Justice as Healing: Native Nations and Reconciliation

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I am honored to give the Canby Lecture for 2020, and I thank Patty Ferguson-Bohnee and Kate Rosier for their leadership of the Indian Legal Program and for inviting me today. I'm delighted to return, even in a virtual space, to the Sandra Day O'Connor College of Law at Arizona State University (ASU). This was my academic home for over twenty-two years, and I owe so much to this law school and its amazing faculty, past and present. In particular, I honor Judge Canby, who first taught Federal Indian law at ASU in the early days of the law school before there was a formal Indian Legal Program, and who was responsible for recruiting the first Native students to graduate from ASU's law school. Judge Canby's intellectual leadership in the field of Federal Indian law inspired me and many other colleagues in the field of Federal Indian aw. Judge Canby was also the impetus for the development of the Indian Legal Program (ILP), and our Program benefitted from his many years of tireless and dedicated service on the ILP Advisory Council.

This lecture is based, in part, on a book in progress, entitled *Justice as Healing: Native Nations and the Politics of Reconciliation*. I started the book when I was on the ASU law faculty and working on reparative justice. I dedicate this lecture to the memory of my esteemed friend and colleague, Professor Jeffrie Murphy, Regents Professor of Law, Philosophy and Religious Studies at ASU. Professor Murphy authored an essay on "responding to evil," and he was able to delink the notion of "forgiveness" from the notion of "reconciliation" as a mode to achieve justice after violent histories, such as apartheid in South Africa.[1] Kevin Gover was our colleague at that time, and the three of us discussed Kevin Gover's apology, when he was the Assistant Secretary of Indian Affairs for President Clinton, for over

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* Regents Professor of Law, University of Arizona. The author is deeply grateful to Sarah Brunswick, Editor-in-Chief of the Arizona State Law Journal, for her excellent editorial work on the published version of the lecture. During a time where our respective Universities were short-staffed and challenged by the exigencies of the pandemic, Sarah's exceptional dedication, skill and professionalism enabled the continued publication of the Journal, as well as the author's contribution.

1. *See* Jeffrie Murphy, Keynote Address, *Forgiveness, Reconciliation, and Responding to Evil: A Philosophical Overview*, 27 FORDHAM URB. L.J. 1353 (2000).

a century of harmful acts by the Bureau of Indian Affairs. I ultimately wrote two articles, based on those conversations, and that became the foundation for my book.[2]

Professor Murphy recently passed away after a long and distinguished career, and he was the single most powerful intellectual force in my career. Professor Murphy led the University of Arizona (UA) Philosophy Department to nationally acclaimed status before he was recruited to ASU as a Regents Professor of Philosophy and Law. When I arrived at ASU as a young visiting professor, just a couple of years out of law school, I had the great fortune to be placed in the office next to Professor Murphy and that is where I remained for the next twenty-two years. Professor Murphy had a deep knowledge of the philosophy of law, morality, and justice; and his pathbreaking work on forgiveness, mercy, punishment, and the moral emotions inspired my work on reparative justice. His friendship and mentorship sustained me for so many years, and even at our last luncheon, we discussed these themes. We were at that time discussing an early draft of his essay, "Humility as a Moral Virtue," which starts with a quote from Rachel Cusk that seems appropriate as a starting point for this lecture:

> Sometimes it has seemed to me that life is a series of punishments for . . . moments of unawareness, that one forges one's own destiny by what one doesn't notice or feel compassion for; *that what you don't know and don't make the effort to understand will become the very thing you are forced into knowledge of*.[3]

At this moment in our Nation's history, the social movement toward racial justice and reconciliation requires our attention and our ability to understand the disparate histories and lived experience of communities that are often invisible within national debates over current topics, such as healthcare or climate policy. This lecture focuses on the changing political and legal relationship between Native Nations and the U.S., as well as its constituent entities and institutions.

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2. Rebecca Tsosie, *Acknowledging the Past to Heal the Future: The Role of Reparations for Native Nations*, *in* REPARATIONS (Jon Miller & Will Kymlicka eds., 2007); Rebecca Tsosie, *The BIAs Apology to Native Americans: An Essay on Collective Memory and Collective Conscience*, *in* TAKING WRONGS SERIOUSLY: APOLOGIES AND RECONCILIATION (Elazar Barkan & Alexander Karn eds., 2006).

3. Jeffrie G. Murphy, *Humility as a Moral Virtue*, *in* HANDBOOK OF HUMILITY (Everett L. Worthington Jr. et al. eds., 2016) (quoting RACHEL CUSK, OUTLINE (2015)).

INTRODUCTION

I am giving this lecture in October 2020, as we near the end of a year marked by multiple and often overlapping crises. The global pandemic remains our most serious concern, as we struggle to determine how—or if—our society can ever truly return to "normal." The climate crisis is evident in the unprecedented fires that have burned throughout California, the Pacific Northwest, the Southwest, and now rage in the Mountain states. In the summer months, we witnessed racial violence and widespread protests for racial justice, highlighting the urgent need for renewed attention to racial inequalities and the stark fact that some lives are clearly not given the same value as others. It quickly became apparent that the intersection of race, poverty and inequality still jeopardizes the health of our nation. As I explored the role of the law in sustaining our ability to meet these various crises, I saw that our notions of justice in the present moment (for example, how we could ensure the safe closure of reservation borders, given that these communities do not have access to food, water, and safe housing in a pandemic) were incomplete without reference to our collective past. The legacy of colonialism haunts us still, although we rarely acknowledge this in public discourse. Most importantly, I wanted to look toward the future in a way that highlighted the theme of healing trauma and restoring a vision of justice that was sustainable and had the capacity to transform the deficiencies in our current institutions.

