Recontextualizing Reconciliation:
A Genealogy of Constitutional Discourses in Canada, 1980-2006

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Abstract

The term "reconciliation" has become ubiquitous in Canada, underpinning divergent commitments as much as leading to wide-ranging critiques. It has been used frequently in constitutional politics, in relation to both Canada's relationship with Québec and Canada's relationships with Indigenous peoples. Reconciliation's discursive prevalence in Canada presents an intriguing phenomenon given that it means many different things, has varying uses outside of politics, and is widely contested when applied to political relations. To explore the ways these characteristics have shaped uses of reconciliation and the paths by which the term attained its contemporary omnipresence, this dissertation investigates when, how, and with what effects discourses of reconciliation emerged and developed in Canadian constitutional politics.

The dissertation uses a genealogical approach to study the conceptual and contextual features of reconciliation discourses and the interplay between them, enabling assessment of different uses and of their operation in relation to each other and to the broad constellation of constitutional power dynamics in Canada. It draws on the insights of genealogical theorists, particularly William Connolly, Michel Foucault, Dalie Giroux, Quentin Skinner, and James Tully, to develop an approach that attends to the role of both actors and events as it explores the intersections of time, space, and power that shape the emergence and development of reconciliation discourses. Informed by Adrian Little's work on contextualizing concepts and Norman Fairclough and Isabela Fairclough's work on discourse analysis, the dissertation employs a series of distinctions put forward by Mark Walters, Bert van Roermund, Catherine Lu, and Sara Ahmed and Anna Carastathis to conceptualize different types of reconciliation and analyze a wide-ranging array of uses of the term covering three decades of constitutional politics, concluding with the House of Commons's recognition of Québec as a nation and the provision to create the Truth and Reconciliation Commission in 2006. The analysis explores a mix of government documents, commission reports, court decisions, hearing transcripts, interviews, (auto)biographical accounts, news media, parliamentary debates, press releases, and other records to identify the points of emergence of different discourses and examine their development over time and across contexts as reconciliation came to be adopted in jurisprudence, government policy, and the creation of institutions.

The dissertation advances a three-part set of propositions regarding the emergence and development of reconciliation discourses. *When:* Though there were occasional earlier uses, the term began to emerge in earnest in Canadian constitutional politics in the 1980s and early 1990s. Discourses of reconciliation relating to Québec largely faded after the late 1990s, though they have made periodic reappearances around key events such as the 2006 House of Commons motion, while those regarding relations with Indigenous peoples have continued to proliferate. *How:* Reconciliation discourses have been used, to differing degrees, in relations between Canada and Québec and between Canada and Indigenous peoples. Their emergence in both contexts was significantly, though not exclusively, shaped by the patriation of the constitution. In the period studied, the term was used both to promote state policy and existing constitutional structures and to challenge them or express doubt about their capacity to achieve reconciliation. Occasionally, the appropriateness of using the term in these constitutional contexts was called into question. Multiple meanings and types of application to politics, a lack of clarity and specificity, and the influence of power relations have marked the use of reconciliation discourses from the outset. These trends are visible in both cases. However, there is also variation between

the cases, and uses of the term in relation to Québec did not become institutionalized as those pertaining to Canada and Indigenous peoples did. *With what effects:* All of these varying uses of reconciliation have the cumulative effect of risking conveying a misleading impression that parties using the term share a common commitment to an agreed-upon undertaking. Such an impression obscures how power relations shape the implications of differing discourses and the interactions between parties in which they are used. The genealogy presented in the dissertation counters this impression by taking stock of what kinds of political work is done by reconciliation discourses. Highlighting how they are marked by conceptual complexities and intertwined with relations of power, it reveals the tensions at the core of contemporary conversations about reconciliation in Canada.

Dedication

For Mum and Dad

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Abbreviations

ADR – alternative dispute resolution

AFN – Assembly of First Nations

AHF – Aboriginal Healing Foundation

AIM – American Indian Movement

AJI – Aboriginal Justice Inquiry

AJIC – Aboriginal Justice Implementation Commission

AMC – Assembly of Manitoba Chiefs

ANC – African National Congress

ARC – Aboriginal Rights Coalition

B&B Commission – Royal Commission on Bilingualism and Biculturalism

BC – British Columbia

BC AFN – British Columbia Assembly of First Nations

BCTC – British Columbia Treaty Commission

BNA Act – British North America Act

BQ – Bloc Québécois

CAP – Congress of Aboriginal Peoples

CAQ – Coalition Avenir Québec

CAR – Council on Aboriginal Reconciliation

CBA – Canadian Bar Association

CCCB – Canadian Conference of Catholic Bishops

CDA – critical discourse analysis

CPT – comparative political theory

FLQ – Front de libération du Québec

FMC – First Ministers Conference

FNFSMA – First Nations Fiscal and Statistical Management Act

FNGA – First Nations Governance Act

FNLC – First Nations Leadership Council

FNS – First Nations Summit

ICTJ – International Center for Transitional Justice

INAC – Indian and Northern Affairs Canada

IRPP – Institute for Research on Public Policy

IRSRC – Indian Residential Schools Resolution Canada

IRSSA – Indian Residential Schools Settlement Agreement

ISCC – Indian Specific Claims Commission

ITC – Inuit Tapirisat of Canada

LCC – Law Commission of Canada

MARR – Ministry of Aboriginal Relations and Reconciliation

MNC – Métis National Council

MP – Member of Parliament

NDHR – National Day of Healing and Reconciliation

NDP – New Democratic Party

NEP – National Energy Program

NFA – Nisga'a Final Agreement

NWT – Northwest Territories

PC – Progressive Conservative

PEI – Prince Edward Island

PQ – Parti Québécois

RCAP – Royal Commission on Aboriginal Peoples

RCMP – Royal Canadian Mounted Police

SCC – Supreme Court of Canada

SCRA – Specific Claims Resolution Act

TRC – Truth and Reconciliation Commission

UBCIC – Union of British Columbia Indian Chiefs

UNESCO – United Nations Educational, Scientific and Cultural Organization

WWII – World War II

Introduction

> I found myself preoccupied by a single word […] which it seemed I was hearing very much more often […]
>
> – Raymond Williams (2011, 10)

> Reconciliation wants so badly to be a keyword of sorts, to contain so much inside its semantic confines, to be 'wide-reaching in its explanatory power.' I'm not surprised things have started to leak all over the place.
>
> – Billy-Ray Belcourt (2016)

It is hardly novel at this point to observe that the term "reconciliation" is omnipresent in Canada nowadays. Pierrot Ross-Tremblay even describes Canada as "a country intoxicated with discourses on reconciliation" (2019, 251). In recent decades, the term has been much used in constitutional debates. Following the Prime Minister's June 2008 apology for the Residential Schools policy and the creation of the Truth and Reconciliation Commission (TRC), it has particularly come to increasingly dominate discussions of relations between Indigenous and non-Indigenous peoples. It is now applied to virtually every aspect of that relationship, from land and resource conflicts to the history of Residential Schools, to criminal law, to child welfare, to constitutional politics, to arts and culture, to education, and more. There are countless organizations and community events dedicated to reconciliation, while positions, institutions, and official plans labelled with reconciliation can now be found at every level of government as well as proliferating throughout the private and non-profit sectors. The Royal Canadian Mint issued a Truth and Reconciliation Keepsake in 2022 (RCM 2022), and 2021 saw the inauguration of the National Day for Truth and Reconciliation as a federal statutory holiday. The Canada School of Public Service offers a mobile app entitled "Reconciliation: A Starting Point" (CSPS 2021). Roads and bridges bearing names linked to colonization and developers of colonial policies have been renamed Reconciliation (Calgary n.d.; Rural Municipality of St. Clements

n.d.).[1] Institutions have begun to give out various kinds of awards linked to reconciliation (e.g., BC Achievement Foundation n.d.; BCEDA n.d.; CAJ n.d.; ESDC 2023; RRC Polytech 2023; YWCA Saskatoon n.d.). Recent polling shows a growing number of Canadians expressing that they understand reconciliation to be important and that governments and individual Canadians should take more action to pursue it (Environics Institute for Survey Research 2021, 13-15; Leger 2022, 10). These developments might suggest the presence of a widespread societal consensus on the importance of something called "reconciliation" and a common commitment among a wide cross-section of actors to undertake this project together. The political reality that underlies the ubiquity of reconciliation is significantly more complicated, however. This seeming consensus does not necessarily translate into shared understanding of what reconciliation means, what it entails, or how it should be pursued.

Amid myriad areas of disagreement, the singular (albeit complex) policy issue of constructing new pipelines to transport fossil fuels provides an illustrative example. For instance, over the past decade, struggles over two prominent pipeline projects, the twinning of the Trans Mountain pipeline carrying diluted bitumen from Alberta to the west coast and the Coastal GasLink liquified natural gas pipeline in northern British Columbia (BC), have seen different parties using the term reconciliation in a wide variety of fashions, sometimes for directly contradictory purposes. Prime Minister Justin Trudeau, whose government purchased the Trans Mountain pipeline from Kinder Morgan in 2018, cited the principle of "making sure we're walking forward in a path of true reconciliation and partnership with Indigenous peoples" as a factor informing the government's approach in ensuring the construction of the pipeline (quoted

[1] This has been proposed in other cases but not implemented. Such proposals include "Rue de la Réconciliation" for the Montréal street previously named for General Jeffrey Amherst (Riga 2017), now Atateken Street (V. Stevenson 2019), and "Reconciliation University" for the former Ryerson University (Paikin 2021), now Toronto Metropolitan University. Elsewhere, a "reconciliation committee" has been struck to find new road names (Froese 2021).

in Tasker 2018).[2] A Federal Court of Appeal decision upholding the Trudeau government's approval of the pipeline expansion drew on previous Supreme Court of Canada (SCC) jurisprudence to centre reconciliation as a "controlling concept" guiding its decision (*Coldwater et al. v. Canada (Attorney General) et al.* [2020], para. 47), and found that the government's efforts to consult with Indigenous peoples had been "all very much consistent with the concepts of reconciliation and the honour of the Crown" (para. 76). Trans Mountain Corporation (TMC), the Crown corporation currently charged with operating the pipeline, published "A Renewed Commitment to Indigenous Reconciliation" on its website on National Indigenous Peoples Day in 2022, in which it touts how its "commitment to Indigenous Reconciliation has transformed many communities" (TMC 2022). TMC's statement, which seemingly elevates Reconciliation to the status of a proper noun by capitalizing the term throughout, lays out a series of objectives linked to reconciliation that include priorities relating to hiring and retaining Indigenous employees, partnering with and investing in businesses owned by Indigenous people, developing an Advisory Council and a Reconciliation Action Plan, and having its employees follow cultural awareness training (TMC 2022). TMC is far from alone in the industry in emphasizing its commitments to reconciliation: many major private energy companies also have webpages, action plans, or statements in their Indigenous engagement strategies declaring their respective commitments to reconciliation and outlining objectives similar to those listed by TMC (see e.g., Cenovus Energy n.d.; Enbridge 2022; Imperial Oil n.d.; Suncor n.d.; TC Energy 2021). The federal government has made clear since buying the Trans Mountain project that it was stepping in to ensure its construction as it deemed the expansion to be in the national interest, but that it ultimately intended to sell the pipeline, and the parties that have expressed interest in purchasing

[2] This aligns with a broad rhetorical emphasis placed on reconciliation by the Trudeau government across multiple policy fields since it first came to power in 2015.

it include several consortia of Indigenous groups (Yunker 2022). One of these titles itself Project Reconciliation and has undertaken lobbying via Reconciliation Inc. to pursue a bid to acquire the Trans Mountain pipeline (Project Reconciliation n.d.). Project Reconciliation presents acquisition of the pipeline as "a path to economic reconciliation" that will "mov[e] Canada's Indigenous peoples from managing poverty, to being firmly and genuinely 'at the table' as material equity partners with Corporate Canada" (Project Reconciliation n.d.).

Other Indigenous peoples, however, cast the relationship between the pipeline and reconciliation in an entirely different light. The səlilwətaɬ (Tsleil-Waututh) Nation, for instance, whose territories lie where the pipeline meets the ocean, has resolutely opposed Trans Mountain. A heading on the website for the Sacred Trust Initiative, established by the səlilwətaɬ to coordinate anti-pipeline and tanker traffic expansion efforts, reads: "Choose Reconciliation – Not the Trans Mountain Pipeline" (Sacred Trust Initiative n.d.). Various pages and reports on the site detail the səlilwətaɬ Nation's reasons for opposing the pipeline, including a 2016 letter from Chief Maureen Thomas to then-federal Minister of Natural Resources Jim Carr. The letter emphasizes that "the goal of reconciliation and constitutional harmony, recognized in s. 35 of the *Constitution Act, 1982* unfortunately remains unachieved between Canada and TWN in relation to the Project," and warns that the federal government choosing to proceed in the face of "our informed withholding of consent" could seriously damage "our nation-to-nation relationship for some time to come, possibly for generations" (Thomas 2016). North of the səlilwətaɬ, in Wet'suwet'en territory, while several band councils have signed benefit agreements with Coastal GasLink, in some cases including equity agreements "securing an option to purchase a 10 per cent ownership stake of the project if the pipeline is completed," Wet'suwet'en hereditary chiefs and their supporters have mounted a determined resistance to the construction of that pipeline

(Simmons 2022). In early 2020, a gate leading to a camp constructed by the Unist'ot'en house of the Wet'suwet'en along the part of the pipeline route that ran through its territory was affixed with a wooden plank on which was painted "RECONCILIATION" – as one news article put it, "as a statement of what police, the government, and Coastal GasLink would destroy by forcing entry into Wet'suwet'en traditional territory" (Brown and Bracken 2020). The symbolism was potent when the Royal Canadian Mounted Police (RCMP) raided the camp and arrested Unist'ot'en members and their supporters, and industry workers dismantled the gate, breaking the plank in half in the process, and took down the red dresses that had been hung along the road leading to the gate to commemorate murdered and missing Indigenous women, girls, and two-spirit people and to warn about the increased risk of gendered violence that has been associated with resource development projects (see photographs in A. Bracken 2020; Cox et al. 2020; see also NIMMIWG 2019, 584-94). The səlilwətaɬ and Wet'suwet'en opposition to these pipeline projects centres on an assertion that respect for their autonomy to choose what developments can and cannot take place on their territories is imperative to reconciliation, and thus to violate the principle of consent is to undermine or destroy the possibility of reconciliation. The RCMP was accused of a "dastardly defiling of reconciliation" for its actions in enforcing an injunction granted to Coastal GasLink (Paradkar 2020). Meanwhile, the RCMP has had a Reconciliation Working Group since 2018 (RCMP 2021a), commissioned a framework for a National Strategy on Reconciliation from Dr. Anita Olsen Harper in 2019 (RCMP 2022), issued a report entitled *Path of Reconciliation: Strengthening Trust in the RCMP 2019-2020* (RCMP 2021a), and has a page dedicated to reconciliation on its website (RCMP 2021b). In reaction to RCMP raids of the Wet'suwet'en checkpoints along the pipeline route came the rallying cry "Reconciliation is Dead," which was proclaimed on the Unist'ot'en camp's website, painted on banners at

solidarity protests, and debated in the media (Glavin 2020; *Globe and Mail* 2020; Selley 2020; Starblanket and Green 2020; Szeto 2020; Talaga 2020; Unist'ot'en Camp n.d.; Yesno 2020).

Within these debates,[3] writers espousing widely varying positions all highlighted that there was a problem of meaning surrounding uses of term:

> Canada can't say it believes in reconciliation, because it has been made clear to us time and time again that it doesn't – it doesn't even know what the word means. (Yesno 2020)

> Is it reconciliation? Who knows. Reconciliation isn't one thing. It can't be measured and, one day, declared achieved. If CGL eventually goes ahead, even within the Wet'suwet'en community, there will be people who consider it a victory for reconciliation, others who consider it an affront to reconciliation, and a whole lot of others who have too many bills to pay and mouths to feed to spend all day worrying about giant amorphous concepts. (Selley 2020)

> For reconciliation to be anything more than an empty signifier, Canada and all provincial governments would have to cease justifying land appropriation when consent has been denied by those with that authority in particular nations. (Starblanket and Green 2020)

> The use of police in British Columbia and Ontario to clear illegal blockades […] has led to an outbreak of people declaring that "reconciliation is dead." That's not surprising. The Trudeau government turned "reconciliation" into a political slogan; it now finds it thrown back in its face anytime it, or anyone else, makes a decision that doesn't jibe with the expectations of Indigenous leaders – or non-Indigenous activists claiming to act on behalf of Indigenous Canadians.
>
> Live by the ill-defined word, die by the ill-defined word.
>
> What does reconciliation look like? How is it measured? How will we know when it has been achieved? The Liberals lifted the word from the Truth and Reconciliation Commission, but beyond a promise of a "renewed nation-to-nation relationship," they never defined their terms.
>
> As a result, "reconciliation" has become a vessel that holds whatever meaning anyone wants to pour into it. (*Globe and Mail* 2020)

> There's really no point in asking whether this vaguely comprehended public good is alive or dead if reconciliation means anything you might want it to mean. If that's the way things are going to be, the term can be weaponized for any old rhetorical purpose you like. Fat lot of good that will do anyone. (Glavin 2020)

Terry Glavin's contribution to these debates submits that "the term does have what you might call objective meaning. The Concise Oxford Dictionary has 'reconcile' as 'make friendly after

[3] For more detailed engagement with the substance of these debates, see Snelgrove (2021, introd.).

estrangement,' which has a nice ring to it, as do its subsidiary meanings. To purify, by special service after profanation or desecration. To make acquiescent or contentedly submissive. To heal, to settle, to harmonize, to make compatible. That kind of thing" (2020).[4] This presentation of reconciliation performs two operations. First, it reminds us that reconciliation is not simply vague and amorphous, carrying either no meaning or too much meaning, but rather is a term that carries a series of specific meanings. Second, by following these definitions with the phrase "that kind of thing," it flattens the distinctions between these definitions, as if they all effectively mean the same thing. They do not, however, and for all there may be certain resonances between them, they emerge from different contexts of use and carry different implications in application. Together, these varying modes of framing the concept that characterize contemporary debates about reconciliation in Canada highlight a significant challenge when it comes to the complicated role that concepts, particularly malleable ones, play in politics.

Reconciliation is far from the only term to provoke such political and sociocultural perplexity and contestation, as has long been emphasized by the work of scholars like William Connolly (1993 [1974]) and Raymond Williams (2011 [1976]). Indeed, it is not the only nor the first such term to feature in debates over the constitutional relationship between Canada and Indigenous peoples.[5] A 1996 report published under the auspices of the Royal Commission on Aboriginal Peoples (RCAP) observed:

> The popularity of certain concepts and terms used in the discourse raises interesting questions. The words that are capable of being interpreted differently by different people appear to have been most resilient. Concepts such as partnership, self-government, and Aboriginal rights have been used consistently in different periods, by different people talking about different issues. It seems clear that the words really do mean different things

[4] Glavin goes on to stress the centrality to this conflict of the SCC's framing of reconciliation, which employs the "make compatible" connotation in positioning reconciling Crown sovereignty and the pre-existence of Indigenous societies as the purpose of s. 35 of the *Constitution Act, 1982*.

[5] See for instance Glen Coulthard's (2014) critical investigation of "recognition," and Andrew Woolford's (2005) exploration of diverging visions of "justice" and "certainty" in the context of treaty negotiations in BC.

> to different people. […] Concepts that are less ambiguous, such as sovereignty and extinguishment, appear less consistently over the course of the discourse. Sovereignty is used often by Aboriginal people to describe their situation but it is used rarely by governments. Sovereignty is, of course, *sine qua non* of effective statehood and is a loaded term because of Canada/Quebec relations. This lends credence to the argument that in the evolution of the policy discourse on Aboriginal issues, certain terms have been popular because they can be interpreted in different ways. These terms may not, however, contribute to achieving dialogue. (Graham, Dittburner and Abele 1996, 352)

Reconciliation would certainly seem to be precisely of this ilk. If the term is generally taken to be so vague as to be empty of any meaning, to be so loaded down with different meanings that it ultimately means nothing, or to effectively have one real meaning that is not being attended to properly by those who are using it in other ways (whether to endorse or reject it), and yet nevertheless remains popular and widely used, this leaves us ill-equipped to have an effective dialogue. To be able to understand, to assess, and to respond to what others are trying to do when they use the term reconciliation, we need to engage with the variety of specific meanings that the term has and how they inform different uses of reconciliation discourses.

Reconciliation's rise to prominence is not only a Canadian phenomenon. Over the last four decades, the term has emerged in political discourse in various forms and different contexts around the world. Some are polities struggling with impunity, forgiveness, and democracy after authoritarian rule, and others, polities seeking to (re)establish a sense of moral and political legitimacy in the wake of colonial injustices. It also figures in relations between nations/states following conflicts of various kinds. Its increased prevalence has led Emilios Christodoulidis and Scott Veitch to observe that "the language of reconciliation has become a persistent and pervasive feature of contemporary politics. It has become, one might say, a regulative ideal in political discourse" (2007, 3). Uses of this language vary widely and are deeply contested across and within political contexts. Reconciliation is bound up with a host of other concepts reflective of an increasing blending of politics and morality (Teitel 2003, 83), including forgiveness,

atonement, amnesty, impunity, healing, social harmony, truth, and justice (Schaap 2005, 12; Rotberg and Thomson 2000; Lu 2017), which can themselves also be interpreted in a variety of ways, and bear varying and contested relationships to reconciliation in political contexts. Erin Daly and Jeremy Sarkin remark that "[i]t is certainly ironic that a word that is fundamentally about cohesion can have so many different and at times competing meanings" (2007, 181). A contributing factor in producing these divergent understandings stems from the concept traveling from one context to another, but as many scholars have pointed out, it cannot simply be neatly translated for straightforward application to differing situations (Drabinski 2013, 121; Edmonds 2016, 14; Gaertner 2011, 249; Hamber 2007, 121). The multiplicity of meanings leads to extensive debate over the term's use and practice, and these debates have significant normative implications in the ways they are shaped by and shape relations of power in return (Doxtader 2003, 268-69), both across and within political contexts.

The use of reconciliation as a framing concept to talk about political relationships operates – in a multitude of ways – to shape a set of debates whose stakes are no small matter. Debates about relationships between Canada and Indigenous peoples involve questions about sovereignty, political and legal legitimacy, and the nature of constitutionalism and political community that may have existential implications. Depending on the form of its use, which may be informed by varying epistemologies and meanings and origins of the term, and on the purposes for which it is employed, reconciliation's associations with creating harmony, unity, and/or sameness can align with transforming the status quo, or with reinforcing it. It appears that uses of reconciliation discourses for such varied purposes in these kinds of circumstances where existential questions are at stake holds a broad appeal in Canadian constitutional politics, as the term has been used repeatedly to talk about both relations between Canada and Indigenous

peoples and relations between Canada and Québec over the last four decades. Reconciliation discourses were previously a prominent feature in negotiations and debates about Québec's relationship to the Canadian federation. This was the case for over twenty years in the wake of the patriation of the constitution, an often-turbulent period during which the continuity of the country was far from assured. The uses of reconciliation in that context have been subject to comparatively little critical analysis, making an investigation of the political work effected by the concept in both of these sets of relationships an important undertaking for understanding the role that reconciliation plays in contemporary Canadian politics. The matter is more complex than Canadian federal and provincial governments favouring the term reconciliation in opposition to Québec and Indigenous peoples preferring to talk about sovereignty, as reconciliation discourses have been used both to support and to contest the existing structures and dynamics of both sets of relationships by various actors who are differently positioned within them.

Emma LaRocque once wrote of another set of discursive trends that when a "type of thinking is 'all the rage,' we must scrutinize and challenge it" (1997, 78). In that spirit, the current context calls for examination: What is the role of reconciliation in contemporary politics, and particularly in Canadian politics? Does its popularity also stem from its flexibility? What are the implications of this conceptual malleability on democratic dialogue? How does this concept serve to (re)produce power relations between different groups within the Canadian polity? Indeed, what do the uses of reconciliation in this context tell us about the Canadian polity itself? This dissertation is animated by these questions about the political work being done by the term reconciliation and the kinds of power relations that reconciliation discourses produce and/or reinforce in the process. In order to examine how and why a term so widely regarded as being ambiguous, and that serves a variety of purposes outside the political sphere, came to be used to

frame constitutional relationships in Canada, it takes up the following research question: When, how, and with what effects did discourses of reconciliation emerge and develop in Canadian constitutional politics? In response, it traces a genealogy of reconciliation that explores when and how different actors began using it to speak about Canada's relationships with Québec and with Indigenous peoples in different ways, following uses of the term through three phases of discursive development up until the onset of its contemporary institutional entrenchment. The genealogy proposes that reconciliation discourses emerged within both sets of relationships beginning in the 1980s and early 1990s, moving from infrequent and often seemingly inadvertent uses to more common uses that increasingly centred reconciliation as an objective and employed the term in official documents, before taking a different trajectory in the two contexts. Reconciliation discourses pertaining to Canada's relationships with Indigenous peoples grew ever more prominent and ultimately became institutionalized, but this did not occur in the Canada-Québec case. In both cases, uses of the term by different actors have implicitly or explicitly evoked the whole range of different things that reconciliation means since the outset of its emergence in Canadian constitutional politics. The term has also been used both to challenge and to reinforce the constitutional status quo. By unpacking and highlighting the features of varying uses throughout their emergence and initial development, the genealogy offers a contribution to the recontextualization of reconciliation discourses that seeks to trouble the impression of a seeming consensus on the matter, as well as to offer a foundation for engaging with the specifics of different uses of the term amidst dissensus in a manner that is conscious of the ways that discourses and the contexts of their uses are shaped by relations of power.

The dissertation is divided into nine chapters, which collectively comprise four main elements: the presentation of my approach, the historical background to my study, the

exploration of reconciliation discourses in relations between Canada and Québec, and the exploration of reconciliation discourses in relations between Canada and Indigenous peoples. Chapter 1 lays the contextual and methodological groundwork for my research by exploring the literature on political reconciliation and on the term's uses in Canada's relationships with Québec and with Indigenous peoples, presenting my research question, detailing my genealogical approach, outlining my research propositions, and explaining my methodology. Chapter 2 provides an overview of the historical background to the period of discursive emergence and development that is the focus of the thesis. This background context is twofold: first, the chapter outlines the development of the Canadian polity and the constitutional relationships in question, and considers how certain ideals of reconciliation may have informed these processes. Second, it explores the global context in which explicit normative discourses of political reconciliation began to emerge in the late twentieth century and briefly describes their emergence in the cases of Chile, Australia, and South Africa in order to contextualize possible transnational influences, as these polities were grappling with the question of reconciliation in the same period that the term began to emerge in Canadian constitutional politics.

With this groundwork laid, the two case studies unfold over the remaining chapters of the dissertation. The events detailed in these chapters are explored as comprising a period of discursive emergence between the longer history of an implied ideal of reconciliation (wherein the phrase is sometimes used colloquially) – the constitutional history detailed in chapter 2 – and the current period of discursive omnipresence, which might be understood to begin in earnest with the launch of the TRC and the adoption of reconciliation as an institutionally entrenched government objective as embodied for instance in BC's creation of a Ministry of Aboriginal Affairs and Reconciliation (MARR). Though both sets of chapters cover the same period, from

1980 to 2006 (with some contextual attention to events in the 1960s and 1970s), the division of the empirical chapters between the two cases is marked by an asymmetry that is rooted in the respective prevalence of reconciliation discourses and trajectory that the term's emergence and development has taken in each case. These are such that I found myself with significantly more data pertaining to the use of reconciliation discourses in the context of Canada's relationships with Indigenous peoples than in the context of relations with Québec.[6] As a result, the latter case is explored over two chapters while the former is the subject of five, with each set of chapters being divided chronologically, and each chronological period further subdivided to explore the different actors using the term and where and how they were using it.

Chapters 3 and 4 attend to the emergence and development of reconciliation discourses in the constitutional relationship between Canada and Québec. Chapter 3 traces reconciliation's movement from a background concept underpinning discussions of the purpose of federalism and the need to constructively navigate conflicts between differing political interests within the federation to a more prominent label for efforts to repair constitutional grievances. At the same time, it presents the first instance of a refrain that recurs throughout the dissertation by demonstrating how many different meanings and types of uses of reconciliation different political actors mobilize and how these variations remain in use amidst shifts in reconciliation's prominence and the emergence of new forms of use. Chapter 4 shows how in the later part of its development in this context, the term's use by the Canadian government went from being most prominently associated with constitutional reform efforts to ultimately being dissociated from the prospect of constitutional change. It also highlights how the term was mobilized by different actors to envision as widely divergent ends as the country staying together or not, as some spoke of a reconciliation that would follow from Québec independence while for others reconciliation

[6] This asymmetry may also be shaped by the contingencies of my research methodology, discussed in chapter 1.

constituted separation's opposite. The story of reconciliation discourses told in these chapters ultimately leads to a dénouement of sorts, as the term is now seldomly used to talk about Canada-Québec relations (though it still occasionally is – and still in different forms) and it did not become entrenched through the creation or renaming of institutions.

The case of the relations between Canada and Indigenous peoples, on the other hand, tells a story of a set of reconciliation discourses that have continued to grow in prominence. Chapters 5 through 9 trace the emergence and development of reconciliation discourses as they have been used in the context of relationships between Indigenous peoples and Canada. The trajectory traced in these chapters resembles that presented in chapters 3 and 4 through its earlier stages but then takes a different direction, particularly after the turn of the century. Unlike in the Canada-Québec context, here reconciliation began to increasingly appear in the names of initiatives, policy proposals, and, ultimately, institutions. Like chapters 3 and 4, these five chapters also feature a wide variety of different types of uses of reconciliation being employed by different actors for different purposes and in ways that were informed by different political visions. First, chapter 5 details a period where, like in the other case, reconciliation was an occasionally used but not very prevalent term. The discursive portrait that emerges in this chapter is one of a term whose use thus far remains occasional and largely seemingly inadvertent or incidental, but simultaneously is also being used by different actors in a variety of different ways that invoke different meanings of the word, setting the scene for what characterized the use of these discourses in subsequent decades as they came to occupy an increasingly prominent place in the context of Canada's relationships with Indigenous peoples. Chapters 6 and 7 jointly explore the development of reconciliation discourses in the decade between 1987 and 1996, covering a period where their use grew in frequency, was adopted by a wider range of actors, and began to

make more significant appearances in state documents. Collectively, these two chapters show a transition into a new phase of discursive development, wherein not only did reconciliation come to be more frequently and widely used, but also began to appear in state documents and be named as a normative goal or commitment. The movement from this stage to a third phase of discursive development between 1996 and 2006 is traced in chapters 8 and 9, which show how, amidst the continuation of the trends introduced in earlier chapters, reconciliation became a focus of state policy and was ultimately enshrined in the names and mandates of federal and provincial institutions, starting with the TRC and BC's MARR. The genealogy closes with these moments of institutional creation inaugurating the type of prevalence the term enjoys today, having shown the diversity of pathways that reconciliation discourses travelled in the creation of the conditions for their contemporary omnipresence, as well as the complex and multifaceted character that has marked these discourses from the outset of their use in Canadian constitutional politics.

Throughout all of the chapters, we see the term reconciliation being applied in differing ways that invoke different meanings. These uses are often marked by a lack of clarity and specificity, and are shaped by power relations. Such characteristics of the emergence and development of reconciliation discourses have significant effects for the prospects for democratic dialogue about constitutional relationships in Canada. The genealogy traced in this dissertation sheds light on the histories that underpin the seeming consensus/dissensus dynamics characterizing debates over reconciliation in the present. The dissertation concludes by reflecting on what insights can be drawn from this investigation to assist in grappling with the tensions that lie at the heart of contemporary conversations about reconciliation and cultivating conditions for meaningful dialogue about constitutional relationships.

Chapter One

On Reconciliation

1.1 Introduction

Reconciliation means many different things, it has varying uses outside of politics, and its political application is widely contested. Why has this term been used so often to frame constitutional relationships in Canada in recent decades? This chapter starts from this general question and lays the foundation for the dissertation.

Section 1.2 provides a review of the literature on reconciliation. The general question that informs the literature review comprises several constituent questions, and these guide the structure of the review. To ask why the concept has been applied in Canadian constitutional politics implies the further questions of what reconciliation is, how it is understood as a political concept, and in what contexts it has been applied in Canadian politics. To address these sub-elements of the general question, the literature review is divided into three sub-sections. The first two focus on the term reconciliation itself, with the first sub-section delving into a discussion of etymology and a survey of different definitions, and the second providing an overview of key theoretical debates about its use as a political concept. The remaining sub-section reviews the scholarship on reconciliation in Canadian constitutional relationships and has two parts, one that explores the literature on the relationship between Canada and Québec, and the other the relationship between Canada and Indigenous peoples. Following from this, section 1.3 reflects on the takeaways from the global and Canadian scholarship on reconciliation and presents the specific research question guiding the dissertation. Section 1.4 then explores genealogy as a theoretical framework for investigating this specific question of when, how, and with what effects reconciliation discourses emerged in Canadian constitutional politics. It lays out my

genealogical approach, and the conceptual frameworks that guide the analysis. In section 1.5, I weave together reflections on the literature and insights drawn from the theoretical framework to outline the key propositions advanced in the dissertation. Finally, section 1.6 explains my methodology with respect to the scope of the study (1.6.1), how I have collected the data for my genealogy (1.6.2), and how the dissertation's findings are analyzed and presented (1.6.3), as well as the principles guiding the use of terminology throughout the dissertation (1.6.4).

1.2 Literature Review

The literature on reconciliation in political contexts has proliferated widely over the last two decades in human rights and transitional justice, law, conflict resolution, moral philosophy, political philosophy, and political theory, and has taken up abstract questions of theory and principle as well as concrete questions of practice and application around the world. To make sense of these debates, and how intertwined they are with tensions rooted in ambiguity surrounding the term, the various meanings of "reconciliation" first bear considering. I take these up in the next sub-section (1.2.1), and then turn to the notion of political reconciliation specifically in sub-section 1.2.2, which provides a brief survey of some key debates regarding the term's uses in politics. These include debates over the relationship between reconciliation and religion, who is responsible for enacting reconciliation, how reconciliation can be assessed or measured, and the links between reconciliation and political legitimacy, which are all also woven through with concerns about political manipulation and issues of sociohistorical and geographical specificity. Section 1.2.3 rounds out the literature review with an exploration of reconciliation in relation to Canadian constitutional politics, first considering the scholarship on Québec and "national reconciliation" (1.2.3.1) and then the scholarship on reconciliation with

Indigenous peoples (1.2.3.2). Collectively, the literature reviewed here provides critical context around the application and contestation of reconciliation in Canadian constitutional politics.

1.2.1 What is Reconciliation?

Even preceding the mushrooming of conceptions of reconciliation in the realm of political conflicts and transitional justice, the term already connoted a variety of things outside of political discourse. It is worth parsing its etymology and various meanings, as this etymological baggage accompanied reconciliation into political discourse and can be found underlying contests over its meaning, substance, and implications. The concept has specific functions in theology, finance, and law, as well as common colloquial uses with respect to interpersonal conflict. Also pertinent are considerations about the links between "reconciliation" and "conciliation."

Erik Doxtader points to "four different moments in which there has been a dedicated effort to define reconciliation: the Greek interpretation as it appeared around 400 BCE, Paul's Second Letter to the Corinthians, one of Hegel's early reflections on Christianity,[1] and South Africa's transition from apartheid" (2003, 270). With respect to the Greek interpretation,

> the English use of 'reconciliation' is taken from the Greek *katallassein* (or *diallassein*), which derives from the word 'other' (*allos*). As such, reconciliation 'is related to overcoming hostile otherness or estrangement' ([McDonagh]1985, 565), the emphasis being on the *act* of relating to the other, of finding a space in which the distance between self and other can be mediated. (Gaertner 2011, 254)

This etymology is reflected in common uses of the term invoked in interpersonal conflict, but a connection to Christian understandings of the term is also apparent. Reconciliation is deeply entwined with Christian theology (Christodoulidis and Veitch 2007, 2; Czarnota 2007, 147-48), reflected in the fact that the Christian meaning of the term is the top definition in both English

[1] For an extended discussion of Hegel's thought on reconciliation, as well as a critique developed in relation to the politics of reconciliation in Canada, see Snelgrove (2021, ch. 3).

and French in the *Oxford English Dictionary* (OED n.d.b) and *Le Petit Robert* (n.d.). The term's religious connotations "includ[e] intimations of purification and cleansing as well as the restoration of an individual's relationship to God" (Dwyer 1999, 82), along with elements specific to Roman Catholicism. Paul's view is linked to the crucifixion of Jesus Christ (see Moellendorf 2007, 213), reflected in the definition of reconciliation as "the action of restoring humanity to God's favour, esp. as through the sacrifice of Christ; the fact or condition of a person's or humanity's being reconciled with God" (OED n.d.b). The Roman Catholic tradition includes the Sacrament of Reconciliation, wherein a person who has sinned restores their place in the Church through rituals of confession, penance, and absolution, thus returning to a prior harmonious relationship previously established "through the contracts of Baptism, Confirmation, and Communion" (Garneau 2012, 36). Reflected in this are concepts and practices widely associated with reconciliation, both in other non-political definitions of the term as well as in political contexts, including prominently in South Africa: apology, atonement, and forgiveness.

These themes also feature in interpersonal relations, including the general definition of reconciliation as "the action of restoring estranged people or parties to friendship" (OED n.d.b), as well as in its form in family law. There, reconciliation is "the renewal of amicable relations between two persons who had been at enmity or variance; usually implying forgiveness of injuries on one or both sides," and is also associated with the term "condonation" in divorce law (Black 1968, 1437). In *The Pocket Dictionary of Canadian Law* (Dukelow 2002), reconciliation is defined as "the settlement of differences after an estrangement," and the case law presented suggests that it requires the restoration of "mutual trust and confidence" through "mutual consent" such that "the past offences, if not forgotten, at least no longer rankle and embitter [the married couple's] daily lives" (*Mackrell v. Mackrell*, quoted in Dukelow 2002, 346). Several

aspects of this definition, as well as other etymological features, including the return implied by "re-," present significant challenges for the term's transposal into political discourse.

Doxtader writes that "[w]hatever it is, reconciliation entails the transformation of a thing, state of mind, event, or relationship into something that it is not" (2003, 269). This may be estrangement or conflict into renewed closeness, peace, or friendship, as above, or in financial accounting or legislation (particularly where documents need to be translated, and/or passed by more than one assembly, for instance), it may be discrepancies in columns of numbers or two iterations of a text into balanced or matching versions. In the latter context, reconciliation refers to "the process of comparing information that exists in two systems or locations, analyzing differences and making corrections so that the information is accurate, complete and consistent in both systems or locations" (University of Minnesota n.d.). This use is also reflected in another definition where reconciliation connotes "the action or an act of bringing a thing or things to agreement, concord, or harmony; the fact of being made consistent or compatible" (OED n.d.b). All of these meanings, whether reconciliation signifies "restoring estranged people or parties to friendship" (OED n.d.b), readmitting a sinner to the Church, or balancing two columns of numbers, invoke the creation or return of some form of harmony. However, harmony too can be understood in different ways and achieved by various means, and different definitions of reconciliation imply different understandings of harmony.[2] Harmony as the absence of conflict may be attained through another version of reconciliation, one which carries a less positive connotation than other definitions, wherein it entails resignation. In this iteration, to reconcile is "to cause to submit to or accept something unpleasant" (*Webster's Dictionary*, quoted in Regan 2010, 60). Finally, one further definitional dimension with implications for the clarity of debates over reconciliation is that the term can variously refer to either a process or a goal.

[2] For more on this, see Wyile (2017b, 402).

There has been significant debate over the relative appropriateness of talking about reconciliation versus conciliation in political conflicts, given the implication of a return to some prior state implied by the prefix in the term, and the fact that many conflicts are between groups of people without a previously good relationship to restore. This debate is complicated by conciliation also having many definitions, and many uses outside of political discourses, including in family law, labour law, and Christian forms of conflict resolution (Horrocks 1982; Reif 2007; Keegan 1987). The definitions of the two terms are also mutually referential in both French and English (*Le Robert Micro* 1998a, 1998b; OED n.d.a, n.d.b). The similarities and differences between the uses of reconciliation and conciliation in English and *réconciliation* and *conciliation* in French (wherein there are instances where one would say "reconcile" in English but "*concilier*" in French) add particular complexities for the Canadian context where both are official languages (and where language is a significant source of political conflict).[3]

1.2.2 What is Political Reconciliation? Debating Reconciliation in Politics

As these many meanings and histories have accompanied reconciliation into its life as a political concept, the ambiguity this has produced has led to a wide variety of conceptualizations and debates over its use, appropriateness, and application in political contexts. Scholars have approached the notion of political reconciliation from a variety of disciplinary backgrounds, concerning themselves with aspects such as its relationship to religion, to democratic theory, and to a variety of interrelated concepts (e.g., truth, justice, forgiveness, apology, amnesty, trust, and peace). In the process, scholars have conceived of reconciliation as, among other things, conflict resolution (Joyner 2010), narrative incorporation (Dwyer 1999), a response to alienation (Lu

[3] For more on the French and English meanings of both terms, the complexities of translation in Canada, and the implications for debates over the use of (re)conciliation in addressing political conflict, see Wyile (2016).

2017), rhetorical activity (Doxtader 2003), a complement to decolonization (Freeman 2014), a necessary fiction (McIvor 2017, 1135), and continued domination (Motha 2007). While some studies have focused on how reconciliation discourses have been deployed, other scholars have developed their own normative models of reconciliation and its constituent parts (e.g., Daly and Sarkin 2007; Dwyer 1999; Govier 2006; Hamber and Kelly 2009; Lu 2017; Meierhenrich 2008; Moellendorf 2007; C. Murphy 2010; Philpott 2012; Schaap 2005; Verdeja 2009). Distinctions have been drawn between social reconciliation and political reconciliation (van Roermund 2001, 176), structural, psycho-social, and spiritual conceptions of reconciliation (Rosoux 2017, 16), minimalist conceptions of reconciliation as peaceful coexistence and maximalist conceptions of reconciliation as restored social harmony (Govier and Verwoerd 2002; Rosoux 2017, 21), "a 'soft' concept that can leave the door open for impunity and […] a more challenging and profound social process" (Hamber and Kelly 2009, 290), reconciliation as therapy and reconciliation as compensation (Moon 2007), interactional, structural, and existential forms of reconciliation (Lu 2017), and reconciliation as "ideology" that reinforces the status quo and reconciliation as "politics" that challenges it (Schaap 2008).

Scholars of democratic theory have taken a particular interest in reconciliation over the last twenty years, with varying formulations being developed in conjunction with deliberative democratic theory (Bashir 2012; Crocker 2002; D. Ivison 2010; Smits 2008) and with agonistic theory (Bohle 2017, 2019; Hirsch 2012; Muldoon 2005, 2008; Muldoon and Schaap 2012; Schaap 2005, 2006, 2008; Short 2005; Tully 2008, 2018, 2020). This builds on the notion put forward by Daly and Sarkin, speaking of transitional contexts, that democracy is "probably the most persuasive" justification for reconciliation (2007, 17; see also McIvor 2017). However, reconciliation's place within democratic politics remains deeply contested. In the four sub-

sections that follow, I examine debates over whether reconciliation is appropriate for political use given its religious undertones (1.2.2.1), whether it is empty symbolism or can create measurable positive impacts (1.2.2.2), whose responsibility it ought to be and why (1.2.2.3), and what kind of relationship exists between reconciliation and political legitimation (1.2.2.4).

1.2.2.1 Religion

As described above, reconciliation has religious roots, both philosophically and in political practice (Christodoulidis and Veitch 2007, 2; Joyner 2010, 41; Nadeau 2012, 445). The concept's religious heritage has given rise to considerable debate over how reconciliation ought to be conceived politically and whether it is even appropriate for politics. Concerns have been raised about reconciliation resting on a certain sense of submissiveness, penance, or imposed or pre-emptive harmony (Meierhenrich 2008, 203; Redonnet 2001, 484; Hamber and Kelly 2009, 287). Others have queried whether reconciliation is compatible with the political, particularly in liberal rights-based polities, or constitutes a violation of the separation of religion and politics (Cahan 2013, 193; Czarnota 2007, 148; McGregor 2006, 160; Moellendorf 2007, 213; VanAntwerpen 2008). A particularly touchy subject at the heart of this debate relates to the place and meaning of forgiveness in the wake of political conflicts (e.g., Cahan 2013; Gobodo-Madikizela 2009; Govier 2002; Hamber 2007; Kohen 2009; Levy and Sznaider 2006; Rigby 2003; Shriver 2007; Vandevelde 2013). Discomfort over the religious associations gave rise to a concerted – though still contested – effort to secularize the concept of reconciliation in the wake of the paradigmatic South African Truth and Reconciliation Commission (TRC) (VanAntwerpen 2008, 45). However, not all theorists and practitioners take issue with linking reconciliation to religion. Though her account is not explicitly rooted in religion, Susan Dwyer notes that her

conception "resonates with Christian understandings" and suggests that theological conceptions should not be dismissed from considerations of reconciliation's role in politics because of the important place of Christianity in many transitional contexts (1999, 97, 82-83). Daniel Philpott (2012) takes religion's role several steps further and grounds his ethic of political reconciliation in Christian, Jewish, and Islamic theologies, as well as a secular theory of restorative justice, with the aim of developing a broad overlapping consensus with respect to reconciliation.

Despite such efforts, "political theologies of reconciliation continue to occupy a relatively uneasy place within both the field of transitional justice and the world of liberal political theory" (VanAntwerpen 2008, 45). However, Christodoulidis and Veitch suggest that instead of necessarily pushing for secularizing reconciliation or avoiding its religious connotations, this theological background highlighted by the growing prominence of reconciliation ought to serve as "a reminder that our key social institutions are *themselves* deeply rooted in religious lineages," and that reflecting on reconciliation can thus allow for a broader critical engagement with the religious foundations of the public sphere (2007, 3; italics in original). This is not to suggest that religious conceptions are unproblematic. David Garneau argues that given the connection between reconciliation and Catholic ritual, "it is ironic, if not sinister" to invoke it in a redress context where Catholicism has been central to the injustices committed, such as is the case with Residential Schools in Canada (2012, 35),[4] and many Indigenous people consider it to be an "inherently Eurocentric Christian concept […] which is inevitably reproductive of colonial thinking" (Freeman 2014, 215). Courtney Jung suggests that the absolution-oriented nature of Catholic conceptions of reconciliation embodies an emphasis on closure that likely also attracts

[4] As Courtney Jung observes, the Catholic Church is also the source of the Doctrine of Discovery that served as a justification for colonization and continues to underpin state claims to sovereignty (2018, 260). For more on this, see Miller et al. (2010). The Canadian TRC final report calls for the repudiation of the Doctrine of Discovery and the accompanying concept of *terra nullius* (see Calls to Action 45-49 in TRC [2015b]).

non-Indigenous Canadians to the concept in the context of addressing colonial injustice (2018, 260), though the extent to which such trends bear out may vary from one conceptualization to another. As Denise Nadeau's (2012) work demonstrates, Christian conceptions can be rooted in solidarity with Indigenous peoples' struggles for self-determination and openness to Indigenous worldviews, and thus may potentially be compatible with decolonization rather than being inherently colonizing. However, this potential depends entirely on execution. When forms of political reconciliation "akin to the Christian theological conceptions of repentance, penance, and absolution" are oriented towards "a final state of relational peace achieved in relatively quick order by an act of apology and contrition," they risk entrenchment in a transactional mode that eschews the possibility of robust, transformative political implications that might come from more substantive engagement with the truth of the injustices in question and with "the Indigenous model of perpetually renewed political and social relationships" (J. Green 2020, 242). At the same time, the secularization of reconciliation has also been challenged from the vantage point of meaningful reconciliation in settler colonial contexts needing to include making space for the public expression of the spiritual traditions of Indigenous peoples (Colorado 2020).

1.2.2.2 Assessment

A distinct but related critique with respect to debates over how to distinguish between differing approaches to reconciliation concerns the matter of how reconciliation can be assessed. This is in part an offshoot of debates regarding whether conceptual clarity over the definition is required before discussions about reconciliation can begin, or whether the ambiguity is fertile ground for exchange over and between differing understandings and visions of reconciliation (Atria 2007, 34; Dwyer 1999, 82; Meierhenrich 2008; Schaap 2008, 250-51). Gaertner highlights a key part

of the conundrum: "reconciliation initiates out of an impossible position: defining reconciliation is a necessary task, but the sheer proliferation of interpretation (based not just in language but in subjectivity itself) precludes this very possibility – at least in any sort of ethical sense" (2011, 246). These debates thus entail both matters of principle and of practicality. Bound up with these matters are the previously noted definitional distinctions whereby reconciliation can refer to a goal/destination, or to a process, including sometimes by different parties in the same situation (Egan 2011, 138-39). Framing redress for political violence in terms of "a simple economy of reconciliation" where truth-telling spaces are created in accordance with a metaphor of moral debt repayment can have troubling implications (Bhandar 2004, 835). Some theorists resist the idea that the prospect of reconciliation can be taken for granted or that it is possible to arrive at reconciliation fully and conclusively (Christodoulidis and Veitch 2007, 1; Schaap 2005).

On the other hand, many people argue that it is essential to have some kind of concrete framework for reconciliation such that it is possible to assess what measure of success can be seen (Atria 2007, 34) – in Jens Meierhenrich's terms, a "conceptual analysis of reconciliation" is needed in order to enable a "strategic analysis of reconciliation" (2008, 214). Taking up the question of monitoring progress after the TRC in Canada, Cody O'Neil observes that while "measurement is not without its colonial contradictions and genocidal consequences" (2020, 67), it is not *only* a colonial tool and can be turned against colonialism, suggesting that "it is both effective and often necessary to wield measurement as a weapon against those who continue to abuse it" (68). However, reconciliation is a challenging concept to measure. Component elements such as, for instance, an increase in respect between prior antagonists (Verdeja 2009, 23), are very difficult to quantify and as such measurement is likely to have to rely on inference (Meierhenrich 2008, 216). Furthermore, reconciliation involves long-term relationship building

and thus entails complex questions of time (Czarnota 2007, 160). Assessing reconciliation also requires careful attention to structural as well as social dimensions of relationships (O'Neil 2020, 69-80). In addition to differences of perspective in theory about the desirability of qualifying and quantifying reconciliation, several scholars point to problems in practice whereby actors invoke reconciliation as an attractive concept without attending to its practical dimensions: what it will entail, how it will be enacted, what challenges this might involve, and how it ought to pair with other policies and frameworks in the wake of conflict (Joyner 2010, 48; McGregor 2006, 161-62; Rosoux 2017, 24). These many complexities are also necessarily specific to historical context.

1.2.2.3 Responsibility

Another dimension along these lines, and implied in asking how relationships might be otherwise, is the question of whose responsibility it is to undertake political reconciliation. Depending on the context, this includes the matter of intergenerational responsibility (Hough 2019, 873-79; Thompson 2002), as well as that of which actors in society bear what form(s) of responsibility. According to Joyce Green, reconciliation "really needs to be initiated and implemented by those who have either enacted or benefited from the abusive policy, not from those who have endured it" (2020, 239). Practice often does not match this ideal, however, as many reconciliation frameworks have drawn criticism for putting the onus on victims and their descendants to reconcile themselves to the status quo of existing power relations (Bhandar 2004, 841; Blackburn 2007, 631; Gaertner 2011, 251; Henry 2015, 204-5). Other commentators present a vision of reconciliation that is initiated by victims but variously note that this is only possible "if they have regained a significant degree of freedom" (van Roermund 2001, 182), and argue that some measure of justice and institutional change is required "to distinguish reconciliation

from mass resignation" (Moellendorf 2007, 208). In approaches that place the emphasis on perpetrators' responsibility for reconciliation, perspectives vary on whether responsibility is, or ought to be, primarily located at the state level or elsewhere (Freeman 2014, 216-18; M. Johnson 2011, 189), while others note more generally that reconciliation requires political will and the involvement of all citizens (Joyner 2010, 70; Rosoux 2017, 20-21), with some presenting reconciliation as a set of practices that anyone can engage in (Tully 2018, 115; 2020). Both will and participation can pose a challenge, as it has been shown that much work remains to be done for citizens to see reconciliation as requiring something of them as individuals (de Costa and Clark 2011; de Costa, Clark and Maddison 2016; Hamber and Kelly 2009, 297).[5]

1.2.2.4 Legitimation

Another major concern in the literature pertains to reconciliation and political legitimacy. Reconciliation has come to be seen as a central feature of post-conflict societies, "a condition for successful democratization and a critical component of peacemaking globally" (C. Murphy 2010, 1). However, its implications differ in societies transitioning to democracy and in non-transitional polities characterized by large disparities in political power between the victims and perpetrators of historical injustice.[6] In the latter contexts, the rhetoric of reconciliation may be used to legitimize existing power structures by dissociating them from past injustices while foreclosing the possibility of addressing fundamental questions about the bounds of the state and the colonial foundations of settler democracies (Bhandar 2004; Blackburn 2007; M. Johnson 2011; Jung 2018; McCrossan 2015; Muldoon and Schaap 2012; Short 2005). Scholars link these

[5] In Canada, beyond debates over the respective responsibilities of state institutions and individual citizens, these trends also need to be understood in relation to persistent anti-Indigenous racism and resentment (Beauvais 2022; Carleton 2021; Denis 2015; Willmott 2022; Willmott and Skillings 2021).

[6] Power dynamics also extend beyond these two groups to include bystanders, beneficiaries, and interveners, and victim and perpetrator are not mutually exclusive categories (Govier 2006, ch. 2).

moves to legitimize the state through reconciliation discourses to modern narratives about progress and liberal democracy (Blackburn 2007, 622; Redonnet 2001, 494). In societies whose origins lie in colonization and slavery, this has been described as a call to reconcile *to* (or at least ignore) the founding violence of the state's creation (Bhandar 2004, 833-34; Drabinski 2013; Edmonds 2016, 2, 23). For Damien Short, what distinguishes these cases from the other contexts of transitional justice is that it is not a lack of democracy but rather the foundations *of* democracy that make the state illegitimate and lead to calls for transformation (2005, 269).

While the links with legitimation were initially theorized in post-war and/or post-authoritarian contexts, it has been suggested that established democracies also undergo a transition, but in "regimes of legitimation" (Winter 2014, 4). In this sense, reconciliation involves the repudiation of the values that justified past wrongdoing and relegitimization through the adoption of a new set of values (4; see also Muldoon and Schaap 2012, 182). However, this orientation risks focusing on the injustices faced by victims to the exclusion of the enactment of injustice by perpetrators and allowing the state to be perceived as a neutral arbiter and dispenser of justice, thus bolstering its legitimacy in the process (James 2012; Muldoon and Schaap 2012, 183; Woolford 2015, 270-72, 287). In such instances, reconciliation can be a move to impose closure that manufactures an impression of transition in the absence of structural transformation of power relations (Blackburn 2007, 622, 625-27; Coulthard 2014, 108; Edmonds 2016, 8, 17; Hamber and Kelly 2009, 303; Henderson and Wakeham 2009, 7; M. Johnson 2011, 187; Jung 2011, 231; 2018, 256, 259). This type of illusory break with the past is linked with the pursuit of redemption of and harmony within the state (Carastathis 2013, 236; Egan 2011, 136). Absent structural change, Miranda Johnson suggests, this form of reconciliatory politics constitutes "a reorientation of national affect" rather than "a complete or radical break with the past" (2011,

195). Here, reconciliation becomes a "normalizing" force that risks reinscribing harmful power relations by amplifying voices that support its legitimation project while excluding dissenting perspectives (Gaertner 2011, 254). The aim of such a project is "to be reconciled" and by emphasizing commonality and reinscribing the legitimacy of the state under which that commonality is defined, it can be understood as a new form of domination (Motha 2007, 70, 88).

A particularly contradictory feature of appeals to reconciliation in the pursuit of nation-building, especially in settler colonial contexts, is that the historical injustices that have prompted calls for reconciliation are often themselves a result or component of nation-building projects (Bashir and Kymlicka 2008, 15). Schaap argues that "[r]econciliation as nation-building may be viewed as assimilative since it seeks to overcome the state's crisis of legitimacy by *incorporating* the colonized into the political community as free and equal citizens rather than recognizing their right *not* to reconcile" (2008, 255; italics in original; see also Harrison and Williams 2019, 322). Contemporary invocations of reconciliation bear a fraught relationship to the beginning of settler colonial nation-building and can paradoxically be a move to simultaneously disavow the violence through which the nation was founded and to maintain and reinforce the foundation of the nation at the same time (Edmonds 2016; Motha 2007, 76-77), including through selective appropriation of Indigenous cultural attachments (M. Johnson 2011; Wolfe 1999, 207-8).

Positions vary on whether reconciliation is simply a discursive formation that reifies and reinforces state power, or is rather a risk in the hands of the wrong actors. Some see this as an opportune tool for states while others see politicians' uses of therapeutic reconciliatory language to protect the status quo as "misappropriation" of the term (Dwyer 1999, 98). Certain reconciliation processes may have empowering effects for victims or be beneficial for building bridges between conflicting parties, while others may have coercive effects that reinforce

existing structures (Coulthard 2014, 107; McGregor 2006, 169). Though concerns that simply engaging with oppressors' institutions will serve to legitimate them may be warranted, some suggest there can nevertheless be certain gains to be made therein and that participating in raising matters relating to past injustices and reconciliation in those forums can contribute to highlighting their contingency as governing structures (Muldoon 2008, 134). According to Darrel Moellendorf, the disparity in power relations is part of the reason that reconciliation is necessarily distinct from the concept of legitimacy. He argues that political equality is required because under conditions of continued oppression, people might accept things that would reflect compromises more proper to the definition of reconciliation as submitting to something unpleasant than compromises as part of (re)building a positive relationship (2007, 210).[7]

This literature highlights the closely interwoven nature of questions about legitimation, responsibility, and power that surround political reconciliation, and shows how debates over the term's use in politics are bound up in its multifaceted heritage and the complications of shifting focus from interpersonal to inter-group relations. It also underlines how the implications of reconciliation discourses depend on who is using them, how, and for what purpose.

1.2.3 Reconciliation in Canadian Constitutional Politics

Following the broader exploration of the use of reconciliation discourses above, this sub-section considers their use in Canada in particular by looking at the scholarship around the constitutional relationships between Canada and Québec, and between Canada and Indigenous peoples.[8] While

[7] In the Canadian context, it has been suggested that meaningful reconciliation and the development of political equality requires a reversal of the status quo such that the terms of legitimation should be set by Indigenous protocols, treaties, and relationships, rather than the state (J. Green 2020, 249; see also Asch 2014, 2018).
[8] These are not the only contexts of constitutional politics concerned with redress in Canada (see e.g., Henderson and Wakeham 2013; James 2006). However, to my knowledge, though there has been some use of the term in relation to the deportation of the Acadians (see note 35 in ch. 4), other cases have not included comparable

the varying different meanings of reconciliation can be seen at play in different debates about constitutional politics in Canada in a variety of different ways, as will be explored throughout this dissertation, the attention they have received in scholarly literature is – as Ernesto Verdeja describes of reconciliation itself – "disjunctured and uneven" (2009, 182). The literature on reconciliation with Indigenous peoples is more linked in with the global literature on reconciliation discussed above and includes significant critical assessment of the term's use in Canada, while the literature on the relationship with Québec remains disconnected and does not engage in such critical conceptual analysis. While there is growing analytical interest in reconciliation in the field of constitutional politics, as demonstrated by its inclusion as a key theme in the recent collection *Constitutional Crossroads*, the term appears to be squarely associated with Indigenous peoples while work on Québec is associated with other themes (Puddister and Macfarlane 2022). Meanwhile, though there is some work that considers the two sets of constitutional relationships in conjunction with each other, none of this work assesses the role of discourses of reconciliation in both of these contexts.[9]

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proliferation of discourses of reconciliation, particularly as adopted by the state.

[9] My focus is uses of reconciliation in constitutional relationships involving the Canadian federal state, but these two sets of relationships are of course not only bilateral ones and a fuller picture of the operation of reconciliation and of the web of constitutional relationships more generally requires attention to relationships between Québec and Indigenous peoples. These relationships are complicated by the ways they are mediated by their respective historical and contemporary relations with the Canadian state. At the same time, as Julie Burelle notes, "While the British did attempt to assimilate French Canadians and deployed oppressive political and economic policies, the intracolonial conflict between francophone and anglophone settlers too often serves to absolve Québec of its past and present complicity in oppressing Indigenous peoples" (2018, 170). Both Québécois and Indigenous thinkers have analyzed the colonial nature of this relationship and possibilities for transforming it, and there is significant ongoing exploration on these questions (see e.g., Beaulieu, Gervais and Papillon 2013; J. Burelle 2018; Capitaine 2018; Gettler 2016; D. Giroux 2019b, 2020; Kapesh 2019, 2020; Michaud-Ouellet 2019; Dorais and Nootens 2023; Nungak 2017; Otis 2005; Ross-Tremblay 2019; Sioui 2008; for a survey of the field in political science, see Choquette 2017). The term reconciliation has also been applied to the relationship between Québec and Indigenous peoples, both with respect to the clash between divergent nationalisms (Salée 1995; Whitaker 1995) and to more recent efforts to address the history of colonialism (Côté and Pilot 2020; Dembinska and Montambeault 2015; Nadeau 2012; see also *Les Cahiers du CIÉRA*, vol. 19), but it is beyond this dissertation's scope to explore the origins and variations of its uses in this context. A dedicated genealogical project might take this up and reveal how those discourses intersect with and diverge from uses in both parties' relationships with Canada.

1.2.3.1 Québec and National Reconciliation

The term "reconciliation" has featured in political debates regarding the relationship between Québec and Canada, with the primary focus being Québec's exclusion from the *Constitution Act, 1982*. While the term has appeared in both political debates and scholarship on the topic, its meaning and application in this context seem to go largely uninterrogated. Valérie Lapointe-Gagnon's (2008) analysis of the Chrétien government's reconciliation strategies in the aftermath of the 1995 Québec referendum is an exception to this trend. As she notes, the scholarship that does take up the concept more commonly appeals *to* reconciliation rather than analyzing the term and its use(s) as such (4).[10] This is the case in scholarship published during the constitutional reform debates of the 1980s and 1990s and in more recent works that use the term.

The form in which reconciliation is presented in this literature is largely descriptive and/or aspirational, and while its appearance is not uncommon, it is also not predominant. The concept takes on a titular role in a couple of works on the relationship, namely Charles Taylor's *Reconciling the Solitudes* (1993) and Roger Gibbins and Guy Laforest's edited collection *Beyond the Impasse: Towards Reconciliation* (1998), but it does not play a significant role within most of the texts in either book. In her introduction to the latter collection, Monique Jérôme-Forget expresses the Institute for Research on Public Policy (IRPP)'s hope for and dedication to reconciliation and dialogue (1998, 1), which is mirrored in the structure of the IRPP's (1998, 1999) collections that bring together essays presenting different perspectives by thinkers from Québec and Canada. However, the book's primary conceptual emphasis is on partnership rather than reconciliation itself (1998, 2). John Ralston Saul's *Reflections of a Siamese Twin* contains a

[10] Alain Noël observes that the years between patriation and 2006 in Canada-Québec relations showed how "the politics of recognition and reconciliation" can be "problematic, indeed perilous" (2006, 26), but does not provide further analysis of the term reconciliation. Anna Carastathis's (2013) chapter in the collection *Reconciling Canada* presents a critical analysis of its use in Québec, but her focus is the Bouchard-Taylor Commission on reasonable accommodation in Québec rather than the broader constitutional relationship between Québec and Canada.

chapter entitled “Multiple Reconciliations,” in which he takes up the “quality” of reconciliation in the context of discussions about separation and partition around the 1995 Québec referendum and reflects on this in relation to the disintegration of Yugoslavia (1997, ch. 21). While Saul acknowledges that reconciliation is multidimensional and can have meaning in a variety of different domains (507), his account generally offers a normative appeal to reconciliation as a Canadian tradition and a preferable option to separation more than an analytical engagement with reconciliation as a discourse. The term also features in the title and overarching aspiration of Pierre Joncas’s *Une réconciliation durable est-elle à la portée du Canada?* (2018). Joncas employs “reconciliation” to speak to a desired constitutional reconfiguration that would renew Québec’s place in the Canadian federation through the recognition and respect for the founding role of French Canadians, in order to dispel longstanding disdain and prejudices and create a relation of social peace between French and English Canada (11, 17, 95, 176, 181-83). While reconciliation appears more frequently in this book and some qualification is implied in Joncas’s use of the term (see e.g., 174), it too appeals to reconciliation between Québec and Canada rather than analyzing the concept’s application to the relationship.

Some of the literature’s earlier use of reconciliation reflects the Mulroney government’s emphasis on the idea. Here, scholars note Mulroney’s commitment to reconciliation trumpeted throughout the 1984 election campaign and during his subsequent time in government (Blake 2003, 2007; Cosentino and Chartrand 2007, 314; Simeon 1988a, 1988b). While some of this work explores dimensions of Mulroney’s reconciliation project that were not limited to Québec (Blake 2003, 73-74), a primary focus is the link between national reconciliation and the Meech Lake Accord. In this work, scholars – mirroring a broader trend during the period in question – use the term, or the phrase “national reconciliation,” to describe particular initiatives, especially

the Meech Lake Accord (see e.g., LaSelva 1996, 182; Rocher and Boismenu 1989, 60; Simeon 1988a, S8-S9; 1988b, 32), and to make assessments of the Mulroney government's attempts at reconciliation (Blake 2003, 71; 2007, 6-7; McRoberts 1997, 111, 116; Meisel, Rocher and Silver 1999, ch. 6; Simeon 1988b, 38). More generally, work on Canada and Québec also employs the term to present normative visions, describing the elements and/or entities in need of reconciling to remedy problems in the relationship (see e.g., Bickerton 2007, 255; Boismenu 2014, 1496; Gagnon 2014, 96; Gagnon and Iacovino 2007b, 105-8; Jenson 1998, 217; Jérôme-Forget 1998, 1-2, 6; Millard 1999, 16; Schneiderman 1998, 176). A few more recent works also present a more general vision of reconciliation as an integral mechanism of democratic constitutionalism in Canada conceived as a multinational configuration (Gagnon 2014; Tully 2000; 2008, ch. 7).

Collectively, this literature helps to develop a portrait of what reconciliation might look like in constitutional relationships in Canada, but does not pair varyingly descriptive, normative, and evaluative uses of the term with conceptual engagement with its meanings and uses, nor consider the implications of the ambiguities that surround it. With the notable exception of Anna Carastathis's critical take on the "non-performativity of reconciliation" (2013), which analyzes the reasonable accommodation debate in Québec, there is a lack of attention – for all that many of the takes on reconciliation in the literature might correspond to more critical or transformative approaches – to how ambiguity of meaning and application might contribute to the rhetoric of reconciliation lending itself well to political manipulation and reinforcement of the status quo. This is true both of the word's uses in scholarship and of the lack of critical inquiry about its uses in political discourse about Canada and Québec. This may be at least partly explained by the fact that, as explored in chapter 4, the term's use regarding Canada-Québec relations had greatly subsided by the time the critical literature on reconciliation began to develop. Reviewing several

decades worth of scholarship on the Canada-Québec constitutional relationship, François Rocher observes a lowered interest in Québec politics in English-speaking Canadian political science in the present era where the national unity crisis of yore has waned and "Quebec no longer represents an imminent danger to the survival of the Canadian political system" (2019, 635). If that "issue is, so to speak, dead," as he puts it (650), and has been during the period of greater critical scrutiny of reconciliation discourses, then it is perhaps unsurprising that earlier uses in relation to Canada and Québec have not attracted more scholarly attention. The term's use has not disappeared altogether, however, as evidenced by the publication of Joncas's book in 2018 despite the absence of crisis at the time. Indeed, for Joncas, the injustices, prejudices, and misunderstandings that precipitated past crises endure and he highlights "la précarité du calme présent" in arguing for constitutional reform that would avert the possibility of "une rupture radicale des attaches qui nous lient" (181, 182). A recent chapter by Guy Laforest and Alain-G. Gagnon also highlights the unfulfilled nature of "true reconciliation between Canadian and Quebec nation-building" (2020, 38). In their view, such a reconciliation requires more room for asymmetry and acceptance of the legitimacy of Québec nation-building in the Canadian federation, and "redefin[ing] justice as equivalence in treatment rather than in terms of a standardized moral framework" (38). Laforest and Gagnon remark that while Canada's current prime minister "has shown himself to be no stranger to the language of reconciliation," at this point its use is generally being applied to relations with Indigenous peoples, not Québec (38).[11] This observation largely also applies to the literature on reconciliation in constitutional politics.

[11] Elsewhere, Laforest and Janique Dubois consider whether the Trudeau government's rhetoric about its relations with both Indigenous peoples and the provinces is indicative of the arrival of a broader "fédéralisme de réconciliation" ("reconciliatory federalism" in the English version) (2017). This term is also used in an exploration of the prospects of federalism as a framework for reconfiguring relations between Indigenous peoples and Canada (Mejía Mesa 2019). The relationship between reconciliation and federalism is explored in the next chapter. While the term "reconciliation" has occasionally been used in relation to Québec in recent years (see conclusion to ch. 4; Joncas 2018), this occurs rarely in comparison to its uses regarding relations with Indigenous peoples.

1.2.3.2 Reconciliation with Indigenous Peoples

Unlike with Québec, there is a large body of critical work on the application of reconciliation discourses to relationships between Indigenous peoples and Canada.[12] This work is in many cases also more conscious of the multiplicity of reconciliation's meanings and the complexity generated by people using and interpreting uses of the term in different ways. John Borrows and James Tully speak to this wide range of uses in *Resurgence and Reconciliation*:

> For example, some say reconciliation between settlers and Indigenous peoples is an end state of some kind: a contract, agreement, legal recognition, return of stolen land, reparations, compensation, closing the gap, or self-determination. Others argue that it is more akin to an ongoing activity. Some say reconciliation embodies a relationship stretching back 12,000 years, an existential mode of being with one another and the living earth. It has also been associated with treaty relationships since early contact. For some it is the path to decolonization, for others a new form of recolonization. Some insist reconciliation must be resisted, while others see it as an essential process for ongoing relationality. (Borrows and Tully 2018, 4)

Within this literature, there has also been some discussion as to the starting point(s) for the use of the language of reconciliation. Many scholars point to the publication of the RCAP's report in 1996 (Coulthard 2014, 108; Redonnet 2001, 488-89; Stanton 2017, 22; Turner 2013, 102-6), or to the SCC's Aboriginal rights jurisprudence (Ladner 2009b; Ladner and McCrossan 2009; Newman 2008; Snelgrove 2021, 32). These discourses also became prominent in public debate over treaty negotiations in BC (Blackburn 2007; Egan 2011; Woolford 2005). They have become particularly widespread since the creation of the TRC through the 2006 Indian Residential Schools Settlement Agreement (IRSSA).[13]

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[12] See e.g., C. Belcourt (2018); Bhandar (2004, 2007); Blackburn (2007); Borrows (2017a); Borrows and Tully (2018); Castellano, Archibald and DeGagné (2008a); Coulthard (2014); Corntassel, Chaw-win-is and T'lakwadzi (2009); Dewar (2016, 2021); Egan (2011); Freeman (2014); R. George (2017, 2020); J. Green (2017, 2020); Henderson and Wakeham (2009); James (2017); Jung (2011, 2018); Ladner (2018); McCrossan (2013, 2015, 2018, 2019); Nadeau (2012); Nagy and Gillespie (2015); Regan (2010); L. Simpson (2011); Snelgrove (2021); Turner (2013, 2016); Wakeham (2012); Younging, Dewar and DeGagné (2009).

[13] Corey Snelgrove distinguishes between the emergence and uptake of discourses, suggesting that reconciliation had been "available as an idea since the early 1990s" but was only significantly taken up as a key concept after the TRC report in 2015 (2021, 51). He argues that it became a "governing idea" then because it served the Canadian

Another important factor in these developments was the turn to restorative justice practices in criminal law, a globally significant shift that "paved the way for the emergence of a reconciliation discourse in the international system" (Meierhenrich 2008, 203). The term reconciliation is often associated with restorative justice practices (victim-offender reconciliation programs being a key example), which began to play a greater role in Canadian criminal law in the mid-1990s, as evidenced by Correctional Services of Canada's inauguration of National Restorative Justice Week in 1996 (Tomporowski et al. 2011, 816). This shift was linked to penal reform with respect to Indigenous peoples in Canada, as the federal government began funding sentencing circles and amended the Criminal Code to include provisions requiring judges to take into account the contextual factors affecting Indigenous people who had been charged with a crime under the aegis of its "Aboriginal Justice Strategy" (Monchalin 2016, 268; Woolford 2009, 65). Some of these restorative justice practices' origins are traced back to the initiation of a victim-offender mediation program linked to the Mennonite Central Committee in Ontario in 1974 (Pate 1990, 135; Peachey 2003). Many scholars also trace their origins back to traditional Indigenous justice practices, though this has been criticized for oversimplifying and essentializing Indigenous legal traditions, overlooking their retributive elements, and conflating Christian or Western concepts animating restorative justice with those of Indigenous peoples' traditions (LaRocque 1997; Monchalin 2016, 281-84; Woolford 2009, 45-46). Furthermore, even where there may be resemblances between practices, "there is not a straightforward and unbroken line" between them (Woolford 2009, 45), as the political and legal systems of Indigenous peoples were directly targeted by colonial policies that banned traditional practices and sought to assimilate Indigenous peoples into mainstream Canadian society. Jane Dickson-Gilmore and Carol La Prairie note that there is a certain irony that Indigenous communities have

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state in responding to a legitimation crisis relating to its economic reliance on resource extraction (ch. 1, sec. II).

become the main targets for restorative justice programming, supposedly based on their traditions but controlled by the state, in order to remedy dysfunction that stems from state violence that included the banning of those legal traditions and justice practices (2005, vii-viii).[14]

Taking these nuances into account though, restorative justice and Indigenous legal traditions associated with reconciliation feature prominently in contemporary discussions of reconciliation and redress for historical injustices. It has been stressed that Indigenous peoples practised reconciliation through treaty negotiations and other ceremonies long before Europeans arrived (Nagy 2014, 213; L. Simpson 2011, 21). Marlene Brant Castellano, a member of the research teams at both the RCAP and the Aboriginal Healing Foundation (AHF), highlights connections between definitions and practices of reconciliation and restorative justice (1999, 96; 2008, 385-86). Borrows and Tully observe that some Indigenous people find reconciliation to be an "appropriate" English word to include in describing "the unique, place-based, kin-centric, and relational ways Indigenous people conceive and enact transformative change" (2018, 7). However, just as there is contestation over the links between restorative justice and Indigenous justice systems, Indigenous people do not uniformly embrace the term reconciliation, and when they do use it, many approach it "critically, and cautiously," and often conceptualize it quite differently or even in opposition to the conceptualizations employed by many non-Indigenous people (Jung 2018, 253; Ladner 2018).[15] One of the major differences is the emphasis that Indigenous peoples place on reconciliation being a process that is about "more than people getting along" (McKay 2008, 106), and one that must include repairing relationships with the

[14] See also Richards on the selective practices such state engagement with Indigenous justice traditions typically involves (2006, 96-116).

[15] This is also true of some non-Indigenous scholars, particularly those who have undertaken concerted engagement with Indigenous peoples' traditions of political thought and practice (Tully is a notable example; see esp. 2018, 2020). In introducing the concept in *Resurgence and Reconciliation*, Borrows and Tully emphasize that they "strongly reject" definitions and practices of reconciliation that "perpetuate unjust relationships of dispossession, domination, exploitation, and patriarchy" and "reconcile Indigenous people and settlers to the status quo," and are instead dedicated to "those that have the potential to transform these unjust relationships" (2018, 5).

land as well as between peoples (Asch, Borrows and Tully 2018; C. Belcourt 2018; McKay 2008, 106; L. Simpson 2011). Distinct from secular liberal democratic narratives of reconciliation, Indigenous people often also highlight the spiritual dimension of treaty-making and reconciliation (Kelly 2008, 30; McKay 2008, 113; see also Colorado 2020).

Indigenous peoples have approached state visions of reconciliation with considerable skepticism, and many have argued that the concept is empty if simply focused on friendlier relations absent restitution and restoration in the wake of colonial dispossession (C. Belcourt 2018; Gabriel 2020; J. Green 2020; Ladner 2018; L. Simpson 2011, 21).[16] The assertion that, "[i]n the very process of purportedly promoting cultural rapprochement, an emerging dominant formulation of reconciliation works to secure a belief in a national imaginary of Canadian civility that overwrites ongoing power asymmetries and gross inequities" accords with these critiques (Wakeham 2012, 210). Such a move relies on framing reconciliation as a generous and benevolent undertaking by contemporary Canadians, who are discursively distanced from the perpetrators of the injustices that beget the need for reconciliation while those injustices are framed as firmly historical (209; see also Coulthard 2014, 108, 120-21). This rendering of the temporality of injustices, as well as their scope, and the relationship between and relative legitimacy of the sovereignty and authority of the state and of Indigenous peoples, are some of the areas where Indigenous peoples and the Canadian state diverge significantly on the nature and purpose of reconciliation (Jung 2011, 217-18; 2018).

The literature thus demonstrates significant tension between state and Indigenous peoples' approaches to reconciliation. In their classification of ideal types of Canadian state policy regarding Indigenous peoples, Teddy Harrison and Melissa Williams present

[16] Michif artist and activist Christi Belcourt also stresses an understanding of restoration that goes beyond a transfer of fee simple property to require a change in nature of relationships to land, arguing against a reconciliation that is "limited to an idea of us all getting along as we destroy the planet together" (2018, 118).

"reconciliation" as Canada's most recent policy approach[17] and note that it devises reconciliation as "usually achieved by limiting or altering indigenous claims to fit within the state structure" (2019, 322). In doing so, it reinforces an ongoing orientation towards assimilation, which Harrison and Williams diagnose as being partly the result of "the normative concepts used to evaluate and reform policy continu[ing] to be drawn exclusively from the liberal ethical system that underpins the colonial order" – which they note is true of "reconciliation" as well as other concepts even though it "was introduced precisely to bridge indigenous and non-indigenous normative orders" (323). This amounts to an approach wherein "Indigenous subjects are the primary object of repair, not the colonial relationship" (Coulthard 2014, 127), one that appears to mandate varying degrees of resignation to colonialism and its attendant harmful relationships between peoples and between peoples and land (Borrows 2017a, 33; C. Belcourt 2018, 118). Billy-Ray Belcourt highlights some key assumptions that underpin this kind of orientation towards reconciliation in writing that "[r]econciliation, at once a heuristic and a form of statecraft, fakes a political that doesn't actually exist as such, one that not only presupposes that we – Indigenous peoples, that is – are willing to stay attached to it, but that we are already folded into it, that we've already consented to it" (2016). As such, there are key concerns about the compatibility of reconciliation with the projects of decolonization and self-determination (B. Belcourt 2016; Coulthard 2014; Jung 2018, 261-62; Tuck and Yang 2012). Contesting such visions as consisting of assimilation in a new guise (R. George 2017; Ladner 2018, 247), on the other hand, Indigenous scholars present alternative understandings of reconciliation as "a robust set of processes over time which address the intergenerational cascade of injuries consequent to colonization" that is not an isolated moment of redress but rather an ongoing, active relationship that requires continual maintenance (J. Green 2017, 181), "a process of being and becoming – a

[17] The others are eliminationism, paternalism, responsibilization, and legalism (Harrison and Williams 2019, 319).

project allowing all peoples and all nations to exist, while determining how it is that we live together on these Indigenous lands" (Ladner 2018, 246; see also Asch, Borrows and Tully 2018).

1.3 Research Question

In exploring why discourses of reconciliation are used in Canadian constitutional politics, a key takeaway from the existing global and Canadian literatures on reconciliation is that the closest there seems to be to a consensus is that the concept is veiled in ambiguity, it has many origins and meanings, and this gives the term a flexibility that contributes to it being put to work for a wide variety of political purposes. For this reason, it is also widely contested when it is used. This suggests that to understand more clearly why it is being used, it is necessary to delve further into what it is being used to do – what is the specific variety of political purposes for which it is being employed? What is it possible to advance, or to contest, using discourses of reconciliation?

