover of this book is not open access and falls under traditional copyright provisions; it cannot be reproduced in any way without written permission of the artists and their agents. The cover can be displayed as a complete cover image for the purposes of publicizing this work, but the artwork cannot be extracted from the context of the cover of this specific work without breaching the artist's copyright.

**COPYRIGHT NOTICE:** This open-access work is published under a Creative Commons licence. This means that you are free to copy, distribute, display or perform the work as long as you clearly attribute the work to its authors and publisher, that you do not use this work for any commercial gain in any form, and that you in no way alter, transform, or build on the work outside of its use in normal academic scholarship without our express permission. If you want to reuse or distribute the work, you must inform its new audience of the licence terms of this work. For more information, see details of the Creative Commons licence at: <http://creativecommons.org/licenses/by-nc-nd/3.0/>

### UNDER THE CREATIVE COMMONS LICENCE YOU **MAY**:

- read and store this document free of charge;
- distribute it for personal use free of charge;
- print sections of the work for personal use;
- read or perform parts of the work in a context where no financial transactions take place.

### UNDER THE CREATIVE COMMONS LICENCE YOU **MAY NOT**:

- gain financially from the work in any way;
- sell the work or seek monies in relation to the distribution of the work;
- use the work in any commercial activity of any kind;
- profit a third party indirectly via use or distribution of the work;
- distribute in or through a commercial body (with the exception of academic usage within educational institutions such as schools and universities);
- reproduce, distribute, or store the cover image outside of its function as a cover of this work;
- alter or build on the work outside of normal academic scholarship.

## Chapter Eight

# *Reconciliation*

But true reconciliation cannot be imposed; neither can it occur between cultures and societies that are enormously uneven in power. The kind of reconciliation that can bring real peace can only occur between partners whose independence, strength of purpose and inner cohesion allows them fully to understand and share with the other.

*Edward W. Said (1996)*<sup>1</sup>

### **THE PURPOSE OF PUBLIC INQUIRIES**

As public inquiries aimed at establishing a new relationship between aboriginal and non-aboriginal peoples, Canada's Royal Commission on Aboriginal Peoples (RCAP) and South Africa's Truth and Reconciliation Commission (TRC) have certain features in common. Both commissions were focused on reconciliation (the healing of wounds inflicted on indigenous peoples by governments and institutions) and gave indigenous peoples the opportunity to tell their stories in their own words. The commissions were held in the 1990s: Canada's RCAP was established in 1991 and South Africa's TRC in 1994. However, the circumstances that gave rise to South Africa's truth commission and the part it played in that country's transition to democracy place it in a completely different category from Canada's Royal Commission on Aboriginal Peoples. The Canadian commission was almost routine by comparison. Over the past century, the Canadian government has held a series of similar inquiries into the grievances of Canada's first peoples, none of which has radically changed the situation of aboriginal peoples or their relationships with government and the country as a whole.<sup>2</sup>

### **CANADA'S ROYAL COMMISSION ON ABORIGINAL PEOPLES**

The Oka crisis in the summer of 1990 alerted the Canadian public to the smoldering anger within the aboriginal community.<sup>3</sup> Television coverage of the seventy-eight-day standoff on the Kanesatake reserve, which ended with the arrest of thirty-nine Mohawk leaders, shocked and shamed

many Canadians. Two of the Mohawks charged were found guilty: Ronald Cross (known as “Lasagna”) and Gordon (“Noriega”) Lazore. They each served sentences of two to four years. The cost of the standoff to Canadian taxpayers came to well over \$200 million. The fact that the incident made headline news around the world was further inducement for the government to take the matter seriously.

In 1991, the Conservative Party government of Brian Mulroney established the Royal Commission on Aboriginal Peoples to recommend ways to “restore justice to the relationship between Aboriginal and non-Aboriginal people in Canada.” Four aboriginal and three non-aboriginal commissioners were appointed to investigate the issues and advise the government on its findings. Former Grand Chief of the Assembly of First Nations, George Erasmus, and Justice René Dussault co-chaired the commission. After almost five years and thousands of hearings held across the country, the Commission published its report in 1996. As a starting point to establishing a new relationship between aboriginal and non-aboriginal Canadians, the Commission affirmed that Canada’s first people are “nations within Canada – collectivities with their own character and traditions [and] have a right to their own autonomous governments, and a special place in the flexible federalism that defines Canada.” This status of nationhood was based on “their original occupancy of the country, the treaties that recognized their rights, the constitution that affirms those rights, and their continued cohesion as peoples.”<sup>4</sup>

One of the primary objectives of the Commission was to give aboriginal people across the country the opportunity to express their grievances and talk about the difficulties they face. George Erasmus made this point very clearly:

Rest assured, at the very least, the Commission will provide the opportunity for disclosure. A big part in traveling the country is for people to tell us their experience. We want to hear it. We want Canadians to hear it also. We will also be asking people to think about what they would like to occur in future – to find solutions and make recommendations for healing and so forth.<sup>5</sup>

The Commission saw its mandate as primarily forward-looking and solution-oriented. As co-chair Dussault expressed it, in order to build a new relationship between aboriginal and non-aboriginal peoples, it is not productive to dwell on the sins of the past. “You don’t build a new country out of a feeling of guilt ... but because it’s pleasant and fruitful to work together towards the future.”<sup>6</sup> However, in its final Report, the

Commission admitted that “it would be false and unjust to attempt to wipe the slate clean,” ignoring both the wrongs of the past and the treaty rights flowing from previous relationships.

Reflecting the evidence presented to the Commission, the final report dwelt extensively on the nation-to-nation relationship between aboriginal and non-aboriginal societies. The image of the two-row wampum, representing peaceful co-existence, was strongly advocated. While it acknowledged that the relationship between aboriginal and non-aboriginal peoples in Canada had “long been troubled and recently has shown signs of slipping into more serious trouble,” the Commissioners concluded optimistically that “the relationship can almost certainly be mended, indeed turned from a problem into an asset and one of the country’s greatest strengths.”<sup>7</sup>

The report also made special mention of the relationship of the government with the Métis community. Although the Métis were recognized in the Constitution as an aboriginal people, they have not been able to negotiate modern treaties or agreements with the federal and provincial governments. The Commission urged the government of Canada to deal with Métis people on a nation-to-nation basis so that they can negotiate agreements on the same basis as other aboriginal peoples.

One of the major revelations made to the Commission was the treatment of aboriginal children in church-run residential schools owned and funded by the government. The impact of residential schools on generations of aboriginal people across the country was a common theme in much of the testimony. The traumatic effects of being separated from their homes and communities at a very young age, then being punished for speaking their languages and sometimes abused, was seen as the direct cause of the serious social problems facing many aboriginal communities.

Even when healing centres were established, the hurt continued. Dominic Eshkakaogan of the Ojibwe Cultural Foundation in Sudbury, Ontario told the Commission:

In spite of [the healing process] the hurt is still there whenever residential schools are brought up. It brings back memories, it brings back tears. Even as an old man we cry. We cry when we remember those years.<sup>8</sup>

Eric Morris, an educational worker and president of the Teslin Tlingit Council in the Yukon, was one of a number of witnesses who called for a special inquiry into the residential school system:

I don't want to rub salt in the wounds by talking about residential schools.... But, the schools broke family ties, cultural traditions. The government system destroyed our oral traditions and our stories and legends were sort of "laid dormant" and did not move anywhere. Violence came afterwards. As villages became "alcohol and drug free" many hurts and pains of the past began surfacing and that is why we are calling for an inquiry into the residential schools.<sup>9</sup>

In response, the Commission recommended that the government institute a National Public Inquiry into Indian Residential Schools in order to enable aboriginal people to "stand in dignity, to voice their sorrow and anger, and be listened to with respect." It also called for further research into the social effects of residential schools, to identify the abuse that occurred, and to recommend remedial actions by governments and churches, including apologies, compensation and funding for treatment. In its Report, the Commission made clear that it did not believe funding was the only solution to the overwhelming social problems afflicting so many native communities. "To make the plan (its recommendations) work at all, first wounded spirits must be healed and real hope restored to young native people."

#### CRITIQUING THE RCAP PROCESS

Of all the government-appointed commissions relating to aboriginal Canadians, the Royal Commission of 1991–96 was by far the most important and far-reaching. The 2005 report of the United Nations Human Rights Committee refers to the Commission as "the most thorough study ever carried out; its numerous recommendations have opened the way to solutions of long-standing problems afflicting the relations between these peoples and various orders of Government in Canada."<sup>10</sup> The government's response in 1998, an action plan named "Gathering Strength" presented a broad-based approach designed to increase the quality of life and to promote the self-sufficiency of aboriginal Canadians. Thus the Royal Commission held out possibilities of addressing the legacies of dispossession including new legislation to compensate First Nations for the injustices of the past.