When I was invited to give this lecture, I reflected on Judge Canby's legacy of intellectual leadership. In 1989, Judge Canby wrote the Foreword for an Indian Law Symposium, organized by two prominent University of Arizona law faculty members, the late Professor Vine Deloria, Jr., and Professor Robert Williams—both of whom started the UA Indian law program and were leading Native law faculty members when I was a student. Judge Canby's text inspired me so much that I quote it on my Federal Indian law class syllabus each year. Professor Canby wrote that Indian law is a complex field of law that features challenging jurisdictional contests, but it also has a greater significance:

> Indian Law is a reflection of a national policy of profound importance. At its heart lie political and ethical questions of the nation's proper treatment of tribes that it overcame, displaced and yet engaged in a reciprocal relationship of the most solemn obligation. *The kind of policy we choose has much to do with the national soul, or ought to*.[4]

4. William C. Canby, Jr., Foreword, *Indian Law Symposium*, 31 ARIZ. L. REV. 191, 191 (1989) (emphasis added).

Judge Canby's words have proven to be quite prophetic. This past summer, the U.S. Supreme Court released its historic opinion in *McGirt v. Oklahoma*, holding that the Muscogee Creek Reservation in Oklahoma had never been disestablished by Congress and exists today, along with the relevant jurisdictional rules governing crimes within Indian Country.[5] Justice Gorsuch rejected the notion that treaty promises could be disregarded merely because it had become "convenient to do so" a century later.[6] In the nineteenth century, the Muscogee Creek Nation was removed from its traditional territory to Oklahoma, a painful and violent experience, which Justice Gorsuch acknowledged in his opinion, writing:

> On the far end of the Trail of Tears was a promise. Forced to leave their ancestral lands in Georgia and Alabama, the Creek Nation received assurances that their new lands in the West would be secure forever. In exchange for ceding 'all their land, east of the Mississippi River,' the U.S. government agreed by treaty that 'the Creek country west of the Mississippi shall be solemnly guaranteed to the Creek Indians.[7]

By the year 2020, that nineteenth century treaty was a distant memory for most citizens of Oklahoma. *McGirt* changed that. "We hold the government to its word," Gorsuch wrote at the outset of his opinion, and in the concluding paragraph, he wrote that to hold otherwise "would be to elevate the most brazen and longstanding injustices over the law, both rewarding wrong and failing those in the right."[8] *McGirt* made the past present in a way that is rarely seen within the field of Federal Indian law. After Oklahoma achieved statehood in 1907, it behaved as though the Creek Treaty was no longer in effect, rendering the reservation boundaries "invisible" as a matter of state policy. Yet, the people of the Muscogee Creek Nation knew otherwise. Joy Harjo, a Muscogee Creek tribal member and the United States' Poet Laureate, says: "When you understand history as 'linked stories, as the Muscogee Creek people do, there is no 'misty past.'"[9] Harjo is the descendant of the Creek leaders who fought Andrew Jackson, and she recalls:

> The elders, the Old Ones, always believed that in the end, there would be justice for those who cared for and who had not forgotten the original teachings, rooted in a relationship with the land. . .

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5. 140 S. Ct. 2452, 2464–65 (2020).
6. *Id.*
7. *Id.* at 2459.
8. *Id.* at 2459, 2482.
9. Joy Harjo, *After a Trail of Tears, Justice for 'Indian Country'*, N.Y. TIMES (July 14, 2020) (emphasis added) https://www.nytimes.com/2020/07/14/opinion/mcgirt-oklahoma-muscogee-creek-nation.html [https://perma.cc/KKT2-USYP].

> *Justice is sometimes seven generations away, or even more. And it is inevitable.*[10]

Joy Harjo also noted that this history and set of experiences links Native peoples with the United States and its citizens: "The Old Ones understood the truth that 'we are all related,' and now, as a nation reckoning with racism, maybe more of us are beginning to understand it, too."[11] The decision in *McGirt* was long overdue, but "at last, on the far end of the Trail of Tears, a promise has been kept."[12]

In this lecture, I will build on these insights to construct "justice" as "healing." We have never needed this lesson as much as we do today. In a nation "reckoning" with racism, a pandemic, and the most extreme disparities we have ever experienced, measured in terms of access to basic necessities, such as food, water, healthcare and housing, we must focus on how we will heal all that is broken. Building on Judge Canby's words, I will first ask: Does our Nation have a "soul" and if so, who is the custodian?

I. CONSTRUCTING THE "SOUL OF THE NATION": LAW, ETHICS, AND MORALITY

The timing of my inquiry was serendipitous because other Americans are asking this same question. Just last week, Elizabeth Dias wrote an article for the *New York Times* commenting on the fact that President Trump and Vice President Joe Biden have each invoked the idea that they are fighting for "America's soul."[13] Yet, given the disparate nature of their respective goals for the country, what does that mean? President Trump's "Make America Great Again" campaign constructs a version of American nationalism anchored in a problematic past. Vice President Biden's version extorts Americans to live up to a higher character. Both leaders attempt to transcend the sphere of politics through an appeal to larger spiritual or philosophical questions, and yet, if this is the case, surely "justice" must rise to the top of that calculus.

This was true in Plato's work, as he wrote of Socrates exploring the connection between the soul and the Republic in creating the virtue of

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10. *Id.*
11. *Id.*
12. *Id.*
13. Elizabeth Dias, *Biden and Trump Say They're Fighting for America's 'Soul.' What Does That Mean?*, N.Y. TIMES (Oct. 17, 2020), https://www.nytimes.com/2020/10/17/us/biden-trump-soul-nation-country.html.

"justice."[14] On this account, one must be part of the "body politic" in order to define the "soul of the Nation." To the extent that the U.S. Constitution embodies a notion of "justice," the Framers had this duty, and the preamble to the Constitution specifies their intent to "establish Justice" for "Ourselves and our Posterity."[15] Of course, at that moment in time, "We the People"[16] constituted a small subset of the current U.S. polity. African American people were enslaved and Native peoples were undergoing massive displacement and genocidal wars, so both groups were formally excluded from defining the "soul of the Nation."

By the beginning of the modern civil rights era, both groups were citizens of the United States with complex histories of injustice that needed to be reconciled. In 1954, the Supreme Court overturned the notorious doctrine of "separate but equal" in the context of public school education, holding in *Brown v. Board of Education*, that racially segregated schools destroyed equal educational opportunity for Black students in K-12 public education systems, stamping them as "inferior" and foreclosing their opportunity for full participation in democratic society.[17] In 1957, the Reverend Martin Luther King and other civil rights leaders formed the Southern Christian Leadership Conference to "save the soul of America," flagging the need for an intercultural and interracial dialogue on justice and civil rights.[18]

Where are we today? In 2020, we are committed to formal equality and to protecting "civil rights." The notion of "institutional racism" is still contested among those who believe that racism exists only in (rare) intentional acts by individual wrongdoers. Yet we continue to witness differential impacts within our systems of law enforcement, housing, and healthcare. We suffer from tense race relations, significant economic disparities, and a continuing lack of equitable access to the fundamental goods that our society must provide for its citizens. Clearly, there is an ongoing battle for the soul of our Nation. There is an active dialogue about the contours of reparative justice for racial groups and a rich literature.[19] I will focus on a narrow part of this

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14. *See generally* PLATO, THE REPUBLIC, bk. IV (G. R. F. Ferrari ed. & Tom Griffith trans., Cambridge Univ. Press 2000).