There are two major contexts where the concept has been used in Canadian constitutional politics, but it has been developed and applied in each to very different degrees. While the concept has been used in political discourse with respect to Indigenous peoples and to Québec, and can be found in the scholarship on both, its use in the Canada-Québec relations context has not been subject to academic critique or political contestation in the same way as its use with respect to Indigenous peoples. Certain aspects of its emergence and development have been probed (some more than others), but a thorough history of how this ambiguous and multifaceted concept came to be applied to these political relationships has not yet been assembled for either case. Finally, the two cases have not been analyzed in conjunction with each other.

This dissertation aims to further illuminate why reconciliation is being used in Canadian politics by investigating what is done with the term – what it is possible to do with it – and how

it came to be used in these ways. This involves tracing its emergence in the relationships between Canada and Québec and between Canada and Indigenous peoples, and considering what is revealed by comparing its uses in these two cases. Exploring how reconciliation discourses first began to be used and the range of contexts in and purposes for which they emerged lays the foundation for understanding why they are being used today. To this end, this dissertation centres on the following research question: *When, how, and with what effects did discourses of reconciliation emerge and develop in Canadian constitutional politics?*

As noted above, reconciliation has numerous forms and meanings. In posing this question, I distinguish between other colloquial forms of the term (referring for instance, to financial reconciliation, the reconciliation of individuals, facts, or claims) and reconciliation as a normative political goal, though I also acknowledge that the distinction is not entirely clearcut as these various colloquial forms may shape the understanding that actors hold of political reconciliation. This means that, in one way or another, "reconciliation" is framed as or linked to the stated purpose or desired outcome of political action, policy proposals, and/or institutions.

By focusing on Canadian constitutional politics, my investigation centres on the role that reconciliation plays in shaping the dynamic between entities that bear particular relationships to each other via the constitution of the country,[18] relationships that are constitutive of debates over the nature and meaning of the Canadian polity and that are entwined in complex power relations. The question thus implies a focus on institutions and elite politics. However, in accordance with the genealogical approach laid out below, the focus also expands outwards from institutions and

[18] The constitution of Canada can be understood as both a noun and a verb. There is the amalgam of textual and conventional sources that make up the capital-C Constitution (see e.g., Webber 2015, 4-5, 97), but constitutionalism is also about "how and why a community *constitutes* itself in the way that it does" (Mills 2021, 3; italics in original). These dimensions of the constitution of Canada – as object and as activity – also interact in complex ways. As Eric Adams writes, it "is a constitution that, like the background assumptions and relationships upon which it is based, can shift and transform over time; a constitution that perpetually exists in a state of becoming" (2015, 318).

elite politics in seeking how reconciliation discourses arrived in those spaces. Furthermore, while the research question engages the role of reconciliation discourses beginning from the present configuration of institutions and power relations in the Canadian polity, the dissertation proceeds from a recognition that the web of relationships that makes up "Canada" in its present form is no less historically contingent than are contemporary discourses of reconciliation. Indeed, the inquiry is animated in part by a desire to understand how the two (re)constitute each other.

In asking "when" and "how" reconciliation discourses emerged in constitutional politics, I am seeking the points at and discursive means by which reconciliation crossed from (some of) its various rhetorical uses outside of political discourse into being put forward as a normative political proposal, and then tracing the paths from these moments to the moments when reconciliation started to be deployed (and challenged) as state discourse. Asking "with what effects?" aims to inquire what constellation of power relations is shaped by these various uses.

As explained further below, by taking a genealogical approach and by employing the plural form in the phrasing of my research question, I have not presupposed the answers to "when," "how" or "with what effects" to be singular. Reconciliation's many meanings and forms outside of political discourse and the variety of contexts in which its political form has been deployed are mirrored in multiple points of entry into political discourse, and these emergences led to a variety of effects. The goal, then, is rather to understand what uses of reconciliation are *doing* in Canadian constitutional politics, and how this has come to be.

1.4 Theoretical Framework: Towards a History of the Reconciliatory Present in Canada

> Le langage est ainsi l'outil par lequel on sépare et par lequel on articule, par lequel on différencie et par lequel on associe, par lequel on valorise et par lequel on dévalorise. C'est-à-dire que le langage est ce moyen par lequel on fabrique une communauté. Il est en conséquence un outil extrêmement puissant, créateur et dangereux, et il est en même

> temps la prothèse qui présente le plus grand degré de contingence et de fragilité. […] Dans une approche politique du langage, il n'y a pas d'une part le discours et d'autre part les rapports de pouvoir. Les mots qui comptent sont les mots qui font des choses […].
>
> – Dalie Giroux (2013, 338)

> These studies will enable us to see our island of disputation and negotiation as it is, in the rough and agonistic sea of relations of power, rather than from the point of view of a utopia free of power. With this toolkit in hand we will be in a position not only to think differently but to begin the cautious experiments in acting differently, in modifying our rules of interaction and practices of self-formation in such a way that the specific game in question can now be played with "a minimum of domination."
>
> – James Tully (2008, 130-31)

This research question about the provenance of reconciliation in Canada is rooted in an understanding of language as inherently political, wherein political community is formed, re-formed, and transformed through language. "The language of politics […] channels political thought and action in certain directions" (Connolly 1993, 1), as power relations shape the use of language at the same time as language gives shape to relations of power. As William Connolly writes, "to adopt without revision the concepts prevailing in a polity is to accept terms of discourse loaded in favor of established practices" (2). The language we employ shapes our political choices and our sense of what is possible within the political communities to which we belong (2-3, 6, 29). Thus, both understanding the configurations of power and seeking to change them require critical engagement with predominant political discourses (3).

In *The Terms of Political Discourse*, Connolly lays out a series of considerations regarding "essentially contested concepts" which are particularly germane to engaging with the deployment of reconciliation as political discourse. Connolly describes political interaction as an activity that takes place between people "who share a range of concepts, but share them imperfectly and incompletely" (1993, 6). When there are disputes over an "appraisive" concept that both "describe[s] [something] and […] ascribe[s] a value to it or express[es] a commitment

with respect to it," and that are "internally complex" and "open" to interpretation between participants who disagree over how and when a concept ought to apply and how its application ought to be valued, he suggests, the concept is "essentially contested" (22, 10). The contestation is compounded when the constellation of other concepts linked to it are themselves also subject to significant disagreement (11).[19] One must therefore also grapple with the "broader conceptual system within which it is implicated" (14), and engage with the moral perspectives that inspire different formulations of the concept in order to understand the purpose of its use (28). The range of possible disagreements is such that the same term may be used to describe entirely different types of acts and animate different kinds of questions (29); participants can even appear to be engaged in altogether different debates (87). The relationships between terms are important and, as Raymond Williams acknowledges, "no word ever finally stands on its own" – yet, "to pick out a word of a problematical kind and to consider, for the moment, its own internal structure, is one necessary way of considering the active inter-relations of words in sentences and in the larger system of the language itself" (2011, 20). To zoom in on one word, while it has limitations (20-21), permits the development of a critical portrait of the range of acts and questions the term is being associated with and what kinds of work it is doing in different debates.

As Connolly notes, the meanings of contested terms are sometimes clear based on context in a variety of smaller and more specific scales, but when it comes to their use with respect to a polity writ large, "these shorthand phrases require more careful and explicit clarification" (1993, 86). The operation of power relations tends towards the dominance of uses of a term that best serve those for whom the existing configuration of power is most favourable (Poerksen 1995, 26). Given its prominence in the Canadian polity, it is incumbent on us to ask how reconciliation

[19] See also Raymond Williams on how what he describes as "a problem of *vocabulary*" can operate both "in single words or in habitual groupings" (2011, 13; italics in original).

has taken on "these particular contours" in our political discourse (Connolly 1993, 24).

In inquiring into the "shorthand" of reconciliation, this project also relates to the key concern in contemporary political theory of "deparochializing" the discipline. Amidst their differences in motivations, methodology, and understandings of "deparochializing," scholars committed to this project share a general commitment to destabilizing false claims to universality and to highlighting and engaging with the cultural, historical, and geographical specificity of political ideas (M. Williams 2020). I am informed particularly by James Tully's assertion of the need to "deparochialize" political theories by "reparochializing," i.e., recontextualizing, them (2016, 56). This orientation draws significant inspiration from Ludwig Wittgenstein (Tully 2016; Turner 2020). Emphasizing the insight that "sense-making is contextual," Tully argues that canonical Western political theories are in fact "parochial," not "general or universal," in the sense that they are "partial and limited in their sense and reference" (2016, 56). They therefore need to be placed back into the specific "contexts in which they make sense," linked to the "quite specific and limited senses of the terms in question" and the "circumstances in which they are normally used" (56). This exercise enables better understanding of the ideas and prevents them from claiming a false universality and dominating other forms of political thought in the process (56). Tully also details how the task is interlinked with attending to "the complex relationships between political theories and forms of power," and meaningfully grasping that Western political theory is "only one species of the larger family of forms of 'political thought'" (56).[20] "Deparochialization," at the local and global levels, is a complex, multifaceted, and "intergenerational project" (M. Williams 2020, 21). It requires careful, critical, and self-reflexive

[20] Tully links these elements to the conditions of possibility for "genuine dialogue," which he juxtaposes with six ways that modes of "false dialogue" can undermine it (2016, 52-55). He emphasizes the importance of "ethical practices of openness and receptivity to the otherness of others" that enable "mutual understanding" and "mutual concern" for having genuine dialogue (52). I return to this question of the conditions for dialogue in the Conclusion.

practices as scholars interrogate their own traditions of political thought and engage with those of others (Karmis 2023, 12-14; Sherwin 2021; Tully 2016, 60-63; M. Williams 2020, 5-6). This work includes coming to see how the ideas we have inherited are culturally, geographically, and historically rooted, working to understand others' "in and on their own terms" (Turner 2020; see also Karmis 2023, 8), and becoming conscious of and responsive to the relations of power that shape interactions between traditions.[21] Studying reconciliation in this time and place necessarily engages all of these dimensions.

Genealogy is a fitting mode for approaching such an exploration of this contested concept as attention to both context and power are at its core. The sub-sections that follow introduce genealogy in more detail (1.4.1), explaining its character as a theoretical approach (1.4.1.1) and how it is well-suited to this investigation of reconciliation (1.4.1.2), before laying out my approach to genealogy (1.4.2) and the conceptual frameworks I employ in my analysis (1.4.3).

1.4.1 On Genealogy: Tracing a History of the Present

1.4.1.1 What is genealogy?[22]

"[I]n the broadest sense," Connolly writes, a genealogy is "any investigation of established truths that loosens the sense of necessity, lawfulness, unity, or intrinsic purpose attached to them" (2008, 212). It explores the contingent nature of contemporary practices and their development "by tracing them back to discrete, particular, contingent elements from which they were constructed" (1995, 34-35). Discourses serve as a focal point for genealogy as the power

[21] This requires grappling with the impacts of imperialism on a global scale (Tully 2016). For reflections on important considerations this work requires of non-Indigenous scholars engaging with Indigenous political thought while inevitably caught up in ongoing colonial power relations, see Sherwin (2021). These dynamics are inherently rooted and relational and so the particulars will thus vary with location (M. Williams 2020, 6). For another account of the "considerable work on the self" required in grappling with the contingencies inherent to both identities and forms of political thought (Connolly 1991, 178), see Connolly's work on pluralism (e.g., 1991, 1995).
[22] This section is adapted from Wyile (2017a, 604-5).

relations that "permeate, characterise and constitute the social body […] cannot themselves be established, consolidated nor implemented without the production, accumulation, circulation and functioning of a discourse" (Foucault 1980, 93). Genealogy accounts for a concept, discourse, process, or set of power relations by examining the point(s) at which it first appeared and tracing its development over time. It differs from other historiographical approaches in that it "is not a method for examining why events unfold as they do, how certain phenomena can be explained as a sequence of rational behaviour when we ask 'why?' Rather, genealogy is a method to uncover the 'how,' particularly how phenomena are imbued with meaning and under what conditions this occurs" (Coburn 2019, 36). It seeks to illuminate the contingency of concepts, practices, and identities and "proceeds in the service of a certain disposition to freedom" by allowing us to consider them as some among many possibilities rather than as the result of some inevitable evolution of historical progress (Connolly 1995, 35; see also Jenkins 2011, 169-70).

Michel Foucault advances two approaches to analyzing discourse (1972, 231), which rest on four methodological principles: 1) the production of discourse is not solely a positive action, but also an activity of exclusion; 2) the production of discourse is not a unified activity, but rather is discontinuous, and, as such, discourses may have many manifestations that can be linked but may also ignore or exclude each other; 3) the production of discourse is an imposition upon the world; and 4) the search for discourse involves searching for its exterior conditions of existence rather than seeking meaning at its "hidden core" (229). Critical discourse analysis (CDA) focuses on the first principle, exploring discourses' formation by seeking out what exclusions and limitations have served to constitute them in their current form (231). Genealogy, the second approach, draws on the other three principles to explore "how series of discourse are formed, through, in spite of, or with the aid of these systems of constraint: what were the specific

norms for each, and what were their conditions of appearance, growth, and variation" (231-32). In so doing, it "(contestably) reveal[s] what other perspectives conceal through their unconscious ontologizations of actuality" (Connolly 1991, 184). By approaching discourses from these different angles and revealing their historical contingency, genealogy complements CDA in unveiling the interplay between discourses and power (Foucault 1972, 233).

Genealogy is rooted in an understanding of ideas and language as being both constitutive and reflective of relations of power. It thus entails the study of language as a type of artefact, with the goal being not to seek some transcendental truth in speech itself but to uncover what is revealed by analyzing the context in which speech takes shape (D. Giroux 2013, 333, 336). Words themselves are not agents responsible for their own effects; what matters is "where and how they are used" (Poerksen 1995, 6). The goal is thus to "problematize established frames" in the present to highlight how they are interwoven with power without assuming they can just be discarded or replaced with alternatives free of power relations as there is no "space wholly outside them" (Connolly 1991, 181-82). Instead of seeking the original meaning of a concept, which may have been discarded or transformed over time, a genealogy aims to establish a "history of the present" by establishing the "descent" and "emergence" of the concept in order to "trace the erratic and discontinuous process whereby the past became the present" (Foucault 1995, 31; Garland 2014, 372). This requires attending to discontinuities as well as continuities (Foucault 1972, 229), the "superficial practices and the accidents of the past" (Coburn 2019, 38). In so doing, genealogy makes room to address the phenomenon Connolly highlights whereby terms may be used by actors in seemingly wholly different fashions in ways that may or may not enter into conversation with each other, and certain competing conceptions may simultaneously persist in some contexts while in others one (or some) conception(s) may prevail over others.

Because discourse and power are inextricably intertwined, genealogy turns its gaze on what words are *doing* in order to understand how they shape and are shaped by relations of power (D. Giroux 2013, 338, 341-42; Skinner 2002, 176). As Dalie Giroux suggests, the two key guiding questions of a genealogical approach ask who is speaking and why one thing is being said as opposed to another (2013, 343-44). Put another way, we can seek to understand the rise to prominence of a particular concept at a particular time in a particular context by analyzing "what could be done with it that could not be done in its absence" (Skinner 2002, 178). These questions highlight a central insight of genealogy: that language and power are simultaneously constraining and productive (Foucault 1980, 119; Skinner 2002, 7). We must thus look not only for what is forbidden by specific discourses, but also what is created or enabled, to see "how power operates beneath phenomena and through discourse" (Coburn 2019, 41; see also D. Giroux 2013, 348; 2019a, 7). Understanding the operations of reconciliation as a political concept in Canadian politics, then, requires analyzing the range of things that can be "done" with the concept. How does the discourse of reconciliation serve as a constraint, and how does it serve as a resource? What relations of power are (re)produced or (re)constituted by discourses of reconciliation?

1.4.1.2 Why genealogy?

In this study, I conceive of reconciliation as a (set of) discourse(s) rather than positing a particular definition or advocating for a particular mode of pursuing it as a political goal. Four aspects of genealogy make it a particularly good fit for studying reconciliation discourses. First, it is variously conceived by Foucault as being complementary to CDA (1972, 231-33) and by Tully as a follow-up to a critical theoretical survey of "what can be said and done within a set of practices and problematization" (2002, 546), and, as noted, while there is a good deal of critical

study regarding reconciliation in the Canadian context and more broadly in settler colonial societies, a wide-ranging genealogical counterpart has yet to be undertaken for Canada.[23] Second, genealogy does not insist on a singular, conclusive point of origin/emergence and is attentive to discontinuities as well as continuities in discursive development (Foucault 1972, 229; Garland 2014, 372), which seems particularly important in exploring a discourse that has multiple sources and that centres on a profoundly contested concept. Third, in tracing discourses' continuities and discontinuities, genealogy is also attentive to the simultaneously restrictive/ constraining and permissive/productive nature of power (Foucault 1980, 98; 1995, 23; 2003a, 356-58; D. Giroux 2013, 336, 348; Skinner 2002, 7; 1988b). Focusing on both dimensions enables an analysis of what type of politics reconciliation discourses *produce*. In doing so, genealogy is "interventional" in the ways it probes the production of "aspectival captivity" – "a condition of being inhibited or held captive by a picture or perspective of which we are either unaware, accept unswervingly without the recognition of alternatives or are so (morally or politically) committed to that we cannot envisage traversing" – and resists depoliticization (Jenkins 2011, 167, 164). Finally, while genealogy focuses on historical emergence and development, it is rooted in the concerns of the present (Garland 2014, 372-73; Skinner 2002, 6; Tully 2002, 535). This makes it a fitting mode of analysis for a project concerned with accounting for the underpinnings of reconciliation's contemporary omnipresence in Canada.

1.4.2 A Genealogical Approach

My approach is informed in varying ways by the writings of many theorists of genealogy,

[23] In the time since this project was initiated, other scholars have published work that includes genealogical exploration of some of the component elements of the reconciliation discourses studied here. See especially Joshua Nichols's (2020) genealogy of the SCC's reconciliation doctrine. Kim Stanton (2017) has also analyzed the Court's doctrine in relation to uses of the concept by the RCAP and the TRC. For more on this scholarship, see chapter 6.

including Connolly, Foucault, Giroux, Skinner, and Tully. All of these thinkers envision genealogy in overlapping yet distinct ways. As such, it is worth detailing the inspiration I take from them and briefly outlining my own approach. The overarching task is, as Tully describes it in a discussion of an orientation shared by Hannah Arendt and Wittgenstein, "to concentrate on the ways language-users use words and the activities in which the uses of words are woven" (2008, 137). The product of this mode of investigation is "a perspicuous representation of the physiognomy of the game itself: what the players do and how they do it" (137). To develop such a representation, I draw on the insights of these different genealogical thinkers regarding the nature of power, the sources of the production of discourses, the genealogical work of highlighting the contingency of politics through description, and the position of the theorist in relation to the inquiry. I blend these insights about theoretical approach together with four conceptual frameworks laid out in sub-section 1.4.3 below to analyze how and in the pursuit of what activities actors use discourses of reconciliation throughout the emergence of this term in Canadian constitutional politics. The resulting genealogy must itself be understood as being as contingent as the emergence and descent of the discourses of reconciliation that it describes.[24]

Power, analysis of which is integral to understanding the functioning and effects of reconciliation discourses, is itself also a contested concept (Connolly 1993, ch. 3). I conceptualize power in political relationships as comprising both symbolic and material dimensions and see these dimensions as interlaced. Some discourses will emphasize only one or the other, but doing so is reflective and productive of power relations that enable certain parties to negate the presence and relevance of the other dimension. Examples of symbolic elements might include assertions of particular narratives about identity and belonging, or trauma and

[24] I follow Connolly here in "affirming the contestable character of [my] own projections" of implicit and explicit "ontopolitical presumptions" in the act of interpretation (1995, 36), as well as recognizing the contingencies that have shaped the research process, logistical and otherwise. I discuss the latter further in section 1.6.

healing, while material elements include things like land, sovereignty, or jurisdiction. These various elements cannot necessarily always be neatly distinguished as being only symbolic *or* material (and indeed some actors insist on their overlap and inter-relation in their lived experience and political assertions). Nevertheless, how the symbolic and material dimensions are addressed matters. Emphasizing the symbolic dimensions of injustice and power relations to gloss over or avoid addressing the material dimensions perpetuates and compounds past and ongoing exercises of domination. Analysis of power must thus attend to both dimensions and the ways in which they are interrelated. My approach to this exercise is also informed by a couple of Foucault's insights about the nature of power. First, power is not something that some people *have* and others do not, but rather is *exercised* through strategies and tactics of domination and resistance in relations of force (1995, 26-27). Second, as noted above, power is not only a restrictive force but a productive one as well; it creates discourses and discourses are imbued with contextually specific relations of power (Foucault 1980, 119; D. Giroux 2013, 333). These considerations inform my understanding of my research question, as the answers to this question are products of the interactions of time, space, and power. As such, the *when* and *how* of reconciliation's emergence are invariably intertwined: when gives rise to how, how shapes when in return, and the dialogue between the two in turn produces certain *effects*.

In seeking uses of reconciliation discourses and considering their operation in Canadian constitutional politics, I attend to the role of both individual actors and events in discursive development. As such I blend insights from the differing genealogical approaches of Skinner and Foucault, seeking to draw on the strengths of both approaches rather than following one over the other (Skinner 1988a, 77-78; 2002, 117-18; Foucault 1980, 96, 99-100). I do this by beginning with certain key texts in which the term reconciliation is used but then following outwards from

these in search of where the discourses in them came from. This allows me to consider both the broad development of discourses and the role played by specific actors in their emergence.

Genealogical analysis of the workings of power through the operation of political discourses requires highlighting their historical contingency. Reconciliation, like Giroux writes of *déracinement* (uprooting), "n'est en somme pas un phénomène naturel, et il n'est pas non plus inéluctable" – it is political, it is "une politique, peut-être une préférence, mais pas un destin" (2019a, 11). My aim, then, is to uncover what kind of politics reconciliation is and has been in the Canadian context, and what kinds of preferences it reflects, it shapes and is shaped by. It is also, in part, to ask how it could be otherwise. I understand the task of genealogy to be primarily a descriptive one (D. Giroux 2013, 346, 348); however, "[c]onceptual disputes […] are neither a mere prelude to [political] inquiry nor peripheral to it," and wading into these disputes is a form of political participation and not merely a neutral intellectual exercise (Connolly 1993, 21, 39).[25] Undertaking such genealogical interrogation of our present concepts is important as it can enable us to develop a more self-aware understanding and help "prevent us from becoming too readily bewitched" by political thought and practice that we have inherited but may take for granted without really understanding it (Skinner 1998, 109-10, 116). This inquiry also serves to trouble patterns wherein we cast a critical eye at the thought and practices of the past but then fail to interrogate the "problematic character of indispensable themes in the present" (Connolly 1991, 3; see also Jenkins 2011, 160, 164). In this, theoretical inquiry and description is bound up with political action; the task of theorists in contexts of domination is to seek the possibilities for increasing capability and freedom without being subjected to increased domination in the process (Foucault 2003c, 55), by engaging in historical analysis that yields tools that can help to "analyz[e] what's going on now – and to change it" (2003b, 109).

[25] See also Connolly (1991, 181-82; 1995, 1-2, 35-36); Jenkins (2011, 158, 161); Rocher (2019, 3).

I adopt a genealogical approach in investigating uses of reconciliation discourses not to undertake critique for its own sake, but to try and understand the contingency and variability of these discourses, how they are shaping and being shaped by political relations of power, and how engaging with these features might open up a broader range of possibilities for contemporary constitutional relationships (Connolly 1995, 34).[26] I take inspiration from Tully's emphasis on historical analysis beginning from concern over an injustice caused by a practice of governance in the present and being rooted in relation with those engaged in struggles to challenge these governance practices on the ground. It does so by presenting a "disclosive sketch" of the contingent constraints embodied in current discourses, offered up for consideration, contestation, and revision as part of the "ongoing activity" of political philosophy (2002, 535). David Garland writes that Foucault's "genealogies begin with a certain puzzlement or discomfiture about practices or institutions that others take for granted" (2014, 379). So too does this genealogy of reconciliation: my puzzlement and discomfiture arise from the conceptual confusion swirling around the language of reconciliation regarding constitutional relationships within the polity of Canada as currently constructed, and from the relations of power these discourses reinforce.

1.4.3 Conceptual Frameworks[27]

I draw on four sets of concepts that speak to different meanings and uses of reconciliation in presenting my "disclosive sketch" of its emergence and development in Canadian constitutional politics. These frameworks allow me to consider four aspects of reconciliation discourses:

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[26] Connolly notes that to some, "genealogy might seem to be only destructive" by problematizing practices and discourses, but that "[t]he genealogist sees her own enterprise differently. She replaces the vertical line that culminates in a transcendental command with one that cultivates a care for identity and difference already operative in life through accentuation of the experience of contingency" (1991, 182). See also Jenkins (2011, 170) on genealogy's normative concerns about the risk of inscribing new forms of domination by creating new frameworks.
[27] The first half of this section is a revised version of a passage drawn from Wyile (2017b, 385-89).

etymology, context of application, normative character, and rhetorical character and reception.

1.4.3.1 Resignation, Consistency, or Relationship?

Mark Walters suggests that meanings of reconciliation can be divided into three broad types: "reconciliation as resignation," "reconciliation as consistency," and "reconciliation as relationship." All three involve striving for harmony in some form but differ in being more or less one-sided (2008, 167). The first, which refers to "people being reconciled to their fate, in the sense of accepting or being resigned to a certain state of affairs that is unwelcome but beyond their control," is necessarily an asymmetrical form of reconciliation (167). Reconciliation as consistency refers to "reconciling propositions, facts, ideas, statements, interests, or rights, rather than people" (168), exemplified in the form involved in financial accounting. This can be symmetrical or asymmetrical, depending on whether adjustments/compromises are made on one or both sides (167). This form thus entails "rendering inconsistencies consistent" (167). Contrary to the first two, "reconciliation as relationship," which refers to the restoration of amicable relations between people or communities, must be symmetrical or reciprocal, for relations cannot be restored without the parties agreeing the conflict has been resolved (168).

Walters adds a further distinction: while reconciliation as consistency "is a process that can take place independently of the attitudes of people who might be affected (although those people may or may not accept the results)," "[r]econciliation as either resignation or relationship cannot be imposed from without; it is a condition at which people arrive themselves" (2008, 168). He notes that reconciliation may be deployed as either an empirical or a normative concept as it can describe a state of resolved conflict or serve as "a normative principle that guides decision-making on an ongoing basis" (169). Of the three forms, Walters describes reconciliation

as relationship as "a morally rich sense of reconciliation" (168).

Walters's typology enables the identification of the etymological character of different uses of reconciliation. Though reconciliation has many – sometimes overlapping and sometimes conflicting – meanings, as explored in section 1.2, these three categories allow us to discern what type of definition of the term is being mobilized in any given use and to consider whether it is being used to make an empirical or a normative statement.

1.4.3.2 Relations of Opposition and Relations of Oppression

Per Bert van Roermund, understanding the meaning of reconciliation requires considering whether the term is being applied to "a relation of *opposition*" or a "relation of *oppression*" (2001, 175; italics in original). Van Roermund presents "reconciling contradictory statements," "reconciling seemingly unbridgeable positions in negotiations," and "reconciliation between former friends who became alienated" as constituting examples from relations of opposition (175). These differ in nature from relations of oppression, which are characterized by the exercise of power. He further distinguishes between criminal oppression, where an offender exercises power over a victim, which might be addressed via social reconciliation, and political oppression, characterized by a claim "to further the *whole* of [...] a polity by oppressing *part* of it. In politics, oppression is accompanied invariably by the claim that it occurs *on behalf of* the public order or the general interest" (175-76; italics in original). Van Roermund writes:

> political oppression operates at the level of representation. It relies on ideology to legitimise its action. It addresses itself to the oppressed as subjects of law, only to deny them their very status as legal subjects. Political oppression, therefore, is cynical on the part of the perpetrators and humiliating for their victims. (176)

As distinct from the first two contexts, relations of political oppression require a political form of reconciliation that addresses all of its components – not only the injustices in question but the

ideologies that justified it and the "cynicism and humiliation" to which it has given rise (176).

Van Roermund's typology enables the identification of the character of the context of application of different uses of reconciliation. Distinguishing between types of relations and types of oppression allows us to discern the connection (or lack thereof) that is being envisioned between a use of reconciliation and relations of political power.

1.4.3.3 Interactional, Structural, and Existential Reconciliation

Catherine Lu, who conceptualizes reconciliation as a "respon[se] to various kinds of alienation wrought by political catastrophe" (2017, 36), presents three types: interactional reconciliation, structural reconciliation, and existential reconciliation.[28] These respond to the different kinds of alienation that arise in relations with others (interpersonal and inter-group), relations with the sociopolitical order in which one is situated, and relations with the self respectively (37, 183, 188-89). "Interactional reconciliation" calls up the definitions of the term that speak to relationship restoration and is linked with the variety of practices that might redress the harms done to the relationship between parties (37). Similarities to Walters's reconciliation as relationship are evident in the statement that interactional reconciliation requires "ask[ing] what agents […] may require of each other to make good their relationship" (37). Lu notes that "[t]ypically, interactional reconciliation focuses on the rights and needs of victims and the obligations of perpetrators to provide remedies" and gives "apology, punishment, compensation, reparations, and forgiveness" as examples of the kinds of measures it might include (37).

While interactional reconciliation may therefore comprise practices of material as well as

[28] Lu's model emphasizes the complementary and cumulative nature of these forms, rather than presenting them as alternatives: "Reconciliation in response to political catastrophe should be understood as a regulative ideal that aims not only to reconcile parties relationally to each other but, more fundamentally, to create a mutually affirmable and affirmed social/political order that can support the flourishing of nonalienated agents" (2017, 38).

symbolic forms of redress, the material (and, correspondingly, symbolic) change of structural reconciliation is of another order. Structural reconciliation takes a wider lens and addresses the overarching context within which the harm has been perpetrated by "aim[ing] to remedy agents' alienation from the social institutions, norms, practices, and structures that mediate relations between agents" (38). This form requires the creation of a sociopolitical order that is mutually affirmed by the parties that had been divided by the ways that the previous order caused or perpetuated the political harms in question (190-91). It is thus inherently linked to the issues of legitimacy and legitimation discussed above. Lu also stresses that while "both structural and interactional reconciliation are important, structural reconciliation is normatively fundamental because its components establish the background conditions appropriate for legitimating any negotiated settlement on interactional reconciliation between agents" (192).

Her final type, existential reconciliation, constitutes what Lu refers to as the "subjective component of structural reconciliation" (38). Sociopolitical conditions of structural injustice can alienate agents from themselves by impairing their ability to conceptualize and comport themselves in accordance with their own worldview (38, 203-4). Lu draws significantly on colonial contexts and on the work of Indigenous resurgence theorists in her account of existential reconciliation (203-13).[29] When part of the harm of the political catastrophe in question is that agents have had their "identities, beliefs, norms, and other structures" disparaged and dominated, reconciliation requires both a change of these conditions and an internalization of this change on the part of those agents that establishes dignity and respect, and enables flourishing (212, 183).[30]

[29] This includes Glen Coulthard, who himself points to three different ways that the term reconciliation is used in relation to Indigenous peoples in Canada. The types he identifies can be understood as aligning with Lu's three categories – albeit in one case in an identification of the absence rather than presence of the kind of change Lu's term names, as his critique of the Canadian state's approach centres on it reinscribing the conditions of structural injustice rather than transforming them. See Coulthard (2014, 106-9, 120).

[30] Other scholars also foreground structural transformation to distinguish between uses of reconciliation. See e.g., M. Hébert (2020); Muldoon and Schaap (2012, 193); Nagy and Gillespie (2015, 11); Schaap (2008, 258-59).

Lu's typology enables the identification of the normative character of the vision of change embodied in different uses of reconciliation. Operating alongside an assessment of what kind of relations reconciliation is applied to, these categories allow us to consider whether the form being presented conceives of reconciliation as a change to the nature of relationships between actors/entities within existing sociopolitical structures or as a change to the nature of the structures within which those actors/entities relate to each other and themselves.

1.4.3.4 Performative and Non-performative Commitments

Anna Carastathis (2013) draws on the work of Sara Ahmed (2006) to consider how calls for or declarations of commitment to reconciliation can constitute "non-performative" speech acts. Extending J.L. Austin's analysis of how speech performs acts, Ahmed probes cases where, rather than doing (or trying to do) something, speech instead takes the place of action: its aim is rather to *not* do. "An utterance is performative when it does what it says" and can succeed or fail at doing so depending on whether the conditions are conducive to the realization of what is being said – if the words "are uttered by the right person, to the right people, in a way that takes the right form" (Ahmed 2012, 116). A non-performative speech act is distinct from a performative speech act that tries but fails to do what it says. Ahmed writes:

> In my model of the non-performative, the failure of the speech act to do what it says is not a failure of intent or even circumstance, *but is actually what the speech act is doing*. Such speech acts are taken up *as if* they are performatives (as if they have brought about the effects they name), such that the names come to stand in for the effects. As a result, naming can be a way of not bringing something into effect. (117; italics in original)

Saying can be doing, but sometimes it can also be "a way of not doing" (132). This has deceptive effects, as discourses "can function to hinder rather than enable action" and "create the illusion of being behind an action, even at the moment the action is not performed" (2006, 110, 112).

Ahmed (2006, 2012) focuses on institutional speech acts and statements of commitment. Her analysis considers the sort of personification that is enacted through speech acts that "make claims 'about' or 'on behalf' of an institution" and in the process also endow it with "attributes, qualities, and even a character," configuring it as something that can have "feelings, thoughts, or judgments" and be capable of experiencing and performing, for instance, regret (2006, 104). In this regard, we can understand "commitment as a mode of subject constitution" (2012, 116). Ahmed attends to how institutions present themselves as holding certain commitments and shows how the making of these commitments itself contributes to rehabilitating and shoring up the identity and sense of pride of the institution, even if the making of the statement itself is accompanied by – while also masking – a lack of further action that belies the ongoing deficit of what the statement commits to (2006, 111, 117, 121; 2012, 115-16). She points to two forms that "commitment" can take and emphasizes the importance of attending to the distinctions and relationship between them for understanding – and, where applicable, challenging – what institutions are doing and not doing with words. A commitment might be understood as "a pledge that is sent out," or as "a state of being bound to a course of action or to another person or persons" (2012, 114). The latter can also be framed as "what an institution is behind or gets behind" (114). Non-performativity comes in when a commitment takes the first form without also taking the second, resulting in the projection of "*an illusion of the behind*" (119; italics in original). Ahmed stresses that statements of commitment cannot be assumed to be performative (121). She characterizes non-performative commitments as "opaque," in that "it is not clear what they are doing if they are not doing what they are saying" (116), and suggests that in such cases, "we need to follow them around" to find out what they actually *do* (117). While these statements may not do what they say, that does not mean that they "do not do anything" (119).

In Carastathis's application of Ahmed's analysis, the characteristic of a non-performative call for/commitment to reconciliation is that it elides the material context of relations of power and in so doing "foreclos[es] the redress of these conditions" (2013, 237). When reconciliation discourses are used by dominant groups in such a fashion, particularly in a settler colonial context, they "can function in a complicated way to reproduce, rather than to transform, existing relations of power" (237). Carastathis argues that non-performative uses of reconciliation are indicative of the possibility that reconciliation discourses that "succee[d] *in failing* to bring about reconciliation," rather than external conditions, are to blame for the failure of reconciliation (239; italics in original). Such non-performative discourses of reconciliation serve as "discursive gestures, which preserve rather than transform oppressive social structures in need of legitimation at times of political crisis" by refurbishing the state's image and restoring and reinforcing its legitimacy and authority (240). Carastathis's analysis attends only to reconciliation as "restor[ing] friendly relations" (240), while in my view, the discursive landscape is further complicated by the multiplicity of meanings of reconciliation, but this does not detract from her call to critically assess uses of the term to consider whether they constitute performative or non-performative commitments. Her conclusion underscores the stakes of the distinction: "In not doing what they say, nonperformative calls to reconciliation succeed in reproducing – rather than failing at transforming – status quo relations of power" (252).

Ahmed and Carastathis's analyses enable the identification of the rhetorical character of different uses of reconciliation. The distinction between performative and non-performative discourses allows us to consider the relationship between word and deed that is embodied in specific uses and what kind of commitment it constitutes. As such it contributes to the exercise put forward by genealogists of analyzing what discourses are *doing*. These categories are also

pertinent in considering how discourses are received, which is informed by whether a commitment is perceived as intending to do what it says (and how successfully it does) or not.

Using these four frameworks to analyze the character of different uses of reconciliation discourses throughout their emergence permits the development of a "disclosive sketch" of how different actors use the concept and in what contexts, what activities it enables and constrains, and, cumulatively, the range of what can be done with reconciliation in Canadian constitutional politics. This analysis yields a genealogical portrait of the historical contingencies of the entanglement of constitutional relationships and the use of the language of reconciliation, showing how they have shaped each other and how they are interwoven with relations of power. Such disclosure is a necessary precondition to any effective shift in these power relations.

1.5 Research Propositions

Flowing from my tripartite research question and informed by my genealogical approach and conceptual frameworks, my research propositions comprise the following three parts:

- *When:* Though there were occasional earlier uses relating to treaty-making with Indigenous peoples and the development of the federal system, discourses of reconciliation began to emerge in Canadian constitutional politics in earnest in the 1980s and early 1990s, particularly as the patriation of the constitution in 1982 spurred renewed debates over the place of Québec in the Canadian federation and over the nature of the rights of Indigenous peoples. Discourses of reconciliation with Québec largely faded after the late 1990s, though they have made periodic reappearances around key events such as the 2006 House of Commons motion recognizing Québec as a nation, while discourses of reconciliation with Indigenous peoples became increasingly prevalent in the late 1990s and early 2000s and have continued to proliferate.

Reconciliation discourses have been used in Canadian constitutional politics primarily in relation to two key constitutional relationships: between Canada and Québec, and between Canada and Indigenous peoples. Its uses in these contexts are at once old and new: the term has long appeared in relation to treatymaking with Indigenous peoples and to federalism as a governing structure, and as such it occupies a longstanding role in Canadian constitutionalism. At the same time, a new emphasis on reconciliation as a normative goal of redress-oriented constitutional politics has emerged over the last four decades, amid a global context that has seen growing attention to reconciliation around the world. The novelty of this newer set of discourses should thus be understood against the backdrop of historical constitutional relations in which the concept has played a role even if not foregrounded in the way it has come to be today. Both the older traditions of reconciliation as an underlying (if not always explicitly named) concept of Canadian constitutionalism and newer conceptions emerging through the global rise of transitional justice, along with the various meanings the term carries in theology, law, finance, and general colloquial use, shape the ways the term is used in Canadian political debates.

Contemporary reconciliation discourses began to emerge in relation to Canada's relationships with both Québec and Indigenous peoples around the same time, appearing at a time when discussions of constitutional reform were front and centre. Over the period examined in the dissertation, from the 1980s to 2006 (with some contextual attention to developments between the 1960s and 1980s), the emergence and development of discourses of reconciliation embraced in Canadian constitutional politics can be loosely thought of as occurring in three phases, though these did not occur identically in the two cases. First, actors began to use the term in verbal exchanges in connection with their relationship to each other, but often largely in ways that appear to be a matter of coincidental or inadvertent word choice rather than conscious choice

to centre reconciliation as a constitutional goal or principle. Second, the term began to appear in state documents of various types (commission reports, court judgments, political agreements, etc.) and to be named as a normative commitment or goal. Third, in the case of the relationship between Canada and Indigenous peoples, it came to be enshrined in the creation of new institutions. This latter stage is absent in the context of reconciliation with Québec, however, and the role of discourses of reconciliation in that context diverged from the development of discourses of reconciliation with Indigenous peoples, as discourses of reconciliation with respect to Québec gradually faded – though they saw a significant resurgence in 2005-06, and they did not disappear altogether and are still used occasionally – while discourses of reconciliation with Indigenous peoples have continued to grow steadily in frequency and ambit of applications.

- *How:* Discourses of reconciliation emerged in connection with relations between Canada and Québec, and relations between Canada and Indigenous peoples. In both sets of relationships, varying discourses of reconciliation reflected the range of different meanings of the term and types of use delineated by scholars, and they were used by different actors in ways that both reinforced and challenged the constitutional status quo. While the term made its way into commission reports and court decisions as well as political speeches and media coverage in both contexts, discourses of reconciliation with Québec did not become institutionalized to the same degree as did those pertaining to relations with Indigenous peoples, where the term eventually also came to be used in legal agreements and the titles of institutions and has remained a key term.

In both relationships, the full range of types of meanings laid out by Walters, van Roermund, Lu, Ahmed and Carastathis, and others – reconciliation as resignation, consistency, and relationship; reconciliation in relations of opposition and relations of oppression; interactional, structural and

existential reconciliation; performative and non-performative commitments to reconciliation – can all be seen in use throughout the emergence and development of reconciliation discourses in Canadian constitutional politics. In both relationships, reconciliation is frequently paired with talk of healing, harmony, and unity, among other companion concepts; linked to matters of economic development and policy and/or questions of legal jurisdiction; and associated with central questions of identity and moral responsibility. Its theological underpinnings are less visible in the context of Canada-Québec relations, but aside from that distinction, all of the term's connotations are in the mix over the course of the development of reconciliation discourses relating to these two sets of constitutional relationships. Through the initial stages of discursive development, reconciliation discourses were used in both contexts with little to no attention to the term having multiple meanings or the contradictions that exist between some of them, and rarely with explicit specification of which meaning was intended. This has changed over time with respect to discourses of reconciliation with Indigenous peoples, with more examples gradually beginning to appear of actors mobilizing and/or rejecting certain definitions, and greater social and academic scrutiny being brought to the term along with its increasing use. The term's use in relation to Québec and Canada has largely not received such critical attention.

- *With what effects:* The varying uses of reconciliation with respect to these two relationships demonstrate that the range of things that can be done discursively with the term runs the gamut from decrying the constitutional status quo to reinforcing it. In both cases, prevailing uses by state actors are oriented towards unity and closure in ways that allow some change but primarily in the service of maintaining the overall existing constitutional structure and (re)legitimizing the state by emphasizing its commitment to reconciliation in the process. This variously takes the form of mobilizing uses of

> reconciliation with implications that diverge from those used by its interlocutors, that advance interactional reconciliation absent structural transformation, and/or that are received as non-performative. At the same time, the term is also used in expressions of doubt about the possibility of reconciliation, in relation to national reconciliation with Québec, and in critiques of state policy and failed or non-performative commitments and the elaboration of visions of transformed relationships, in the context of relations with Indigenous peoples. The simultaneous use of discourses of reconciliation that reflect such different meanings of the term by actors pursuing different and sometimes conflicting ends risks conveying a misleading impression that all parties using the term share (in either or both the senses of pledging or being bound by) a common commitment to an agreed-upon undertaking. Such an impression obscures the ways that power relations skewed in favour of those who are best served by the status quo shape the implications of differing discourses and the interactions between parties in which they are used.

With respect to their effects, a key characteristic of reconciliation discourses in Canadian constitutional politics is that they have been used both in service and promotion of the aims of the Canadian federal state and to challenge or resist them. As such, attention to power relations is of critical import in understanding the operation of the political work being done by discourses of reconciliation in Canada. When wielded by those best served by the constitutional status quo, discourses of reconciliation – whether implicitly or explicitly framed as consistency, relationship, or resignation and often even when claiming to redress relations of oppression – generally have the effect of calling for the protection and reinforcement of the wholeness of the Canadian state and/or maintenance or restoration of its legitimacy. Such reconciliation may allow for some symbolic and/or material changes but only insofar as the underlying foundations

of the country's constitutional structure – and thus the attendant configuration of power relations – are not called into question. At the same time, however, throughout the emergence and development of reconciliation discourses, there have also always been uses of reconciliation seeking to challenge the current configuration of the state and oppressive relations of power. In these uses, actors call for a form of reconciliation that entails transforming the status quo or suggest that the status quo renders reconciliation unlikely or impossible. These challenges to dominant uses of reconciliation vary between the two cases explored as well. Resistance to claims of or calls for reconciliation between Québec and the rest of Canada come most frequently in the form of expression of doubt about the possibility of reconciliation. Indigenous peoples' challenges generally come either in the form of turning the state's own expressions of reconciliation against it to hold it to account for failing to match its actions to its rhetoric, or of presenting calls for reconciliation that express a very different vision of political relationship than that on offer in either the current constitutional structure or the state's visions of reconciliation. These varying approaches to using discourses of reconciliation are simultaneously distinct and operate in relation to each other. The common rhetorical use of "reconciliation" as a term under which these divergent positions are advanced risks presenting a surface-level impression that all parties are talking about the same thing, and so unpacking the distinctions between uses of discourses of reconciliation by actors belonging to dominant and non-dominant entities in Canadian constitutional politics requires careful attention. Of particular note is the fact that the participants in these discussions of reconciliation do not all hail from the same tradition of political thought, and the colonial context means that the conversations are taking place in English and, to a lesser degree, in French, which – along with the role played by the differences between English and French in some of the constitutional debates in question – does not reflect

the full linguistic and cultural diversity of the participants or the epistemologies with which their original languages are entwined.[31] The implication of these factors is that greater efforts are needed to listen to and work to understand participants "in and on their own terms" (Turner 2020) when they speak of reconciliation, in addition to taking heed of which of reconciliation's multiple English meanings is being invoked in any given use and what implications that carries given the positionality of the speaker in relation to the broader web of power relations.

Reconciliation discourses are now a well-established feature of Canadian constitutional politics, arising primarily (though not exclusively) concerning relations with Indigenous peoples in the present day. Reconciliation's many meanings all remain in the mix, debates continue to be rife with uses of the term that do not specify which meaning and etymology is being used, and power relations continue to play a determining role in shaping the effects of the use of and resistance to discourses of reconciliation. Tracing the development of these discourses from their early moments of emergence through to their adoption in SCC jurisprudence, government policy, and the creation of institutions such as the Truth and Reconciliation Commission of Canada and the Ministry of Aboriginal Relations and Reconciliation in BC, this genealogy demonstrates how these features have marked the use of reconciliation discourses from the outset. The result is a portrait of the conceptual complexities and intertwinement of discourses of reconciliation and relations of power that lie at the foundation of ongoing contemporary conversations in Canada.

1.6 Methodology

1.6.1 Scope of the Study

The genealogy explores two cases and focuses primarily on the period from 1980 until 2006. I

[31] On the entanglement of legal, political, and social governance, worldview, ecology, and language, see Young (2016).

have selected this period as it corresponds to the part of the history of reconciliation discourses in Canada that has received the least attention so far, which is their emergence and early development. As I explain in the next sub-section, there is some contextual consideration of developments from prior to 1980 where these were revealed through the data collection process. The main focus of the study begins in 1980 as much of the emergence of reconciliation discourses in both cases is closely connected to the patriation of the Canadian constitution and the legal and political developments that stemmed therefrom. In the case of relations between Canada and Québec, the endpoint of the study in 2006 corresponds with a resurgence of reconciliation discourses around renewed debates over recognizing Québécois nationhood that year culminating with a shift in the relationship between reconciliation and constitutional change, after which this set of reconciliation discourses has largely faded into the background. In the case of Canada's relations with Indigenous peoples, the endpoint corresponds to the signing of the IRSSA that provided for the creation of the TRC, which came shortly on the heels of the establishment of the Ministry of Aboriginal Affairs and Reconciliation (MARR) in BC. I take these developments to mark the shift to a phase in the discursive development of reconciliation whereby the term had become institutionalized and was on its way to becoming omnipresent.

1.6.2 Data Collection: Practicing Genealogy

In order to develop somewhat of a systematic approach to studying the development of reconciliation discourses in Canada, which is itself inherently not systematic, my investigation blended insights from differing genealogical approaches by beginning with a centralized focus on particular texts to provide some focus at the outset. I then followed outwards from these in search of the sources of their uses of reconciliation. I identified these beginning points through

references to the origins of reconciliation in the literature and a search of Royal Commission reports and SCC decisions pertaining to the relationships between Canada and Québec and between Canada and Indigenous peoples to identify the earliest appearances of reconciliation as a normative goal in those documents.[32] The beginning points in each case are as follows:

- *Reconciliation between Canada and Québec:* 1) Brian Mulroney's emphasis on national reconciliation in the 1980s (reflected in a section entitled "Reconciliation and National Unity" in his government's first Throne Speech and subsequent constitutional reform efforts); 2) the report of the Citizens' Forum on Canada's Future (1991); and 3) the report of the Commission sur l'avenir politique et constitutionnel du Québec (1991).
- *Reconciliation between Canada and Indigenous peoples:* 1) the report of the Aboriginal Justice Inquiry (AJI) of Manitoba (1991); 2) the SCC's decisions in *R. v. Sparrow* (1990), *R. v. Van der Peet* (1996), and *R. v. Gladstone* (1996);[33] and 3) the RCAP report (1996).

My broader corpus of uses of reconciliation was then assembled through document analysis and interviews, as I tracked preceding text sources (e.g., articles, transcripts, earlier court decisions referenced in the commission reports and court decisions) and conducted interviews with individuals who were involved in the creation of those documents and/or the commissions or political negotiating processes surrounding their production. Some of this process amounted to a sort of snowball sample approach to document collection, as one item led to another, while other discoveries were more spontaneous and isolated. The growing digitization of government documents also permitted me to cast a wide net for some types of data. For instance, I was able to search the RCAP's archive of hearing transcripts, background materials, and reports, federal

[32] The initial findings of this search are published in Wyile (2017a).
[33] I had initially conceived of its use of reconciliation differently, but later also added *R. v. Sioui* (1990).

and provincial parliamentary debates,[34] databases of media coverage,[35] and two databases of records relating to constitutional negotiations going back to Confederation.[36] In some cases, I found data because I was looking for it; in others, I found it because I was looking for something else and stumbled onto it in the process. Some leads came from reading academic literature, others from discussions with interview participants or other conversations, and some I happened upon via exploring the news of the day or attending an event. This multifaceted process led me both backward and forward chronologically from the initial beginning points.

The process was also conditioned by a series of logistical choices and constraints. With a few exceptions, the bulk of the data I searched consisted of publicly available documents that I could access online.[37] I arranged and conducted interviews in 2018 following the first round of documentary research and did not add further interviews in relation to later documentary research. These factors contribute to the partial and contingent nature of the genealogy, part of which is a product of methodological limits, owing to pursuing one process rather than another, but also a result of limitations of time and access. Within the parameters of a dissertation, I was not able to invite every key participant. Furthermore, some key participants in the events explored in the dissertation are deceased, not everyone that I contacted was able or willing to participate, and the significant role played by some individuals only became clear to me after I had concluded the interview stage of my research. Where possible, I consulted relevant memoirs

[34] As Hansard is not my sole or predominant focus, it was beyond the scope to do a full search of all debates during the period in question. Instead, I searched the debates of certain provincial legislatures (namely BC and Manitoba) and the House of Commons for select periods coinciding with specific events where the term reconciliation was being used. A complementary study might look at other parliamentary debates to explore variations between them.
[35] A comprehensive media search was also beyond my scope, but I have included data from more limited searches undertaken for presentations on my PhD research and/or conducted in aid of contextualizing other data I collected.
[36] These are available at https://primarydocuments.ca and https://hcmc.uvic.ca/confederation/en/index.html.
[37] A more expansive addendum to this work might incorporate archival research and/or ATIP requests. I briefly visited the Bibliothèque et archives nationales in Montréal to consult its Bélanger-Campeau Commission collection, but subsequently determined that including such archival research would not be feasible within my scope and time frame, which ultimately relied on using digital search capacities. Other than monographs consulted in hard copy, key documents found by means other than online search include speeches and reports held by the University of Ottawa library, SCC hearing transcripts obtained from the Court, and a pamphlet shown to me by an interview participant.

and biographies, which enabled me to consider the perspectives of people I could not interview and to review accounts that were often published in closer temporal proximity to the events.

I conducted twenty-two interviews with people who were in some way involved in the events that produced the sets of documents above, joined by a couple who were involved with the AHF established in 1998.[38] Many had also been involved with earlier and/or later events related to the emergence of reconciliation discourses in addition to the primary association that led me to contact them. The interviews were semi-structured. I sent the participants questions ahead of time, which varied slightly depending on their specific role but generally focused on the background to their involvement, whether they recalled using or hearing others use the term reconciliation during the event(s)/process(es) they had been involved with (and if so, how), what they understood it to mean/require, and when they first recalled hearing the term used in the Canadian political context. The interviews provide background and particular perspectives; they are not intended to be a representative sample.[39] They are also shaped by the passage of time: the events I discussed with interviewees largely took place 20-30 years ago, which poses challenges for recall and means that perspectives have been shaped by intervening events and changes in political structure and discourse. Nonetheless, these interviews were invaluable, as they gave me insight into the human experiences at the heart of the events, reports, and studies in question. This insight is essential to building understanding. Matters of political conflict and

[38] Some were conducted in person and some over the phone. I transcribed the interviews and provided the transcripts to participants for verification and amendment/correction. Participants had the options to be named or anonymous and to allow direct quotation or not, and to confirm or amend these choices upon reviewing the transcript.

[39] In accordance with the terms of the consent forms guiding participation, I have not used the contents of any interviews for which I did not receive confirmation of continued consent to participate and approval of the transcript. All of the interview material referenced in the dissertation is taken from components of the transcripts that participants confirmed in writing their acceptance that I could use, with the exception of one participant who gave their consent verbally over the phone after reviewing the transcript. Several participants did not respond to confirm after being sent the interview transcript. My interviews with those participants have informed my own thinking and understanding of the events we discussed, and in some cases led me to pursue subsequent documentary research that is included herein, but in accordance with our agreements I have not included any content from those conversations or named those individuals in relation with the interviews referred to in the dissertation.

reconciliation are not dispassionate processes, but deeply emotional social and political experiences within and between communities of people. I have incorporated statements from the interviews primarily where they offer a possible explanation in areas where the documentary record is silent, non-existent, or unavailable, and occasionally where patterns observed between multiple interviews permit me to advance broader – albeit contingent and contestable – observations about the development of reconciliation discourses. In many cases, the interviews also played another kind of role in the data collection process: rather than constituting the primary data themselves, discussions with participants directly or indirectly led me to search other documents, speak to other people, read books I had not previously heard of, and/or consider the relevance of events that led me to branch my investigation off in a new direction.

As such, the data that I have collected consists of a blend of government documents, commission reports, court decisions, hearing transcripts, interviews, (auto)biographical accounts, some media accounts, parliamentary debates, press releases, and other relevant records. In engaging with such a large volume of source material, I relied heavily on the search function to identify documents containing reconciliation and to search within them for the passages where the term is used, as it would not have been possible to read through all the material in the time available. These searches produced a corpus of uses of the term excerpted from the documents that I organized in accordance with which constitutional relationship uses pertained to, which period they were used in, and which actor they were used by, and this corpus forms the basis of the account of the emergence of reconciliation discourses presented in the chapters that follow.

1.6.3 Engaging with the Data: (Re)contextualizing Concepts

In aligning itself with the broader undertaking of recontextualizing political theories (Tully

2016), this project takes methodological inspiration from Adrian Little's (2018, 2020) contextualizing concepts approach to comparative political theory (CPT). Little uses this method to investigate "malleable political concepts" and understand how they "are deployed to inform political action in specific contexts" (2018, 88).[40] This approach includes "both endogenous and exogenous comparisons" in analyzing how concepts "develo[p] relationally with debates internal to and outside" a given society (2020, 31). Scholars have argued for critical social analysis to meld explanatory and normative critique (Fairclough and Fairclough 2012, 12, 79; Jenkins 2011). My goal, following Little, is "developing a more informed account of the different kinds of work" reconciliation does (2018, 89). This explanatory focus is complemented by a normative concern about how "our capacity to have informed debates about the efficacy of political practice in political contexts is enhanced by greater clarity about the substance of political concepts and the disagreements about their meaning" (89). Inspired by insights from Little and the genealogical thinkers above, my comparative study of reconciliation discourses in Canada explores the interconnections of concept, context, and power in pursuit of such clarification. Comparison can be especially useful for revealing the specific modes by which the discourses associated with a certain concept constrain or enable different forms of political thought and action, as genealogical theorists emphasize, in a given political context (Little 2018, 92). Comparison can focus on various forms of difference in context, whether spatial, cultural, and/or temporal (96-97). Resonating with Connolly's observations, Little notes that untangling the relationships between ideas/concepts, structures, and practices partly requires attending to "broad families of concepts" because of how the political "system of meaning" in which a malleable

[40] This model is particularly interesting and helpful as Little's illustrative case studies are an exploration of the development of discourses of reconciliation in South Africa, Northern Ireland, and Australia (2018), and a comparison of diverging understandings of the Yolngu concept *Makarrata* among Indigenous and non-Indigenous peoples in Australia as considered in relation to the international comparison of reconciliation discourses (2020).

concept is deployed develops in an ongoing dialogical relation between ideas and institutional structures that produces the range of possible political action (91, 99-100, 111).[41] Thus, "by tracing their evolution in different contexts and clarifying the political choices that are available and unavailable when problems are addressed in particular contextual circumstances," the contextualizing concepts approach aims to better make sense of the malleability of concepts like reconciliation and the relationships within which they perform political work (99).

In his investigations, Little explores the development of reconciliation discourses in the context of three different states. In my case, which shares the same "similarity in terms of the object of inquiry" with Little's exogenous comparison, I pursue comparison within the context of one state, Canada, on the basis of a different "means of differentiating between the cases in which that object [is] analyzed" (95), which is the varying contexts of the constitutional relationships between Canada and Québec, and between Indigenous peoples and Canada.[42] My project is thus complementary and supplementary to Little's. It yields an internally relevant analysis of the political work of reconciliation discourses *in Canada* by comparing different contexts within the larger polity, while also contributing to the broader collection of comparisons of global reconciliation discourses. By looking at discursive development in both of the cases over a period of three decades, my approach allows for a comparison between relationships as well as a comparison of uses of these discourses over time within each case.

The analysis of these developments is informed by the question of what discourses can do in argument (Skinner 2002, 178). While genealogy is distinct from (but complementary to)

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[41] For instance, as I explore in later chapters, understanding the uses and effects of reconciliation discourses requires engaging pairings with other concepts such as "unity," "healing," and "truth" and their various meanings and uses.

[42] As discussed in section 1.6.4, the nature of "Canada" as an entity and the nature of the entities that make it up are complex and contested. As such, debates over reconciliation in Canada might simultaneously be understood as taking place *within a* society and *between* societ*ies*, and some consider the differences between constituent entities to be cultural while others insist that they are national. Little's emphasis on relationality is helpful for thinking about this, as Canada is also certainly a context where "different traditions have developed *alongside and sometimes in engagement with one another*" (2020, 32; italics in original; see also 36, 41-42).

CDA (Foucault 1972), insights from CDA are nevertheless helpful for genealogical engagement with discourses. In this regard, I also keep in view Norman Fairclough and Isabela Fairclough's suggestion that political discourse is "primarily a form of argumentation" that argues "for or against particular ways of acting" and "can ground decision" (2012, 1). Discourses comprise narratives, explanations, imaginaries, and descriptions that perform a representational function providing actors with reasons to favour or oppose certain policies or actions (4). Analyzing this practical argumentation requires identifying and assessing the premises of the argument, the action that it argues for, and the relationship between them (11). They describe four forms:

> a circumstantial premise, which represents the existing state of affairs and the problems it poses; a goal premise, which describes (and 'imagines') the future state of affairs agents want to bring about or think ought to be brought about; a value premise, expressing the values and concerns that underlie the agents' goals (but also affects how they represent the context of action); and a means–end premise, which represents the proposed line of action as a (hypothetical) means that will presumably take agents from the current state of affairs to the future state of affairs that is their goal. (11)

Exploring the premises that inform the arguments embodied in the use of particular discourses allows for an engagement with the relationship between the agency of specific actors and the structures that influence their reasoning (12). In emphasizing a focus on practical argumentation, Fairclough and Fairclough note that power constitutes a reason for action, and this can manifest in various ways and reflect various forms of power (2012, 112-16). To suggest that the beliefs and values that actors hold and the political action they advocate and enact as a result are shaped by their positioning within a set of social and political power relations (81), however, is not to espouse any kind of pure structural determinism. Within a range of possibilities, actors can make choices that can challenge and lead to change in practices and structures (Wiesner, Haapala and Palonen 2017, 7; Fairclough and Fairclough 2012, 82, 100). Attention to the roles of and relations between actors and institutions relative to broader societal processes of discourse

formation and application is key to analyzing how actors' discourses represent aspects of social reality in particular ways and how these representations inform and shape what actors do in terms of political action (85-86). What actors do includes "what they do discursively" (4). In line with Connolly's (1993) insights regarding disputes over essentially contested concepts, engaging with premises can assist in highlighting how visions for diverging courses of action can stem from actors "defin[ing] the context of action in radically different ways and imagin[ing] goals in radically different ways, in relation to different and often incompatible values or concerns" (Fairclough and Fairclough 2012, 93). Given the wide range of meanings of reconciliation available, untangling what meanings and related values actors are invoking, and how they link them to a certain understanding of social and political reality, is key to understanding how actors use the term to pursue different goals and how the term shapes and is shaped by this pursuit.

To get at these various conceptual and contextual dimensions of different uses of reconciliation discourse in the Canadian context, I have undertaken a multi-layered comparative approach to assessing the uses of the concept found in each piece of data to consider the meaning and political vision they express in relation to the Canadian constitutional web of relations of power. This involves comparing the uses to each other and situating the implications of the comparison within the broader debate about the ambiguity surrounding the concept of reconciliation. The comparative analysis draws on several sources. At the etymological level, I consider the various dictionary definitions of reconciliation (e.g., financial, interpersonal, theological) to explore explicit or implicit connections to religion and to other colloquial uses of the term. In line with the observations of Connolly and Little, where relevant, I compare the ways reconciliation is linked with other concepts in the process. Conceptually, I draw on the analytical distinctions laid out in section 1.4.3 to assess, categorize, and compare different

political uses of reconciliation. I also consider uses of reconciliation in relation to the debates on religion, assessment, responsibility, and legitimacy discussed in section 1.2.2.

Drawing on Skinner and Tully's insights, analyzing the uses of the term also involves situating the etymological and theoretical analyses within the sociopolitical context in which they were voiced. The goal is to consider what "move" was being made with the term in the political arguments of the day and, to the extent I am able, to situate these uses in relation to the epistemological "contexts in which they make sense" (Skinner 1988a, 77-78; 2002, 115, 156; Tully 2016, 56). On this front, some limitations to my contextualization of discourses bear mentioning. As Tully (2016) emphasizes, "deparochializing" political theory through "reparochializing" is an inherently dialogical task. Contextualizing a political idea in the context it makes sense – the place and tradition of political thought from which it is being expressed – requires familiarity with and understanding of that context. Understanding the differences and relationships between political ideas requires dialogue between the traditions in which those ideas are rooted. Debates over reconciliation in Canada take place primarily in English, and to some degree in French, and in a political space contoured by Canadian law, but they are rooted in a much greater multiplicity of political traditions and languages. The meanings of reconciliation in the mix in these debates cannot be reduced to the term's meanings within the confines of the English and French languages (and even these, as outlined above, are many), the Canadian constitution, or capitalist liberal democracy more broadly. I seek to understand the discursive phenomenon of reconciliation as someone who is part of a political community that at various points has been said to be engaging in it with Québec and with Indigenous peoples, and I come to this inquiry from the vantage point of a white anglophone researcher schooled in the tradition of Western political thought. As such, I am not equally familiar with all the different

traditions of political thought that inform these exchanges about reconciliation, which affects the degree of contextualization I can engage in for each use of reconciliation.

Though there are also many similarities and a long history of shared institutions, there are significant differences of language and traditions of legal and political thought between Québec and the rest of the country. This is, after all, the basis of the claim to forming a distinct society, and these differences gave rise to a conversation about the need for reconciliation in this context in the first place. Epistemological, legal, political, and spiritual differences play a major role in cross-cultural communication between the traditions of political thought of European extraction underpinning Canadian constitutionalism and the many traditions of political thought of Indigenous peoples across the continent. The latter also vary greatly amongst themselves if perhaps sharing some common features, particularly in contrast with capitalist liberal democratic thought. Especially salient to understanding differences in meaning around reconciliation are differences pertaining to the nature of land, the place of humans in the broader web of ecological relations, and the individual and collective rights and/or responsibilities that stem therefrom and inform the character of a given sociopolitical order. Eliding these differences or assuming commensurability, or even identicality, because of similarities in vocabulary choice risks missing significant nuances or conflicts of meaning and implication.[43] Where possible, I draw attention to when such differences may be informing the uses of reconciliation at issue in various contexts and point to considerations for engaging with these uses that might be drawn from reflecting on these epistemological and constitutional differences in broad terms. However, I am not equipped to situate all of these uses in the precise context from which each actor is speaking. Such further and more specific contextualization comprises part of the ongoing work of dialogues on

[43] In doing so, it also risks perpetuating longstanding and ongoing epistemic injustices (R. Nichols 2020; Sherwin 2021; Tsosie 2012, 2017). For important considerations regarding the epistemological and political differences noted here, see e.g., Ahenakew (2016); Mills (2021); Turner (2020); V. Watts (2013); Young (2016).

reconciliation between the many different traditions of political thought co-existing in this place.

A further element of this contextualization component of the analysis relates to how discourses can undergo recontextualization – another term that can be understood in varying ways. As Little notes, "concepts can develop in one context and then get translated into another but […] in so doing, they are likely to be adapted to suit the problem they are supposed to address" and may undergo changes in meaning and application as a result (2018, 95). In addition to translation from one political context to another, recontextualization can also entail transfer from "a particular social field or institution" to another (Fairclough and Fairclough 2012, 83). As with discursive development broadly, how discourses are operationalized in the process is "not inevitable" but a matter of "contingent possibilities which depend upon a range of factors and conditions" that are both symbolic and material in nature (84). Fairclough and Fairclough suggest that recontextualization can take a couple of different forms, as discourses may either 'colonize' or be 'appropriated' by new fields or institutions (83); this might be applied to the process of translation from one polity to another as well. These questions of recontextualization are central to this study in a couple of different ways, both due to the various social fields where reconciliation carries particular meanings and because of discussions of political reconciliation in other polities that coincided with the development of reconciliation discourses in Canada. However, "colonization" and "appropriation" are not unproblematic lenses through which to apprehend and analyze these moments of recontextualization in the context in question, for two main reasons. First, and fundamentally, colonization and appropriation are not metaphors[44] with regards to Canadian political discourse. They are the material and social relations that underpin the existence of the Canadian state, and therefore the backdrop against which any use and recontextualization of discourses about constitutional politics must be understood. As Sarah

[44] See Tuck and Yang (2012).

Dowling reminds, "[b]ecause appropriation refers to legalized processes of taking, and to the sovereign power to do so, it is inextricably bound up with the logics of property undergirding settler colonialism" (2019, 104). Ergo, appropriation cannot simply be treated as a discursive move or a compositional practice without heeding the fact that "someone else was here first" and "[t]he existence of the settler state is defined by the appropriation of their territory and its accompanying violence. Neither of these is a historical event; both are a constant condition" (122). Appropriation thus is intimately interwoven with, rather than neatly distinguishable from, colonization in Canada, which also muddies the use of these terms for the purposes of analyzing discourses in this context. Second, this muddying has taken place at a broader discursive level as well, as Seth Mehl shows, whereby – like "reconciliation" – "appropriation" and "colonization" are also "words whose multiple meanings are 'contradictory' and 'contested', leading to 'cross purposes and confusion in public debate as well as in personal conversation,'" and have undergone processes of semantic change[45] such that they are now often treated as synonymous (2020, 1). I approach the use of Fairclough and Fairclough's analytical frames and the task of tracing recontextualization, in the sense of "moving into a new context," with these factors front of mind. I also understand them to reinforce the need for the other kind of conceptual and discursive recontextualization Tully (2016) foregrounds, in the sense of "contextualizing again": the task at hand requires highlighting the specific meaning of a given use and how it relates to both a particular context of origin (the etymology and epistemology behind the term) and of application (the material and social relations within which it is being used). These different dimensions of discursive development all inform the contextual component of the analysis.

Just as the development of discourse is a historically contingent process, so too is the

[45] Mehl particularly highlights the processes of "metaphorisation" and "generalisation;" for more on this see pp. 3-4. Mehl's study situates the analysis of "appropriation" and "colonisation," also accompanied by "gentrification," as contemporary "keywords" in the sense of Raymond Williams's *Keywords* (2011).

development of the context in which it takes place: "the construction of a 'polity'" is itself "the result of (contingent) political action" and subject to contestation and diverging interpretation (Wiesner, Haapala and Palonen 2017, 10). The polity invoked in referring to the idea of "Canada" is made up of concrete structures in the form of established institutions and political processes that are the products of, and that also produce, particular relations of power. However, none of this is necessary or unassailable fact but rather a specific configuration resulting from a series of contingent historical particularities that could have been, and could be, otherwise. The dynamics of this configuration warrant some remarks about the use of language.

1.6.4 A Note on Terminology

This thesis deals with two sets of relationships: one between Canada and Québec, and the other between Canada and Indigenous peoples. I want to reflect briefly on who and what I am referring to in this framing, as all of these entities are complex and comprise highly contested identities.[46]

My analysis is structured with an institutional and primarily elite focus stemming from the genealogy's starting points, but I understand it as being nested within a broader complex sociopolitical system that is shaped by interactions between individuals, groups, institutions, and structures. These are all influenced by ever-shifting economic, political, and social forces including capitalism, language, religion, sex, gender, sexuality, ability, race, and relationships to land. Institutions are my starting place because of the question I was looking to answer, but this does not mean that all the questions and answers about political reconciliation start and/or stop

[46] This discussion applies to my use of terminology in the fabric of my own writing. In referring to specific entities, such as organizations and communities being represented at commission hearings, etc., in the account of historical developments presented in the chapters that follow, I use the names employed by those entities themselves at the time of the developments being discussed as found in the source documents. Where names and titles have subsequently shifted, I include explanatory clarifications as I am able. In referring to specific Indigenous peoples and communities, I seek to use the names those peoples use to call themselves and the places they are connected to but apologize for any cases where I may have erred in my identification of an individual, people, or community.

with institutions. Rather, institutions play an important role as a fulcrum of sorts in proliferating discourses as they draw in, process, amplify, spread, and implement political ideas.

My focus, then, is on Canada, Québec, and Indigenous peoples at a level that understands these entities as political societies that are interacting with each other. It is difficult to define the forms these societies take. Just like reconciliation, definitions of each are all contested, and the struggle over definition is at the very heart of the conflicts that raise the matter of reconciliation in the first place. Furthermore, while lines between the entities involved need to be drawn somewhere in order to embark on the discussion, discourse does not necessarily observe these lines. Its development is fluid; it does not develop in a vacuum within any given entity that can be clearly and neatly delineated from all others. Discourse can also spill over from one context, be it a document, an institution, a debate on a particular topic, or a country, and so on, to another.

Having to define things to be able to talk about how they operate and interact with each other, thus, in many ways, mirrors the conundrum regarding reconciliation in the theoretical literature: is coming to a definition enabling or constraining of critical engagement, interpretation, and analysis? Can we only talk about how something works (or does not) once we have said what it is, or, if we have to agree on what it is before we can get to talking about how it is and isn't working, will we never end up having the discussion because there are too many competing visions? These definitions are particularly tricky as it is the presence of such competing visions that give rise to the phenomenon I want to think through and talk about in the first place. I find myself sympathetic to both arguments, as I need to use words in a clear and delineated way to be able to say anything, but at the same time, the fact that the uses and definitions of the terms that I present are fraught and contested is at the heart of all I have to say. Canada, Québec, and Indigenous peoples can variously be framed using the concepts of nation,

state, people, group, or community. What term is used depends on who is asked and how they understand it, and the choice is inherently political as these concepts can all be understood in varying ways that have particular and different – sometimes conflicting – implications.

In this sub-section, I outline how I am using each designation – in spite of, but also in recognition of, all of this complexity and contestation – but first I want to note some of the complications and complexities that surround defining what is being identified:

- Canada, Québec, and Indigenous peoples have all in varying ways articulated themselves as nations.[47] However, "nation" is conceptualized and applied differently in each of these cases,[48] and its use by each entity is challenged in various ways by the other parties. Understandings, applications, and refusals of the term have also shifted over time.[49]
- The identity formation processes of these entities are complex and are alternately inspired by and developed in opposition to each other.[50] This has also changed over time.[51]

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[47] To be clear, Indigenous peoples as many nations, not a singular nation alongside the Canadian nation and the Québécois nation. Also, the francophone population of Canada is multifaceted and is not fully contiguous with the population of Québec. This population has a long and varied history here since prior to the solidification of Québec as a political and administrative entity, and to the development of Québécois as a sociopolitical identity (see e.g., D. Giroux 2019b). Francophone populations outside of Québec, such as the Acadiens, have their own complex internal dynamics and relations to the Canadian state with regards to self-determination and questions of nationhood (see e.g., Bickerton 2012, 103-8; Dubois 2014, 2018; Foucher 2010; Poplyansky 2013).

[48] For some of the extensive literature on nationhood and nationalism, particularly as related to these contexts, see e.g., Gagnon (2014); Gagnon and Iacovino (2007a); Gagnon, Lecours and Nootens (2011); Gagnon and Tully (2001); C. Parent (2011). On the complexities around these concepts in Indigenous contexts, see Teves, Smith and Raheja (2015, 157-67); Andersen (2014, 17-20). For an example of how differently "nation" can be conceptualized in Indigenous philosophy compared to its typical use in Euro-Canadian thought, see Little Bear's (2017, 41) description of how nationhood "arise[s] from a mutual relationship with the totality of the ecology of the territory."

[49] For instance, the use of "nations" to refer to Indigenous peoples began in the latter half of the 20th century (Teves, Smith and Raheja 2015, 157); Québécois gradually became an identity distinct from French Canadian (D. Giroux 2019b, 37-39; Russell 2017, ch. 9; Maclure 2003; Turgeon 2003, 69); and (particularly English) Canada developed a sense of itself as a nation distinct from Great Britain over the course of the early 20th century (Charbonneau 2012).

[50] Some of the many different kinds of examples of this in the Canadian context include how Indigeneity and coloniality relationally shape Indigenous and settler identities (Arvin 2015; Bell 2014); varying forms of individual and collective settler self-indigenization (Andersen and Gaudry 2016; J. Burelle 2018, ch. 2; M. Johnson 2011, 188, 192; Wolfe 1999, 207); the myriad ways that hybridity marks languages, cultures, and identities (D. Giroux 2019b, ch. 1); dynamics of both mutual influence and competition between Québec and Indigenous peoples' nationalisms (Russell 1997, 117); and (English) Canada's identity struggles in relation to both Québec and the United States, and with its own heterogeneity (Cochrane and Perella 2012; Mackey 2002, ch. 1; Resnick 2005; Rocher 2019, 642-43).

[51] For example, until 1960, Indigenous people were subjects of Canada but excluded from Canadian citizenship unless they renounced their Indigenous status and accompanying rights. The effects of federal government

- The boundaries between these entities are fluid, contested, and change over time. Many people living on the lands shared by all three can be understood to belong to multiple nations and in some cases to all three overarching entities, but this is by no means the case for all individuals and many people reject association with one or more identities related to these entities. As such, it is effectively impossible to identify clear and comprehensive boundaries, both between the national identities involved and between the territories linked to these entities. In many cases identities and territories are overlapping, never fully, but to a variety of different degrees at the boundaries between them.[52]
- Whether or not Québec and Indigenous peoples do or should be understood to belong to Canada has been a matter of fierce contestation and longstanding debate.
- The legitimacy of the claims to territory, sovereignty, and political authority of all three entities is also contested.

These complexities all constitute important background caveats to bear in mind with respect to my use of terminology in this dissertation, and my delineation of constitutional relationships as existing between Canada and Québec, and Canada and Indigenous peoples.

When I speak of "Canada," I am referring to the constellation of political structures and institutions that operate as a state within the territorial boundaries they claim political control over and within the global community of states. Given the organization of political authority within this constellation, which is structured as a federation and within whose constitution the federal government is allocated jurisdiction over "Indians and lands reserved for Indians,"[53] the

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interference with the self-definition and self-determination of Indigenous peoples on identity formation and relationships between entities also bear noting (D.B. MacDonald 2019, 150). For more, see e.g., Coburn (2019).

[52] On distinctions between borders and boundaries in this context, see Battell Lowman and Barker (2015, 119); Egan (2013); D. Giroux (2019b, 16); Pasternak (2014); A. Simpson (2014); L. Simpson (2017, 78).

[53] This term is widely understood to be derogatory when used by others in reference to Indigenous peoples in what is now referred to as the Americas, but it continues to hold legal significance in Canadian law due to section 91(24) of

primary actor in question is often the federal government, but Canada may also refer to the federal and provincial governments collectively. In discussions of the relationship between Canada and Québec,[54] Canada generally refers to the federal government and the nine other provincial (and sometimes the territorial[55]) governments.[56] While there are deep and significant social dimensions to the question of reconciliation as well, and these are raised occasionally in the dissertation, in most cases the "Canada" in question is the state.[57]

"Québec" is used to name the mainly francophone political society currently governed under the Canadian constitution by the government of the province of Québec. Unlike the nine other provinces of Canada, Québec's sole official public language is French and it is governed under civil law rather than common law. Québec has a number of distinct administrative arrangements with the federal government in addition to provisions particular to its society stemming back to the *Quebec Act* of 1774, and later the *British North America Act* of 1867.

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the constitution and the still-operative *Indian Act*. I only use the term in references to this specific legal designation or where it is contained in direct quotations or the titles of organizations and institutions.

[54] This is a complicated context as Québec can be understood to be part of Canada or in opposition to it, depending on who you ask and on the circumstances in question.

[55] This is context-dependent; for instance, the territorial premiers were not included in the Meech Lake Accord negotiations but did participate in the development of the Charlottetown Accord.

[56] In line with the tensions laid out above, this relational framing for the purposes of discussing uses of discourses should not be taken as an endorsement of a "binary way of thinking about Canada," which as François Rocher observes, "raises serious problems" (2019, 644). Rocher highlights the mismatch between Canadian federalism and the idea of "English Canada" or the "Rest of Canada" as a singular, cohesive entity: "While the federal government has a mandate to govern for all of Canada, its vision can be thwarted by the provincial governments speaking for territorially defined segments of the Canadian population. The grouping of the nine provinces and three territories cannot represent a unified Canada, just as the federal government cannot claim to speak for everyone" (644).

[57] The fabric of "Canada" as a social body is complex, in ways that the primary emphasis on state actors' uses and interests in reconciliation discourses in this dissertation does not permit me to meaningfully address. I hope readers will nevertheless keep this sociopolitical heterogeneity and the complexity, differences, and tensions contained by broad umbrella terms in view. The entities discussed here are not homogeneous, nor are they neatly delineated or mutually exclusive. I have offered brief comments about the heterogeneity of Indigenous peoples and French Canadians previously in this section and take up the demography of the non-Indigenous population of Canada, also referred to as "settlers" to reflect their relation to the settler colonial structure of the Canadian state, in note 1 in chapter 2. For now, I underscore that the complex demography of the overarching social body encompasses differentiated relationships – to the state and between social groups – of marginalization, violence, benefit, and privilege, historically and in the present, necessitating analysis that attends to the intersecting or interlocking nature of systems of power (Crenshaw 1991; Razack 1998). For in-depth engagement with the term "settler" and the relational positioning it names, see Battell Lowman and Barker (2015); Bell (2014). On the heterogeneity of the non-Indigenous settler population, how it is shaped by power relations, and the bearing this has on relations with Indigenous peoples, see e.g., Mathur, Dewar and DeGagné (2011); Snelgrove, Dhamoon and Corntassel (2014).