However, the Commission hearings have been criticized as intrinsically flawed because they failed to provide an acceptable forum for aboriginal people to voice their pain and anger. Although many aboriginal people who testified to the Royal Commission in Canada remarked on the sense of release they felt in coming before the Commission, there

were some who expressed a profound sense of frustration. Among these was a woman elder from the Cariboo Tribal Council who said: “I’m angry that nothing has ever been done about [the legacy of residential schools]. I’ve been angry for fifty years, and all anybody ever does is to try to talk me out of it! And that makes me angry too!”<sup>11</sup>

Roland Chrisjohn and Sherri Young, the authors of a published report on residential schools presented to the Commission in October 1994, take the Commission to task for what they consider to be its one-sided perception of the residential school issue. In their view, by focusing attention on the need for “healing” and “reconciliation” within aboriginal communities, the Commission drew attention away from the individuals who committed such acts of abuse against children in their care – and the institutions responsible for their appointment and supervision. Chrisjohn and Young are skeptical about the efficacy of this one-sided approach to the healing process. Moreover, they blame the churches for using “therapy” as a way of avoiding responsibility for the treatment of aboriginal students in residential schools:

We cannot see into the hearts and minds of those who have called so strongly for therapeutic or conciliatory responses to the Residential Schools, whether ecclesiastics, judges, or therapists of any stripe. Instead, we point out that unanimity has come about in the absence of any evidence to favor it. We ask if such unanimity really benefits Aboriginal Peoples. And we call attention to manifest economic, political and legal reasons such a smoke-screen would be created in the first place.<sup>12</sup>

The deep-seated distrust of aboriginal peoples towards the Canadian government and churches is indicative of the wide gap that exists between the two worlds of aboriginal and non-aboriginal Canadians. Although the notion of a deliberately set “smoke-screen” may represent an extreme view, and bear little relation to reality, there is enough “smoke” to warrant raising the important question of accountability on the part of the perpetrators of aboriginal abuse. The rank and office of those who victimized aboriginal children, whether they were school administrators or clergy, should not be allowed to shield or immunize them from being held accountable.

Another area of concern for some First Nations people is that by giving prominence to the issue of residential schools, the Royal Commission may have diverted attention away from the systemic violation of human rights in Canada and the wider issues of land and treaty rights and

self-government. As inexcusable as the schools were as instruments of oppression and subjugation, they do not represent the total picture, any more than Australia's "stolen generation" represents the whole of that country's history (see Appendix) – or South Africa's victims of gross human rights abuses heard by the TRC represent the history of apartheid. The hardships and deprivations endured by aboriginal peoples run much deeper and cover a far wider range of concerns than the residential schools alone represent. Thus the Commission has created fresh divisions within the aboriginal community by favouring one group over others. A case in point is the administration of the government's "Healing Fund" which is earmarked specifically for survivors of sexual and physical abuse in residential schools. Survivors of residential schools who experienced cultural or psychological abuse are not eligible to apply for compensation. The result has been that growing numbers of former students are claiming compensation through the courts.

#### **SOUTH AFRICA'S TRUTH AND RECONCILIATION COMMISSION**

The Truth and Reconciliation Commission was established as part of the compromise between the apartheid government and the liberation movements to ensure a peaceful transition to democracy.<sup>13</sup> While apartheid South Africa was not formally a military state, the generals who operated the National Security Management wielded almost unrestrained power. Their demand for automatic amnesty during the negotiations of 1993 forced the African National Congress (South Africa's largest liberation movement) to find a middle path to satisfy both parties. While it rejected a Nuremburg-style inquiry on philosophical grounds, the African National Congress was prepared to consider an alternate process which would provide a forum for full disclosure of the crimes committed, while denying the right of automatic amnesty to any perpetrator.

Appointed under the Promotion of National Unity and Reconciliation Act in December 1995, the Truth and Reconciliation Commission (TRC) was assigned the task of establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights committed from 1 March 1960 to 5 December 1993. Archbishop Desmond Tutu was appointed chairperson, and Dr. Alex Boraine, his deputy. The Commission consisted of three committees: the Human Rights Violations Committee, which was to conduct investigations and hearings into petitions relating to human rights violations submitted to the Commission; the Reparations and Rehabilitation Committee, which was to investigate the issue of compensation; and the Amnesty Committee, which had to grant or withhold amnesty to the thousands of applicants who admitted



their role in the deaths and torture of their countrymen and women. There was also an Investigative and a Research Unit.

The TRC submitted its report to President Nelson Mandela in October 1998 after two and a half grueling years of hearings held across the country. Since the hearings received extensive media coverage, South Africans were exposed almost daily to revelations about their traumatic past on national radio and television. In improvised courtrooms fashioned out of town halls, community centres and churches, people came forward to tell their stories of terror, mutilation and death. The Commission received 21,300 statements from victims and nearly eight thousand applications for amnesty. As the TRC process got underway, it became obvious that the Commission's optimistic objectives to "put the past behind us and move into a peaceful future" were probably both unrealistic and unattainable.