15. U.S. Const. pmbl.

16. *Id.*

17. 347 U.S. 483, 493–95 (1954).

18. *See generally* ADAM FAIRCLOUGH, TO REDEEM THE SOUL OF AMERICA: THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE AND MARTIN LUTHER KING, JR. (2001).

19. *See*, *e.g.*, ROY L. BROOKS, WHEN SORRY ISN'T ENOUGH: THE CONTROVERSY OVER APOLOGIES AND REPARATIONS FOR HUMAN INJUSTICE (Roy L. Brooks ed., 1999); ROY L. BROOKS, ATONEMENT AND FORGIVENESS: A NEW MODEL FOR BLACK REPARATIONS (2019); ALFRED L. BROPHY, REPARATIONS PRO & CON (2008); KATHERINE FRANKE, REPAIR: REDEEMING THE PROMISE OF ABOLITION (2019).

discussion as I engage the theme of reconciliation and explore an approach of "justice as healing" for Native Nations and the United States.

II. LAW AS "JUSTICE": LESSONS FROM FEDERAL INDIAN LAW

In 1989, when Justice Canby wrote his comments for the Indian Law Symposium, the field of Federal Indian law was defined by federal statutory law and the jurisprudence of the federal courts on the "rights" of Native Nations to land, governance, and to treaty rights. Conflicts over tribal power to regulate and adjudicate non-Indians in Indian Country, particularly on fee land, led to a series of momentous Supreme Court opinions, such as *Oliphant v. Suquamish Tribe*,[20] *Montana v. United States*,[21] (and in more recent years, *Strate v. A-1 Contractors*,[22] and *Plains Commerce*[23]) that found an "implicit divesture" of tribal sovereign authority due to the overriding interests of the United States in protecting certain fundamental rights of its citizens.

Another line of cases, such as *Navajo Nation v. United States*[24] and *Nevada v. United States*[25] articulated a narrow vision of the federal government's trust responsibility, refusing to find breach of "fiduciary duties" as a basis for damages claims in some cases, and excusing overt conflicts of interest in other cases, when Congress had created the conflict. A third line of cases, including *South Dakota v. Yankton Sioux Tribe*[26] and *Hagen v. Utah*[27] found that Congress had "implicitly" diminished the boundaries of treaty reservations by later statutes, in some cases looking at the contemporary demographics and "settled expectations" of non-Indians in the opened areas. The effect of a finding of diminishment was to authorize state regulatory authority over these areas.

In a world where tribal rights are determined by the law of the very government that is seeking to divest or diminish tribal rights, justice is quite tenuous. If Congress is composed of representatives that support tribal interests, as was true in when Senator John McCain, Senator Daniel Inouye, and Senator Ben Nighthorse Campbell led the Senate Committee on Indian Affairs, then it might enact protective legislation, as did with the Native American Graves Protection and Repatriation Act of 1990 and the Indian

20. 435 U.S. 191 (1978).
21. 450 U.S. 544 (1981).
22. 520 U.S. 438 (1997).
23. Plains Com. Bank v. Long Fam. Land & Cattle Co., 554 U.S. 316 (2008).
24. United States v. Navajo Nation, 556 U.S. 287 (2009).
25. 463 U.S. 110 (1983).
26. 522 U.S. 329 (1998).
27. 510 U.S. 399 (1994).

Child Welfare Act of 1978. If the President is supportive of tribal interests, Executive agencies, such as the EPA and BLM, might protect and promote tribal rights to natural resources and cultural resources, both on tribal lands and on so-called "federal public lands." If the political branches are not protective of tribal interests, then the Supreme Court is the only branch that can potentially protect tribal rights. In a world where the political branches also control the Supreme Court, the quest for justice will become particularly difficult.

A. How Will We Approach These Challenging Dynamics in the Years To Come?

Standing Rock Sioux legal scholar, Vine Deloria, Jr, described Federal Indian law, not as a field of "law" defined by principles and precedent, but as a chronological set of historical data about how the United States has treated Indian tribes. There was nothing principled about the historical development of Federal Indian law as "data." It was merely a political process that became embedded within federal law as "legal doctrine" without any need for tribal consent.

Deloria compared this unprincipled approach to law-making with the treaty tradition, which creates law through a set of "solemn" agreements between specific Native Nations and the United States. Those treaty promises were made to secure tribal consent, and they continue to carry moral and political weight, as Justice Gorsuch noted in *McGirt*. Although the 1903 Supreme Court in *Lonewolf v. Hitchcock*[28] found that Congress had the unilateral right to abrogate an Indian treaty, and this was a "political question" beyond the Court's authority to adjudicate, Gorsuch wrote that Congress had to explicitly act to abrogate a treaty.[29] If Congress had not done so, the Court should not allow these promises to be broken merely as a matter of "convenience."

The principle of consent protects the autonomy interests of individuals and Nations. Vine Deloria, Jr., commented in 1989 that Federal Indian law had become mired in a litigation model, where tribal sovereignty could "lose" in the federal courts, and he advised a return to the principle of tribal consent. Deloria said that the consent principle is anchored in the Northwest Ordinance of 1789, which was a Congressional statute adopted the same year that the U.S. Constitution was ratified.[30] The Northwest Ordinance declared

28. 187 U.S. 553 (1903).

29. McGirt v. Oklahoma, 140 S. Ct. 2452, 2465 (2020).

30. Vine Deloria, Jr., *Laws Founded in Justice and Humanity: Reflections on the Content and Character of Federal Indian Law*, 31 ARIZ. L. REV. 203, 220 (1989).

the principles and structures that would be used to add new states to the federal union, serving as an enduring compact between the original states and the people within the territories chartered for statehood. Of course, Indian tribes were not parties to the U.S. Constitution and were not envisioned to become "states" of the Union. Consequently, Article Three of the Northwest Ordinance described the Nation's policy toward the Indians: "[T]heir land and property shall never be taken away from them without their consent…but *laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them*."[31]

As Deloria noted, consent is the operative principle that governs interactions between sovereigns. International law has always guarded the right of each sovereign Nation to consent to treaties on subjects of mutual concern, such as trade agreements. Under the Northwest Ordinance, the principle of consent ensured a principled basis for justice, as between the original states and those that subsequently entered the Union. Treaties are the mode of agreement between Nations, which are autonomous actors, and that dynamic also characterizes the historic relations between Native Nations and the U.S. The Northwest Ordinance called for a principle of consent in the dealings of the United States with Indian Nations, and this dynamic informed Deloria's view that: "It is to these ideas that courts and Congress must remain faithful."[32]

Today, International human rights law envisions that the relationships between Nation-states and Indigenous peoples should reflect similar principles. Under International human rights law, the principle of "free, prior and informed consent" is enshrined within several provisions of the U.N. Declaration on the Rights of Indigenous Peoples, which was adopted by majority consensus of the U.N. General Assembly in 2007. The Declaration established that Indigenous peoples have the right to self-determination, which is a moral and political right to autonomy and self-governance. For Indigenous peoples, this right is to be exercised in negotiation with the nation-states, because the territorial boundaries of the states remain intact. Yet, the right to self-determination requires consent before nation-states take any political action that could jeopardize the rights of Indigenous peoples, particularly with respect to their lands and resources.