"Indigenous peoples" is an umbrella term[58] to refer to the many peoples or nations who have lived on and in connection to this land since prior to the creation of the federation of Canada, in most cases since long before the arrival of Europeans. Broadly this is a collective term for many peoples who are grouped together as Inuit, First Nations, and Métis. Inuit are the Indigenous people of the homeland they call Inuit Nunangat, which spans the current Canadian jurisdictions of Nunavut and parts of Québec, Labrador, and the Northwest Territories. First Nations is an umbrella term for the other Indigenous peoples who have been here since prior to European arrival. The Métis Nation was formed through the union of European men (primarily French and Scottish fur traders) and Indigenous women whose children went on to develop a distinct culture and society, with its political governance rooted in the buffalo hunt and a national consciousness that developed in response to European encroachments on their homelands in the 19th century (Andersen 2014, 24; Gaudry 2014; O'Toole 2014).[59] Indigenous peoples are diverse; they have distinct legal orders, social systems, and forms of culture and governance, and speak sixty different languages belonging to a dozen language groups (Walker 2017).

In this way, I am employing the mainstream uses of "Canada," "Québec," and "Indigenous peoples" for analytical purposes, but using them in this fashion is not intended to elide the complexities laid out above; rather, I use them with all of this complexity and contestation in mind. Indeed, these very complexities and contestations are crucial: they are constitutive of the entire dynamic that underpins my research, as they are central to the conflicts

[58] As such terms often are, it is a complex and imperfect one that has its limitations. On some of its complexities, see Andersen (2014, 15-17); Arvin (2015); Teves, Smith and Raheja (2015, 109-18). I use "Indigenous" rather than "Aboriginal," another umbrella term for Indigenous peoples in Canada that refers to First Nations, Métis, and Inuit. Aboriginal is an administrative term in Canadian law (distinct, for example, from its use in Australia) stemming from section 35 of the *Constitution Act, 1982*. "Indigenous" has a broader global application and is a term under which Indigenous peoples have organized politically across national and state boundaries. Per Maile Arvin, "indigeneity" is an analytic term that can be theorized in relation to raciality and coloniality (2015, 120-22).

[59] Significant linguistic, religious, and cultural diversity has always characterized the Métis (O'Toole 2014, 156-58); however, it is important to clarify that "'Métis' is not a catch-all term for anyone who is Indigenous-but-not-First-Nation-or-Inuit" (Andersen 2014, 24; see also Adese and Andersen 2021; Vowel 2016, ch. 4).

that have given rise to the notion of reconciliation. With all of this in view, the next chapter turns to the historical backdrop against which these conflicts and attendant reconciliation discourses have emerged. Reconciliation is at once an old and a relatively new concept in Canadian constitutional politics, and making sense of its contemporary uses requires understanding its longer histories in this place as well as its concurrent emergence in other global contexts.

Chapter Two

Historicizing Reconciliation in Canada

2.1 Introduction

Given the wealth of meanings and possible uses laid out in chapter 1, depending on how you look at it, reconciliation is either a relatively new political concept and practice in Canada, or a longstanding one that goes to the heart of the polities established here. Understanding both the older and newer uses of the term, their implications, and their interrelations requires understanding the constitutional configuration of the different entities in the Canadian polity and the histories of their relationships. It also requires a sense of the global context in which contemporary uses of reconciliation have come to the fore. While this dissertation's primary focus is the newer uses that have emerged over the last thirty to forty years, the history of the constitutional relationships in which they are applied provides critical context for appreciating their significance and effects. Older uses of reconciliation found in earlier stages of the development of these relationships bear reflecting on as part of this context. These histories illuminate how contemporary uses may jive or contrast with a longer intellectual heritage informed by certain kinds of ideas about reconciliation. This chapter provides a brief historical sketch to contextualize the emergence of more recent reconciliation discourses in Canada and support the comparison of their uses as shaped by differences of time, space, and power.

The chapter comprises of two main sections. The first (2.2) deals with the history of constitutional relationships in what is currently called Canada. This section's aims are twofold. First, it provides a short overview of the development of the relationships between Indigenous

peoples and settlers who came over from Europe[1] to consider the patterns of conflict and cooperation that lie behind the configuration of constitutional relationships that exists today, and within which reconciliation discourses have emerged over the last several decades. Second, it considers the role that ideas of reconciliation may have played in the historical development of these relationships, in practical and philosophical terms. These elements are developed through three sub-sections: the first (2.2.1) explores the negotiation of treaties between Indigenous and settler peoples; the second (2.2.2) considers the statutory accommodations built into English–French relations at various junctures; and the third (2.2.3) examines the place of reconciliation in the theory and practice of federalism. The second main section of the chapter (2.3) presents the global context in which the emergence of more recent reconciliation discourses took place. The section begins by discussing the concept's links to the development of transitional justice in the aftermath of World War II (WWII) (2.3.1), and then goes on to consider the emergence of reconciliation discourses in three significant early cases (2.3.2): Chile, Australia, and South Africa. These cases are important for understanding the global proliferation of reconciliation generally. They also provide background for understanding possible channels of influence on the Canadian context. The last part (2.3.3) attends to the matter of influence between global contexts by discussing the transnational policy transfer of reconciliation discourses and mechanisms.

The histories traced in this chapter set the stage for the dissertation's exploration of when,

[1] This phrasing reflects that the specific political interactions and developments discussed in the chapter took place between these entities so defined, not to suggest that the non-Indigenous population was made up only of European settlers. While historically comprised of a majority of people of British and French heritage, it includes people from all other parts of the world who came here by different paths (Brodie 2002; Kelley and Trebilcock 2010; Resnick 2005). It bears highlighting that part of this story of arrival involves the enslavement and forcible transfer of people from Africa to the French and British colonies that became the Canadian state (Cooper 2006; Maynard 2016, ch. 1; Whitfield 2016). These histories call for reckoning alongside and in relation to the colonization of Indigenous peoples and lands (Maynard and Simpson 2020; Walcott and Abdillahi 2019, esp. 54-56). The histories of the Canadian state, society, and economy are intimately intertwined with racism, cis-heteropatriarchy, and other systems of oppression (see e.g., Abu-Laban 1998; Backhouse 1999; Maynard 2016; Stanger-Ross 2020; Walker 2008). This dissertation interrogates one piece of "the pasts that are constitutive of our present" (Cho 2008, 186), but it should be understood in connection to this wider web of identities, histories, and power relations.

how and with what effects contemporary uses of reconciliation emerged in Canadian constitutional politics. The chapter contextualizes "when" in two different ways. First, it shows that while they were not foregrounded in the same way, there were uses of the term during much earlier periods of constitutional politics in what was to become Canada. Second, it situates the emergence of newer reconciliation discourses in Canada in relation to the term's emergence in other global contexts around the same time. How it was used in these two sets of contexts is marked by some similarities and some differences, both in relation to each other and to the genealogy traced in the following chapters. While in the late 20th century reconciliation would be invoked in defense of maintaining the constitutional status quo, centuries earlier the term appears in varying ways during its construction. As in later periods, the term is also occasionally used in resistance to it. In addition to links between reconciliation and treaty-making with Indigenous peoples and constitutional arrangements between English and French settlers, we see that the concept also inheres in the theory of federalism that underpins the Canadian state's constitutional structure itself. This use speaks of rendering compatibility between different forms of unity and diversity geared at establishing and maintaining a political whole. In so doing, it embodies the dialectical relation between unity and exclusion that marks the political pursuit of oneness (Grant 2018). In the later uses that emerged in other contexts around the globe discussed in section 2.3, reconciliation was more directly and explicitly linked to addressing relations of oppression, while many of the earlier uses centred on various relations of opposition (though such uses also remained in later periods). The link between unity and exclusion is palpable in these contexts too, most strongly in examples that highlight how the language of reconciliation can be used to justify and support oppression as well as to contest it and seek repair in its wake. The chapter concludes by returning to a consideration of Canada within this global context that provides a

brief overview of the state of constitutional relationships in the period immediately preceding that which is covered in the rest of the dissertation. In doing so, it reflects on the possibilities and limitations of a longer history of reconciliation in Canada and considers the similarities and differences to more recently emerged discourses, as well as between the adoption of transitional justice and reconciliation in recent decades in Canada and in other parts of the world.

2.2 The Development of Constitutional Relationships in Canada: An Underlying Ethos of Reconciliation?

John Ralston Saul writes that "[t]he continuing theme of Canadian history is reconciliation. The recurrent underpinning is reconciliation through alliances based on principle" (1997, 327). For Saul, this history stretches back to the latter half of the 18th century (289), through the alliance of Georges-Étienne Cartier and John A. Macdonald that led to Confederation (336), the partnership between Robert Baldwin and Louis-Hippolyte LaFontaine, and the reformist struggles of William Lyon Mackenzie (328). Others have varying perceptions of duration and novelty regarding the history of reconciliation in Canada. One of the things that I asked the people I interviewed for this project was when they remembered first hearing the term reconciliation used in relation to Canadian politics, and there was an interesting split in the reactions that I got in response to this question. Many people felt that it was a term that they had only heard used recently, particularly since the creation of the TRC. Several others, however, suggested that reconciliation has always been present through the entirety of Canadian history, and might even be understood as a fundamental political feature – that Confederation could be understood as a practice of reconciliation, and that indeed reconciliation is what Canada has always been about.

There are many possible explanations for such a divergence, likely linked to the myriad

meanings and uses of the term. One is that the word reconciliation – in the sense of resolving a conflict or finding a way for two contradictory aims or interests to be accommodated/rendered compatible – may have been used throughout the longer history of Canadian constitutionalism, but not in the underscored and emphatic, capital-'R'-Reconciliation way that it has been used of late. This latter type of use naturally garners more attention and thus is more likely to stick in people's memories than in-passing uses of the term. Another is that depending on people's backgrounds and perspectives, they might not be inclined to view certain historical developments as reconciliatory (for instance if they belong to a group that was excluded). Finally, there is a distinction between the presence of a practice of something that might be called reconciliation – or an implied theme of reconciliation – and the presence of an explicit discourse of reconciliation. The former does not necessarily require or involve the latter. As a result, developments that led people to suggest that reconciliation significantly predates the 1980s in Canada may reflect a longer history of *practices* that could be associated with reconciliation, but that were not necessarily framed with *discourses* explicitly using the term at the time.

The reconciliation discourses that have proliferated in the past few decades are distinct from but also deeply connected to earlier developments. While recognizing the differences noted above with respect to frequency of use and emphasis, as well as explicit rhetorical use as opposed to implicit idea, it is worth considering such practices and earlier uses of the term as they have shaped the context in which contemporary discourses and practices of reconciliation have emerged. This is so both in terms of the evolution of the discursive context and in terms of the development of conflicts and relationships in which claims of reconciliation are made. It is not possible to cover the entirety of the history of constitutionalism here, or to search for every use of the word "reconciliation" throughout that history to weigh its meaning and impact, but

three broad areas merit at least some consideration as reconciliatory context for assessing the contemporary uses of discourses of reconciliation in Canada. First, with respect to the relationship between Indigenous peoples and European settlers, the matter of a history of (re)conciliation centres on the practice of treatymaking. Second, the development of the relationship between the British and the *Canadiens* following the conclusion of the Seven Years War saw several flareups of conflict as well as concessions and reforms that might be understood as forms of reconciliation with the aim of coexistence. Third, broadly speaking, the notion of reconciliation plays a certain role in the theory of federalism, which is pertinent given the choice in 1867 to adopt a federal system that arranged the relationships between the British, French, and Indigenous populations in these lands in a particular configuration. The form of reconciliation present in conceptualizing federalism has both structural and intellectual bearing on understanding the conflicts within the different constitutional relationships that make up the Canadian federation and the discourses of reconciliation that emerge within them. That this federal arrangement was struck without the participation and consent of Indigenous peoples yet was imposed on them also has deep relevance to discussions of reconciliation in this context. The three sub-sections below take up each of these historical threads of reconciliation in turn to sketch out the broader historical context around reconciliation and constitutionalism in Canada.

2.2.1 Reconciliation and Treaties

Contemporary application of reconciliation to relations between Indigenous peoples and Canada has often drawn the reaction that the term is inappropriate in this context. Many argue that it implies a prior conciliation that has never taken place here, though some have suggested that there are examples of conciliation in earlier periods of coexistence (Amagoalik 2008, 93;

Castellano, Archibald and DeGagné 2008b, 3; Freeman 2014, 217; Garneau 2012, 35; RCAP 1996a, vol. 1, ch. 5; Ross 2008, 146; Saul 2009; Tully 2008, 246-47). Such assessments vary in part as a matter of interpretation but also because the history of interactions varies widely across the continent. Disagreements on the conciliatory nature of early interactions between Indigenous peoples and settlers aside, it is worth highlighting a history of conciliation as a European imperial practice that underlies contemporary discourses and practices of reconciliation. This is often emblematized, as Penelope Edmonds describes, by the symbol of a handshake:

> Reconciliation belongs on a continuum of peace-making efforts, and under the rubric of the handshake, forms part of a distinctive European genealogy of diplomacy and conciliation that used particular performative repertoires in colonies of settlement. […] whenever Europeans invoked conciliation the handshake symbol invariably appeared. It was used as a shorthand vernacular, part of empire's potent repertoire, emblematic of the desire for the cessation of violence, appeasement and accord and offering a form of covenant between Indigenous and non-Indigenous peoples. Distinctive to settler national formations is the requirement for peace-making and accord to elicit Indigenous volition and cooperation in the face of unrest, violence and the expropriation of Indigenous lands and resources. (2016, 19)

Edmonds notes that "the strategy and practice that the British (and other European powers) repeatedly termed conciliation" is linked to "the emergence of liberal humanitarian governance and an assimilationist governmentality" (19, 20; see also Maxwell 2017). The handshakes depicted on so many colonial medals and crests are intended to symbolize "benevolent dealings with colonized and enslaved peoples alike" and yet these conciliatory gestures and their attendant symbols are in aid of violence through the consolidation of an imposed settler state in the wake of colonial invasion (Edmonds 2016, 23). There are important differences between the narratives and practices of conciliation of the early colonial period and those of reconciliation in the contemporary period, and significant contextual differences characterize the periods themselves more broadly. Nevertheless, Edmonds argues, "there are clearly resonances and

continuities between the two" which belie arguments about a break between the past and present of settler colonial societies (23). As such – and considering the "potent relationship" that reconciliation has with interpretations and representations of the past (10) – historical practices of agreement-making and their links with notions of (re)conciliation serve as key background for contextualizing and understanding the discursive invocations of the present.

Treaty-making has a long political history here, dating back to long before the arrival of Europeans, as Indigenous nations forged and maintained relationships with each other and with the many beings with whom they shared the land through sacred agreements enacted and renewed over time through ceremony and (re)negotiation.[2] When Europeans began settling on Indigenous peoples' lands, the latter sought to negotiate terms of coexistence with these newcomers through treaty as well. Because it was common to both Indigenous and European peoples, treaty-making was a logical practice for them to employ with each other (Morse 2004, 51).[3] In order to contextualize more recent developments regarding reconciliation and understand their connection to this long and complex history of relations though, it is important to consider at least the broad strokes stretching back to the beginnings of the "tripartite relational dynamic in Canada that endures to this day" (Otis 2015, 69).[4]

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[2] See e.g., J. Battiste (2008, 322-26); Borrows (2017b); Craft (2013); King (2018, 110); Mills (2017, 230-41); L. Simpson (2008; 2011, 106; 2013a, 6; 2017, 58-61); Starblanket (2019b, 444, 455); Stark (2010); V. Watts (2013); R.A. Williams (1997).

[3] There is a large body of scholarship on the history of treaty-making between Indigenous nations and European settlers (and later the Canadian state), and it is not within my scope to get into the details. See e.g., Asch (2014); Borrows (1997); Borrows and Coyle (2017); Fenge and Aldridge (2015); King (2018); Long (2010); Miller (2009); Morin (2018); Ray, Miller and Tough (2000); Talbot (2009); Tidridge (2015); R.A. Williams (1997). On modern treaties, see e.g., Alcantara (2007); Blackburn (2007, 2021); J. Dickson (2018); Egan (2012, 2013); Gehl (2014); Nadasdy (2004, 2017); Morales (2017); Woolford (2005). For Indigenous perspectives on governance and treaty relations, see e.g., J. Battiste (2008); M. Battiste (2016a); Borrows (1997, 2017b); Cardinal and Hildebrandt (2013); Craft (2013); Gespe'gewa'gi Mi'gmawei Mawiomi (2016); H. Johnson (2007); Mills (2017); L. Simpson (2011, 2017); Starblanket (2019a, 2019b); Treaty 7 Elders and Tribal Council (1996); K. Williams (2018).

[4] This moment does not mark the beginning of treaty-making. Both the English and French built relations and made agreements with Indigenous nations for over a century prior to 1763 and, as noted above, treaty-making was a well-established practice among Indigenous peoples long before Europeans' arrival. However, the Royal Proclamation of 1763 might be understood as the moment when the formal foundations of the three-way constitutional relationships

The year 1763 saw a reordering of colonial powers whereby the foundations of the constitutional configuration that is Canada today began to take shape. Following the conclusion of the Seven Years War between Britain and France, King George III of England issued a Royal Proclamation that laid out the grounds for the governance of what was now the British colony of the Province of Quebec as well as the legal foundations of the relationship between the British Crown and Indigenous peoples. The component that dealt with Indigenous peoples, as Peter Russell notes, was likely at least partially a product of reports of the uprising led by Odawa chief Pontiac in the summer of that year. Yet, even prior to this, the king had conveyed that he "had it 'much at heart to conciliate the Affection of the Indian Nations, by every act of strict Justice, and by affording them his Royal Protection from any incroachment [*sic*] on the Lands they have reserved for themselves, for their hunting Grounds, & for their own Support & Habitation'" (2017a, 46). In the proclamation, the Crown recognized Indigenous nations and aimed to protect them from fraudulent settlements on their lands by preventing British subjects from settling on territory until it had first been acquired from the nation whose land it was at a public gathering and then subsequently granted or sold to the settlers in question (Russell 2017b, 81-82).[5]

At first glance, the provisions of the Proclamation that deal with Indigenous peoples and their lands appear to compare favourably with those pertaining to Québec, and they are often lauded as the continuing foundation for contemporary Indigenous rights (Wotherspoon and Satzewich 2000, 20). However, there is disagreement over how favourable this development truly was for the interests of Indigenous peoples. As Terry Wotherspoon and Vic Satzewich demonstrate, the Royal Proclamation was a key component in the conversion of Indigenous

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between English, French, and Indigenous peoples began to crystallize.

[5] The existence of the proclamation did not always necessarily mean its terms translated into practice, and implementation (and lack thereof) was significantly marked by conflict between colonial officials and settlers seeking land. For instance, on how such conflicts contributed to the dispossession of the Mi'kmaq and Wolastoqey, see Adams (2004); Bear Nicholas (2011); Reid (2009).

peoples' territories into private property in a process that reserved the role of primitive accumulation to the Crown (2000, 18-20), and as such this was not simply an altruistic and benevolent move by a British monarch looking to protect Indigenous peoples from land speculators. In Ghislain Otis's assessment, the document is of a "deeply imperial and colonial nature" and has an extremely damaging effect on Indigenous sovereignty (2015, 75). While it recognizes the "internal sovereignty or self-governing status" of Indigenous nations, it also forbids them from dealing with any other European powers and denies "their international status as independent nations" (75-76). In other words, it is a "unilateral assertion of sovereignty" by the British Crown over Indigenous peoples and their lands (76). Others have noted that the Royal Proclamation cannot be understood to operate in isolation. They argue that the full complexity of its role as a foundation for relationships between Indigenous peoples and settlers can only be appreciated by reading it in tandem with the Treaty of Niagara. In 1764, the Proclamation was presented by Sir William Johnson to a gathering of representatives from twenty-four Indigenous nations at Niagara, and negotiations on the terms of peaceful coexistence were agreed to according to the protocols of both parties (Borrows 1997; Mills 2017, 238-41; Russell 2017b). Russell calls this "another confederal event," noting that it was evidently not "an agreement on the terms of joining Canada" but that "it was the making of a peace treaty defining the terms on which Indigenous nations would be willing to share territory with people subject to the authority of the British government" (2017b, 77, 80). John Borrows argues that understanding this agreement and its implications requires interpreting it according to the terms of Indigenous cultural and political protocols along with the text of the written document (1997, 156).

Treaty-making continued to be practiced between the British Crown and Indigenous nations in many parts of what would later become Canada. However, as the number and

demographics of arriving settlers shifted during the period after the Royal Proclamation, there was a correspondent shift away from the types of commercial agreements signed between the Hudson's Bay Company and Indigenous peoples and the peace and friendship treaties signed with the British (Miller 2009, chs. 1 and 2). In their stead came agreements that better reflected the industrial and agricultural interests that were now motivating the arrival of new settlers rather than the fur trade (Wotherspoon and Satzewich 2000, 21). These new treaties, the bulk of which are collectively known as the Numbered Treaties, are often referred to as "land cession" treaties and are widely interpreted in Canada as having constituted the surrender of Indigenous lands to the British Crown in exchange for annual payments and a series of other enumerated terms. However, this assertion is challenged by Indigenous peoples who contend that in line with their treaty-making protocols, the treaties constituted the terms on which they agreed to share, not surrender, their lands (Cardinal and Hildebrant 2000; King 2018, 111; Krasowski 2019), a position that is supported by first-hand accounts from Crown negotiators (Asch 2014; Long 2010; Talbot 2009).[6] For Indigenous peoples, Aaron Mills describes,

> Treaties aren't legal instruments; they're frameworks for right relationships: the total relational means by which we orient and reorient ourselves to each other through time, to live well together and with all our relations within creation. They have a legal quality in the sense that they constrain behaviour and they are at once political, social, economic, spiritual, and ecological. They're how we constitute ourselves as communities of communities, across our difference. (2017, 225)

In such an orientation, a treaty is a wholly different type of relationship than a contract (225), constituting an appreciation for and commitment to interdependence rather than an act of severing and division of property and authority (231-32). On an understanding of treaty rooted in interdependence, Mills writes, "the work of normative ordering is to coordinate right

[6] One of the complicating factors contributing to this conflict is that, as Russell notes, while negotiators such as Johnson developed a strong familiarity with Indigenous peoples' protocols and employed them in his practice of treaty making, "the government and the people he spoke for did not share his understanding" (2017b, 84).

relationships through mutual aid, not to resolve rights-claims through contract. It's about a particular way of being-with, not claiming-over" (236). The conflict between divergent understandings of what kind of relationship was being established between Indigenous nations and the Crown was further exacerbated when, in the middle of the period when the Numbered Treaties were being established, the colonial government (and then, after Confederation in 1867, the government of the Dominion of Canada) unilaterally declared Indigenous peoples and their lands to be the objects of federal jurisdiction under the *British North America (BNA) Act*. It also made provisions for their forcible assimilation, segregation, and subjugation under first the *Gradual Civilization Act* (1857) and then the *Indian Act* (1876), which persists today. As such, recalling Edmonds's (2016) description of British colonizers' interest in conciliation above, the treaties can variably be interpreted as the foundation of a mutually respectful ongoing relationship or as a cynical pacification effort in the pursuit of colonization and dispossession.

The ambiguous concept of (re)conciliation was present during the exercise of making historical treaties as well, marked as it also was by these broader ambiguities. Conciliation and reconciliation appear in conjunction with treaty-making both during the period of early treaty-making and in more recent years in reference to the early treaties.[7] In describing the cycles of conflict and peacemaking between the British and the Mi'kmaq, Eric Adams notes that the "Board of Trade favoured a policy of conciliation rather than war with the Mi'kmaq" (2004, 331-32). For example, a letter from the Board – which oversaw the financing of the colonies – to Edward Cornwallis during the period when he served as Governor of Nova Scotia states:

> Should it be in your power before your return by any opportunities of friendly intercourse to gain over the minds and disposition of the Indians with your province to the interest of Great Britain, such a reconciliation will be a great additional strength to the settlement, an effectual discouragement to the French and the best provision which the province can have for its future peace and security. (Quoted in Tattrie 2013, 128)

[7] This is also true of modern treaties, as is discussed in chapters 6 and 9. See also e.g., Blackburn (2007).

The term also appears in the renewal of the Casco Bay treaty between the Wabanaki and the English, where part of the stated purpose is "to reconcile whatever Differences had hapned [*sic*] since the last Treaty" (quoted in Augustine 2016, 21). The language of (re)conciliation is used to recall these agreements in the present as well. For example, Marie Battiste writes in *Living Treaties*: "The people of Nova Scotia have only to look at the handshake on the original seal of Nova Scotia as part of the ancient reconciliation of friendship between the peoples. The Courthouse on Spring Garden Road [in Kjipuktuk/Halifax] must be remembered as the site of the 1761 treaties with the Mi'kmaq" (2016b, 7). In these instances, perhaps unsurprisingly given their association with the Peace and Friendship treaties, reconciliation seems to generally be given the interactional sense of addressing opposition by forging or returning to peaceful and friendly relations. As is detailed in chapter 7, the SCC applied a related but distinct sense of the term to the treaty relationship by highlighting the dimension of opposition between competing interests in its interpretation of another treaty from the same period in *R. v. Sioui* (1990, 1027). It then later made a more sweeping claim about reconciliation with respect to treaties than it had in *Sioui*, asserting in *Haida Nation v. B.C. (Minister of Forests)* that "[t]reaties serve to reconcile pre-existing Aboriginal sovereignty with assumed Crown sovereignty" (2004, 524).

What form of reconciliation this comprises is a significant and unresolved question. Indigenous peoples have continued to challenge the legitimacy of Crown sovereignty and to engage in treaty-making from a perspective rooted in a very different understanding of land and political economy, as is demonstrated by scholars such as Aimée Craft (2013, esp. ch. 6), Hayden King (2018), Mills (2017), Leanne Betasamosake Simpson (2008, 2011, 2017), Gina Starblanket (2019a, 2019b), and Heidi Kiiwetinepinesiik Stark (2010), among others. Indigenous peoples have continued to honour the commitments they agreed to in the treaties and to remind

the Crown of its commitments and broken promises (Borrows 1997, 166; Palmater 2016, 36-37). As such, the history of treaty-making is an important part of what Otis calls the "ongoing constitutional drama wherein decolonization and reconciliation are at stake" for Indigenous peoples as well as for Québec, stretching back to the Royal Proclamation (2015, 79-80).

2.2.2 Reconciling the Solitudes

While the nature of the dynamics of the relationships between groups differed in significant ways from those between Indigenous peoples and European settlers, the relationship between the British and French settlers also followed a cyclical pattern of conflicts and attempts at readjustment in the name of peaceful coexistence that could be interpreted as a type of reconciliation. Following the Seven Years War, the 1763 Royal Proclamation transfigured a segment of what had been Nouvelle France into Québec and established a new governance regime that had deleterious effects with respect to language, law, and religion for its French speaking population. For some, the Royal Proclamation thus constituted a double colonization of both Indigenous nations and the *Canadiens*, as it declared a process for the Crown to acquire Indigenous lands and also created Québec as a type of ethnolinguistic and political reserve for the French speaking inhabitants while subjecting them to British rule (Giroux 2019b, 55-56). These developments lead Otis to declare that the Proclamation "is therefore the constitution that confirmed a dramatic reversal in status and fortune: from making colonial claims to Canada the French became a colonized people" (2015, 70).[8] In response to outcry over the religious

[8] Noting the need for greater critical theoretical reflection on these dynamics, Dalie Giroux observes that "[l]es Québécois, qui de bon droit se posent en victimes historiques du régime impérial britannique, sont prompts par ailleurs à affirmer que les Français dont ils croient hériter ont eu une attitude conciliante et amicale avec les peuples autochtones, et que le rôle du colonisateur reviendrait au seul régime anglais et à son héritage *canadian*" (2019b, 17). The story is indeed more complex than this. However, while the French had been a colonizing presence in North America, prior to British Conquest there had also been a series of alliances and partnerships between French

inequality instilled by a rule requiring public officials to forswear core tenets of Catholicism and the imposition of English law and the threat this posed both to the civil law system and the French language (71-72),[9] the British Parliament passed the *Quebec Act* in 1774, enshrining protections for Roman Catholicism and French law in civil matters (Russell 2017a, 34-37). In the lead-up to the passage of the *Quebec Act*, Lieutenant-Governor Guy Carleton sought to develop a relationship with the French *seigneurs* in order to, as Russell puts it, "conciliate 'the national spirit' that was resentful of the exclusion of Canadians from official government positions" (33). Indeed, the *Quebec Act* might be thought of as a form of (re)conciliation in the wake of the conflicts wrought by the regime imposed in the Royal Proclamation.[10]

The cycle of what David Schneiderman calls "waves of accommodation and assimilation" continued (2017, 917). The British hoped that granting French Canadians an elected assembly, now as Lower Canada, through the *Constitutional Act* of 1791 would inspire gratitude and a desire to unite with Upper Canada. French Canadians, however, were frustrated by their lack of a share in governing power (Russell 2017a, 90-91). Instead of seeking union, they "used Lower Canada's elected Legislative Assembly as a platform to secure and advance the interests of their nation" (90), and conflict between the French-dominated Assembly and the English-dominated Legislative Council that controlled finances resulted in frequent paralysis (91-92). Authoritarian management by colonial officials did not help matters (92), and conciliatory shifts in the 1810s and early 1830s failed to have the desired effect as there was an

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settlers and the Indigenous nations on whose lands they had settled, and these too were transformed by the imposition of British rule. As Otis writes, "each of these groups would gradually turn toward defining its interests separately from the other. Each would fight for its survival, development, recognition, and sovereignty" (2015, 75). On the continuation of this pattern centuries later, see e.g., D. Giroux (2020).

[9] The nature of this resistance to the imposition of colonial rules is complex in that the French Canadians "often relied deftly on their rights as British subjects" in contesting the structure of the new regime (Morin 2017, 49).

[10] This observation was first made to me by Matt James, who cited Tully (1994) as informing his thinking on the subject. John Ralston Saul has also suggested that "A dispassionate observer can see the origins of reconciliation in Canada in the Quebec Act in 1774" (1997, 289).

intractable difference of positions with respect to the selection of senior officials and judges (92, 96). The ensuing conflict between the *Patriotes* and the colonial administration in Lower Canada, paired with further conflict born of religious divisions and a desire for responsible government in Upper Canada, ultimately produced yet another situation that called for reconciliation anew. This resulted from Lord Durham's royal commission report in the wake of the 1837-1838 rebellions in the Canadas. The report itself presented a series of highly damaging statements and was used as the rationale for a new form of untenable institutional arrangement (Karmis and O'Toole 2018, 95-100; Russell 2017a, 106-14). While it has been lauded for spurring the implementation of responsible government (Russell 2017a, 109), the Durham Report also advocated a policy of "obliterating the nationality of French Canadians" (quoted in Karmis and O'Toole 2018, 96). This was to be enacted by, among other measures, uniting Upper and Lower Canada into one province and encouraging mass anglophone immigration to foster the assimilation of French Canadians (98), who Durham perceived as backwards and naturally inferior to the British (Russell 2017a, 110). As Dimitrios Karmis and Darren O'Toole demonstrate, the Durham Report had a deeply detrimental effect on the generation of trusting relationships between Québec and the federal and other provincial governments that continued to reverberate in constitutional debates well over a century later (2018, 100, 104-5).

While a more informal type of "quasi-federal" arrangement emerged in the Province of Canada in the aftermath of the *Act of Union* (1840) following the Durham Report as this seemed to be "the only way the united province could be governed" (Russell 2017a, 115), the major development that might be understood as a reconciliation after the conflicts of the previous decades is Confederation. This is perhaps best thought of as an exercise that embodied a certain kind of spirit of reconciliation rather than an undertaking that was framed within a discourse of

reconciliation. However, the term itself did make the occasional appearance at various points during legislative debates about Confederation.[11] The uses of the words "conciliation," "reconciliation" and "irreconcilable" (and their respective variants) employed in these speeches reflect many of the different meanings that were laid out in chapter 1. While many of the uses in the speeches are not made in direct reference to Confederation or related debates,[12] several statements highlight a link between federal union and notions of conciliation and reconciliation, drawing connections to some of the key motivations for Confederation. For example, during the debates in the Legislative Assembly of the Province of Canada in 1865, Hector-Louis Langevin argued for the need to unite the provinces in one legislature in order "to reconcile so many different interests" with respect to an array of commercial and public works (Legislative Council of Canada 1865, 366), while William McGiverin pronounced his relief that conflicts in the provinces would not result in the kind of civil war that had erupted in the United States thanks to "the scheme now before us for reconciling our differences" (473). In this sense, reconciliation embodies a structural plan for addressing relations of opposition between the parties.

Perhaps most notable are the references made by Sir John A. Macdonald in a speech in support of his motion to call on the Queen to initiate the Confederation of the British North American provinces. In that speech he both highlights the danger of irreconcilable differences present in alternatives to the plan he is proposing (with respect to differences of opinion over representation by population between Upper and Lower Canada prior to the development of the

[11] Thanks to *The Confederation Debates* project, which undertook to digitize the debates that preceded each stage of all the Canadian provinces coming into Confederation, I was able to do a key word search of the debates for "conciliation," "reconcile," "reconciliation," and "irreconcilable" (there were no results for "irreconciliation"). The debates can be accessed here: https://hcmc.uvic.ca/confederation/en/index.html. Where possible, the citations in this section correspond to the scans of the original documents cited by the database; where these are unavailable, I have provided the bibliographical information cited along with a link to the relevant page of the database.

[12] A substantial portion of the term's appearances reflect other vernacular uses, such as calling for reconciliation between inconsistent arguments or statements, descriptions of certain actors as being skilled conciliators, or highlighting irreconcilable differences of opinion (see e.g., Legislative Council of Canada 1865, 26, 454; House of Commons 1905, 2582, 2585, 3118-19; 1949, 17; New Brunswick 1866a, 13; 1866b, 99; PEI 1870a, 192).

Confederation plan, and between the Upper and Lower Houses of Parliament should the Senate be elected along with the House of Commons) and emphasizes that the resolution to these and other problems have been enabled by "a spirit of conciliation" (Legislative Council of Canada 1865, 31). Also significant is that Macdonald's account provides a sense of what he understands this conciliation to mean, what it has required, and the purpose at which it is aimed:

> The whole scheme […] bears upon its face the marks of compromise. Of necessity there must have been a great deal of mutual concession. […] it must be admitted that had we not met in a spirit of conciliation, and with an anxious desire to promote this union; if we had not been impressed with the idea contained in the words of the resolution — "That the best interests and present and future prosperity of British North America would be promoted by a Federal Union under the Crown of Great Britain,"— all our efforts might have proved to be of no avail. […] if we had not met, I say, in a spirit of conciliation, and with an anxious, overruling desire to form one people under one government, we never would have succeeded. […] if, after a calm and full consideration of this scheme, it is believed, as a whole, to be for the advantage of this province—if the House and country believe this union to be one which will ensure for us British laws, British connection, and British freedom—and increase and develope [*sic*] the social, political and material prosperity of the country, then I implore this House and the country to lay aside all prejudices, and accept the scheme which we offer. (31)

By his description, acting in a spirit of conciliation entails a reciprocal practice of making compromises motivated by an overarching goal of achieving unity – specifically, a form of unity rooted in and protective of British institutions and values, and prosperity.[13] While it has been suggested that the willingness to engage in conciliation, particularly between the English and French delegates, was rooted in a pragmatic calculus of "encapsulated interests" rather than a shared ideology or understanding of what federalism entailed and what the country should look like (Russell 2018, 129), Macdonald nonetheless discursively paints a picture of an ultimately grander shared vision that eclipses the differences of opinion over details.

Macdonald's celebration of a conciliation that enables becoming "one people under one

[13] Macdonald does not specify in this respect, but implicitly the nature of prosperity here is also conditioned by British (or perhaps more broadly Western/capitalist) conceptions of what prosperity entails and requires.

government" provides a foundation-laying example of John Grant's observation that "[p]ublic life in Canada is […] animated regularly by calls to become one" (2018, 19). As Grant's *Lived Fictions* demonstrates, however, the pursuit of oneness is inextricably bound together with the exclusions that constitute it. Reflecting on this insight raises the question of what exclusion(s) this conciliatory scheme was generating and being generated by. Most starkly evident in their complete absence were Indigenous peoples, who were subjected to and made object of the *BNA Act* but entirely excluded from its creation. As a result, their views regarding Confederation and the rhetoric within which they were couched are absent from the debates. Also necessarily crowded out were competing visions for alternate political arrangements than what was laid out in the *Act*, some of which are represented. Among these can be found a differently inflected use of reconciliation that appeared in anti-Confederation speeches. In New Brunswick and Nova Scotia, there was significant opposition to Confederation, reflected for instance in Thomas Anglin's declaration to the Legislative Assembly of New Brunswick that "the Provinces are distinct communities with conflicting interests, and the Quebec Scheme does not reconcile them" (New Brunswick 1866c, 105). Here Anglin uses the word reconciliation in the same type of fashion as Langevin and McGiverin, as rendering compatibility, but in order to contest rather than to support the proposal for federal union. A starker assessment is presented by Thomas Killam in the Nova Scotia House of Assembly in protest of the lack of consultation of Nova Scotians about Confederation: "Nothing can reconcile the people to the manner in which this measure is being forced upon them" (Nova Scotia 1867, 8). In this formulation, reconciliation is a matter of resignation to an imposition, and it is refused. Echoes of this opposition remain in subsequent years as Charles Tupper reflects in the newly created House of Commons on "measures that might reconcile the people [of Nova Scotia] to the Union" and argues that the

government has "a solemn duty which they owed to the whole people of the Dominion to exhaust every means consistent with the honour and rights of the country, to bring representatives of the people of Nova Scotia into harmony – not with the Government of the country so much as with the institutions of the Dominion" (House of Commons 1869, 479). Reconciliation in these forms is implicitly less mutually concessive and more a matter of means to lead opposed parties to accept an established state that they do not favour. Such discussions and subsequent interpretations show that Confederation is certainly not universally perceived as a reconciliatory exercise, at least in a positive sense. As François Rocher notes, for some French Canadians, Confederation is not seen as a resolution of previous conflicts but rather as the development that "forever consecrated their inferior status" (2018, 157).

As the above examples from the Confederation debates demonstrate, the use of the terms conciliation and reconciliation applied broadly to varying conflicts among the federating parties and not only to English-French differences.[14] The statements about (re)conciliation (or the lack thereof) that punctuated the debates over Confederation are distinct from the kinds of articulations of reconciliation framed as an explicitly normative goal that appear in contemporary constitutional debates in Canada. Nonetheless, they do demonstrate that the term has a long history here, and that there is a foundation of political relationships being entangled with a "spirit of conciliation" underlying contemporary invocations of reconciliation, just as the conflicts of centuries past continue to echo in the present as well. These statements that appear in discussions

[14] While I do not tackle the matter here for reasons of space and scope, references to conciliation also took appeared in advance of the entry into Confederation of Manitoba, Prince Edward Island (PEI), Alberta, and Saskatchewan, as politicians discussed the need to reconcile "difficulties" or "objections […] to Confederation" and debated between policies of conciliation and coercion (House of Commons 1870, 1441; 1905, 2265, 2557, 2969, 4066-67; PEI 1870a, 198; 1870b, 228). The term continued to appear in general references to the (in)compatibility of statements or positions as well; in BC, one politician challenged another's assertion that Confederation was not necessary for the province by noting that Britain didn't want them acting like "mendicants," stating, "I can hardy [*sic*] reconcile the position of manly independence with the position of hanging on to unwilling Imperial skirts" (BC 1870, 16).The question of conciliation was also treated at a personal level in a series of exchanges between the opposition and the government regarding Sir Wilfrid Laurier's record as a conciliator (House of Commons 1905, 3976-77, 4037).

regarding the practice of federalism in Canada are also accompanied by the presence of references to reconciliation as a component of the theory of federalism.

2.2.3 "[T]he scheme now before us for reconciling our differences": Federalism and Reconciliation

A certain notion of reconciliation, rooted in the meaning of rendering consistency or compatibility, is present in the very governance structure adopted by the creators of the Canadian federation as they undertook their exercise "in the spirit of conciliation." As Rocher outlines,

> theoretical work on federalism often makes reference to the fact that federalism aims to combine unity and diversity within a given political space or society. These two ideals, contradictory at first glance, could be reconciled if the political system and its institutions favoured the maintenance and renegotiation of an acceptable equilibrium between the imperatives of unity and diversity. Regardless of the way in which these ideals are put into practice, the foundational idea is that different communities simultaneously recognize their diversity and their mutual need for solidarity, which engenders the creative tension between the dynamics of autonomy and cooperation […] (2009, 84)

This vision of federalism as the reconciliation of unity and diversity, embodied in the separation of powers laid out in the *BNA Act*, continues to be rearticulated throughout the development of Canadian constitutionalism after Confederation. In *Law of the Canadian Constitution*, William Henry Pope Clement emphasizes several times that the "true federal idea" is "to reconcile national unity with the right of local self-government" (1892, 8-9, 146, 175), which might also be rendered as "diversity."[15] In an interpretive application of this point, he devotes several pages to considering the reconciliation of the provisions of sections 91 and 92 of the *BNA Act*, which

[15] As discussed further below, while there are multiple ways of interpreting the presence of "diversity" in the Canadian federation, many of these were distinctly not the type of diversity reflected by the division of powers constructed in the 1860s. The latter attended solely to the differences between the British North American colonies as well as, to some extent at least, between the French and English (though conflicts over the type of reconciliation of diversity and unity Confederation constituted in this latter case have persisted ever since, as exemplified for instance in the debate between the compact and statute theories of Confederation [Grammond 2016, 801-9; Webber 2017, 20]). For an argument about cultural diversity within the Canadian federation and how state framing of this diversity is itself geared towards a project of political unity, see Grant on multiculturalism (2018, ch. 6).

enumerate the respective powers under the jurisdictions of the federal and provincial governments (206-11). The idea is reiterated again by the Royal Commission on Dominion-Provincial Relations (Rowell-Sirois Commission), which describes Confederation as "a plan whereby, through mutual concession, cultural and local loyalties could be preserved and reconciled with the political strength and solidarity of the whole" (1940, 1: 29).[16]

More recently, the notion has been rearticulated by James Tully in his assessment of the SCC's 1998 decision in the *Reference Re: Secession of Quebec*, wherein Canadian constitutional democracy is envisioned "as a 'global system of rules and principles' for 'the reconciliation of diversity with unity' by means of 'continuous processes' of democratic discussion, negotiation and change" (2000, 4).[17] This is not a matter of straightforward historical continuity for, as Tully notes, the vision of constitutionalism as an ongoing process of reconciliation represents a "new understanding" on the SCC's part (20), but the approach builds on an already-existing discourse around the reconciliation of unity and diversity, as we have seen. For Tully, this new orientation towards constitutional democracy in Canada, which aligns with a conception of what Jeremy Webber refers to as "agonistic constitutionalism" (2015, 2017), presents a constructive, hopeful, and liberatory mode of addressing political differences in the Canadian federation as they arise over time.[18] In presenting it as a positive and desirable conception, these analyses represent particular interpretations and uses of reconciliation that appear to imply certain definitions over

[16] Like the Confederation debates, the report of the Rowell-Sirois Commission contains a number of passages that use the word reconciliation, but they are all more common vernacular uses of the term (reconciling conflicting interests [1940, 1: 55, 182, 184], reconciling a population to a policy it did not favour [2: 251]) as opposed to the enunciation of reconciliation itself as a declared normative goal as we see today.

[17] As Robert Hamilton and Joshua Nichols observe, the SCC's use of reconciliation in this decision differs significantly from those in its Aboriginal rights jurisprudence, which they attribute to the different constitutional visions held by the SCC of Canada's respective relationships with Québec and with Indigenous peoples (2020, 435-36). I take the SCC's uses of reconciliation in these two contexts up in chapters 4 and 7.

[18] See Walters (2017) for a critique of agonistic constitutionalism in the Canadian context. His rejection of agonistic constitutionalism is rooted in a defense of the value of normative unity that sees unity and pluralism as "mutually *reinforcing* rather than *conflicting* ideals" (421; italics in original). Walters distinguishes unity from sameness (435).

others. For example, when Tully critiques the status quo mode of constitutional interpretation that he suggests the SCC is moving away from, Canada being a "straight jacket" for Québec is equated with Canada being unable to "reconcile Quebec's demands for diversity" and therefore leaving Québec the option to "conform to the existing constitution or secede" (2000, 6), this appears to presuppose the exclusion of definitions wherein reconciliation means resignation.[19] This is significant because how terms are conceived can have powerful practical implications. As we will see from examples in other parts of the world as well, notions like "reconciliation" and "unity in diversity" can be used to construct and uphold very different kinds of power relations. The political imaginaries that underpin a vision of unity can make all the difference (Grant 2018). Observing that "Canada is exemplary of how political unity is an ongoing and always unfinished project," Grant argues that while some see its dedication to the ongoing pursuit of unity as a "remarkable" constituent characteristic (2018, 11, 12), the picture is less rosy in practice than is often projected in narratives about what he calls "the promises of Canadian politics" (12, 15). He explores the tension that inheres in the inseparability of unity and exclusion and the formidable challenge posed by the fact that "unity can be both a necessary feature of politics and frequently the source of real damage" (21). These difficulties innately attach to reconciliation as a result of its focus on creating or restoring harmony or unity.

Whatever reconciliation of unity in diversity was created in the relationship between French and English Canadians through the development of Canada's federal structure in 1867, this reconciliation did not extend to Indigenous peoples. There was no thought of including Indigenous nations in the federation and thus in the negotiations (Russell 2017b, 77). The *BNA Act* refers to them only once, and then "not as people, let alone partners in Confederation, but as

[19] Tully's recent scholarship on reconciliation, though not centred on Canada-Québec relations or institutional processes, explicitly rejects reconciliation as resignation to relations of oppression (2018, 94; 2020, 403).

a subject matter of federal legislation" (78). For whatever talk there was of the treaties – both those agreements from the previous two centuries and those that were being actively negotiated at the time of Confederation – constituting (re)conciliations, Indigenous peoples were in the process of being actively subjugated by violent and coercive state policies and legislation.[20] While Québec was a party to Confederation at the moment of its creation, it is worth considering the limits to the room of manoeuvre it had in participating in that particular exercise of reconciliation: the involvement of French Canadians was shaped by the bounds of constituting a minority population and being structured and governed as a British colony. Altogether, this is a very different exercise than the kind of reconciliation that would be embodied in a confederation of the English populations coming together to develop a political structure of unity in diversity with free self-determining French and Indigenous peoples. But these are not the circumstances in which the question of pursuing reconciliation has arisen over the course of the history of constitutional relationships on these territories. That question must rather speak to "the wounds we live in already" (Drabinski 2013, 130). The explicit framing of efforts to address the wounds inflicted through these conflicts and their legacies as a project of reconciliation would not begin until some time later. However, these older histories and the glimpses of (re)conciliation that appear throughout them are critical context for understanding more recent developments in the wake of the shifts that took place in Canadian society and in the rest of the world after WWII.

2.3 The Global Rise of Reconciliation

> Until recently, no one talked about reconciliation per se. When scholars, politicians, and practitioners spoke about the restoration of community peace, they did not use the word

[20] See e.g., James Daschuk's *Clearing the Plains* (2013) on how the government subjected the Indigenous peoples of the prairies to policies of forced starvation to enable the state's territorial expansion, and David B. MacDonald's *The Sleeping Giant Awakens* (2019) for an analysis of state policies towards Indigenous peoples through the lens of genocide. Gendered oppression is a central feature of this colonial violence (see NIMMIWG 2019, ch. 4).

> 'reconciliation.' Now, people use the word all the time, even when they are not exactly sure to what they are referring.
>
> – Erin Daly and Jeremy Sarkin (2007, 7-8)

While Indigenous societies have long-standing traditions of reconciliation and sociopolitical healing (Chief Robert Joseph quoted in Nagy 2014, 213; L. Simpson 2008; 2011, 21; Walters 2008, 170; K. Williams 2018), and these traditions are often identified with the origins of contemporary restorative justice,[21] the emergence of reconciliation as political discourse and policy is most closely linked to the advent of the transitional justice paradigm that emerged in the aftermath of WWII. This paradigm has morphed and expanded in new directions in conjunction with global political developments over the last seventy years, and the proliferation of reconciliation discourses has extended along with and also beyond it. Of the now-many examples of states grappling with past injustices under the banner of reconciliation, three key early cases that coincided with the term's emergence in Canada include Chile, Australia, and South Africa.

2.3.1 The Post-War Era and the Development of Transitional Justice

While the South African TRC is often identified as the starting point for the global preoccupation with truth and reconciliation, Erin Daly and Jeremy Sarkin comment that a broader landscape of post-conflict resolution also provides important historical context for the term's rising prevalence (2007, 8). A shift in the nature of military conflicts and post-conflict transitions that occurred over the latter half of the 20th century is an important feature of this context (9). Earlier conflicts concluded through military defeat and were followed by the imposition of the victors' post-conflict vision. After WWII came a shift towards negotiated peace, a blurring of the lines between combatants and civilians, and an increase in intrasocietal conflicts, particularly in

[21] It bears recalling, however, that such assertions are subject to the various caveats and critiques discussed in section 1.2.3.2 of the previous chapter.

contexts of decolonization struggles, civil wars, and post-authoritarian transitions.[22] With it came a greater focus on concepts, strategies, and institutions geared at establishing peaceful coexistence between conflicting parties belonging to the same society (9; Arthur 2009). Political developments in Latin America played an important role in initiating the reorientation towards addressing human rights violations that began during this period (Arthur 2009, 360-61).

Ruti Teitel (2003) divides the development of the transitional justice paradigm that emerged in conjunction with these events into three broad phases. The first is the international transitional justice emblematized by the Nuremberg trials following WWII, which is linked to the establishment of the international human rights architecture and has a punitive focus on the criminal culpability of leadership (70-72). The transitions that gave rise to the second phase brought with them a new and distinct set of issues around regime change following the collapse of the Soviet Union and authoritarian regimes in Latin America. This led to a shift towards national trials held by successor regimes. With this came questions about the need for amnesty and forgiveness, as establishing and preserving peaceful coexistence between adversaries who continued to live together needed to accompany holding perpetrators accountable (75-77). Truth commissions came to the fore during this phase, a development which reflected a more collective orientation than past approaches focused on individual perpetrators and a concern with cataloguing the history of injustices and building dialogue. Transitional justice now "became associated with the more complex and diverse political conditions of nation-building" (77, 78-80). The language of reconciliation also came into play at this stage. As Teitel describes, this shift entailed a significant political and juridical reformulation of transitional justice:

[22] Like so many concepts linked with reconciliation, "transition" too is open to interpretation and can be understood in a variety of ways. As Nicola Henry notes, it also gets variably framed as a process and as an outcome (2015, 207). For reflections on these conceptual complexities and the origins of the term "transitional justice," see Arthur (2009).

> The truth and reconciliation project incorporated much of its normative discourse from outside the law, specifically from ethics, medicine, and theology. Its purpose was not merely justice, but peace for both individuals and society as a whole. The problem of transitional justice was reconceived across moral and psychological lines to redefine identity. The evident mix of legal, political, and religious language reflected both the conceit and the limits of the law. […] Whereas in its first phase the problem of transitional justice was framed in terms of justice versus amnesty, with amnesty considered exceptional to general adherence to the rule of law, the second phase adopted a broader amnesty policy with the aim of reconciliation. The exception became generalized and reflected an explicit attempt to incorporate both mercy and grace into the law. (81-82)

Transitional justice in this form involved a different range of actors, expanding beyond the juridical realm to include NGOs, churches, and civil society groups, and a different range of processes, expanding beyond criminal prosecutions in a "turn to discursive confessional testimonials" and rituals of contrition and forgiveness (83). This shift reflects contextual changes as, unlike in Allied-occupied postwar Europe, leaders of new transitional regimes faced different pressures and were more compelled to make amends with their political opponents and their supporters (Daly and Sarkin 2007, 9; Norval 1998, 252-53).[23]

The extent to which reconciliatory politics in such contexts are a structural reality rather than primarily or solely a rhetorical feature is a live question (Daly and Sarkin 2007, 12). There is also a risk that inward-looking processes, particularly those during the period associated with Phase II, overlook important structural components resulting from the conflict's situation in a broader global politics and preclude the pursuit of other justice-seeking processes (Teitel 2003, 84-85). Teitel warns that "the focus [of reconciliation politics] may subvert broader political reform" (84). This warning has one set of implications in the kinds of transitional contexts she describes; along with the development in Phase III of an "appeal to a language of universal morality" and the expansion and deployment of a global humanitarian regime (92), it raises yet

[23] Regarding the focus on transitions, the different types transitional justice might be understood to encompass, and the reasons for the field's predominant focus on transitions to democracy, see Arthur (2009, 337-48, 359-61).

other issues in non-transitional established democracies using reconciliation politics to grapple with historical injustices (Arthur 2009, 361-62). Canada is one of these.

The most prominent narrative of Canada's inclusion among the polities engaging in what might be understood as a Phase IV of transitional justice[24] revolves around the negotiation of the 2006 Indian Residential Schools Settlement Agreement (IRSSA) and the subsequent creation of the TRC.[25] However, as explored in the dissertation, reconciliation discourses began to take hold in Canadian politics over the two decades prior to the IRSSA. This emergence of reconciliation in Canadian political discourse coincided with the first major instances of redress processes being established under the banner of "reconciliation" in Chile, Australia, and South Africa.

2.3.2 Stories of Emergence: Early Global Reconciliation Endeavours

2.3.2.1 Chile

While there were other truth commissions that preceded it (Hayner 2011, xi, 10-11), the first to adopt a titular focus on reconciliation was the *Comisión Nacional para la Verdad y Reconciliación* in Chile in 1990. The commission was established by Patricio Aylwin's Concertación government to investigate human rights violations perpetrated under Augusto Pinochet's military regime. It came into being in a political context where Pinochet and his supporters continued to wield significant military and political power and influence, and a sense of threat remained regarding the possibility of the military undermining Chile's new transitional

[24] Dustin Sharp (2013) has suggested a "fourth generation" of transitional justice in a somewhat different vein. The concerns centred in Sharp's formulation include "the need to work towards a more honest accounting of the underlying politics of transitional justice; the discourse of the local; and the invisibility of economic justice" (153).
[25] For several generations, government policy required Indigenous children to attend boarding schools where they were forced to abandon their own languages in favour of English and French and to adopt Christianity, and were subjected to extensive physical, sexual, cultural, spiritual, emotional, and psychological violence. The IRSSA is a negotiated court settlement that concluded a massive class action lawsuit brought by the former students of Residential Schools against the Canadian state and the churches that ran the schools on its behalf. The process that led to the negotiation of the IRSSA and the components of the agreement are discussed further in chapter 8.

democracy (Hiner and Azócar 2015, 57; Loveman and Lira 2007, 61; Vasallo 2002, 162, 165). The result was a commission that was constrained to work within a limited mandate focusing on establishing what had happened to the victims (but only of certain crimes) without naming perpetrators (Loveman and Lira 2007, 61-62). The victims were understood to include both those killed or disappeared at the hands of state agents and those "who died at the hands of 'individuals acting under political pretexts'" which, Katrien Klep suggests, meant that "the Commission effectively equated the repressive system of the regime with the actions of the left-wing groups who had resisted the dictatorship" (2012, 261). Klep also argues that "the collective and political nature of the repression" was elided due to the adoption of an individualistic human rights framework (261). This serves to remind that in cases where reconciliation addresses relations of oppression, how the oppression is characterized makes a difference along with the interactional and/or structural elements of the vision in question. At the conclusion of its nine-month mandate, the National Commission for Truth and Reconciliation issued a report[26] recommending compensation for victims, commemoration, human rights education, a certain degree of legislative and judicial reform around the role of the military and criminal law, increased conformity with international human rights law, and the creation of a "National Corporation for Reparation and Reconciliation" to oversee the implementation of these changes (Vasallo 2002, 164-66), the latter of which was established in 1992 for a period of two years (167). Political contestation around the nature of Pinochet's dictatorship and appropriate modes of investigating, redressing, and commemorating the injustices that took place during that period continues, and Klep notes, no conclusive resolution of these disagreements is likely to occur (2012, 259).

The period ushered in by the establishment of the Concertación government and the truth

[26] An English translation of the report is available here: https://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf

and reconciliation commission was characterized by what Hillary Hiner and María José Azócar describe as a "political culture of reconciliation and consensus" (2015, 53), which evoked Christian themes of hope and forgiveness and wherein the emphasis on reconciliation was paired with neoliberal economic policy and efforts to shore up a Catholic conception of the traditional family (57, 55).[27] Brian Loveman and Elizabeth Lira suggest that Chile has a long history of political conflict between groups presenting themselves in varying ways as fighting in the name of "*la patria*" and that this has been accompanied by a well-cemented distinct approach to political reconciliation dating back to the country's early 19th century constitutional conflicts, which they dub "*la vía chilena de reconciliación política*" (2007, 46, 44). While they note that the approach taken in the 1990s "somewhat extended the meaning of political reconciliation beyond the historical pattern" (52), they identify a number of resonances embodied in a resistance to a full uncovering of the truth of human rights violations, the absence of a guarantee of punishment for the perpetrators of those violations, and the persistence of – though also continued resistance to – impunity (64, 60). Loveman and Lira conclude that the tension between the dangers of picking at political and social wounds and the dangers of an approach to past injustices that perpetuates impunity continues to be a matter of debate in Chile (69).

2.3.2.2 Australia

Arising as they do out of a history of British colonialism, the circumstances that have given rise to debates and policies about reconciliation in Australia bear many similarities to the process as

[27] Hiner and Azócar demonstrate how the political culture inculcated by the TRC and the approach to democratic transition also permeated Chilean governance more broadly during the 1990s. This was exemplified in family court reform efforts, which produced a "therapeutic" emphasis around addressing domestic violence where "the main goal of the law was to maintain the family united through reconciliation" (64). At the same time, the Chilean polity itself was cast as a family to be held together, with reconciliation understood as an activity of "'refound[ing]' the spiritual patria" (57): "the Concertación often used 'reconciliation' to portray the nation as a family led by the symbolic father figure of the president who tried to reconcile his squabbling children through Christian example" (65).

it has developed in Canada, yet there are important differences between the two contexts. The history of colonization in Australia is an encounter with different peoples, one that began nearly two centuries later and did not include the kind of competition with a rival colonial power that had such a constitutive effect in the development of Canada. It also did not include treaty-making with the Indigenous peoples on whose territories the British colonizers came to settle, though it did involve practices of conciliation (Edmonds 2016). However, while colonialism has played out in context-specific ways, the dispossession, colonial violence, racism, and systemic discrimination perpetrated against Indigenous peoples on both continents has been similar.

The language of reconciliation emerged as the product of Indigenous resistance to the Australian state right around the same time as it appeared in Chile. Indigenous peoples challenged the legitimacy of the settler state and its reliance on the doctrine of *terra nullius*, and their discriminatory treatment at the hands of state institutions. Like in the Canadian context, as is discussed in later chapters, engagement with the relationship between Australia and Indigenous peoples occurred through both mobilization around land rights and investigations into patterns of systemic discrimination and abusive treatment by the state. On the one track was strong activism that included persistent calls for recognition of prior occupation and the creation of a treaty as well as the pursuit of title claims through the courts (D. Ivison 2010, 127; Little 2020; Muldoon and Schaap 2012; Russell 2005). On the other was a series of parliamentary committees and royal commissions tasked with studying various facets of the relationship between Indigenous peoples and Australian settlers (Celermajer 2010, 126; de Costa 2002a, 410; D. Ivison 2010, 127-28; Little 2018, 108). These tracks converged at the beginning of the 1990s. At this juncture, the report of the Royal Commission on Aboriginal Deaths in Custody,[28] which refers to reconciliation throughout, coincided with the Labor government's decision – instead of

[28] The report can be accessed here: http://www.austlii.edu.au/au/other/IndigLRes/rciadic/

heeding Indigenous peoples' call for a treaty – to focus on changing the administration of Indigenous affairs and building better relationships between Indigenous and non-Indigenous people in Australia, effectively choosing an interactional approach over a structural one.[29] As elsewhere, the politics of reconciliation were woven through with theological influences. In an article detailing the Christian underpinnings of reconciliation in Australia, Michael Phillips notes that "[t]he text of the parliamentary motion of reconciliation moved by Prime Minister Hawke in 1988 was taken from a pamphlet entitled 'Towards Reconciliation in Australia' produced by 14 Australian Christian Churches" (2005, 113), and suggests that the approach taken by the government in the early 1990s might be understood as a form of "policy penance" (120). Reconciliation as an official state project began in 1991 with the creation of the Council on Aboriginal Reconciliation (CAR), which had a ten-year mandate to "build a base of public support broad and strong enough to enable some significant 'reconciliation' with Aboriginals and Torres Strait Islanders to take place in 2001, Australia's centenary year" (Russell 2005, 227).

These developments took place in a context of extremely polarized politics in Australia. This polarization shaped the policy choices that were made in significant ways that are deeply intertwined with how "reconciliation" was made to mean diverging things in debates over social, economic, political, and legal relationships between Indigenous peoples and settlers. The Labor government that was in power in the 1980s and early 1990s was more sympathetic to Indigenous peoples' claims and flirted with the possibility of pursuing the development of a treaty – though, not conceived in a way that aligned with what Indigenous people were advocating for (221-23) –

[29] Russell suggests this was largely about "legitimating the Commonwealth government's policies for Indigenous peoples" and that it facilitated "self-management" rather than self-determination (2005, 223-24). Little observes that there is "no clear agreement" as to whether the concept of reconciliation served to complement or marked a move away from a focus on treaty and the concept of Makarrata (2020, 47). Per Russell, the Hawke government shied away from committing to treaty (2005, 223), and Little and Schaap both incline towards the perspective that the rise of reconciliation constituted a break away from treaty on the part of the state (Little 2020, 47).

and new legislation around Indigenous title. However, there was virulent opposition by the conservative opposition parties in Parliament as well as various agricultural and industrial interests (219). This followed an earlier parliamentary committee study into the possibility of a treaty that resulted in a report that ultimately chose instead to focus on "changing societal attitudes" (D. Ivison 2010, 127). The atmosphere only became more negatively charged in the mid-1990s. The newly elected government under John Howard reacted bitterly to the Australian High Court's decisions regarding Indigenous title in the ground-breaking *Mabo* and *Wik* cases by cutting funding to the CAR by a quarter (128). Howard indicated that "the *Racial Discrimination Act* was not sacrosanct" as the government set about its legislative response with a view to addressing the "uncertainty" the *Wik* decision had caused for farmers (de Costa 2002a, 399), and "singularly attacked reconciliation with an angry and oppositional speech at the Reconciliation Convention in Melbourne in May 1997" (Altman 2016, 218).

Yet, what is notable about these developments on the discursive front is that while Howard's views towards Indigenous affairs policy evidently differed dramatically from those of his Labor predecessors Bob Hawke and Paul Keating, which themselves remained a far cry from the kinds of transformations that Indigenous peoples were seeking, he nevertheless embraced the language of reconciliation in the change of course he pursued.[30] As Ravi de Costa writes, "Howard saw that reconciliation would work in a conservative cause, his case for social 'balance'" (2002a, 400). He narrowed the scope of "reconciliation" to focus specifically on the socioeconomic position of Indigenous peoples in Australian society under the banner of what he referred to as "practical reconciliation" (Altman 2016, 219; M. Phillips 2005, 121). Practical

[30] Similar dynamics have played out in Canada where polarized debates have seen political opponents both frame their approach as reconciliation, with the debates over modern treaties in BC in the late 1990s and early 2000s providing a key example, as is explored in chapter 9. For an analysis that provides a joint exploration of reconciliation in Australia and treaty politics in BC, see de Costa (2002b).

reconciliation was to be consciously future- and not past-oriented and "must *presuppose* an overriding and unifying commitment to Australian institutions" (D. Ivison 2010, 128; italics in original; see also Altman 2016, 219; Smits 2008, 240). This conception of reconciliation differed significantly from the vision of "reconciliation with justice" put forward by Indigenous peoples (M. Phillips 2005, 120), and marked a shift away from the vision that had been introduced by the Royal Commission on Aboriginal Deaths in Custody (de Costa 2002a, 410).[31] Contrary to Indigenous peoples' calls to recognize the illegitimacy and violence at the foundations of the state and to transform structures and relationships in such a fashion as to enable trust and justice, Howard's approach to reconciliation reaffirmed the foundational myths of the state and reinforced a homogenizing unity in a way that "showed tremendous skill in transforming the latent confusion over what reconciliation actually was into something that was easily constrained" (410). His refusal to condemn or apologize for past harms went further even than what Stewart Motha diagnoses as a "postcolonial gesture" of reconciliation that abhors and disavows the violence of the past at the same time as it reaffirms it as the foundation of the state whose bounds are all-encompassing and cannot be called into question (2007, 77). This serves as another example of how "lived fictions" used to pursue or uphold certain visions of unity can be bound together with different kinds of exclusion (Grant 2018, 6) – in this instance through both a constitutive original violence and a refusal to recognize it as such in a substantive manner in the present. Tensions between competing visions of reconciliation amidst persistent conceptual confusion have continued to define the political debate around relationships between Indigenous and non-Indigenous people in Australia through subsequent developments, which include an

[31] See also Little (2020, 42-50) on divergences of interpretation and application of the Yolngu concept Makarrata and their relation to debates over treaty, reconciliation, and justice throughout this period.

apology to the Stolen Generations in 2008[32] and have most recently been focused on the question of constitutional recognition (Henry 2015, 204; Little 2018, 109; 2020).[33] The presence of myriad competing visions and the absence of "outcomes agreed to at the start of the process" results in "the debate proceed[ing] in Australia as if we knew – and agreed on – exactly what reconciliation was," and yet the reality is anything but (de Costa 2002a, 401; Little 2018, 112).

2.3.2.3 South Africa

Following shortly on the heels of Chile and Australia, South Africa was the third political community to establish a state institution that foregrounded "reconciliation," though of the three is likely the most widely known. As Trudy Govier has noted, it entails something different to approach the question of reconciliation in a context of settler colonialism, a post-war society, or a post-totalitarian state; at the outset of its official project of reconciliation, South Africa was all three of these (2006, 21-22). Here, reconciliation was a story of reckoning with the legacies of British and Dutch colonialism, the apartheid state constructed by the Afrikaner Nationalist Party to segregate and dominate the majority Black population of the country, and the violence wrought by the war between the government and the armed wing of the African National Congress (ANC) as it fought for liberation from the oppressive strictures of apartheid. While the TRC established following the first election after South Africa's transition to democracy in 1994 is arguably the most recognized feature of the country's reconciliation story, Erik Doxtader

[32] This was a response that had long been sought in the wake of the *Bringing Them Home* report on the state policy of removing Indigenous children and "placing them with white families in order to assimilate them into mainstream Australian society" (Hayner 2011, 14). The report is available here: https://bth.humanrights.gov.au/sites/default/files/documents/bringing_them_home_report.pdf

[33] As elsewhere, varying discourses and practices of reconciliation in Australia have not only operated at the state level but have also at the local and interpersonal levels, including through social and artistic projects (Edmonds 2016; D. Ivison 2010, 129). On the complex and ambiguous place such reconciliation initiatives can occupy amid the tension between the work of shifting societal attitudes and the tangible project of structural transformation, see de Costa (2002a, 407-8). For analysis of significant contributing contextual factors regarding conceptions of reconciliation and of Indigenous peoples' place in Australian society, see Altman (2016) and Walter (2014).

argues that it is a "myopic assumption that reconciliation in South Africa began with the TRC" (2012, 28). In fact, as he traces in *With Faith In The Works of Words* (2009), notions of reconciliation stretch back decades earlier and are at the very root of the injustices that eventually gave rise to this well-known exercise of political reconciliation.

The account of the development of reconciliation laid out in Doxtader's book shows just how complex and deeply contradictory divergences over reconciliation can get. He demonstrates how reconciliation in South Africa was not only a response to injustice in the wake of apartheid, but in addition to that played a role both in justifying the creation of the apartheid state, and in opening a space for peace negotiations amid a state of emergency that allowed for a beginning to the end of the conflict. Recounting developments that carry echoes of the history of Canada (though the two contexts also vary greatly), he traces the beginnings of the conflict back to the end of a war between the two occupying colonial powers, when the Anglo-Boer War itself ended in "a call for 'conciliation'" leading to the *South Africa Act* as there was a "growing desire for a united white nation" (2009, 44-45). Exploring the development of Afrikaner nationalism and the particular strain of Christian doctrine that supported it, as exemplified by the Nederduitse Gereformeerde Kerk (Dutch Reformed Church), Doxtader explains that the first variant of reconciliation to appear in South Africa took the form of an argument that there was natural differentiation among human beings with respect to race and that God wished for races to develop separately as this was a "preparation for a reconciliation to come" when they would attain "unity in diversity" in the next life (49, 50-51). This line of thinking about reconciliation was used to provide the moral justification for the development of the apartheid system formalized following the National Party's electoral victory in 1948 (54-55) – a most brazen example of unity being invoked to support exclusion (see Grant 2018). Here, the idea of "unity in

diversity" was used to justify a system of segregation, inequality, and oppression, sitting in stark contrast with the idea of unity in diversity associated with the notion of federalism that – at least theoretically – comprises the equality and cooperation of distinct parties.

Doxtader then details how conceptions of reconciliation also played a role in the struggle over ending apartheid as well as in grappling with its legacies during and after the transition to a new system. During the conflict, contestation of the theological justification of apartheid in the English-speaking churches led to the development of a competing vision of reconciliation that gradually took on political dimensions advocating the dismantling of apartheid (2009, 57-73). A key moment in this process was the release of the *Kairos Document* by a group of religious leaders (VanAntwerpen 2014, 86-88). This document presented a call to reflection and political action for Christians in resistance to apartheid centred on a theological analysis of the concept of reconciliation, which included a recognition of the multiplicity of meanings of reconciliation and an argument that applying some of them to the case at hand would be unjust:

> In a private quarrel between two people or two groups whose differences are based upon misunderstandings it would be appropriate to talk and negotiate to sort out the misunderstandings and to reconcile the two sides. But there are other conflicts in which one side is right and the other wrong. There are conflicts where one side is a fully armed and violent oppressor while the other side is defenseless and oppressed. There are conflicts that can only be described as the struggle between justice and injustice. To speak of reconciling these two is not only a mistaken application of the Christian idea of reconciliation; it is a total betrayal of all that Christian faith has ever meant. Nowhere in the Bible or in Christian tradition has it ever been suggested that we ought to try to reconcile good and evil, God and the devil. We are supposed to do away with evil, injustice, oppression and sin – not come to terms with it. (*CrossCurrents* 1985, 373)

In addition to theological contributions to resistance to apartheid, Doxtader suggests that implicit understandings rooted in the ANC's and the government's respective nationalisms also played a role in envisioning reconciliation (2009, 93). The ANC and the National Party both spoke of reconciliation amid attempts to establish a climate for negotiation (111-12). The conception of

reconciliation as coming to terms with something then also appeared in other guises once the parties undertook to negotiate peace and transition. For instance, President F.W. de Klerk, two years after reformulating the state's relationship to "unity in diversity" by declaring that its time had come (121), "argued that 'all South Africans now have to reconcile themselves once and for all' to the fact that there 'will be born a new constitutional order'" (159).

The new constitutional order was instantiated with Nelson Mandela's election in 1994. The following year the *Promotion of National Unity and Reconciliation Act* was passed, giving rise to the creation of the TRC (Hayner 2011, 27).[34] This commission was "modelled explicitly on the Chilean example" (Norval 1998, 252). With the TRC came a whole new phase of debates over the meaning and value of reconciliation. Two key controversies around the TRC's approach centred on a provision allowing for amnesty for perpetrators of crimes during the period of apartheid and liberation struggle, which raised concerns about impunity and caused many to draw parallels to "[t]he association of reconciliation with the history of impunity in Latin American countries" (VanAntwerpen 2008, 37), and on the prominent emphasis placed on the necessity of forgiveness and its associations with Christian theology (Gobodo-Madikizela 2009, 38; Govier and Verwoerd 2002, 180). Differences of opinion existed both outside and within the TRC (VanAntwerpen 2008, 26). A particular concern was that an approach to reconciliation centred on therapeutic notions of healing and forgiveness eclipsed fundamental issues regarding the economic injustices of apartheid and its legacy of material inequality, thus failing to meaningfully initiate a reckoning with the need for structural transformation (Moon 2007). The TRC had both detractors who were opposed to acknowledging harm or "too much dwelling on the past" and who found its mode of addressing harm and uncovering the truth of past harms insufficient (Norval 1998, 254; 2009, 311), and a certain degree of ambivalence marked the

[34] The final report of the TRC is available here: https://sabctrc.saha.org.za/reports.htm.

years following its work with profound questions about redress and reconciliation remaining outstanding in its wake (Hayner 2011, 31-32; Norval 2009). Though the preponderant association of reconciliation in South Africa is with the TRC, the pursuit of reconciliation, justice, and democracy in the wake of apartheid was not designed to be vested entirely in the TRC but rather in a constellation of several institutions, and the others continue their work.[35]

2.3.3 Transnational Policy Transfer and the Proliferation of Reconciliation

In the years following the South African TRC, there has been a widespread global proliferation of the use of transitional justice mechanisms, and of TRCs and their attendant discourses of reconciliation in particular. There is no doubt that South Africa looms large in both the study and the practice of reconciliation of the last thirty years. This may in part be a social influence, in that the world was watching and many people remember the movement to boycott the apartheid state, Mandela's release from jail, South Africa's first democratic election, and the launch of the TRC. There was also a concerted effort in the aftermath of the South African TRC to support the transnational policy transfer of such a truth commission as a mechanism for dealing with conflict in other divided societies. Several NGOs, such as the International Center for Transitional Justice (ICTJ) and the Institute for Justice and Reconciliation, were established to develop expertise on reconciliation and transitional justice and standardize truth commissions such that a model could be employed in other contexts outside of South Africa (Ancelovici and Jenson 2013, 300-1; VanAntwerpen 2008, 27; 2014, 92-101), which likely played an important role in this influence as well. In this regard, reconciliation and transitional justice have become "something of an industry" (Oduro and Nagy 2014, 98), as transnational actors such as the ICTJ collect, develop,

[35] I owe this observation to conversations with Janice Dowson about her doctoral research.

and propagate "best practices" and serve as consultants around truth commissions and reconciliation in different political contexts (98; Ancelovici and Jenson 2013; Arthur 2009; VanAntwerpen 2008, 2014). It is important to note, however, that the role of transnational actors predates the South African TRC as well. Marcos Ancelovici and Jane Jenson point to the contribution – both in terms of intellectual influence and personnel – of a series of conferences on transitional justice organized in the 1980s by the Aspen Institute and the Ford Foundation, which also helped to establish the Centre for the Study of Violence and Reconciliation in South Africa in 1989 (2013, 299-300; see also Arthur 2009). While there has been significant effort to decontextualize and standardize the South African model for export and to align it with UN efforts around peacebuilding and reconciliation (Ancelovici and Jenson 2013, 303; Henry 2015, 206-7), it seems to be more the general idea of TRCs that is being proliferated than a particular version (Oduro and Nagy 2014, 97). Countries have been influenced by South Africa but have drawn inspiration from other contexts that have employed truth commissions as well (92), and the influence of transnational actors remains tempered by "domestic structural conditions" shaping the specific contexts where transitional justice mechanisms are adopted (98).

As noted previously, a more recent development on this front is the adoption of transitional justice mechanisms in political contexts that are not understood to be in transition in the sense embedded in Teitel's three phases, which points to a new phase or a stretching of the established boundaries of transitional justice. This shift has included a particular focus on political contexts shaped by settler colonialism and the transatlantic slave trade. Established democracies, including Canada, have employed mechanisms such as truth commissions, political apologies, reparations, and commemoration projects, along with discourses of healing and reconciliation – "institutions and language shaped by the experiences of paradigmatic transitional

practice" (Winter 2014, 5) – that had previously been primarily associated with contexts emerging from authoritarian rule and/or armed conflict.[36] The stakes of these debates are high in settler colonial societies as "redress potentially threatens these polities by undermining their constitutional basis, their embrace of territory, their legal practice and their forms of governance. The danger posed by redress is potentially existential" (Winter 2014, 14-15). For some, the ability to raise these existential questions is precisely the promise of transition in such contexts, as it allows for questioning the legitimacy of the state and spurring a discussion about "what sort of political transformations are required or desired" (Henry 2015, 217, 209). Absent a transition of the kind associated with those "paradigmatic" cases, there is much debate about whether the use of these mechanisms in established democracies constitute "transitional justice" and if so, what transition entails in such contexts, as well as about their transformative potential (Jung 2011; Henry 2015; Matsunaga 2016). As such, like elsewhere, the place of reconciliation within this form of transitional justice is diverse, fraught, and contested.

2.4 Conclusion

With the global emergence of transitional justice and the decision to employ some of its mechanisms in the Canadian context, the widespread use of explicit normative reconciliation discourses became very prominent. In the time between the early development of constitutional relationships in Canada and this emergence, significant shifts took place within Canadian society and with respect to Canada's place in the world, and new conflicts piled up in the relationships between Canada, Québec, and Indigenous peoples. Canada slowly developed greater

[36] For example, there have been political apologies and commissions in the United States as well as in Australia and Canada (NPR 2008; Miller 2021; R. George 2020), with others sought, planned, or underway in Australia, the United States, and Finland (Yoorrook Justice Commission 2021; Brown 2021; Minneapolis 2021; Truth, Justice and Reconciliation Commission n.d.; Truth and Reconciliation Commission Concerning the Sámi People 2021).

independence from Great Britain, constructing its own citizenship regime and establishing a welfare state in the aftermath of WWII, and taking steps to define and assert its own national identity. Conflicts deepened with French Canadians as a result of the Manitoba schools crisis and the fallout of the conscription crises during the two wars in Québec (Rocher 2018), and mounting pressures accompanied Québec beginning to develop its own state infrastructure after WWII. This transformation included asserting linguistic and cultural rights and demanding an end to the inequities that permeated the Anglo-dominated political economy of the province. Among these developments came the rise of the Québec independence movement, which at times erupted into violent conflict through the actions of the Front de libération du Québec (FLQ).

For Indigenous peoples, oppression at the hands of the Canadian state had only deepened since Confederation, as the *Indian Act* controlled virtually every aspect of daily life, disrupting Indigenous peoples' forms of governance and imposing colonial structures overseen by government agents, banning the practice of cultural traditions, and forbidding Indigenous people from participating in Canadian democracy or pursuing various forms of education and employment unless they surrendered their status and identity as Indigenous people.[37] There was a hiatus in treaty-making after 1923, and Indigenous people were prohibited under the *Indian Act* from becoming or hiring lawyers to pursue land claims and other grievances against the Canadian state. Throughout this period, they were also subjected to the Residential Schools policy, which was part of an aggressive assimilation campaign aimed at converting Indigenous people into French- and English-speaking Christian members of the mainstream Canadian society and economy. These policies also worked in tandem to gradually separate Indigenous peoples from their territories by disrupting their traditional cultural, economic, and political

[37] For a brief but telling account of the all-compassing nature and deeply detrimental effects of the *Indian Act*, see Bob Joseph's *21 Things You May Not Know About the Indian Act* (2018).

structures and to end the responsibilities committed to under the treaties by eroding formal Indigenous identity.[38] Indigenous people have engaged in varying forms of resistance to these policies at all stages. In the wake of WWII came changes in international norms around human rights and legislative changes in Canada that granted Indigenous people the right to vote without surrendering their status and amended the *Indian Act* to remove the ban on lawsuits. These changes helped to enable a new phase of resurgent Indigenous activism against state violence enacted upon their lands and identities, pivotally including resistance to an attempt in 1969 to advance a policy that would formally end all distinct status for and commitments to Indigenous peoples in the name of undifferentiated equality with Canadian citizens.