For many who watched the proceedings on television, the most memorable part of the proceedings was the extraordinary role played by TRC Chairperson, Archbishop Desmond Tutu. Certainly no one could have provided an atmosphere more conducive to reconciliation and healing than this dynamic Anglican clergyman. That he wept openly with the emotionally distraught and anguished survivors who testified to the Commission, pleaded with Winnie Madikazela-Mandela to admit her part in the crimes she was accused of committing, and treated everyone from the intransigent former President P.W. Botha to the most remorseful abuser with equal respect and dignity was apparent in the broadcasts. However, some faith communities who did not share Tutu's theological interpretations of the TRC's mission felt alienated and excluded by the "powerful presence" of the Archbishop and the visual display of Christian symbols (Tutu wore his purple cassock and cross to the hearings). As Muslim activist Faried Esack pointed out, the result of this sense of exclusion was that few Muslims were able to "own" the TRC process.<sup>14</sup>

#### CRITIQUING THE TRC

For all the careful thought and discussion that preceded South Africa's TRC process, opinions about the usefulness and success of the commission vary widely, as did public expectations for what it might accomplish. For those who were looking for what Professor Mahmood Mamdani calls a "grand concluding narrative" to accompany South Africa's entry into a global economy after decades of isolation and international censure, the TRC played its part admirably. Widely covered in the foreign media, the TRC was generally reviewed much more favourably abroad than inside the country. For many, the Commission's most valuable contribution was to hold up a mirror to South Africans showing them a deeply troubled

society, a society torn apart and distorted by the obsessive policies of white supremacy. One of its greatest achievements, according to some commentators, was to make it impossible for the white community to deny all knowledge of what had happened; but other commentators criticized the process for failing to address some of the key concerns of the majority (black) population.

The international community has been rightly impressed by the role of the TRC in restoring dignity and recognition to thousands of its citizens. However, there are other aspects of the TRC process which send a more cautionary message. Writing in 1998, journalist Antjie Krog observed, “the jury is still out as to whether the Truth Commission has been successful as an agent of reconciliation and reparation. And South Africans are discovering that the relationship between truth and reconciliation is far more complex than they ever imagined.”<sup>15</sup>

One of the most compelling criticisms of the TRC process for many black South Africans was made by Professor Mamdani, head of the African Studies Department at the University of Cape Town. By focusing on human rights abuses as “the narrative” of the past, Mamdani argued, the TRC confronted apartheid through a narrow lens that excluded the experiences of the vast majority of the population. The consequence of paying special attention to a small minority who had been victimized by agents of the state (or agents of the opposition forces in some cases) was that the impact of the apartheid system on millions of South Africans remained unexamined and unaddressed.

A second criticism of the TRC – and one of the most controversial – was that it was only empowered to provide restorative justice not retributive justice: to punish offenders for their actions. As Elizabeth Kiss wrote in *The Economist*, “We’ve heard the truth. There is even talk about reconciliation, but where’s the justice?”<sup>16</sup> This was one of the compromises made with the ruling apartheid government before the truth commission was established. But many families of victims were angry that the people who had harmed their loved ones were going to escape punishment by requesting and receiving amnesty.<sup>17</sup> Among those who campaigned vigorously to have amnesty declared unconstitutional before the TRC began its work was the Biko family. Steve Biko, the leader of the Black Consciousness Movement, had been brutally murdered in police custody in 1977. The Biko family eventually accepted the *bona fides* of the TRC process once the announcement was made but were nevertheless openly jubilant when his killers were refused amnesty.<sup>18</sup> While restorative justice is needed to rebuild community spirit, for many people there was also a need for retribution.



TRC hearing relating to General Magnus Malan, former Minister of Defence.

Some of the perpetrators who testified to the TRC and applied for amnesty were subsequently charged in the criminal courts. Eugene de Kock, a former commander of the security police's C-10 counter-insurgency unit at Vlakplaas farm outside Pretoria was sentenced to 212 years in jail after a twenty-one-month trial. Because of the non-political nature of some of de Kock's crimes, he will serve time in jail even if his amnesty application had been granted. But in another key trial, former defence minister Magnus Malan and his fifteen co-accused were acquitted of all charges related to the 1987 KwaMakutha massacre, due to insufficient evidence.<sup>19</sup>