At the international level, the principle of "free, prior and informed consent" operates as a premise of corrective justice, seeking to redress the legacy of racist doctrines, such as the Doctrine of Discovery, that treated Indigenous peoples as inferior and "uncivilized," negating their full rights to

31. *Id.* at 220–21 (emphasis added).
32. *Id.* at 221.

exercise territorial sovereignty over their lands.[33] The Declaration acknowledges that this history of injustice had severe and continuing impacts, and counsels Nation-states to reconstitute their political relationship with Indigenous peoples under conditions of equality and in service of their right to self-determination. Governments must take steps to remediate past wrongs, uphold treaties and constituent agreements, and prevent further wrongs.

Of course, the U.N. Declaration is an aspirational document. Nonetheless, the United States endorsed the Declaration on December 16, 2010, after the U.S. Department of State found that the principles within the U.N. Declaration were consistent with U.S. Federal Indian law. Walter Echo-Hawk, the current Chairman of the Pawnee Nation of Oklahoma, as well as a legendary Federal Indian law attorney and widely published author on Indian law and International human rights law, has taken the position that the twenty-six articles of the Declaration established important guiding principles for domestic governments as they define the "rights of Indigenous peoples."[34] Similarly, these forty-six articles, taken together, embody principles of justice that can be used to advocate for needed change to the extent that domestic law fails to meet these benchmarks.

In particular, Echo-Hawk notes that Federal Indian law has emerged from a set of nineteenth century narratives about "conquest, colonialism, and race" that are antithetical to what the United States today asserts about its status as a multicultural Constitutional democracy. The way to reshape this body of law is to examine whether it comports with modern human rights norms.

III. JUSTICE AND RECONCILIATION: LESSONS FROM INTERNATIONAL HUMAN RIGHTS LAW

Twelve years after adopting the U.N. Declaration on the Rights of Indigenous Peoples, the United Nations is actively studying its implementation by nation-states. In July 2019, the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), released a Report providing updates on efforts to implement the Declaration.[35] The Report is organized around three main themes: *recognition*, *reparation*, and *reconciliation*.

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33. The Doctrine of Discovery was incorporated into U.S. law in the *Johnson v. McIntosh* case, which held that the European sovereigns obtained "title" to lands in the New World by "discovery and settlement," while Indigenous people retained only their aboriginal "title of occupancy." 21 U.S. (6 Wheat.) 543 (1823).

34. *See* WALTER R. ECHO-HAWK, IN THE LIGHT OF JUSTICE: THE RISE OF HUMAN RIGHTS IN NATIVE AMERICA AND THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (2013).

35. Human Rights Council, Expert Mechanism on the Rights of Indigenous Peoples, Efforts to Implement the United Nations Declaration on the Rights of Indigenous Peoples: Recognition, Reparation and Reconciliation, U.N. Doc. A/HRC/EMRIP/2019/3 (May 2, 2019).

Recognition of the status and rights of Indigenous peoples is an on-going process among nation-states and there are striking inconsistencies among nation-states. Nation-states use different processes and standards to accord "recognition" to Indigenous peoples, and some Nation-states claim an Indigenous identify for themselves. Although the United States has a defined recognition process for delineating the groups that are entitled to status as federally recognized Indian nations, there are still gaps and inconsistencies in our domestic practice due to specific historical circumstances and political pressures.

The process of *reparations* is linked to compensatory justice for "past" wrongs and. as the Report notes, is often quite controversial because it often carries economic consequences.

The process of *reconciliation* is also directed toward reparative justice but focuses on restoring broken relationships that have arisen from centuries of injustice in the wake of colonialism. Thus, it is the most abstract part of the equation, but a theme that must be engaged if we hope to repair the wounds that currently divide us, as a society.

Importantly, intercultural justice requires an attention to intercultural norms. Justice cannot be defined solely by the standards set down by the Framers of the Constitution, or by the U.S. Supreme Court, speaking on behalf of the Framers. The EMRIP Report clearly states that the norms and values of the Declaration should be "approached from an Indigenous perspective."[36] In particular, the Report notes that Indigenous peoples view these themes as a way to address colonization and its long-term impacts. Drawing on the similar conclusion of Canada's Truth and Reconciliation Commission on the impacts of the residential school program for Indigenous children in that country, the EMRIP Report specifically links reconciliation to a process of "healing" in at least four different ways:

> [1] Reconciliation is a process of healing relationships that requires public truth sharing, apology and commemoration that acknowledges and redresses past harm (reparations);
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> [2] Reconciliation is a process of healing relationships that requires addressing the ongoing legacies of colonialisms that have had destructive impacts upon Indigenous peoples' education, cultures, languages, health, child welfare, administration of justice and economic opportunities (equity);
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> [3] Reconciliation requires the creation of a more "equitable and inclusive society" by closing the gaps in social, health, and

36. *Id.* ¶ 72.

> economic outcomes between Indigenous and non-Indigenous sectors of society (inclusion); . . . .
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> [4] Reconciliation requires sustained public education and dialogue, including youth engagement, about the history and legacy of violations of Indigenous peoples' rights, as well as the historical and contemporary contributions of Indigenous people to society. (public education/public humanities).[37]

A. Comparative Accounts of Reconciliation

In 2015, Canada's Truth and Reconciliation Commission released its report on Canada's residential schools.[38] The Commission recommended revamping the Country's educational system, as well as working a curricular reform to ensure that all citizens had a basic understanding of the history and contemporary identities of Canada's First Nations.

Prime Minister Justin Trudeau stated that reconciliation is an essential part of Canada's commitment to address current inequities, such as over-policing of Aboriginal communities, under-funding of schools serving Aboriginal students, and need to recognize treaty rights, including rights to hunt and fish.