This context, as is explored in further detail in the coming chapters, coincided with the global developments around transitional justice and the emergence of reconciliation in Chile, Australia, and South Africa. None of these developments occurred in a vacuum, and there were various lines of communication between these different places. The events that took place in Canada and the particular discourses that emerged in their midst are specific to its context. However, there are also resonances with the emergence of reconciliation elsewhere in that the questions that accompanied it also pertain to competing attempts to challenge or reinforce differing notions of national unity and to reckon with the historical and ongoing forms of violence that lay at the foundation of the state – what James Drabinski calls "founding wounds" (2013). There is something new about the reconciliation discourses that have emerged over the last four decades and yet they rest on a longer history of uses of the term and can be connected to a sense that there is some kind of "reconciliatory *ethos* of constitutional democracy" in Canada (Tully 2000, 32). Similarly, the conflicts that call forth conversations about reconciliation in the

[38] See Harrison and Williams (2019) for an analysis of the eliminationist and paternalistic logics that characterized Canadian policymaking during this period.

present include recent and ongoing injustices that are also intertwined with a longer history of conflicting visions and violence that stretches down to the roots of constitutional relationships on these lands. As we have seen, these patterns have developed in ambiguous and uneven ways over time, as have the shifting applications of ideas of reconciliation to the conflicts and resolutions between the parties. A range of uses of reconciliation appeared during early stages of the development of constitutional relationships, including in expressions of both support for and opposition to Confederation. There are competing interpretations of the various political practices and institutional arrangements (re)conciliation was linked to at those points. Later uses in other parts of the world also highlight the widely diverging range of relationships between discourses of reconciliation and political oppression. These examples all collectively highlight reconciliation's complex relationships to inclusion and exclusion in how it is linked to pursuing different forms of unity. In the remaining chapters, we will see how the specificities of these patterns unfold in the relationships between Québec and Canada, and between Indigenous peoples and Canada, as more explicit normative discourses of reconciliation begin to emerge and come to frame discussions about constitutional politics.

Chapter Three

The Emergence and Development of Discourses of Reconciliation with Québec: 1963-1990

3.1 Introduction

As we have seen, use of the term reconciliation regarding the relationship between Canada and Québec was not wholly a 20th century novelty, but the developments of this era ushered in both an increase and a shift in its uses. Joining – and intertwined with – continued uses of the types of references to reconciliation relating to federalism and democracy explored in the previous chapter came a seemingly new reparative form that followed in the wake of the adoption of the *Constitution Act, 1982*. These uses explicitly named reconciliation as a normative political goal or described constitutional negotiations as efforts at reconciliation, emerging in the 1980s and carrying on through the 1990s and early 2000s. The outcome of political and juridical events in these three decades is that reconciliation now occupies a central place in political thought and public debates about constitutional politics in Canada. Curiously, however, while the protracted period of constitutional reform discussions began as a result of Québec's struggle for greater autonomy within the federation, and the language of reconciliation made many appearances in media coverage, political debates, and academic scholarship during this period, public memory of this connection has faded. This is likely a result of these rhetorical associations being currently much less common, while at the same time the association of the term with Indigenous peoples has grown exponentially. Further, as the following chapters show, the use of reconciliation discourses in relation to Québec was not materialized through the creation of institutions in the way that discourses of reconciliation with Indigenous peoples have been. As a result, though the term is still occasionally associated with Québec-Canada relations, understandings of its application have shifted in the last two decades such that people are often surprised to hear that it

was once common to talk about reconciliation between Québec and Canada.

And yet, the constitutional relationship between Québec and the Canadian federation was the repeated focus of normatively oriented reconciliation discourses over more than two decades in the wake of the patriation of the Canadian constitution. This chapter and the next explore this component of the genealogy of reconciliation in Canadian constitutional politics, showing that *how* reconciliation emerged in this context is deeply interlinked with the exclusion of Québec from the *Constitution Act, 1982*, while also involving ongoing debates about the compatibility of its aspirations with those of the rest of the federation. The *when* of reconciliation's emergence in this context can loosely, if not tidily, be broken into stages linked to successive political events associated with the constitutional reform efforts after patriation in 1982, distinguishing the first wave of reconciliation efforts from those that followed its failure. The first stage, which is taken up in this chapter, involves the efforts to pursue "reconciliation and national unity" during the first term of Brian Mulroney's government, culminating in the negotiation of the Meech Lake Accord in 1987. Chapter 4 then explores the continuities and shifts that marked the development of reconciliation discourses in the stage that followed the Accord's collapse in 1990.

The chapter begins by exploring the context of reconciliation's emergence in this period by considering the uses that appeared in constitutional debates prior to patriation (sec. 3.2). It then details the circumstances around the patriation of the constitution in 1982 that led to the conversation about national reconciliation in the years that followed (sec. 3.3). These sections highlight the continuation of consistency-type discourses relating to understandings of federalism and the work of politics broadly introduced in chapter 2, and demonstrate the link between emergent discourses of reconciliation after patriation and earlier discourses of national unity that came with the onset of constitutional negotiations spurred by the Quiet Revolution in Québec.

Section 3.4 marks the arrival of a much more central focus on reconciliation that also brought with it a distinct discourse of reconciliation as political healing that joined the ongoing use of consistency/compatibility-type uses of the term. The Mulroney government's efforts to address the fall-out from the patriation of the constitution for the Canada-Québec relationship established the prominence of discourses of national reconciliation connected to the goal of constitutional reform. The first stage of these efforts, culminating in the successful negotiation of the Meech Lake Accord, reflected a hopefulness for reconciliation in the form of the completion of the constitutional project initiated in 1981-82, which many regarded as unfinished. The uses of reconciliation during this period feature primarily the consistency and relationship forms of the term as applied to relations of opposition, and include some proposals that countenance structural changes in addition to interactional ones. Uses of the term are generally unaccompanied by definition or theorization and often seem to be a product of coincidental or inadvertent word choice, even when featured in key documents and not just when used in passing in verbal debates, though one parliamentary committee report did draw attention to the unusual nature of applying it to constitutional politics. The developments traced in this chapter, both discursively and politically, set the scene for what followed through the 1990s and into the early 2000s as constitutional tensions between Canada and Québec reached a new fever pitch before fading into the background behind other political priorities, and reconciliation discourses with them.

3.2 "[A] country intact, but worried and cranky": The Lead-up to Patriation

The Quiet Revolution in Québec is widely held to have been the initial spark for the decades of constitutional negotiations that comprise the context in which more explicit normative discourses of reconciliation gradually appeared in Canadian politics. While there were evidently tensions in

the relationship between French and English as well as between Québec and Canada previously, this period marked the beginning of a new phase. As Lester B. Pearson[1] put it, with the Quiet Revolution came "a major political development: the emergence of a new Quebec, a Quebec determined to be recognized in confederation more substantially than in the past" (1975, 243). Looking back from amid the constitutional turmoil of the early 1990s, Laurier LaPierre describes Québec's sociopolitical transformations in the early 1960s as "[t]he catalyst that has brought about today's constitutional confrontation and struggle for reconciliation" (1992, 178). The period between the Quiet Revolution and the patriation of the *Constitution Act* did not yet see the volume of uses of reconciliation that emerged in the wake of the rift that opened – or, depending on one's perspective, widened – in 1982. Still, it was intensely preoccupied with debates over the nature of the Québécois and Canadian collective identities, and punctuated occasionally with the same variety of different kinds of references to reconciliation appearing during earlier periods.

Key among these, descriptions of Canadian federalism have long included invocations of the reconciliation of unity and diversity, going back to the debates described in chapter 2. As noted there, it appeared in the report of the Royal Commission on Dominion–Provincial Relations's description of federal union (1940, 29). That report also contained references to the reconciliation of conflicting interests (55, 182, 184, 251), which is another recurring use of the word reconciliation. In these types of uses, reconciliation generally refers to a rendering of compatibility or consistency within relations of opposition between two things. By and large, until the period immediately leading up to the patriation of the constitution, these were the primary uses of the term, and they remained in use alongside pleas for reconciliation as a normative goal for political relationships once these began to appear.

As the Quiet Revolution took hold in the 1960s, discussions about Québec's place in

[1] Prime Minister of Canada from 1963 to 1968.

Canada and the balance of power and jurisdiction within the federation came to the fore.[2] They were institutionalized through the creation of the Royal Commission on Bilingualism and Biculturalism (B&B Commission) and several subsequent commissions and parliamentary committees, as well as a series of First Ministers' Conferences (FMCs). In 1956, the report of Québec's Commission royale d'enquête sur les problèmes constitutionnels had addressed the challenges of reconciling British parliamentary government with federalism and the statist doctrine with French Canadian principles (2:102, 315), and argued that it would be necessary to reopen the Constitution in order to *concilier* the social, political, and economic reality of Québec and the principles of political community and federalism with the practical exigencies of contemporary Canadian politics (3:201).[3] At this point, the language of "national unity" was generally much more prominent than the language of "reconciliation," though the latter was a significant enough implied theme that the B&B Commission, for example, has been described in retrospect as "une tentative de réconciliation nationale" (Lapointe-Gagnon 2018, 9). LaPierre presents the enduring questions of the period, as people grappled with the stark outlook presented in the B&B Commission's preliminary report announcing that Canada was in crisis, as follows: "What could reconcile Québec to Confederation? And what constitutional formula would best meet her needs and those of the Canadiens scattered across the country?" (1992,184-85). In the records of the debates from the two decades preceding patriation,[4] the term is

[2] This paragraph includes revised excerpts of a section from Wyile (2017a, 615).

[3] The Commission royale d'enquête sur les problèmes constitutionnels (1956) as well as the Commission d'enquête sur la situation de la langue française et sur les droits linguistiques au Québec (1972) both use *(ré)conciliation* a number of times. However, outside those noted above, these uses largely refer to financial reconciliation (1956, 4: 40-41), or to the need to *concilier* different principles, powers, interests, statements, needs, or activities (e.g., 1956, 2: 40-41, 102, 315; 1972, 1: 145, 2: 51-52, 63-64).

[4] In addition to the royal commission reports and court decisions that are discussed in this chapter, the main source for the data considered is the array of documents available at primarydocuments.ca, a database of historical constitutional documents hosted by the Canadian Constitution Foundation. I searched it for "concil*" to turn up any documents containing "reconcile," "reconciliation," "*conciliation,*" "*concilier*," "*irréconciliable*," etc, and then searched the PDFs from the resulting list and pulled out the passages containing one of these words. These findings

primarily employed in the consistency/compatibility sense to speak of reconciling opposition between divergent objectives or interests, conflicting points of view, differing approaches to problems, and the like, to raise queries about apparently contradictory statements, to celebrate or call for a conciliatory approach, to address the harmonization of different roles or jurisdictions, or of certain situations with particular principles or objectives.[5]

While the references to reconciliation that were peppered throughout the discussions about national unity surrounding the B&B Commission and the constitutional negotiations in the decades that preceded patriation were mostly of this type, there were occasional uses of the term that foreshadowed the kind of reconciliation narrative that would become more prominent later. For instance, a July 1963 editorial hoping that the B&B Commission would lead to stronger national unity proclaimed: "No doubt it will release across the country many extreme views and harsh words. … (But) through the liberation of the national neuroses a larger and reconciling healing will come, and come it must" (quoted in *Montreal Gazette* 2019; ellipsis and parentheses in original). Here reconciliation is given a more interactional sense and paired with healing, as well as an implied origin in truth-telling, two other concepts that later became frequent companions of reconciliation in some of its discursive uses. Grappling with English Canada's prior sense of denial in the face of the "possibility of estrangement" from Québec and mistaken "assumption of Canada's permanent unity," a *Journal of Canadian Studies* editorial in 1967 took the question of the relationship between reconciliation and unity in a rather different direction:

> As the realities of sentiment and aspiration in both parts of the country become clearer, the possible incompatibility of these separate sets of attitudes becomes

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were somewhat impaired by technical challenges in that not all of the PDFs were functionally searchable, while others appeared to be but then did not turn up results for "concil*" despite having showed up in the initial search result list. If documents were short enough, I read through them to look for results, but it was not feasible to read all the unsearchable documents. As such, there may be references that I missed. Further, it is not possible to account for occasions where political actors used the term "reconciliation" in fora where it was not captured in a written record.

[5] For select examples, see e.g., Constitutional Conference (1969, 8, 19, 30, 39, 44); SJCSHCCC (1972, 28, 52, 82).

> clearer too. If Quebec is determined and powerful enough to frustrate or paralyze the federal system; if English Canada is determined to preserve that system for itself in more or less its present form, then is not one possible path of reconciliation the acceptance of a degree of disengagement between Quebec and federal Canada? (D. Smith 1967, 2)

Here reconciliation is once again linked to questions of compatibility and incompatibility, but associated with an acceptance of incompatibility rather than the achievement of a compromise that will create compatibility or require consistency. It proffers the premise that the goal of reconciliation might be achieved by means of structural change that could then enable different interactions, as disengagement would allow the federal system to operate in English Canada without interruption by Québec.[6] The conundrums surrounding calls for reconciliation in Canada are captured in a passage from a chapter LaPierre contributed to *The Canadians* in 1967, where he wrote: "the things most hoped for in Canada often involve the reconciliation of the irreconcilable: the ideals of the nation and *la nation*, of east and west, of federal and provincial claims; all within a framework complicated by size and lack of unity of purpose, economic diversity and social inequality" (quoted in LaPierre 1992, 178). The notion that what there is to be reconciled is not reconcilable also appears among more general statements suggesting that reconciliation is the overarching task of prime ministers specifically, or politicians more broadly (see Halifax *Herald* quoted in Pearson 1970, 242). As Alberta MLA and NDP leader Grant Notley put it during a hearing of the Special Joint Committee on the Constitution in 1981, the work of politicians is that "[y]ou have two totally conflicting points of view which you have to reconcile. I suppose it is a matter of judgment as to where you draw the line" (1981a, 33:130). It is also not unusual for this orientation towards reconciliation to be presented as an especially Canadian attribute. For instance, at a constitutional conference in 1969, Ontario Premier John

[6] Similar arguments have been advanced by others at different points in the debate over Québec's relationship to Canada. See e.g., Parti Québécois excerpted in Fidler (1991, 45); Laforest (2004, 41).

Robarts stated, "Inevitably, we are going to fall back on the great Canadian characteristic of compromise, because some of the points of view might be termed to be irreconcilable; and yet they have to be reconciled. This will only be done through the exercise of great judgment, goodwill and an eventual compromise of positions. And this we can do" (Constitutional Conference 1969, 20). Narratives about reconciliation being a Canadian characteristic appear at multiple stages of the constitutional saga that ensued over the following three decades.

The protracted era of constitutional reform negotiations seeking to address Québec's concerns about the structure and functioning of the Canadian federation that began during this period was initiated under Pearson's government. While the language of national unity – rather than reconciliation – was dominant during this period, we can see the same kinds of positions emerging in these discussions that later underlie certain uses of reconciliation. Indeed, recalling the significance of how concepts operate in relation to each other in reflecting on the functioning of political discourses (Connolly 1993, 11-14; Little 2018, 91, 99-100), it is notable that reconciliation emerged as a companion term to national unity. For Pearson, "national unity was the major question facing Canada" (1975, 239). Within Québec, debates about identity and governance revolved around conflicting perspectives ranging from anti-nationalism to secessionist nationalism to the kind of "affirmationist nationalism" championed by André Laurendeau that was also at the heart of the vision of Canada put forward by the B&B Commission under his joint leadership (Maclure 2003, 66-67).[7] Both of these latter perspectives consisted of significant challenges to the constitutional status quo, but in ways that strove for

[7] Of course, the Commission also had significant internal divergences of vision over the nature of Canada and the place of bilingualism, Québec nationalism, and multiculturalism in the fabric of the country. For a detailed exploration of these debates, see Valérie Lapointe-Gagnon's *Panser le Canada* (2018). Many of these core concepts around which competing political visions have swirled – nation, reconciliation, etc. – are themselves the subject of contestation over multiple meanings. In the wake of the B&B Commission, "multiculturalism" became another of these. Eve Haque writes in her genealogy of multiculturalism as it emerged through the work of the commission that it "has become a term with great elasticity, which has allowed it to be taken up across the political spectrum even as its demise has been heralded time and time again" (2013, 18). The same could be said for reconciliation.

very different outcomes. Leaders of both federalist and sovereignist stripes invoked the idea of some kind of need for reconciliation in the sense of establishing consistency or compatibility in negotiations with Canada. At a federal-provincial conference in 1969, Québec premier Jean-Jacques Bertrand stated, "What we are seeking together, therefore, is the constitutional system most likely to reconcile the free growth of Canada's two cultural communities with the requirements of economic solidarity" (Constitutional Conference 1969, 30). A decade later, during his opening remarks at a FMC, René Lévesque stated that "we seek to reconcile that which appears to us of vital interest to the people of Québec, with this other required continuity, that of Canada" (1978, 12). Both statements advance circumstantial premises acknowledging necessary conditions – economic solidarity, the continuity of Canada – and seeking the structural changes that will permit Québec to uphold its culture and interests in relation to those conditions. This is again a question of rendering consistency. At the federal level, Pearson, acknowledging the real possibility that Canada could break up if actions were not taken to address Québec's concerns (1970, 292), strove to counter secessionist nationalism by putting forward a vision of unity and diversity that was more affirmative of Québec's place in a Canadian partnership and acknowledged the need for English Canada to make changes to address the dominance of English-speaking Canadians in government and private industry (195-96).

In calling for these changes, Pearson marshalled the longstanding narratives about federalism reconciling unity and diversity in a fashion that simultaneously recognized the nationhood of Québec and sought to contains the limits of this recognition in a way that prioritized the preservation of the broader Canadian state, effectively in somewhat of a challenge to the status quo yet one that also aimed to preserve it. Foreshadowing subsequent debates over the meaning of "distinct society" and now of "reconciliation," this articulation took place in a

context where "[a] great deal of breath and wordage was expended on an effort to prove that the term [nation] had different meanings in French and in English," and where there were widely varying perspectives on the implications of being a nation (Bothwell 1995, 110). Pearson described Québec as "a nation within a nation" and emphasized English–French duality as "one of the more important facts of history" giving rise to a recognition that "Canadian unity must be founded on two peoples, two languages, two cultures, and two traditions," and so his vision of unity did "not include conformity" (1970, 161). In a 1962 speech in the House of Commons, Pearson argued that the nature of Confederation was such that "national political unity would be achieved and maintained without the imposition of racial, cultural, or linguistic uniformity," and that French Canadians had agreed to a pact of "partnership, not domination" (192, 193). He noted that the imbalances and inequalities defining the country at the time meant that "it is the English-speaking Canadians who must accept the changes which are required to make a reality of full partnership" (195). This reflects the recognition of a need for an asymmetrical approach to rendering consistency between unity and diversity, with Pearson suggesting that the majority held a greater responsibility for changing the pattern of interactions (195).

At the same time, the acceptance of difference is also paired with transcending it, as Pearson suggested that making adjustments within the federation would mean that "we can look forward to a new era of strength and unity which will enable us to overcome any economic, cultural, and political differences and to go forward together as Canadians" (196). Indeed, diversity itself is framed as something held in common (279), and as such even the presence of differences is considered to contribute to unity. Emphasis on a transcendent commonality is a recurring theme in Pearson's vision, which consistently paired acknowledgement of certain kinds of diversity – described as "racial" and/or "cultural – with an emphasis on political and/or

economic unity (261, 279). On this latter point, there is no room for compromise and the limits of his recognition of Québec nationhood are clear: as he writes in his memoirs, "I never made a speech which did not emphasize that two *political* nations cannot exist within one country" (1975, 238). In a statement issued in response to French president Charles de Gaulle's infamous remarks upon his visit to Québec,[8] Pearson stressed: "Canada will remain united and will reject any effort to destroy her unity" (1970, 277). Earlier he had also suggested that while the development of different component elements of the country might proceed unevenly, they nevertheless should be headed in the same direction, implying that some kind of conformity is still required: "En somme, si nous n'évoluons pas tout à fait en même temps, nous évoluons au moins dans le même sens. C'est là l'essentiel à mon avis" (1970, 211). These invocations of unity and the limits they draw around the boundaries of what kinds of diversity are permissible demonstrate a logic that played a significant role in informing ideas of reconciliation as they increasingly emerged in national unity debates in the following decades.[9]

One of the few places where Pearson uses the language of reconciliation in reference to national unity comes in a recollection of learning that Pierre Trudeau, Gérard Pelletier, and Jean Marchand were going to run for election under the Liberal banner. He writes that "they were concerned about the pressures on federalism and believed that only the Liberal party could reconcile what they considered to be genuine Quebec nationalism with genuine participation in the Canadian confederation" (1975, 217). Pearson's assessment of these men, who he describes as "strong Quebec nationalists but good Canadians as well" (217), serves up an interesting take on Trudeau, who since that period has been widely associated with a well-known distaste for

[8] De Gaulle declared "Vive le Québec libre!" in a speech while visiting Québec in 1967.
[9] This tension in the unity/diversity dynamic reflects the dialectic relationship between unity and exclusion highlighted by John Grant (2018). As with the examples explored in chapter 2 and those that would follow later, the boundaries drawn here exhibit how a call for unity always carries with it exclusion of some form(s) of diversity, even if it includes others. In this case, cultural diversity is celebrated but diversity of political nations is foreclosed.

Quebec nationalism, and even at the time was penning essays that were quite critical of nationalism (Trudeau 1968; for analysis see Karmis 2003, 90-91; A. Burelle 2005). Some overarching aspects of Pearson and Trudeau's visions of federalism might be similar, but their approaches to attaining national unity differed significantly. If "Pearson left a country intact, but worried and cranky" (Bothwell 1995, 114), Trudeau's approach to dealing with Québec when he was prime minister amplified the worries and crankiness to an even more dramatic level and served as a catalyst for the political developments that ushered in a greater focus on reconciliation. Constitutional conflict in Canada has thus also included a cycle where one approach to reconciliation begets the need for another. Trudeau offered a vision of Canadian federalism linked to a civic nationalism rooted in rationality, individual rights, and liberal universalism (Karmis 2003, 91), embodied in official bilingualism, multiculturalism, and the *Charter of Rights and Freedoms*. While the 1979 Task Force on Canadian Unity observed that there were some "advances being made on the road to reconciliation" with respect to minority language rights (53), Trudeau's approach had the opposite of a reconciliatory effect with Québec and was achieved at the expense of Québec's lack of consent to the *Constitution Act, 1982*.[10] Brian Mulroney, following after Trudeau, arrived with a new vision of reconciliation that sought to repair the rift wrought by the events of 1981-82, but then left office with the country embroiled in conflicts brought about or at least exacerbated by his attempts at reconciliation.

[10] Alain-G. Gagnon notes that the recommendations of the Task Force embodied a vision of asymmetrical federalism that was not embraced by the Trudeau government, arguing that the undertaking rather served to buy the government time as it developed its own reform project: "D'un côté, les stratèges politiques laissaient croire qu'une voie de réconciliation pouvait être imaginée pour répondre aux attentes de tous les États membres de la fédération et, de l'autre côté, ils préparaient la vraie réplique en élaborant le projet de loi C-60: *Le Temps d'agir*" (2003, 137-38). For Gagnon, this dual strategy foreshadows the federal government's Plan A/Plan B approach in the wake of the 1995 referendum (138), discussed in the following chapter. For an in-depth consideration of the lead-up to and the fall-out from the Trudeau era on this file, see Kenneth McRoberts's *Misconceiving Canada: The Struggle for National Unity* (1997), which has also been updated to consider the developments of the last twenty years (2018).

3.3 "[A] harmonious reconciliation of the legitimate interests of all the partners"? The *Constitution Act, 1982*

In the latter part of the 1980s, speaking of a need for national or constitutional reconciliation to address political grievances became a common refrain in addition to more general uses of the consistency version of the term that had predominated earlier. The catalyst for this was a breach in the relationship created when a constitutional accord was reached without Québec in 1981, leading to the implementation of the newly patriated *Constitution Act, 1982* without Québec's consent. This exclusion came as a blow in Québec particularly as it followed on the heels of Trudeau promising to renew the Canadian constitutional order in a way that would reflect Québec's aspirations after a No vote in the 1980 referendum (Rocher 2018, 151-54).

The different kinds of uses of reconciliation explored above continued to appear during various parliamentary processes and constitutional negotiations that led up to the patriation of the constitution. The proceedings of the Special Joint Committee of the Senate and the House of Commons on the Constitution in 1980 and 1981 are sprinkled with references to reconciling competing objectives, different approaches to problems, conflicting interests or points of view, the roles and jurisdictions of different actors, and facts or objective situations with principles or goals.[11] These uses all constitute versions of relations of opposition. Concerns are raised about potentially irreconcilable visions of the country (SJCSHCCC 1981d, 52:18), and it is noted that in a Canada where it took "a spirit of tolerance and good will" to build "unity out of the diversity that we have at the present time," the role of the prime minister should be to seek common ground "so that the process of reconciliation can go on, rather than the process of divisiveness" (House of Commons 1981a, 7961). Several statements highlight conciliation as a particularly

[11] See for example FPCFMC (1980, 4, 5, 16, 20, 52, 55); SJCSHCCC (1980b, 24:14, 24:38, 24:48, 24:79; 1981b, 40:12-40:15).

Canadian value or practice, such as the suggestion that "compromise, conciliation, and consultation […] sum up what Canada is all about" (House of Commons 1981b, 8439).[12] Reconciliation also continued to appear in descriptions of federalism, such as the following normative vision put forward by Senator Arthur Tremblay:

> It is not the provinces that should be stronger than the federal government or vice versa, but rather the federation itself which should be stronger than either one. The antidote to separatism is to be found in the overwhelming force, lying not with the federal government nor the provinces but with the federation, in the reconciliation of jurisdictions, the federal and the provincial. (Senate of Canada 1981, 1838)

This kind of language appears among the constitutional proposals released by the Québec Liberal Party as well, whose Beige Paper emphasizes federalism as the only suitable form of government for Canada and describes it as "permit[ting] a reconciliation between the central apparatus and the periphery" (Constitutional Committee of the Quebec Liberal Party 1980, 26). It argues that the outcome of negotiations "should be the result of a harmonious reconciliation of the legitimate interests of all the partners" (26), resulting in a constitution that can itself reconcile "seemingly contradictory objectives" and an economic union whose central authority is able to "conciliate the interests of the different regions" through its coordinating role (129, 102). However, while these articulations are not wholly disconnected from the later constitutional debates, it was really the aftermath of patriation that shifted the discourse towards an emphasis on "reconciliation" as a name for a desired political activity rather than a term mainly used in a more roundabout fashion in descriptions of federalism, fiscal policy, or general competing objectives.

These events are, unsurprisingly, subject to multiple competing interpretations. Patriation took place under a Liberal federal government led by a Québécois prime minister, while Québec was led by a PQ government that had campaigned for Québec independence in 1980. On the one hand, there was uncertainty and concern over whether Québec's primary goal was "to wreck

[12] For other examples, see also FPCFMC (1981, 55, 120); House of Commons (1980, 3989).

Ottawa's plan for patriation" (Romanow, Whyte and Leeson 2007, 265), and whether there was perhaps no deal to which René Lévesque would consent, whether his reticence to agree to one stemmed from his own beliefs or Québec party politics or otherwise (Gendron 2014, 159; Lougheed 1993, 173; Monahan 1990, 14).[13] Lévesque, on the other hand, decried Québec's exclusion from the final negotiations and the new constitution they produced: "Cette horreur de Constitution, fabriquée sans nous, contre nous et dans notre dos, c'est le pays des autres" (quoted in Gendron 2014, 160). At the same time, some Québec federalists wondered if Trudeau would have been prepared to give Québec anything that it asked for, so determined was he to put the sovereignists in their place and to attain his desired legacy of patriation, which then resulted in "la scission de '82" (C. Pelchat, research interview, January 2018). Québec's concerns had been a major impetus for the many negotiations leading up to patriation. Now, not only did it not achieve any of its priorities in the new constitution, it found itself in a weakened position. It no longer had "what had previously been regarded by tradition as a veto over constitutional amendments affecting it," was subject to the centralizing influence of the *Charter*, and was less able to fulfill what it saw as the unique cultural and linguistic responsibilities that fell within its jurisdiction (R. Watts 1996, 357; Webber 2018, 169-70). For some, this came across as an attack on the idea of Québécois nationhood and raised significant questions about the legitimacy of the federal government in Québec (Laforest 2004, 10, 15; Monahan 1990, 14-15).

While it has been suggested that the ensuing constitutional strife of the next decade was

[13] These negotiations were, of course, significantly more complex than it is possible to capture here. Prior to the negotiation of the "Kitchen Accord," the majority of the provinces including Québec – at that juncture termed "the Gang of Eight" – had been allied in resisting the federal government's attempt to patriate the constitution unilaterally. During that stretch of the negotiation efforts, Roy Romanow notes that Québec "bargained hard, and perhaps they wanted too many powers for a province, but I did not get any explicit statements that their objective was simply to block the entire exercise" (quoted in Bothwell 1995, 173). Things changed significantly when Lévesque agreed to a proposal for a referendum put forward by Trudeau without prior warning to the others, which split the group and ultimately set the stage for Québec's isolation from the final agreement as the other provinces no longer felt obligated to honour a pact they saw Québec as having broken (174).

"caused in good measure by what happened in the middle of the night of November 4-5, 1981" (LaPierre 1992, 204), the rupture it wrought was not the only source of frustration and conflict in the early 1980s. Ronald Watts highlights three issues that lingered in the constitutional arena following patriation: "the reconciliation of Quebec, the pressure in western Canada for better representation in the federal institutions through the reform of the Senate, and the provision of self-government for the aboriginal peoples" (1996, 357). As the Progressive Conservatives (PCs) took power, they also faced the legacy of historical tensions that had been exacerbated by Pierre Trudeau's policies, particularly with respect to oil and gas, in the western provinces and in Newfoundland (Blake 2015, ch. 5-6; James and Michelin 1989, 61-62; Pollard 1986, 164-67). Efforts to address these latter areas of discontent did get linked to the project of national reconciliation in the 1980s. However, the primary undertaking associated with the term was attempting to reach an arrangement for Québec to sign the new constitution.[14]

3.4 "The ultimate reconciliation": Brian Mulroney, Lucien Bouchard, and Meech Lake

Brian Mulroney came to power in 1984 with the goal of mending the rift created by Québec's exclusion from the constitution in 1982. This endeavour was assisted by the replacement of Lévesque's PQ government with a Liberal government headed by Robert Bourassa following the 1985 Québec election, who by Mulroney's account had "made it part of his election platform to seek constitutional reconciliation with the rest of Canada" (2007, 515-16). With these two "more conciliatory leaders" in office, as Peter Russell puts it, "the scene was set for an attempt at reconciling Quebec to the changes made in 1982" (1993, 215). The appearance of reconciliation discourses themselves as part of this exercise came in different forms and from different corners.

[14] The links between reconciliation discourses and constitutional debates around Indigenous peoples' struggles for self-government following patriation are discussed in chapter 5.

Mulroney prominently used the term, as did other members of his team, including notably Lucien Bouchard. It was also employed by a royal commission that predated the PCs' election, and a parliamentary committee struck to study the Meech Lake Accord.

Reconciliation is a central theme of Mulroney's own telling of his years in office, as well as in Guy Gendron's 2014 biography of Mulroney. Mulroney's memoir demonstrates that he used the term in all kinds of fora during his time as Prime Minister: in his personal journal (quoted in 2007, 58, 638), at a Francophonie summit at Versailles (415), in a letter responding to a citizen in which he noted that one of his government's main goals was to foster a climate of national reconciliation (414). In Gendron's estimation, the seeds of Mulroney's reconciliatory mission were already visible as early as in his undergraduate thesis, in which he wrote of Canada as a pact between two peoples and argued for the importance of recognizing the distinctness of Québec (2014, 29). Gendron suggests this was a veritable matter of identity for Mulroney as an Anglo-Quebecker of Irish heritage who grew up in a "bassin culturel francophone" and was thus seeking to "réconcilier sa double appartenance" (31, 161). After 1982, Gendron notes that Mulroney felt a sense of collective responsibility with respect to Québec's exclusion during the patriation of the constitution and wanted to right the wrong: "Brian Mulroney ne voulait pas refaire l'histoire; il voulait en écrire une nouvelle page, celle de la réconciliation. Une page au bas de laquelle se retrouverait cette fois la signature du Québec" (160).

This became a theme of his election campaign. As Mulroney puts it, "In the 1984 election I offered a vision of federalism that was quite different from that of the previous government, by seeking a mandate, from Quebecers and from all Canadians, for national reconciliation" (2007, 514). According to Jean Charest, there was a sort of country-wide yearning for this kind of change: "the Liberals had been in power for a very long time, and in the eyes of the electorate

their mandate had expired. You could also sense a desire for reconciliation, a need to turn the page, after a divisive debate on the future of the country" (1998, 40). During a speech in Sept-Îles that has often been identified as a decisive moment in the campaign,[15] Mulroney announced that he would seek a way to reintegrate Québec into the Canadian constitutional family with "honour and enthusiasm" (2007, 160). Upon winning the election, the Mulroney government's first Speech from the Throne contained two entire sections dedicated to reconciliation: "Reconciliation and National Unity" and "Reconciliation and Economic Consensus Building" (Canada 1984, 22, 24).[16] The Speech calls for "a new era of national reconciliation, economic renewal and social justice" (22). It seems that this use of "reconciliation" in the framing of the Mulroney government's objectives may have been "an accident of penmanship" whereby the term was employed because it seemed to convey the desired approach (J. Clark, research interview, August 2018).[17] The latter section of the Speech indicates that in addition to the matter of national unity and Québec's place in the federation, national reconciliation also entailed addressing Western and Atlantic alienation and had an economic dimension as well. Later in his memoirs, Mulroney recalls emphasizing to his cabinet that Canadians' top priorities were economic renewal and national reconciliation (2007, 457).[18] Deployed in conjunction with unity

[15] Charest disputes this interpretation and suggests the Tories were already headed for electoral victory by this point, but notes that the speech provided the basis for a cabinet committee tasked with laying the groundwork for constitutional negotiations on national unity that he sat on along with Lowell Murray, Joe Clark, Jake Epp, Marcel Masse, Benoît Bouchard, Gerry Weiner, and Arthur Tremblay (1998, 77).

[16] The Mulroney government's second Throne Speech contained a section entitled "National Reconciliation" as well (Senate of Canada 1986, 9); its later Throne Speeches did not contain the term. Instead, "Canada's National Identity" constituted the last section of the 1989 speech, and the 1991 speech featured one on "Canadian Unity."

[17] Joe Clark speculated that the word may have made sense partly because it is a bilingual term and also that it may generally have been in the air in international relations around that period of time. He did not know where the term's use in the speech itself came from but thought "it may have been an accident" (research interview, August 2018).

[18] Mulroney used the same language in a speech at the Economic Club of New York shortly after the election in 1984 as well. He proclaimed that Canadians had "voted for a start on a new era of conciliation and cooperation," that grievances in Newfoundland and western Canada were being resolved, and that Québec's would follow, stating that "[t]he people of Quebec overwhelmingly supported our program of national reconciliation and economic renewal in last September's election" (Mulroney 1984). MPs also recalled the centrality of these themes to the Mulroney government's agenda in the House of Commons over the next decade and a half. For instance, Bloc

and consensus in this fashion, these uses seem to indicate an interactional orientation to reconciliation as relationship with the aim of overcoming divisiveness and relations of opposition associated with the policies and approach of the previous government. Proposals for a degree of structural reconciliation followed a few years later with the Meech Lake Accord.

Helping to set the stage for the multi-pronged national unity efforts pursued by Mulroney's government was the report of the Royal Commission on Economic Union and Development Prospects for Canada chaired by Donald Macdonald, which had been established by Trudeau but did not issue its final report until 1985, after the change in government. This report was "the first major study to be undertaken after the proclamation of the *Constitution Act, 1982,*" and thus "to deal at length with the need to obtain Quebec's assent to the new Constitution" (Council for Canadian Unity 1990, 10), and as Watts puts it, was "a major development" for federalism after "a decade of crisis" (1986, 175-76). The Macdonald Commission report was also the first to feature reconciliation more significantly, with variations of the term appearing about three dozen times throughout the text.[19] These uses come in different forms, several of which mirror the longstanding theme of federalism reconciling diversity and unity, and all of which primarily relate to recommendations regarding institutional reform. The Commission notes that in addition to Québec's concerns, other provinces have issues they want to see addressed too and that even if the specific tensions of the 1970s and '80s subside, "the

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Québécois MP Nic Leblanc, who had previously been a PC, reiterated the Mulroney government's tripartite emphasis on decentralization, cutting spending, and national reconciliation as the banner under which he'd been elected on several occasions during the mid-1990s (House of Commons 1994c, 2060; 1995a, 13147; 1995d, 17585; 1997a, 9059), while, before leaving the party, then-PC MP André Harvey stated that "[l]e principe de base de notre parti a toujours été de travailler pour la réconciliation nationale" (House of Commons 2000c, 4864-65).

[19] My earlier work on this (2017a) overlooked the Macdonald Commission and as such misidentifies the first source of significant normative references to reconciliation among royal commissions dealing with the relationship between Québec and the Canadian federation. In his 1986 article about the Commission's report, Watts noted that its support for free trade with the US was likely to be the main feature that the Macdonald Commission would be remembered for and that this was already overshadowing its recommendations regarding federalism and institutional reform in public discussions in the mid-1980s (197). This was indeed what I had learned of the Commission. As such I did not think to include it in my initial search, and so only discovered its uses of reconciliation after stumbling on the Council for Canadian Unity's (1990) description of the commission in its overview of past constitutional proposals.

future will continue to present Canadians with renewed and unforeseen challenges which will pose fundamental regional dilemmas for those seeking national reconciliation" (1985, 3:76). Under this broader umbrella of national reconciliation is a collection of uses of reconciliation as consistency geared at addressing relations of opposition in multiple guises. Throughout the report, the subjects of reconciliation are variously presented as provincial differences and national goals (1:17), regional and national (and sometimes international) interests (1:210, 3:70, 83), "Canada's internal social, economic and political diversity" (3:6), "the interests of French- and English-speaking Canadians" (3:91), "social cleavages" that must be addressed at both provincial and national levels (3:28-29), and generally "diverse regional perspectives" (3:71). Perhaps its most emphatic statement about the significance of reconciliation in Canadian constitutional politics is that "the positive reconciliation of our nation's French/English dualism […] must always be one of the central tasks of statecraft in Canada" (1:17).

The Macdonald Commission's uses of reconciliation operate on a number of fronts. As in earlier references, reconciliation is entwined with the nature and functioning of federalism and the task of politicians, but it is now more overtly and frequently referred to as such. It is also associated with core values and elements of the constitution. The Commission notes that the reconciliation of "national and regional interests" through intergovernmental relations is "an essential purpose of executive federalism" (3:70), but also emphasizes the central role of Parliament, which it suggests has a "fundamental responsibility to serve as the arena in which we reconcile, accommodate, balance and compromise the interests of each and every region in national policy" (3:71). The report includes a variety of recommendations for reforming institutions, including the Senate (3:8, 87, 91), that are geared at a more effective fulfilment of this goal. The Commission argues that a variety of institutional practices and problems have

impaired the federal government's ability "to promote reconciliation of competing regional interests in a fair and balanced manner" and that the mode of intergovernmental relations in use at the time "exposes differences more effectively than it contributes to their reconciliation" (3:80, 263). Despite the problems identified in the report, the Commission sees reconciliation as being built into the structure of the federation. This includes, for instance, the way that equalization "effectively reconciles the principle of provincial autonomy with the principle of equal access of all Canadians to basic government services" (3:184), as well as how various concepts and principles in the constitution "help Canadians reconcile majority rule and minority rights, the rights of Canadian society and of provincial society, and uniformity and diversity" (3:253). An example of this is *Charter* rights aiming "to promote social cohesion and national unity" by "representing and reconciling cultural, linguistic, territorial and other facets of our diversity" (3:290). There is a broad focus on national institutions, with some particular attention to the Senate. The Commission suggests that a reformed Senate could be "both a regionalist and a dualist chamber" that could "contribute to representing and reconciling the interests of French- and English-speaking Canadians" (3:91), and generally emphasizes the importance of Parliament as a forum for reconciliation (1:210, 3:21, 37, 71). While it is observed that the courts play a role in "reconciling national and provincial interests and citizens' rights" (3:300), responsibility for reconciliation is attributed primarily to the federal government (1:16, 17, 3:80, 149).

The Commission emphasizes that the federal government has a "general task of conciliation and leadership," and that it is deliberately focusing on this role as it relates to English/French relations as well as the relationship between Québec and the federal government (1:17). However, this conciliatory role does not mean that the federal government's purpose is simply to facilitate Québec's relationship with the other provinces. The Commission states:

"Canada will require ongoing reconciliation of diverse regional perspectives. Equally, the federal government must be able to define and promote a national interest which is more than the sum of these regional parts, a national interest which transcends our provincial and regional selves" (3: 71). The *Charter* and equalization are given as examples of a national Canadian community that is "more than the sum of its parts" (1:17). Federalism as an institutional structure is presented as needing to "wor[k] democratically and promot[e] reconciliation of national and regional interests" (3:99), and this reconciliation, paired with fair representation, is itself described as a requirement of democracy (3:70). The Commission's consideration of the reconciliatory role of the federal government takes up questions of representation and the structure of institutions, as well as economic leadership in establishing "a unified national framework" (3:149). While Mulroney's focus on these areas did not begin with the Commission's report, as his campaign platform and earlier writings (1983) show, his approach to national reconciliation did align with these two core aspects of the Commission's focus as he paired attempts to repair constitutional relations with Québec with efforts at a broader economic reconciliation within the federation.

The economic dimension of Mulroney's reconciliation efforts included the negotiation of free trade with the United States, the dismantling of the National Energy Program (NEP), and the signing of the Atlantic Accord, on which occasion Mulroney said:

> This agreement reflects important Newfoundland values and accommodates legitimate provincial aspirations in a generous Canadian perspective. This new attitude, a cornerstone of national reconciliation, will be instrumental in the development of policies designed to foster economic renewal. (Mulroney 2007, 354)

The sentiment was also invoked in conjunction with a 1985 FMC in a federal document that stated: "More than any other initiative of the federal government, perhaps, the new national policy on energy marks the advent of reconciliation among Canadians and our progress toward a renewed federalism" (quoted in Pollard 1986, 163). The general idea, according to Raymond

Blake, was that free trade with the US would redistribute economic power in Canada to allow for more market access for the Western and Atlantic provinces and appease Québec nationalists who were in favour of free trade (2003, 73-74). The economic renewal project was also linked with the national unity dimension of reconciliation through constitutional reform; beginning with the Sept-Îles speech, the plan was to create the conditions for Québec to sign the constitution by way of economic renewal (Mulroney 2007, 305-6). As Joe Clark explained it, the PC government's efforts in dismantling the NEP and addressing the constitutional question with Québec, both of which were identified with "deeply divisive initiatives" brought in by Trudeau's government, were "separate but consistent," though in his recollection, "[w]e didn't call it [reconciliation] then. We called it national unity, we called it bringing the country together, we called it bringing in the people who had felt excluded." The choice to address these two issues was partly a result of an electoral calculation that there were votes in Western Canada and in Québec, but "also because we had opposed both those measures and opposed them because we thought they were […] potential nation-breakers" (research interview, August 2018).[20]

In addition to the economic dimension, another key element of improving relations between Québec and the federal government was normalizing relations with France, which had been subject to a decades-long chill following de Gaulle's 1967 visit to Québec (Gendron 2014, 212-13). This feature of the reconciliation agenda was put in motion with the appointment of Lucien Bouchard as Canadian Ambassador to Paris. Bouchard had also already played a key early role in Mulroney's turn to the language of reconciliation, as he had suggested that Mulroney focus on constitutional relations in his Sept-Îles speech and was involved in the drafting (Behiels 2007, 257-58; Bouchard 1992, 142-43; Mulroney 2007, 305). In his own memoir, Bouchard writes that "[l]'occasion me semblait belle pour lui de proposer une nouvelle

[20] On the PC government's constitutional agenda in relation to the party politics of the period, see Behiels (2007).

perspective des relations fédérales-provinciales, fondée sur une réconciliation qui permettrait au Québec de reprendre au moins la place qu'il occupait avant les événements de 1981-1982" (1992, 142), and he describes the speech Mulroney delivered as "un appel passionné à la réconciliation entre Québécois et Canadiens" (143). Once the PCs were in office, Bouchard says that he had "toutes les raisons de croire qu'il [Mulroney] voudrait intégrer à sa politique de réconciliation nationale un rapprochement aussi spectaculaire que possible avec la mère patrie des francophones canadiens" (149). This involved tackling an ongoing conflict between Ottawa and Québec over what role Québec was able to play within summits of la Francophonie, which in the interim had not yet gotten off the ground (Gendron 2014, 211).[21] Here the substance of the reconciliation project included official visits to France and Canada by the leaders of the two countries, as well as the acceptance of bilateral relations between France and Québec with respect to matters that fell within provincial jurisdiction.[22] In a 1987 note in his journal, Mulroney explicitly links the normalization of relations with France to the project of constitutional reform and the goal of reintegrating Québec into the constitution "with honour and enthusiasm" (Mulroney 2007, 306). Bouchard describes Québec's participation in la Francophonie as "le pendant externe des futurs accords du lac Meech," and states that it was key to national reconciliation as it was a matter for Canada "[de] rétablir un équilibre en assumant, sur le plan international, sa composante francophone" as it did with the Commonwealth[23] (1992, 170; see also 161). Bouchard thus featured in Mulroney's pursuit of national reconciliation as a speechwriter and ambassador to France, and then later, following the 1988 election, as a minister

[21] The inability to participate in Francophonie summits was not only frustrating for Québec. Senegal president Léopold Senghor had been pushing for the summits in the pursuit of "un forum d'échanges Nord-Sud susceptible de rééquilibrer les relations forcément inégalitaires qu'entretenait la France dans ses échanges bilatéraux avec chacune de ses anciennes colonies" (Gendron 2014, 211).

[22] Louis Balthazar writes that this "atmosphère de conciliation n'a pas survécu au gouvernement Mulroney," explaining how Canada and Québec's relations with la Francophonie shifted back when Jean Chrétien's government returned to a policy of limiting Québec's role in international relations (2003, 436).

[23] Gendron notes that Mulroney made a point of equalizing spending between the two organizations (2014, 321).

in his government. In retrospect, knowing what later came to pass between Mulroney and Bouchard, it takes on an air of tragic irony, but in the early years of his time in government Bouchard appears to have played a central role in helping Mulroney craft the narrative and put in place the elements of his policy of national reconciliation.

Mulroney's writings and speeches are full of references to the reintegration or the "repatriation" of Québec (2007, 459), to the need for Québec to sign or "rejoin" the constitution (305, 236), and to the renewal and healing of the country (507).[24] The implication of his conception of reconciliation is to remake or make whole something that has been broken, that is incomplete (522). As he noted upon the signing of the Meech Lake Accord,

> A constitutional proposal that results in agreement between the federal government and the English-speaking provinces is one thing. But that is not Canada. Canada comes into being only when the federal government, the English-speaking provinces, *and* Quebec sign on together. (544; italics in original)

The real central piece of national reconciliation, then, is Québec consenting to the constitution. It is what Bouchard called "the ultimate reconciliation" (quoted in Mulroney 2007, 412). Following a period of under-the-radar consultations with provincial governments by Lowell Murray, Mulroney's Minister of Federal-Provincial Relations,[25] and the announcement by Gil Rémillard, Québec's Minister of Canadian Intergovernmental Affairs, of Québec's five conditions for signing the constitution,[26] Mulroney and all of the premiers met for a marathon negotiation session at Meech Lake in 1987. When they succeeded in reaching a unanimous agreement, it appeared that the mission had been accomplished, as Mulroney announced the Accord in a public address with the statement that, "Ce soir […] le Canada forme à nouveau un tout. La grande famille canadienne est de nouveau réunie et la nation est réconciliée" (quoted in Gendron

[24] Other members of Mulroney's government used this kind of language as well, as did provincial premiers. See e.g., Murray quoted in SJCSHCCA (1987, 25-26); Murray (1987, A6); Mulroney (2007, 522, 544, 779).
[25] Gendron, in his biography of Mulroney, refers to this period as "la réconciliation en sous-marin" (2014, 217).
[26] In his memoirs, Mulroney refers to these as "Premier Bourassa's conditions for reconciliation" (2007, 516).

2014, 232).[27] Of course, in the end, this declaration turned out to be premature.

In addition to Mulroney using the term at least from the 1984 Throne Speech onward, several other prominent political figures used the term in the media during the Meech Lake period. Ontario Attorney General Ian Scott referred to "the importance of the fundamental goal of constitutional reconciliation" (*Montreal Gazette* 1989), and Hugh Segal, who worked for Ontario Premier Bill Davis and was later to become Mulroney's Chief of Staff, wrote in the *Toronto Star* that "[n]ational constitutional reconciliation is an important goal for Prime Minister Brian Mulroney to pursue" and that "[u]nderstanding Quebec's specific cultural, linguistic and related imperatives is a key part of any effort at constitutional reconciliation" (1986). Also writing in the *Star* three years later, NDP leader Audrey McLaughlin began a list of "concrete, urgent steps" she argued the Canadian government needed to take with: "Begin constitutional reconciliation and renewal that involves all Canadians in bridging the two solitudes" (1989). Manitoba Liberal leader Sharon Carstairs spoke of a threatened "climate for achieving constitutional reconciliation" in 1990 (quoted in York 1990), and New Brunswick premier Frank McKenna, who had previously opposed the Accord, that year stated, "If we make the determination that we are not going to walk away from our obligations and responsibilities to the country and we are prepared to compromise, then we will have a constitutional reconciliation" (quoted in Delacourt 1990). Frank McKenna, Lowell Murray, and Claude Ryan also all spoke on the topic of reconciling "the language issue" at a conference at Queen's University in December 1989. Both Murray and Ryan used the term "reconciliation" in their remarks (Murray 1992, 75;

[27] Peter Russell notes that Mulroney made extensive use during this period of such phrases referring to "getting [Québec] back in the family" (research interview, November 2018). Metaphors about marriage and family are common in discussions of the relationship between Québec and the rest of Canada, which is particularly interesting given the place of the term reconciliation in family law, among other things. The Special Joint Committee of the Senate and the House of Commons on the 1987 Constitutional Accord took note of the frequency of statements about bringing Québec back into the constitutional family in its study of the Accord and probed its meaning (1987, 13), characterizing it with reference to the objections of the Québec government to the 1982 constitutional changes and the actions it undertook in protest of its imposition despite Québec's lack of consent (17-18).

Ryan 1992, 51, 59[28]), with Ryan describing reconciliation as "[t]he central topic" (51).

Following the amendment formula introduced in 1982, the reforms laid out in the Accord would only take effect after ratification by the federal parliament and the legislatures of all the provinces. Among the processes that took place during the ratification period was a Special Joint Committee of the Senate and the House of Commons on the 1987 Constitutional Accord established to study its provisions and make a recommendation to Parliament regarding its adoption. The term reconciliation is used several times throughout the committee's September 1987 report. Most of these are in fact in quotations from witnesses who appeared before the committee, but the committee's own uses of the term are notable for centring reconciliation in relation to the nature of the accord and in categorizing the positions of witnesses.

In presenting an overview of the Meech Lake accord, the committee writes:

> Ordinarily, talk of family reconciliation in connection with a constitutional impasse between governments would sound somewhat theatrical, but the 1987 *Constitutional Accord* has been presented to the Joint Committee as a means of bringing Quebec 'back into the constitutional family'. It is not only the federal government that has presented the 1987 *Constitutional Accord* to us in this light. The Joint Committee has heard many Canadians from all regions of the country, but especially from Quebec, who have urged acceptance of the 1987 Accord as a means of national reconciliation and as a way for Canada to put behind it the trauma of the 1980 Quebec Referendum and the subsequent isolation of Quebec during the 1981-82 patriation process. It is time, they say, to get on with other things; but first we must deal with Quebec's outstanding grievances. (1987, 7)

This passage, which advances reconciliation as a goal premise in an argument for constitutional reform, embodies a different kind of use of the term than the consistency version commonly used to talk about Canadian federalism. While the Macdonald Commission's report had also used the term "national reconciliation," it primarily centred reconciliation as consistency as a key feature and purpose of the federal system as it presented proposals for institutional reform. Two years later, the Special Joint Committee report's introduction brings a different tone to the discussion

[28] See p. 55 in the French version for the uses on p. 51 in the English version; the later reference is phrased as "rapprochement" in French.

of reform by associating reconciliation with grievance and trauma, putting an emphasis on subjectivity and emotions in its presentation of diverging political perspectives, and drawing a parallel to reconciliation within families (7-8). This offers a normative vision of reconciliation that is rooted in the relationship repair version of the term and invokes interpersonal relations and family law more so than balance sheets and the harmonization of rules and logistics, even as these are also necessarily a component of constitutional negotiations. While the report does not characterize the treatment of Québec as oppression, the framing of grievance and reconciliation here indicates that the relations within which reconciliation is being called for have been marked by something beyond a difference in opposing positions or priorities.

The nature of the repair that is called for comes across in the committee's endorsement of Murray's statement that "[t]he psychological and emotional and political implications of having Quebec legally bound to a Constitution its national assembly did not accept and does not subscribe to are […] a destabilizing force within our federation" (quoted in SJCSHCCA 1987, 29). In this context, reconciliation becomes closely linked with the relegitimization of the Canadian state, evoking the debates about reconciliation and legitimation discussed in chapter 1. The committee notes that "many witnesses, including lawyers, emphasized to us the difference between legality and legitimacy" (8), presenting several quotations demonstrating the perception of a legitimacy deficit stemming from the exclusion of Québec in the patriation of the constitution in 1981-82 and problems stemming therefrom (see e.g., 17-18, 22, 29).[29] On this view, a gap had been created between legality and legitimacy by subjecting Québec to the rule of a constitution to which it had not consented, and the result of the reconciliation brought about by

[29] These observations can be understood as part of a continuum of debate over the distinction between legality and legitimacy relating to the Canada-Québec constitutional relationship, which also featured in the patriation, Québec veto, and secession references to the SCC in 1981, 1982, and 1998 (for discussion, see e.g., Choudhry and Howse 2000, 164-68; Gaudreault-DesBiens 1999, esp. sec. C; Hamilton and Nichols 2020; Russell 2011).

Meech "would be that the federation would be back together in spirit as well as tied together by law" (22). Though some critics charged the Accord with bringing gains for the provinces but not the federal government, the committee quoted Murray disputing this by emphasizing that "[t]he strengthening of our country, the reconciliation of Quebec, opportunities for economic policy coordination and future constitutional reform" all constituted "significant gains" for the federal government, making "Canada […] the clear and undisputed winner" (22). The discussions of legitimacy in the report and in witnesses' comments are paired with framings of the task at hand and the desired goal as being one of completing an unfinished project or "repair[ing] an unfortunate omission" in order to return Canada to a state of wholeness (8, 27, 131), similarly to the framing of reconciliation in Mulroney's writings. In broad terms, the vision of reconciliation offered here, for those who adhere to it, is a healing from the perceived injustices of procedural exclusion and imposed inclusion in a constitutional order not of Québec's choosing through legitimation enacted by Québec signing the constitution. The committee observes that this vision has its detractors as well, however, and classifies the witnesses that appeared before it as falling into three categories: "enthusiasts" and "sceptics" of the Accord, and "defenders of the status quo" (26-27). The first are described as "perceiv[ing] reconciliation with Quebec to be an urgent priority" and thinking the Meech Lake Accord "represents the best achievable basis for such a reconciliation" while the second "believed strongly in reconciliation with Quebec" but found the Accord "seriously deficient" (26-27). The term reconciliation then does not appear in the description of the defenders of the status quo, for whom "present constitutional arrangements are satisfactory" (27), implying that they do not see the matter as one calling for any kind of reconciliation, or do not think that reconciliation should be pursued.

The committee report also includes some quotations from witnesses that include the term

reconciliation, demonstrating what uses were employed before the committee and informed its deliberations on the subject, and how these uses were linked with the Accord. In addition to the use by Murray quoted above, this included uses by scholars Ronald Watts and John Whyte. Watts, in a submission on behalf of a group of scholars, used the term to describe the PCs' campaign platform, noting that they had "promise[d] to reconcile Quebec to the Canadian constitutional order" (quoted in SJCSHCCA 1987, 29). The structure of this use is similar to Murray's use of the phrase "the reconciliation of Quebec" (22), as well as Whyte's description of Québec as being "not reconciled, at a formal level in any event, to the Constitution" (29).[30] Such framings of reconciliation might be interpreted in different ways depending on one's perspective. The grammar of being reconciled *to* – as opposed to with – something implicitly invokes the meaning of being resigned to something despite it not being desirable, rather than striving for compatibility or a repaired relationship between two things/parties. However, to be reconciled to might also be read in the sense of accepting or being restored to something, which appears to be the sense in which it is used here, and which aligns with the discourses of returning Québec to the constitutional table/family. These uses point to relations of opposition between Québec and the constitutional order that are to be overcome through the reconciliation in question. Another quotation from Whyte later in the report follows up on his cautionary note that judgment about the Accord's deficiencies should weigh whether they are more or less problematic than this lack of reconciliation (29), reflecting two different dimensions of reconciliation in arguing for care in making a decision about ratification. In Whyte's view, "[t]hose who continue to oppose the 1987 Accord after it has been accepted and approved by Quebec must realize that they argue not simply against the adoption of certain terms for reconciliation, they argue to undo the historical

[30] Similar phrases are used in a Library of Parliament report on the Accord (Carson 1989, 11, 23, 25), and also appear in scholarship on the subject (see e.g., Russell 1993, 215).

act of reconciliation and that is a course with clear harmful, long-term consequences for Canada" (141). In the first part of this formulation, reconciliation comprises a set of constituent elements that allow for agreement, in this case the provisions of the Meech Lake Accord, which might be understood as an exercise in rendering consistency or compatibility as the parties determine which adjustments will enable them to satisfactorily address the relations of opposition between them (assuming in this case a participatory version of the exercise rather than a consistency rendered from without, though who was and was not included among the participants was among the central critiques of the Accord). At the same time, the second part presents the very fact of the Meech Lake Accord being negotiated as an achievement of reconciliation in and of itself. Whyte also casts this reconciliation as precarious, suggesting that the interactional effects of the latter will be endangered should the structural elements of the agreement be rejected.

The committee contextualizes the nature of the Meech Lake Accord as a historical act of reconciliation and the potential consequences of its failure by presenting a long excerpt from testimony by Solange Chaput-Rolland,[31] who "recalled with some bitterness what she perceived as the lack of national reconciliation in the aftermath of the Referendum, a lack which was forcefully underlined by the patriation of the Constitution over the opposition of Quebec" (139). Chaput-Rolland spoke about how quickly English Canada had seemed to move on after the 1980 referendum while in Québec people were left reeling from "a battle between brothers, a dangerous, divisive battle" that had resulted in "[f]amilies against families, towns against towns, fathers and mothers not speaking to their children," explaining how the lack of sensitivity "stung [her] and it stung all of us who fought so hard to remain in Canada" (quoted on 139). In the wake of this, the Meech Lake Accord appeared as a "gesture of friendship" that let Chaput-Rolland finally feel like she had won the 1980 referendum (quoted on 139-40). These comments serve as

[31] Former member of the Québec's Assemblée nationale and member of the Task Force on Canadian Unity.

a reminder that the political conflicts to which reconciliation discourses respond play out at different levels in different ways simultaneously, as well as yielding calls for varying forms of reconciliation. Within this multifaceted context, what forms of interactional and/or structural reconciliation are or are not enacted set the bounds for what existential reconciliation is possible within and between the agents who have suffered as a result of the conflict. Chaput-Rolland and Whyte's cautionary notes about the dangers of rejecting the Accord proved to be quite germane, as with that came a new phase of reconciliation discussions that had to grapple with the failure of Meech itself as well as with the events that had produced it in the first place.

The story of what ultimately happened with Meech Lake is well-known. Ratification by all of the legislatures had to take place within three years following the first one, and despite several subsequent negotiations over those years, the Accord floundered in June of 1990 as it was not passed in Manitoba and Newfoundland. Various factors may have contributed to this failure, which others have documented in detail elsewhere.[32] For the purposes of my exploration, one of the interesting features of the tensions surrounding this debate had to do with conflicts over semantic differences. While there was little to no direct theoretical engagement with the meaning of "reconciliation" during this period despite its relatively common use to describe constitutional reform efforts, there were extensive debates over the meaning of "nation" and "distinctness" as linked with the "distinct society clause" proposed in the Accord and later negotiations, and how these terms carried different connotations in different languages, and for different constituent groups in the country (Bourassa 1995, 289-90; J-M. Fournier, research interview, October 2018; Manning 1992, 240; G. Rémillard, research interview, January 2018).

For many people, debates about these other terms ring familiar, but "reconciliation" does

[32] See e.g., Bourassa (1995, ch. 3 and 4); Comeau (1993); Coyne (1992); Crosbie and Stevens (1997, 366); Charest (1998, 102); Manning (1992, ch. 13); Mercredi and Turpel (1993, 173-75); Monahan (1991).

not endure in personal or public memory of these events.[33] Three decades later, time and intervening political developments may have affected recollection on the subject.[34] Discourses of reconciliation were nevertheless present at the time. Beyond the uses surveyed above, many newspapers also employed "constitutional reconciliation" to refer to the Mulroney government's constitutional reform goals and the Meech Lake exercise, complementing or perhaps taking their cue from politicians speaking of reconciliation.[35] Similarly, while they did not undertake critical analysis of its meanings or uses, scholars also used the term in their work on constitutional negotiations and the political developments during this period and later on.[36] While there is little

[33] This is an anecdotal observation that reflects many conversations I have had while conducting this research, including with interview participants who were involved in the political developments in question, many of whom did not recall the term occupying a prominent place at the time. Several of them associated it with the relationship between Indigenous peoples and Canada rather than Québec, with some not recalling the term becoming prominent until the advent of the TRC (C. Pelchat; M. Harcourt; G. Rémillard, research interviews, January 2018). As with developments I discuss in chapter 7, some of the people I asked about reconciliation with Québec in the 1980s and 1990s emphasized that even if the word was not used or was a recently introduced term, the idea or spirit or practice of reconciliation was certainly present. It was also suggested that reconciliation was a long-standing tradition in Canadian politics, as something that is generally an important part of the work of politicians but also is a particular feature of Canada that can be traced back to Confederation. Joe Clark, for instance, described reconciliation as having "been such a constant concept in [his] consciousness of the country" and having "always been an element of Canada," also noting that for him, "the practice is more important than the word" (research interview, August 2018). The differences among these various conversations about the presence of reconciliation further suggest, as discussed in chapter 2, that a distinction between the spirit or idea of reconciliation and the explicit use of the term and differences in perception about whether it is a longstanding or newly introduced concept in the Canadian federation both contribute to the malleability and ambiguity surrounding reconciliation discourses in Canada.

[34] In *The Morning After*, Chantal Hébert and Jean Lapierre write: "Two decades have elapsed since the [1995] referendum and none of us is the same person that we were on the day after the vote. Our views are inevitably coloured by what has happened since" (2014, xv). The same is true here, and even more time has passed. I asked interview participants what they could recollect about whether the term reconciliation was used during the negotiations and debates they either participated in or were close observers of, while recognizing that remembering the wording of conversations that took place three decades ago was no easy feat. In Foucauldian terms, these conversations were of double interest: they gave me helpful insight into the experiences and perspectives of the human beings at the heart of the political developments around which the notion of reconciliation emerged, but they are also instructive with respect to the descent of the term – what of it has stuck and what has not, and how.

[35] See e.g., Chambers (1985); *Financial Post* (1986); *Globe and Mail* (1989); Goar (1989); W. Johnson (1989); MacPherson (1989); *Montreal Gazette* (1985); *Ottawa Citizen* (1986, 1987, 1990a); Shifrin (1987); Speirs (1990); *Toronto Star* (1990); Wanless (1990); Winsor (1987); Weston (1986).

[36] The academic uses of the term corresponding with Mulroney era policies generally tend to embody either a reflection of the government's uses of the term or an assessment of its efforts, as discussed in chapter 1 (see sec. 1.2.3.1). Though scholarship about politics generally does not take place in a vacuum outside of the political relations and processes it studies, it bears noting that the connections between the two were particularly palpable during this period. Many scholars were active participants in the parliamentary processes and public debates around the constitutional negotiations in the late 1980s and early 1990s and are quoted in parliamentary committee and commission reports in addition to having published academic work on the subject. The political context also shaped

evidence of deliberation on the word choice or significance of applying reconciliation discourses to such a context beyond the Special Joint Committee's brief comment, the second half of the 1980s had truly brought "national reconciliation" onto the Canadian political scene.

3.5 Conclusion

Three years after Mulroney's declaration in announcing the Meech Lake Accord that the nation was reconciled, the goal of constitutional reconciliation remained unfulfilled. Instead, as is reflected in a letter to Mulroney from retired Chief Justice Brian Dickson, the failure of Meech itself created new wounds (Mulroney 2007, 879). Among these wounds was the parting of ways of Mulroney and Bouchard. In the description of the unravelling of their collaboration just before the final collapse of the Meech Lake Accord, Bouchard suggests that "[l]a formule 'de l'honneur et de l'enthousiasme' revenait me hanter" (1992, 314). By the time of his resignation, he says, "j'avais bu le calice du beau risque jusqu'à la lie et mis toute mon énergie à réaliser la réconciliation nationale par le renouveau canadien" but ultimately concluded that "l'entreprise était, dès le début, vouée à l'échec" (334-35).[37] This interpersonal rift also laid amidst the broader political rift embodied in the departure of several MPs from their prior political affiliations to form the Bloc Québécois (BQ). Bouchard and his new fellow Bloc MPs changed paths; the discourse of reconciliation remained.

Political debates in the years leading up to patriation had included discussions of politics as a task of reconciling the irreconcilable and occasional concerns about the feasibility of this task. However, when it came to the discourses of reconciliation swirling around Québec's lack of consent to the 1982 constitution and the attempt to rectify this exclusion with the Meech Lake

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inquiry, teaching, and debates in the academic context, as Rocher describes (2018, 634).

[37] For analysis of the implications of the failures of the *beaux risques* taken by Québec political leaders in the 1980s for political trust and the conditions of constitutional negotiations, see Karmis and O'Toole (2018).

Accord, the uses of the term surveyed in this chapter show that this period primarily featured hopeful or matter-of-fact uses of reconciliation (sometimes qualified as “national” or “constitutional”) to name an exercise of healing, repair, return, and/or completion that was being accomplished with this constitutional reform package. These uses accompanied continuing uses of the term to describe exercises of rendering consistency between competing principles, priorities, interests, and identities through the Canadian federal system, whether in statements lauding the system or proposing changes to it. The failure of the ratification of the Meech package in 1990 marked a shift to a new phase, as these types of uses continued but now in a context where the initial conflict had been compounded by the effects of this failure, from which followed a growing number of assertions of irreconcilability that were woven through the debates around the relationship between Canada and Québec over the next decade and a half.

Chapter Four

The Emergence and Development of Discourses of Reconciliation with Québec: 1990-2006

4.1 Introduction

This chapter picks up the *when* of reconciliation's emergence in Canada-Québec relations in what can be regarded as a second stage arising from the ruins of the Meech Lake Accord. While still intimately connected to the constitutional status quo and reform goals emanating from the developments of 1981-82, *how* reconciliation discourses developed in this next period was also shaped by the failure of Meech and other accompanying Mulroney government policies in the late 1980s as a first major attempt at reconciliation post-patriation. As Little (2017) observes of the politics of reconciliation more broadly, fear, hope, and disappointment were all key elements in the dynamics of the post-Meech period. While the types of uses of the term seen in the 1980s and prior continued, this next stage also saw a growing set of uses that were conditioned by the spectre of past failure, and, particularly with the tensions around the 1995 Québec referendum after the rejection of the Charlottetown Accord, the threat – or, depending on one's perspective, hope – of future failure of constitutional unity.[1] Many of these uses pitted perceptions of reconcilability and irreconcilability against each other. The term was predominantly associated with the federal government's unity efforts, both before and after the changes in government in 1993 and 2006, but no political party had a monopoly on its use; not only did the PCs, Liberals, and Conservatives all use reconciliation discourses while in government, but opposition MPs also used the term to promote their own stances or critique those of other parties. It was used to speak to relations between Canada and Québec and to relationships within Québec, especially in

[1] This theme loomed in scholarship on the relationship as well. One collection contains an entire section entitled "Failed Reconciliation" (Meisel, Rocher and Silver 1999, ch. 6). Raymond Blake later observed that after the early 1990s, "one could hardly applaud Mulroney and his government for reconciling the nation" (2007, 6). Rather, "as with Trudeau a decade earlier, his attempts to bring national reconciliation left the country further divided" (7).

the wake of the 1995 referendum. Contrasting uses even went as far as diverging on whether the country should stay together: while most are implicitly if not explicitly linked to enabling and/or maintaining the unity of Canada, some BQ MPs spoke of reconciliation as something that would enable or follow Québec's independence. Discourses of irreconcilability were already present prior to the referendum but were used more in the years between 1995 and the passage of the *Clarity Act*. Tracking uses of the term in the House of Commons reveals a lull in reconciliation discourses pertaining to Québec that set in with the new millennium, though they still appeared occasionally, but the election of the Conservatives and renewed debates on recognizing Québec nationhood saw it make a comeback in 2006. Though many aspects of the term's uses at that juncture bear resemblances to earlier uses, this resurgence marked a break from prior uses by the federal government in that reconciliation became dissociated from formal constitutional reform.

These developments in the genealogy of reconciliation between Québec and Canada are traced over the course of three sections. The first (4.2) covers from the failed ratification of the Meech Lake Accord to the Québec referendum in 1995, looking at reconciliation discourses that were peppered through initiatives by the governments of Canada and Québec to investigate and negotiate possibilities for reform, including the Renewal of Canada conferences, the Citizens' Forum on Canada's Future, the Commission sur l'avenir politique et constitutionnel du Québec, and the Charlottetown Accord. Section 4.3 examines the reconciliation discourses that circulated after the 1995 referendum, surveying diverging uses by different political parties in the House of Commons,[2] the term's application to political relations within Québec society, and its use by the SCC in the *Reference Re Secession of Quebec*. The last section (4.4) explores reconciliation's

[2] Hansard excerpts are quoted and cited in English or French as spoken. As there is no "floor" transcript available, the bibliography links to whichever language version of Hansard I have (primarily) quoted from for each given date. The corresponding English or French version of each issue can be accessed by replacing "noscommunes" and "F" in the provided URL with "ourcommons" and "E" or vice versa. With occasional exceptions when longer phrasing in one language runs onto another page, the page numbers are the same in the English and French versions of Hansard.

resurgence in 2005-06 and how the Conservative government used it to frame a motion to recognize the Québécois as a nation. The chapter then concludes with some overarching reflections on the trajectory of discourses of reconciliation between Canada and Québec.

4.2 "Son of Meech, Mega Meech"[3]: Back "into the constitutional vortex" with Spicer, Bélanger-Campeau *et les autres*

The failure of Meech Lake, along with the events at Kanehsatà:ke and Kahnawà:ke a few weeks later, prompted both the Bourassa and Mulroney governments to launch commissions and parliamentary committees to engage the public on the futures of Québec and Canada.[4] Subsequent to these investigations, Québec announced it would hold a referendum in the fall of 1992, to either vote on a new constitutional proposal from Canada or on secession. This spurred a whirlwind new round of negotiations as once again Canada's leaders were "drawn into the constitutional vortex" (Harcourt and Skene 1996, 76). In response to criticisms over the elitist procedure of the Meech negotiations and the exclusion of issues other than Québec's concerns,[5] this round included Indigenous leaders and the territorial premiers, as well as extensive public consultation, with the result to be put to a country-wide vote. A wide-ranging reform package was negotiated, but the resultant Charlottetown Accord was rejected in the referendum. This left the country back at square one in addressing the fallout of patriation, though suffering from an ever-greater case of "constitutional fatigue syndrome" (Meekison 1992, 451).

Reconciliation remained a theme in the process leading to the Charlottetown Accord

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[3] Preston Manning skeptically refers to the Charlottetown proposals this way in *The New Canada* (1992, 242).
[4] See Citizens' Forum on Canada's Future (1991); Commission sur l'avenir politique et constitutionnel du Québec (1991a); CSC (1992); Fidler (1991); Gagnon and Latouche (1991); Government of Canada Canada (1991); SCSHC (1991a; 1991b). Mulroney also created the RCAP (see 1996a), which is discussed further in chapter 7.
[5] Particularly those of Indigenous peoples, who were not able to reach an agreement regarding their own rights at a series of FMCs following the patriation of the constitution and then were not included at Meech (see ch. 5 and 6).

(Desruisseaux and Fortin 1999a, 340). Once again, this included the use of the increasingly familiar forms of reconciliation as used to speak to the nature of federalism and the work of politics and as a general label for constitutional reform efforts. These uses also started to be accompanied by a newer, more moralizing or perhaps even pleading variant. This latter version, present in uses of reconciliation as an imperative and/or as something Canada has a particular talent for, then grew to even greater prominence after the 1995 Québec referendum that followed Charlottetown's defeat. The failure of Meech Lake also led to further variations in discourses of reconciliation during the Charlottetown negotiations, as it shaped how reconciliation had both personal and political meaning for participants. In addition to this, discussions of the importance of reconciliation were also now accompanied by concerns about its potential impossibility.

The period between the failure of the Meech Lake Accord and the Charlottetown referendum was filled with an unprecedented degree of public consultation on constitutional matters that took place through different avenues at multiple levels. The federal government established the Citizens' Forum on Canada's Future under the leadership of Keith Spicer, which drew in nearly half a million participants over the course of its mandate (Spicer 2004, 260). It also released its constitutional reform proposals, titled *Shaping Canada's Future Together*, in late 1991, which a joint parliamentary committee led by Dorothy Dobbie and first Claude Castonguay, and then Gérald Beaudoin, was then tasked with "shop[ping] around the country" (Russell 2017a, 410). As part of its agenda, the committee hosted a series of five conferences in different cities in early 1992, in partnership with various think tanks and NGOs and prominent figures from the legal, political, economic, and academic communities. These conferences, at which citizens were invited to discuss key constitutional issues, were presented under the umbrella theme of the "Renewal of Canada." Public consultations then gave way to a return to

negotiation among elites in the form of an expanded version of the FMC process that had produced the Meech Lake Accord. This time, the nine other provincial premiers, joined by the territorial premiers and the leaders of four Indigenous organizations, along with Joe Clark as the federal representative, sought to craft a constitutional proposal to put to Québec. Meanwhile, Québec had launched separate internal inquiries into its own future, both through a process within the Liberal Party of Québec led by Jean Allaire, and through a multi-party effort led by Michel Bélanger and Jean Campeau, the Commission sur l'avenir politique et constitutionnel du Québec. These various processes ran on parallel tracks until a few months before the referendum, when Bourassa joined his counterparts at the negotiating table. In a document published after the collapse of Meech Lake aiming to give citizens an overview of previous developments, the Council for Canadian Unity referred to these as "proposals for constitutional reform and national reconciliation" (1990, 2). The phrase "constitutional reconciliation" remained a feature of news reporting as a general label for reform efforts in the lead-up to the Charlottetown referendum as well,[6] and references to reconciliation also appear in various forms within the reports issued by the various committees and commissions struck by the Canadian and Québec governments.

Tying these processes in with the tradition discussed in previous chapters, the federal government's proposals and the report of the Citizens' Forum on Canada's Future both use reconciliation in forms that associate it with federalism. *Shaping Canada's Future Together*,[7] which former Chief Justice Brian Dickson described in a letter to Mulroney as "a giant step toward national reconciliation" (quoted in Mulroney 2007, 879), suggests that the conundrum of 1992 is "very much like that in 1867" and that "[t]he basic objective […] for a revitalized

[6] See e.g., Beltrame (1990); Coyle (1991); McKeague (1992); *Montreal Gazette* (1991); *Ottawa Citizen* (1990a, 1990b); Shifrin (1992); J. Simpson (1991); Speirs (1991); Speirs and Doyle (1991); Winsor (1992).
[7] The introduction to this document was published in the media under Mulroney's byline in conjunction with its presentation in the House of Commons (Mulroney 1991).

Canada is the effective reconciliation of unity and diversity through a harmonious combination of distinct parts" (Government of Canada 1991, vii). This calls for creativity and imagination and will be achieved by "complet[ing] the process begun with the 1982 amendments to the Constitution" (viii). The proposals rest on a series of criteria that pair "respect for diversity" with "Canadian goals," emphasizing the need for some kind of overarching common endeavour (28). Diversity is presented as a characteristic of the provinces, associated with the observation that "[f]ederalism reconciles the need for certain strong common powers with the ability to accommodate and reflect different regional needs and objectives in other areas" (28). The Citizens' Forum, meanwhile, describes "the central issue" facing the country as "reconciling our two main communities, the English-speaking and the French-speaking, the latter about 90 per cent anchored in Quebec" (1991, 3).[8] The Forum notes the need to achieve a reconciliation between the pragmatic and the symbolic dimensions of nation-building, and that one of the challenges is reconciling Québec's desire for greater autonomy with other provinces' preference for a strong central government (117-18). Both texts' uses focus on the need for consistency or compatibility between countervailing aspirations or elements within the federation.

An appended comment from Commissioner Richard Cashin in the Citizens' Forum report presents the matter as such: "The basic question is how does the rest of Canada accommodate Quebec and how does Quebec reconcile itself with the rest of Canada" (142). Though no clarification is offered regarding the terminological choices, this suggests that accommodation and reconciliation are distinct, leaving open the question of what differs in what these respective processes ask of each entity. While Québec reconciling itself could be read as a form of acceptance akin to resignation, it is clear from the subsequent discussion that something other

[8] The passage from the foreword to the report that contains this line was also published in the media, in one case under the subheading "Reconciliation central issue" (Spicer 1991). An excerpt containing the same passage also appeared on page B3 of the *Montreal Gazette* on the same day.

than capitulation to the status quo is meant, as the prospect of reconciliation is linked to decisions about the structural and interactional changes to be undertaken. Cashin suggests that from what the Forum heard, accommodation and reconciliation could either entail recognizing Québec as a distinct society or devolving more powers to all of the provinces (142), and notes that these are not simple policy questions but rather a matter of "the underlying values of our political community" (143). Acknowledging that citizens presented the Forum with concerns on a wide array of issues, he states that "before we can deal with them we have first to establish what the political community is – is it to be a political community with or without Quebec?" (143). He also argues that the public debate risks being overtaken by a fixation with "process and personalities" that will detract from "dealing with the fundamental issue of whether or not there is a reconciliation with Quebec and whether or not that reconciliation will allow our nation to build for the future on the principles of our past" (143). These comments highlight how reconciliation as a matter of federal structure cannot be extricated from normative questions about values and aspirations, echoing Spicer's observation, in his foreword to the report, that "Canada is grappling with twin crises – one of structure, the other […] of the spirit" (8).

In addition to a specific focus on federalism, both the Citizens' Forum and the Renewal of Canada conferences invoke the notion of meeting these crises with a conciliatory spirit, thus also drawing in understandings of reconciliation as constituting the essence of the work of political negotiation more broadly. At the introduction to the closing conference, for instance, the Renewal of Canada conferences were described as "a most extraordinary exercise in nation-building" whose "achievement has been to find a creative reconciliation among the fundamental divisions which have threatened to fracture the unity of Canada" (CSC 1992, 3).[9] The final

[9] The reports from all of these conferences have been collected into one document but they are individually rather than consecutively paginated. As such, in the references that follow I have included the specific conference and the

conference is presented as having undergone a "magical" shift from conflict to "[c]o-operation, comprehension and, above all affirmation" (16). Punctuating the reports on the five conferences are "strong feelings in favour of keeping Canada whole" (Toronto conference, 4), "a spirit of conciliation and compromise" (Calgary conference, 6; see also Halifax conference, 22), a desire for "the country to remain coherent" (Halifax conference, 10), and a goal of "complet[ing] the circle of Confederation we began in 1867" (Toronto conference, 15). One of the primary avenues for doing this was a proposed "new Canada clause" that would "breathe life into the Constitution" in a fashion that would "both capture the essential unity of Canada and recognize and celebrate its diversity" (14). While the "heterogeneity" of Canada was also emphasized (Vancouver conference, 5), the respect for – or at least tolerance of – diversity that is linked to these uses of reconciliation, as it relates to Canada as a federation, is all contained within an entity that must be made and/or kept whole. Building on similar discourses around Meech, this attempt is distinguished by being more extensive in what it all seeks to include in that whole that then must be preserved.[10] Taken collectively, the discourses surrounding these conferences thus incorporate understandings of reconciliation as both an approach and an outcome, and echo the discursive linkages of earlier reform discussions in blending invocations of consistency/ coherence, unity and diversity, and achieving and/or preserving wholeness.