Finally, the TRC has been faulted for setting up a dichotomy between the perpetrators of abuse and those they abused. This dualism of "perpetrator" and "victim" evaded the issue of systemic repair, and most significantly of all, it failed to recognize and address the other critical player in the South African tragedy: the beneficiaries. This was a critical failing because it meant that the influential but silent "accomplices" of apartheid – the white minority who had benefitted in every respect from the apartheid system – did not have to face the country. The distinctive characteristic of the apartheid system, Mamdani argues, is the link between the perpetrators and the beneficiaries. "It is the link between power and privilege, between racialized power and racialized privilege."<sup>20</sup>

The merging perception of the dominant culture as beneficiary, perpetrator and victim has had important consequences. Sometimes the merging was seen as part of the "South African miracle." No longer were there

sharp and clear distinctions between “white” (beneficiaries) and “black” (victims); people became changed by the TRC process and the exposure it provided to the excesses of apartheid. One of those deeply affected by the TRC process was Afrikaner poet and journalist, Antjie Krog. In the closing paragraph of her book, *Country of my Skull*, she describes the strange confusion of emotions she is left with after her two-year assignment as special radio reporter on the TRC hearings:

I am filled with an indescribable tenderness towards this Commission. With all its mistakes, its arrogance, its racism, its sanctimony, its incompetence, the lying, the failure to get an interim reparation policy off the ground after two years ... it has been so brave, so naively brave in the winds of deceit and rancour and hate.... For all its failures, it carries a flame of hope that makes me proud to be from here, of here. But I want to put it more simply. I want this hand of mine to write it. For us all; all voices, all victims.

Because of you  
this country no longer lies  
between us but within  
it breathes becalmed  
after being wounded  
in its wondrous throat  
In the cradle of my skull  
it sings, it ignites ...  
I am changed for ever. I want to say  
forgive me  
forgive me  
forgive me  
You whom I have so wronged, please  
take me  
with you.<sup>21</sup>

Krog’s imagery exquisitely sums up the dilemma of being both beneficiary, as a member of the privileged white “race,” and perpetrator by association as a member of the ruling Afrikaner nation. In addition, she also feels victimized by the shocking and shaming revelations of the TRC that turned her world upside down.

But the opposite effect can also occur. Mamdani observes that the more South Africa’s beneficiaries are outraged by the violations of hu-

man rights under apartheid, the less they feel responsible. Not only do they see no need to be forgiven, but they also experience forgiveness as a humiliation. Consequently, those victimized by apartheid become outraged by the complacency, callousness, and indifference they perceive, and so they feel that forgiveness is undeserved. As a result, they demand justice. So the TRC has in some ways ended up fueling the very demand for justice it set out to displace. What South Africans must do now, Mamdani insists, is search for a form of justice which can heal without compromising or diminishing the truth.<sup>22</sup>

#### REPARATIONS

One of the major disappointments that came out of the TRC process was the ANC government's refusal to honour its commitment to compensate the victims of gross human rights abuses who testified to the Commission. In 1996, the Commission's Reparations Committee recommended that twenty-two thousand people should receive compensation of up to R150,000 each to buy homes, educate their children, and pay for medical care. In 1998, the Government of National Unity (headed by President Nelson Mandela) agreed with the Commission's recommendations and promised greater equality of resources to all South Africans: "Unless there are meaningful reparations, the process of ensuring justice and reconciliation will be flawed." But as of January 2000, only eight thousand people had received interim payments of R2,000 each. As one newspaper editorial put it, the TRC's forty pages of recommendations were met with "deafening silence" by the ANC government.<sup>23</sup>

When Thabo Mbeki succeeded Mandela as president, he defended his government's decision not to honour its pledge of reparations by questioning the justness of paying individuals for the suffering they had endured. Finance Minister, Trevor Manuel, went so far as to discredit some of the claimants saying that "there were many Oscar contenders among those who appeared before the TRC," and argued that individual reparations were not necessary because the government was trying to uplift all the country's poor through its policies.<sup>24</sup> By asserting that the socio-economic implications of apartheid were being dealt with by other structures, notably the Land Claims Commission, the Gender Commission, and the Youth Commission the government side-stepped its commitment to the TRC process.

#### UNCOVERING THE TRUTH

Both Canada's Royal Commission on Aboriginal Peoples and South Africa's Truth and Reconciliation Commission raised a number of criti-

cal issues relating to the restitution of land rights and the restoration of dignity to aboriginal peoples. The most important lesson to be learned from both commissions is that “reconciliation” cannot be seen as an end in itself, merely the healing of a relationship that has turned sour. If this is how it is perceived, then the process of reconciliation holds out little hope for the disadvantaged partner. The act of reconciliation must change the relationship in fundamental ways in order to redress the injustices of the past.