Specifically, Canada has made a pledge to "Indigenize" its Universities, offering public education about Indigenous peoples in an effort to atone for systemic racism against Indigenous people and "rebuild" the relationship between them.[39]

B. How Are We Doing in the United States?

1. National Effort To Establish a Truth, Racial Healing, and Transformation Commission

After a long summer of witnessing truly horrific events, such as the murders of George Floyd and Breonna Taylor, the nation's attention shifted to the discussion of how the United States should reconcile race relations. Rep. Barbara Lee of California introduced a resolution into Congress on June 4, 2020, that would establish the first United States Commission on Truth,

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37. *Id.* ¶ 45.

38. TRUTH & RECONCILIATION COMM'N OF CAN., HONOURING THE TRUTH, RECONCILING FOR THE FUTURE (2015) (summarizing final report).

39. Update: recent cases document the deaths of many aboriginal children at government sponsored boarding schools.

Racial Healing and Transformation.[40] The Commission would "properly acknowledge, memorialize, and be a catalyst for progress toward jettisoning the belief in a hierarchy of human value based on race, embracing our common humanity, and permanently eliminating persistent racial inequities."[41]

By June 8, more than one hundred members of Congress signed on as co-sponsors. The idea of creating a national body to acknowledge *historical injustices* is likely long overdue in the United States, but it is still quite contested due to the perceived economic burdens of reparative justice. The idea of creating a national body to acknowledge *continuing inequity*, on the other hand, seems pivotal to correcting the severe disparities that became even more pronounced in the wake of the COVID-19 pandemic. Of course, the position taken by the current leadership of the United States is that all individuals are entitled to achieve the level of success that they merit by virtue of their labor and efforts. The nation has healthcare systems, a food system, and a housing system. The mere fact that many citizens lack adequate access to these systems is deemed an individual failing despite the fact that the disparities fall disproportionately upon African American and Native American people, as well as other marginalized groups, such as Mexican-Americans and Mexican immigrants in the Southwest.

It seems likely that our pursuit of racial justice will require us to reconceptualize our fundamental notions of human rights and values in relation to the historical and contemporary experience of specific communities and peoples within our Nation. The profound inequities experienced by African American and Native American communities around the impacts of COVID-19, including health disparities and educational disparities, created a compelling case for a multifaceted exploration of equity in these communities, as well as other vulnerable communities (such as undocumented persons in the Borderlands region).

Native American Congressional representative Deb Haaland (New Mexico)[42] correlated the experiences of injustice for the respective communities as she supported Rep. Lee's Resolution, stating that we, as a country, "must untangle the racist webs that are woven into our laws and

40. H.R. Con. Res. 100, 116th Cong. (2020); *see also* H.R. Con. Res. 19, 117th Cong. (2021) (introducing a nearly identical resolution).

41. *Id.*

42. Deb Haaland has since been appointed Secretary of the Interior—the first Native American to serve in any cabinet position. *Secretary Deb Haaland*, U.S. DEP'T OF INTERIOR, https://www.doi.gov/secretary-deb-haaland [https://perma.cc/GC94-UTXZ].

policies."[43] Rep. Haaland highlighted the intersection of health inequity with environmental injustice and police violence, and she noted the cumulative impacts of these injustices for African Americans and Native Americans, as well as undocumented youth.

2. California

On June 18, 2020, California Governor Gavin Newsom met with tribal leaders in Sacramento, California, and formally apologized to California Indians for a century of genocide, oppression, and other atrocities.[44] Governor Newsom also issued an Executive Order establishing the Trust and Healing Council, led by Newsom's Tribal Advisor, which will take steps to clarify the historical relationship between the state and "California Native Americans." This formal "accounting" between the state and Native peoples must be done. The Governor designated a section of state land for the "California Indian Heritage Center."

Among other facts, Governor Newsom mentioned that California's first governor, Peter Burnett, spoke in 1851 about the "war of extermination" against Indians, and the Governor's office funded more than $1.5 million to vigilantes, militia members, and the military to accomplish this goal. As of the 1850's, eighteen treaties had been signed by California tribal leaders, but Burnett and his successor convinced the U.S. Senate not to ratify them—and further convinced the Senate to place them in a sealed vault for at least 30 years.

In a momentous act, Governor Newsom stated that his Executive Order covers the 109 federally recognized Indian tribes within California, as well as the tribes who are currently not recognized, but seek this status, after this tragic history and sealing of the historic record.

3. Truth and Healing Commission/Boarding Schools[45]

On September 29, 2020, Rep. Deb Haaland (D.-NM) and U.S. Senator Elizabeth Warren (D-Mass) introduced a bill into Congress that seeks healing

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43. *See Haaland Introduces Bill To Address Slavery and Racism's Impact on Laws and Policies*, LAST REAL INDIANS (June 1, 2020), https://lastrealindians.com/news/2020/6/1/haaland-introduces-bill-to-address-slavery-and-racisms-impact-on-laws-and-policies.

44. Debra Utacia Krol, *California Governor Apologizes to Tribal Nations*, INDIAN COUNTRY TODAY (June 21, 2019), https://indiancountrytoday.com/news/california-governor-apologizes-to-california-indians [https://perma.cc/MU46-M79T].

45. Update: Interior Secretary Deb Haaland has called for an inquiry into U.S. Boarding Schools.

for the estimated 83% of Native children that were involuntarily placed in United States sponsored boarding schools—often experiencing catastrophic personal harms and causing an intergenerational impacts—which are often designated in the literature as "historic trauma" or "unresolved historic grief."[46] The Bill seeks to create a Truth and Healing Commission on Indian Boarding School Policy in the United States to investigate, document, and acknowledge "past injustices of the federal government's cultural genocide and assimilation practices through its Indian Boarding School Policy. The Commission will also develop recommendations for Congress to aid in the healing of the historical and intergenerational trauma passed down in Native American families and communities" and provide a forum for victims to speak about the harms that they suffered as a result of these human rights violations.

As Rep. Haaland said when the Bill was introduced, this history is not commonly known among non-Indian citizens in the U.S. and it is not taught in public schools. The Honorable Michael Chavarria, Chairman of the All Pueblo Council of Governors in New Mexico thanked Rep. Haaland and Sen. Warren for their leadership in holding the United States accountable for these injustices and stated the need to develop "meaningful healing paradigms and systems in consultation with Tribes across sectors."[47]

Building on Governor Chavarria's important insight, I will conclude by highlighting some of the opportunities that we have to re-envision our current laws in a way that promotes reconciliation and a commitment to justice as healing.