Actors sometimes frame embracing a conciliatory spirit and settling constitutional conflicts as an aspect of Canada's character or as a moral imperative, suggesting Canadians have a particular reconciliatory determination, capacity, and/or obligation. For instance, this is said of the very fact that the Charlottetown process happened: "That Meech Lake did not permanently

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page number(s) from the corresponding report within the broader collection.

[10] This more broadly inclusive vision is conveyed for instance in Bob Rae's comment around the August 1992 intergovernmental negotiations that he "can't believe we would come this far with anyone believing we could reach a constitutional reconciliation that doesn't include the native people. It has to include the native people" (quoted in York 1992). The nature of that inclusion as a form of reconciliation is discussed in the following chapters.

undermine the links of tolerance and affection that bind us together was due only to the many people who chose to stand up to the tumult and keep their faith in our capacity to compromise and to reconcile" (LaPierre 1992, 208). The imperative for seeking this reconciliation sometimes rests on internal justifications, and sometimes on more global ones. *Shaping Canada's Future Together* argues that Canadians "owe it to ourselves and to our children to surmount our present difficulties by reconciling our unity and diversity" (Canada 1991, viii). Others suggest this is owed to the whole world and that Canada's place in the world depends on its ability to achieve reconciliation. The Citizen's Forum, for instance, states that Canada's "moral credit comes from reconciling different cultures" and argues that its international influence would be weakened if Québec separated (1991, 119). It also suggests that "[t]he idea of Canada as a model for mankind is a grand one, worth defending far more passionately than many of us, or our leaders, do," and that we ought to remember "how consoling the vision of a harmonious Canada remains to the world" (10). LaPierre echoes this sentiment in arguing that the world is "waiting for us to be the prototype of the countries or political formations of the twenty-first century, by demonstrating that we do not seek cultural, linguistic, and ethnic conformity, but have succeeded in reconciling our differences and living fully a national unity in diversity" (1992, 249). Joe Clark linked all of these elements at one of the Renewal of Canada conferences, stating that the goal was "to save this peaceable kingdom. That is our blessing, our gift to the world, our duty to ourselves, our obligation to our children" (Calgary conference, CSC 1992, 17). Per Clark and others, for all its constitutional conflicts, Canada has a distinct capacity for "unity in diversity" and reconciliation that sets it apart from truly divided countries in other parts of the world (see e.g., Clark 1994, 133-34; House of Commons 1994d, 3186-87; Mendes 1993, 165; Monahan 1993, 246).[11]

[11] While uses of reconciliation in House of Commons debates sometimes drew direct contrasts between Canada and other countries, it bears noting that the term was also employed in connection to other global contexts independently

While these kinds of statements about reconciliation emerging from the political processes across Canada outside of Québec express a hopeful outlook, even if arising from a context rife with political cynicism (Spicer 2004, 250), the mood in Québec at the time was very different. This was the "couteau sur la gorge" period where Québec retreated from negotiations and stated that it would hold a referendum on secession if it did not receive a satisfactory constitutional offer from the rest of Canada. Jean-Marc Fournier – former Québec Minister of Canadian Relations who at that point worked as an aide to the Liberal members of the Bélanger-Campeau Commission – indicated that there was a greater preoccupation with irreconcilability at this juncture (research interview, October 2018). Even Québec federalists were feeling fairly hopeless about Québec's place in Canada at this point (J-M. Fournier, research interview, October 2018; C. Pelchat, research interview, January 2018). I spoke with some former members of the Commission and by and large they did not remember "reconciliation" making many appearances. As Christiane Pelchat stated, "on parlait de comment réintégrer le giron constitutionnel canadien, c'est comme ça qu'on parlait, alors ça pourrait être une conciliation, mais je ne me souviens pas que ce soit le mot utilisé" (research interview, January 2018). The primary operative concept for Québec, rather, was *reconnaissance* (recognition) (J-M. Fournier, research interview, October 2018). This was not to say that the word reconciliation was never used, Fournier told me, but if it was, it focused on recognizing Québec's character and place in Canada in a way that was distinct from how the term gets used with respect to Indigenous peoples today (research interview, October 2018). Like some of the other people I spoke with regarding the Charlottetown period, though, Fournier suggested that the *idea* of reconciliation could be understood as present even if the *term* was not central. He noted that while he associates

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of any discussion of Canadian constitutional politics. My search results for the period from 1994-2006 revealed uses of reconciliation linked to conflicts in just shy of twenty other parts of the world.

the term more strongly with relationships with Indigenous peoples, the idea of reconciliation is contained within Québec's quest for recognition (research interview, October 2018). Looking back on Meech in 1994, Bouchard offered comments linking recognition and reconciliation in this context, stating:

> I left my sovereignist family in 1984 to work for that because I thought, like Prime Minister Mulroney and many people in Quebec, a majority of Quebecers, it was worthwhile to try to reconcile the country. The minimal requirement we could set up to save the honour; accept that something very important in Quebec politics be enshrined in the Constitution, not in the powers but in the preliminaries of the Constitution; that Quebec should be recognized as a distinct society, which is to recognize us as a people. This is the fundamental thing, people in Quebec feel like a people. We cannot change that. It is a fact of public life. (House of Commons 1994f, 4920)

On this view, recognition of Québec is a mechanism and at-minimum condition for reconciliation. In 1991, since Meech had recently failed and, as Nic Leblanc put it, "[l]a réconciliation nationale venait de tomber à l'eau" (House of Commons 1994c, 2060), the Bélanger-Campeau Commission's hope for achieving this objective of reconciliation through recognition seemed low, and others continued to express concerns about the possibility that the aspirations and interests of the parties were in fact irreconcilable over the years that followed.

The Bélanger-Campeau Commission's report addresses the difficulty of reconciling divergent identities, aspirations, and political visions within the Canadian federal framework (CAPCQ 1991a, 31), suggesting that the impasse between the different groups stems from unresolved political problems and that the debates around the Meech Lake Accord highlight that these differences are becoming increasingly difficult to reconcile (37-38). The report presents the cohesion of a national Canadian identity around the *Charter of Rights and Freedoms* and an associated vision of federalism in the aftermath of the patriation of the constitution as being "difficilement conciliables" with an effective recognition and expression of Quebec's distinct identity (38). Further, it argues that the political choices that would meaningfully respond to

Quebec's needs and aspirations are treated as though they are *inconciliables* with the dominant vision of Canada and of federalism (44-45).[12] The report concludes that "la conciliation des attentes et intérêts du Québec et des autres parties du Canada dans le cadre de l'État fédéral nécessiterait des efforts considérables de la part des membres de la fédération" (58).[13] Like with the Citizens' Forum, the discussions engaged in at the Bélanger-Campeau Commission were preoccupied with both logistical questions of structure and questions of values and spirit which can be understood as embodying different dimensions of what reconciliation can mean. This was also very much an internal debate about what Québec society is and should be, and as Rod Dobbell notes, "the range of views to be addressed and reconciled by the Commission" in producing its report was significant (foreword in Fidler 1991, i). The outcome of this internal reconciliation was pointedly framed around whether Québec's and Canada's respective sets of aspirations and interests were in fact irreconcilable (CAPCQ 1991a, 37-38, 44-45, 58).

The range of views and interests brought to the country-wide constitutional reform negotiating table was no small thing to grapple with either, and even if the resulting proposals were rejected in the subsequent referendum, it remains a remarkable feat that the parties were able to reach an agreement. This happened in a couple of stages. In July 1992, all the parties except Québec reached a tentative agreement, the result of what BC Premier Michael Harcourt

[12] For example, in his submission to the Commission, Guy Laforest states that he does not think that the Canadian model of multiculturalism "soit réconciliable avec le projet de promotion d'une société distincte au Québec" (1991, 538). He also notes that while there is room for a certain kind of pluralism in the form of Canadian nationalism produced by the 1982 constitution and the *Charter of Rights and Freedoms*, it is also accompanied by a strong impulse towards uniformity. He writes that "[l]a Charte des droits et libertés recèle un équilibre complexe entre des droits individuels et des droits collectifs. […] ce pluralisme entre différentes sortes de droits […] paraît réconciliable avec une volonté d'homogénéisation" (532). In a later essay, Laforest speaks to both these seeming incompatibilities and to the context of the commission's report in the wake of the wounds of both 1981-82 and Meech Lake, noting that at the report release, "M. Michel Bélanger supplia le Canada anglais de s'excuser pour avoir isolé le Québec en 1981-1982. Tel était, d'après lui, le chemin de la réconciliation. Ce qui rend la chose tragique, c'est que la société et l'opinion publique canadiennes anglaises ne voient pas du tout pourquoi elles s'excuseraient" – in their view, the patriation of the constitution and the *Charter* that were perceived as illegitimate by Québec were "les plus grands promoteurs et véhicules de l'identité nationale canadienne" (2004, 40-41).

[13] This paragraph up to here is drawn from Wyile (2017a, 615).

termed “an exercise in conciliation among the nine provinces” (Harcourt and Skene 1996, 87). He notes, “Looking back at the moment, we had not really bridged a gap between two solitudes” (87), and Mulroney later stated to the media that this agreement was “‘an important stage’ on the road to constitutional reconciliation. But one that ‘must, to achieve national reconciliation, be expanded to include Quebec’” (quoted in Russo 1992). Such an agreement was later reached in a proposal that Peter Russell calls “a potpourri with constitutional goodies for everyone” (2017a, 410). While the language of reconciliation was evidently present in the Prime Minister’s rhetoric and in media coverage of the negotiations, it is not a term that endures in the memories of participants in the negotiations as having been a central explicit feature of the discussions (J. Clark; M. Harcourt; R. Romanow, research interviews, 2018), though some suspected that the word may have been used to refer to the goals of the negotiations (R. Romanow, research interview, February 2018). The draft legal text of the Accord did contain the word reconciliation, but a narrower technical meaning regarding the rendering of consistency rather than the kind of use being made by political actors in describing the undertaking as a whole.[14]

Despite initial optimism that the Charlottetown Accord would garner support because it had “goodies” for everyone, ultimately it also appeared to contain something for everyone to dislike (Rae 1996, 188), and when put to the country in a referendum it was soundly rejected. While the failure of this Accord may not have had the same starkly divisive effect that the collapse of Meech did (partly because Québec voted against it as well and as such did not have the feeling of being singled out for rejection by other parts of the country), it did mark the end of the constitutional reform efforts for Mulroney, for whom Charlottetown was “sa dernière bataille, la dernière chance de concrétiser sa promesse de réconciliation nationale” (Gendron

[14] The draft legal text, which is published in McRoberts and Monahan (1993, app. 2), includes provisions for the creation of a “reconciliation committee” comprising of members of both the Senate and the House of Commons to assist in the passage of bills in cases of disagreement between the two chambers over a piece of legislation (320-22).

2014, 365). In the end the result was not a "giant step towards national reconciliation" (Dickson quoted in Mulroney 2007, 879). Instead, the path led to a 50.6%–49.4% split in a referendum on Québec separation, after which Lucien Bouchard found himself calling for reconciliation in a new context (Desruisseaux and Fortin 1999b, 353), this time, among Québécois (Bouchard 1996, 313), while, in the words of the *Edmonton Journal* (1993), "the apostle of reconciliation" – Mulroney – had become "an agent of division among Canadians."

In the years between the rejection of the Charlottetown Accord and the second Québec referendum, partisan dynamics shifted significantly from the configuration that had produced the Meech and Charlottetown efforts, as the 1993 federal election brought to power a Liberal majority government under Jean Chrétien with an opposition made up primarily of the newly minted BQ and Reform parties, and shortly thereafter the PQ was elected in Québec. This period saw more uses of the language of irreconcilability, as political actors employed the consistency version of the term to both advance and critique claims that Québec and Canada's aspirations could not be reconciled. After the failure of the Charlottetown referendum, for instance, PQ leader Jacques Parizeau stated: "Canadian politicians tried to reconcile the irreconcilable, and it didn't work. And from both sides we told them it will never work" (quoted in Picard 1992; see also Ha 1992). Though once a proponent of the *beau risque*, Bouchard too came to share this view, telling a BC radio host that it was "not possible to reconcile the two conflicting visions of the country" (E. Stewart 1994). Liberal MP David Berger rebuked this statement, contrasting Bouchard declaring that "our differences were irreconcilable" with the "lucidity" and "remarkable" character of an agreement between Israel and Palestine and Nelson Mandela calling for unity in South Africa (House of Commons 1994e, 4050), thus implying Bouchard's

position to be of an opposite nature.[15] A *Toronto Star* piece earlier that year described Bouchard as "say[ing] openly that his aim is to work for an end to the 127-year-old Canadian experiment in reconciling two nations" (Speirs 1994). Another Liberal MP found the BQ's position itself to be irreconcilable: Pat O'Brien wondered how the BQ could square praising the Canadian health care system with "their political goal" and inquired how they could "reconcile the irreconcilable of why they want to break up such a wonderful nation with such a great system" (House of Commons 1994b, 916). BQ MP Gilles Duceppe distinguished between the theory and practice of governing systems in declaring that "le fédéralisme n'est pas mauvais en soi, mais l'arrangement fédéral que nous avons dans le cadre politique actuel est inconciliable avec les besoins du peuple canadien et du peuple québécois" (House of Commons 1994a, 484). Claims of irreconcilability were sometimes pitched at this overarching broad level, while on other occasions they were directed at specific differences such as differing aspirations and approaches regarding immigration or workforce training (House of Commons 1994g, 6450; 1994h, 6631). Alongside these declarations and critiques of irreconcilability, BQ MP Pauline Picard's suggestion, in the fall of 1994, that "le gouvernement aurait pu faire contre mauvaise fortune bon cœur et poser un geste significatif pour prouver sa bonne foi dans ce qu'il appelle depuis un an la réconciliation nationale" indicates that the language of 'national reconciliation' also persisted with the Liberals after having been introduced by the previous PC government (1994i, 7255).

After becoming Premier of Québec, Parizeau called for another referendum on Québec independence in 1995. The vote was an exercise in profound tension within Québec and in the whole of Canada, as even members of the same side experienced significant and substantive

[15] In a similar vein, later that year, Liberal MP Judy Bethel framed claims that "our partnership has reached a stage of irreconcilable differences," along with other claims she qualified as "distortions," as absurd, contradictory, and tragic (House of Commons 1994j, 8833-34).

disagreements over strategies and desired outcomes.[16] Picard's statement indicates that the Canadian government was already emphasizing national reconciliation before the referendum took place,[17] but the term was also prevalent in its approach following the extremely narrow No vote with which the referendum concluded.

4.3 "[U]n programme très bien défini" or "une vaste fumisterie"? Reconciliation After the 1995 Referendum

After the referendum, a whole new phase of reconciliation efforts began, both federally and within Québec. These included both efforts to repair relationships in the wake of the referendum campaign and to make provisions for the next potential referendum. In the process, political actors of different stripes used varying forms of the term reconciliation to describe their political undertakings and aspirations and to critique those of opposing parties. The discourses I have surveyed from this period, which are drawn from the debates of the House of Commons, speeches and writings by the federal Intergovernmental Affairs minister, the SCC's decision in *Reference Re Secession of Quebec*, and some media articles, involve primarily uses of the consistency and relationship meanings of reconciliation. The variation in what political visions these uses express showcases the normative range of reconciliation discourses, speaking to both interactional and structural changes geared at in some cases opposite goal premises, with some actors suggesting relations of opposition could be overcome while others insisted on their irreconcilability. While most statements focused on what was being done or to be done in the

[16] See Hébert and Lapierre's *The Morning After* (2014) for interviews with participants from the different camps in the referendum campaign. The collective effect of these interviews illustrates the deep complexity of the matter and how heterogeneous the positions on all sides were.

[17] While the quote from Bouchard that he refers to speaks of the solidarity – rather than reconciliation – among all Québécois that would follow a Yes win in the referendum, Liberal MP Don Boudria also used the term in calling on Bouchard to "adopter la même attitude et à prêcher les mêmes vertus de réconciliation au lendemain de la victoire du non" (House of Commons 1995d, 15397).

present and/or the future, the term was also sometimes used retrospectively in recollections of the Meech Lake and Charlottetown developments.[18] Uses of reconciliation discourses with respect to the relationship between Canada and Québec fluctuated over the decade following the referendum. They appeared quite frequently through the late 1990s but largely faded after 1998, though the term did arise occasionally in conjunction with debates around key developments in the Canada-Québec constitutional relationship in subsequent years, and then saw another swell in late 2006 when a House of Commons motion to recognize Québec as a nation within Canada was billed by the federal government as a gesture of reconciliation (sec. 4.4).

In the immediate aftermath of the 1995 referendum, the Liberal government in Ottawa launched its famous Plan A/Plan B response, seeking to mend fences with Québec while also bolstering the country against future secession efforts.[19] While part of its strategy in the period after the referendum included emotional appeals to reconciliation – exemplified for instance in the speeches by Intergovernmental Affairs minister Stéphane Dion discussed below – and projects geared at shoring up national symbols, particularly in Québec (Hébert and Lapierre 2014, 110-11), it also undertook a couple of legislative initiatives that sought to fulfil some of Québec's primary demands through non-constitutional means. This included passing a motion stating that the House of Commons would operate under the recognition of Québec being "a distinct society within Canada," passing a statute binding the federal executive to respecting a regional veto for any constitutional reform proposals advanced under the 7/50 provision of the amending formula, and transferring workforce training to the provinces (Russell 2017a, 424-25;

[18] For the most part, these were statements by BQ members alluding to those past developments as a sort of period of reconciliation lost, and/or as evidence of the irreconcilability of the parties and their respective visions of federalism (House of Commons 1995l, 17585; 1995m, 17642; 1997a, 9059; 2000b, 4715; 2003c, 8745; 2004c, 3157). In one instance, NDP MP Nelson Riis sought to highlight the resemblance between the Liberals' reconciliatory rhetoric in the 1997 Speech from the Throne and that of the PCs in 1984 (1997b, 83).

[19] For a more in-depth exploration than it is within my scope to offer here, see Valérie Lapointe-Gagnon's (2008) analysis of both the federal government's reconciliation strategies after 1995 and their representation in the press.

R. Watts 1996, 362-63). At the same time, the government also sent a reference to the SCC seeking to determine whether Québec had the legal right to secede unilaterally from Canada. These federal initiatives were joined in 1997 by a joint statement of all of the premiers other than Québec's, known as the Calgary Declaration, that included a recognition of Québec's language, culture, and legal tradition – framed in this instance as "unique" rather than "distinct" – and the role of the Québec government in protecting them, alongside an affirmation of individual and provincial equality.[20] Uses of reconciliation appeared in relation to all of these elements as well as in more general statements about what was happening or should happen after the referendum.

The day after the referendum, Liberal MPs declared that "[l]e temps est maintenant venu de tourner la page sur les divisions et les débats. L'heure est à la réconciliation et à la solidarité" (House of Commons 1995f, 16022). They also expressed hope that "le premier ministre du Québec saisisse la main que nous lui tendons et qu'il envoie ainsi un véritable message de réconciliation à tous les Québécois et Québécoises" (16022). The federal government's own post-referendum efforts were then framed in terms of reconciliation. These uses consisted of a mix of the relationship and consistency meanings, geared at expressing the desirability and feasibility of salvaging Canadian federalism and repairing the relationship between Canada and Québec. Describing a speech Chrétien gave in Toronto two days after the referendum, Liberal MP Bernard Patry referred to the need to make changes in the country and characterized the prime minister's message as "un de stabilité, de réconciliation et d'optimisme" (House of Commons 1995g, 16140). The following month, debating the resolution to recognize Québec as a distinct society, his colleague Lyle Vanclief spoke of the need to "heal the wounds" and "move forward together as Canadians" in the wake of the referendum and argued that "[t]his motion

[20] A copy of the Calgary Declaration is available here: https://www.saic.gouv.qc.ca/documents/positions-historiques/positions-du-qc/part3/Document36_en.pdf The declaration does not use the term "reconciling" in describing Canadian federalism, but rather states that "respect for equality and diversity underlies unity."

along with the bill concerning the veto and other actions of the House concerning workforce training measures provide a confident display of national reconciliation" (1995j, 17336). Similar language was used the following year. Mauril Bélanger, upon the opening of the next parliamentary session, stated that "on retrouve dans ce discours du Trône les jalons de la réconciliation," pointing to the aforementioned measures and the statement in the Throne Speech in support of entrenching the regional veto and the recognition of Québec as a distinct society in the constitution (1996a, 25). Clifford Lincoln likewise spoke of reconciliation as a takeaway theme of the Throne Speech and pleaded with the BQ to defer their hopes for independence and commit to trying to "travailler en réconciliation" together (1996b, 109). Paul DeVillers, parliamentary secretary to Dion, reiterated this as being the key mission of the federal government on several occasions, making statements such as "Notre plan est de travailler à la réconciliation. Nous essayons d'éviter un autre référendum," and "Nous nous sommes résolument engagés dans un processus de réconciliation nationale" (1996i, 2940; 1996m, 4781). Such reconciliatory efforts were guided by the conviction that people in Québec "veulent du changement, bien sûr, mais du changement dans le cadre du Canada" (4782). Other Liberal MPs made similar comments, affirming that "national reconciliation is one of the fundamental priorities the government is committed to achieving" (1996j, 3292), and asserting reconciliation as a desired approach, goal, and policy focus in Canada and Québec – in some cases, presented in contrast to an initiative being put forward by an opposition party, such as Senate reform (1995h, 16260; 1996j, 3288; 1996k, 3526; 1996l, 4187). After the premiers issued the Calgary Declaration in 1997, a Liberal MP stated that the declaration "and the broad public relations it has engendered can also be positive steps toward national reconciliation and a stronger future together" (1998, 3700). In all of these uses of the term, reconciliation or "national reconciliation"

is used as the name of an overarching project of improved political relations that achieve and maintain unity in Canada. Reconciliation in the sense of compatibility or consistency also appeared in the discussions as MPs invoked the familiar language of reconciling diversity and unity, or equality, or spoke about the reconcilability of Canadian and Québécois identities (1995j, 17293; 1996n, 5326; 1997d, 1730; 1997e, 2151, 2166).

Reconciliation was thus a shared vocabulary during this period, but one MP played a particularly prominent role in the development of reconciliation discourses at this point as his Intergovernmental Affairs portfolio was dedicated to national unity. This was Dion, whose mandate was even described by a BQ MP as being to "parcourir le Canada pour y prêcher la bonne parole et la réconciliation nationale" (House of Commons 1996h, 2432). Answering a question about how this role could be reconciled with elements of the federal government's Plan B approach, Chrétien stated, "Quant à la réconciliation, nous avions un programme très bien défini dans le discours du Trône […]. Le plan de réconciliation que nous avons mis de l'avant, très bien dirigé par le ministre des Affaires intergouvernementales, sera de l'avant et montrera que nous, nous sommes en faveur du fédéralisme renouvelé et non pour la séparation du Québec" (2432). Dion, who Chrétien appointed in early 1996, often used the term during this period. His speeches both demonstrate a continuity with the invocations of reconciliation as the spirit of federalism that stretch back to Confederation, and yet also align with a shift to a more explicitly stated normative purpose where reconciliation is named as the goal of contemporary politics.

Throughout Dion's book *Straight Talk*, which collects his writings and speeches from his time as minister, the term is applied to a variety of subjects, speaking on some occasions to the notion of (in)compatibility, on some to the idea of healing and unity, and on others to a general goal or priority of the Canadian government. Interestingly, Dion also appears to contrast

reconciliation with the notion of resignation, which is of note since that too can be a meaning *of* reconciliation. On a couple of occasions, he speaks of not being "resigned to accepting" the disintegration of the country (1999, 131), and of needing to combat feelings of "[p]assivity and despair" and "resignation" in the country (6), and he presents "try[ing] again" to achieve reconciliation as the required counterpoint (131). While some of the reconciliations in question are matters of structure, Dion primarily seems dedicated to addressing Canada's crisis of the spirit, as Spicer put it, and emphasizes several times that what must be pursued is a reconciliation that is not simply agreed to on paper but that is *felt*: "we must be reconciled in our hearts" (13, 137, 149).[21] On this latter dimension, reconciliation is presented as an antidote to feelings of mutual rejection between Québec and other parts of Canada (xvi), and a path of accepting and celebrating dual loyalties within the federation (5), something Dion suggests is enabled by the fact that both Québécois and Canadian society share "great universal values" (18). This affective vision would seem to accord potentially with existential reconciliation as well as interactional reconciliation, but as the varying receptions of Dion and the Liberals' approach show, much depends on the receiver's perspective of the structural change on offer.[22]

When it comes to structures, Dion argues that Canadian federalism is "an undeniable success," and he is decidedly laudatory of its ability to "unite different populations around common objectives" in a "melding of unity and diversity" (xiv, xi). However, his vision of reconciliation requires a change from the status quo in that he considers it necessary to recognize the distinct character of Québec society, which he sees as "a practical step" and "not a dangerous constitutional abstraction" (12, 135). He argues against the insistence on provincial equality as a

[21] For an analysis of the role of emotions in the politics of reconciliation, see Little (2017). Dion's uses of reconciliation reflect the simultaneous emphasis on fear and hope that Little describes, which he suggests are "intrinsically linked in the politics of reconciliation" (205).

[22] As Little observes, drawing on Bernard Williams, "the *substance* of hope is not universal. […] what generates hope for some people will be a cause of despair for other people" (2017, 206; emphasis in original).

barrier to taking this step, suggesting that it is a "false dichotomy" to oppose the equality of the provinces and the recognition of Québec as a distinct society, and that these "can be reconciled the moment it is admitted that equality is not synonymous with uniformity in Canada" (xvi). Strategically here, however, the approach is distinct from that taken under Mulroney's government and is linked with Dion's affective description of reconciliation, as he argues against the path of returning to "constitutional obsession" and suggests that Québec's distinctiveness is something that needs to be shown, understood, and felt rather than presented as a non-negotiable condition of Canadian unity (xvi). In his discussion of federalism and the possibilities for coexistence within Canadian society, Dion speaks variously of the "reconciliation of unity and diversity" among "people of many different backgrounds and languages" (7), "reconciling different communities" (11), "reconcil[ing] Quebecers and other Canadians" (13), and, generally, "national reconciliation" (12, 55, 135, 140, 142, 148). He touts federalism as a structure for accomplishing this as it aims "to reconcile extensive solidarity and desires for autonomy" and the dual pressures characteristic of the late 20th century of simultaneous impulses towards "larger political organizations and […] smaller, more regional ones" (29-30). In all these invocations, reconciliation is formulated as either the already-existing compatibility or the possibility of establishing compatibility or consistency between divergent trends, entities, or interests. Dion also flips the equation to speak of incompatibility with regards to secession and democracy in the context of Canadian federalism (xviii, 146-47). Further, secession is the opposite of reconciliation as a substantive outcome, as it is only upon avoiding secession that Canada and Québec "will have found the road to reconciliation and unity" (16).

Dion celebrates the Canadian federal system in part because he sees it as being flexible enough to continue reconciling unity and diversity on an ongoing basis: "This is fortunate, given

that the cohabitation of cultures is necessary, and, indeed, the only viable possibility, since neither cultural assimilation nor cultural separation is practical or morally acceptable" (34). Dion strongly emphasizes moral imperatives in his framing of Canadian federalism and reconciliation, and proclaims the achievement and maintenance of these to be a duty owed by Canada to the entire world. He often invokes the idea of Canada as "a model for all mankind," the best existing embodiment of universal values (132, 3, 9, 23, 168), and pleads that Canada "must not inflict on the world the spectacle of its break-up" (3), arguing that to do so would "set a bad example for the rest of the world" (23, 43, 3). He goes so far as to say that "Quebecers and other Canadians do not have the right to fail. They must move closer to one another and achieve reconciliation" (24). This is something they owe themselves but also "the other inhabitants of this poor planet, who see in Canada a source of hope and a country that has been blessed by fortune" (24). On a couple of occasions, this plea takes the form of some comparative chastising, as Dion suggests that if South Africa can achieve "reconciliation and striving for harmonious cohabitation of cultures," then surely Canada is not going to become a contrasting example of fragmentation (27, 43). A sense of the significance of reconciliation in Dion's thought about Canadian federalism is in some ways felt as a cumulative effect, but the following is perhaps the most potent example, invoking reconciliation as something that Canadians *must do* and that *they have always done*:

> Canada is a unique human achievement. Not just as British Columbians or Quebecers, not just as the holders of milk quotas or investors in savings bonds, but as human beings, we have no right to impose upon the world the end of this Canadian dream. Canada is considered the world over to be a model of generosity and openness. Let us live up to our reputation and send the rest of the world a positive signal of reconciliation.
>
> We, whether Francophones or Anglophones, Aboriginals or new Canadians, Easterners or Westerners, will favour solidarity and reconciliation over division and break-up. It is within ourselves and the history of what we have always been able to do that we must find the way to reconciliation. (133)

In this formulation, reconciliation is presented as both a matter of moral duty and of inherent

identity that cannot be eschewed. Collectively, in all of these statements, reconciliation appears as a plea, a commitment, and a seemingly non-negotiable fact. Dion promises that "[t]he Canadian government's priority is to help Quebecers and other Canadians achieve reconciliation" (190). He declares – echoing Pearson's statement three decades prior[23] – that "we will choose to stay together, because the forces of unity will prevail" (44), while simultaneously imploring citizens to make it so (13, 133-34, 137, 140).

Russell describes Dion as taking "the reconciler's approach to constitutional change" (preface in Dion 1999, xi), stating that "Dion's project is not one of conversion but of reconciliation," and that he lays out "the conditions for a reconciliation – a reconciliation of Quebec nationalism with a highly decentralized and multi-national Canadian state" (x). This approach was not met with approval in all corners, however. Both Dion in particular and the Liberal approach in general faced varied opposition criticism rooted in divergent positions on conceiving of Canada as multinational. These critiques also sometimes invoked reconciliation, in some cases criticizing the Liberals' description of their actions as reconciliatory and, later, criticizing them for seemingly moving away from the reconciliation-focused approach they'd promised after the referendum. Reform Party members were critical of Chrétien "attempt[ing] to characterize the move to confer distinct society status and a constitutional veto on Quebec as an act of generosity and reconciliation" as they saw the recognition of Québec as a distinct society as an act of segregation and a violation of individual and provincial equality (House of Commons 1995j, 17340; 1996c, 291-92).[24] BQ members, on the other hand, were critical of this form of recognition for being insufficient. Michel Bellehumeur, for instance, stated: "Si c'est là

[23] There are a few echoes of Pearson in Dion's speeches. While they used slightly different language in addressing national unity, they strike a similar balance in calling for certain forms of recognition and accommodation for Québec. They also both emphatically seek to ward off attempts to call the broader project of Canada into question.
[24] The same arguments appeared in Reform Party and BC Liberal Party critiques of modern treaties with Indigenous peoples, as is discussed later in chapter 9.

le plan de réconciliation proposé, le gouvernement manque de sérieux et de respect envers la population du Québec" (1996e, 1458). Meanwhile, his colleague Roger Pomerleau criticized Dion's appointment as Intergovernmental Affairs minister in the first place due to the role he had played in the No campaign during the referendum, claiming that making him "responsable du dossier de la grande réconciliation nationale, alors qu'il affiche déjà un tel mépris pour ceux qu'il doit représenter relève de la plus haute fantaisie et démontre à quel point le premier ministre n'a aucune idée de réconciliation en tête, malgré tous les beaux discours du trône" (1996d, 737). Expressing frustration over the federal government's decision to intervene in the *Bertrand* litigation,[25] Suzanne Tremblay asked: "En niant au peuple québécois le droit de décider lui-même de son avenir, le ministre ne se rend-il pas compte que son gouvernement est en train de faire la preuve qu'il n'a rien à offrir au Québec et que le grand plan de réconciliation nationale n'est qu'une vaste fumisterie?" (1996g, 2251). These critiques appear to use the term reconciliation with skepticism and challenge the Liberal vision of reconciliation as relationship on structural and interactional grounds, as they argue that it reflects neither the kinds of changes required to foster improvements in interactions between agents from the different parties nor to alter the structural context of their relationship.[26]

Four years later, Dion faced questions about his commitment to reconciliation from both PC and BQ members following the introduction of the *Clarity Act*. The government put this legislation forward in the wake of the SCC's decision in the *Reference Re Secession of Quebec* to

[25] Québec lawyer Guy Bertrand had sought to prevent Québec from holding a future referendum after previously failing to stop that of October 1995. The federal government intervened in response to Québec's position – that only international law and not the Canadian constitution would govern secession – to argue that such an effort would fall under the authority of the Canadian constitution and courts. The struggle between these competing positions in this forum was superseded when the federal government submitted the reference questions to the SCC that led to the *Reference Re Secession of Quebec* (Centre for Constitutional Studies 2019; House of Commons 1996m, 4707-10).
[26] While still a PC MP, André Harvey also continued to critique the Liberals for, in his view, being responsible for thwarting "national reconciliation" in the form of the Meech Lake Accord and the structural changes it included, arguing that they chose to place party interests over the country's (1997d, 1728-29; 2000c, 4865; 2000d, 5848).

set parameters around how and when the House of Commons would determine that a clear majority had expressed its will on a clear referendum question regarding the secession of a province that would require the federal government to enter into secession negotiations.[27] Associating the *Clarity Act* with Plan B, which referred to the federal government's efforts to stave off future secession attempts, while Plan A was "celui de la réconciliation" (2000g, 7691; see also 2000a, 3172),[28] these MPs challenged the perceived shift from the former to the latter for different reasons. BQ MP Daniel Turp took aim at the federal government funding contracts geared at promoting Canada and national unity within Québec (a practice that would later take centre stage in the infamous sponsorship scandal) along with the *Clarity Act*, which he described as the "apothéose" of Plan B (2000g, 7687). Turp argued that these actions undermined Plan A and imposed a set conception of the future over Québec's democratically legitimate right to choose between independence and remaining in Canada for itself (7691; see also 7671, 7686-88). PC MP Jim Jones, on the other hand, challenged the *Clarity Act* for legitimizing secession and thus the destruction of the country, counterposing this with "reconciliation between our nation's two founding peoples" which he argued the government should focus on instead (2000a, 3172). Jones also employed the consistency version of reconciliation to inquire as to how Dion could account for championing the *Clarity Act*, "which obviously comes to us from the plan B school of thought," given that he had "c[o]me to Ottawa as a fervent advocate of plan A" (3172).

The discussions of the Québec-Canada relationship in this period also featured another set of uses of the consistency form of reconciliation that was pitched at a broader set of relations

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[27] The *Clarity Act* is available here: https://laws-lois.justice.gc.ca/PDF/C-31.8.pdf. In its wake, Québec passed the *Loi sur l'exercice des droits fondamentaux et des prérogatives du peuple québécois et de l'État du Québec*: https://www.legisquebec.gouv.qc.ca/fr/pdf/lc/E-20.2.pdf. It asserted that "[l]e peuple québécois a le droit inaliénable de choisir librement le régime politique et le statut juridique du Québec" and that a majority is 50% plus one vote.

[28] This distinction has been drawn in scholarship as well. Jeremy Webber writes of Plan B and its "impact on trust and distrust": "by contemplating what might happen in the case of secession, it reinforced an antagonistic relationship between Québec and the rest of Canada, emphasizing conflict, not reconciliation" (2018, 178).

of opposition than individual actors' rhetorical and behavioural inconsistencies. Reminiscent of the uses in the Bélanger-Campeau report (1991) that expressed concern about the prospects for reforming Canadian federalism, members of the BQ advanced suggestions that Canada and Québec's differences were irreconcilable at various junctures over the decade after the 1995 referendum. This sometimes took the form of arguments against specific bills and sometimes against the possibility of the redemption of the federation in general. These included claims of "l'opposition irréconciliable des revendications traditionnelles du Québec et de la position du Canada anglais" (House of Commons 1995i, 17054); of the existence of "deux extrémités inconciliables dans ce pays qu'il faut reconnaître" (1995l, 17586); of "deux visions du Canada, à mon avis irréconciliables, et qu'il faudra un jour trancher" (1996n, 5322); of divergent economic visions regarding the funding role of the federal government and the degree to which policy should be centralized (1997f, 3051; 1997g, 3096), and regarding federalism in general, as indicated by the rejection of the Meech Lake and Charlottetown accords (2000b, 4715; 2003c, 8745); and of how "totalement irréconciliable" the values informing Québec's and western Canada's positions on legislation were (2000f, 6356). In Turp's view, attempts to address these irreconcilabilities via "constitutional remedies have been exhausted" and a new solution via a partnership between Canada and a sovereign Québec should be pursued instead (1997c, 228).[29]

However, the distinction between how the different parties related to reconciliation discourses was more complex than BQ members simply seeing irreconcilability where Liberals saw reconcilable differences, and pushing back against what others tendered as a vision of reconciliation. At the same time, there were also discussions about the need for reconciliation

[29] Turp, a law professor, had also previously advanced this argument in academic writings (1993, 1996). In an article following the Charlottetown referendum, he states: "It is time to acknowledge the irreconcilable views of the nature and structure of their federation held by Quebecers and Canadians. It is time to reconcile Canada and Québec in a novel union of genuine sovereign states that will foster the possibility of going beyond the very unsuitable and inappropriate federal structure that has bound the peoples of Canada and Québec for the past 125 years" (1993, 49).

within Québec society, and some BQ MPs employed the term in appealing to a political vision that was diametrically opposed to that associated with the form of reconciliation the federal government was promoting.[30] Lucien Bouchard noted that after the referendum results were tallied, he told Parizeau he was going to use his concession speech "to start the healing process" (Hébert and Lapierre 2014, 6).[31] Writing in *L'actualité* the following February, Bouchard stated:

> La solidarité requise [pour remettre le Québec sur pied] devra découler d'une réconciliation de toutes les composantes québécoises. Nous devrons emprunter ensemble le chemin de la relance, les gens d'affaires avec les syndicats, le secteur public en alliance avec le secteur privé, […] les anglophones, allophones et autochtones aux côtés des francophones. (1996, 313)

In March of 1996, Bouchard gave what was later described as "son discours dit de réconciliation," "son fameux discours réconciliateur," and "un discours conciliant et en anglais" to an audience of anglophone Montrealers at the Centaur Theatre as part of the effort towards this healing process (House of Commons 1999c, 2168; Karmis 2003, 114; G. Stevenson 2003, 328).[32] For BQ MP Paul Crête, the goal of such reconciliatory efforts within Québec society had a very different goal than the kind of reconciliation envisioned by Plan A. Speaking in the House

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[30] Beyond the Liberals' stated commitment to reconciliation and the uses by BQ members described here, members of other political parties also claimed an association between their party and reconciliation, and critiqued the policies of other parties for being lacking on that front. See e.g., House of Commons (1996k, 3525; 1996m, 4785; 1997e, 2160; 1999a, 12606; 2000e, 5965). While infrequent and spread out over a number of years, these statements demonstrate a certain partisan attraction to being seen as the party of reconciliation as competing parties each seek to associate themselves with the term. Jockeying for association with reconciliation among political parties also took place in relation to treaties with Indigenous peoples during the same period (see ch. 9).

[31] Bouchard "recall[ed] Parizeau saying that his own speech would be quite different" (Hébert and Lapierre 2014, 7). Parizeau's speech after the referendum loss remains infamous. Since then, conflicts over *laïcité*, interculturalism/ multiculturalism, and accommodation of diversity in Québec have been the subject of complex and ongoing debates. Others treat the matter elsewhere and it is not within the scope of this dissertation, but on the present theme it is worth noting that the Bouchard-Taylor Commission on reasonable accommodation's 2007 report was subtitled *A Time for Reconciliation*. See Carastathis (2013) for a critique of the use of "reconciliation" in that context.

[32] Apart from one reference to seemingly irreconcilable disagreements, his speech did not make use of the term reconciliation itself, however. This use connected to relations of opposition and dispute resolution. Bouchard stated: "I am glad to hear that talk about the use of force is disappearing from the federal discourse. Wiser heads have prevailed. As a former negotiator by trade, I can tell you that when disagreements arise that seem at first to be irreconcilable, there is a whole storehouse of mediation and arbitration methods, of cooling-off periods, national, international settlement mechanisms, and if by chance they can't be found, then others can be devised. […] I have no doubt that we will find within ourselves the means to come to reasonable, peaceful solutions. For us Quebeckers, there is simply no other way" (CTV Montreal n.d., 24:38-25:32).

of Commons a few days after Bouchard's speech, he stated: "Présentement, au Québec, on est en train de travailler très fort à ce qu'il y ait une réconciliation entre les anglophones, les francophones et les allophones pour s'assurer que le projet qu'on n'a pas réussi à mener à terme la dernière fois obtiendra une majorité suffisante la prochaine fois pour être réalisé" (House of Commons 1996d, 743). A year and a half later, reflecting on his lack of enthusiasm about the Calgary Declaration with respect to allowing "Québécois de se réconcilier avec un fédéralisme canadien que l'on veut faire reposer sur l'égalité des provinces et des individus plutôt que sur la reconnaissance et la liberté des peuples," Turp asserted that "[i]t is now time to acknowledge the diverging views of the peoples of Quebec and Canada on the nature and structure of the federation. It is time to reconcile Canada and Quebec in a new kind of partnership, a novel form of union between genuine sovereign states" (1997c, 226). For Crête and Turp too, then, it seems that reconciliation was a possible and desirable undertaking – but as a means and an end that would enable and follow Québec independence, not prevent it. These uses of the term also constitute a vision of reconciliation as relationship, but associated with goal and means-end premises that not only diverge from but oppose those informing the Canadian government's vision and its supporters. This is evidenced by the dichotomy drawn by Dion between reconciliation and secession: where the supporters of Plan A and/or Plan B sought interactional (and sometimes contemplated structural) changes that would secure a reconciliation that would foreclose the possibility of secession, sovereignist visions associated reconciliation with the fundamental structural change *of* secession. Reconciliation was thus being used by opposing parties in the debates of this period to mean both a thing and its opposite.

In the mix of political and legal responses that followed the 1995 referendum, politicians were not the only actors to employ the term reconciliation. As part of its Plan B approach, the

federal government referred a series of questions about the legality of Québec seceding to the SCC. This yielded the *Reference Re Secession of Quebec* (1998), in which "the Court crafted a lucid and politically artful verdict: Quebec did not have such a right, but nor could the rest of Canada legally refuse to negotiate the terms of secession should Quebecers democratically and unambiguously express a will to secede" (Millard 1999, 1-2).[33] As such, the decision seemed to "giv[e] both sides something to cheer about" but did not outline any scenarios for if such negotiations failed, or what the parameters of a question and vote regarding secession would need to be; "[t]hose are political questions the Court said that are best left to the political actors involved" (Russell 2017a, 427). The Court puts this requirement in terms of reconciliation.

The SCC's use of reconciliation falls within the tradition of using the consistency version to describe federalism and does not put the same kind of rhetorical emphasis or normative centrality on the word as some of the political speeches of the era, but is significant in that it places the term within a declaration of Canada's foundational constitutional principles. It is also of note that it did so at a time when the Court had also already begun using the term in cases pertaining to Aboriginal rights.[34] Reconciliation makes two types of appearance in the *Reference Re Secession of Quebec* (1998), both of which speak to the nature of politics in Canada. One is the recurrent reconciling of unity and diversity (244, 245). This comes as part of the Court's description of federalism in delineating what it deems the four "underlying principles animating the whole Constitution": constitutionalism and the rule of law, federalism, democracy, and respect for minorities (220). The other references come in discussions regarding the negotiations of the parties' respective interests in the event of a referendum vote in favour of secession. The

[33] For more on the Court's approach to constitutional interpretation and engagement with different constitutional visions, identities, and histories of political relations in the *Secession Reference*, see Choudhry and Howse (2000); Gaudreault-DesBiens (1999); Hamilton and Nichols (2020, 416-19, 430-34).
[34] This is explored in chapter 7. On the contrast between these uses, see also Hamilton and Nichols (2020).

SCC holds firmly that the "reconciliation of the various legitimate constitutional interests" must be the work of politicians and not the courts "because that reconciliation can only be achieved through the give and take of political negotiations" (222, 272, 294-95). The requirement to seek reconciliation is framed as a constitutional obligation: "In the event secession negotiations are initiated, our Constitution, no less than our history, would call on the participants to work to reconcile the rights, obligations and legitimate aspirations of all Canadians within a framework that emphasizes constitutional responsibilities as much as it does constitutional rights" (273). While the SCC acknowledges that this reconciliation may not be possible, it does "not speculate […] as to what would then transpire" (270). These uses all constitute reconciliation as rendering consistency within relations of opposition, whether between principles animating Canadian constitutionalism or between the rights and interests of different constitutional partners.

As with the Mulroney government's Throne Speech, it seems that use of the word "reconciliation" in these statements framing federalism and potential negotiations may also have been a coincidental vocabulary choice. A former Justice who sat on the Court at the time noted that while there were evidently discussions "dealing with the merits of the case and the problem," in his recollection the Justices "did not discuss the terminology" (J. Major, research interview, July 2018). While the SCC's use of reconciliation in the reference did not brandish the same degree of rhetorical flourish as many MPs' speeches, and perhaps reached a slightly different audience, its use of the term in the context of a statement of Canada's fundamental constitutional principles was significant and informed new avenues of academic exploration centred on reconciliation (Millard 1999; Tully 2000; Hamilton and Nichols 2020).

Guy Laforest suggests that the *Secession Reference* brought with it "une embellie dans notre climat politique" after the tense divisions that followed the referendum (2004, 6), and

Hansard shows that with lessened tensions came less talk of reconciliation. After the period that included the debates over the *Clarity Act* that the Liberals introduced in response to the reference case in 1999-2000, uses of the term with respect to the relationship between Canada and Québec in parliamentary debates subsided for several years,[35] though it still appeared occasionally.[36] This changed following the 2006 federal election when a confluence of events returned debates over the structure of federalism and the nature of Québec and its relation to Canada to centre stage.

4.4 "[U]n geste d'ouverture et de réconciliation": The 2006 House of Commons Motion Recognizing Québécois Nationhood

After several years of being comparatively quite infrequently used in Commons debates in relation to Québec, reconciliation reemerged in late 2006 as Stephen Harper's Conservative government introduced a motion to "recognize that the Québécois form a nation within a united Canada" (House of Commons 2006c, 5197). In the year leading up to this, the Conservatives, NDP, Liberals, and BQ all advanced proposals or undertook debates about making changes to

[35] During this interval, though not focused on Québec specifically, a series of unsuccessful motions put forward by MP Stéphane Bergeron to recognize the deportation of the Acadians saw reconciliation surface in a different set of debates relating to the historic relationship between French and English. The initiative was framed by Bergeron and others as one that would bring reconciliation (House of Commons 2001c, 7557; 2003a, 7589, 7591; 2004a, 468; 2004b, 1285). These debates are notable both as an example of the use of reconciliation in debates about historical redress and of the federal government's orientation towards apology and redress during this period (James 2007, 328; Matsunaga 2021, 100), and because of how they were situated within partisan dynamics between the Liberals and the BQ – since the motions were introduced by a BQ MP – as well as within debates among Acadians about how to approach this history. For examples of the tenor of these debates, see House of Commons (2001b, 7458-67; 2003a, 7589-96; 2004a, 461-68; 2004b, 1281-86), and for an account that situates the debates in relation to broader discussions among Acadians and to the trajectory of commemoration initiatives around the founding of Acadie and the *Grand Dérangement*, see Ronald Rudin's *Remembering and Forgetting in Acadie* (2009, ch. 6). Rudin's account highlights several other occasions where discourses of reconciliation were employed in this context (233, 243-45, 250, 255), observing that in many of these uses "it was not clear who was being reconciled with what" (255).

[36] The types of uses that appeared during this relative lull, some of which are cited above, were similar in character to the variety already described, as Liberal MPs presented reconciliation as a Canadian trait (House of Commons 1999a, 289-90), declared that "[l]es Québécois veulent la réconciliation" (2002, 11185), and asserted the reconcilability of Canadian and Québécois identities (2003d, 9021), while BQ MPs queried the Liberals on what they asserted were contradictory positions (2005, 8557), charged them with acting in contravention with their earlier rhetoric about reconciliation (2003b, 8202), and advanced arguments about irreconcilable differences (2001a, 2532; 2003c, 8745; 2005, 8557). On the occasion of Joe Clark's retirement, Duceppe acknowledged Clark for having "tenté de réconcilier sincèrement les aspirations du Québec et du Canada, mais sans succès" (2004c, 3157).

the relationship between Canada and Québec, sometimes using reconciliation in the process. Uses of the term during this period bore the inheritance of earlier debates over constitutional reform and the recognition of Québec as a distinct society. Similarities remained in the lack of clear conceptualization of what reconciliation was intended to mean and the divergence of meaning attributed to it by different political actors. However, amid varied uses by others seeking greater short- or longer-term structural change, this juncture in the genealogy of reconciliation also differed from earlier periods in that it featured the federal government explicitly dissociating reconciliation from the project of formal constitutional reform.

2006 had brought with it several important developments that laid the groundwork for the recognition motion and the accompanying discourses of reconciliation. The contexts surrounding the Conservatives' election and their subsequent introduction of the motion were the product of both factors that were a long time in the making over the course of the years following the referendum and more immediate political opportunities.[37] In the lead-up to the January 2006 election, both the Conservatives and the NDP stressed a need to revamp relations with Québec after what they argued had been a damaging period of Liberal rule. By the end of 2006, both parties had linked their approaches to doing things differently to reconciliation.

For his part, Harper courted the country, but in many ways especially Québec, with a platform rooted around what he called "open federalism."[38] Open federalism's key elements

[37] Such factors included the arrival of a Liberal government in Québec, the implosion of the federal Liberal Party resulting from internal disputes and the sponsorship scandal, growing provincial frustration with the fiscal imbalance between the federal government and the provinces, the development of intergovernmental agreements such as the 2004 Health Accord that incorporated differing provisions for Québec, accumulated frustrations in Québec with federal Liberal policy, and broader changes occurring under increasingly neoliberal governance. For discussion of these and other factors, see e.g., Changfoot and Cullen (2011, esp. 772-73); Fox (2016, 9-12); Graefe and Laforest (2007, 49-51); Héroux-Legault (2022, 69-72); Laforest (2014, 182).

[38] While this marked a shift from prior marketing of the party, scholars have highlighted how many elements of open federalism are consistent with Harper's longstanding ideological vision regarding Canadian politics dating back to the mega-constitutional reform debates, the creation of the Reform Party, and the immediate aftermath of the 1995 referendum (Castro-Rea 2016, 260, 265-66; Fox 2016, 8-9, 14-15; Héroux-Legault 2022, 72-73; Laforest

included recognizing and addressing the fiscal imbalance between governments in Canada, refraining from encroaching on provincial jurisdiction, supporting the Council of the Federation, and "recogniz[ing] the special cultural and institutional responsibilities of Québec" as well as other provincial interests in relation to international institutions and agreements, which meant tackling questions related to equalization, the division of powers and the federal spending power, and the role of provinces – particularly Québec – in the international arena (Laforest 2014, 183; see also Castro-Rea 2016, 162-62; Graefe and Laforest 2007, 51-52; Pelletier 2014, 118-20).[39] These provisions responded in various ways to Québec's longstanding calls for greater autonomy and recognition (Graefe and Laforest 2007; Noël 2006). The latter provision was linked particularly to the creation of an official role for Québec in Canada's delegation to the United Nations Educational, Social and Cultural Organization (UNESCO), which it was suggested would be "along the lines of its participation in la Francophonie" (Conservative Party of Canada quoted in Fox 2016, 13). Despite the differences between the conservative governments of 2006 and twenty years prior,[40] this move comprised one of several similarities to Mulroney's approach in the 1980s. Mulroney had also come to power making overtures to Québec, been able to pursue those plans with the aid of a federalist government in Québec,[41] and made room for Québec to play a greater role on the international stage by expanding its participation with regards to la Francophonie. Some commentators have also drawn a parallel between a speech Harper gave in

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2014, 175-79). At the same time, it also reflected a significant change in how Harper talked about Québec compared to previous periods (Boily 2014, 231; Jeffrey 2015, 303-5; Laforest 2014, 179-82).

[39] Around this time, the Council of the Federation also struck an Advisory Panel on Fiscal Balance, which issued a report on the subject in March 2006 that it titled *Reconciling the Irreconcilable*. Little use of reconciliation is made in the panel's report beyond the title. While the term also has fiscal connotations, the title appears to align primarily with a reconciliation as consistency use regarding a difference of views between the provinces and the federal government as to whether a fiscal imbalance existed. See Advisory Panel on Fiscal Imbalance (2006, 6, 72).

[40] The PCs had had merged with the Reform Party-turned-Canadian Alliance to form the new party under Harper's leadership a few years prior to the Conservatives' election in 2006.

[41] A Liberal government headed by Jean Charest, previously a member of Mulroney's government, was elected in Québec in 2003. As PC leader during the 1997 federal election, Charest too was associated with reconciliation, with pollster Pierre Drouilly describing him as "proposing reconciliation between Canadians" (Peritz 1997).

Québec City in 2005 and Mulroney's Sept-Îles speech during the 1984 campaign (Caron and Laforest 2009, 29; Pelletier 2014, 117),[42] and Alain Noël suggested in 2006 that despite some of the reactions elicited in other parts of Canada by the references to Québec in the Throne Speech following the Conservatives' election that year, "no government since the Mulroney years has been better placed to move the country ahead along the path of reconciliation" (30).[43]

The UNESCO promise was part of Harper's Québec City speech (Pelletier 2014, 119), and later, as discussed below, linked expressly to reconciliation by Harper in his framing of the House of Commons motion recognizing Québécois nationhood. He followed through by signing an accord with the Government of Québec in May 2006. The significance of this development both in terms of the substance of Québec's role in the UNESCO delegation and of the degree to which it reflected a multinational conception of Canada and a willingness to create asymmetrical institutional arrangements in accordance with such a vision is disputed. Despite the comparison drawn in the election platform, scholars have observed that the parameters of Québec's representation in the UNESCO delegation do not measure up to its role in la Francophonie (Castro-Rea 2016, 167; Pelletier 2014, 124-25). In some ways foreshadowing the wording of the November motion in the House, Québec's representative role with regards to UNESCO was situated firmly *within* the Canadian delegation. Some argue that this circumscribes the role that Québec's representative is able to play to one that effectively amounts to lobbying within the

[42] For further discussion of this speech and why it struck a chord in Québec, see Noël (2006, 27-28). Though it does not go into any detail on the term, Noël's piece includes a rare acknowledgement of the longevity of the application of reconciliation in this context and note of critical caution, contained in the statement that "[t]he inherent appeal of recognition, reconciliation, and respect explains why Quebecers responded positively to Harper's new vision, but it offers few operational guidelines regarding the course of action that could be or should be pursued. The past 20 years have taught us how problematic, indeed perilous, the politics of recognition and reconciliation can be" (26).
[43] A less auspicious parallel to the Mulroney government's reconciliation efforts was drawn by Assembly of First Nations (AFN) National Chief Phil Fontaine, who upon learning of the motion recognizing Québécois nationhood observed that "[ç]a sent le Lac-Meech" as no one had consulted Indigenous peoples about it (Buzzetti 2006). He juxtaposed this recognition of Québec with the federal government's simultaneous opposition to the United Nations Declaration on the Rights of Indigenous Peoples adopted by its General Assembly in 2006 (Buzzetti 2006).

Canadian delegation (Castro-Rea 2016, 266-67; Pelletier 2014, 124), as only sovereign states are admitted to UNESCO and each must speak with a singular voice (Pelletier 2014, 124), and so Québec's representative "doesn't have an autonomous presence" and "can only speak if she or he agrees with the Canadian position" (Caron and Laforest 2009, 48). Nevertheless, in establishing the role, the Conservatives kept a promise that had gone unfulfilled by the previous government (Héroux-Legault 2022, 73), and "provided some slight recognition of Quebec's difference within Canada" despite the risk of it being an unpopular move in other parts of the country where the equality of the provinces is the predominant cherished principle (Graefe and Laforest 2007, 52). This principle is often taken to be at odds with the prospect of asymmetrical institutional arrangements rooted in a recognition of Canada as a multinational state. While Harper's open federalism offered recognition and support to Québec specifically in certain instances, including the UNESCO role and the recognition motion among others (Jeffrey 2015, 308), Harper has historically been a strong proponent of provincial equality (Laforest 2014, 178). Open federalism can also be understood as being rooted in that principle and enacted through a broader commitment to decentralization and respect for provincial jurisdiction, as Harper also emphasized support for other provinces' participation in international organizations and a "willingness to allow provincial input on federal matters" in areas where provinces had strong particular interests (Jeffrey 2015, 308; Caron and Laforest 2009, 46).

Recognizing the Québécois as a nation was not one of the Conservatives' election pledges or an original part of the vision of open federalism, but rather followed in sequence from these earlier overtures as a result of the vagaries of partisan politics (Pelletier 2014, 125; Rivet and Rivault 2008, 274). Though the Conservatives had not advanced recognition proposals, the other parties had been debating the subject. In 2005, the Québec Section of the NDP put forward

the Sherbrooke Declaration, which elaborated its recognition of the "national character" of Québec (previously included in its 2004 election platform), embraced asymmetrical federalism as a mode of governance suitable to Canada's multinational character, and endorsed 50% plus one vote as constituting a majority for the purposes of a referendum on secession.[44] The Declaration itself only employed the consistency form of reconciliation, and in only two instances: in one, it emphasizes the importance of opting-out provisions as "mak[ing] it possible to reconcile the exercise of federal spending power for provinces that want it with respect for Québec's constitutional jurisdiction," while in the other it quotes a passage from the *Secession Reference* that includes the term (NDP 2005, 5-6, 7). However, the Declaration was also later linked to reconciliation in broader relationship terms. For instance, at the 2006 NDP convention – where the Declaration was adopted – a delegate stated that the Declaration advances "des pistes d'entente et de réconciliation pour que le Québec devienne un membre à part entière du Canada" (quoted in *Le Quotidien* 2006), and scholars Peter Graefe and Rachel Laforest describe it as "calling for Quebec-Canada reconciliation" (2007, 59). During the election campaign in December 2005 and January 2006, party leader Jack Layton deployed the term on multiple occasions in making his pitch for an alternative to the Liberals, who he cast as endangering national unity and being the culprit – rather than Canadian federalism writ large – for the state of relations between Canada and Québec. "Nous voyons un conflit, des doigts accusateurs, des divisions, des murs qui s'érigent," Layton stated, "et nous croyons qu'il faut que quelqu'un se mette à parler de réconciliation devant les profondes divisions créées par le Parti libéral et non

[44] See Lexier (2017) on how this declaration built on a long history of debates within the party about Québec nationalism and self-determination dating back four decades. The declaration is currently available in English here: https://mronline.org/wp-content/uploads/2017/09/Declaration_Sherbrooke_ENG_V2.pdf and in French here: https://www.boulerice.org/declaration-de-sherbrooke.

par le fédéralisme" (quoted in White 2005; see also Cauchy 2005a).[45] Arguing that he believed that most people in Québec wanted to remain part of Canada and that "[s]ans un exercice de réconciliation, la crise va augmenter de jour en jour" (quoted in Cloutier 2005), Layton used the broad relationship meaning to position seeking a "piste de réconciliation" as a desirable and necessary goal, though several media commentators assessed this vision of reconciliation as being short on specifics (Authier 2005; Cauchy 2005b; David 2005; *Le Quotidien* 2005; R. Parent 2005; White 2005).[46] Meanwhile, accused by the other parties of creating the need for such reconciliation in the first place, and faced with their first election loss since 1993 on the heels of the sponsorship scandal, the Liberals embarked on their own debates on the subject.

In 2006, the federal Liberal Party was on the hunt for a new leader, and in the midst of its leadership race kicked off a new round of debates over the recognition of Québec after leadership candidate Michael Ignatieff "claimed that Quebecers formed a nation within Canada" and "later released a platform promising to recognize Quebec's national status in the Constitution" (Héroux-Legault 2022, 74).[47] Of note considering his earlier prominent role in the debates about Québec's status and reconciliation in the wake of the referendum, Stéphane Dion was also in the running to become the new Liberal leader. However, he did not favour this

[45] Layton reiterated this message in his first speech after being elected: "Il est temps de parler de réconciliation. Il est temps de créer au Québec les conditions gagnantes pour le Canada" (House of Commons 2006a, 49).
[46] The Sherbrooke Declaration and comments of Layton's suggest that, like earlier uses, the NDP's vision of reconciliation was linked with Québec signing the constitution, as Layton intimated that an NDP government would demonstrate to Québec that "le fédéralisme peut être respectueux et flexible, célébrer le Québec et amener l'Assemblée nationale à signer finalement la Constitution" (quoted in Cloutier 2006), though the Declaration distinguishes between non-constitutional approaches and constitutional reform in the medium and long term (NDP 2005, 3). For media coverage analyzing Layton's statements about reconciliation, see Authier (2005); Cloutier (2006); David (2005); R. Parent (2005). While Layton and Harper's approaches contained some similar elements, they were inscribed within distinct visions of economic and social policy (Changfoot and Cullen 2011; NDP 2005, 7). Layton argued that a Conservative government would not solve the issues in Canada-Québec relations as most people in Canada and Québec did not share the Conservatives' values and that, "[p]our une réconciliation, on doit commencer en basant les discussions sur les valeurs communes" (quoted in R. Parent 2005).
[47] As with Harper, this represented a significant shift in how Ignatieff spoke about Québec nationalism; see Ipperciel (2011) for an analysis of the development of Ignatieff's positions since the early 1990s. For a brief overview of the sequence of events regarding Liberal Party debates on the subject in 2006, see Rivet and Rivault (2008, 273-75).

debate, arguing that "[w]e've seen this movie three times already" and that it was not the time to be seeking such recognition, and at this point was primarily using "reconciling" to talk about humanity and the planet (Dion 2006).[48] In October 2006, the Québec wing of the Liberal Party adopted a resolution recognizing Québec as a nation (Hogg and Bélanger 2006; Rivet and Rivault 2008, 273-75). Similarly to Harper's later framing of his motion in the Commons, the resolution's authors also framed it in terms of reconciliation – and only reconciliation – but in this instance, between the Liberal Party and Québec (Hogg and Bélanger 2006).[49] It was to be debated at the party convention at the end of November 2006 (Bellavance 2006).[50] Before this could happen, things took a turn for the unexpected for all of the parties when the BQ seized the occasion of public discussion on the matter to introduce a motion to "recognize that Quebeckers form a nation" (House of Commons 2006d, 5234).[51] The day before it was up for debate in the House, Harper did a political end run around the BQ by introducing his own motion, which modified the BQ's version by adding the four words "within a united Canada." While there were significant tensions around them within different parliamentary caucuses (Fox 2016, 17-18), the debates on these respective motions concluded with the Conservative motion being adopted by a

[48] Dion's leadership campaign had a strong environmental focus; for examples of uses of reconciliation in his speeches on the subject, see e.g., Campbell (2006); Dion (2006); Fekete (2006); Yaffe (2006). When asked whether, with respect to Canada and Québec, "il n'y a plus de réconciliation nécessaire?" Dion replied that he believed "qu'il y a eu une réconciliation. Elle s'est fait au fil du temps, quand on s'est rendu compte que la prémisse qui nous était un peu imposée à l'époque à savoir que sans réforme de la Constitution, ne pouvait pas réussir, s'est avérée fausse," as "Québécois et autres canadiens" had achieved economic success together (SRC Télévision 2006).

[49] They argued that the party needed to move away from its prior conflictual stance towards Québec in order to offer something more compelling in the face of support for the sovereignty movement than another "gros 'Nous vous aimons!'" should there be another referendum (Hogg and Bélanger 2006). For other varying references to reconciliation between the party and Québec/Québec nationalism/Québec federalists during this period, see also Auger (2006); Bellavance (2006); Greenfield (2006); C. Hébert (2006b); Pratte (2006c); M. Venne (2006).

[50] It was later struck from the agenda after Harper's Commons motion passed (Descôteaux 2006). Endorsing this decision, party member Marc Garneau, who later became an MP and cabinet minister, noted his satisfaction with the Commons' support for Harper's motion, saying that he thought that "avec le temps, tout le monde va prendre un petit peu de recul et comprendre que c'était un grand signe de réconciliation pour le Québec" (R. Giroux 2006).

[51] The wording of the two motions was the subject of much discussion, not only with respect to the meaning of the word "nation" and the phrase "within a united Canada" but also the choice of "Québécois" vs "Quebeckers" in translation between English and French (see e.g., Blattberg 2006; Franks 2006; Laforest 2014, 19-20; Madou 2006; Martin 2006; Rivet and Rivault 2008, 277).

large majority of MPs on November 27, 2006, while the BQ motion was rejected.

In both the debates on the motion and press conferences upon its adoption, the Conservatives presented it as an act of reconciliation.[52] Describing its introduction, Harper declared: "This government believes strongly that the time has come for national reconciliation. That is why we put forward the motion before the House today. It recognizes the Quebec nation within a united Canada. We believe this is the kind of respect and reconciliation that Quebecers are looking for" (quoted in MacCharles 2006). The term was also employed by some politicians in other parties and in media coverage, largely in a supportive fashion but also occasionally in conjunction with expressions of concerns about the motion's limitations. The dominant form of reconciliation in this context was the relationship connotation of the term,[53] and it was employed quite explicitly in an interactional and not in a structural sense, while those who raised cautions were critical of reconciliation being limited to that.[54] The language of reconciliation was employed to simultaneously vaunt the reconciliatory nature of the motion and link it to the

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[52] For instance, Harper and Conservative MPs Maxime Bernier, Daniel Petit, and Josée Verner used the phrase "un geste" or "un acte de réconciliation" in the House and in the media in November and December 2006 (Bellavance and de Grandpré 2006; Buzzetti 2006; House of Commons 2006f, 5353, 5409; L. Lévesque 2006; Pratte 2006b). Verner paired the terms "réconciliation" and "ouverture," implicitly linking the motion to the government's notion of open federalism (House of Commons 2006g, 5728; Lemieux 2006). For one Conservative MP, it appeared to be simply the election of the Conservatives in the first place that had achieved reconciliation: Jacques Gourde, speaking to the BQ's motion, stated that "[l]e 23 janvier, le Québec et le Canada se sont réconciliés" (House of Commons 2006d, 5236). (The 2006 federal election was held January 23rd.)

[53] The consistency version did however appear in news stories around the motion in relation to Conservative MP Michael Chong leaving cabinet due to his opposition to the motion, in that instance referring to a relation of opposition between the recognition of Québecois nationhood and Chong's personal convictions about Canadian nationhood. Chong had been Harper's Minister of Intergovernmental Affairs. Harper had not consulted him prior to putting forward the motion, though he did consult Dion, who had headed up the file when the Liberals were in government (while incidentally, Ignatieff had not consulted Dion prior to re-launching the debate during the Liberal leadership race) (R. Giroux 2006; MacCharles 2006; SRC Télévision 2006). Media accounts reporting on a press conference held by Chong presented him as being unable to reconcile what he saw as a reflection of ethnic nationalism in the motion with his principles, as he considered Canada to be a singular indivisible civic nation (Agrell 2006; Galt 2006; R. Giroux 2006; J. Ivison 2006; MacCharles 2006). For his part, Harper seemed accepting of the trade-off of losing a minister, turning again to the interactional sense of reconciliation as improved, unity-reinforcing relationships in stating, "In politics, you take risks. That's what we did, but national unity, national reconciliation are more important than any one party or than one individual" (quoted in MacCharles 2006).

[54] The consistency version was also sometimes used to describe the type of relationship that needed to be achieved or protected. For instance, Harper stated that "[l]e monde a besoin de plus de pays comme le Canada, qui peuvent concilier différentes nationalités qui vivent en paix et en harmonie" (quoted in Bellavance and de Grandpré 2006).

Conservatives' broader open federalism agenda and to a vision of Québec as part of a united Canadian whole, and also to assure Canadians that the motion was *merely* about reconciliation. In this, reconciliation was implicitly pitched in opposition to legal and constitutional change in two different ways. First, carrying echoes of the dichotomy Dion had drawn between secession and reconciliation a decade earlier, reconciliation via the motion was presented as the opposite of having another referendum. Asked by BQ leader Gilles Duceppe about whether he would follow the motion with action geared at pulling the federal government out of Québec's spheres of jurisdiction, Harper responded by stating that he hoped the House would adopt the motion "parce que les Québécois veulent la reconnaissance, le respect et la réconciliation. C'est tout ce que ce gouvernement a livré et c'est ce que les Québécois veulent; ils ne veulent pas d'un autre référendum" (House of Commons 2006f, 5365). Second, reconciliation was also distinguished from constitutionally entrenched recognition: giving a speech in Montréal a couple of days before the motion passed, Harper declared, "Ce n'est pas un amendement constitutionnel. Ce n'est pas un texte juridique. C'est simplement une déclaration de reconnaissance et un geste de réconciliation" (quoted in L. Lévesque 2006). In emphasizing this, he sought to reassure those in Canada who saw the motion as "un bonbon donné au Québec" that the move was important for national unity but was not overly significant and that he had not lost sight of the interests of western Canada (L. Lévesque 2006). When pressed on whether the motion would be substantiated by any other political action, Harper suggested that the government had already done this by having "indiqué sa capacité et sa volonté de reconnaître cette réalité d'une façon plus précise quand la spécificité du Québec est une vraie question, comme à l'UNESCO" (quoted in L. Lévesque 2006). He reiterated this notion more directly again a few weeks later when he stated that creating a representative for Québec in the UNESCO delegation was how the

government had “matérialisé cette idée” (S. Harper 2006).

In light of these qualifications, the reconciliation associated with the recognition motion seems to align much more with interactional reconciliation than the structural type (Lu 2017). This approach drew diverging perspectives on the symbolic gesture offered by the motion and its sufficiency for the purpose of pursuing reconciliation. For some, symbolism nevertheless had potent effects, and the symbolic recognition of the motion might build support for an eventual later constitutional entrenchment (see e.g., Pratte 2006a). Others, while recognizing the symbolic importance of recognition, had more immediate questions about substantiating the motion’s implications, whether cast as reconciliation or recognition. Liberal MP Jean Lapierre commented that he hoped that “le député et ministre ne tient pas pour acquis qu’avec cette motion, le travail est fait. La réconciliation avec les Québécois et l’adhésion du Québec à la Constitution nécessiteront encore beaucoup de travail. À mon avis, on fait un petit pas aujourd’hui. C’est gentil, mais c’est symbolique” (House of Commons 2006f, 5355). He pressed the government on whether and how it would follow the motion with measures relating to the federal spending power and the fiscal imbalance, emphasizing that “[c]es sujets figurent aux premiers rangs dans l’ordre du jour, parce qu’au-delà du symbole, il y a une réalité,” and noted that he hoped to one day see the House celebrating Québec fully signing on to the constitution (5355). Lapierre nevertheless also saw the motion as a laudatory culmination of many years of discussions about Québec as a distinct society/people/nation. He summed this up with a sentiment rooted in reconciliation as consistency/compatibility: “on peut faire de la sémantique toute la journée, mais à la fin, l’intention est de reconnaître la différence québécoise, qui est conciliable avec les différences canadiennes” (5375). Duceppe, meanwhile, did not mention reconciliation, but also paired statements about the motion’s importance with questions about what would follow next,

asserting that federalists were thus far not proposing anything concrete but that the BQ would hold them accountable to ensure that "il y aura des suites à cette reconnaissance" (2006e, 5305). Thinking with Sara Ahmed, this could be read as a call for performativity from a commitment – that the House not only pledge recognition but demonstrate it to be something that it is behind (2012, 114). At the same time, Duceppe sought to claim the motion as already performative by highlighting the significance of recognition by Canada as a strategically orchestrated necessary first step that would facilitate international recognition of Québec later (Bellavance and de Grandpré 2006; Buzzetti 2006).[55] As such, his position cannot be straightforwardly interpreted as an accusation towards the other parties of making a non-performative commitment. Meanwhile, the leaders of Québec's political parties passed a motion in the Assemblée nationale to acknowledge the House of Commons' recognition as a positive development (Québec 2006, 3636). The only use of reconciliation in the speeches on this resolution was a statement by Action démocratique du Québec leader Mario Dumont, made in support of his claim that it was an opportune moment for Québec to pursue greater autonomy, that there was "un esprit de réconciliation qui est bien senti au niveau du gouvernement fédéral" (Québec 2006, 3640).[56]

What those who pressed for accompanying action along with the recognition motion – though they did not necessarily share identical visions of what that action should be – seemed to be pushing for, at least those like Lapierre and Dumont who referred to reconciliation, was for some form of structural reconciliation to accompany the interactional reconciliation embodied in

[55] Furthermore, he hoped that the "within a united Canada" passage would not have the same kind of staying power with the people of Canada and Québec as the act of recognition itself (Buzzetti 2006). His sentiment that the motion would bolster international recognition efforts was echoed by PQ leader André Boisclair (quoted in Pratte 2006b).
[56] The resolution itself, however, was described as "une belle réconciliation de tous les points de vue" (*La Presse* 2006), Charest's original version that was "nettement plus enthousiaste" having been reworked in dialogue with the other parties to reflect a position that could draw their unanimous support (Dutrisac 2006). Charest called the House of Commons motion "un geste de respect et d'ouverture" rather than of reconciliation, though he also invoked the familiar sentiment of Canadian federalism reconciling unity and diversity without using the term itself in situating the motion in the tradition of the *Quebec Act* and Confederation (Québec 2006, 3637).

the motion. Jean-François Caron and Guy Laforest (2009) provide complementary analytical frames by analyzing the motion in terms of what they call "symbolic multinationalism" and "consequentialist multinationalism." The former "limits the recognition of multinationalism to its purely symbolic elements" through gestures of affirmation and the like, while consequentialist multinationalism "aims to give concrete and practical implications to the recognition of minority nations within a larger state, more specifically by making sure that the state becomes a partnership between at least two nations that should have equal rights to nation-building and to political self-determination without suffering interferences from the other national group" (41). Noting that the Commons motion and UNESCO delegation role serve as the basis for arguments that the events of 2006 were moving Canada towards greater embrace of its multinational character, Caron and Laforest assess both measures and find them to be more symbolic than consequentialist (45-49). To constitute the kind of structural reconciliation that consequentialist multinationalism might provide in this context, such measures would need to come with "practical implications that would make political self-determination a real possibility" such as "the adoption of asymmetrical mechanisms" (48-49). While others offer a more optimistic assessment of *de facto* asymmetry in the absence of formally enshrined asymmetrical policies aligned with the recognition of Québec nationhood (Webber 2018), for Caron and Laforest "indirect asymmetry of results" still falls short of "direct asymmetry of intent" (2009, 47).

Explicit discourses of reconciliation as resignation were nigh on absent in the sources I explored from this period, but one example that appeared in a *Winnipeg Free Press* editorial in late November 2006 spoke to another dimension of the reconciliation dynamics in play. The editorial began: "Manitoba's MPs of all political colours are sorting out their opinions of Quebec and nationhood, reconciling themselves to Prime Minister Stephen Harper's proposal to declare

Quebecers a nation within a united Canada. They are lining up, with more or less comfort, behind that government motion, which surprisingly gained the backing of the Bloc Québécois" (*Winnipeg Free Press* 2006). Taken in conjunction with the prevailing discourse of interactional reconciliation, this effectively implies that MPs had to reconcile – in the sense of resigning – themselves to supporting a gesture of reconciliation.[57] The suggestion is that they felt they had to accept the motion despite not necessarily wanting to. The reasons for the greater and lesser degrees of comfort in doing so varied among MPs of different parties, as some could be understood as reconciling themselves to the recognition of nationhood while others reconciled themselves to the inclusion of the phrase "within a united Canada," along with differing perspectives of the symbolic nature of the motion. As explored above, while this symbolic-only character was reassuring to some, others were dismayed by the lack of a more consequentialist recognition of multinationalism, and some hoped the motion would serve as a statement of commitment that could be mobilized in support of more significant structural changes down the road – ranging from entrenching the recognition of nationhood in the Canadian constitution to international recognition of a sovereign Québec following its independence from Canada.

4.5 Conclusion

At the point where, two decades after the Meech Lake Accord, the House of Commons recognized Québécois nationhood, the context surrounding the use of reconciliation discourses in conjunction with the relationship between Québec and Canada was similar to that of earlier periods in the genealogy of reconciliation, but also differed significantly, both in general terms and in relation to uses of reconciliation. As before, the term was being employed by the federal

[57] Were the vote broadly to be conceived in such terms, of course, the exceptions being Michael Chong (as discussed in note 50 above) and the other MPs who abstained or voted against the motion. This accords with Walters's explanation that reconciliation as resignation "cannot be imposed from without" (2008, 168).

government to frame its approach to Québec while also sometimes being used by other political actors who put forward visions of reconciliation as constituting something else or something more. A key change was "formal recognition of Quebec – as a nation or as a distinct society – ha[ving] been disjoined from the question of legal effect" (Webber 2018, 184). Harper's dissociation of the recognition motion from any prospect of constitutional change while nevertheless promoting it as reconciliation distinguished his approach from Mulroney's vision of reconciliation, despite any other similarities in context around the two leaders' overtures to Québec. Alongside this disjoining stands the contrast with the context of discourses of reconciliation with Indigenous peoples (see ch. 8 and 9), whereby 2006 seemed to mark a discursive dénouement of sorts rather than the beginning of an era of proliferation of institutions and positions and policy documents with reconciliation in the title. The two cases are marked by significant structural differences. For one thing, Québec has a state structure through which it relates to Canada and matters linked to reconciliation are likely to be funneled through existing institutions within the federal system. Nevertheless, to my knowledge neither the governments of Canada or Québec ever, for instance, renamed their ministry Intergovernmental Affairs and Reconciliation or the like (in contrast with BC, which has now had a Ministry of Indigenous [previously Aboriginal] Affairs and Reconciliation for nearly two decades). Secondly, the kinds of grievances and conflicts in which reconciliation discourses emerged and developed in relation to Canada and Québec were not of a type that saw any political actors calling for a truth and reconciliation process, despite the fact that they did sometimes make references to other contexts where TRCs or other transitional justice mechanisms were employed (see e.g., Dion 1999, 27, 43; House of Commons 1994e, 4050). While the grievances stemming from patriation that spawned much of the reconciliation discourses that followed were sometimes couched in the

language of trauma and healing (see e.g., Caron and Laforest 2009, 37; SJCSHCCA 1987, 7-8), this did not get linked to the creation of a TRC in this case. Given the roots of the TRC – which spawned a significant ongoing proliferation of the term reconciliation in Canada – in a 2006 settlement agreement, the year 2006 might be regarded as a winding up moment for one set of reconciliation discourses at the same time as it served as a sort of curtain call for the other.