As South Africa’s experience clearly showed, the only kind of truth commission that can produce meaningful reconciliation between aboriginal and non-aboriginal communities must uncover the “truth.” Mary Burton, who later became a TRC Commissioner, outlined the essential nature of the truth-telling process in the South African context at a conference in 1994. Her words are equally valid for Canada:

We need to have a commission of truth that can establish the facts and we need to give it teeth. It must gather in the stories to reach that truth which is, in a way, already known and accepted. But we need to make it legitimate through that process. We need to tell and record and validate that truth. We need to acknowledge wrongs, not only in terms of injustice and hurt, but also the terrible loss.<sup>25</sup>

In his usual evocative language, poet Breyten Breytenbach described the purpose of truth-telling as “the obligation to live together in full knowledge of the past with at least a semblance of decency and tolerance and order, when the foulness of the crimes committed by some of us against others is still propagating its stench.”<sup>26</sup>

As post-apartheid South Africans learned very quickly, one of the ways of evading “the truth” is to offer an apology. In 1996, the leader of the National Party, F. W. de Klerk, expressed his “deep regret” about apartheid in a speech to Parliament but has yet to admit his party’s role as a deliberate, willful agency of human suffering. In his 1999 autobiography, de Klerk revealed his perceptions of the truths brought to light by the Commission. Describing the confrontational relationship that had developed between himself and the TRC Chairman, Archbishop Tutu, de Klerk wrote:

The pity is that Archbishop Tutu and I – and the essentially decent communities that we respectively represent – are still so deeply divided by our different perceptions of the truth of

our country's troubled past. At the time of writing, the TRC has not yet produced its report. My fear is that, judging by its performance thus far, it will attempt to impose its own one-sided version of the truth on all South Africans, based on those aspects of the truth that fit its preconceived notions of our history. . . . My fear is that if the commission fails to produce a report which takes into account the perspectives and good faith of all the parties to our conflict, their efforts will lead neither to truth nor to reconciliation.<sup>27</sup>

By persisting in depicting the Afrikaner National Party government as an "essentially decent community" that acted in "good faith," de Klerk failed to acknowledge responsibility for the heinous crimes committed under his party's fifty-year administration. In fact, by denying all knowledge of the reprehensible actions of anti-insurgency police units, such as the Civilian Cooperation Bureau and the notorious Vlakplaas Unit, de Klerk passed the blame onto the foot soldiers who carried out their orders to such brutal effect: "I am convinced that the great majority of the members [of cabinet and the State Security Council] remained unaware of such operations until they were finally exposed by the Goldstone Commission or by the media."<sup>28</sup>

The truth about what was actually known to political leaders may never be revealed. There were reports that politically sensitive records relating to the activities of government departments had been destroyed in the weeks prior to the 1994 elections. For this reason, the Commission conducted a special investigation into the alleged destruction of records. Verne Harris, an archivist at the National Archives of South Africa and a member of the investigative team, has reported that "swathes of official documentary memory, particularly around the inner workings of the apartheid state's security system, have been obliterated." While a surprising amount of documentation survived the purge, Harris notes, the work of the Commission was gravely impeded by the loss of many critical "pieces of the past's puzzle."<sup>29</sup> As the TRC report indicated, "the destruction of state documentation probably did more to undermine the investigative work of the Commission than any other single factor."<sup>30</sup>

Anglican priest Father Michael Lapsley and lawyer Albie Sachs, survivors of separate assassination attempts by the apartheid regime, point out the enormous barrier to reconciliation presented by the non-repentance of government officials. In his Christian tradition, Lapsley says, repentance involves amendment of life, not glibly speaking about a new South Africa "as if it was like putting on a clean shirt."<sup>31</sup> This failure to

recognize the enormity of the past places serious roadblocks in the path of reconciliation. Albie Sachs summarizes the problem:

It is enormously frustrating to me to know there are millions of people who want to share this country, to share their humanity and open up their hearts – not just Mandela who is noted for this. But they cannot do it because the other side will not acknowledge that apartheid was more than a mistake.<sup>32</sup>

In Canada, official apologies to aboriginal peoples have become the centrepiece of the move towards “reconciliation” and the establishment of a new relationship with First Nations. In fact the only response elicited by the Royal Commission to date has been an apology from the Department of Indian and Northern Affairs (DIAND) plus the establishment of a Healing Fund for the survivors of physical and sexual abuse in church-run residential schools. In 1998, at the launch of “Gathering Strength,” the government’s official response to the RCAP Report, Jane Stewart, then minister of Indian Affairs, included a Statement of Reconciliation. Expressing regret for the many past policies and actions that have eroded the political, economic and social systems of Aboriginal peoples and nations, she told First Nations people that the government was “deeply sorry” and offered an apology to the victims of residential schools who suffered physical and sexual abuse. On 4 May 1998, at the launch of the \$350-million fund to develop a community-based healing strategy for victims of the legacy of abuse, the Department stated: “Reconciliation has been our first priority because we cannot look forward without first looking back and coming to terms with the impact of our past actions and attitudes.”<sup>33</sup>