IV. JUSTICE AS HEALING: HONORING THE OBLIGATION OF MORAL REPAIR

Philosopher Margaret Walker, author of the acclaimed book, Moral Repair, gave a lecture at ASU in 2006 focused on "justice and responsibility."[48] She commented that Nations often don't like to examine the negative aspects of their past, and they may even attempt to "erase" the past, for example, by not teaching about slavery or genocide. They may also

46. H.R. 8420, 116th Cong. (2020).

47. Press Release, Warren, Haaland Introduce Bill To Seek Healing for Stolen Native Children and Their Communities (Sept. 29, 2020), https://www.warren.senate.gov/newsroom/press-releases/warren-haaland-introduce-bill-to-seek-healing-for-stolen-native-children-and-their-communities [https://perma.cc/33QW-MUMK].

48. Margaret Urban Walker, Professor, Philosophy Department Homecoming Lecture at Arizona State University: Telling Truths and Restoring Moral Relations (2006); *see also* Margaret Urban Walker, *Truth Telling as Reparations*, 41 METAPHILOSOPHY 525 (2010) [hereinafter Walker, *Truth Telling*].

engage in denial, stating that "We are all equal" or that "We are post-racial." However, citizens within our society are not equal, nor are they equally situated. They have different historical experiences and different contemporary experiences, and the combination of these factors can manifest as "injustice."

How do we address this reality? Professor Walker claimed that there is a "right to truth about the past" and a corresponding duty placed upon educational institutions and archives.[49] There is also a "duty to remember" the past, and this duty falls upon states and their respective institutions.[50] The "past" is part of the present for communities, like the Muscogee Creek Nation, that understand their history as "linked stories." For Indigenous peoples, these stories go back to time immemorial, to the moment of their creation on these sacred lands. They also document acts of dispossession and appropriation by the colonial nations and their successors. Most of all they embody an Indigenous notion of justice in relation to land and cultural identity.

For Indigenous Nations, decolonization entails "Indigenization," bringing the land and people to the center of policy discussions, and grounding institutions in Indigenous values, even if this requires transformation of institutions and practices.[51] For example, Karuk Tribal Chairman Russell Attebury sees Governor Newsom's Executive Order as a potential basis to have tribal leaders at the table when the state engages policymaking on topics that will affect tribal lands and resources. In this way, "Indigenous land and water stewardship protocols" can become part of state policymaking: "We need to work together to combine Indigenous traditional ecological knowledge with modern science," including "thousands of years of managing the forests."[52]

On September 25, 2020, in commemoration of "Native American Day," Governor Newsom attended a virtual celebration entitled "Healing Nations—

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49. Walker, *Truth Telling*, *supra* note 48.

50. *Id.* at 526–27.

51. *See* AMY LONETREE, DECOLONIZING MUSEUMS: REPRESENTING NATIVE AMERICA AND TRIBAL MUSEUMS (2012); Dylan Clark, Patricia Mcnany & Sonya Atalay, Braiding Knowledge: Opportunities and Challenges for Collaborative Approaches to Archaeological Heritage and Conservation, Presentation at The 84th Annual Meeting of the Society for American Archaeology (2019), https://core.tdar.org/document/452362/braiding-knowledge-opportunities-and-challenges-for-collaborative-approaches-to-archaeological-heritage-and-conservation [https://perma.cc/8CYW-P8NZ].

52. *See* supra note 44 and accompanying text.

Protecting Elders, Women, and Children."[53] He also released a new Statement of Administration Policy on Native American Ancestral Lands, encouraging state entities to support California Tribes' co-management of and access to natural lands that are part of the tribes' ancestral lands and currently under state management authority. The Policy was a follow-up on the State Land Commission's earlier conveyance of forty acres of State-owned land to the Lone Pine Paiute-Shoshone Community for the preservation of tribal cultural resources.

I will return to the themes of the EMRIP Report to discuss what this might look like in the United States.

C. Recognition

The theme of recognition is of fundamental importance. Although the U.N. Declaration does not contain a definition of "Indigenous peoples," it is clearly true that in the settler colonial nations—the United States, Canada, New Zealand, and Australia—there is a powerful relationship between Indigenous peoples and the land, and this relationship both predates European settlement and serves as the foundation for the political relationship between the settler Nations and the Indigenous Nations. The rising importance of making a "Land Acknowledgement" as a matter of Institutional practice exemplifies one form of "indigenizing" the University or other state Institution.

There are several emerging issues in terms of "political" recognition, in terms of status rights. Indigenous self-determination in the United States is facilitated by the sovereignty model, but also by co-management models, corporate governance, and citizen participatory rights. It is not always easy to parse these out, and the paradigm case is the Voting Rights Act, which protects the interests of federally recognized Indian tribes to have a voice in selecting political representatives, but also is designed to protect Native American voters, as a "racialized" class of voters that was historically denied equal access and participation. Many of the current issues in this year's election straddle both tribal interests and the interests of individual Native voters as citizens. I acknowledge the leadership of Professor Ferguson-Bohnee and the Native Vote Project in this area.

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53. Press Release, Off. of Governor Gavin Newsom, On Native American Day, Governor Newsom Takes Action To Restore Land, Promote Equity for California Native Communities (Sep. 25, 2020), https://www.gov.ca.gov/2020/09/25/on-native-american-day-governor-newsom-takes-action-to-restore-land-promote-equity-for-california-native-communities/ [https://perma.cc/V5VK-VJL8].

Rights of non-federally recognized tribal governments are a continuing issue in many states, including California and Louisiana. Typically, the rights of recognized tribes—for example, to consultation—do not extend to non-recognized tribes. Governor Newsom's approach reflects an increased understanding of historical and contextual challenges which impede the realization of Indigenous rights for non-recognized tribes.

This is also an issue in Hawaii, where national and international attention focused on the latest episode of the state's attempt to site yet another massive telescope (funded by Universities and partner institutions and foundations) on the peaks of Mauna Kea, a sacred site to Native Hawaiian people, which is closely associated with their Creation stories. The mountain houses altars, deities, burials, and ceremonial sites that date back centuries. The legal protections available to American Indian people for sacred sites protection are limited, but Native Hawaiian people do not even have those rights as a matter of federal law. Rather, after the Hawaiian courts approved the granting of the permits, it took a vehement protest movement and the closure of the roadway to Mauna Kea to force the state to back away from active facilitation of the project.

In 1993 President Clinton signed the Joint Resolution of Apology to the Hawaiian people for the overthrow of the Hawaiian Kingdom by a set of American insurgents backed by the U.S. military.[54] The Apology Resolution called for a "reconciliation" with the Hawaiian people, but this was never followed by tangible action, such as federal recognition, due to a set of political challenges.

The protests at Mauna Kea highlighted several forms of injustice: the displacement of Native Hawaiian people from their traditional lands, the destruction of their government and current challenges in creating a new "governing body" eligible for federal recognition, and the multiple intersections of poverty, homelessness, and inadequate access to food and healthcare, given the extreme costs of both housing and food in Hawaii.