In the years since the events recounted in the last two chapters, many things have changed and yet much remains the same in Canada-Québec relations. Québec's signature is still missing from the Canadian constitution. The BQ made a comeback in the 2019 federal election after having been reduced to ten seats in 2015, and held those gains in the 2021 election. In 2017, then-Premier Philippe Couillard's government released a policy statement on Québec society and Canadian relations and sought to re-open constitutional negotiations,[58] but this did not receive much uptake in the rest of the federation. His Liberal government was subsequently pushed out in the 2018 Québec election by the "populist, nationalist but not outright independentist" Coalition Avenir Québec (CAQ) while Québec's sovereignist parties trailed behind, which Jean-François Dupré suggests may portend a return to autonomism over sovereignism along with a primary focus on "a liberal-conservative cleavage dimension" in Québec (2022, 244). At the same time, some note that even if the changes are not entrenched in the constitution, Québec has ultimately received many of the things it sought in terms of recognition and jurisdictional powers by other means (C. Pelchat, G. Rémillard, research interviews, January 2018; Webber 2018). More recently, the CAQ government has taken a different route on the constitutional front by passing legislation that, further to making significant changes to Québec's language regime, adds

[58] Asked whether "reconciliation" played any role in discussions around the 2017 Policy on Québec Affirmation and Canadian Relations, Jean-Marc Fournier, Minister responsible for Canadian Relations and the Canadian Francophonie in Couillard's government, indicated that the concept was present even if the term itself was not used (research interview, October 2018).

provisions to the Canadian constitution that recognize that "[l]es Québécoises et les Québécois forment une nation" and that "[l]e français est la seule langue officielle du Québec" and "la langue commune de la nation québécoise" (Québec 2022, 94). While the immediate reaction of the leaders of the federal political parties was to agree Québec had the authority to do this, and it has been suggested that this route may "ingeniously […] satisfy Quebecers' long-time demands for formal recognition […] without seeking to obtain the approbation of other provinces" (Dupré 2022, 246), others maintain that making such changes to the constitution requires the approval of the Senate and the House of Commons in addition to Québec's Assemblée nationale and/or the 7/50 amending formula (Macfarlane 2021; Peach 2021). Notably, amid debates in the House of Commons on Québec's initiative, the Liberal federal government pointed to the 2006 recognition motion as having settled matters (C. Reynolds 2021a, 2021b). In 2018, not long before becoming Premier of Québec, CAQ leader François Legault had declared that Québec's future was within Canada, stating: "Je me suis vraiment réconcilié avec le Canada" (Bélair-Cirino 2018). Amid these more recent developments, references to national reconciliation or constitutional reconciliation with Québec have faded, but they have not disappeared altogether.[59] In 2017, for instance, Konrad Yakabuski wrote in the *Globe and Mail* that "[r]econciliation with Quebec is no less critical to Canada's success in the 21st century than reconciliation with First Nations and Inuit peoples." This statement demonstrates that the term continues to be linked with Québec, and also links reconciliation with Québec and reconciliation with Indigenous peoples – two distinct sets of constitutional conflicts that came increasingly into conversation and also often into conflict over the last four decades, as will be explored further in the coming chapters.

[59] See e.g., Albert (2016); Bliss (2005); C. Hébert (2008, 2016, 2017); Lang (2014); MacPherson (2007); Perreaux (2011); Plamondon (2009); *Saint John Telegraph-Journal* (2011, 2013); Yakabuski (2008, 2013, 2014, 2017).

Chapter Five

The Emergence and Development of Discourses of Reconciliation Between Indigenous Peoples and Canada: 1969-1987

5.1 Introduction

The present-day story of reconciliation with Indigenous peoples in Canada differs in important ways from that of reconciliation with Québec. While talk of reconciliation has largely faded into the background when it comes to Québec, it is now omnipresent in discussions of relationships between Canada and Indigenous peoples. For at least the last decade, the term has been applied to virtually every imaginable facet of those relationships. Unlike in the case of Québec, in this instance, reconciliation has also become the subject of significant theorization and critique, and has become discursively centred in the naming of institutions. Yet in the earlier stages, many similarities link the two cases with respect to the emergence of reconciliation discourses. Tracing this emergence reveals that here as well, for the first half of that trajectory, reconciliation often appears to have been an incidental word choice, used more out of lexical habit than conscious decision to emphasize the term, and it does not appear to have been the subject of theoretical conceptualization or analysis. At a certain point, however, these stories diverge. Where discourses of reconciliation between Canada and Québec subsided, those pertaining to Indigenous peoples instead became exponentially more widespread.

The process whereby the term has come to occupy such a predominant place in debates and policies about the relationships between Indigenous peoples and Canada has involved many paths and many distinct – though sometimes interrelated – actors, institutions, and events. There are no clean and definitive beginning points or delineations among these elements, or between chronological segments of the process; however, the emergence of reconciliation discourses can

be loosely separated into three phases, which are traced over the remaining chapters of the dissertation. This chapter explores the first phase, which spans the period between the introduction of the Trudeau government's White Paper in 1969 and the last Federal—Provincial Conference of First Ministers on Aboriginal Constitutional Matters in 1987. In this phase, reconciliation is an occasionally present but not yet prevalent term. In the second phase (1987-1996), detailed in chapters 6 and 7, uses of reconciliation in verbal exchanges between political actors began to be accompanied by uses in various types of state documents. The third phase saw the term's centrality solidified by its use in the names of institutions dedicated to investigating and enacting the relationship between Canada and Indigenous peoples. This latter phase is explored in chapters 8 and 9, which consider the events leading up to the creation of the TRC and BC's Ministry of Aboriginal Affairs and Reconciliation, respectively, over the course of the period from 1996 to 2006, along with other discursive developments of that time. The phases are cumulative; earlier types of uses continue as the term's prevalence increases and the forms and forums in which it is used shift. At no point in the process is reconciliation singular: it does not begin from one identifiable point and then split off onto diverging paths of meaning, nor do the many uses of the term converge or concede to a dominant version. Rather, as it gradually moves from being sometimes casually used in discussions about relations between Indigenous peoples and Canada towards becoming a central normative organizing concept, all the different meanings the term already had outside of that political context are carried with it into those discussions.

The part of the story of reconciliation's emergence traced in this chapter is not a portrait of a discourse as yet, but rather of what can be understood as precursors to a soon-to-be nascent set of discourses that begin to emerge in earnest in the 1990s. During the period it covers, many of the key events include discussions about the meaning of words, the challenges of lacking

common definitions, and the effects of ambiguity (Dalon 1985, 85-86; FPCFMACM 1983, 131; Ittinuar 1985, 48; Trudeau 1985, 149-50). However, no attention of this kind is drawn to reconciliation itself, though the idea of needing to reconcile definitions or conflicts over the meanings of other words is sometimes invoked. Reconciliation is largely used seemingly inadvertently as an ordinary word – albeit one with a variety of meanings and histories that is used in differing ways – and without the term being emphasized as a central concept. While many of these uses share affinities with later ones, this period is marked by discontinuities. From my position and looking in retrospect, at least, it is not possible to establish direct links between any of the uses surveyed here and those of the later phases. This exploration of the early phase is nevertheless important to understanding the emergence of reconciliation discourses in relation to Indigenous peoples in Canada. It shows the variety and operation of many different meanings of the term at work in this context, allowing us to see how these meanings function and how their implications are entwined with relations of power, and foreshadowing the complexities and complications this gives rise to when reconciliation is propelled to the status of central concept.

The chapter is divided into two main parts. Section 5.2 considers uses of reconciliation prior to the patriation of the constitution, exploring variants used in parliamentary hearings, in a landmark SCC case, and in an internationally distributed news journal dedicated to stories about Indigenous peoples. Section 5.3 then explores uses of the term during and after the patriation process through the conclusion of the 1987 conference of Canadian first ministers and the representatives of Indigenous peoples on the rights of Indigenous peoples and the constitution, looking at parliamentary committee hearings on patriation and Indigenous self-government as well as the FMCs. The survey of events and uses of reconciliation during this period sets the stage for the developments traced over the next four chapters.

5.2 "We must address ourselves to a just reconciliation of the causes of discontent": The Lead-Up to Patriation

As we saw in the previous chapter with Québec, the context of constitutional negotiations and legal disputes in which discourses of reconciliation between Canada and Indigenous peoples emerged, and gradually grew to prominence, was rooted in a centuries-long history but also particularly catalyzed by a period of major political developments in the 1960s and 1970s leading up to the patriation of the constitution. Following the 1951 amendments to the *Indian Act* and a number of other significant political events, in the latter part of the 1960s "government policy toward aboriginal peoples entered a period of instability as both government and aboriginal peoples sought to alter their relationship with each other" (Boldt and Long 1985, 4). The 1950s and '60s had seen the decriminalization of Indigenous peoples bringing legal claims against the Canadian state, the renewal of struggles for the recognition of land rights through the Canadian courts, and the granting of the right to vote to Indigenous people without the penalty of loss of Indian status, and along with this came a growing swell of new forms of political activism as Indigenous people formed a series of new alliances and organizations to press for changes in their relationships to the Canadian state.[1] The events of the subsequent period, from the Trudeau government's release of its Statement on Indian Policy (commonly referred to as the White Paper) in 1969 to the entrenchment of Aboriginal and treaty rights in the *Constitution Act, 1982*, have had a deep and significant impact on contemporary relationships between Indigenous peoples and the Canadian state, as well as on the emergence of varying discourses of and

[1] For firsthand reflections on key developments of this period, see e.g., Cardinal ([1969] 1999); Manuel and Posluns ([1974] 2019); and Manuel and Derrickson (2015, ch. 2-5), as well as the short documentary *Our Tomorrows, Today: Wahbung 1971*, which explores Indigenous peoples in Manitoba's organizing and research in response to the White Paper (Magne and Robertson 2016). See also Coulthard (2020); Gemmell (2021); Palmer (2009, ch. 10).

perspectives on reconciliation during the last couple of decades.[2] During this period, "reconciliation" itself made occasional appearances but was by no means yet a major discourse.

Tracing backwards from points of emergence in state documents in the 1990s has led me to a series of snapshots of reconciliation in legislative transcripts, court decisions, and media articles. While these findings cannot be seen as comprehensive or definitive, they illustrate some general patterns, and some exceptions, of what there is and is not to be found in looking back to earlier periods before the contemporary versions of reconciliation came into widespread use. In the lead-up to patriation, I have looked to three main areas to consider what they show about the use of the term at that point: 1) parliamentary committee hearing transcripts; 2) SCC decisions pertaining to Aboriginal law; and 3) the archives of *Akwesasne Notes*, a news journal covering stories relating to Indigenous peoples from across the continent.[3] Broadly speaking, these sources indicate that reconciliation was far from being a pivotal term at that point. It was not yet gaining traction as a normative goal within constitutional law or politics in Canada, despite one notable articulation during a meeting of the Special Joint Committee on the Constitution of Canada

[2] For an overview and critique of the White Paper, see Turner (2006, ch. 1). Other significant events during this period included, among others, protests of Canada's treatment of Indigenous peoples at Expo during the centennial of Confederation (Dickason 1992, 383; see e.g., Dan George's [2017] "Lament for Confederation"); the SCC's decision in *Calder* (1973); the development of the Red Power movement, which was informed by and in dialogue with other radical movements of the 1960s but dedicated to addressing the particular conditions and challenges facing Indigenous peoples (Coulthard 2020; Gemmell 2021; Palmer 2009, ch. 10; Smith and Warrior 1996); the beginning of the gradual dismantling of the Residential School system (Dickason 1992, 337; Milloy 1999, ch. 10); and a "cluster of events" pertaining to "an aggressive push by state and industry to develop what it saw as the largely untapped resource potential […] of northern Canada" (Coulthard 2014, 6; see also Dickason 1992, 401-6). For accounts of several Indigenous peoples' struggles around land claims, sovereignty, and resistance to resource exploitation and military incursions in the period leading up to and following patriation, see Richardson (1989).

[3] I came across the *Akwesasne Notes* archive in the American Indian Histories and Cultures database while researching the 1995 Sacred Assembly (see ch. 6), and discovered that the word "reconciliation" had made various earlier appearances going back to 1971 as well. These findings struck me as worthy of inclusion even as they transcend the specific context of Canada because they highlight the variety of arenas in which the word was used in that period, and they appear in a publication through which the struggles of Indigenous peoples in many different places were collected in one forum and widely circulated. That it comes out of Akwesasne is both symbolically and materially significant in reflecting on the separation and connection between contexts, as the Kanienke'há:ka community is subjected to multiple overlapping colonial jurisdictions (Canada, the US, Ontario, Québec, and New York) in a potent illustration of the effects of imposed borders as a key component of the story of colonialism. For a detailed critical exploration of the politics of borders in Kanien'kehá:ka territory, see A. Simpson (2014). For more on the origins and history of *Akwesasne Notes*, see George-Kanentiio (2011, esp. 126-37).

(1970), but it did get linked on a number of occasions, in different ways, to various Indigenous peoples' struggles, at least some of which were the subject of widespread public attention.

5.2.1 Parliamentary Committee Proceedings

Prior to 1982, there are only four instances in the documents I searched where a variation of the word "reconciliation" arose in legislative proceedings pertaining to constitutional politics in relation with Indigenous peoples,[4] all of which occurred during meetings of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada. The first of these, which takes place a decade prior to the other three, is the most notable in terms of the formulation of reconciliation as a normative goal, though it does not appear that this instance contributed to any immediate further development of the concept in that context.

This first use formed part of a presentation by Dr. Dave Courchene, then President of the Manitoba Indian Brotherhood, to the Special Joint Committee on September 11, 1970. He began his speech by quoting a long passage from a letter by Richard Nixon about the state of relations between Indigenous peoples and the US. Per Courchene, Canada bore the same "moral and social obligations" towards Indigenous peoples as America even if the legal contexts differed, and "[a] reconciliation must take place that takes into account the commitments made and the obligations undertaken by the federal government in the light of today's circumstances and today's knowledge" (SJCSHCCC 1970, 9:79). He situated the need for this within a history of treaties between Indigenous peoples and the Crown and the injustices that characterized the process of treatymaking. Courchene's call for reconciliation as a direct use of the term with respect to political relationships in Canada is distinct from those preceding it, and from most of

[4] These findings are drawn from a search of the constitutional archive available at www.primarydocuments.ca.

those following it until the 1990s, in that it specifies a vision of what it does and does not mean.

In order to explore how Courchene qualified the idea of reconciliation, it is worth quoting from his speech at some length:

> The treaties of 100 years ago were signed between two sovereign nations and were negotiated in two alien tongues. They represent on the one hand knowledge and experience by the Crown and a lack of knowledge and experience by the Indian people. They have been the basis of misunderstanding, discontent, paternalism and discrimination. These treaties, in the light of today's circumstances and today's law would be classified as unconscionable agreements. I say this with the full knowledge that the benefit to the Crown and to the people of Canada bears little relationship to the remuneration and recompense offered to the Indian people. It is imperative that we now redress the injustices of the past. We must address ourselves to a *just reconciliation of the causes of discontent*. We must clarify and identify, *jointly*, the obligations of government and those outstanding differences of aboriginal rights, human rights and equality of opportunity.
>
> *Such a reconciliation cannot be based on an abject surrender by the Indian people to unrealistic interpretations of solemn obligations undertaken at the time of treaty nor rigid and unrealistic judgments based on your dominant position and on our subservient position.*
>
> The attainment of an element of moral justice is equally as important as the attainment of legal justice. If we are *to reconcile our differences and improve our constitution*, we must recognize at last that the dominant society has imposed upon and dispossessed thousands of Indian people in this country.
>
> Since at this time the question of amendments to the constitution is in the forefront of not only this Committee's mind but in the minds of all governments and of many of the people of this country, the time would be ideal for seeking settlement of this question of relationships between the federal government and the original possessors of this land. We would ask, however, that no amendments to the constitution with respect to Indian people be recommended or undertaken until such time as we have had an opportunity to negotiate honestly and honourably a reconciliation of differences between our people and their government.
>
> Arbitrary changes in the constitution that do not satisfy, in the final analysis, the moral and legal obligations *as seen by both parties to the treaties* will simply provide a springboard for continued discontent and dissension in this country. A constitution that does not reflect justice for all, that does not respect the rights and privileges of minorities such as Indians would be a discredit to our democratic society. I caution most sincerely that our dealings with Indian people at this time be predicated upon full knowledge and understanding by both parties of the ramifications of their acts. We must take time to ensure that we do not repeat the mistakes of the past through haste and indifference. (9:79-80; emphasis added)

In this passage, several characteristics and requirements of reconciliation stick out. The strongest perhaps is an emphasis on mutuality and reciprocity: the treaties are clearly identified as joining

two parties, both of whom must be involved on equal terms in the process of reconciling in order for it to be just. The speech notes that the treaties were signed by "two sovereign nations." However, the account of the "injustices of the past" that must be redressed, and the "continued discontent and dissension" they have produced as the "dominant society has imposed upon and dispossessed thousands of Indian people in this country," indicates that the sovereignty of both parties has not been mutually respected – specifically, the Crown has not respected Indigenous nations' sovereignty. The speech stresses that this injustice is not to be repeated in any reconciliation linked to the remaking of the constitution. Its premises emphasize participation and consent, as Courchene asks that there be no amendments to the constitution affecting Indigenous peoples without their involvement or until they are ready for that process to take place, and only after Indigenous peoples' relationship with the Canadian government is reconfigured. His vision thus transcends interactional reconciliation to comprise a structural transformation rooted in historical analysis and understanding, as it must attend to the "causes of discontent" and address past injustices related to the relationship's structure – one that has constituted a relation of oppression. Injustice is framed as not being only in the past, either, as he issues a call to "ensure that the mistakes of the past are neither repeated *nor continued*" (9: 77; emphasis added). Finally, this is emphatically not an asymmetrical reconciliation or a resignation that places all or most of the burden on Indigenous people to do the reconciling, as highlighted by Courchene's adamant opposition to any requirement to "surrender" to domination in the form of a unilateral interpretation of the relationship by the Crown.

In his exploration of the emergence of what he calls the "vocabulary of First Nations' self-government" in the 1970s and early 1980s, Michael Posluns considers the significance and substance of Courchene's appearance before the committee (2007, 81-85), analyzing his broader

rhetorical strategies as well as his focus on reconciliation in particular. He writes,

> In offering a definition of justice – 'We must address ourselves to *a just reconciliation* of the causes of discontent' – [Courchene] introduced not only the idea of reconciliation but also the assurance that he and, presumably, his colleagues and constituents, were prepared to be part of a process that had to do with embedding justice and reconciliation in the Canadian Constitution. (83; emphasis in original)

This observation rests on a definition of reconciliation that Posluns sees Courchene as arguing *for*, and does not attend to the notion that what he is arguing *against* – as epitomized in the line about "abject surrender" – can itself be understood as a form of reconciliation, that which calls for resignation or imposed asymmetrical coherence. He describes reconciliation as "restoring a bond of union" and links this to Courchene's emphasis on the treaties as previously existing positive relationships (83-84). Posluns highlights both the past- and the future-oriented elements of Courchene's vision, noting the importance of attending to history for both lessons about the possibility of "a healthier, more positive relationship characterized by bonds of friendship" and cautionary tales about misunderstandings and procedural injustices to be avoided in the future (84). These inform the procedural and substantive requests made of the committee, embodied in the implication that "the reconciliation of which he was speaking should result in constitutional amendments" but that no such amendments be made without Indigenous peoples' participation, and not until they had been able to negotiate a better relationship with the Crown that could then be constitutionally entrenched (84). His vision includes interactional and structural dimensions, and the phrase "to reconcile our differences and improve our constitution" firmly links reconciliation and constitutional politics (SJCSHCCC 1970, 9: 79; see also Posluns 2007, 83).[5]

Posluns suggests that Courchene strategically framed his presentation around the quote

[5] This is not to say that Courchene sees the constitution as the only or the primary mechanism for addressing injustices and transforming the relationship. He replied to a committee member's question by saying: "I hope that we do not have to wait for a constitution to be revised to meet some of the moral obligations that Canada as a whole has to our people. […] I know we cannot wait until the constitution is revised. The conditions are appalling to say the least. We have to do something now" (SJCSHCCC 1970, 9: 88).

from Nixon in such a way as to garner the attention and respect of conservative committee members as well as to open the door to a certain kind of reflection on self-determination (82), and concludes that "Courchene's own discussion of reconciliation resonated with a gradualism which, in contrast to Nixon's radical rhetoric appeared both responsible and Canadian" (85). His position ultimately revolved around a "Citizens Plus" understanding of the place of Indigenous peoples in Canadian society (82).[6] In framing Indigenous people's "plight" as an imposed "social and economic deprivation" to which Canadians have been "indifferent," but also insisting against the making of any further constitutional changes affecting Indigenous peoples without their participation and consent, Courchene's speech challenges both the exclusion and the forcible inclusion of Indigenous peoples in Canadian society. He does not challenge the foundations of Canadian society itself though, rather aiming for a reconciliation that would see Indigenous people be able to participate in Canada while remaining who they are. He declares, "We believe in the democratic institutions of this country and in the fundamental Christian principles upon which it is built" (SJCSHCCC 1970, 9: 80), and speaks of the contributions that Indigenous peoples can make to Canada's development while noting, "We want the same good things that Canada makes available to its citizens. We do not have to lose our identity in the process though" (9: 90). Responding to a question about natural resources, Courchene states, "I hope that we can find a new direction together as Canadians" (9: 89); Posluns notes that this was a statement that the parliamentarians "might have interpreted each according to their own lights" (2007, 86). One could speculate that the same might likely have been true of his vision of reconciliation overall.

What is apparent is that at this stage, the committee did not adopt Courchene's language of reconciliation, though versions of several elements of his presentation did make it into its final

[6] For more on the concept of "Citizens Plus" and surrounding debates, see Hawthorn (1966); Cardinal ([1969] 1999); Cairns (2000); Dobrowolsky and Devlin (2002); Turner (2006, ch. 2).

report.[7] Posluns notes that in addition to several of Courchene's recommendations appearing in the report, "[s]o does a significant number of the rhetorical devices in the speeches of both Dr. Courchene and Walter Gordon, including lexical items which occur not in their own words but in Courchene's extended quotation from Richard Nixon" (2007, 84). However, this does not include references to "reconciliation." The word does not appear anywhere in the report's chapter on Indigenous peoples (SJCSHCCC 1972, 15-17).[8] Furthermore, along with it receiving no further use or development in the parliamentary process stemming from Courchene's speech at this juncture, it is equally notable that the term does not appear anywhere in *Wahbung: Our Tomorrows*, the document produced by the Indigenous nations in Manitoba and presented to the government subsequent to the research process Courchene described to the Special Joint Committee (Indian Tribes of Manitoba 1971).[9] As we will see below, when reconciliation reappears at committee hearings during the patriation process, it takes different forms and is not presented as a concept forming part of a vision in the way it serves in Courchene's speech.

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[7] The report's recommendations included: "9. No constitutional changes concerning native peoples should be made until such time as their own organizations have completed their research into the question of treaty and aboriginal rights in Canada," "10. The preamble of the new Constitution should affirm the special place of native peoples, including Métis, in Canadian life," and "12. No jurisdictional changes should be made in administrative arrangements concerning Indians and Eskimos without consultation with them" (SJCSHCCC 1972, 15).

[8] It is used four times in the report overall, in reference to employment, mobility, and regional development (1972, 28), provincial revenues and health insurance (52), national and regional interests with respect to economic policy (82), and federal and provincial legislation (92).

[9] I have not located enough of Courchene's other speeches and writings from this period of time to be able to suggest at this point that his presentation to the Special Joint Committee was either somehow unique in its use of reconciliation or that he was using the term regularly in discussions of Indigenous peoples' relations with the Canadian government. However, the fact that it does not appear in *Wahbung* – including in Courchene's Message of the Grand Chief at the beginning – is significant given that this document is the manifestation of the exact process that he describes to the committee as needing to happen prior to and in order to enable a reconciliation in the relationship with Canada and the amendment of the constitution. The document is a collaboration of the Indigenous nations in Manitoba that "present[s] to the Canadian people through their government our position on policies necessary to achieve a just and honourable and mutually satisfactory relationship between the people of Canada and the Indian people of Manitoba" (Indian Tribes of Manitoba 1971, Prologue I). The absence of "reconciliation" in the text despite Courchene's earlier emphasis on the term implies that either he did not use it in the course of the work that produced *Wahbung* or was not convinced that it provided the right framing for presenting their position (perhaps a conscious decision or it simply did not occur to use the phrase), or that for one reason or another his collaborators in creating the document were not persuaded and there was a collective decision not to use the term. On the development and significance of *Wahbung*, see Magne and Robertson (2016).

5.2.2 The Supreme Court

During this same period, reconciliation makes its first appearance in a judgment of the SCC pertaining to Aboriginal law. At this juncture, it is not yet in the form of the central normative concept which appears some two decades later. The term appears twice in *Calder v. Attorney-General of B.C.* (1973), a foundational Aboriginal title case dealing with a land claim the Nisga'a had been pressing against the Government of BC since 1887 (Gosnell in K. Smith 2014, 440; Miller 2009, 250-55). The first reference is found within the following passage quoted in Justice Hall's dissenting reasons from the Judicial Committee of the Privy Council's 1919 decision in *Re Southern Rhodesia* written by Lord Sumner:

> The estimation of the rights of aboriginal tribes is always inherently difficult. Some tribes are so low in the scale of social organization that their usages and conceptions of rights and duties are not to be reconciled with the institutions or the legal ideas of civilized society. Such a gulf cannot be bridged. […] *On the other hand, there are indigenous peoples whose legal conceptions, though differently developed, are hardly less precise than our own. When once they have been studied and understood they are no less enforceable than rights arising under English law.* (1973, 387; emphasis added by Hall J in *Calder*)

Beyond citing this passage, Justice Hall does not use reconciliation himself in his reasons for judgment, and the SCC does not at this juncture further develop Lord Sumner's use of the term into a concept to be deployed in its own Aboriginal rights jurisprudence. However, this passage and the kind of exercise of reconciliation that it signals is worth bearing in mind in reflecting on the SCC's later uses of reconciliation (particularly with respect to aspects such as the emphasis on Indigenous peoples' perspectives being cognizable to the Canadian legal system, explored further in chapter 7). The other use of reconciliation appears in Justice Pigeon's reasons for judgment. In explaining his determination that the appeal ought to be dismissed on procedural terms because "the Court has no jurisdiction to make [a declaration of Nisga'a title in B.C.] in the absence of a fiat of the Lieutenant-Governor of that Province" (1973, 427), Justice Pigeon

states that he does not see how such a declaration "could be reconciled" with the case law he cites (426). Both of these uses speak to the idea of reconciliation as compatibility or the absence of contradiction, applied regarding relations of opposition.[10] As detailed in chapters 6 and 9, a quarter century later, discourses of reconciliation became deeply entangled with the Nisga'a land claim at issue in *Calder*; in 1973, though, the term does not make that kind of normative appearance in the jurisprudence on the matter. It also does not make any appearance in conjunction with discussions about land claims in the legislative debates in BC in the wake of the SCC decision, a period during which Frank Calder himself sat in the Legislative Assembly.[11]

5.2.3 Akwesasne Notes

While reconciliation made varying appearances in pieces dealing with other matters, the *Calder* case and the Nisga'a land claim were not among the events reported on in conjunction with the word reconciliation in *Akwesasne Notes*, a news magazine started in Akwesasne in 1968 that became a significant international forum for Indigenous peoples' stories over the following three decades (*Akwesasne Notes* 1995, 2, 4; Benedict 1995, 6; George-Kanentiio 2011, 126-37). Its coverage of a wide range of different contexts and its international distribution make *Akwesasne Notes* a noteworthy source for reflecting on the emergence of reconciliation. I have encountered

[10] Though the relations between Indigenous peoples' conceptions of their rights and duties and the institutions and legal ideas of what Lord Sumner calls "civilized" society can be understood in terms of oppression, that understanding is not in evidence in Sumner's presentation of the context wherein he refers to reconciliation.

[11] I searched the Debates of the Legislative Assembly of BC for the term "reconcil*" for the period spanning from the beginning of the 30th Parliament, 2nd Session in 1973 through to the 38th Parliament, 1st Session which ended in 2006. None of the results from prior to October 1983 link the word to any matter relating to Indigenous peoples. The majority of the uses of the term involve a member asking another to answer for some kind of apparent contradiction; many refer to financial reconciliation in the accounting/budgetary sense; and some speak generally to the idea of reconciling differences. There are a few examples throughout the rest of the 1980s of reconciliation being used in both the consistency and relationship forms in relation to matters concerning Indigenous peoples, constitutional politics, and broader causes of social reconciliation (BC 1983, 2928; 1984, 3257; 1986, 7505; 1988a, 3600; 1988b, 3901; 1988c, 4068; 1988d, 5533), but these uses did not normatively apply the term to the relationship between BC or Canada and Indigenous peoples itself. The first such use appeared in 1989 (1989, 5883). The discursive development of reconciliation in the BC context is explored further in chapters 6 and 9.

few references to *Akwesasne Notes* during my research,[12] and as far as I am aware it has not been cited as having influenced the thinking or adoption of the term by people who then contributed to shaping reconciliation discourses in Canada (which is not to say that it did not, only that I have not found any such lines of connection). As such, in genealogical terms, the word's appearances in *Akwesasne Notes* at least seem to be instances of discontinuities in the development of reconciliation discourses (Foucault 1972, 229); at any rate, I am unable to confirm any continuities they may have had. However, both continuities and discontinuities are important parts of a genealogy, and exploring how it was used in the magazine demonstrates some significant things about the use of reconciliation with regard to relationships with or between Indigenous peoples in the broader context of the Americas during the two decades before it began to be much more widely used in Canada. The uses found in *Akwesasne Notes* apply the term to various kinds of conflicts and once again demonstrate its multifaceted nature. They include the senses of rendering compatibility and resolving conflict (on mutually agreed or asymmetrically imposed terms) as well as the term's religious connotations. The magazine reveals that uses were fairly geographically widespread. It also includes articles that mention reconciliation in relation to a couple of international contexts – the United States and Nicaragua – further to those discussed in chapter 2.

The term first appears in a 1971 piece by Posluns, who worked at *Akwesasne Notes* for a time. It is used both in the sense of establishing consistency/compatibility and in the sense of restoring peace and harmony after a conflict, as the piece speaks to reconciling Indigenous and Canadian law, while also suggesting that Kanien'kehá:ka law itself contains an emphasis on reconciliation: "Any Mohawk with whom I have spoken who is conscious of his own people's legal customs is convinced that they have consistently shown a greater concern for

[12] See Coburn (2019, 222); Gemmell (2021, 149, 160); Giroux (2020, 55n20); Posluns (2007, ix, xv, 5, 104).

reconciliation, reform and community well-being" (27). These related but distinct meanings, used side-by-side in short succession, carry an interesting implication in the way they are used together here. Posluns states, "Reconciling the two concepts of law is not so much a matter of deciding rights and wrongs as it is determining appropriate responses to misconduct" (27). In this context – a discussion of the prospect of establishing a "special court" that would "reconcile Indian law and Canadian law in deciding each case" when addressing conflicts in the community of Akwesasne (27) – the "greater concern for reconciliation" in Kanien'kehá:ka law must then itself be understood as part of what is to be reconciled in the exercise of reconciling the two legal orders as it bears a relation of opposition to the concerns animating Canadian law.

Reconciliation is presented in significantly less positive terms in another 1971 piece. Speaking to the connections between the oppression of Indigenous and Black peoples, Lerone Bennett, Jr. opens: "Centuries ago, at the great turnings of the world, the Indians had the land, the blacks had the labor, and the Europeans had marked both for destruction" (44). Discussing the violence that efforts to resist this destruction have been met with, Bennett goes on to suggest that parallels can be drawn between frontier violence against Indigenous people in the US, the war in Vietnam, and the treatment of Black people:

> In all three instances, the whites worship their will to impose 'peace'. And for each, whites sought to designate the representatives for receiving oppressive reconciliation terms: tribal chiefs were compelled to sign although they had no power to speak for their tribes; nationally known Negroes are manipulated into agreements without any ties to the Negro mass, and the North Vietnamese under Ho Chi Minh rather than the Viet Cong are declared the aggressors, and therefore the sole representatives for reaching any accord. (44)

Here, reconciliation still signals the end of a conflict, but not via mutual agreement; the end of the conflict and the terms on which this occurs are presented as impositions by a dominant party, and the notion of peace itself is called into question. Bennett's assessment further raises significant ethical and political questions for reflecting on what reconciliation means and entails

in referring to the response to conflicts between groups: Between whom does the reconciliation take place? How do those people relate to the broader groups that are in conflict? What is the action this entails on the part of each party, and who decides what that will be?

Starting in 1973, a key focus of articles using the term was the standoff at Wounded Knee on the Pine Ridge reservation in Lakota territory,[13] as well as the subsequent trials of American Indian Movement (AIM) leaders Dennis Banks and Russell Means and other participants in the occupation. Much of reconciliation's role in these articles is bound up with its place in religious doctrine. Members of a Christian organization called the Fellowship of Reconciliation served as observers at Wounded Knee, as well as participating in a protest outside of a Bureau of Indian Affairs office in 1975 (*Akwesasne Notes* 1973, 9; 1975a, 33). References to the Fellowship and reprints of articles from the group's own publication appeared in a number of issues (*Akwesasne Notes* 1973, 9; 1974a, 29; 1975a, 33; Swomley 1973, 14).[14] Beyond such titular uses of reconciliation, two other uses highlight the contested role of Christianity and Christian uses of the term. One is a Catholic official's statement of commitment to "a spirit of reconciliation" following attacks on a Wounded Knee church building that he understood to reflect "a hatred of Christianity" (*Akwesasne Notes* 1973, 9). The other critiques the "Jesuit presence on the reservation […] be[ing] justified as 'a force of reconciliation between differing Indian factions'" and eliding the underlying problem "which is that this whole white/European political and economic structure is oppressing the Indian people and destroying them" (Lundstrom 1973, 36-37). Collectively these articles paint a complex picture of the role of Christianity and Christian

[13] For an account of the 1973 occupation of Wounded Knee, see Smith and Warrior (1996, pt. 3).
[14] The Fellowship also served as observers at Akwesasne and featured in *Akwesasne Notes* in 1990 (*Akwesasne Notes* 1990a, 12, 20-22). The Fellowship of Reconciliation's aims are described in a later issue as including "respond[ing] to conflict nonviolently, seeking reconciliation through compassionate action," and "recognizing that restitution and reconciliation can help to heal both victims and offenders" (*Akwesasne Notes* 1990b, 20).

organizations[15] and their visions of reconciliation in relation to Indigenous peoples, which are situated within a context where Christian churches were at the forefront of the colonization of Indigenous societies and their doctrines provided justification for invasion, dispossession, genocide, and colonialism.[16] The story of the Wounded Knee occupation includes solidarity and support from a Christian organization with reconciliation in its name;[17] at the same time, some uses of reconciliation sit alongside a seeming inability or unwillingness to address root causes of relationships of domination and conflict and to see the Church's role in their creation.

There is also a broader sense of reconciliation as a political process and one with a strong normative bent that is associated with Wounded Knee and its aftermath. After the initial verdict in the trial of Banks and Means following the occupation, most of the jurors wrote a letter to the government asking it not to appeal the decision, stating that their call was made in "the spirit of reconciliation and redemption" (*Akwesasne Notes* 1974b, 7). These jurors later joined a group of religious, academic, and civil rights leaders who called on the Attorney General to drop the charges in the other Wounded Knee trials "so that an 'era of reconciliation' be initiated between Indians and non-Indians. That era would be accompanied by a serious discussion on treaties and a lessening of control of the Bureau of Indian Affairs over the lives of Indian people" (*Akwesasne Notes* 1975b, 26). They later formed a group they called Jurors and Others for Reconciliation that engaged in protest and advocacy work around the convictions of other participants in the Wounded Knee occupation and US government mistreatment of Indigenous

[15] Indeed this complexity itself is the subject of one of the articles (*Akwesasne Notes* 1973, 9).
[16] On the Christian theological roots of justifications of colonial domination such as the Doctrine of Discovery and the continuing entwinement of these doctrines and contemporary law in settler societies including Canada, see e.g., Miller et al. (2010); Newcomb (2008); TRC (2015a, 1:15-20, ch. 2). On how the concept of reconciliation was interwoven with both theology and colonial conquest during the period when the Doctrine was first issued and applied, see Desmarais (2022). Desmarais's analysis reveals how multifaceted and multipurpose reconciliation can be within one person's oeuvre by tracing different conceptions at work in the writings of Bartolomé de las Casas and considering how they shifted between emphasizing pastoral practice and reflecting moves towards secularization, and between justifying and condemning colonial violence and domination (see esp. 100-10).
[17] Another example of a religious organization using reconciliation in a group name appears in Jamieson (1975, 26).

peoples more generally (*Akwesasne Notes* 1975c, 13; 1976-77, 6). During the fall 1974 election, Means also used the term to connote an alternative to racism in critiquing Republican candidate for Attorney General of South Dakota William Janklow's anti-AIM platform: "'When Bill Janklow can run on a racist campaign and be elected by a two-to-one margin, it seems to me that 65 to 70 percent of the state is racist,' Russell Means told a news conference in Sioux Falls. 'Reconciliation is the only hope for peace between the Indians and the white people in South Dakota'" (*Akwesasne Notes* 1974c, 28). In early 1975, the religious and political strands of reconciliation came together in the context of a conflict between the Mamaceqtaw and the Alexian Brothers over the occupation and ownership of an abbey in Gresham, Wisconsin. An opinion piece praised the Brothers' decision to sell the building to the Mamaceqtaw as a potential "turning point in our childish national game of cowboys and Indians" and "occasion of grace for persons who are genuinely concerned about finding new paths of reconciliation between native Americans and society at large" (Shannon 1975, 28). In these uses, reconciliation is presented as a broad but unspecified process that needs to take place between Indigenous and non-Indigenous people, in the latter also directly associated with following Christian teachings.[18]

Other references to reconciliation appeared in various issues of *Akwesasne Notes* through the end of its publication in 1998. The last few pertained to events in Canadian constitutional politics, which I discuss in chapter 6. With respect to the global development of reconciliation discourses, it is interesting to note that none of the stories where the word is used address either the Australian or South African contexts.[19] In addition to references to reconciliation in stories

[18] The decision to sell the abbey was linked to "the premises of The Sermon on the Mount" and described as demonstrating "a clear concept of what it means to follow Jesus Christ in these tough times" (Shannon 1975, 28). Regarding the lack of specifics, it bears noting that Means is only quoted in brief and only a short excerpt from Shannon's opinion piece, originally published elsewhere, is reprinted in *Akwesasne Notes*.

[19] Nor Chile, but I note the other two particularly because while Chile is also a settler colonial context, the conflict around which the language of reconciliation emerged there was rooted in political divisions within the settler population in the country rather than one between colonizers and Indigenous peoples, and so given the mandate of

from the US, of which there are several other examples into the early 1990s,[20] the other main international context to which reconciliation is linked is the conflict between the Miskito and the Sandinista government in Nicaragua during the 1980s. "Reconciliation" appeared in three issues on the topic, which featured interviews with Miskito leaders as well as a backgrounder on the process following the 1987 peace accord (*Akwesasne Notes* 1981, 4-15; 1984, 28; 1989, 9-11; Barreiro 1984). The latter included the full text of the *Indigenous Initiative for Reconciliation in Yapti Tasba* which put the term at the forefront of a plan for "peace with historical justice" (*Akwesasne Notes* 1989). I do not explore this coverage in detail as it somewhat surpasses the time period with which this section concerns itself, but note a few elements that make the latter piece stand out in comparison to the other texts in *Akwesasne Notes* that use the term: Like the stories from the US, the reconciliation initiative reflects the bringing to agreement or rendering compatibility meanings and theological aspects of the concept.[21] However, it also has some distinct features. First, this case is exemplary of the incorporation of reconciliation in processes of transitional justice as described in chapter 1, wherein reconciliation is introduced as part of an effort to end and to rebuild after an armed conflict. This then fosters an association between reconciliation and the kinds of mechanisms involved in such a process. Second, unlike many more vaguely framed uses, the *Initiative* constitutes a vision presented by Indigenous people that links reconciliation directly to justice, historical rights and self-determination, and addressing the root causes of conflict, and provides a concrete list of "fundamental issues" that need addressing for reconciliation to be possible, as well as a procedure for addressing them (*Akwesasne Notes*

Akwesasne Notes it would be more likely to report on the other two. A 1990 issue included a letter to the Mandelas from the Mohawk Nation Council but it did not include the word reconciliation (*Akwesasne Notes* 1990c, 24).

[20] Some of these relate to conflicts between or within Indigenous nations (*Akwesasne Notes* 1976, 12; 1990a, 24); others speak to relations between Euro-American and Indigenous peoples, including some cases that use "reconciliation" in the name of initiatives (*Akwesasne Notes* 1990d, 30; Knuth 1992, 26); and one involves a broad call for "peace, healing and reconciliation of all People, Mother Earth, and all Sacred Traditions" (Perez 1992, 13).

[21] Many of the participants in the peace process had religious affiliations.

1989, 9). These include protection of land and self-determination through control over governance, security, and natural resources (9), and stand in stark contrast with the kind of "reconciliation terms" earlier referred to by Bennett (1971, 44). In Lu's (2017) framing, these might be understood as elements of structural reconciliation that serve as conditions for interactional reconciliation. While the contexts and processes differ greatly, the *Initiative* in this sense resembles Courchene's speech more than most, if not all, of the other intervening examples of uses of reconciliation highlighted above as well as those that emerge in Canada in the 1980s.

Collectively, these snapshots from Canadian parliamentary and judicial processes and *Akwesasne Notes* highlight a few things about this period beginning in the late 1960s. The term reconciliation was used during this era of renewal and growth in Indigenous peoples' activism, and it appeared in different forms. A few uses were more fleshed out than others in terms of what specifically they called for. Many others were not yet actively connoting an overarching normative goal, and some that were left it relatively vague. In the international examples, many individuals and groups using the term – in some cases in organizations' and initiatives' names – were linked to Christian churches and/or linked the need for reconciliation to Christian teachings. However, overall, while there were examples of reconciliation being used in sometimes overlapping but distinct ways in these three sets of snapshots, they are not in great abundance, which suggests the term was discursively present but not prevalent in these contexts at this point.

In this sense, this period might be seen as a forerunner to the more widespread emergence of reconciliation discourses in the 1990s, both discursively and in terms of a number of the significant events that took place. Developments around the White Paper, *Calder* and the renewed land claims and treaty negotiation processes that followed from it, and the constitutional negotiations leading to patriation – which did not see much in the way of discussion of

reconciliation initially – all later came to be bound up with talk of reconciliation. As such, while some of the potential discursive continuities are difficult if not impossible to trace, and the uses of reconciliation during this time laid out above may or may not have directly influenced the broader adoption of the term itself in connection with Indigenous peoples' struggles for justice, the events of this time had ripple effects that have informed how that discursive process has occurred in subsequent decades. Additionally, even absent direct links identifying these earlier uses as influences in shaping later more prominent discourses focusing on reconciliation as a normative goal, this handful of snapshots from the decades prior allows for points of comparison. It also highlights the range of uses and influences already in play at this early stage, where the introduction of explicit reconciliation discourses into public discussions of political relationships is linked to a broad web of meanings, including those connected to Christian theology, armed conflicts, compatibility, and resigning oneself to an imposed and disagreeable situation, as well as a general sense of restoration of harmony. This allows us to consider similarities and differences between later reconciliation discourses and the ideas embodied by these uses that are peppered occasionally throughout discussions during this period. In that sense, the 1960s-80s might be thought of as a bridge spanning from a time when a reconciliatory spirit or attitude may have shaped politics but during which the language of reconciliation was seldom used, to one where an explicitly stated normative goal of reconciliation is front and centre in political discourse. It also demonstrates how multifarious the use of reconciliation has been since this transitional period. While this transition towards near-omnipresent discourses of reconciliation that takes hold in a range of institutional settings really begins to pick up steam in the 1990s, much of the groundwork for these developments is laid in the 1980s, a time when, as we saw in chapter 3, the discourse of national reconciliation relating to the place of Québec in the Canadian

federation was also starting to develop. We now turn to the role played by the term in relations between Indigenous peoples and the Canadian state during the 1980s through the patriation of the Canadian constitution and in the lead-up to the developments of the 1990s.

5.3 The "Exact Opposite" of Power? Patriation, the Penner Committee, and the 1983-87 First Ministers' Conferences

As noted above, the 1960s and '70s were a period of increased and transformed activism and resistance among Indigenous peoples.[22] In Canada, these changes were particularly enabled by amendments to the *Indian Act* in 1951 removing provisions that criminalized political organizing, legal training, and the hiring of lawyers to pursue claims against the government, which, along with developments in transportation and communications (Cardinal [1969] 1999, 83), allowed for the creation of national organizations and increased mobilization and political participation at the federal level (Ladner 2009a, 233-35). This included, during the 1960s, a shift from attempts to focus on specific issues to a push to demand that the government address the overarching question of Indigenous sovereignty, rights, and title to land. As George Manuel and Michael Posluns write, "We had tried the piecemeal, clause-by-clause, problem-by-problem approach. We had run out of clauses, and the problems were too numerous to discuss without allowing recognition of the fundamental framework that perpetuated those problems" ([1974] 2019, 168).[23] Mobilization only increased when the government proposed to do the opposite of

[22] There was activism and resistance prior to this period as well, but at this juncture it began to take on new forms, exert new pressures, and draw attention differently than in earlier periods. George Manuel and Michael Posluns write in *The Fourth World*: "The fact of the matter is that there was never a time since the beginning of colonial conquest when Indian people were not resisting the four destructive forces besetting us: the state through the Indian agent; the church through the priests; the church and state through the schools; the state and industry through the traders" ([1974] 2019, 69). Speaking of what many called a "renaissance" in the 1970s, they continue: "If it appears that we are only now awakening and discovering a new strength, it is because the current climate of political, social, and economic forces is allowing what was always beneath the surface to emerge into the light of day" (70).

[23] While Manuel and Posluns are not using the language of reconciliation here, this statement can be read in relation

recognizing rights and title in its 1969 White Paper, and was further spurred by the SCC's decision in *Calder* in 1973. The parallel factor of the Quiet Revolution, which had opened the door to federal-provincial negotiations on constitutional reform stemming from Québec's pursuit of increased autonomy, contributed to the circumstances whereby Indigenous peoples' calls to address their subjugation by the colonial state came to be taken up in the arena of constitutional politics as efforts to patriate the Canadian constitution got underway. The coincidence of this timing is significant as the convening of a constitutional arena to address Québec's claims opened the door to discussions of Indigenous peoples' concerns in this forum as well.[24] Over the course of the 1980s, three significant processes took place in this legislative/constitutional forum, which, it bears recalling, took place either conjointly or in parallel to the developments of that period explored in chapter 3. The first was the patriation process and the attendant hearings of the Special Joint Committee of the Senate and the House of Commons on the Constitution. The second, coming shortly after patriation in 1983, was the Special Committee on Indian Self-Government chaired by Liberal MP Keith Penner. Finally, in 1983, 1984, 1985, and 1987, there were the FMCs mandated by s. 37 of the *Constitution Act, 1982* where leaders from the national Indigenous political organizations met with the prime minister and the premiers of the provinces to attempt to determine the meaning of the rights enshrined in s. 35.

I spoke with a number of people for this dissertation who were involved in political negotiations at the time of patriation and the FMCs as well as in later constitutional reform discussions. In these interviews, a distinction was often made between the concept or idea of reconciliation, which some said was widespread, and the actual use of the word itself (B. Morse, research interview, March 2018). By and large, participants did not recall reconciliation playing

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to Lu's observations regarding the interconnected nature of interactional and structural reconciliation (2017, 192).
[24] At a more general level, see Russell (1997, 117) on the influence between nationalisms.

any prominent role in the 1980s beyond, as one person put it, "the appropriate use of the verb" in the sense of reconciling different views – the emphasis of the talks was rather on rights and self-government (S. Serson, research interview, February 2018). While I evidently do not have access to all of the discussions that took place around these processes, this is generally what is borne out in available documentation of the FMCs and the parliamentary committee hearings. The word appears slightly more often than in the previous decade and in a couple of different variants, with the meaning of rendering consistency or inquiring as to inconsistencies being the most common.

5.3.1 The Patriation Process

As the federal and provincial governments debated the merits and drawbacks of different amending formulas and the balance of powers between their respective levels of jurisdiction, Indigenous peoples' patriation concerns were of a different sort. The occasion was seen as a chance to remedy the exclusion perpetrated in 1867, but also sparked the fear that patriation might instead extend this exclusion and solidify an assimilative framework akin to that in the White Paper by failing to protect Indigenous peoples' rights, treaties, and special relationship with the Crown in the face of the individualistic form of equality being entrenched in the *Charter of Rights and Freedoms* (Manuel and Derrickson 2015, 67; 2017, 96).[25] Georges Erasmus writes, "Our nervousness arose, in part, from the fact that the meaning of our rights written in these pre-confederation treaties had not been tested in Canadian courts, but, more perhaps, because of our memory of the callous ways in which we have been treated by Canadian legislatures and courts

[25] While a bulwark against this possibility was ultimately entrenched in the new constitution, both within and external to the *Charter*, in ss. 25 and 35, this was neither a conceptual nor a substantive cure-all for the issues that Indigenous peoples were seeking to address with the Canadian state during that time, and continue to seek to address today. On the *Constitution Act, 1982*'s rights paradigm in relation to Indigenous peoples, see Patzer and Ladner (2022a, 2022b). The substantive issue of the definition of the contents of s. 35 will be considered more below as it has been at the heart of subsequent political and legal struggles since 1982, and is closely entwined with the development of reconciliation discourses.

in the past" (1989, 21). With their political organizations participating in the process, a major shift occurred as Indigenous peoples were included in a forum from which they had previously been firmly excluded, and their participation led to a significant change in the constitutional status quo (Boldt and Long 1985, 10-11). Their inclusion was not, however, on an equal basis with federal and provincial leaders, and while they received government funding to participate, this did not translate to smooth relations with governments in the process as they "demanded that they be allowed to participate fully and equally in the discussion of issues affecting them," and sought the full recognition and protection of their status and rights in the constitution (10-11).

The eventual product of this mobilization was ss. 25 and 35 of the *Constitution Act, 1982*, which "recognized and affirmed" Aboriginal and treaty rights and provided that nothing in the *Charter* could derogate from these rights. The road to this achievement was a bumpy one, however, as has been the one following from it. Aboriginal rights were not initially on the constitutional agenda (Romanow 1985, 74-75). Significant pressure was required to produce the initial draft of what was then s. 34,[26] which was later dropped and did not appear in the version that followed from the Kitchen Accord, and only restored in its current iteration (which included, at the insistence of several premiers, the addition of the word "existing" to qualify Aboriginal and treaty rights[27]) following great outcry in late 1981 (Inuit Kanatalimami Pijutigiluit Katimajiit 1983, 1; Romanow, Whyte and Leeson 2007, 121-22, 212-14, 268-69). In this process, we can see a shared origin point for discussions of reconciliation that later follow with respect to

[26] This included, among other efforts, the organization of the cross-country Constitution Express and its subsequent lobbying tour in Europe. See the Union of British Columbia Indian Chiefs' Constitution Express Digital Collection at http://constitution.ubcic.bc.ca for archival documents. An overview of the movement is available at https://indigenousfoundations.arts.ubc.ca/constitution_express/, and *BC Studies* has recently published a special issue on the Constitution Express that brings together academic analyses and contributions by participants (Winter 2021/22, no. 212). See also Feltes (2021); Mandell and Pinder (2015); Manuel and Derrickson (2015, ch. 6).

[27] On this, see Ladner (2015, 274) and Russell (2015, 236). Russell notes that he inquired as to the reasoning behind this "most notorious tweak" to the wording of the section in a discussion with former Alberta Premier Peter Lougheed at a conference in 2011 and was informed that "he wanted the rights that were recognized to be those that applied in the contemporary context, without dragging in a lot of history."

relationships with both Indigenous peoples and Québec. Arthur Manuel writes of the decision to remove the Aboriginal rights provision from the draft accord during the "Night of the Long Knives": "the knife that night was used first against our people. […] in the middle of the night, Aboriginal people were tossed out of the constitution, along with Quebec" (Manuel and Derrickson 2015, 73). The difference is that the Aboriginal rights provision was returned, while the *Constitution Act, 1982* was enacted without Québec, and in the latter case the discussion of reconciliation proceeded from this *exclusion* while in the case of Indigenous peoples a significant strand of reconciliation discourse emanates from the *inclusion* of s. 35 in the constitution.

Section 35 was the product of "intense political activities" of Indigenous peoples in the lead-up to patriation (Manuel and Derrickson 2017, 96). "The result," Erasmus writes, "was that we became a constitutional issue" (1989, 22). The entrenchment of Aboriginal and treaty rights in the constitution has been described as a "watershed" (Boldt and Long 1985, 13), as it enshrined a new constitutional status for Indigenous peoples and represents "a commitment from which the Canadian state cannot retreat" (11). Politically it also had the significant effects of involving provincial governments in the negotiation of Indigenous peoples' rights, a shift from the previous constitutional status quo set out by s. 91(24) of the *BNA Act*, and of the constitutional forum coming to overshadow other negotiations between Canada and Indigenous groups (11). This remained the case at least for the better part of the decade following patriation before the events of the early 1990s shifted the terrain once again.[28]

[28] This is by no means to suggest that the constitutional forum was the only locus of significant developments in the political relationships between Indigenous peoples and the Canadian state during this period, however. Indeed, the ongoing negotiation of these relationships can never be understood as developing along fully discrete pathways; it is continually taking place in multiple distinct but mutually influencing arenas simultaneously, including various formal and informal processes operating at different scales (Tully 2010, 247). For accounts of several direct actions developed in resistance to a variety of incursions by the Canadian state in the 1980s, and their respective historical contexts, see *Drumbeat: Anger and Renewal in Indian Country* (Richardson 1989). While not captured in the sets of documents explored in this section, the 1980s also involved significant study and lobbying pertaining to the government's comprehensive claims policy (Erasmus 1989, 16-17). The challenges around existing policies and the

With respect to references to reconciliation during the patriation process itself, transcripts from the Special Joint Committee on the Constitution of Canada – a decade after Courchene's 1970 presentation – reveal that these uses, like the committee's earlier report, also do not refer to Courchene's use of the term, nor do they resemble his formulation of the concept or embody uses that are as developed. These references all occur during hearings in December 1980 and January 1981 addressing the government's patriation proposals. The first speaks of reconciling in the sense of remedying a problem or injustice, while the other two both invoke (in)compatibility. In the first instance, Jim Sinclair, then President of the Association of Metis and Non-Status Indians of Saskatchewan, addresses the constitutional entrenchment of Aboriginal rights, stating:

> The concern that we have, it is like going from the fox to the wolf, who is going to be tougher on us, the courts or the politicians. […] I would personally feel that something should be enshrined in the constitution that we could at least take to the court because if we leave it to the whims of the politicians who will change it because the majority says so, and you get elected by the majority, we are in trouble.
>
> Again, the other thing that is wrong with the democratic system, and I see it wrong in Canada today, is the fact that in a democracy the majority seems to trample on the rights of the minority groups and it leaves us out.
>
> So you have to reconcile that some way, especially, as we say, we have to have something to protect us, and our children, and our future. (SJCSHCCC 1980a, 22:152)

In this presentation, there are resonances with the problems that Courchene spoke about a decade earlier, and the reference to trampling on rights gestures towards a need to address relations of oppression and not simply of opposition, but the notion of "reconciliation" is not foregrounded as a normative focus in response in the same way. Here "reconcile" is used in passing to mean that an imbalance must be evened out, that some kind of remedy must be provided to address the the infringement or neglect of minority rights. Again the remedy proposed is a constitutional one, though recourse to the courts is seen here as a minimal protection and not any kind of panacea.

The other two uses speak rather to the meaning of reconciliation that refers to

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shock of the standoff at Kanehsatake in 1990 ultimately led the government to create the Indian Specific Claims Commission (ISCC). For context and policy history pertaining to the ISCC, see J. Dickson (2018, ch. 1 and 2).

compatibility or incompatibility, evidenced particularly in the first case by the fact that the word "reconciled" appears only in the English translation of the text where the original French speech says *incompatible*. René Simon, President of the Attikamek-Montagnais Council, argued against the imposition of the Royal Proclamation of 1763 and other unilateral acts and declarations of the Crown, and suggested that the idea of anyone having "the power to acknowledge or do away with the basic rights of sovereign peoples […] would be an abusive power" that was not compatible – reconcilable – with the equality of human individuals and groups (SJCSHCCC 1980c, 28: 8). The question of compatibility clothed in the language of reconciliation appeared again when committee member Svend Robinson questioned Acting Minister of Justice Robert Kaplan about the inclusion of a provision for a referendum in the case of deadlock on future constitutional amendments in the government's proposed amending formula. He said,

> I would like to ask you how you reconcile the protection of aboriginal and treaty rights, such as they are defined inadequately as they are in the proposed resolution – how you reconcile the protection of these rights with the concept of a referendum?
>
> Would you not agree that a referendum initiated by the federal government could take away any of these rights which, supposedly, may exist at any time in the course of the next few years, and suggest to native people in this country that their rights should depend upon the will of a majority, with regional majorities of course – not even majorities in some regions – is denying the existence of these fundamental rights.
>
> How do you reconcile the referendum mechanism with the protection of treaty and aboriginal rights? (SJCSHCCC 1981c, 41: 74).[29]

Here, the matter of reconciliation, posed as a question, asks "How are these two things not contradictory?" This particular use of reconciliation, from what I have seen in perusing parliamentary transcripts, seems to be the most common in exchanges between politicians. In this specific instance, the question happens to apply to Aboriginal rights, but the place of reconciliation in the question does not appear to carry any special weight or normative implication. Grand Chief Courchene's speech aside, insofar as versions of the word

[29] The concepts of referendum and reconciliation were later reunited in debates over treaty rights in BC (see ch. 9).

"reconciliation" were used in political exchanges on the road to patriation, from the snapshots that I have examined, the prevailing use is this form that inquires as to or points out the presence of seeming contradictions, followed by reconciliation in its financial form in discussions of budgets, and it gets used in these forms in the same way – and primarily so – with respect to other topics not having to do with relations with Indigenous peoples.

Section 35 of the *Constitution Act, 1982*'s recognition and affirmation of Aboriginal and treaty rights set the stage for what later became a predominant formulation of reconciliation in SCC jurisprudence, as we will see in chapter 7. However, in the years right after the passage of the new constitution, s. 35 was subject to political debate rather than legal interpretation, and at this juncture, while some uses can be related in a variety of ways to the SCC's later uses, by and large that understanding of reconciliation did not appear. Within less than a year after patriation, two initially overlapping political processes took on the task of addressing Aboriginal rights – the Penner Committee on Indian Self-Government and the FMCs mandated by s. 37 – and variations of "reconciliation" were invoked by a number of different actors in both.

5.3.2 The Penner Committee

The process to establish the Penner Committee, which went through a couple of iterations before arriving at its eventual form, began shortly after the passage of the *Constitution Act, 1982*, suggesting that its "report was meant to assist Parliament in determining the practical meaning of the new relationship promised by the suggestive (but vague) language of s. 35" (J. Nichols 2020, 316). As Arthur Manuel describes it, the Committee's work constituted the "first comprehensive study of how the Indigenous right to self-determination could be accommodated within the Canadian space" (Manuel and Derrickson 2017, 269). Ultimately, the final report recommended

"a fundamental restructuring" of the federal government's relationship with Indigenous peoples that would end the *Indian Act* system of imposed governance and recognize an Indigenous order of governance with attendant land, economic resources, and jurisdiction (Dickason 1992, 408; Manuel and Derrickson 2017, 270-71). Joshua Nichols argues that the Penner Report was notably distinct from other efforts up to that point because it actually engaged in what he refers to as "recollection" by addressing the historical context around how the relationship between the government and Indigenous peoples came to be one of domination enacted and maintained through a unilateral and arbitrary assertion of "power-over" (2020, 317). This was captured in an epigraph from Leo Tolstoy cited at the beginning of the final report that had been presented to the committee in a submission by the First Nation of Na-Cho Nyäk Dun: "I sit / on a / man's back / choking him / and making / him carry / me and yet assure myself and / others that I am sorry for him / and wish to lighten his load by / all possible means – except by / getting off his back" (HCSCISG 1983a, 2). For Nichols, the significance of the Penner Committee's engagement with this state of things was that it "makes the illegitimacy of [the relationship] open for all to see" and "recommended that the very basis of the relationship had to be changed" (2020, 320). There is much to reflect on here; most notable for this particular exploration is that while the word did make some appearances during the proceedings of the committee's work, in contrast with today's political rhetoric on the need to transform the relationship, the Penner Committee did not frame its recommendations in terms of reconciliation.

The main form of the term that appeared during the Penner Committee hearings, used by both MPs and Indigenous leaders appearing before the committee, is the verb form indicating the rendering of a harmony or consistency between two things, views, or interests. One such version was used on several occasions in MPs' questions about how self-government could be reconciled

with the trust relationship between Indigenous peoples and the federal government (HCSCISG 1983b, 7:45; 1983c, 8:21; 1983d, 30:118). While in this iteration the word was used in what appeared as suggestions that Indigenous peoples' positions contained an internal inconsistency, the same charge could be aimed in the other direction.[30] One example of this is Cowichan Chief Dennis Alphonse calling attention to a government practice of denying leases to band members as something that "has never been reconciled with changes in our legal status brought on by the right to vote" (1983e, 5:26). More examples of highlighting inconsistencies or incompatibilities in the government's approach appear in the submissions around the FMC negotiations, as explored below. In a variation on the theme of rendering consistency, the word also made one appearance related to financial reconciliation (1983f, 15:66); other such uses included a query about how to reconcile the divergent maxims that Christians and Indigenous peoples each understood as guidance from their respective Creators (15:65), another about how there could be a global model of self-government for the country but also flexibility to accommodate the desired models of different nations (1983g, 26:33), and an observation about the lack of mechanisms for reconciling "competing interests among different segments of Northwest Territories society" as a challenge in working on self-government in the territory (1983h, 28:10).

Besides these, (re)conciliation makes two other kinds of appearance during the Penner Committee's work. While an underlying current can be understood to connect all of them – they all invoke the pursuit or achievement of some kind of harmony, though harmony too can be sought in different ways and taken to mean different things – these other two uses differ from those above in the type of reference they entail and the connections they invoke. One reference is

[30] Indigenous leaders also challenged the existence and form of the trust relationship. For instance, Gitxsan leader Neil Sterritt stated, "There is said to be a trust relationship, but there is not […] the trust relationship is institutionalized right now through the DIA, and it is sadly lacking. The relationship should be in the Constitution. It should be a constitutional relationship; that is what it has to be, not an institutional relationship" (1983c, 8:21-22).

historical and the other is legal. The first calls back to the early relations between Indigenous peoples and British colonial officials explored in chapter 2. Speaking to the committee of the history of the Royal Proclamation of 1763, Teme-Augama Anishnabai Chief Gary Potts quoted two letters from Lord Egremont, Secretary of State for the Southern Department at that time, sent in 1763 to Jeffrey Amherst (then Commander-in-Chief of Britain's forces in North America) and to the Board of Trade in London. These letters both spoke of "conciliating" the "affection" and the "minds" of Indigenous peoples as the British Crown's chosen approach in the lead-up to the issuing of the Royal Proclamation (HCSCISG 1983i, 34:10). The reading of these passages into the record in 1983 not only indicates the Proclamation's continuing relevance 220 years later, but also serves as a reminder of the existence of an earlier use of a language of conciliation to frame the relationship during a period when *re*conciliation was about to become a prominent concept for doing the same. This presents an opportunity to reflect on the observation that "reconciliation in contemporary settler nation states […] has its historical roots in past practices of conciliation, as both an intellectual idea and an imperial repertoire" (Edmonds 2016, 19).

While Potts's presentation invokes a specific history of conciliation, one four months earlier by David Ahenakew, then National Chief of the Assembly of First Nations (AFN),[31] invokes a specific legal concept of conciliation. Articulating a connection to the constitutional negotiation process set to begin with the first FMC some weeks later, which he argued should

[31] Asked when he first recalled hearing the term reconciliation used in political debates in Canada, Roy Romanow noted that he remembered attending many meetings with then-Premier of Saskatchewan Allan Blakeney and David Ahenakew, who was the president of the Federation of Saskatchewan Indian Nations (now called the Federation of Sovereign Indigenous Nations) throughout the 1970s, and that reconciliation came up during those discussions (research interview, February 2018). I have not yet managed to locate any speeches or documents that demonstrate Ahenakew using the term during that decade and he passed away prior to me commencing this research, so I have not been able to verify whether and how he might have used the term beyond this one reference at the Special Committee. Several decades later, Ahenakew came to feature negatively in public discussions of reconciliation when a journalist recorded him making anti-Semitic comments, prompting deliberation about how reckoning with the violence of colonialism in Canada necessitated confronting the racism and injustice faced by many different groups of people and how they all are and have been intertwined (Spear 2014, 112-15).

lead to "the principle of honourable treaty relations" being "re-affirmed on a permanent basis," Ahenakew argued that the committee should "recommend that Canada enter into a process with the First Nations to establish an aboriginal and treaty rights protection office," with quasijudicial powers, that could make binding decisions in resolving conflicts between Canada and Indigenous peoples with respect to Aboriginal and treaty rights (HCSCISG 1983j, 9:8). Among the powers accorded to this office, he suggested, would be "special authority to seek evidence and issue penalties to parties which violate terms of its decisions" as well as "other powers, such as mediation, conciliation, and arbitration" (9:9). While it is important to consider that Indigenous peoples have their own understandings of conciliation rooted in their own legal orders – and indeed it is often emphasized that practices of conciliation play a central role in many Indigenous peoples' justice systems – the pairing of the term conciliation with mediation and arbitration here immediately invokes a specific set of practices related to labour law and other areas of dispute resolution within the English common law. As such, while this presentation bears some resemblance to all of the other uses of reconciliation at the committee in that they all speak to addressing a conflict or inconsistency in some form, this use is also distinct in that it calls up a specific set of formal processes associated with the word "conciliation."

This was also the only form that appeared in the Penner Committee's final report, which included among its recommendations the creation of tribunals to address conflicts that might arise around agreements between Indigenous nations and the federal government, which the committee emphasized would constitute "political settlements, not air-tight legal contracts" (1983a, 67). The report cited the above-quoted passages from Ahenakew's presentation in describing the kinds of powers that might be given to such tribunals, and then noted that "[a]lthough mediation or conciliation would be useful in attempting to resolve differences of

opinion about interpreting agreements […] there will be occasions where differences are not reconcilable and where an impartial third party must decide," stating that whether this was to be through arbitration or some other mechanism, it had to be a forum whose "decisions will be acceptable to all concerned" (67). Aside from this one reference to a specific area and process of conflict resolution, the final report did not make any other references to (re)conciliation, much less frame the overall transformation of relationships that it was calling for in such terms.

The Penner Report offered a path to changing the relationship that Nichols argues remains a radical vision in comparison with the status quo nearly forty years later (2020, 294), but it was a path not taken. The Liberal government saw a change in leadership and then the country saw a change in government, and "the Penner Report was tossed aside" (Manuel and Derrickson 2017, 271). Nichols suggests this began even prior to the arrival of the Mulroney government, as the Liberal Minister of Indian Affairs and Northern Development's response in early 1984 "avoided directly rejecting the substance" of the report but "shifted emphasis away from the inherent right of self-government" and emphasized the FMCs as the proper forum for reconfiguring the relationship between Canada and Indigenous peoples (whereas the Penner Report's vision did not require the participation of the provincial governments) (2020, 327).[32]

5.3.3 The Federal—Provincial Conferences on Aboriginal Constitutional Matters

Section 37 of the *Constitution Act, 1982* provided that within a year after patriation, the prime minister would convene a FMC whose agenda would address "constitutional matters that directly

[32] Nichols also notes that the government's March 1984 response characterized the form of relationship the Penner Committee called for in a way that emphasized it being "within Canada" and painted a "picture of the constitutional framework [that] suggested the existence of limits that were in some way known in advance. It shifted the focus from reinterpreting the balance of powers to simply pointing to jurisdictional limits. It did so, to my view, because it took those limits as fixed" (2020, 329). Ultimately, even this turned out to be of limited consequence in 1984 when the PCs swept the Liberals in that year's fall election, but for Nichols the Penner Report bears revisiting (357).

affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada," and that representatives of Indigenous peoples would be invited to participate in the discussions. A constitutional amendment emerging from the first FMC in 1983 added a provision for "at least two" further constitutional conferences on these matters. The nature of the exercise afforded by these FMCs is subject to multiple interpretations.[33] Described in one account as "a sop for Natives having been excluded from the constitutional negotiations" preceding patriation (Dickason 1992, 407), Arthur Manuel on the other hand suggests that the provision for negotiations meant that "the Constitution was setting out a framework to begin the decolonization of Canada, just as the Constitution itself had been a final symbolic act of the decolonization of Canada from Britain" (Manuel and Derrickson 2017, 97-98). Had there been different engagement on the part of Canadian governments perhaps this could have been the case, though it seems doubtful that that would have been their intention for the process; rather, Nichols suggests, their participation demonstrated a "continual strategy of deferral" (2020, 331). Other Indigenous leaders were much more cynical about the Canadian governments' aims. For example, as far as Fred Plain was concerned, "The first ministers have only one goal in mind in the constitutional negotiations: they hope to gain complete control over all Indian lands and resources. That is what the constitutional process is all about" (1985, 38). There was significant wariness between the groups; indeed, "[t]hat a constitutional guarantee was needed to deal with the matter of calling meetings between Aboriginal leaders and government representatives is indicative of the level of mistrust that plagued Aboriginal-state relations" going into the FMCs (Cosentino and Chartrand

[33] David Hawkes's (1989) study of the FMCs, which incorporates interviews with the participants as well as the transcripts of the proceedings and media coverage, provides valuable insight into the wide variations in understandings of the nature and goals of the process and experiences of the negotiations. This includes significant variation among governments and Indigenous peoples' organizations as well as between the two sets of entities (14).

2007, 298). Concerns about delaying through a fixation on process were raised by Indigenous leaders during the FMCs, with Bill Wilson at one point observing, "There's something that's happening, and it's of grave concern to me, is that as soon as we get close to doing something, there seems to be a, almost a strategy to prevent something from happening" (Bulbulian 1987a at 24:40).[34] Pierre Trudeau dismissed this concern as unconstructive (24:56). As we will see, these divergences over procedure and the questions about the exercise of power they implied became entwined in a couple of different ways with the notion of reconciliation.

As several of my interview participants noted, reconciliation was not the central language of these conferences. Again, the word made a handful of appearances, and by and large these were of the same ilk as the uses in the processes described above. For instance, a submission to a parliamentary committee addressing the proposed amendment issuing from the 1983 FMC from the Brotherhood of Indian Nations of Manitoba noted that the Trudeau government's particular conception of equality was "not easily reconciled" with the constitutional recognition of Indigenous peoples (Standing Senate Committee on Legal and Constitutional Affairs 1983, 71A:10). Another document argues that it is difficult "to reconcile Section 91(24) and the involvement of the provinces in the constitutional discussions between the Indian Peoples and Canada" as well as to reconcile the constitution with parliamentary supremacy (Blood Tribe 1983, 4, 8). The Piikani Nation's declaration at the 1983 FMC included a reference to

[34] On this argument, see Hawkes on FMC participants' views on governments' approaches in the negotiations (1989, 10), and Weaver on how an evasive and "reactive" approach in government policymaking regarding Indigenous peoples in the 1980s was shaped by structural issues relating to the relationships between the Department of Indian Affairs and Northern Development, central agencies, and cabinet (1985, 145-46). The divergence over the question of process here should not be taken to imply a lack of concern with procedural questions on the part of Indigenous peoples. Indeed, the overarching concern at the outset of the 1980s was a procedural one: that Indigenous peoples were not being included in the negotiations process at all. For one account of how, for example, treaty negotiations involving the governments of Canada and BC are procedurally (and as a result, substantively) flawed because they fail to engage with and incorporate the dispute resolution philosophies and practices of the Indigenous nations with whom the negotiations are being conducted, see Morales (2017). With the FMCs, the concern was particularly that the focus on process was being used as a stalling tactic to avoid dealing with core principles and issues.

conciliation as a historical policy similar to those cited by Potts, citing a Hudson's Bay Company regulation calling for "mild and conciliatory means" in the Company's treatment of Indigenous people (Peigan Tribe of the Blackfoot Confederacy 1983, 3). A contemporary version of the notion of conciliation as a tactic of engagement was offered in a back-and-forth between Brian Mulroney and a reporter from Radio-Canada, who asked him what "moyen de conciliation" he would use to convince the premiers to adopt his proposed constitutional amendment (Mulroney 1985a, 12). Only in one instance was reconciliation used to name an explicit overarching normative goal. However, a couple of other points where the word is used merit consideration in a little further detail, as the context speaks in important ways to underlying divergences of purpose and understanding. These uses might also be seen as containing the seeds of the thinking informing some of the more directly stated versions of reconciliation that would follow later.

These glimpses can be seen at a couple of points in the transcripts of the 1983 and 1984 FMCs, which are also worth considering alongside the remarks Mulroney made on the occasion of the 1985 conference. Book-ended by definitive statements by Trudeau at the first FMC and then new Minister of Justice and Attorney General Ray Hnatyshyn at the last FMC, these discussions about power and definition circle back to Manuel's framing of s. 37 as a mechanism for decolonization (Manuel and Derrickson 2017, 97-98), and are revelatory of the kind of reconciliatory exercise the FMCs could entertain – even if the word itself was only seldomly used at this point. These excerpts from the proceedings show Canadian politicians holding an orientation towards Indigenous self-determination that revolves around an asymmetrical reconciliation-as-consistency and constitutes an exercise of power that is enacted in the process of attempting to disguise itself. Another dimension that is of interest given the dissertation's focus is a concern that several of them demonstrated regarding the meaning of words in the talks,

and indeed with reconciling the conflicts between different definitions of key concepts.

At the March 1983 FMC, Attorney General of BC Allan Williams sought to diagnose "the gordian knot we are having," noting, "maybe it is language" (FPCFMACM 1983, 131). Responding to Indigenous leaders' assertion that the rights recognized and affirmed in s. 35 include title to land, Williams put on the brakes and argued that "Aboriginal title" could not be put in the constitution "unless the aboriginal peoples and the rest of the Canadians know what it is we are doing to the constitution when we are putting those words in" (131). The problem, he felt, was one "of reconciling the conflicts that there may be between title as we understand it and title as the aboriginal peoples understand it in Canada today" (132), suggesting that this was "a language problem" that resulted from "com[ing] from different ethics when we approach this concept of land ownership" (131).[35] He framed the conflict's stakes by raising the spectre of Indigenous peoples claiming ownership of Vancouver, as well as that of the courts, arguing that "the choice of this language is so critical" lest the rights be enshrined in the constitution and then interpreted unfavourably by a judge (132). These comments are interesting from a retrospective vantage point some decades later when "reconciliation" itself has become the subject of a need to reconcile conflicts between how Canadian politicians and how Indigenous peoples coming from "different ethics" understand it. They also suggest the limits being placed around the exercise of addressing this conflict of meanings and negotiating an agreement. While Williams' description of Vancouver as being "completely occupied" by non-Indigenous people (an overstatement that erases the xʷməθkʷəy̓əm [Musqueam], Sḵwx̱wú7mesh [Squamish], and səlilwətaɬ [Tsleil-Waututh] peoples still living on their territories in the city) and his use of the phrase "in Canada today" could be taken as mere factual descriptors of the context of the negotiations at the FMCs

[35] When Hawkes asked FMC participants about having differing "assumptions about the negotiation process" and frameworks of analysis, "almost all respondents answered in the affirmative with the exception of several federal officials, who were of the view that assumptions were widely shared throughout negotiations" (1989, 9).

(132), they can also be read as an assertion of the starting point as well as a non-negotiable aspect of the outcome. In this sense, being "in Canada today" is taken as a necessary qualifier of how Indigenous peoples could possibly understand the meaning of their title.

This line of thinking is also strongly at work in remarks made by Alberta premier Peter Lougheed at the same conference. Lougheed stressed, seconding a point made earlier by Mulroney, that in defining the rights of Indigenous peoples, "we have to talk about the rights of these other Canadians who also enjoy the protection of the constitution and the law" (162). He then challenged the idea that the negotiations were being shaped by power relations:

> I take some concern with an expression that it all has to do with power and to the contrary, I think the difficulty we have is that we are trying to balance the views of some as to what their rights are and the views of others as to what their rights are and it is not an easy one to be involved in. I see it as the exact opposite, frankly, of the question of the exercise of power. It is trying to respond to rights of people on the one hand, which have been expressed here today and it reflects, as you say, Mr. Chairman, the rights of those other Canadians who also enjoy the protection of the constitution and the law. They need to be reconciled *and that is the key word*, with the rights accorded to the aboriginal peoples.
>
> I am not sure yet whether that reconciliation is possible. I would be inclined to think that in some areas it may be and in some areas it may not. (162; emphasis added)

Lougheed's comments do a couple of things here. First, in a fashion that is complementary to Williams's description of reconciling the different meanings of title, he defines the exercise at hand as a reconciliation of the rights of Indigenous peoples and the rights of Canadians.[36] This version of reconciliation involves rendering compatibility between the two sets of rights that are seen as sitting in a relation of opposition. Second, he frames this reconciliation as a balancing act that is somehow devoid of the exercise of power, going so far as to say that it constitutes the

[36] In using the phrasing "other Canadians," Lougheed also defines the Indigenous peoples seeking recognition of distinct rights as themselves Canadian. This is a complex matter due to the historical oppression of Indigenous peoples through means of both exclusion from the rights of citizenship and forcible inclusion within Canadian society. Indigenous people were denied the basic rights of Canadian citizens for nearly the entire first century of Canada's existence as a state. The recognition of Indigenous people as Canadian citizens can thus be understood as both an important victory after a long struggle and as the imposition of a not necessarily desired status and identity, and is the subject of a wide variety of views among Indigenous people and peoples. On the complexities of this matter, see e.g., J. Green (2017). The effect of such framing in this context of reconciling sets of rights can be read as implying a simultaneous assertion of Indigenous peoples as both same and other.

opposite of exercising power. Given the impossibility of seeking elaboration from him, it is not clear exactly what Lougheed meant by "the opposite […] of the exercise of power." What seems to be suggested by the linking of this phrase with the notion of making an effort to address the concerns of Indigenous peoples and to attempt a reconciliation of their rights with "the rights of those other Canadians" is that it would only be to *not* make this attempt that would constitute an exercise of power, even in the face of the potential impossibility of said reconciliation. That the first ministers are sitting down to have the discussion with Indigenous leaders at all then somehow waves away all possibility of them exercising power over Indigenous peoples, and it appears that reconciliation is the "key word" that accomplishes this disappearing act of power.

Two other moments, from the transcripts of the 1984 and 1985 conferences, flesh out further dimensions of this dynamic. These two speeches offer two different perspectives on the question of the nature of the task before the conference participants, their relationship to each other, and what role power played in the negotiations. Speaking at the 1984 FMC, Chief David Ahenakew also spoke of achieving balance, and described himself and the other Indigenous leaders as sharing a "common purpose" with the Canadian first ministers (FPCFMACM 1984, 27). As he described it, this purpose was "to redress inequities, compensate abuses and change a system which is inadequate, unworkable and unacceptable" (27). In a description that echoed several aspects of Courchene's 1970 speech, Ahenakew's vision of a restored balance was a "harmonious […] mutual accommodation recognizing our political institutions for what they are, a distinct order of government in Canada" and wherein no changes to Indigenous peoples' rights, sovereignty or territory, or any constitutional provisions affecting Indigenous peoples, would be made without their "express consent" (27). The common purpose he was putting before the group was thus the protection of Indigenous peoples' sovereignty and jurisdiction, defined as

"full economy and self-determination within Canada and the Canadian Constitution" and "full control over and responsibility for our lives and our future" (28). Ahenakew asserted that Canada also owed Indigenous peoples compensation for the ongoing use of their lands and resources (28). While calling on all of the participants to join in this mode of relationship as a common aim, however, Ahenakew also offered some reflections on the FMC process and the meetings with officials in between conferences thus far that cast them quite differently than as "opposite" to the exercise of power: "We have often felt treated in the process like colonized and subjugated peoples who are some sort of a social problem needing the therapy which officials indeed seem to think assimilation would provide" (29). He reiterated the concern about procedure and spoke to the framing of the reconciliation question that Williams and Lougheed had raised, stating: "Federal and provincial participants often appear more preoccupied with the process than with the substantive issues. Federal officials claim that there are views which cannot be reconciled. They say we have reached an impasse and they say the alleged impasse is the fault of the First Nations" (29). In this configuration, the reconciliation of rights or views does not appear to be absent the exercise of power. Given both Canada's historical track record towards Indigenous peoples' sovereignty and jurisdiction, along with this description of the experience of the representatives of Indigenous peoples in the FMCs, Ahenakew's declaration of common purpose appears more as an aspiration and a challenge that as a factual description. Coming from the other side of the table, such an invocation of commonality comes across rather differently.