The United States issued a similar statement of apology in September 2000. The Federal Bureau of Indian Affairs apologized to indigenous Americans for “the legacy of racism and inhumanity” including massacres, forced relocations and attempts to quash languages and cultures. “Never again will we attack your religions, your languages, your rituals or any of your tribal ways. Never again will we seize your children, nor teach them to be ashamed of who they are. Never again.” In presenting this apology, the head of the Bureau, Kevin Gover, a Pawnee Indian, said that by acknowledging this legacy, the Bureau accepted the moral responsibility of putting things right. One hundred and seventy-five years after the creation of the agency as Indian Office of the War Department, the Bureau recognized its role in the “ethnic cleansing” of western tribes, the



deliberate spread of disease, the decimation of the mighty bison herds, the use of the poison of alcohol to destroy both body and mind, and the killing of women and children – a tragedy so ghastly that it cannot be dismissed as merely the inevitable consequences of the clash of competing ways of life. In the United States, some native leaders welcomed the apology, while others called for an apology from the entire federal government, not just the department responsible for Indian Affairs.<sup>34</sup>

Chief Stewart Phillips of the Penticton Indian Band and president of the Union of B.C. Indian Chiefs gave short shrift to verbal apologies on both sides of the border. “Those kinds of statements from government represent a bunch of cleverly staged hand-wringing to make governments look good, while they continue to promote policies that lead to our marginalization.” However, when Jane Stewart presented her apology on behalf of the DIAND, expressing “profound regret” for past actions, Phil Fontaine, Grand Chief of the Assembly of First Nations, accepted the apology on behalf of the AFN.<sup>35</sup> Not all First Nations leaders approved of his acceptance.

Canada’s mainline Christian churches have also apologized. An explicit acknowledgment of the churches’ culpability regarding residential schools came from the Oblates, a Roman Catholic order which ran many residential schools for indigenous children across Canada. In a statement read by Reverend Douglas Crosby, O.M.I., to the annual religious pilgrimage at Lac Ste-Anne, Alberta on 24 July 1991, the Oblate Order issued a full apology to the native people of Canada:

We wish to apologize for the existence of the schools themselves, recognizing that the biggest abuse was ... that the schools happened ... that the primal bond inherent within families was violated as a matter of policy, that children were usurped from their natural communities, and that, implicitly and explicitly, these schools operated out of the premise that European languages, traditions, and religious practices were superior to native languages, traditions and religious practices.<sup>36</sup>

The United Church of Canada as well as the Anglican and Presbyterian churches have since offered their own apologies. The United Church of Canada offered two apologies, first in 1986 and again in 1997. The latter, a statement of Repentance and Apology to the First Nations of Canada for the harm caused by residential schools, was accompanied by the establishment of a Healing Fund. Despite these expressions of remorse and

promises of a new relationship, the survivors of the residential school system have taken matters into their own hands. By November 1999, former residential school students had filed over six thousand claims against the four churches (Roman Catholic, Anglican, United and Presbyterian) and federal government. The number has increased each year since. Many claims allege physical and sexual abuse; but the main thrust of the litigation is for compensation for the loss of language and culture as a result of the residential school experience.

The notion of apologies without meaningful actions to go along with them is not readily understood by aboriginal peoples: even the words “I’m sorry” have no equivalent in many Canadian First Nations languages. Elijah Harper, Commissioner of the Indian Claims Commission and a former residential school student, has explained that in his tradition when a wrong has been committed, “the onus was placed on the perpetrator to make it right or to do something to make it okay. Reconciliation to me means making things right. How do you restore dignity, self-confidence and worthiness by saying ‘Here’s a million dollars?’ I think there needs to be a human element, an emotional attachment to that – much more than money is being transacted.”<sup>37</sup>

The skepticism of aboriginal peoples is not difficult to comprehend. The gulf between words and action remain a barrier to true reconciliation between aboriginal and non-aboriginal communities. Numerous commissions and government reports have urged changes in the legal relationship between aboriginal peoples and Canada, including self-determination. The Penner Report, published in 1983, gave strong endorsement to the principle of self-government within Canadian confederation.<sup>38</sup> But to date, the Canadian government has not chosen to implement any of them, including the Royal Commission’s 1996 recommendations advocating aboriginal governments as a “third order of government.” Similarly, there has been no action to implement an aboriginal lands-and-treaties tribunal to replace the Indian Claims Commission, as recommended by the Commission. During his term as prime minister of Canada, Jean Chrétien proposed major amendments to the Indian Act (last revised in 1951), but the Act and the Department of Indian and Northern Affairs remain in place.