The issue of recognition is also occurring in Alaska, where the Alaska Native Corporations continue to argue for a share of the CARES Act funding that was set aside for tribal governments. Are the corporations "governments"? Are Indigenous corporations "peoples"?

The question matters a great deal for the Gwich'iin people in Alaska, who for generations have relied upon the Caribou herds to sustain themselves.[55]

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54. Joint Resolution to Acknowledge the 100th Anniversary of the January 17, 1893 Overthrow of the Kingdom of Hawaii, Pub. L. No. 103-150, 107 Stat. 1510 (1993).

55. *See* Eva Holland, *For the Gwich'in People, the Arctic National Wildlife Refuge Isn't a Political Issue, It's Home*, SMITHSONION MAG. (Dec. 2021),

This entire way of life was jeopardized by the 2017 legislation that opened the coastal plain of the Arctic National Wildlife Refuge to oil drilling. This area is used by the Porcupine Caribou as a calving ground, and the Gwich'iin have long fought to protect this area from oil development, asserting the massive cultural and environmental destruction that would occur if this area were developed.

The development of oil in Alaska provides economic benefits to the Native corporations—as well as the oil companies and the state of Alaska. Yet, the harms fall differentially on rural Indigenous communities, who lack access to food, water, or adequate housing and healthcare, and who depend upon subsistence rights to survive. In Alaska, a gallon of milk can cost $18, said one Gwich'iin leader, and even working full time as a licensed contractor, he has no way to feed his family without subsistence hunting and fishing rights.

The rights of Indigenous peoples in Alaska have been impacted by years of federal policy, but most prominently by the Alaska Native Claims Settlement Act of 1971, which extinguished aboriginal title in Alaska to allow the construction of a transboundary pipeline.[56] The statute also explicitly revoked all Indian reservations in Alaska, except for Metlakatla in the Annette Islands, leading to a crisis in exercising tribal governmental authority. The state of Alaska, which does have PL 280 authority[57] to adjudicate criminal and civil actions, even in Native Villages, has a relatively greater role in governance authority over crime, education, and other aspects of social policy, but the experience of Native Alaskans has often been one marked by extreme disparities rather than equity. Clearly, there is a tension between economic development and governance authority.

A final example concerns the rights of Native peoples on the Border. Tribal governments impacted by the construction of the Border wall have faced significant challenges in protecting their territories and the right of their members to access and protect cultural sites on each side of the Border. This past summer, Chairman Ned Norris of the Tohono O'odham Nation gave a presentation detailing the lack of consultation with tribal leaders prior to undertaking destructive activities which impacted burial sites and other significant sites.[58] The asserted National Security issues apparently

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https://www.smithsonianmag.com/science-nature/gwichin-people-arctic-national-wildlife-refuge-180979001/ [https://perma.cc/YJ6A-ZJYH].

56. Alaska Native Claims Settlement Act of 1971, Pub. L. No. 92-203, 85 Stat. 688 (codified as amended at 43 U.S.C. §§ 1601–1629).

57. Pub. L. No. 280, ch. 505, 67 Stat. 588 (1953) (codified as amended at 28 U.S.C. §§ 1151, 1360).

58. *See, e.g.*, Hearing Examining the Effect of the Border Wall on Private and Tribal Landowners Before the Subcomm. on Border Sec., Facilitation, & Operations of the H. Comm.

preempted normal consultation protocols, but in other cases, government officials and contractors alleged that the harms were "on the other side of the border" and not the concern of "American" Indian tribes.

Again, the U.N. Declaration gives us a language to understand the rights of Indigenous peoples who are inadvertently separated by National borders but who still exist as a "people" within a traditional "territory."

D. Reparation for Past Wrongs

The most powerful example of reparative justice to date is the Native American Graves Protection and Repatriation Act of 1990,[59] and this week marks the thirtieth anniversary of the statute's enactment by Congress. The Association on American Indian Affairs and the Denver Museum of Anthropology recently co-hosted a Symposium on NAGPRA, and Suzan Harjo gave the opening keynote address, detailing the history leading up to the statute's enactment.[60] The NMAI Act was passed in 1989 to govern the collections under the control of the Smithsonian Museum and the creation of the National Museum of the American Indian in Washington DC was designed to reconcile that bitter history and enable Native people to come together in acknowledgement of their history and current identity as the sovereign Nations of this land.[61]

There is much that could be said about that statute, which directed museums and agencies to inventory their collections and repatriate culturally affiliated ancestral remains and funerary objects to the descendant tribe or tribes. In addition, the statute required summaries of objects of cultural patrimony and sacred objects (defined in reference to their meaning under tribal law) and required those to be repatriated as well. Another section of the criminal code banned commercial trafficking in any of the protected items. Another section of the statute determined the ownership rights of current Native Nations to items that are excavated on federal or tribal lands after 1990.

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on Homeland Sec., 116th Cong. (2020) (statement of Ned Norris, Jr., Chairman, Tohono O'odham Nation).

59. Pub. L. No. 101-601, 104 Stat. 3048 (1990) (codified as amended in scattered sections of U.S.C.).

60. ASSOC. ON AM. INDIAN AFFS. & UNIV. OF DEN. MUSEUM OF ANTHROPOLOGY, 6TH ANNUAL REPATRIATION CONFERENCE (2020), https://www.indian-affairs.org/uploads/8/7/3/8/87380358/conference_program_final_printable.pdf [https://perma.cc/QX7N-XX32].

61. *See* National Museum of the American Indian Act, Pub. L. No. 101-185, 103 Stat. 1336 (1989) (codified as amended at 20 U.S.C. §§ 80q to 80q-15).

There are still many areas of concern, of course, but the victory of NAGPRA is that it forced Museums and Agencies to enter dialogues with tribal leaders to establish cultural affiliation; and, in the process, the Museums learned a great deal about tribal cultures over time and about the appropriate care of entities that might be seen as a "hat" or a "basket," but in fact, were imbued with a living essence, requiring appropriate care and treatment.[62]

E. Reconciliation: Building Partnerships

At the heart of "reconciliation" is the spiritual, moral, and political status of Indigenous peoples in relation to their ancestral territories and the nation-states that now occupy those territories. Indigenous peoples "belong" to the land, but they must now reimagine their political relationship to the nation-states in a way that facilitates their right to self-determination.