In his opening remarks at the 1985 FMC, Mulroney made the only reference to reconciliation as an overarching policy goal. It was not stated explicitly as the goal of the s. 37 FMC process itself, but rather tangentially related to it by way of reference to Mulroney's other commitments as he explained his desired approach to the negotiations:

> My objective at the Regina conference on the economy, and again at the national economic conference, was to encourage the key actors in the Canadian economy to recast their dialogue in terms that made issues into shared concerns, not jurisdictional disputes. And so no one should be surprised that one of my objectives for this conference is to encourage all participants to accept their share of responsibility in the search for new understandings. You know of my commitment to national reconciliation. You know of my determination to breathe new life into and restore harmony to federal-provincial relations. We have seen the advantages of moving to consensus and the new hope it offers us. (1985b, 157-58)

National reconciliation, cast as a restoration of harmony, thus evokes Mulroney's approach to Québec and federal-provincial relations explored in chapters 3 and 4, but also gets implicitly linked to relations with Indigenous peoples by way of the announced intention to approach the s. 37 FMCs in the same fashion. Mulroney then follows this with his own comments on power and commonality: "To the aboriginal leaders, I want to say that, having been a labour negotiator, I know what it means to be sitting on one side of the table looking at powerful interests on the other. But this is not the situation today. We are here together to try to come to grips with problems common to us all" (150). This statement has a couple of implications for thinking about reconciliation and power relations in this context. The comment about labour negotiations serves as a reminder that conciliation, along with mediation and arbitration, is a specific dispute resolution process in Canadian law (and that this is a background that Mulroney brings with him into political negotiations).[37] It also serves as an acknowledgement by Mulroney that power relations shape negotiations, and yet his framing simultaneously neutralizes the acknowledgment by dismissing its applicability to the specific negotiations in question. In presenting the FMC's subject matter as a common problem that the participants collectively need to grapple with, Mulroney seems to echo the same spirit as Ahenakew, except that he does it in a way that gives the impression of an equality and a form of commonality among the participants that does not

[37] Some of the Indigenous participants in the FMCs indicated that the federal government's approach became more "akin to labour negotiations" beginning in 1983-84, an approach "emphasizing compromise rather than inalienable rights" which they "thought to be inappropriate for the identification and definition of aboriginal rights in the constitution" (Hawkes 1989, 11).

actually exist. This framing might be considered in light of both Grant's (2018) analysis of "lived fictions" embodying the political drive towards being/becoming one and of Ahmed's (2006, 2012) description of non-performative speech acts: it suggests the participants are all united in a shared endeavour absent relations of power but does not make things so.

This contradictory expression of power through a denial that power is being exercised and an emphasis on resolving common problems in order to solidify a common political community continues as a subtle through line in the remainder of Mulroney's speech. He approvingly quotes Inuk leader Zebedee Nungak on how the purpose of the conferences ought to be to do "constructive damage to the status quo," and he is adamant that "[t]he Canada we are building for the twenty-first century must have room for self-governing aboriginal peoples" (160). However, the way that he expresses support for this goal and circumscribes its limits reveals the very power relations that have been disavowed by Mulroney and Lougheed in action. First, his characterization of the historical relationship necessitating these negotiations in the 1980s as being because "our ongoing arrangements have failed to leave room for aboriginal peoples" glosses over the direct and deliberate actions taken by the Canadian state to disrupt and destroy the societies of Indigenous peoples, including their modes of governance (160), though he does acknowledge that "there were times when aspects of their cultures were subject to legal sanctions and suppression" (161). Rather than recognizing that Indigenous peoples have survived despite and in resistance to the Canadian state, though, he instead claims this resilience for Canada by suggesting that the fact that they have "persevered and maintained their cultural identity through many years of adversity […] is part of our national heritage, part of how we define ourselves as a society, something to be celebrated, not ignored" (159-60). This renders Indigenous peoples' survival in the face of oppression by Canada a point of pride for the country

instead of its acts of oppression towards Indigenous peoples indicting it.[38]

Second, in advocating for self-government as a means to Indigenous peoples taking "their rightful place in Canadian society," Mulroney situated the exercise of self-government within the existing structure of the Canadian state and subject to both what he saw as "the realities of the current economic environment" as well as the ideals of the Canadian socioeconomic model, wherein Indigenous people would "play their full roles as active and important contributors to the national economy and as holders of a unique and special place in the national mosaic" (163). He suggested Canadians should not worry about self-government for Indigenous peoples, as "[i]t is not an end in itself, but rather a means to reach common goals. It is the vehicle, not the destination" (161). In this framing, self-government is a car to be driven on Canadian roads, for the purposes of participating fully in the Canadian society and economy. This is consistent with the Mulroney government's overall political and economic orientation and a policy approach that "leaned towards liberal individualism, devolution, and a market-driven response to Aboriginal issues" (Cosentino and Chartrand 2007, 308). Gina Cosentino and Paul Chartrand write,

> This approach may be seen as conflicting with the collective self-determination goals that were articulated by the representatives of the Aboriginal peoples in the FMCs. While the language of self-government was often linked to devolutionary policies, it is evident that the actions of Mulroney's government can be more accurately described as Indian self-administration based on delegated authority within the established federal system. (308)

Cosentino and Chartrand note that while there were some limited hopes for increased autonomy

[38] This kind of framing has been common in Canada's approach to redress for historical injustices committed against a variety of groups over the last several decades. In his work on redress programs for non-Indigenous groups who were targeted by oppressive state policies, Matt James refers to this approach as "neoliberal heritage redress," which he suggests is the subject of "an underlying Liberal-Conservative consensus" that he charts from the early 2000s through to the Harper government's Community Historical Recognition Program (2013, 35). James suggests that this approach aims "to construct popular understandings of injustice in ways congenial to the neoliberal project of remaking a public sphere devoid of critical dissent" (37), operating by "transform[ing] Canadian histories of wrongdoing from potential tools of national self-criticism and introspection into paternalistic occasions for congratulating victim groups on their 'contributions'" (38; see also James 2015). While James's study focuses on policies not developed until two decades later, the same kind of depoliticization can be seen at work in the way that Mulroney's speech transfigures Indigenous peoples' resistance against the Canadian state into a contribution to the Canadian state and a positive attribute of its overarching identity. Such rhetorical frames and commitments to redress can also be considered to constitute a certain identity for the state as subject (Ahmed 2006, 104; 2012, 116).

under the devolutionary approach of the Mulroney government, the government's fiscal policies undermined this possibility and some people were concerned that the rationale that underpinned the approach would "actually promote the assimilationist goals of past Aboriginal policy" and argued that "promoting national reconciliation with Aboriginal peoples cannot occur through devolution and bureaucratized Aboriginal relations" (307-8).

Whether it is conscious on the part of the speaker or not, the use of language is shaped by and shapes social relations and is thus never neutral, which means that to understand what work is being done politically by any given utterance, we must ask who is speaking (D. Giroux 2013, 333). Only by considering the effects of the power relations that Lougheed and Mulroney seek to declare non-existent can meaning and significance begin to become clearer, showing how the same kind of language says different things from different positions. This is key to wading through the many mobilizations of reconciliation, more subtle and often seemingly inadvertent in the examples explored so far but increasingly more active and deliberate in developments over the three decades that follow. The contrast between Ahenakew and Mulroney's respective uses of the language of common problems and common purpose is instructive on this: they may sound like similar uses and calls to work together, but the former is challenging the limits of the negotiations and their possible outcome while the latter is reinforcing them. Furthermore, the limits of the status quo in which the negotiations were taking place were not the product of mutual agreement but of the power relations between Indigenous peoples and Canadian political leaders and institutions as they had developed historically up to that point.[39]

[39] Following Foucault (1995, 26-27), power is not understood here as something that one set of parties has and the other does not, but as a fluid dynamic of domination and resistance. For instance, reflecting on a decision taken by the first ministers at the last FMC to move the meeting *in camera*, Bill Wilson suggests that the prime minister and premiers did not want to be seen by the Canadian public to be taking the positions and approach to dealing with Indigenous peoples that they were choosing (Bulbulian 1987b, 27:27). This speaks to a certain social power that Indigenous peoples held in relation to public opinion even if they were at a relative disadvantage with respect to other markers of social, political, legal, and economic power in comparison with the first ministers. Ahenakew

This exercise of power was by no means unique to Lougheed and Mulroney, and indeed inherently necessitated a certain collective effort on the part of the first ministers; while it is important to consider the role of individual agency in the process, it can be understood as something broader in the sense that it is exercised by the Canadian state and its institutions, which specific individuals embody in certain moments and spaces. The individual and the structural meet in those moments and spaces as agents choose or refuse to exercise the power available to them, decisions which are conditioned – permissively and restrictively – by how their own understandings and incentives have been informed by their position and structural and discursive relations to others. The FMCs were billed as conferences wherein the first ministers aimed to use the structural power afforded them by the constitution to define and protect Aboriginal rights and identify how Indigenous peoples' self-government would proceed within the framework they had established in 1982. From beginning to end, though, the conferences were also defined by the exercise of power in its restrictive form on the part of Canadian political leaders. Trudeau stated that the conferences were not to be preoccupied with "whether there should be institutions of self-government, but *how* these institutions should be brought into being" (Trudeau 1985, 152; emphasis in original). However, he also asserted clear limits around how this question could be addressed from the outset in his comments at the opening of the first FMC when he stated that while he rejected "assimilation" and "extinction" as bases for relating

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gestures to this during the second FMC in saying, "We do not believe that reasonable Canadians will tolerate their officials telling us that the only right we have is the right to surrender, surrender our inherent rights and our traditional lands" (FPCFMACM 1984, 31; emphasis in original). However, to acknowledge that all parties can exercise different kinds of power in different ways is not to suggest that the situation is simply the opposite of how Lougheed and Mulroney frame it – i.e., that instead of it not being a question of power, it's simply that everyone has power. These negotiations took place on structurally unequal terms, in the wake of centuries of colonial domination of Indigenous peoples by imperial officials and Canadian governments of which the Canadian politicians at the FMCs represented the successor governments and the current iteration. Furthermore, they were not participating on equal terms, as the Indigenous leaders were able to speak but they did not get to partake in the decision-making. The moment to which Wilson refers represents the epitome of this power dynamic, as the first ministers retreat behind closed doors to make decisions out of view of the public and without the involvement of the representatives of Indigenous peoples. For footage from the FMCs that is curated with a particular view to reflecting on the power relations at work, see Maurice Bulbulian's (1987a, 1987b) documentary *Dancing Around the Table*.

to Indigenous peoples, he equally rejected their full independence and sovereignty (Bulbulian 1987a at 5:12).[40] At the end of the last FMC, these limits were reinforced by Hnatyshyn. In his opening remarks at a ministers' meeting in 1987, Hnatyshyn reiterated the matter of what there was to be reconciled and described the federal government's view about addressing it:

> Some feel that self-government is an inherent right. Other participants feel that while aboriginal communities may once have been self-governing, there should now be a process of negotiation over how those rights are exercised – given the context of our current Confederation.
>
> For our part, we seek to avoid what appears to be a fundamentally irreconcilable difference of opinion. The courts have told us that self-government is an issue to be settled through negotiation – not litigation. That is the Canadian way and one which, I might add, the federal government is firmly committed to. (Hnatyshyn 1987, 10)

In reality, this difference of opinion was not avoided, and after the subsequent failure of that conference, litigation became a primary avenue for addressing questions about the rights and title of Indigenous peoples. If anything, the FMCs concluded with a solidification of the difference of opinion. Arthur Manuel recalls: "At the end of the negotiations, the federal minister of justice and attorney general, Ray Hnatyshyn, flatly rejected the idea that our peoples had a right to 'self-determination.' He said that this was the same as demanding sovereign rights, and sovereignty applied only to Canada as a whole. Period" (Manuel and Derrickson 2017, 99). Thus the FMCs began and ended with these declarations circumscribing what any exercise of reconciliation being undertaken in the negotiations could entail, limitations given further form by the emphasis on reconciling Indigenous peoples' rights to those of 'other Canadians.' These limits effectively foreclosed the possibility of achieving the kind of common purpose put forward by Ahenakew and was enabled by an exercise of power masquerading as its 'opposite.'

[40] This statement was also included in the "Highlights from the prime minister's address" published in a special edition on the 1983 FMC of "Minister's Letter: A letter to Indian People on Current Issues from the Minister of Indian Affairs and Northern Development" (Munro 1983, 3).

5.4 Conclusion

At the end of the 1980s, after two decades of major developments in political and institutional dynamics, the relationship between the Canadian state and Indigenous peoples had changed significantly and yet many longstanding interactional patterns and structures remained in place. Due to the onset of the era of mega constitutional politics and the decriminalization of one form of mobilization and resistance,[41] Indigenous peoples' political organizations were now formal participants in Canadian constitutional politics and the rights of Indigenous peoples were enshrined in the country's constitution. Treaty negotiations, which the Canadian government had suspended in the early 1920s (Miller 2009, 223), resumed in a new form following the *Calder* decision in 1973. Despite these significant changes, the rights recognized in the constitution had not been given mutually agreed-upon substance but rather remained the subject of deeply diverging understandings as to their very nature; Indigenous peoples had made it to the constitutional negotiating table but were not recognized as equal partners that could participate in the decision-making with Canadian federal and provincial representatives; recommendations for substantively transforming the nature of the relationship between Indigenous peoples and Canadian governments put forward by the Penner report, like those of the Hawthorn report and others before it, had been cast aside; and the new modern treaty processes were not immune to the same critiques as previous Canadian policies (see e.g., J. Nichols 2020, 312).

The s. 37 FMCs had ended in failure, at least from the perspective of Indigenous peoples; some felt that for Canadian governments, "the failure of the negotiations was the intended

[41] While the 1951 *Indian Act* amendments lifted some restrictions, Indigenous peoples continue to experience criminalization of other forms of organizing and resistance (often undertaken because state-sanctioned processes – such as negotiations like the FMCs, among others – have failed to resolve ongoing issues), along with multiple forms of violence and discrimination at the hands of state and private actors. See e.g., Crosby and Monaghan's *Policing Indigenous Movements* (2018). For a broader investigation of violence against Indigenous people in Canadian society and its historical contexts that considers its gendered dimensions, see NIMMIWG (2019, ch. 4-8).

outcome" (Manuel and Derrickson 2015, 80), suggesting that some saw Canada's commitment to negotiating rights and self-government as a non-performative one. For his part, Mulroney wrote regretfully in his journal some years later, "*I am not happy, either, with Canada's achievement vis-à-vis natives or my own government's – even though we tried mightily on constitutional amendments, public expenditures, etc*" (quoted in Mulroney 2007, 798; italics in original).[42] This mighty effort was not necessarily felt by those on the other side of the table. Writing at the close of the 1980s, then National Chief of the AFN Georges Erasmus described how there had seemed to be some hope at the outset of the FMCs despite it seeming "clear from the first that the European side did not share our leaders' attitudes" (1989, 25), but that then the process's conclusion "was shocking to all native people in Canada" (26). In his view, Mulroney could have pursued other options to continue the process after the end of the 1987 FMC, but did not, and declared the process over with, and then took a very different approach towards the Meech Lake Accord (26). Erasmus writes that "First Nations' leaders were astounded to see that, at Meech Lake, Mulroney and the same premiers signed a vague and imprecise accord, the details of which were to be worked out by 1990" while they had insisted against enshrining self-government in the constitution because they found it insufficiently clear and precise (26). Indigenous peoples felt betrayed by Canadian governments they perceived as hypocritical for "simply dropp[ing] the file and mov[ing] on to the Quebec issue" and seeming to prioritize addressing Québec's constitutional grievances over and at the expense of theirs (Manuel and Derrickson 2015, 79; Erasmus 1989, 27). In Mulroney's own account, his approach at the s. 37 FMCs were in part responsible for enabling the negotiation of the Meech Lake Accord – he wrote in his journal in

[42] This passage is from a journal entry dating from late July 1990, after the Meech Lake Accord failed due in significant part to Indigenous peoples' resistance, and the beginning of the standoff at Kanehsatake. Mulroney's *Memoirs* do not discuss the s. 37 FMCs or policies with respect to Indigenous peoples in anywhere near the kind of detail with which he addresses the Meech Lake Accord and other policy initiatives such as free trade with the US.

1987 that Peter Lougheed had suggested to him that his manner with the western premiers in light of the positions they put forward at those FMCs meant that "*bridges not having been burned, I was able to bring them together to complete the work of the Fathers of Confederation*" by negotiating Meech Lake (2007, 235-36; all italics in original). In his reflections, he posited Meech as necessary to the achievement of an eventual agreement on Indigenous peoples' rights because "*there can be no constitutional amendment featuring aboriginal rights until Quebec […] rejoins the Constitution*" because "*the votes are not there*," and that without the agreement reached at Meech, "*justice for native people would have been – as it might still be, if the accord is rejected – delayed for a generation*" (236). For Erasmus, on the other hand, what Meech symbolized was the presence of "a racist double-standard" whereby moves could be made in negotiating with Québec that would not be entertained in negotiations with Indigenous peoples (1989, 27-28). In Arthur Manuel's assessment, "the decolonization process that Section 35 was supposed to begin had been blocked by the Canadian political class" (Manuel and Derrickson 2015, 79). Erasmus saw this experience as part of a continuing pattern: "For the last few decades we have been riding on a roller-coaster of political hopes and promises – our hopes often lifted in response to apparently serious commitments by governments to deal decently with us, and as often dashed as governments have failed to live up to these commitments" (1989, 8). These latest failures, as with those preceding them, did not go unmet with resistance by Indigenous peoples. The mobilization against the Meech Lake Accord on the basis of its exclusion of Indigenous peoples and its achievement on the heels of the failure of the FMCs is a case in point.

The result of this resistance, along with other significant events that took place in 1990, covered in the next two chapters, put in motion a series of developments that set the stage for reconciliation discourses to begin to emerge onto the scene more prominently, gradually building

to the central place the term occupies today. In this chapter, we have seen a variety of the word's forms in use in political, legal and media contexts in relation to matters involving Indigenous peoples. Up to this point, the uses were not widespread or concentrated enough to be considered a discourse. Indeed, part of what is interesting about this period is the term's relative absence given how pervasive it has since become. Some years later, "reconciliation" gets identified by the SCC as the essence of s. 35 of the *Constitution Act, 1982*. And yet, during the patriation process, the Penner committee struck right after the enactment of the new constitution, and the FMCs it mandated to discuss the meaning and implications of s. 35, the term was fairly seldomly used and – Lougheed's one comment about it being "key" in the sense of reconciling rights aside – never identified at that point as a central purpose in the new constitutional framework. Most of the uses of the term surveyed in this chapter read as almost incidental, offhand uses of common vernacular rather than conscious word choices that are seeking to highlight reconciliation as a central concept of any kind. In searching the documents where these uses were found, they stuck out to me because of what I was looking for, not because the statements in which they were used appeared to be seeking to make something particular of the word reconciliation (or reconcile or conciliation) itself. These uses are significant, however, because they demonstrate – within the context of relationships with Indigenous peoples alone – how many different ways the term can be used and how widely varying its meanings and implications can be. In that sense, they illuminate the etymological baggage and range that reconciliation brings with it – Christian doctrine, resignation to undesirable situations, and efforts to render compatibility or consistency that are shaped by relations of power, among others – even prior to it being identified and highlighted as a specific normative policy goal and central political concept. In addition to this, the forms found in the speeches, articles, and jurisprudence of this period, though not yet in the

spotlight, are also significant because they engage in a sort of foreshadowing of what is to come once reconciliation does take centre stage. This is true both of the persistent multiplicity of (sometimes conflicting) meanings as well as some of the specific meanings themselves, the worldviews and ideologies that inform them, and the implications they hold. These meanings all reverberate as reconciliation moves from being an occasionally used word that can be employed in a variety of ways for a variety of purposes to being a set of discourses that gradually comes to dominate the arena of social and political relations between Canada and Indigenous peoples that can be employed in a variety of fashions for a variety of purposes. A series of events in the early 1990s began to propel the developments that led to this shift on a number of different fronts.

Chapter Six

The Emergence and Development of Discourses of Reconciliation Between Indigenous Peoples and Canada: 1987-1996, Part I

6.1 Introduction

The next two chapters trace the various paths the term reconciliation travelled from the events and debates of the 1970s and '80s charted in the previous chapter through to arrive at the moments of its early adoption by state institutions. Following the same structure as chapter 5, they cover the period from 1987 to 1996, considering in turn the sets of actors that began emphasizing reconciliation during this time, how they used the term and in what setting, and what meanings are conveyed by the different uses. The development of reconciliation discourses in the early part of the decade forks out in different directions from a series of catalytic events in 1990 and prior,[1] and these paths cannot all be neatly delineated or mapped out in a clear sequential flow based on the documentary record. I have subdivided the period's developments into two thematic groupings in order to consider the implications of intersections between particular forms of reconciliation, looking at the crossover of politics and religion in part 1, and

[1] Significant processes beginning in the 1980s include resistance to the Meech Lake Accord, discussions about colonialism within church communities, litigation that made its way up through the court system before landing at the SCC, and the establishment of the Aboriginal Justice Inquiry (AJI) in Manitoba. Several key events occurred in 1990, including: 1) the failure of Meech Lake in June, which then led to the negotiation of the Charlottetown Accord and, coupled with the Kanien'kehá:ka's stand-off with the Sûreté du Québec and the Canadian army that summer, prompted the creation of the RCAP; 2) the formation of the British Columbia Claims Task Force, which led to the establishment of the British Columbia Treaty Commission (BCTC) and inaugurated a period of significant focus on land claims and treaties in BC (though the BCTC is distinct from the process that produced the Nisga'a Final Agreement around which much subsequent talk of reconciliation also swirled); 3) the first National Residential School Conference, which drew hundreds of participants (Hodgson 2002, 104), as well as Phil Fontaine's public disclosure of his experience of being abused as a child in Residential School during a televised interview that, along with the airing of a movie called *Where the Spirit Lives* the previous year, brought the violence of the Residential Schools to countrywide public attention (Bush 2015, 51; Woods 2017, 41; see also Hodgson 2008, 367-68; D.B. MacDonald 2019, 17-18; and Million 2013, 28, 61-67 for further context on work that enabled these developments); and 4) the release of the SCC's judgments in *R. v. Sioui* and *R. v. Sparrow*, which marked the Court's first post-s. 35 uses of the term "reconciliation" in Aboriginal rights jurisprudence.

of law and politics in part 2. Within each chapter, I have endeavoured to organize the discussions of each element chronologically where possible as I consider the different arenas in which reconciliation was emerging in turn. While I make organizational divisions for the purposes of analytical exploration, there remains significant overlap between categories. Questions of law were hardly absent from the events discussed in this chapter as Canadian and Indigenous politicians debated the country's legal frameworks in negotiations around the constitution and treaties, and the churches undertook reconciliatory initiatives with the threat of lawsuits in the background. Meanwhile, the next chapter focuses particularly on the intermingling of law and politics in the forms of reconciliation that arise in the courts and commissions, but the churches partook in the proceedings of the latter as well. It also bears remembering that many of the events and processes explored in chapters 6 and 7 took place simultaneously, and many actors were involved in two or more of them. The developments discussed in these two chapters comprise the second phase in the emergence of reconciliation discourses in relations between Canada and Indigenous peoples and collectively set the stage for the institutionalization of reconciliation as a primary policy focus in the early 2000s (see ch. 8 and 9).

As we saw in chapter 5, the language of reconciliation appeared occasionally in relations between Canada and Indigenous peoples in the decades prior, but it had not yet become a widespread and consciously used discourse, nor was there critical analysis of uses of reconciliation. The term was generally used in the sense of reconciling rights or interests, though at least some uses in the US were already speaking of the need for repair and transformation of relationships. The second, intermediate phase of the development of reconciliation discourses was bookended by the constitutional negotiations in 1987 and the release of the RCAP's final report, the handing down of the SCC's decisions in *R. v. Van der Peet* and *R. v. Gladstone*, the

reconciliation-focused Sacred Assemblies in 1995 and 1997, and the signing of the High Arctic Relocation Reconciliation Agreement in 1996. With respect to the question of *when* reconciliation emerged in Canada, this decade is an interval in the genealogy between earlier decades when uses were less frequent and conscious, and later decades when political, legal, and social uses of the term became widespread and reconciliation with Indigenous peoples was gradually solidified as a state objective. During this transitional period, the term was being used by a greater number of people, including a range of different actors, but there was still very little critical interrogation of its uses. Though many if not most of these may have been more a matter of happenstance word choice than conscious centring of the term, in retrospect 1987 to 1996 appears as a groundwork-laying period for reconciliation's subsequent centrality.

The *how* (though not the *how much*) of reconciliation's uses during this period is quite like the periods before and after. That is, the term was used by a variety of different actors, in ways that invoked different meanings, and for different purposes. The forms of its use continued to reflect varying spheres of provenance, including the term's particular meanings in religion, finance, and family law as well as its more general vernacular uses, which are captured by Walters's three categories of reconciliation as consistency, relationship, and resignation (2008, 167-69), and constituted variously interactional and structural conceptions (Lu 2017). Some uses were applied to relations of opposition and others speak to relations of oppression, with some of the latter constituting criminal oppression (particularly those regarding reconciliation in its relation to restorative justice and Indigenous legal traditions as contra the prevailing practices of the Canadian penal system) and some political oppression (van Roermund 2001, 175-76). Thinking with Fairclough and Fairclough on discursive premises (2012, 11), these uses were again variously employed to speak to goals, values, and means.

However, two dimensions of the *how* aspect of reconciliation's emergence during this decade do vary compared to the period prior. As Fairclough and Fairclough note, discourses can undergo different kinds of recontextualization into new fields or institutions (2012, 83). Between 1987 and 1996, some of the fields and institutions in which reconciliation discourses were being used – religion, constitutional debates – were those in which they had already begun to appear previously. Further to those areas, however, they also made new appearances in jurisprudence, the work of commissions, and a negotiated agreement with the federal government. This chapter attends primarily to reconciliation's growing uses in the religious and constitutional spheres, while its uses in these additional forums are explored in the next chapter. It is not always evident what process of discursive transfer led to these recontextualizations. The origins of and/or motivations behind the emergences of specific uses are not all definitively identifiable, and in some cases the term may already have been present within a field, with it being rather that field intersecting with particular institutions or processes that brought that use of the term into political discourse (such as with reconciliation as an element of restorative justice). Additionally, the uses traced in chapter 5, particularly in Canada, were largely more fleeting verbal uses of the term in presentations, debates, and exchanges at parliamentary hearings and constitutional negotiations. Between 1987 and 1996, reconciliation began to be used in new formats as well as in new fields and institutions, appearing in official documents and records alongside continuing uses in verbal exchanges as part of various political processes and in media reports.

Flowing out of the events examined at the conclusion of chapter 5, in this chapter I begin by looking at the constitutional developments of 1990-92 and other uses of reconciliation by politicians in the early 1990s, particularly in legislative debates in BC (6.2), then turn to explore the place of reconciliation in church apologies to Indigenous peoples (6.3). These two sections

highlight the variation among uses of reconciliation within the political and religious spheres during this period. The final section of the chapter then tackles the crossover between the two by discussing a Sacred Assembly organized by Elijah Harper that gathered Indigenous and non-Indigenous political and spiritual leaders together around the theme of reconciliation (6.4). Further to the significance of the Assembly producing a proclamation that emphasized reconciliation, this event invites consideration of the complexities of bringing together political and religious or spiritual conceptions of reconciliation and the potential murkiness of multiple meanings that may lie behind seemingly common commitments. It also reveals points of encounter joining discussions of reconciliation between Canada and Indigenous peoples in the mid-1990s and other discussions of reconciliation in political relationships, including between Canada and Québec as well as in other contexts around the globe.

6.2 Politicians: Negotiating Meech, Charlottetown, and More

Like we saw from a different angle in chapters 3 and 4, reconciliation made various appearances in the framing of the Meech Lake and Charlottetown Accords, used both by the political actors who negotiated them and in media descriptions of the agreements. In thinking about the overall trajectory of the constitutional reform politics of the era and about the development of reconciliation discourses specifically, it is important to situate those developments with respect to the broadly (though not straightforwardly) triangular relationship between Québec, Canada, and Indigenous peoples.[2] The negotiations and failures of the s. 37 FMCs and of Meech Lake cannot be neatly mapped on to each other but are interlinked in some important ways, at the very least as a matter of perception, and they both fed into the next stages of pursuing "constitutional

[2] My genealogy largely focuses on two sides of that triangle. For an analysis of the relationship between Québécois and Indigenous peoples that includes a genealogical exploration of the animating concept of the pursuit of Québécois self-determination, "Maîtres chez nous," see D. Giroux (2020).

reconciliation" through the Charlottetown Accord as well as through other legal and political avenues discussed below. This section comprises four sub-sections. The first considers the place of reconciliation in the Meech Lake debates, with a particular focus on the legislative debates in Manitoba (6.2.1). The second (6.2.2) turns to the Charlottetown Accord negotiations and a policy proposal that featured reconciliation during that period. Then, 6.2.3 considers another legislative context where the term began to appear in the early 1990s: discussions of treaty negotiations in BC. Finally, 6.2.4 explores the use of reconciliation by then-Grand Chief of the AFN Ovide Mercredi, considering how his framing of the concept compared to uses by Canadian politicians.

6.2.1 Mulling Meech in Manitoba

As described at the close of the previous chapter, there was deep frustration among Indigenous peoples in 1987 when the failure of the last FMC was followed almost immediately by the successful conclusion of the Meech Lake Accord. In comments made following the FMCs, Prime Minister Mulroney spoke in similar terms of Indigenous self-government as he did of the need for Québec to sign the constitution, stating for example at the leaders' debate during the 1988 election, "I do not think that Canada will be complete as a nation until that matter […] is effectively resolved" (quoted in Hawkes 1989, 64-65), but in the 1989 Speech from the Throne it was clear that the government did not think the matter could be addressed until after Québec had rejoined the fold (Senate of Canada 1989, 3). Key among the reasons for Meech's failure was Indigenous peoples' refusal to accept this ordering of priorities, organized through and embodied in MLA Elijah Harper's dissent in the ratification vote in the Legislative Assembly of Manitoba.

While Manitoba was not the only locus of resistance to Meech Lake, the image of Harper standing in the legislature holding an eagle feather and saying "No" is iconic of the defeat of the

Accord and of Indigenous peoples' assertions of presence and resistance during the era of mega constitutional politics (Dickason 1992, 420; Howse 1990; MacGregor 1990; Turpel and Monture 1990; Peach 2011). Harper is most famous for saying "No," but he also spoke at length in the constitutional debates about the circumstances and experiences of Indigenous peoples, though Canadian political history tends to focus more on his act of refusal than what else he had to say.[3] His speeches' contributions to political and public education are reflected in the legislative debates in Manitoba from June 1990, where some of Harper's colleagues refer to what they learned and thought about as a result of listening to him (Manitoba 1990c, 6044-46, 6058).

In their own speeches, a few other MLAs made use of the word reconciliation in discussing Meech Lake. These references cast reconciliation in a normative light, on one occasion as a matter of identity and on two others as juxtaposed with the prospect of constitutional failure. In a speech on June 21, 1990, Minister of Justice James McCrae framed the discussion in this way: "I think we are looking at ourselves and asking ourselves who we are. We are asking ourselves, are our goals reconcilable? What do we want our future as a nation to be? If they are not reconcilable what course or courses will we take as a civilized nation of human beings as we address the future of our children?" (Manitoba 1990b, 6019). Liberal MLA James Carr spoke of the divisiveness of the constitution, saying, "The noble goal of national reconciliation has been overtaken by national malaise and by aching doubt. Instead of jubilation and a sense of achievement, we find ourselves agonizing over the threat of division and the consequence of failure" (Manitoba 1990c, 6058). This statement followed a similar contrast between reconciliation and failure presented by NDP leader Gary Doer two days prior. Recounting a conversation with then-Nova Scotia NDP leader Alexa McDonough about the potential implications of implementing the Meech Lake provisions, Doer noted that both leaders

[3] I owe this observation to a conversation with Dalie Giroux in the winter of 2018.

felt "that it is better to proceed with constitutional peace and the opportunity to have peace in our country. There is no guarantee but the opportunity to have those kind of reconciliations that are so badly needed in our country rather than have constitutional failure" (Manitoba 1990a, 5995). References to reconciliation in the sense of reconciling different goals and whether issues were irreconcilable also appeared in a speech by NDP MLA Jay Cowan (Manitoba 1990c, 6044-45). These uses reflect the consistency and relationship repair meanings of reconciliation as well as the common political emphasis on becoming one underscored by Grant (2018, ch. 1). Some speeches included the concerns of Indigenous peoples within the ambit of the reconciliation they envisioned, but for the most part it seems to be broadly pitched as a more general project of national unity in conjunction with the goals of the Meech Lake Accord rather than a specific goal to be undertaken between Canada and Indigenous peoples. At this point, in refusing consent for ratifying the Accord, Elijah Harper did not speak of reconciliation in his speeches in the legislature. This would change several years later when he became an MP.

While Indigenous peoples came to be seen as principal adversaries of the Meech Lake Accord, Indigenous leaders frequently emphasized that their opposition to the Accord did not constitute an opposition to Québec's aspirations (Dickason 1992, 409; Manitoba 1990c, 6044-45; Mercredi and Turpel 1993, 185; Monture-Angus 1995, 159; Behiels quoted in Young 1996). Some did have specific concerns about the potential impacts of the Accord (Hawkes 1989, 49-51). However, the primary issues were the exclusion of Indigenous peoples from the negotiations and the emphasis on recognizing Québec as a distinct society but not Indigenous peoples (Erasmus 1989, 28; Hawkes 1989; Matchewan 1989, 159). In coordinating a key element of the defeat of the Meech Lake Accord via Harper in Manitoba, Indigenous leaders successfully made a political, and – at least for some – moral, case that their constitutional concerns could not be

shunted to second place and that further reform negotiations could not occur without Indigenous peoples' representatives at the table (Howse 1990; Russell 2017a, 410). When the next round of negotiations began, several premiers pushed for representatives of Indigenous peoples' political organizations to be included as equal participants, with Bob Rae stating to the media during the Charlottetown round that "constitutional reconciliation […] has to include the native people" (York 1992).[4] A March 1992 piece in the *Montreal Gazette* called that inclusion itself "an act of national reconciliation unparalleled in our history" (W. Johnson 1992).[5]

6.2.2 The Charlottetown Round

During the Charlottetown process, the language of reconciliation began to take on some new roles as compared to its appearances during the s. 37 FMCs and the Meech Lake debates, though again it is still not a dominant term in many people's recollections of the period. Much of what this entailed was recounted earlier in chapter 4. Media coverage mostly used the term in broadly labelling the negotiation efforts as national or constitutional reconciliation, though occasional specific reference was made to the participation and concerns of Indigenous peoples, as in the

[4] The year prior, reacting to the Québec Liberal Party's adoption of the Allaire report, an article published in several newspapers argued that reconciliation with Indigenous peoples should even take priority, but instead "their demands have been pushed to the back of the filing cabinet" while the country addressed the "two founding nations" question. The author states, "Surely, since the aboriginal people were here first, it makes more sense to reconcile our relationship with them before reconciling other relationships. […] Even if Canada and Quebec do manage to reconcile their differences, this country will never be whole until we reconcile our relationship with this country's first inhabitants" (Steward 1991). (Per my search of the Canadian Major Dailies database, the piece also appeared on A15 of the *Edmonton Journal*, A6 of the *Windsor Star*, and C3 of the *Calgary Herald* the same day.)

[5] On the significance and limitations of this inclusion, see Ladner (2015, 280-83), Monture-Angus (1995, 156-57; 1999, 15-16), Turpel (1993), and S. Venne (1993). Ladner argues that the Charlottetown negotiations were marked by deeply incommensurable positions and that Indigenous peoples "and settler governments were playing two very different games while continuing to speak past each other, despite the use of the same language" (2015, 281). See also J. Green (1993) on the gendered politics of Indigenous peoples' participation in the negotiations. The challenges highlighted by these analyses stem from the colonial history whereby Indigenous peoples have been both excluded from full and equal participation in the Canadian political community and forcibly included within it in forms not of their own choosing. Particularly, these forms have neither recognized their diversity nor conceived of a political relationship that puts Indigenous peoples' forms and structures of governance on equal footing with Canadian ones. Furthermore, Indigenous peoples' governance practices have also been impacted by relational hierarchies imposed through colonialism. These factors all shaped the complexities of the Charlottetown process.

quote from Rae above. While a couple of the participants in the Charlottetown negotiations that I interviewed thought some use may have been made of the term, for the most part they did not remember reconciliation having a significant place in the discussions (J. Clark, M. Harcourt, B. Rae, R. Romanow, research interviews, 2018). Rosemarie Kuptana, who in 1992 headed the Inuit Tapirisat of Canada (ITC; now Inuit Tapiriit Kanatami), noted that while such negotiations could be understood as a process towards reconciliation,[6] she did not recall the term itself being used in the town hall discussions she attended around the Accord, and remembered the negotiations focusing squarely on the recognition of an inherent right to self-government of Indigenous peoples (research interview, August 2018). Joe Clark suggested that the language of reconciliation would have been prevalent were the Charlottetown discussions taking place now. His recollection was that it was not widely used in 1992, however, beyond perhaps use in the sense of "we have to learn to reconcile our differences" (research interview, August 2018).

One key exception to these patterns of broad, likely incidental uses of reconciliation during the period of Charlottetown negotiations was a policy proposal that placed the term front and centre in an initiative pertaining to the relationship between Canada and Indigenous peoples. The proposal does not appear to have made a big splash – the references I found to it were fairly few and far between[7] – and the other participants I spoke to had only vague memories of the proposal, if any, and suggested it did not get very far. However, the initiative is notable for having a titular emphasis on reconciliation. The proposal was put forward by Joe Ghiz, then Premier of Prince Edward Island (PEI), who argued that the federal and provincial governments should "take the initiative – long overdue – of signing with the Aboriginal Peoples a National

[6] Bob Rae also indicated it could be understood as such. Despite not having a precise recollection regarding whether the term itself was used during the negotiations, he noted: "I think it's no question that the idea of reconciliation surrounded the whole discussion" (research interview, March 2018).

[7] As documented in the next chapter, the proposal was raised a couple of times during the proceedings of the RCAP, which overlapped with the Charlottetown Accord negotiations.

Treaty of Reconciliation" (Ghiz 1992, 11). He described the idea as follows:

> A National Treaty will be a symbolic act of reconciliation and a statement of moral purpose, both of these to be the basis of a new relationship with the Aboriginal Peoples in Canada, but it must be more. I recommend that it serve as the vehicle to move from the recognition of inherent right to actual negotiated agreements on self-government. (13-14)

Ghiz suggested that a constitutionally protected treaty could "set the framework and terms for negotiations that can be acceptable to all parties" whereby Indigenous peoples could reach agreements with Canadian governments that would see them come to exercise paramount jurisdiction over certain areas of governance (16-17). He saw the signing of such a treaty as a solution that would redress the failure to include Indigenous peoples "in fact or in law or influence" in the partnership of confederation as "a Founding Nation of Canada" (12-13). He also argued that such a treaty would be beneficial in "commit[ting] the parties to negotiation based on good faith and political purpose rather than through litigation," and that an associated special tribunal would provide a better dispute resolution mechanism than the existing lower courts (20-21). By pairing institutional change and an emphasis on jurisdiction with a moral and symbolic vision, the proposal thus incorporated both interactional and structural elements.

Ghiz's proposal included some important descriptors, limits, and caveats that are significant for understanding its vision of reconciliation, and for considering it in light of issues some have raised regarding the constitutional inclusion of Indigenous peoples (Monture-Angus 1995, 156-57; 1999, 15-16; Turpel 1993; S. Venne 1993). The theme of becoming one can again be seen as an undercurrent here and the proposal adheres to a goal of unity that necessarily excludes certain possibilities (Grant 2018). Ghiz described his proposal as a "nation-building" project that would see Indigenous peoples "join in the unfinished promise which is Canada" by becoming "fully contributing peoples in a reborn Canada," noting that all Canadians "need them to build the Canada of promise" (1992, 24, 22). In a turn of phrase reminiscent of Stéphane

Dion's calls for reconciliation a few years later, Ghiz stressed the importance of such a "unifying commitment and a shared undertaking" by stating: "The people of the world need the Canadian experiment to work. The people of the world want the Canadian promise to be fulfilled" (23). In his view, "a new beginning with the Aboriginal Peoples will give Canada renewed vigor, a new moral purpose and a vision that will draw out the best from all of us" (24). This new relationship was to be located "within the constitutional framework and within the sovereignty of Canada" (10). Ghiz acknowledged the ambivalence many Indigenous peoples felt towards Canada (11-12), and argued that Canadians ought to accept that Indigenous peoples have areas of exclusive and shared jurisdiction under the constitution (17-19). The jurisdictional details could be negotiated under the framework set by a National Treaty, but the outside limit was drawn firmly: "There can be only one legal and symbolic sovereignty within the borders of Canada" (17).

Ghiz's proposal does not seem to have gained much traction. A few years later, a similar idea was contemplated by the RCAP, but at that point "treaty of reconciliation" was not used, and once again the proposal does not seem to have gone very far.[8] While treaties – plural – have continued to be linked with reconciliation by many actors including governments, the courts, and Indigenous peoples, the proposal for a National Treaty of Reconciliation serves as an example of a discontinuity in the development of differing conceptualizations of reconciliation. It also illustrates Little's (2018, 2020) argument about the contextualization of concepts in different political and structural circumstances: while the Treaty of Waitangi plays a pivotal role in

[8] In a submission to the RCAP, the Native Council of Canada "proposed that a national treaty be used to establish the process for urban self-government along with enabling legislation in the form of an Aboriginal Authorities Act" (RCAP 1994a, 18). Other proposals were put forward by Charlie Watt of the Makivik Corporation to create a "National Inuit Treaty that would establish the power and jurisdiction of various Inuit self-government institutions," and by the Quebec Aboriginal Equality Forum to create "a co-existence treaty to govern relations between Aboriginal and non-Aboriginal peoples" (55). Some proposals were modelled on institutions from other contexts, such as the Waitangi Tribunal in Aotearoa/New Zealand (3). Other Indigenous peoples opposed the creation of a national treaty, preferring processes specific to each nation through the implementation of existing treaties or negotiation of new ones where none existed previously (7, 55).

Aotearoa/New Zealand, proposals for a national treaty trailed off in Australia as well as in Canada.[9] Subsequently, Australia chose to instead create a Council for Aboriginal Reconciliation (CAR), but Canada did not embrace a proposal to create a similar council (see sec. 6.4).

6.2.3 Treaties and Reconciliation in British Columbia

The other context where reconciliation came to be associated with contemporary political debates about treaties was in BC. This association was much more prevalent later in the 1990s, as discussed in chapter 9, but reconciliation was already present in debates in the Legislative Assembly around the time of the Charlottetown Accord. A likely motivating factor is that very little of BC is covered by early treaties, and the province was the site of major litigation pertaining to Indigenous peoples' rights and title in the lead-up to and during the 1990s along with discussions about land claims. In the mid-1990s, these court cases became the source of one of today's dominant strands of reconciliation discourse, issuing from SCC jurisprudence on s. 35 (see sec. 7.2). Support for and opposition to settling land claims was quite a partisan affair in this period, and the normative language of reconciliation began to grow in prominence as an NDP government that favoured negotiations took power in the early 1990s. Some foreshadowing of this is visible in debates about the xʷməθkʷəy̓əm claim to use of the endowment lands around the University of British Columbia in 1989, when NDP MLA Tom Perry urged the premier to seize the "opportunity to begin the historic process of reconciliation through justice" with the xʷməθkʷəy̓əm, and argued that this "process of reconciliation" was "ultimately […] inevitable" (BC 1989a, 5883-84; 1989b, 6190-91). Reconciliation made occasional other kinds of appearances around this time as well, with references to a "native victim-offender reconciliation

[9] The proposal in Australia was more prominent and was a project of the national government rather than the vision of a state or territorial leader. For a discussion of the trajectory of the Hawke government's treaty plan and the creation of the CAR, see Russell (2005, 218-28).

program" in Fort Ware (1989c, 7058), the implications of not having "some reconciliation" as a result of the Meech Lake Accord (1990a, 9194), and the "reconciliation of the different taxation jurisdictions" under the proposed *Indian Self Government Enabling Act* (1990b, 11475).

Then an NDP government took power, and the new Minister of Aboriginal Affairs, Andrew Petter, mentioned reconciliation several times in his opening speech to the legislature. Petter suggested there was a "growing sentiment among non-aboriginal British Columbians […] in favour of reconciliation," which he saw as having "two sources: one is a desire to right past wrongs and to return to first nations their ability to look after themselves; the other is a need to normalize relations in the interests of economic stability and prosperity" (BC 1992a, 941). This came shortly on the heels of the previous government having established the BC Claims Task Force with the First Nations Summit (FNS) and the federal government. Petter noted the NDP supported the Task Force's recommendation to create a treaty commission, stating that the "reconciliation we seek on behalf of all British Columbians, aboriginal and non-aboriginal, cannot be achieved by means of a legal judgment," and that he believed in "privileging negotiation as a vehicle for reconciliation" (941-42). "[B]y recognizing the right of aboriginal peoples to come to the table as equals," he said, "we have opened the door to possibilities of reconciliation that would be forever denied us were we to continue to rely on the decisions of the court. Willingness to negotiate is a tangible symbol of our desire for a new social order based on cooperation and mutual trust" (943). In a follow-up exchange, Petter then shifted to using reconciliation in a slightly different sense, though one that could be understood as subsidiary to his emphasis on reconciliation as an overarching goal. Responding to questions about self-government, Indigenous people living off-reserve, and the applicability of *Charter* equality provisions to self-determination, Petter spoke of reconciliation in the consistency sense of

reconciling competing principles and inconsistencies – as he put it, "squar[ing] the circle" (952). Elaborating on why he was leaving the door open to "self-determination independent of the land base" for some off-reserve Indigenous people, he stated:

> Ultimately that's going to be the decision of aboriginal people themselves. We're going to have to be able to respond and negotiate based on the aboriginal people's own understanding of their society today, these many years after contact. Otherwise we would be saying on the one hand that we respect their right of self-determination, and on the other hand we'd be trying to tell them what their societies are. I can't see how that inconsistency can be reconciled except by saying that ultimately there must be room for aboriginal peoples to define their own societies, cultures and forms of government, and for us to then negotiate, based on their understanding, arrangements that would be acceptable to the citizens of the province as a whole, taking into account third-party interests and certain aspects of government policy and public policy that we will insist upon as part of any negotiation. (951)

His subsequent response then spoke of the philosophical task of "how we reconcile the principle of equality with the principle of self-determination" in a context informed by the *Charter* and ss. 35 and 91(24) of the constitution (952). "How do we reconcile those inconsistencies?" he said. "Well, to an extent we may not be able to; there may be tensions. But I guess the way I would reconcile it philosophically […] is this: what the right to equality really means is a right to self-determination within a set of cultural values and assumptions that are of the person's own choosing and that reflect the person's own cultural and social milieu" (952). The implication of this was that Indigenous people had to have "the same opportunities to participate as Canadians from the perspective of their own cultural values and traditions that we have as Canadians to participate from our cultural values and traditions" (952). However, allowing people to define themselves did not go as far as "an ultimate measure, because society as a whole must have a say within Canada, as you said, and the government has an interest" and third-party interests needed to be represented in negotiations as well, but the starting point needed to be that Indigenous peoples ought to be able to define themselves for the purposes of those negotiations (952).

Petter's vision thus seems to encompass several forms of reconciliation as destination and journey: the dual overarching goal of righting past wrongs and "normalizing" relations in the name of economic certainty requires interactional and structural elements including attitudinal changes about agency and decision-making and the organization of relations through self-government. These changes are rooted in a negotiations process that embodies a certain reconciliation-as-consistency logic inhering in his discussion of the balancing of interests and the factors limiting how far things might move on the BC side of the balance. Thus, like Ghiz's proposal, Petter's approach gestures to a set of boundaries beyond which reconciliation efforts could or would not stray in redefining the relationship between Indigenous peoples and BC.

At the same time, along with a couple of other references to the tensions around reconciling interests and understandings regarding negotiations with Indigenous peoples (BC 1992b, 1043; 1993a, 7082), reconciliation was also linked to the broader constitutional discussions in the days leading up to the referendum on the Charlottetown Accord by Petter and Attorney-General Colin Gabelmann (1992c, 3525, 3540, 3542; 1992d, 3615). After the referendum failure, there were no further references linking reconciliation and mega constitutional politics in the legislative debates. The term did continue to appear occasionally in reference to constitutional politics related to s. 35 and the treaty negotiations process, mostly in the sense of reconciling conflicting interests or provisions, or broadly of resolving conflict (1993a, 7082; 1993b, 7190; 1993c, 8661; 1994, 10504; 1995a, 13946; 1995b, 14000). Some boundaries were asserted in relation to the term by the government on a few occasions. For instance, the Minister of Aboriginal Affairs stated: "The existence of aboriginal rights does not call into question Crown title. However, it does mean that the province must negotiate to reconcile and recognize the exercise of aboriginal rights in B.C." (1995c, 14303). Premier

Michael Harcourt asserted that "illegal means, conflict and confrontation […] will not advance justice and a reconciliation between the aboriginal and non-aboriginal people in this province. The only way that will happen is through the Treaty Commission process and sitting down and negotiating these issues peacefully" (1995d, 15017). Normative emphases on reconciliation as a process and an objective were thus present at this juncture, but not yet central and still relatively infrequent. Within a few years though, as is discussed in chapter 9, reconciliation became much more prominent in debates about treaty negotiations, with the BC government placing a greater and greater emphasis on the term.

6.2.4 Comprising or Compromising Reconciliation?

The year after the Charlottetown referendum, then-AFN Grand Chief Ovide Mercredi published a book with Mary Ellen Turpel[10] that included calls for reconciliation. This shows that some Indigenous political leaders were speaking about reconciliation during this period as well.[11]

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[10] Turpel (now Turpel-Lafond) was a law professor who served as a constitutional advisor to Mercredi during the Charlottetown negotiations prior to becoming a judge and later Representative for Children and Youth in BC. While she was long known as a prominent Indigenous legal scholar and commentator, a recent CBC investigation has challenged Turpel-Lafond's claims to Cree ancestry (Leo 2022a, 2022b, 2022c). Her writings from the early 1990s (with Mercredi and solo-authored) remain an artefact of how the Charlottetown negotiations were seen and presented – including how the term reconciliation was used in the process – during this period by someone who participated in them, as a close advisor and co-author of Mercredi's, and they are considered here in that capacity.

[11] Rosemarie Kuptana also used the term in at least one speech a little later in the decade, in which she stated: "To complete the process of reconciliation with aboriginal peoples, Canada must recognize our fundamental human right as a people to self-determination by supporting the current Draft Declaration on the rights of indigenous peoples. This can be done without compromising the territorial integrity of Canada" (1995, 10). This use of the term was embedded in a speech that presented the right to self-determination of Indigenous peoples as a remedy for colonialism and a necessary prerequisite for upholding the individual human rights of Indigenous people, and that stressed that recognizing this right and dismantling colonialism required "a conscious effort to reorder and restructure society and its institutions" (4). Kuptana also told me that she remembered using the term reconciliation in a meeting with Indian and Northern Affairs Minister Ron Irwin in the early 1990s and that she recalled hearing him use the term after that occasion. She said her own use had been informed by hearing people speak about reconciliation when she had been in Australia (research interview, August 2018). I was not able to confirm with Irwin about his own recollection of that time and what uses of the term he remembered hearing or making but found three occasions in Hansard on which he used the term, all in 1995: one is a consistency use about reconciling public safety standards and Aboriginal rights in firearms legislation (1995b, 13729); another refers to discussions with the AFN National Chief about the creation of a National Aboriginal Day called for at the Sacred Assembly (1995l, 17582; see sec. 6.4); and the other, which was the occasion on which he used the term the most often, was a speech

Broadly speaking, there is a seeming resonance between Mercredi and others' appeals to reconciliation and harmony. However, as *In the Rapids* (1993) shows, the arguments articulated alongside Mercredi's invocations point to some important differences from Canadian politicians' uses of the term. The book presents Charlottetown as a deeply disappointing experience for the Indigenous leaders who participated, as they were confronted with the fact "*that after all of the resources and effort in developing and designing new approaches and strategies for reconciliation, in the span of one day the whole package could be dropped*" (222).[12] Mercredi states the following in presenting the political goals of Indigenous peoples:

> what we are trying to do […] is to end the dominance of one society over another. There are many ways of describing this process. Some people use the language of liberation, the language of freedom, the language of justice, or even the language of reconciliation. But to put it in its proper context, what we are involved in with Canada is the struggle for self-responsibility and self-rule. The dominance that has come into our lives in the past hundred years has not always been there. But the creation of a nation-state called Canada was by far the most important political event in our lives; it marked the beginning of the exclusion and rejection of our people and our rights. (Mercredi and Turpel 1993, 196)

In describing the pursuit of ending this dominance and a vision of a different kind of political relationship that could replace it, Mercredi uses terms like partnership, healing, and harmony, as well as reconciliation, that were and are also often used by Canadian politicians. However, like with earlier statements by Indigenous leaders at constitutional hearings surveyed in chapter 5, at

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about the creation of the BCTC (1995e, 15614-16). Irwin quoted from the lower court decision in *Delgamuukw*, which emphasized the terms coexistence, consultation, and reconciliation (15614), and then reiterated these terms as characterizing the government's and the BCTC's approaches, while suggesting that opposition members "favour an all or nothing approach" and "have no patience for reconciliation or consultation" (15615-16).

[12] The passages from this book in italics are written by Turpel and those in regular type are Mercredi's, apart from references to the concluding chapter which was written by both (1993, 229-48). Turpel notes that many of Mercredi's "words in this book began as speeches" prior to being collected in written form (11). While I have not come across transcripts from earlier versions of these speeches and thus cannot say whether and how the wording may have changed, this suggests the possibility that Mercredi may have used the language of reconciliation in public presentations and negotiations during the Charlottetown Accord process, though this was not how he remembered it a quarter century later. In his 2018 Charles R. Bronfman Lecture at the University of Ottawa, "Cree Social Thought: Politics, Leadership, and Society," Mercredi described the Charlottetown negotiations as having been about reconciliation but said that the participants talked about it as social justice rather than as reconciliation at the time (personal notes, October 2018). On the substantive point here, it bears noting that there was significant opposition to the Accord among Indigenous peoples. For more on this, see J. Green (1993) and S. Venne (1993).

the same time as Mercredi is appealing to a sense of unity and commonality, as were Canadian politicians, the vision he articulates also pushes against the bounds of what Indigenous peoples were being met with by Canadian governments in debates and negotiations. The temporality of framing reconciliation as a response to relations of domination that persist in the present also distinguishes this vision from those that locate the harms that require redressing in the past while present concerns motivating reconciliation focus on economic certainty (see e.g., BC 1992a, 941). These differences show how the term can take on different meaning in relation to actors' interpretations of the other concepts it is being linked with and their application "in relation to the material structures and institutional configuration of […] society" (Little 2018, 111).

In Mercredi's words, "What we are looking for is not just power to deal with the social problems we face but reconciliation with Canada. We are trying to find a way of creating harmony in the country. […] What we are asking is to become partners working towards the same future" (Mercredi and Turpel 1993, 131). At the same time, he and Turpel are clear about what paths they see as unconstructive in pursuing this goal, they are adamant about the centrality of the self-determination of Indigenous peoples in the process, and they highlight the importance of being able to establish and govern through institutions built on different – and in some cases contradictory – values to those that inform Canadian institutions (163-64). They identify guilt as a problematic motivating factor and an insufficient foundation for transforming political relations (6), and challenge the notion that Indigenous peoples should be more willing to compromise (131), a sentiment commonly expressed by Canadian officials during constitutional negotiations (Dalon 1985; Hawkes 1989; Turpel 1993, 124-25). In Mercredi's view, "We compromise and show flexibility with governments but to be asked to always give more ground is to be asked to humiliate ourselves. It is as simple as that. It amounts to surrender" (Mercredi and Turpel 1993,

131). It is notable that Mercredi expresses frustration with Canadian governments' approach to compromise and then immediately follows this by stating that Indigenous peoples are looking for reconciliation with Canada. This points to both how fine the line separating reconciliation as consistency and reconciliation as resignation can be, and the complexity that marks a debate informed by the many different things the word can mean. Even when all parties are operating on a shared understanding that reconciliation requires some compromises from everyone, competing visions of what these should be makes this a deeply political exercise.

In the case of the Charlottetown Accord, Turpel argues that the resulting agreement was problematic for Indigenous peoples due to "painful" compromises that Canadian governments required during the negotiations that were informed by what she "could only describe as mean-spirited objections to self-government, based on stereotypes about Aboriginal peoples as peoples without the sophistication to govern themselves" (Turpel 1993, 124). As with the FMCs in the 1980s, a key aspect of the debates was the meaning of "self-government." Indigenous peoples insisted that their right to self-government was inherent rather than something that could be granted or delegated from the Canadian federal government, and this term and its implications also generated contentious debate. An inherent right to self-government was ultimately included in the agreement, but "subject to three key limitations: it was to be 'within Canada,' subject to federal and provincial laws in the interest of peace, order, and good government, and subject to a provision that no new land rights would be created by implication" (126). Turpel notes that these limitations "were insisted upon, respectively, by the premiers of Alberta, Newfoundland, and Quebec" (126). We can also see some resonances with the limits asserted by Ghiz and Petter in their calls for reconciliation. These complex and ambiguous debates, which persist today, are marked by Canadian politicians appealing to reconciliation (whether rooted in a moral, political

and/or economic imperative), which they circumscribe with these kinds of limits around the political difference of Indigenous peoples, while some Indigenous peoples challenge the imposition of limits on their right to self-determination but nevertheless also appeal to reconciliation in the process. In these examples from the early 1990s, both sets of parties were using the term to pursue some form of unity and shared political project, but one's discursive premise requires certain prerequisite kinds of sameness while the other sees harmony and balance stemming from the creation of more political space for difference.

The night before the Charlottetown referendum, Mulroney wrote in his journal: "*We see the emergence of the federation, then, according to different priorities. The question is, are they irreconcilable? Can they be accommodated to the mutual advantage of all?*" (quoted in Mulroney 2007, 956; italics in original). He saw the Accord as suggesting that they could be (956), but like its predecessor, the Charlottetown Accord fell apart, this time with reforms to the relationship with Indigenous peoples as part of the package. This shifted the discussion of reconciliation and the constitutional relationship to other forums. As examined in chapter 7, litigation became a primary route for addressing the substance and meaning of s. 35 after the failures of the s. 37 FMCs, and this was reinforced by the collapse of the Charlottetown Accord. The royal commission Mulroney called following the summer of 1990 was already underway as well. At the same time, a conversation about another key piece in the colonial relationship was breaking open, as churches were pushed to begin reckoning with their role in colonialism and the abuses of the Residential School system slowly became a subject of countrywide discussion.

6.3 The Churches: "The Kingdom of Heaven is a Place […] of Reconciliation"

Though the separation of church and state is considered a cornerstone of modern liberal

democracies, the church and the state nevertheless operate in the same overarching social context, making it unsurprising that both sets of institutions often find themselves dealing with the same issues, if in different ways. In the early 1990s, the Canadian state and Canadian churches were both facing a domestic and global context that led them to embark on engaging with questions of reconciliation. When it came to the matter of relations with Indigenous peoples, the separation between the two was challenged by the deep implication of churches in the process of colonization, the establishment of myriad institutions throughout Canadian society, and the implementation of state policies, most notably the Residential Schools. While the broader constitutional relationship between Indigenous peoples and Canada was the subject of reform discussions at the political level in the 1980s and early 1990s, the nature of the relationship, the role of different denominations in colonization, and the entwinement of evangelization and colonialism were coming into question in congregations. This was due in no small part, as at the political level, to Indigenous people's efforts in pushing for accountability for the harms done to their peoples by the churches and for greater autonomy in their own involvement in these religious communities. These conversations began at a more general level, and then became more acutely focused on the Residential Schools as the abuses that took place there and the harms of the system as a whole became the subject of greater public attention. Part of this process involved churches issuing apologies.[13] Some of these apologies included the word reconciliation; all of them incorporated some variety of associated concepts of healing and forgiveness and could be understood to imply ideas of reconciliation even if they did not use the word itself. These developments further signal the multiplicity of arenas in which the conversation about reconciliation was building, as well as highlighting the complexities

[13] For overviews of the apologies given by the various churches and the developments that led to them, see Bush (2015) and Miller (2017, ch. 1, esp. 30-40).

stemming from the murkiness of the boundaries between social, political, and religious spheres, and between secular and Christian ideas of reconciliation.

The 1990s saw growing attention to the prospects of public apology and forgiveness in addressing wrongdoing (Howard-Hassmann and Gibney 2008; Misztal 2011; Nobles 2008), and this trend and the developments that influenced it contributed to introspection and contrition in church circles as well as in the political sphere (Schreiter 2005).[14] As Michael Phillips notes, "reconciliation as a political program […] often begins with the intervention of Churches and Church leaders in political debates," as was the case in Australia and South Africa (2005, 112-13). In Canada, churches were also involved in broader political debates about the relationship between Indigenous and non-Indigenous peoples at the same time as they were launching internal self-reflection and apology processes. This activity was influenced by both domestic and international political developments. In Canada, this included the constitutional politics going back to the debate over the White Paper in 1969 (CCCB 1995, 26). Globally, Christian missionary thinking was undergoing a shift (Schreiter 2005, 76-79), which included particular attention to a need for reconciliation with Indigenous peoples, influenced in part by the UN proclaiming 1993 the Year of Indigenous People (78).[15]

As seen with some of the examples from the US in chapter 5, Canadian churches in the

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[14] The rise of these practices that were mainly associated with individuals, and that have deep religious associations in the arena of political relationships between groups, has generated significant debates about the appropriateness of undertaking these practices collectively, whether apologizing and forgiving for wrongs committed and suffered by previous generations is possible or desirable, and whether forgiveness and reconciliation can or should be extricated from their religious heritage (see e.g., Celemajer 2006, 2010; Kohen 2009; Misztal 2011). Restorative justice, which was on the rise in Canada in the 1990s, also cannot be neatly extricated from Christianity. For instance, the Victim-Offender Reconciliation Program that began in Kitchener, Ontario in the 1970s that is often cited as the point of origin for restorative justice programs was created by the Mennonite Church and drew on religious principle and tradition (Bonta, Wallace-Capretta and Rooney 1998, 2-3; Monchalin 2016, 281).

[15] See https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/45/164 and http://un-documents.net/a47r75.htm. The UN later declared 2009 the International Year of Reconciliation: https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/61/17. See Schreiter (2005, 76-82) for a portrait of the interrelations between various social and political events, debates over the reconceptualization of missionary work, and a distinctly Christian understanding of the nature of reconciliation and healing during this period.

late 1980s and early ’90s were playing a sort of dual role with respect to reconciliation. On the one hand, some religious organizations were supportive of Indigenous peoples in the resolution of disputes and the pursuit of a broader political transformation in their relationships with governments, while on the other, the relationship between the churches and Indigenous peoples was itself the subject of contention, reckoning, and calls for reconciliation.[16] This reckoning initially ran in parallel to processes involving the state, until a slew of lawsuits against both the churches and the federal government for the Residential Schools policy drew them into a joint process. Beginning in the late 1980s, four Christian denominations in Canada issued a series of statements and apologies, first about their devaluation of Indigenous peoples and their spiritual traditions generally, and later regarding their involvement in Residential Schools in particular.

The first of these statements to include the word reconciliation was a series of addresses by Pope John Paul II[17] delivered upon visits to Saint-Anne-de-Beaupré, the Martyrs’ Shrine in Huronia, and the Yellowknife airport[18] during his visit to Canada in 1984 (LEV 1984a, 1984b, 1984c).[19] In 1987, Pope John Paul II returned to the Northwest Territories, where he recalled

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[16] In its brief to the RCAP, the Canadian Conference of Catholic Bishops (CCCB) emphasized having supported Indigenous peoples’ struggles on various occasions since the 1970s (1995, 26-27), citing the importance of international influences, particularly from Latin America, in doing so (27), and so mirroring Schreiter’s analysis of the ecclesiastical developments of the period. Prior to the 1987 FMC, the churches comprising the Aboriginal Rights Coalition (Project North) penned a letter to Canada’s political leaders advocating for constitutionally entrenched self-government and the creation of “a new covenant” between Canada and Indigenous peoples (ARC 1987). They argued that “covenant-making has deep spiritual roots” that resonated with both Indigenous peoples’ beliefs about the role of the Creator in treatymaking and with the Christian tradition (2), which they suggested Canada “might be able to recover” by “coming to terms with the historic demands for justice affecting the descendants of its original inhabitants” (5-6). Though taken up elsewhere, this document does not acknowledge the churches’ role in perpetrating the historical injustices in question, or discuss their role in the reckoning and re-covenanting that is called for. As seen further in chapter 8, there has frequently been tension around attribution of responsibility between the churches and the federal government.

[17] Jennifer Llewellyn and Daniel Philpott note that Pope John Paul II, as well as Archbishop Desmond Tutu and other theologians, played an important role in bridging religion and politics by developing “[r]eligious meanings of reconciliation […] as principles of peacebuilding” (2014, 23; see also Young-Bruehl 2006, 106, 113).

[18] This last speech was delivered as a radio and television broadcast as Pope John Paul II was not able to complete his visit as initially planned; he returned to Fort Smith in the Northwest Territories three years later.

[19] As with the ARC’s letter three years later, the Pope’s 1984 addresses speak in specific terms with respect to positive aspects of the relationship between the church and Indigenous peoples, but remain vague regarding injustices committed against Indigenous peoples, why reconciliation and forgiveness are necessary, and who is

parts of his broadcast from Yellowknife and highlighted the compatibility he saw between Indigenous peoples' cultures and Christianity. He argued that the church had always supported Indigenous peoples' rights, freedoms, and dignity, and emphasized the role that missionaries had played in the resurgence of their cultures and traditions (LEV 1987). This visit came just as the s. 37 FMC process had come to an unsuccessful close. The Pope acknowledged these developments and affirmed his support for "a just and equitable measure of self-government, along with a land base and adequate resources" and for a new round of conferences (1987). He closed this address by inviting Indigenous people to "*renew your trust in God who guides the destinies of all peoples and clear-sighted* [*sic*] as you rebuild the future of your tribes and nations," stating that "[i]n the Paschal Mystery of the Death and Resurrection of Jesus Christ, we have been reconciled with God and with each other. *Jesus Christ is our peace* (Cfr. *Eph*. 2, 14)" (1987; italics in original). This speech influenced the efforts of Catholic entities within Canada with respect to their relationships with Indigenous peoples (Bush 2015, 51; CCCB 1995, 28).

In 1991, citing the impending 500th anniversary of Christopher Columbus's arrival and the recent revelations about the Residential Schools, the Oblates issued an apology to Indigenous peoples "for certain aspects of [their] presence and ministry" (Oblate Conference of Canada 1991). This apology spoke to their broader role in colonization and to their specific role in the Residential Schools policy.[20] It did not include the word reconciliation, but the term was used at another Catholic event earlier that same year. The Canadian Conference of Catholic Bishops (CCCB) held a national meeting on Residential Schools in Saskatoon in March 1991,[21] which

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responsible for building new relationships and how. Rather, after acknowledging relational difficulties and the marginalization of Indigenous peoples, the Pope speaks of efforts to "rectifier les situations pénibles" only insofar as they fall within the ambit of government responsibility, noting "[l]'Église n'intervient pas directement dans ce domaine civil" (LEV 1984a). The church is positioned as having an inspirational guiding role in the process, with reconciliation at the centre of living together in the spirit of Christianity.

[20] The Oblates were responsible for a significant majority of the Catholic-run Residential Schools (Bush 2015, 51).

[21] The meeting brought together representatives of Catholic entities that had been involved with the schools as well

was followed by a statement expressing regret and detailing the CCCB's position on redress for the Residential Schools. The statement opposed proposals for a federal public inquiry in favour of "local forums of dialogue" in individual dioceses "that will bring together former students and their families and the religious, clergy and lay staff who were involved in the schools so that they may reflect on their experience and work together toward healing and reconciliation" (CCCB 1991). The Catholic approach was decentralized and favoured local conversations and apologies over apologies "from the denomination as a whole" (Bush 2015, 52; TRC 2015a, 6: 99).

In addition to the Oblates' apology, another approach within the Catholic Church is found in apologies within two homilies the Archbishop of Halifax Austin Burke delivered in Mi'kmaw communities in December 1992 and February 1993 (Burke 1992 & 1993).[22] Unlike several of the other statements and apologies, these were issued within the context of a church service (see Bush 2015, 61), and they delved into greater depth in linking reconciliation to scripture than the CCCB statement that spoke generally of a need to embark on healing and reconciliation work. The first homily did not refer to reconciliation directly. It situated the need for healing in a context of past discrimination and injustices in Nova Scotia and of a longer biblical history of stories of disharmony and peoples attempting to remake others in their image, apologized for suffering caused by the church in the Shubenacadie Residential School, and spoke of a longstanding partnership between the Mi'kmaq and the Church of Halifax (3). The second homily referred repeatedly to reconciliation. Speaking of Jesus's teachings about reconciliation and responding to injustice, the Archbishop stated: "The good news here is that the Kingdom of Heaven is a place of justice, of mercy, of wholeness, of healing, of reconciliation. And we are

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as representatives from other churches and the ARC. While "eight Native elders involved in the Catholic Church" attended, Peter Bush notes that it "was not without controversy as leaders within the Aboriginal community demanded they too be invited to participate. Their request was not granted" (2015, 51-52).

[22] For other examples, see Bush (2015, 61-63).

called to be the people of the Kingdom of Heaven. Not after we die, but here and now" (4). He presented reconciliation as requiring God's grace and emphasized the need to call on that grace in the present as "[w]e need to be reconciled among ourselves here" (4-5). Acknowledging the unjust nature of how the gospel had initially been presented to Indigenous peoples and of settler churches' and governments' attitudes towards their cultures and traditions, Burke declared that "the gospel of Jesus Christ is stronger and more powerful" than any of these past engagements and must now be approached through "a new code of behaviour" (5). He concluded his homily:

> I cannot change the past. I cannot erase any damage that has been done. I can only express sorrow and pray that the grace of reconciliation will be given to us. In the light of today's gospel, we can see that we are called to be reconciled to each other.
>
> Reconciliation and healing come together. They come with honesty and truth and respect for each other. They come when we sit down to talk with each other. They come when we agree to listen to each other. Healing and reconciliation are part of the good news of the Kingdom. We cannot do this alone. We can only come to full life when we participate in the life of God. Together we must discover what this can mean for us. (6)

This approach is interactional and emphasizes conceptual pairings that also characterize other broader visions of reconciliation as relationship but in this case operate within an inextricably religious vision. Though brief reference is made to law and government, the focus is primarily on harm and reparative work within the church community, and reconciliation is indissociable from a relationship to God. While this apology situated reconciliation firmly in a Christian spiritual tradition, another apology by a Catholic bishop five years later positioned it differently, forgoing requesting forgiveness in favour of calling for the church to "follow 'aboriginal spiritual traditions' whose preference was for 'restorative justice and reconciliation'" (Bush 2015, 63).

The Presbyterian Church, on the other hand, centred forgiveness in its approach. The Presbyterian effort had been influenced by the 1991 CCCB meeting, as a representative of the Presbyterian Church had attended the meeting and been prompted, as a result, to investigate the history of the Presbyterian-run Residential Schools (Bush 2015, 58). The church's Board of

World Mission established a Committee of Reconciliation with Aboriginal People "to explore the possibility of developing a confession/apology" (58). The choice of confession as an approach reflected a theological orientation and centred the "premise […] that all wrongdoing is first and foremost a sin against God and therefore must be confessed" (58), as well as the close connection between confession, penance, and reconciliation in the Christian tradition (Garneau 2012, 35-36; M. Phillips 2005, 116-18). After a couple of years of internal debates, the General Assembly of the Presbyterian Church adopted the confession in June 1994 and then offered it to Indigenous people by presenting it to then-Grand Chief of the Assembly of Manitoba Chiefs (AMC) Phil Fontaine that fall (Bush 2015, 59-60). Despite the titular emphasis in the name of the committee that developed the confession, the Confession of the Presbyterian Church itself did not contain the term reconciliation (General Assembly of the Presbyterian Church 1994).

The Anglican Church of Canada also embarked on a process of addressing its relationship with Indigenous peoples with a title featuring reconciliation, voting in 1990 to "name 1992 as 'A Year of Reconciliation with Aboriginal Peoples'" (Bush 2015, 54). After 1991, the emphasis shifted to the Residential Schools (55), with the church forming a Residential Schools Working Group that engaged with the history and legacy of the Schools and, in 1993, "explored how Bishops could be helpful in modeling healing and reconciliation" (56), the main goals centred by the Working Group (ACC 1992). The term reconciliation was not included in the apology issued by the Primate of the Anglican Church in August 1993 (ACC 1993a), but it did appear in communications from the Primate to Anglican bishops in the lead-up to the apology (Bush 2015, 57), as well as in the church's submission to the RCAP (ACC 1993b).

As with the Catholic Church, the 1980s also saw the beginning of efforts to make changes and address historical injustice within the United Church of Canada, stemming from a

first consultation with Indigenous people in Saskatchewan in 1980 (McKay and Silman 1997, 172).[23] An apology was issued by the Moderator of the United Church in 1986, which spoke generally of the church's disrespect towards Indigenous peoples' traditions and its evangelical efforts to impose a different way of being on them. It did not contain the word reconciliation,[24] though the concept might be understood as implicit in the concluding line: "We ask you to forgive us and to walk together with us in the Spirit of Christ so that our peoples may be blessed and God's creation healed" (UCC n.d.). The term did appear in association with the apology and surrounding processes in the United Church in the decade following the apology, as demonstrated for instance by the conversation between Stanley McKay and Janet Silman published in *The Reconciliation of Peoples: Challenge to the Churches* (1997).[25] This conversation provides an example of theorization of and critical engagement with the concept of reconciliation by Indigenous people that links discussions of religious community with discussions about political self-determination during a period when the term was generally not

[23] These changes included the education of church leadership, yearly national consultations, and the development of an "Aboriginal learning center for ministry" (173), and in 1983 an Indigenous member named Alberta Billy called on the General Council Executive to apologize to Indigenous peoples for the harms the church had done to them (174). This inaugurated a process that led to the United Church's first apology. For details and analysis of this process, see McKay and Silman (1997) and Bush (2015, 48-50, 63-65).

[24] Nor did the response presented by the All Native Circle Conference to the General Council in 1988 (UCC n.d.). In 1998 the United Church issued a second apology that did contain a direct reference to reconciliation, stating: "We are in the midst of a long and painful journey as we reflect on the cries that we did not or would not hear, and how we have behaved as a church. As we travel this difficult road of repentance, reconciliation, and healing, we commit ourselves to work toward ensuring that we will never again use our power as a church to hurt others with attitudes of racial and spiritual superiority" (UCC n.d.). This apology, which addressed the United Church's role in the Residential School system, came on the heels of a lawsuit dealing with abuses by a former supervisor and an apology feast organized by the local congregation for the Survivors of the Port Alberni Residential School, which then petitioned the General Council to issue a more specific apology (Bush 2015, 63-64). After initial resistance due to fear of liability, the Moderator of the United Church issued the second apology once the church was nevertheless found liable along with the government (64). This is one among other stories of local or individual efforts coming in conflict with the political and economic priorities of church hierarchies (see e.g., RCAP 1993m, 62-63, 205). Such stories led the RCAP to observe that "some individuals within the churches are willing to take concrete action toward reconciliation but are being held back by their superiors" (RCAP 1993u, 21).

[25] Along with the analysis by Schreiter (2005), this collection demonstrates the global breadth of engagement bringing together politics and Christian reflections on reconciliation during the 1990s, with contributions linking theological perspectives on reconciliation to conflicts in South Africa, Rwanda, Chile, Korea, Fiji, Palestine, Serbia, Northern Ireland, Germany, Poland, and Canada (Baum and Wells 1997).

yet significantly substantiated or critiqued, though it was starting to be more frequently used in these contexts in Canada.[26] McKay and Silman's account also highlights how mobilization by Indigenous members pushed United Church leadership towards apology and change, and influenced thinking about reconciliation within church communities in the 1980s and 1990s.

McKay and Silman also use the term reconciliation descriptively,[27] but particularly significant is that they discuss the power relations that attach to reconciliation and the varying levels at which reconciliation takes place. Silman speaks of evidence that "the dominant culture is not prepared for reconciliation," and suggests that the very word strikes her as problematic: "Who is asking for the reconciliation, or even demanding it?" (1997, 180). For her, "there are a lot of words, like *reconciliation*, that have been dissociated from any reality. Words that float as ideas without substance or action. It seems to me that there is virtually an idolatry of worship, where the words are seldom connected with any lived experience" (182; italics in original). McKay describes how the apology process was accompanied by Indigenous people within the United Church organizing for greater autonomy. This would be achieved through establishing their own leadership, structures, and decision-making processes – "[a]s in all self-government" (176). He and Silman go on to discuss how the church needs to heed its own teachings and how its "talk of reconciliation is too soon" because there has not yet been any real reckoning or sharing of power (182). McKay states that "many people within the structure of the church […] are still hanging onto dreams that are our nightmares" and finds them coming up short when

[26] It also serves as an important reminder of the many complexities shaping these debates. The boundaries between groups with different conceptions of reconciliation rooted in different understandings and interests are not rigid, clear, or straightforward. Throughout the history in question, Indigenous people have been the victims of church wrongdoing but also in many cases members of those churches, sometimes willingly and sometimes not, and the process of reckoning with that history includes Indigenous people who continue to be members of and sometimes leaders within the churches. Thus, while some may reject Christian ideas of reconciliation, for others theorizing and practice of reconciliation rooted in Christian and Indigenous traditions are not necessarily mutually exclusive.

[27] They suggest that a "spirit of reconciliation" was demonstrated by Jim Dumont, a traditional teacher who had previously left the United Church, participating in the events around the 1986 apology (1997, 175).

assessed against their own concepts of reconciliation, justice, and "being the people of God" (182). Silman and McKay emphasize many different dimensions of reconciliation, including the need for a foundation of "reconciliation with oneself" whereby "the internal process of the victimized finding wholeness of self, wholeness in community and as a people" is necessary both to healing among Indigenous peoples as well as to the prospect of reconciliation with those by whom they've been oppressed (180). Furthermore, reconciliation "is not simply a human reality" but also includes the land (181; see also McKay 2008, 103, 106). In this, McKay and Silman stress a vision that encompasses structural and existential dimensions in the face of an institution that appears primarily focused on an interactional reconciliation about whose performativity they have significant concerns. Thinking with Ahmed about their observations raises the question of whether this "talk of reconciliation" simply fails to do what it says or is non-performative, due to attaching to "dreams" that are Indigenous peoples' "nightmares" such that Indigenous peoples may experience reconciliatory pledges of commitment to solidarity work as "an illusion of the behind" as a result of these unrelinquished aspirations (Ahmed 2012, 119; italics removed).

Reconciliation may not have been "a prominent keyword in early discussions about the impact and legacy of residential schools" throughout the 1990s (James 2017, 368).[28] Still, all four major churches in Canada invoked the term in some way as they undertook to re-examine their relationships with Indigenous peoples, though not all included it in their apologies. Some religious actors more explicitly detailed the concept according to biblical teachings and asserted an unassailable connection between reconciliation and God, while others spoke in more general terms of reconciliation and healing. The different denominations influenced each other in the

[28] The churches used the term with respect to Residential Schools earlier on, but the AFN's 1990 resolution calling for redress for the Residential Schools did not mention reconciliation, nor did a Law Reform Commission of Canada survey of Survivors conducted eight years later (James 2017, 369). As Matt James notes, "[t]his landscape changed significantly in the immediate lead-up to the TRC and over its life" (2017, 369). More on this follows in chapter 8.

process (Bush 2015, 48). Wayne Spear argues that "[a]ll were slow and reluctant in arriving at the conclusion that apology and restitution were necessary," but within this "gradual evolution" some went from seeing apology "as a necessary but nonetheless unpleasant inevitability" to considering it "an opportunity to fulfil the principles at the core of the Christian faith" (2014, 200-201). Debates over apology and reconciliation efforts were also closely bound up with the churches' concerns about legal liability (ACC 2000; Bush 2015, 64; Spear 2014, 202; WGTRED 2000, 92).[29] At a broader level, the issue of responsibility for the Residential Schools, the use of discourses of reconciliation, and the sometimes overlapping positions and perspectives of people tackling these questions highlight the murkiness of the boundaries between religion and politics. Debates over the concept's religious affiliations have continued to feature contestation over whether a theologically tinged reconciliation can play a constructive role in transforming relationships between Indigenous peoples and Canada (Garneau 2012, 34-36; Nadeau 2012). Later in the 1990s, after the federal government issued its Statement of Reconciliation, the churches and the government were jointly drawn into a wave of litigation over the Residential Schools and efforts began to seek options for resolving the matter out of court, eventually leading to the IRSSA and the creation of the TRC, as detailed in chapter 8. First, though, another initiative drew politics, religion, and spirituality together around the term reconciliation.