Apologies and talk about “reconciliation” are ways of dealing with problems without any real changes taking place. Speaking of the reconciliation process in Latin American countries, Tina Rosenberg warns that short-term solutions can have great long-term costs. Beware of the words “amnesty” and “reconciliation,” she cautions, because amnesty

can be confused with amnesia and reconciliation with recurrence. False reconciliation risks allowing a century-old cycle of crime and impunity to continue.

If the state still believes it did the right thing and behaves in a manner in which crimes could be repeated, it is not ready for reconciliation. The kind of reconciliation that lets bygones be bygones is not true reconciliation ... If, conversely, the victims in a society do not feel their suffering has been acknowledged, then they too are not ready to put the past behind them.... This is an important problem related to reconciliation: if people do not believe that justice will ever be done the door is left open to private acts of vengeance and retribution, and that can be dangerous for a society.<sup>39</sup>

The essential purpose of truth-telling is to confront the dark side of the past and to ensure that such things never happen again. The onus is on the whole society to make the radical changes necessary to establish a new kind of relationship with those who were formerly oppressed. In the words of Albie Sachs:

We have to acknowledge that we, as a country and as South Africans, assume an historic responsibility for what happened. Many of us fought against it, all of us are going to give the guarantee that it will not happen again. Our future relationship will be based on the principle of dignity, equality and respect.<sup>40</sup>

The chilling testimonies in the TRC hearings brought light to bear on the darkest side of South Africa's psyche. They laid bare the signs of a deeply wounded and sick society.

For meaningful reconciliation to take place in Canada, there would need to be a thorough investigation into its treatment of indigenous peoples in order to create a society and a culture that values human rights over everything else. The need for transparency is still urgent. In September 1995, First Nations activist Dudley George was killed at Ipperwash Provincial Park during a confrontation with the Ontario Provincial Police over the land rights of the Stoney Point People. The public inquiry into the incident, held nine years after George's death in response to pressure from a number of organizations, was carefully monitored by aboriginal and non-aboriginal groups alike. In calling for

the inquiry, the ecumenical Aboriginal Rights Coalition drew attention to the need for stricter controls over police deployment in matters involving aboriginal communities.<sup>41</sup> Neither the federal nor provincial governments nor the justice system have been transparent in all their dealings with aboriginal peoples, even though there are laws which provide public access to information.

Finally, as Chilean law professor Jose Zalaquett told South Africans in 1996, the purpose of dealing systematically with the legacy of atrocities is moral reconstruction, rather than crime and punishment. To put back in place the moral order that has broken down or has been severely undermined, or to build up a just political order where none has existed in historical memory, are the primary objectives of a truth commission. This entails the building of a political culture and setting in place values and institutions and policies that will guard against recurrence.<sup>42</sup>

### CONCLUSION

By persisting in seeing reconciliation as primarily a question of people-to-people relations – the establishment of a “renewed relationship,” as the RCAP Report phrases it – meaningful changes are unlikely to take place. Government-driven attempts to fashion a new relationship out of the old one have failed to acknowledge that the existing system is founded on the alienation of aboriginal peoples from their land and resources. As South African theologian, Itumeleng Mosala observed, reconciliation can never be achieved on the terms of the dominant society. It is indigenous peoples, who have been alienated from their source of identity and survival, who must dictate and determine the terms of reconciliation.

Reconciliation must have something to do with the reversal of our alienation; and our alienation is not alienation from white people first and foremost. Our alienation is from our land, our cattle, our labour which is objectified in industrial machines and technological instrumentation. Our reconciliation with white people will follow from our reconciliation with our fundamental means of livelihood.<sup>43</sup>

A crucial point is being made here. Once indigenous people have been reconnected with their land and resources, which represent their “fundamental means of livelihood,” only then will their reconciliation with the dominant society be possible.

Chief John Joe Sark of the Mi'kmaq Grand Council came to a similar conclusion. As he told the Royal Commission in 1994, Canada's aborigi-

nal peoples are not looking for “sympathy, good intentions, or charity from non-aboriginal Canadians: they are demanding justice and recognition of their aboriginal rights and treaties including the right to self-government. Only when these rights have been recognized and land claims have been equitably settled will there be a level playing field and the fair chance for aboriginal peoples to coexist in peace, harmony and prosperity with other Canadians.”<sup>44</sup>