Indigenous peoples have complex duties and responsibilities to the land, and this relationship is acknowledged politically when the United States invites Native Nations to engage in consultation before adopting policies that would potentially harm tribal Nations. The United States should go beyond consultation and adopt a norm of "free, prior and informed consent" before engaging in mining or other forms of destructive development of "public lands," which are carved out of Indigenous territories, and certainly before adopting policies that would restrict access to treaty-guaranteed resources, such as water and salmon.[63] If the federal-tribal relationship is reimagined under more equitable principles, then the trust duty of the United States will include an obligation to respect the Indigenous belief that the people and land are inseparable connected. For that reason, the defense of the land (for example, from contamination by uranium mining or oil pipelines) is a defense of the Indigenous people and their lifeways.

There are many examples of emergent efforts to establish this norm. For example, the Bears Ears National Monument in Southeastern Utah, established by President Obama in 2016 (and confirmed by President Biden in 2021) recognizes the cultural value of the lands to the affiliated Indigenous Nations and established a method of cooperative governance that involves

62. I will also reference other current issues, including intangible cultural "property," responses to use of Native American mascots, including Washington Team's decision to withdraw its Trademark, sacred sites, and international repatriation movement.

63. *See generally* Food & Agric. Org. of the United Nations, Free, Prior and Informed Consent: Manual for Project Practitioners (2016), https://www.fao.org/3/i6190e/i6190e.pdf [https://perma.cc/J44G-UJYN].

the tribal representatives, as well as the federal land managers.[64] At the Chaco Canyon National Historical Park in New Mexico, there is an active effort by Indigenous nations to protect their cultural sites within the extended cultural area that surrounds the National Park.[65] The lands contain oil and gas reserves, but the extended area, along with the Chaco Canyon National Historical Park, comprises a unique "cultural landscape" that has continuing sacred value to the Pueblo Indian nations and other Indigenous peoples that are affiliated to that site.

The effort to reach "reconciliation" clearly involves a reconstruction of the political relationship that characterizes federal-tribal relations. Beyond that, however, there is a need to incorporate Indigenous cultural values in the federal decision-making process, and even that of state governments, to ensure that Indigenous laws and Indigenous peoples are respected within domestic law and political processes. The identity of Indigenous peoples differs from region to region, and often comprises groups that may lack formal political recognition by the U.S. government, but are nonetheless "Indigenous" in their relationship to place and cultural identity. These factors and the attendant historical circumstances must also be considered in the effort to reach reconciliation.

CONCLUSION

"We have a duty to remember what our fellow citizens cannot be expected to forget."[66]

Inclusion is not a "one size fits all" proposition. Inclusion for Native Nations requires attention to political and cultural sovereignty as well as the intergenerational connections between Indigenous peoples and the land. It

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64. Proclamation No. 10285, 86 Fed. Reg. 57321 (Oct. 8, 2021).

65. *See, e.g.*, *Greater Chaco Protection Must Go Beyond the 10-Mile Buffer*, PUEBLO ACTION ALL., https://www.puebloactionalliance.org/protectgreaterchaco [https://perma.cc/G4P9-QDAU]. President Biden recently proposed a twenty-year ban on oil and gas drilling permits to protect these lands. *See* Ken Rait & Laurel Williams, *Proposed Oil and Gas Drilling Ban Would Help Protect Remarkable New Mexico Landscape*, PEW (Jan. 26, 2022), https://www.pewtrusts.org/en/research-and-analysis/articles/2022/01/26/proposed-oil-and-gas-drilling-ban-would-help-protect-remarkable-new-mexico-landscape [https://perma.cc/M9EQ-E4T3].

66. This quote (or a parallel rendition), used by Margaret Walker, is commonly ascribed to Pablo DeGreiff. *See*, *e.g.*, *Online Debate: Does Collective Remembrance of a Troubled Past Impede Reconciliation?*, INT'L CTR. FOR TRANSITIONAL JUST. (May 4, 2016), https://www.ictj.org/news/online-debate-remembrance-reconciliation [https://perma.cc/4JE6-VNC7] ("We have the obligation to remember everything that we cannot reasonably expect our fellow citizens to forget." (quoting Pablo DeGreiff)).

also requires remembering problematic histories and making a sincere effort to reconcile historic and contemporary harms and injustices.

Within many Indigenous Justice traditions, "reconciliation" between parties that have been engaged in conflict requires a process of healing that restores a sense of well-being, balance, hope, and peace after a painful experience of conflict and trauma. This is true for individuals, communities, and peoples. The process of reconciliation works on an "inner level," which is tied to emotional and spiritual states, and it works at an outer level in social, economic, and political relationships.

Within many Indigenous justice systems, "law" is a mechanism to achieve healing, and it corresponds to the cultural view that there is a central set of principles which ought to govern human interactions with one another and with the natural world.

We need to think of what people need in times like these:

1. The need to feel safe
2. The need to feel connected
3. The need for hope
4. The need to heal from traumatic loss of land, lives, and ways of life

Look at the way that landscapes have been altered by histories of coal and uranium mining. The Four Corners Area, for example, was designated as a "National Sacrifice Area" when the coal-fired power plants were created that allowed the growth and expansion of cities in California, Arizona, and Nevada.[67] Today, we must look at the impacts of that decision; decades later, we see the harm to the land, the change in water flow due to climate change, the increased levels of salinity and toxicity. Look at the tremendous costs associated with reclaiming and restoring those lands or purifying the water. Who bears those costs?

The ethics of reconciliation must be directed to "restore" what was wrongfully taken from Indigenous peoples. Healing takes place at the level of mind and spirit first, and then at the level of the material world. We must imagine a better future in order to realize that future. These are the lessons of Indigenous justice traditions, and they are useful as we contemplate a world that can sustain itself through climate change, a society that can sustain itself through acknowledging the relationships that are fundamental to its well-being and economies that are based on regenerative practices rather than extractive and exploitive practices.

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67. THE FOUR CORNERS: A NATIONAL SACRIFICE AREA? (Bullfrog Films 1989).

As Justice Murray Sinclair of Canada's Supreme Court stated: "Reconciliation is about forging and maintaining respectful relationships. There are no shortcuts."[68]

Thank you for allowing me to share these thoughts with you today.

68. *See*, *e.g.*, The Sunday Magazine, *Truth and Reconciliation: What's Next?*, CBC RADIO (May 15, 2014) (quoting Justice Murray Sinclair), https://www.cbc.ca/radio/sunday/harper-v-mclachlin-michael-s-essay-justice-for-residential-school-survivors-mail-ira-basen-s-listumentary-an-ode-to-the-oboe-vancouver-the-most-asian-city-outside-of-asia-frank-faulk-goes-to-butchering-school-1.2905066/truth-and-reconciliation-what-s-next-1.2905067 [https://perma.cc/GRW8-D9ML].