6.4 The Sacred Assembly: A Reconciliation Proclamation

In 1992, Elijah Harper left the Manitoba legislature and decided to run for federal office. While

[29] This was driven by worries that the cost of compensation would bankrupt the churches should they be found liable for abuses committed in the Residential Schools. Such concerns were a major focus of media coverage in the late 1990s and prompted a "second wave of *reconciliation* news items" detailed in James's (2017) survey of media representations of reconciliation between 1995 and 2014. (I worked as an RA on this project.) James notes that in several examples, "church personnel propos[ed] reconciliation as an alternative to abuse litigation" (370). Marlene Brant Castellano observes that media discussions about compensation focused "overwhelmingly on the cost of redress to financially hard-pressed churches and to taxpayers and not the cost of abuse to successive generations of First Nations, Inuit, and Métis children" (2008, 396).

initially hoping to be an NDP candidate (he had been a member of the provincial NDP caucus), he ended up running for the Liberals, despite concerns about the effects that having a prominent opponent of the Meech Lake Accord on the roster might have on the party's fortunes in Québec (E. Stewart 1993). A *Toronto Star* article about his candidacy notes that party leader Jean Chrétien "vigorously defended Harper and the need for national reconciliation" (E. Stewart 1993). While his rise to prominence in Canadian constitutional politics in the Meech debates did not find Harper speaking of reconciliation, national or otherwise, five years later it had become a term on which he was placing significant emphasis. In December 1995, he convened a Sacred Assembly, which he spoke about several times in the House of Commons. Harper's contributions during this period might be understood as forming part of a constellation of emerging reconciliation discourses, as his speeches highlight connections to the discussions in the church community, the international context of the rise of reconciliation, and the national unity debate.

On September 21, 1995, Harper rose in the House to share that he had received favourable responses from a variety of parties, including the Minister of Indian Affairs, churches, and Indigenous organizations and spiritual leaders, to his proposal to hold an event that would "bring together native and non-native spiritual leaders in the spirit of healing and reconciliation" (House of Commons 1995c, 14715). The Assembly was to serve "as a forum for sharing spiritual wisdom on aboriginal issues and also as a forum for promoting reconciliation between native and non-native communities in Canada" (14715). This proposal followed significant personal and political experiences: Harper had recently recovered from a long "mystery illness" (Roslin 1995), and the country had just been faced with the violent standoffs that took place at Gustafsen Lake and Ipperwash over the previous month. Meanwhile, the Québec referendum was looming. A December 1995 news report explained Harper's vision:

> Harper, the Cree leader who as a member of the Manitoba legislature helped scuttle the Meech Lake accord, decided during months of reflection in the northern Manitoba wilderness that he – and Canada – needed a reconciliation of the conflicting feelings attacking the soul. The Liberal MP for Churchill suffered more than a year from a strange disorder that made him re-examine his own spirituality.
>
> Part of the reconciliation must be political. But the chasm between Christianity and Indian traditions has to be bridged before First Nations can become strong again, Harper believes.
>
> "The aboriginal people, as well as ordinary Canadians, look at Parliament and see that the institution has been swaying away from the foundations of that institution: democracy and the supremacy of God,'" Harper said in an interview.
>
> "It's a result, partly, of the global economy. … It's also happening in our communities, and it became more obvious to me this summer when I saw situations developing at Gustafsen Lake and Ipperwash, where one of our young men got killed.
>
> "I felt the need to get back to our roots, because the political process had failed us. We had to re-insert spirituality back into the process." (Bourrie 1995; ellipsis in original)

The Assembly was held in Gatineau in December 1995. It brought together some two thousand people, including Indigenous spiritual leaders and members of the Christian churches and others. As per the *Star*, "Anyone interested in reconciliation was invited" (Bourrie 1995).

The Sacred Assembly, which "convened around four themes: Sacred Foundations, Spiritual Reconciliation, Aboriginal Justice, and Political Responsibilities" (Peterson 2018, 167), concluded with the issuing of a Reconciliation Proclamation, which Harper read and distributed on the last day (Koehler 1996). In the Proclamation, as well as in an accompanying document entitled "Principles and Priorities for a New Relationship" (Sacred Assembly 1995b),[30] the delegates asserted a "common spiritual foundation" and recognized "that reconciliation between Aboriginal and non-Aboriginal Canadians must be rooted in a spiritual understanding of land as a gift from the Creator God," that "the sins of injustice which have historically divided Aboriginal and non-Aboriginal peoples remain active in our society today," and that "concrete actions must be taken by Aboriginal and non-Aboriginal peoples alike to overcome these

[30] These texts were coauthored by Terry LeBlanc, Bruce Clemenger, Lorraine Land, and Murray Angus, collectively representing World Vision, the EFC, the ARC, the CCCB, and the Citizens for Public Justice, drawing on input from "Treaty Elders, representatives from the Aboriginal Rights Coalition (ARC), 100 Huntley Street, [and] Indian and Northern Affairs, along with Elijah Harper," among others (EFCISRWG 2020, 162; LeBlanc 2016, 11).

injustices and bind up the wounds of those who have suffered" (Sacred Assembly 1995a). The Proclamation committed delegates as individuals, organizations, and faith communities to act on reconciliation in a variety of ways in different forums, including communities, churches, and "current and future public affairs" (Sacred Assembly 1995a). The Reconciliation Proclamation was presented to the Minister of Indian Affairs and Northern Development, Ron Irwin (Koehler 1996). The Prime Minister and a representative of the official opposition attended as well (House of Commons 1995k, 17493). The following week, Harper stated: "the assembly was a success. We came together in the spirit of faith and reconciliation and agreed on a new vision for Canada as a whole. We have laid the groundwork for reconciliation and healing in this land" (17493). In a profile commemorating Harper, Richard Wagamese described the Sacred Assemblies that Harper organized (a second was held in Manitoba in 1997, hosted by the Sagkeeng First Nation)[31] as "groundbreaking events," writing that "[p]eople of all nations gathered to find ways and means for reconciliation and harmony. They were powerful gatherings and many people took his ideas home to implement in their communities" (2013).

This event very clearly highlights an inextricability between the secular and the sacred when it comes to reconciliation,[32] with respect to both participation and outlook. This includes the involvement of the Christian churches,[33] drawing in the understandings of reconciliation discussed above, as well as Indigenous spiritualities, and other faiths (House of Commons 1996c, 289).[34] Harper's own conception of and participation in the Sacred Assembly was informed by

[31] An invitation to the second event, which comprised of "discussion groups, ceremonies and celebrations," was published in *Akwesasne Notes*, where its purpose is described as: "to share in the continuing quest for healing, reconciliation and justice" (*Akwesasne Notes* 1997, 4; see also *Edmonton Journal* 1997).
[32] For recent reflections on secularism, spirituality, and reconciliation in Canada, see Colorado (2020).
[33] According to Wendy Peterson, who was present at both Assemblies, "Top leadership from most Christian organizations attended" (2018, 167).
[34] The Principles and Priorities document also called for greater inter-faith collaboration in pursuing reconciliation in addition to calling on Christian churches to go beyond their statements of apology to take more concrete action (Sacred Assembly 1995b, *3*). N.b., all citations in this dissertation where page numbers are in italics correspond to

both Oji-Cree spirituality and Christianity,[35] and the "assembly was reflective of evangelicalism inasmuch as it was conceived, planned and executed by evangelicals" (Ernst 1997, 30). In descriptions of the event, Canadian churches have presented the Sacred Assembly as the beginning of an important commitment to reconciliation with Indigenous peoples.[36] As explored above, the involvement of the churches in a reconciliation-oriented event or process draws in particular Christian-inflected understandings of the term.[37] However, the strong emphasis on spirituality and dialogue between groups of differing spiritualities at the Sacred Assembly also serves as a reminder that Christianity is one among many traditions in which understandings of reconciliation can be rooted.

As with other developments, there were also connections between the Sacred Assembly and a broader international context wherein reconciliation was gaining prominence elsewhere around the same time. In his report to the House of Commons following the gathering, Harper led by noting international as well as local participation in the event, including "guests and

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[35] Accounts of the event have framed Harper's spirituality in conflicting ways. Timothy Ernst describes Harper as "an evangelical aboriginal Member of Parliament" (1997, 30), while Peterson suggests that he was "not a Christian" but turned to Jesus during his illness, and "Jesus healed him […] and gave him a vision for reconciliation" (2012, 68; see also 2018, 166). Harper's former legislative aide notes that his "upbringing was Pentecostal" and his father, Allan B. Harper, was a pastor whose religion shaped him as did growing up on the land and participating in traditional Oji-Cree ceremonies (Wood and Schwartz 2018, 366-67). In her view, Harper "was of the mind that there is only one God, but there are very many different religions in the world, and it didn't matter if there were different religions as long as we understood that we all look up and all have a benevolent Creator looking upon us" (367). At the Sacred Assembly, Harper described having a vision of Canada as one "that acknowledges and embraces the supremacy of God our Creator," and linked this to the spirit of the treaties (NivervillePrayer 2010, 1:10-2:30).

[36] For the Anglican Church, while the "seed" of reconciliation planted at the Assembly was recognized as being "a very fragile life requiring much careful nurturing" that necessitated dedicated efforts by both Indigenous and non-Indigenous people to overcome "[i]ntolerance and selfishness," it was seen as "the will of the Creator" that this reconciliation be "destined to live" (ACC 1996). In 2016, the Evangelical Fellowship of Canada (EFC) issued a statement after the release of the TRC's final report noting that "[t]he EFC's participation in the work of reconciliation began in 1995, when Elijah Harper called together Indigenous and non-Indigenous religious leaders for a Sacred Assembly to listen to one another and to establish the call for reconciliation" (EFC 2016). The EFC also connected its response to the TRC Calls to Action to the commitment embodied in its adoption of the Reconciliation Proclamation at the Sacred Assembly. The EFC produced a video of the Reconciliation Proclamation in 2020-21. The description notes that "[t]wenty-five years later the Reconciliation Proclamation will be a focus for an education awareness program at the EFC," linked to a "[r]ecommitment to the Reconciliation Proclamation" (EFC 2021).

[37] This also occurs with their participation in the work of the RCAP, as discussed in part 2 (sec. 7.3.2).

visitors from South Africa, Brazil, the United States and Central America" (House of Commons 1995k, 17493). Four months later, in a statement about the South African TRC, Harper shared that he had met with its chair Archbishop Desmond Tutu in Cape Town and had "presented to him the statement of principles and priorities and the reconciliation proclamation that were adopted by the Sacred Assembly held last December in Hull, Quebec" (1996f, 1759). This encounter provides an example of international exchange between two conversations about reconciliation that were taking place at that time.[38] Harper closed by saying that he "hope[d] all Canadians will be inspired by the courage of the South African people" (1759). The Sacred Assembly also explicitly pointed to Australia as an example in its call for the Canadian government to create a Council for Reconciliation (Sacred Assembly 1995b, *5*).

In a March 1996 speech, Harper also connected reconciliation and various political conflicts and divisions within the Canadian context, including the national unity debate: "We saw how fragile this country is just between two groups, east and west, the French and English. There needs to be an understanding and a healing. Reconciliation work has to be done in that area, not just among aboriginal people" (House of Commons 1996c, 291). Though the Sacred Assembly was planned prior to the October 1995 Québec referendum, it took place six weeks afterwards, and it bears recalling that the events and discourses detailed in chapter 4 were unfolding concurrently. The language of unity and reconciliation used at the Sacred Assembly did not sit well in all corners, as reported in the *Vancouver Sun*:

> The only note of discord was offered by Bloc Quebecois MP Claude Bachand.
> Harper had earlier said the Creator had provided his vision of a just and unified Canada.
> "Saying that the Creator wants a united Canada can be questioned," Bachand replied. "God does not know any political arrangements – neither sovereign, nor federal." (Coleman 1995)[39]

[38] Harper also participated in other international exchanges about reconciliation in the 1990s (see Meili 2013).
[39] Bachand attended as the representative of the official opposition (House of Commons 1995k, 17493).

Harper did not take well to Bachand's comments that the Sacred Assembly "reeked of politics," arguing that it was insulting to the participants who had come together because they "were concerned about the country" (House of Commons 1996c, 289). He himself was strongly in favour of national unity, which he rooted in a connection to the treaty relationship dating back to the arrival of Europeans, stating that "[i]t has always been our belief that we should live together in harmony and in peace and to have honour and respect for each other," and that he had challenged Indigenous people and their leaders "to maintain the unity of the country" (288). In his view, a united Canada was in everyone's interest, but also of special importance for Indigenous peoples: "I stated at the sacred assembly that as aboriginal people we have a greater responsibility than any other group of people in this country to maintain the unity of the land we call Canada. It is our home and we have nowhere else to go" (289). Reconciliation was needed, which "would not be just among aboriginal people themselves but would include every other nation in this country," that is, anyone who had come to Canada from elsewhere (290).

Harper's comments on unity and reconciliation here echo previous statements by other Indigenous leaders. For example, some twenty-five years earlier Harold Cardinal had written:

> The vast majority of our people are committed to the concept of Canadian unity and to the concept of participation in that unity. The Indians of Canada surely have as great a commitment to Canada, if not a greater one, than even the most patriotic-sounding political leaders. More truly than it can be said of anyone else, it is upon this land that our heritage, our past and our identity originates. Our commitment to Canada exists because of our belief that we have a responsibility to do all we can to ensure that our country is a nation with which we can proudly identify. ([1969] 1999, 11)

The language of unity was prevalent throughout the era of mega constitutional politics in Canada, with reconciliation increasingly interwoven with it moving into and through the 1990s.[40]

[40] While he did not use the term "unity," this perspective is also reminiscent of the approach to reconciliation advanced by Dave Courchene in his presentation to the Special Joint Committee on the Constitution (1970), discussed in the previous chapter, wherein he argues that it is not that Indigenous peoples do not want to be a part of Canada, but that the nature and means of that inclusion is critical (see sec. 5.2.1). Courchene also linked

That Indigenous leaders like Cardinal and Harper were appealing to the concept as well as many federalist Canadian politicians provides another lesson in the importance of engaging with conceptual context and variations in meaning (along with previously explored aspects such as the prevalence of discussions of Canadian federalism reconciling unity and diversity, and the fact that the restoration of unity is one way of understanding reconciliation).

Both political vision and cultural context are important for understanding the delineations of meaning among these invocations of unity. Cardinal's reference to unity is made against the backdrop of the Trudeau government's White Paper, which advanced a vision of unity through equality as sameness. It must thus be understood in conjunction with his critique of Canadian politicians for fixating on English–French relations and excluding Indigenous peoples from the visions of "strength in diversity" they were advancing (10), as well as his broader sharp condemnation of oppressive and assimilative Canadian policies towards Indigenous peoples. Indeed, Cardinal denounced the treatment of Indigenous peoples within Trudeau's Just Society as "a thinly disguised programme of extermination through assimilation" (1). For him, a genuine shared citizenship between Indigenous peoples and Canadians rested on a prerequisite of the recognition and acceptance of the distinctness of Indigenous peoples (22), and the reorientation of the political relationship required "[n]othing less than new structures" that would protect Indigenous peoples' rights and that were collaboratively created, implemented, and maintained to replace existing paternalistic colonial structures (41). In 1995, while the Chrétien government was broadly focused on unity and had proclaimed a number of commitments to Indigenous peoples, it was still policy that Indigenous peoples were required to agree to the extinguishment of their rights as a condition of reaching agreements with the federal government (Coleman

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reconciliation to the attainment of legal and moral justice (SJCSHCCC 1970, 9:79). See also the discussion of Mercredi's framing of reconciliation in section 6.2.4 above, and Georges Erasmus and René Dussault's in section 7.3.2 of the next chapter.

1995; M. Murphy 2006, 170-71).[41] Harper's positioning differed markedly at this juncture in comparison to Cardinal's vis-à-vis Trudeau in 1969, as he was at this point a sitting MP belonging to the party in government. Part of his argument for reconciliation was so that Canada could "heal and grow strong" (House of Commons 1995c, 14715). Minister Irwin accepted the Reconciliation Proclamation and suggested he could support the demands that issued from the Assembly (Coleman 1995; Sacred Assembly 1995b). A critique of the Sacred Assembly published the following year argued that it was palatable to government because "difficult concepts" – namely, a requirement that the government do away with policies of assimilation and extinguishment – "were not included" in the Reconciliation Proclamation (Koehler 1996), while another reaction to the event characterized its results as "style […] over substance" that "was all too depressingly familiar" (Chrisjohn, Young and Maraun 2006, 11). Nevertheless, though the difference in political configuration is worth keeping in view, the vision of unity and reconciliation expressed in the Proclamation stakes out some similar commitments to those evoked earlier by Cardinal. It refers to "the fulfillment of political responsibilities" and states that "relations based on justice will require respect for past treaties, a fair settlement of land rights disputes, the implementation of the inherent right of self-government and the creation of economic development opportunities and other institutions to support it" (Sacred Assembly 1995a). This came in the wake of the failures to agree on and implement self-government in the FMCs and the Charlottetown Accord. Speaking at the Assembly, Harper called for "restoration and restitution" along with reconciliation and healing (NivervillePrayer 2010, 4:40-4:50).

Absent the possibility of discussing it with either of them, I lack the insight as well as the

[41] This was an issue that the RCAP looked at as well. In addition to the discussion included in the final report, it also published an interim report entitled *Treaty Making in the Spirit of Co-existence: An Alternative to Extinguishment* (1995b). "Reconciliation" appears eight times in that report (though three are accounted for by quotations from *Sparrow* and RCAP's mandate), with several presenting reconciliation in opposition to extinguishment (34, 66, 68).

cultural knowledge to be able to speak to the cultural context informing Cardinal and Harper's understandings and uses of unity and reconciliation. It seems important to reflect in general, however, on how appeals to these concepts by different actors might be rooted in and informed by different cultural and spiritual understandings. The vision of unity and reconciliation presented in the Reconciliation Proclamation emerging from the Sacred Assembly is expressed in spiritual terms and advances the notion that there is a "common spiritual foundation" among the Indigenous people, Christian church representatives, members of other religious groups, and other participants who collectively made up the delegates (Sacred Assembly 1995a). The delegates do share a common commitment to approaching reconciliation through a spiritual lens. Presumably, however, their diverse spiritualities carry implications that might lead to divergences from commonality. As Umeek notes in his consideration of the distinctions between the Nuu-chah-nulth practice of a vision quest and the Christian practice of intercession, for instance, even when two practices in different spiritual traditions would seem to have the same intentions, "the underlying rationale may not be the same" (2004, 114). The potential implications of such differing rationales could have an important impact in distinguishing one vision of unity and reconciliation from another. For example, the Reconciliation Proclamation states that the delegates all believe that "the land on which we live was created for the benefit of all" and recognize that "reconciliation […] must be rooted in a spiritual understanding of land as a gift from the Creator God" (Sacred Assembly 1995a).[42] However, the relationship between humans and land and the benefit they understand themselves as deriving from it cannot be assumed to be identical between Indigenous and Christian worldviews.[43] It would seem that there

[42] It has been suggested that the adoption of a language of an "ambiguous 'Creator principle'" at the Sacred Assembly aimed to encompass the spiritual pluralism of the delegates (Ernst 1997, 36).

[43] At the same time, it is of course again important to recall that Indigenous and Christian are not mutually exclusive identities, though perspectives may differ significantly on the compatibility of these worldviews, as well as on the

is significant divergence between the teachings of Indigenous peoples, such as the Nuu-chah-nulth principle of *heshook-ish tsawalk* (Umeek 2004), the nêhiyaw principle of *wahkotowin* (Wildcat 2018, 12), or the Mi'kmaw principle of *netukulimk* (Prosper et al. 2011, 5-6) among other examples, which in varying, culturally specific ways emphasize reciprocal relations of recognition, responsibility, and respect between all beings, and the potential and realized implications of the Christian decree in Genesis (1:26-28) that humans should "subdue" and "have dominion over" everything else on earth.[44] These offer quite different starting places for conceptualizing the nature of the political relationship that reconciliation might entail as well as who and what might be understood to participate in it.[45] As Umeek cautions, sometimes different definitions can be necessary for different audiences when contending with intercultural communication, as "[e]ach definition is fraught with potential for misunderstanding because of radically differing worldviews that imply distinct meanings for the same words" (2004, 85-86). With respect to dialogue between worldviews and spiritualities, the matter of cultural translation is also intermingled with the complexities of linguistic translation.[46]

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desirability of Indigenous people participating in Christianity or reconciling with Christian churches in the wake of Christianity's role in colonizing Indigenous peoples around the world. These complexities are deeply entrenched after several centuries of Christian presence on the continent and in Indigenous communities, and they also contribute to the complexities of untangling the various conceptual threads of reconciliation discourse, as with similar and related discourses and practices such as restorative justice (Richards 2006, 102-4).

[44] On the etymology of *dominium* in Christian theology and the influence of the conception of land it informs in the colonization of Indigenous peoples and lands, see Newcomb (2008, esp. ch. 4-6). For more on the Doctrine of Discovery as an element of its manifestation, including its impact in Canadian law, see Miller et al. (2010) and J. Nichols (2020). There are also, however, Indigenous and non-Indigenous Christians who challenge such interpretations and work to envision and enact decolonial approaches to Christian teachings (Curtice 2020; Nadeau 2012). My intention is not to ascribe any one interpretation of this passage or of the nature of humans' relationship to land to the Christian participants in the Sacred Assembly, but rather simply to observe that such different interpretations exist and that their influence and implications for discussions of reconciliation bear consideration.

[45] See Asch, Borrows and Tully (2018), esp. chapters by Borrows, Tully, Mills, Starblanket and Stark, Turner and Spalding, and Noble.

[46] This is taken up by the AJI, discussed in chapter 7, with respect to how Indigenous people's interactions with the legal system are informed by unfamiliar concepts and language. The AJI notes: "Some words can be translated directly from an Aboriginal language into the English language, but they may not convey the same concept. Some concepts are totally foreign to Aboriginal thought and so new words or phrases have to be invented to approximate the meaning. […] Because most concepts of the dominant justice system differ from those of Aboriginal societies, words used to describe the concepts in an Aboriginal language have had to be newly coined or invented, or

Participants in the event demonstrated awareness of such divergences of vision. This is evidenced in part by the various reconciliations that unity and healing were said to require. Harper believed in a reconciliation that was both political and spiritual, that necessitated "bridg[ing]" "the chasm" between Christian and Indigenous spiritualities (Bourrie 1995). Within the Christian community itself, "the assembly showed […] that the various churches must become reconciled among themselves" (ACC 1996). The Reconciliation Proclamation also called for "healing and reconciliation within" Indigenous communities and organizations (Sacred Assembly 1995a). There is a "common foundation" in that participants used the same terminology to describe shared goals of healing, reconciliation, and unity. These terminological commonalities are a palpable feature of the lingering documentary record of these events. Nevertheless, it remains important to keep in view the wide range of possible variations in "underlying rationale" for participants' use of such terms and in the interests informing their pursuit of particular actions connected to the expressed goals.[47] For instance, in Timothy Ernst's assessment, the participation of evangelical Christians in the Sacred Assembly and their willingness to sign on to the Reconciliation Proclamation was partly reflective of "a new cultural sensitivity" but also likely motivated by wanting to make use of "an opportunity for further evangelism towards all parties represented at the assembly and indeed toward the larger, pluralistic Canadian community" (1997, 36). Conceptual and political homogeneity cannot be

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explained with words that actually have different meanings" (vol. 1, ch. 2). On the translation of Indigenous languages into English, particularly as regards conveying the complexities of spiritual concepts, see also Turner (2020). These challenges with translation provide further reason to avoid assuming the same conceptual meaning is understood/intended in the use of a familiar-sounding word. This is so even before one gets to the issue some have noted regarding state officials using terms, including sometimes those initially put forward by Indigenous peoples, in ways that shift them away from their commonly held meanings and so mask the substance of the policy they are being used to advance (Manuel and Derrickson 2015, 90; 2017, 105; Manuel and Posluns 2019, 125; Posluns 2007, esp. 3, 1, 57, 66 on "enfranchisement" as an "emblematic" example).

[47] The movement for redress for Residential Schools is illustrative of this. Among others, see Spear (2014).

assumed within any of the participating groups, either.[48]

In addition to the broad commitments laid out in the Reconciliation Proclamation, demands were also made at the Sacred Assembly for the implementation of specific policy measures by the federal government (Coleman 1995; Sacred Assembly 1995b, *4*). Some of these, like the creation of a National Aboriginal Day, were done (A. Harper 2013); others, like the call for "the government to form a permanent Council of Reconciliation" and to "officially drop the stipulation that aboriginal rights be extinguished as a condition of signing treaties and a promise that native rights will not be eroded by future constitutional change" (Coleman 1995), were not, at least not in the short term.[49] Elijah Harper continued to speak about and promote reconciliation, both in the immediate term following the first Sacred Assembly and leading up to the second (*Akwesasne Notes* 1997, 4; *Calgary Herald* 1996; *Canadian Press Newswire* 1996; Danylchuk 1996; Wills 1996), and in later years (Thomson 1999; Ledding 2009; Wood and Schwartz 2018, 375n24), including through an organization called Project Reconciliation after leaving federal politics (Wood and Schwartz 2018, 375-76), and he was remembered for his

[48] In his comments quoted in Bourrie (1995), Ovide Mercredi spoke of the inhibiting effects of countervailing cynicisms towards reconciliation in both Indigenous and non-Indigenous communities. Both he and Harper expressed a role for both spirituality and politics in changing the relationship. For Mercredi, "religious good will" would have "to be translated into political action," but "[i]f we leave it up to politics, there will never be unity in Canada" (Bourrie 1995). The dynamic between spirituality and politics is complex and sometimes contentious, including in this case. A participant at the second Sacred Assembly in 1997 described it as having "disintegrated into conflicting agendas" between parties who wished to focus on "a sociopolitical agenda" and those, including Harper, who wanted to focus on "seeking common ground through spiritual values" (Peterson 2018, 32n101).

[49] The TRC later also called on the federal government to establish a National Council for Reconciliation (see Calls to Action 53-56 in TRC 2015b, 217-19). Legislation to this effect was introduced in June 2022; as of a year later, it is at the committee stage in the Senate. While the government started to shift away from explicitly using "extinguishment" in the late 1980s, moving to language of establishing "certainty" and the modification, non-assertion, or release of rights (Eyford 2015, 20, 70-74), many Indigenous people continued to see these new terms as still effectively implying extinguishment or termination of their rights (70, 73; see also Coulthard 2014, 66; Manuel and Derrickson 2017, 104-5). In 2018, then-Minister of Justice Jody Wilson-Raybould released a new statement of *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples*. The fifth principle's description states: "the existence of Indigenous rights is not dependent on an agreement and, where agreements are formed, they should be based on the recognition and implementation of rights and not their extinguishment, modification, or surrender" (Department of Justice Canada 2018, 11). In 2019, the FNS and the governments of Canada and BC agreed on a new BC treaty negotiations policy that "is unequivocal in rejecting extinguishment, and directs that treaties not require full and final settlement and are capable of evolution" (BCTC 2019).

commitment to and role in reconciliation upon his death in 2013 (Galloway 2013; A. Harper 2013; Marks 2013; Meili 2013; Wagamese 2013).

6.5 Conclusion

This chapter has explored how different uses of reconciliation were advanced and sometimes resisted as Canadian and Indigenous political leaders participated in debates about constitutional reform and treaty negotiations, and Christian churches began to reckon with and seek to make certain kinds of amends for their role in harming Indigenous peoples, during the period from 1987 to 1996. The chapter has also showed how the Sacred Assembly, which represented an important moment in the development of reconciliation discourses as it produced a proclamation that centred the concept of reconciliation, brought the discourses from these spheres of constitutional politics and religious communities into direct conversation with each other.

The reconciliation discourses in use at and around the Sacred Assembly reflect the complexities of the term's application in Canadian constitutional politics in various ways. Reconciliation's multifaceted entanglements are highlighted by how, in both political and church spheres, it was connected to several political issues in Canada and to religious and political debates in other parts of the world. The Assembly built upon the development of reconciliation discourses within the earlier constitutional reform debates and within church circles, and reactions to it were informed by those earlier proceedings as well. Harper and Bachand's exchanges highlight the tensions emitting from the simultaneous occurrence of calls for unity and reconciliation and resistance to their imposition within these two sets of relations, especially at that charged moment in the wake of the tight 1995 referendum result and the prior failed constitutional accords. These tensions are shaped by a context where both Québec and

Indigenous peoples have experienced oppression in relation to the Canadian federation, and Indigenous peoples also by Québec (see e.g., D. Giroux 2020). Further exacerbation resulted from the sense of being in competition in the renegotiation of these relationships. Such dynamics can be seen at work in some Indigenous people's perceptions of the failure of the s. 37 FMCs and their resistance to the Meech Lake Accord, as well as in Bachand's rejection of Harper's call for a reconciliation that would unite all peoples in Canada.

Bachand's retort to Harper that God is not a federalist or sovereigntist also points to the challenges of blending religious/spiritual and political conceptions of and debates about reconciliation. This is not to suggest that religious conceptions and commitments have no place in politics generally (Connolly 1999), or in political reconciliation specifically (Philpott 2012). However, it does call for careful attention to how reconciliation discourses are interwoven not only with relations of power between human beings but also with different understandings of humans' relationship to a higher power or broader web of being. Discursive commonalities, such as shared commitments to reconciliation, require unpacking, as they may mask different or even divergent underlying rationales when it comes to value, goal, and means-end premises (Fairclough and Fairclough 2012). While more of a theoretical reflection than an empirical observation when it comes to the records around the Sacred Assembly,[50] McKay and Silman's conversation about reconciliation in the United Church gets at these kinds of conceptual and practical incongruities (1997, 180-83). Diverging underlying rationales and motivations became increasingly palpable throughout the process that led to the ratification of the IRSSA (see ch. 8),

[50] This partly reflects that my discussion of the Assembly is limited to the text of the two documents it produced, Harper's statements in Hansard, and a few media articles regarding the event. I have not had access to any debates and discussions that took place within the event itself aside from a brief video with clips from the event on YouTube (Niverville Prayer 2010), along with some limited commentary by participants (EFCISRWG 2020; LeBlanc 2016; Peterson 2012, 2018). A documentary was made of the event (Marks 1995), some clips of which appear to be included in the YouTube video, but I have not yet been able to access a copy.

and after. With the churches and the federal government both being parties to it, that process also saw further entwinement of the religious and political spheres.

Reconciliation was by no means new to Christianity, though as Schreiter (2005) shows, its role in the conceptualization of mission shifted as churches began to grapple with their history in recent decades. We saw some examples of Christian uses of reconciliation discourse in the US in chapter 5, and these were also prevalent in South Africa and Australia during the period from 1987 to 1996 as well (Doxtader 2009; M. Phillips 2005; Tutu 1999).[51] In Canada, discourses of reconciliation drawing on Christian theology became more widespread as Indigenous people pushed churches to apologize for their involvement in colonization, and as discussion of the harms of Residential Schools came out into the open. At the same time, the constitutional reform negotiations that followed from the developments of earlier decades saw the term continue to be used to describe those efforts, both with respect to relations with Québec and with Indigenous peoples, with the discussions becoming joined during the Charlottetown process. Some of these uses referred to varying inconsistencies, incompatibilities, or interests that needed addressing or applied the term very broadly to describe the exercise of the negotiations in general. Others, like Ghiz's national treaty proposal, more pointedly and substantively focused on reconciliation as a goal or process needed between Indigenous peoples and Canada. Likewise, some uses focused primarily on interactional reconciliation, while others linked reconciliation to structural changes.

Though the term's use by politicians and churches in this context appears to have grown in frequency and scope of application between 1987 and 1996, this largely entailed continuation and further development of forms in which it was used in the period prior. Other actors also used

[51] South Africa created its TRC, chaired by Archbishop Desmond Tutu, under the *Promotion of National Unity and Reconciliation Act* in 1995 (South Africa 1995), and Australia created the CAR in 1991 (Australia 1991). The CAR ceased to exist in 2001 and has been succeeded by an organization called Reconciliation Australia. See: https://www.reconciliation.org.au/about-us/

reconciliation discourses throughout this decade, however, and in exploring these uses we see that new intersections were being built between other fields of application and public discourse on reconciliation, such as constitutional jurisprudence and criminal law. Reconciliation was also making a greater move from speech to text, beginning to appear in court decisions, commission reports, and legal agreements. In part 2 of my exploration of this decade, I next look at the term's introduction in SCC judgments, the varying forms in which it was used in the work of the Aboriginal Justice Inquiry (AJI) of Manitoba and the RCAP, and its application in a negotiated agreement between the federal government and Inuit regarding the High Arctic relocations of the 1950s. In addition to rounding out the portrait of the development of reconciliation discourses initiated in this chapter, the exploration in part 2 also allows for consideration of the interactions of law and politics in shaping the development of reconciliation discourses during this period.

Chapter Seven

The Emergence and Development of Discourses of Reconciliation Between Indigenous Peoples and Canada: 1987-1996, Part II

7.1 Introduction

This companion to chapter 6 rounds out my account of the emergence and development of reconciliation discourses between 1987 and 1996 by looking at the roles of two other key sets of actors: the courts and commissions of inquiry. The uses of reconciliation in these settings both differ from and overlap with those in part 1. Taken together, the two parts paint a portrait of this phase of the *when* of reconciliation's emergence that foregrounds the complexity of *how* it emerged. It often seems to have been used haphazardly. It appeared simultaneously in multiple settings wherein it was used differently by different people. These uses sometimes travelled from one setting to others, and sometimes not. Again, the uses reflected the range of different things that the word can mean and the various sources of those meanings (e.g., family law, theology, accounting, restorative justice), covering the categories of resignation, consistency, and relationship (Walters 2008, 167-69), and were applied to both relations of opposition and of oppression in ways that sometimes focused exclusively on interactional reconciliation and in other cases paired interactional with structural and existential reconciliation (van Roermund 2001; Lu 2017). To the sketch initiated in part 1, part 2 adds a depiction of the similarly varied content of uses of the term in the courts and commissions, but also shows how it began to appear in new formats during this period. The uses in these contexts also allow us to consider the interactions of politics and law in the development of reconciliation discourses. Attending to these interactions and those between politics and religion explored in part 1 helps to set the stage for the developments of the next decade as well, during which the federal government and

churches became parties to Residential School lawsuits, and federal and provincial governments began to draw on and respond to the SCC and the RCAP's conceptions of reconciliation.

The nature and roles of the actors explored in this chapter differ from those in the previous one, which accounts in part for the form of their contributions to the emergence of reconciliation discourses. Courts reach judgments that are published, distributed, and applied to future decisions, and commissions produce written reports and recommendations that are delivered to governments and to the public. It is difficult to know how widely the church apologies or the Reconciliation Proclamation circulated. However, we may reasonably expect that the court decisions and commission reports studied in this chapter were more widely accessible and accessed at the time, and are likely revisited more often, than the transcripts of debates, negotiations, and other speeches canvassed in the last two chapters. Also, whether consciously done or not, these two avenues of discursive emergence put specific formulations of reconciliation connected to relationships with Indigenous peoples directly in front of governments, in documents that were geared at informing or guiding state action.

The different sources and spheres of discursive emergence are not neatly extricable from one another, and parts 1 and 2 should be understood as parts of a web rather than two tracks travelling in parallel through the decade. Not all of them are connected, and some hang from the edge, but key threads meet in the middle and travel on through to other sides. Concerns about maintaining Canadian sovereignty and territorial unity are woven through the SCC's treatment of reconciliation, as they were in politicians' speeches about treaties in BC and the prospect of Québec separation; Indigenous leaders' and churches' calls for healing and reconciliation appear again at the RCAP. Different actors build different parts of the web, some in more than one sector at different points. The RCAP epitomizes this complex web-building dynamic as a result

of the people involved, the form of the process, and its intersection with negotiations between Inuit and the federal government that produced the 1996 Reconciliation Agreement, as well as the fact that virtually every form of reconciliation appeared at some point during its work.

In this genealogy, as per Foucault's observation that discourses are shaped by continuities and discontinuities, there are threads that have trailed off and seemingly been left behind, and others that have grown into thicker strands, have been interwoven with others, and can be traced right up to today. The National Treaty of Reconciliation proposal, for instance, did not become a major factor in the Charlottetown process, and now seems to be largely forgotten. The Sacred Assemblies and Reconciliation Proclamation still get invoked in theological circles (EFC 2021; LeBlanc 2016; Peterson 2018), and may persist in the public memory of Indigenous communities who were involved with the events, but do not feature significantly in contemporary Canadian scholarship and public debate on reconciliation.[1] In contrast, several discursive threads presented in this chapter comprise the beginnings of major uses of reconciliation that remain dominant today. These include uses of reconciliation associated with the SCC's Aboriginal rights and title jurisprudence, with Indigenous peoples' justice traditions and other restorative justice practices, and with the RCAP's vision of healing the wounds of historical injustice and building a new political relationship. However, the continuity of these broad strands is also accompanied by discontinuities, variations, and contradictions throughout these emergences. During this period, there was a slight increase in critical engagement with the term reconciliation, as some actors for instance raised concerns about reconciliation denoting resignation, though these were still less

[1] Terry LeBlanc, who coauthored the documents that came out of the Sacred Assembly, observes that "little, if anything was done with the output of the Assembly" and suggests that he is "not optimistic that many even recall the events" (2016, 12; see also EFCISRWG 2020, 163). In this instance he is referring to the RCAP and the TRC as well as the Sacred Assembly. While I concur that "the outlook for reconciliation is still in question" (2016, 12), I would argue that these three events have not gone equally unnoticed. Most significantly for this genealogy, the RCAP and then the TRC elicited greater public attention and have had a successively greater influence on government discourse about reconciliation.

prevalent than later such critiques. Not all uses of the term by RCAP participants made it into the final report or informed the RCAP's own framing of reconciliation. Collectively, however, the different uses during these processes, as with those in other chapters, show that reconciliation's multiple meanings have all been present throughout the term's emergence and development.

In this chapter, I first take stock of reconciliation's arrival at the SCC in the wake of the constitutional developments of the 1980s (sec. 7.2). I look at two decisions from 1990, *R. v. Sioui* and *R. v. Sparrow*, and two from 1996, *R. v. Van der Peet* and *R. v. Gladstone*, drawing on legal scholarship to situate and compare their uses of the term. Next, I turn to two commissions whose final reports included the term reconciliation (7.3), first exploring its use by Manitoba's Aboriginal Justice Inquiry (AJI) (7.3.1), and then its manifold appearances throughout the work of the RCAP (7.3.2). The final section (7.4) deals with the Reconciliation Agreement aimed at redressing the relocations of Inuit families to the High Arctic in the 1950s. The negotiation of the Agreement followed from the RCAP intervening in the conflict between the parties, and circles back to questions about the relationship between law and politics from a different angle. The SCC tends to portray reconciliation as a matter for political negotiation. In this instance, the term is used in a negotiated political agreement and presented in a specific legalistic framing. Though more limited in its scope, application, and publicity than later developments explored in chapter 8, the Agreement marks the first instance I have found of a Canadian government document pertaining to relationships with Indigenous peoples naming reconciliation as an objective. This declaration of reconciliation as a state goal and the onset of the term's use in official documents as well as verbal exchanges, paired with its overall increasing use during this period, signal the second phase of the term's discursive development.

7.2 The Courts: Reconciliation from *Sioui* and *Sparrow* to *Van der Peet* and Beyond

In chapter 5, we saw two fleeting uses of reconciliation in *Calder*, but no real emphasis on the concept by the SCC, and there were no uses in Aboriginal rights cases over the next decade and a half. This changed in the 1990s. The inclusion of s. 35 in the constitution in 1982 was seen as mandating a reinterpretation of jurisprudence relating to the place of Indigenous peoples in Canada (Walters 2006, 487). In the 1980s, the re-evaluation of constitutional relationships had been allotted to the political sphere, but with the FMCs failing to achieve an agreement about the substantive meaning of s. 35, the courts became a primary venue for interpreting the provision.[2] In the 1990s, reconciliation became a central concept regarding the federal government's relationship with Indigenous peoples under the aegis of s. 35.[3] The SCC's uses of the term have been treated extensively in legal scholarship,[4] as well as in political science[5] and literature.[6] In particular, Joshua Nichols (2020) provides a detailed genealogical account of the term's uses by the SCC (as well as the broader foundations of Canadian law about Indigenous peoples).[7] His inquiry underscores the complexity and variety of the SCC's uses of reconciliation alone, before one even considers them in relation to different uses by other actors.[8] My aim is to complement

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[2] See P.G. McHugh's "A Common Law Biography of Section 35" for an exploration of the role of scholarship in seeking to shift the courts' treatment of Aboriginal rights and title during this period (2016, esp. 145-47).

[3] It has been suggested that this concept "provides a vehicle for the development of a distinctly Canadian narrative of intercultural justice" (S.R. Stevenson 2011, 276)

[4] See e.g., Bhandar (2004, 2007); Bird (2011); Borrows (2017a); Christie (2002, 2005); Goldenberg (2004, 82-87); Grammond (2009); Hamilton and Nichols (2019); Hewitt (2014); Hoehn (2012, 2016); Lambert (2009); MacIntosh (2011, 2014); Macklem (2018); Macklem and Sanderson (2016a); McNeil (2003); Minnawaanagogiizhigook (2007); Newman (2008); J. Nichols (2015a, 2015b, 2020); Nichols and Hamilton (2020); Stanton (2017); Vermette (2011); and Walters (2006, 2008).

[5] See e.g., Coulthard (2014, 107, 124); Ladner (2009b); Ladner and McCrossan (2009); McCrossan (2013, 2015, 2018, 2019); and Turner (2013, 2016).

[6] See C. Bracken (2015). While treatments of either law and politics or politics and theology are more common, Bracken brings together jurisprudence and theology (along with Indigenous literature and political thought).

[7] Rarihokwats (a founding editor and publisher of *Akwesasne Notes*) also compiled a genealogy of reconciliation in SCC jurisprudence in an e-note first posted in 2010 and then amended in 2016, available here: https://www.academia.edu/21858174/Reconciliation_Indigenous_Nation_Sovereignty_v_Crown_Sovereignty

[8] Noting the conceptual distinctions, sense of "what the operation of 'reconciling' actually entails," and assertion of authority that undergirds it, Nichols writes: "even after a brief glance we can see that reconciliation is tightly bound to the concepts of sovereignty, jurisdiction, and legitimacy. And so, by pulling what initially seemed like one strand,

rather than repeat this body of work, to trace how the development of a jurisprudence of reconciliation fits in with and occurs alongside the emergence of other discourses at the time.

Reconciliation made its first post-s. 35 appearances in slightly different forms in two SCC decisions released a week apart in 1990. The first came in *R. v. Sioui*.[9] In this case, the SCC "conceive[d] of treaties between Indigenous peoples and Canada as instruments of reconciliation" (Macklem and Sanderson 2016b, 5), using the term to speak to the respective interests of the Wendat and the British, and to the need to seek an understanding of the "common intent" of a 1760 treaty between the parties with a view to "reconciling the competing interests" and "giv[ing] full effect to the spirit of conciliation" (*R. v. Sioui* [1990], 1071). While the latter phrase aligns more with the language of conciliation associated with early treaty-making as discussed by Edmonds (2016) and others,[10] the more prominent emphasis is placed on the consistency form of reconciling competing factors (1990, 1027, 1069, 1071-72).[11] This form – in different iterations – predominates in the SCC's early reconciliation jurisprudence and remains a dominant strand, though it is now joined by other formulations that can be understood to refer to a broader idea of harmonious relationship (Bird 2011, 11; MacIntosh 2011, 218-21; Walters 2006, 514-16). While the language in *Sioui* of balancing and identifying common intentions may sound geared at harmony, scholars have pointed out that these purposes are shaped by both past and present power imbalances and heavily favour British and Canadian interests.[12] The decision

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we quickly find ourselves entangled in a web of concepts that seem to go off in all directions" (2020, 4).

[9] For a philosophical reflection on the nature of this case from the perspective of someone at the heart of it, see "The Sioui Case Explained," in Georges Sioui's *Eatenonha: Native Roots of Modern Democracy* (2019, ch. 4).

[10] See chapter 2, and note 55 below, for examples of British colonial officials' references to conciliation.

[11] The decision advances an interpretation of the treaty wherein the Wendat could exercise their rights on the whole of their territory "so long as the carrying on of the customs and rites was not incompatible with the particular use made by the Crown of this territory," as this "interpretation would reconcile the Hurons' need to protect the exercise of their customs and the desire of the British conquerors to expand" (1990, 1027).

[12] It also bears noting that, like reconciliation, "harmony" can signify different things and be arrived at by widely varying means (Wyile 2017b, 381-82, 402).

only makes room for Wendat interests – in the form of practices of using land[13] – that are compatible with British interests in the land (1990, 1071-72; Grammond 2009, 43-44; Macklem and Sanderson 2016b, 5). Further, the interpretation of how these interests should be balanced is framed through the lens of the contemporary context. As Sébastien Grammond explains, Justice Lamer, who penned the *Sioui* decision, had a deep interest in history and drew on his own historical research in approaching the case (2009, 41), but instead of a genuine historical mutual intention, his reasoning produced "un raisonnement normatif sur la portée géographique souhaitable des droits contemporains des Hurons" conditioned by what appeared reasonable in the present according to the "practical requirements" of the non-Indigenous population (45, 43; *R. v. Sioui* [1990], 1071-72). Insofar as the idea of balancing is invoked in this reconciliation, then, it appears to be unmistakeably an asymmetrical rendering of consistency.

The first case to engage substantively with s. 35, *R. v. Sparrow*, came shortly after *Sioui* and invoked a form of reconciliation as consistency, but with a different focus than in *Sioui*.[14] Where in *Sioui*, the object of reconciliation was the parties' interests, in *Sparrow* it was the federal government's conflicting roles stemming from ss. 35 and 91(24) of the constitution. The passage from the decision that deals with reconciliation reads:

Section 35(1) does not explicitly authorize the courts to assess the legitimacy of any

[13] Gordon Christie (2005) considers how the SCC's framing of the issue – are the Wendat's activities incompatible with the Crown's use of the land? – "casts serious doubts on the use of the expressions 'accommodation' and 'balancing' as somehow synonymous or intimately inter-related, and as together somehow capturing a post-colonial sense of reconciliation" because it denotes that there is only room for the Wendat to have rights that do not conflict with non-Indigenous people's interests (48). He also identifies a bigger unaddressed consistency issue: it is not simply that two groups want to make different uses of the land, but that they have divergent understandings of what the land *is* (48-50). Thus, "[i]t is not a simple matter of working out some way by which the Huron could carry out activities within the park boundaries, for we are asking that underlying conceptualizations of the land – and of how the land relates to people linked to the land – may be reconciled. It seems fairly impossible […]" (50). Further, to do so would require reconciling "the underlying sovereign authority that generates them" (50). On the SCC's difficulties addressing the question of sovereignty, see Asch (2002); Beaton (2018); Bhandar (2004, 2007); Ladner (2009b, 2019); Ladner and McCrossan (2009); McCrossan (2013, 2015); Minnawaanagogiizhigook (2007); J. Nichols (2020); Stanton (2017); Turner (2016); Vermette (2011); and Walters (2016).

[14] This section on *Sparrow* is a lightly edited version of a section from an article laying out a preliminary sketch of my genealogy of reconciliation that dealt with SCC jurisprudence and the RCAP (Wyile 2017b, 391-93).

> government legislation that restricts aboriginal rights. The words 'recognition and affirmation', however, incorporate the government's responsibility to act in a fiduciary capacity with respect to aboriginal peoples and so import some restraint on the exercise of sovereign power. Federal legislative powers continue, including the right to legislate with respect to Indians pursuant to s. 91(24) of the *Constitution Act, 1867*, but must be read together with s. 35(1). Federal power must be reconciled with federal duty and the best way to achieve that reconciliation is to demand the justification of any government regulation that infringes upon or denies aboriginal rights. (1077, *h-i-j*)

Where exactly the term reconciliation – and the meaning it is given by the Court here – comes from is unclear.[15] There is no mention of it in the 1986 BC Court of Appeal decision in *Sparrow v. R*. The term does appear three times in the transcript from the SCC hearing, but in none of these instances is it used in the same fashion as it appears in the decision.[16]

The version of reconciliation put forth in *Sparrow* presents a formulation that "functions as a restraint on governmental action" (Newman 2008, 82; see also McCrossan 2013, 155). It is rooted in an approach to s. 35 that is analogous to the justification test for s. 1 of the *Charter* inspired by Brian Slattery's scholarship (McCrossan 2013, 166; Newman 2008, 81), and reflected the shift in the balance between parliamentary supremacy and judicial review enacted by the constitutional changes of 1982 (McNeil 2003, 2-3). While this reconciliation requirement in *Sparrow* mitigated the impacts of parliamentary supremacy on Aboriginal rights, it did not eradicate them entirely. Assessments of the transformative potential of *Sparrow*'s vision of reconciliation have been mixed. This is exemplified in reflections on how the decision renounces the "old rules of the game" in relations between Canada and Indigenous peoples, yet also

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[15] On internal debates among the SCC justices that shaped the decision in *Sparrow*, see Sharpe and Roach (2003, 449-53). Their account does not illuminate the use of reconciliation but offers broader insights about the crafting of the judgment. They draw on archival papers to consider differences of perspective on the SCC and contextualize Chief Justice Dickson's contributions to jurisprudence and the establishment of the RCAP, tracing the evolution in his thinking about Indigenous peoples' rights and position in the Canadian constitutional order. Their study of SCC memoranda shows that Dickson's role in the development of Aboriginal and treaty rights jurisprudence might itself be seen as a reconciliatory task of sorts, as he "mediat[ed] between the strongest poles of his Court" (451).

[16] One use is in a question about consistency between the arguments in two Crown submissions (SCC 1988, 101). The other two uses refer to reconciling the interests of Indigenous peoples and others generally (48), and of Indigenous and non-Indigenous fishers by federal fisheries officials specifically (130-31).

pronounces sovereignty to be undoubtedly vested in the Crown. Walters notes that the latter passage has been the one courts have subsequently relied on, and posits that "[t]his sovereignty-without-a-doubt passage reflects deeply held judicial convictions and anxieties" (2016, 37). Some suggest that even though the SCC maintained colonial attitudes about sovereignty, "the decision nevertheless provides an opening to question the legitimacy of Crown sovereignty over Aboriginal peoples" (Ladner and McCrossan 2009, 272). For others, this still falls far short of a reconciliation shaped by the goal of engagement between Canadian law and Indigenous legal orders in their own right as it only initiates a shift within a form of Canadian law that continues to subjugate Indigenous legal orders (Minnawaanagogiizhigook 2007, 84).[17]

Sparrow appears to present reconciliation as consistency, where the exercise of federal power must be consistent with federal duty, which might be understood as being in a relation of opposition. As Minnawaanagogiizhigook's (2007) critique highlights, this is not a form that meaningfully and substantively engages with the relations of oppression between Indigenous peoples and the Canadian state (van Roermund 2001, 175-76), even if it does "presen[t] a vision of reconciliation that is underscored by federal duty (and responsibility) to protect the interests of Aboriginal people" (McCrossan 2013, 160). In Nichols's view, this results from the SCC failing to interrogate the prevailing interpretation of s. 91(24) of the constitution as granting the federal parliament unlimited sovereignty over Indigenous peoples and their lands (2020, 7, 38-40). Paradoxically, the s. 35 framework underlying the SCC's approaches to reconciliation from *Sparrow* onwards rests on "the unquestioned assumption of the very thing that is in contention. In other words, this framework presupposes the *very sovereignty* that it is supposed to be

[17] The limitations of the vision in *Sparrow* cannot necessarily be only attributed to the attitudes held by the Court, however. As Michael McCrossan has shown in his analysis of the hearing transcripts, "it would appear that Sparrow's own lawyer, in his submissions to the judiciary, unwittingly opened the door to the continuation of governmental regulatory regimes" (2013, 165).

reconciling" (16; italics in original). Per Nichols, this approach to s. 91(24) undergirds the SCC's lack of doubt about Crown sovereignty (283), and despite rejecting the "old rules," *Sparrow* continues this prevailing "broad view" of federal power (283-84). Writing of *Sparrow*'s shift from "old" to "new" rules via the entrenchment of s. 35, Nichols warns: "it can […] mislead one into thinking that the 'old rules' were somehow solid all the way through, or that the 'new rules' are actually significantly different. Neither is necessarily the case" (11), because the old rules' unfounded assertion of sovereignty is retained (14-15). Thus, "the game of reconciliation in *Sparrow* operates within a framework of unquestionable federal 'power' that determines the results of the game in advance" (284). Having to reconcile federal power and federal duty means that "Aboriginal and treaty rights check the exercise of sovereign power" but "do not […] challenge the constitutional validity of sovereignty itself" (Macklem and Sanderson 2016b, 2).

For Nichols, this is a stark continuity in the reconciliation jurisprudence that has been present from the outset. Others saw reason to have higher hopes for the approach in *Sparrow* that were then dashed by subsequent jurisprudence (McCrossan 2018, 361). In D'Arcy Vermette's assessment, *Sparrow* offered "a coherent vision" of reconciliation, but the SCC then proceeded "to apply reconciliation in a variety of ways, each of which diverted considerably from the *Sparrow* approach" (2011, 57). He terms this form "constitutional reconciliation," distinct from what he calls the "historical reconciliation" and "contemporary reconciliation" of the next two decisions to use the term (58), because the object of reconciliation is rooted in federal powers allocated in the constitution (59). At this point, reconciliation was framed "as a burden placed on the actions of the federal government" (59), and "did not involve taking account of the interests of non-Aboriginal" people in assessing the Crown's fulfillment of its obligations to Indigenous peoples (McNeil 2003, 3). In Darlene Johnston's view, the threshold for establishing Aboriginal

and treaty rights still felt attainable then, whereas later "reconciliation became a vehicle for infringement in the name of non-aboriginal appeasement" (2009, vii).[18]

Six years later, during which time the SCC's membership changed,[19] reconciliation acquired a different, more central place in the interpretation of s. 35. The decisions in which this shift takes place arrived in a context where, despite a certain degree of progress in negotiations in BC and Ontario after *Sparrow* (as well as the election of NDP governments in both provinces), "[t]he federal government did not take the opportunity to use *Sparrow*, or the Royal Commission's various elaborations on *Sparrow*, to embark upon any sort of meaningful nation-wide consideration of Aboriginal rights," and Indigenous peoples thus kept pursuing litigation (Rudin 1998, 87). The first Aboriginal law case where the term appears in 1996, *R. v. Badger*, only refers to it once. This use is consistent with the *Sparrow* formulation, with Justice Sopinka noting that the constitutional provisions for provincial legislative power regarding conservation and hunting rights must be reconciled (1996, 785). Later that year, however, a shift occurs in a trilogy of decisions that came down the same day: *R. v. Van der Peet*, *R. v. N.T.C. Smokehouse* and *R. v. Gladstone*. The first and last of these include significant uses of reconciliation.[20] The term appears more in *Van der Peet* than in *Sioui* or *Sparrow*, with key passages stating:

> More specifically, what s. 35(1) does is provide the constitutional framework through which the fact that aboriginals lived on the land in distinctive societies, with their own practices, traditions and cultures, is acknowledged and reconciled with the sovereignty of the Crown. The substantive rights which fall within the provision must be defined in light of this purpose; the aboriginal rights recognized and affirmed by s. 35(1) must be directed towards the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown. (1996, para. 31)

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[18] See also Goldenberg (2004); Grammond (2009, 44); McNeil (2003, 9, 20).

[19] Brian Dickson retired from the SCC just after *Sioui* and *Sparrow* were issued and Bertha Wilson in early 1991. Both then played important roles in the RCAP, with Dickson presenting the government with terms of reference and recommended commissioners, and Wilson serving as a commissioner. They were replaced on the Court by Frank Iacobucci and John Major. Antonio Lamer became Chief Justice. On Dickson's and Lamer's approaches to Aboriginal rights jurisprudence, see Grammond (2009), Sharpe (2000), and Sharpe and Roach (2003, ch. 21). On Wilson's work relating to Indigenous peoples at the SCC and the RCAP, see Anderson (2002, ch. 8 and 14).

[20] This section on *Van der Peet* is also adapted from Wyile (2017b, 393-95), with some revisions and additions.

> The definition of an aboriginal right must, if it is truly to reconcile the prior occupation of Canadian territory by aboriginal peoples with the assertion of Crown sovereignty over that territory, take into account the aboriginal perspective, yet do so in terms which are cognizable to the non-aboriginal legal system. (para. 49)[21]

Like with *Sparrow*, the meaning that reconciliation is given in *Van der Peet* is not foreshadowed in the lower court decision, where reconciliation is only used in a direct quotation of the passage from *Sparrow* (*R. v. Van der Peet* 1993, para. 74), or in the SCC hearing transcripts, where the term does not appear at all (SCC 1995). Rather, this conception appears to be drawn from scholarship and jurisprudence in Canada, the United States, and Australia (*R. v. Van der Peet* 1996, para. 43; McNeil 2003, 5). Chief Justice Lamer refers to the French text of s. 35 (para. 32), *Calder* (para. 33), *Guerin v. The Queen* (para. 34), and the academic writings of Brian Slattery (para. 35), David Elliot, Patrick Macklem, William Pentney, and Mark Walters in Canada (paras. 41-42); to the decisions of Chief Justice Marshall in *Johnson v. M'Intosh* and *Worcester v. Georgia* in the US (paras. 36-37); and to *Mabo* and statutory fishing rights in Australia (paras. 38-40).[22] Of the passages cited, only an excerpt from *Mabo* about reconciling customary rights with Western law and institutions uses the term (para. 40). Attesting to the significance of discontinuities and parallel tracks as well as continuities and connections in a genealogy, Russel

[21] See also paras. 36, 42-44, 50, 57, 61. The term also appears once in Justice L'Heureux-Dubé's reasons (para. 135) and throughout Justice McLachlin's reasons (paras. 230-31, 240, 302, 306-7, 309-10, 312-13, 315-16).

[22] Scholars have debated whether the SCC's reconciliation doctrine was in fact, as some suggest, "pulled from thin air" (Barsh and Henderson 1997, 999; Vermette 2011, 71). On this, see e.g., C. Bracken (2015, 13), McCrossan (2018, 361), and Newman (2008, 82-83). I have traced the citational threads in *Van der Peet* here as I see them, as a non-legal specialist, taking inspiration from McCrossan's work in searching the hearing transcripts and lower court decisions. In Newman's view, "The judges were no doubt aware of the ongoing discussions on reconciliation in Australia, discussions that by this point were not concerned solely with the limitation of Australian governmental power. They were certainly aware of the articles they cited, some of which, like those of André Émond, cast a challenge as to how assertions of certain Aboriginal rights could be made consistently with the rule of law and the assertion of Crown sovereignty. As in *Sparrow* in the first place, and thus consistent with the Court's earlier methodological approach, the Court drew on academic theory to flesh out the meaning of section 35. The Court, however, seemingly turned in part to different theorists, notably some on the other side of a linguistic divide that bedevils the claims of those who attempt to characterize dominant Canadian constitutional thought in any monolithic or unilingual way. Indeed, the French-language writings of theorists like Émond manifest a different approach to Aboriginal rights that, in this instance, appears partly to have undergirded the Court's approach. […] it would seem that the Court did redevelop reconciliation in light of further intellectual influences on its jurisprudence" (2008, 83).

Barsh and Sákéj Henderson observe that this conception of reconciliation did not draw on the work of the RCAP despite its availability at the time (1997, 999).[23]

I asked a retired judge who was among those who heard the *Van der Peet* trilogy whether there had been a particular reason that "reconciliation" was used in the decisions and whether it was intended to carry a particular meaning. In not being able to speak directly with the authors of the *Sparrow*, *Sioui* and *Van der Peet* decisions themselves, I could not determine whether there was a conscious intention in using the word and if so, what it was. In John Major's recollection, there was no discussion among all the justices that sat on the *Van der Peet* case regarding the choice of words in the decision (research interview, July 2018). There may have been discussion among some members of the Court, but to Justice Major's knowledge that terminology was not discussed, and, like Clark's reflection on the 1984 Speech from the Throne, he suspected that the term may have been employed largely as a matter of happenstance. Perhaps it had simply been the word that came to mind for Chief Justice Dickson when penning *Sparrow*, and had another word occurred to him – Justice Major suggested that "accommodate" could have been a suitable alternative to "reconcile" in that context – then it might have been used instead. Chief Justice Lamer may have then borrowed "reconciliation" from *Sparrow*, or again may have had it happen to come to mind.[24] Generally speaking, Justice Major noted, it was uncommon to debate the use of individual words as opposed to particular sentences or conclusions. He observed that while

[23] This is not necessarily unusual. Kim Stanton notes, "While the RCAP report relied upon exhaustive evidence from testimony and scholarly research, like many royal commissions, its conclusions are not uniformly accepted as factual evidence in courts of law" (2017, 28). This is not to say the SCC never drew on the RCAP, however. Chief Justice Lamer cited the RCAP in *Delgamuukw v. B.C.* (1997), though not as evidence (Stanton 2017, 28), and Justice Binnie drew the concept of shared or merged sovereignty from the RCAP (though not accompanying it with the acknowledgment of sovereignty of Indigenous governments that the RCAP did) in *Mitchell v M.N.R.* (2001) (Walters 2016, 60). In a recent retrospective, Dussault saw the RCAP's work as having been "readily welcomed into the courts, where the report dramatically influenced the development of Aboriginal law" (2021, 80).

[24] Lamer only refers to *Sioui* – which he also wrote – once in *Van der Peet* (para. 24), and not in conjunction with reconciliation. References to *Sparrow* are significantly more prevalent in both the majority and dissenting reasons. Nevertheless, it is also unclear whether his own earlier use of the term in 1990 in any way informed its use here.

reconciliation was "a phrase usually associated with matrimonial disputes," it has also "been used in other contexts" and didn't seem to have one "particular unique meaning […] in the field of law" but has "drifted into meaning a number of things" (research interview, July 2018). Absent clearer insight from Chief Justices Dickson or Lamer, then, whether its origins in SCC jurisprudence stem from anything other than inadvertent wording cannot be determined.

In *Van der Peet*, the sources Chief Justice Lamer cites seem to furnish the substance of what he uses "reconciliation" to describe, more than the word itself. This form represents a shift from *Sparrow*.[25] Crown sovereignty and the pre-existence of Indigenous societies become reconciliation's objects instead of "federal power" and "federal duty" (J. Nichols 2020, 284), with a "changed emphasis on who must undertake accommodations to enable that reconciliation" (MacIntosh 2011, 205). What "process of adaptation" accomplishes this – who must reconcile what/who to what – is not a neutral choice (Walters 2006, 500-501; Vermette 2011, 61, 67). For Barsh and Henderson, reconciliation moves from entailing "a limitation on federal power" to serving as a means "to limit further the scope of Aboriginal rights" (1997, 999).

Van der Peet's vision of reconciliation relies on various assumptions about the nature of sovereignty, the Crown's right to claim it, and the requirements of temporality that surround such claims (Bhandar 2004; Coulthard 2014, 106-7; Ladner and McCrossan 2009; McCrossan 2013; McNeil 2003). It also casts Indigenous peoples' rights in purely cultural terms, divorcing them from their epistemological and political context (Turner 2016), and leaving it to the SCC to

[25] Different reasons are posited for this shift. Jonathan Rudin argues that "the decision in *Van der Peet* is best understood as a reaction to the federal government's rejection of the Court's invitation to enter into substantive negotiations with Aboriginal people contained in *Sparrow*" (1998, 68), suggesting that the courts' institutional limitations are such that "if the Court sees that the government will not even come to the table after they have managed to deal the Aboriginal players a bigger hand [to play at the negotiating table], then the pressure rises on the Court to retrench when the Aboriginal litigants return for even better cards" (86). Michael McCrossan points to internally rather than externally-sourced limitations, arguing that it is a reaction to the introduction of Indigenous territorial claims: "it is at the very moment in which Aboriginal rights […] are linked to alternate conceptions of territorial space […] that a majority of the Court shifts its understanding of reconciliation, offering instead a unified vision of sovereignty which ensnares Aboriginal peoples within 'Canadian' territorial and social space" (2013, 157).

assess which aspects of Indigenous cultures "can be reconciled" with the ways of the Canadian polity (Barsh and Henderson 1997, 1002).[26] The notion that Indigenous peoples must be reconciled to Crown sovereignty is contested. For instance, Michael Asch argues that "if for no other reason than that the political rights of Indigenous peoples already existed at the time that Crown sovereignty was asserted […] it is the question of how the Crown gained sovereignty that requires reconciliation with the pre-existence of Indigenous societies and not the other way around" (2014, 11). Instead, that question – as John Borrows puts it, "What alchemy transmutes the basis of Aboriginal possession into the golden bedrock of Crown title?" (1999, 558) – is elided. Walters concludes that *Van der Peet* implies a consistency rather than relationship form of reconciliation, though "[t]o the extent that people are implicitly involved, […] the formulation may suggest reconciliation as resignation rather than relationship" by asking Indigenous peoples to resign themselves to the Crown's sovereignty over them (2008, 178; see also 2006, 499-501).

While *N.T.C. Smokehouse* made no mention of reconciliation, *Gladstone* extended the vision in *Van der Peet* as follows:

> Aboriginal rights are recognized and affirmed by s. 35(1) in order to reconcile the existence of distinctive aboriginal societies prior to the arrival of Europeans in North America with the assertion of Crown sovereignty over that territory; they are the means by which the critical and integral aspects of those societies are maintained. Because, however, distinctive aboriginal societies exist within, and are a part of, a broader social, political and economic community, over which the Crown is sovereign, there are circumstances in which, in order to pursue objectives of compelling and substantial importance to that community as a whole (taking into account the fact that aboriginal societies are a part of that community), some limitation of those rights will be justifiable. Aboriginal rights are a necessary part of the reconciliation of aboriginal societies with the broader political community of which they are a part; limits placed on those rights are, where the objectives furthered by those limits are of sufficient importance to the broader community as a whole,

[26] In Dale Turner's view, this approach constitutes a misrecognition of Indigenous peoples' rights by failing to situate them "in the political context of Indigenous nationhood" (2016, 171). He pushes back against *Van der Peet*'s requirements for the articulation of Aboriginal rights, arguing that "characterizing Aboriginal rights as a form of reconciliation between pre-contact Aboriginal cultures and the unilateral assertion of state sovereignty *is not cognizable to Aboriginal ways of understanding the world*" (178; emphasis in original).

equally a necessary part of that reconciliation. (1996, para. 73; emphasis in original)[27]

This decision signals that *Van der Peet*'s vision of reconciliation requires not only accepting the assertion of Crown sovereignty but also starting the conversation about what this reconciliation entails from the assumption that Indigenous societies are already a subset of the larger Canadian society.[28] Ladner and McCrossan argue that "the Court has continuously dealt with contestations of sovereignty by situating Aboriginal people as part of the Canadian collective and by creating a unified vision of sovereignty that subsumes Aboriginal nations under the Crown" (2009, 278). While Indigenous peoples' rights have protection under s. 35 that non-Indigenous people's interests do not, the latter are introduced into reconciliation's balancing exercise in such a way that they can take precedence over the former, leaving some scholars wondering about the onus of reconciling not going in the other direction (Macklem 2018, 338-39, 345; Vermette 2011, 61-62, 67). Thus, Brenna Bhandar suggests, challenges to the Canadian legal and political system are folded into the system itself (2004, 834), and the reconciliation it performs avoids addressing "the legitimacy of the founding violence of colonial settlement" (833; see also McCrossan 2015, 33). Bhandar argues that this move comprises a tautological line of reasoning whereby Aboriginal rights are formulated as a burden on Crown title, and so Crown sovereignty must be supreme such that Aboriginal rights can be a burden on Crown title (2007, 98). According to Michael McCrossan, this formulation of reconciliation, which emphasizes the supremacy of Crown sovereignty and discursively locates Indigenous societies within the Canadian political community, "occurs at the precise moment that Aboriginal peoples link their rights to alternate legal orders and understandings of territorial space" (2013, 167). In the process, it "undercut[s] Indigenous legal orders, alternative territorial understandings, and ongoing forms of resistance to

[27] For other references to reconciliation in the decision, see also paras. 72, 74-75.
[28] This passage regarding the *Gladstone* decision is reproduced from Wyile (2017b, 619-20).

initial 'British' assertions" (2018, 361-62). The result is a certain form of recognition of distinct status and rights, but wherein historical and contemporary power imbalances are glossed over and "the less-powerful entity is subsequently forced to submit or resign itself to the existing structural relations of dominance" (Bhandar 2004, 840; see also Borrows 2017, 37; Minnawaanagogiizhigook 2007, 93-94; J. Nichols 2020, 45-46).

The distinctions and continuities between the forms of reconciliation introduced in *Sioui*, *Sparrow*, *Van der Peet* and *Gladstone* thus run along three different lines. First, there is, as McCrossan (2013, 2015, 2018) explores, the division between the forms that it takes before and after a challenge to Canadian territoriality embodied in a title claim comes before the SCC. Vermette's work offers a second by focusing on the relationship that is the object of reconciliation. In contrast to the "constitutional reconciliation" of *Sparrow*, he describes *Van der Peet*'s as "historical reconciliation" as it "is focused on the historic relationship between Aboriginal peoples and the Crown" (though he notes that this complements rather than substituting for constitutional reconciliation) (2011, 60). He then calls that in *Gladstone* "contemporary reconciliation" as its target is contemporary conflicts between Indigenous and non-Indigenous peoples' interests (61-62). The third set of distinctions comes from assessing the different forms that reconciliation takes under the pen of different Chief Justices (Grammond 2009; MacIntosh 2011; McNeil 2003). In addition to marking Chief Justices Dickson and Lamer's differing approaches, *Van der Peet* also introduces another approach to reconciliation and sets the stage for potential future routes to be taken by the SCC in the dissent of Justice Beverley McLachlin, who later succeeded Lamer as Chief Justice.[29] Drawing on *Sparrow*, McLachlin takes issue with the emphasis on "community harmony and the reconciliation of

[29] After retiring from the SCC in 2017, McLachlin described "the peaceful evolution of Indigenous rights in a way that might foster reconciliation between Indigenous and non-Indigenous peoples" as "the grand project of [her] legal generation" (2019, 288).

aboriginal and non-aboriginal interests" for how it draws the "economic demands" of non-Indigenous people into the reconciliatory equation in ways that "may speak more to the politically expedient than to legal entitlement," and have "the potential to erode aboriginal rights seriously" (*Van der Peet* [1996], paras. 306-7, 313). Stressing the importance of treaties and of not transferring Indigenous peoples' rights to non-Indigenous people without their consent (paras. 310, 313, 315), she concludes that

> a government limitation on an aboriginal right may be justified, provided the limitation is directed to ensuring the conservation and responsible exercise of the right. Limits beyond this cannot be saved on the ground that they are required for societal peace or reconciliation. Specifically, limits that have the effect of transferring the resource from aboriginal people without treaty or consent cannot be justified. Short of repeal of s. 35(1), such transfers can be made only with the consent of the aboriginal people. It is for the governments of this country and the aboriginal people to determine if this should be done, not the courts. (para. 316)

While McLachlin's dissent did not differ so much from the majority framing of reconciliation in *Van der Peet* and *Gladstone* as to challenge the legal interpretation lying at the foundations of Canada's constitutional framework (J. Nichols 2020), it did open another path of conceptualizing reconciliation that branched off from *Sparrow* in a different direction from that put forward by Chief Justice Lamer. Scholars have reflected on the extent to which this thread was later picked back up after McLachlin became Chief Justice (MacIntosh 2011; McNeil 2003), but in the short term this dissent and its accompanying interpretation of reconciliation was short-lived: a year later, Chief Justice Lamer "reaffirmed [his conception of reconciliation] in very similar language in *Delgamuukw* without further objection from the other judges" (Newman 2008, 82).

As Patrick Macklem highlights, the SCC's emphasis on and conception of reconciliation "informs the nature and scope of the rights recognized by section 35," as well as what will be taken into consideration in assessing violations of those rights (2017, 337-38). In doing so, it plays a key role in shaping the polity's constitutional bounds, with its approach to the question of

Canadian sovereignty having no small part in the process (Beaton 2018; J. Nichols 2020; Walters 2016). Since its introduction in these 1990 and 1996 cases, "il ne fait pas de doute que l'idée de réconciliation est devenue et demeure toujours le leitmotiv des jugements de la Cour suprême en matière autochtone" (Grammond 2009, 49). However, despite its continual presence since then, its substance has not always remained consistent. It is variously advanced as "a constitutional principle and a substantive goal" (J. Nichols 2020, 41). As Constance MacIntosh writes, "This term is evoked as a norm in Aboriginal rights cases. However, the way in which the term is deployed, the values that inform it, the logic that drives it, and the conclusions that it supports have shifted and are continuing to shift" (2011, 202). These discursive shifts are particularly significant given the courts' role in "provid[ing] a possible common language" for reorienting relations between Indigenous peoples and Canada (S.R. Stevenson 2011, 280), and as detailed in later chapters, the SCC's early uses of reconciliation quickly echoed in other quarters. While legal scholars have attended to this shifting conception as being what some describe as an "invention" or "arbitrary creation" of the SCC (J. Nichols 2020, 107n133; Vermette 2011, 57), projects of reconciliation were also envisioned and advanced in other arenas at the same time. These other approaches sometimes converged with and sometimes diverged from the SCC's, including in how they conceived of relationships between reconciliation and law.

7.3 The Commissions: The Aboriginal Justice Inquiry of Manitoba and the Royal Commission on Aboriginal Peoples

Between 1987 and 1996, law and reconciliation also came under examination from other angles due to the creation of two commissions, one provincial and one federal, tasked with assessing the relationship between Indigenous peoples and Canadian institutions and society. The people I

spoke with who participated in these processes did not remember reconciliation as having been a dominant operational concept. Nevertheless, the term does appear in the final reports of both commissions, and participants acknowledged reconciliation as a significant implicit conceptual influence even if the term itself was not central at the time. Both commissions – the AJI in Manitoba that issued its final report in 1991 and the RCAP, which was established in 1991 and concluded in 1996 – were important events on the path to more recent developments around reconciliation in Canada. The ways that reconciliation appears in association with their work also serve to illustrate the variety of roles the term was playing during this period, overlapping, complementing, and contrasting with the uses operating in other processes and events.

7.3.1 The Aboriginal Justice Inquiry of Manitoba, Restorative Justice, and Reconciliation

The AJI was struck in response to the murder trial of two men charged in the killing of Helen Betty Osborne in 1987, and the killing of J.J. Harper by Winnipeg police in 1988. The Government of Manitoba established the inquiry in April 1988, and it delivered its final report in 1991. The AJI was co-chaired by Associate Chief Justice A.C. Hamilton and Associate Chief Judge Murray Sinclair, who later went on to become the Chair of the TRC. Two volumes of their report dealt with the killings of Osborne and Harper specifically, while the third focused more globally on the relationship between Indigenous people and the Canadian legal system.

Bradford Morse, who served as the AJI's director of research, stated that "reconciliation was a dominant factor in our thinking, in a variety of contexts," but he did not recall whether the word "reconciliation" itself was used in discussions of rebuilding relationships during the AJI's work, which was the sense he gave the word in that context (research interview, March 2018). He noted two areas of relationship rebuilding that emerged through the focus of the AJI. The first

was a need for a kind of reconciliation with the police and between Indigenous and non-Indigenous people that was highlighted by the circumstances around the two deaths, as in the case of Osborne's murder, "many white people in [The Pas] were aware of her rape and death, but would not report it to the police," and "the police were themselves the ones who shot and killed" Harper (research interview, March 2018; see also AJI 1991, vol. 2, ch. 5, vol. 3). However, this application of reconciliation does not appear in the AJI's report. The word is not used anywhere in the volumes dealing with the deaths of Osborne and Harper, but this does not necessarily mean the connection was not being made more broadly in discussions about the investigations of the two cases and their aftermaths. Indeed, as explored below, the mayor of The Pas highlighted the notion of reconciliation in his appearance before the RCAP a few years later.

The second way the term came up in connection with the AJI related to reconciliation-oriented practices within the criminal law system, an approach to addressing crimes (particularly by young offenders) noted as having roots both in many Indigenous peoples' justice practices and in the Mennonite tradition (B. Morse, research interview, March 2018). As discussed briefly in chapter 1, this points to the forms of reconciliation that are centred in the restorative justice paradigm, which itself is the subject of contested histories rife with discursive complexities.[30] This is the form which appears in the AJI's report, particularly in *Volume 1: The Justice System and Aboriginal People*. The term's use in the report is not extensive, and it is used with significantly less frequency and variation than in later reports such as the RCAP (though it bears noting that the AJI's mandate was also much narrower than the RCAP's), but it does appear

[30] See Kelly Richards's work (2006, 2009, 2014) for a genealogical exploration of restorative justice. Richards maps out the tensions, difficulties, and lack of consensus surrounding definitions of restorative justice and investigates its history, which she suggests is "simultaneously – perhaps contradictorily – both taken-for-granted, and fraught with contention" (2006, 18-22, 17). There are similarities and overlap in several areas with the ambiguities and contestation that surround reconciliation, and like Richards with "restorative justice," I am preoccupied with the "currency" the term "reconciliation" holds and the power relations and contestation that underpin that (26).

several times, including in recommendations. Co-chair Murray Sinclair did not "recall anybody ever doing a presentation to us during the AJI who talked about reconciliation," but did recall discussing it with Hamilton, explaining that the two judges had engaged with conceptions of reconciliation as the restoration of peaceful co-existence in the wake of harm through the removal of the "violent element" in a relationship through their work in family and criminal law, particularly in addressing questions of sentencing (research interview, October 2018). Insofar as the term is used in the AJI report, it is this type of conception that appears. This aligns with Sinclair's observations that his "conversations with [Hamilton] about reconciliation were largely in the area of […] the criminal justice system, because that was what we were looking at,"[31] and that the AJI report was concerned with the need to "think about […] the justice system as a healing process" rather than an adversarial one (research interview, October 2018).

While some of the uses are more general references to conflict resolution measures such as conciliation, mediation, and victim-offender reconciliation programs, the report's main uses of reconciliation relate to discussions of Indigenous peoples' conceptions and practices of justice and peacemaking, and the need to incorporate more of these into Manitoba's legal system.[32] These discussions highlight emphasis on reconciliation as central to distinguishing between meanings of justice in Indigenous and non-Indigenous societies:

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[31] Sinclair also acknowledged the wide variety of meanings and definitions of reconciliation, noting its different significance in, for example, bookkeeping, as compared to different areas of law or politics. The TRC would later have to confront this cornucopia of definitions – Sinclair noted that a discussion at the outset of the TRC's work yielded "well over a hundred different meanings depending on context" (research interview, October 2018).

[32] See Dickson-Gilmore and La Prairie (2005, vii-viii), LaRocque (1997), Monchalin (2016, 281-84), Richards (2006, 96-116), and Woolford (2009, 45-46) for cautionary notes on conflating Indigenous legal traditions and restorative justice when it comes to the origins and use of such mechanisms, particularly with respect to state-sponsored programs that are presented as being rooted in Indigenous peoples' practices. The AJI discusses cultural and linguistic differences between the Canadian legal system and Indigenous peoples around concepts related to justice (1991, vol. 1, ch. 2). However, neither the AJI report nor the later proceedings of the RCAP include specific consideration of potential conceptual differences relating to reconciliation as a term for the desired outcome of restorative justice mechanisms or Indigenous peoples' justice practices; "reconciliation" is used without further qualification in both contexts.

> The purpose of a justice system in an Aboriginal society is to restore the peace and equilibrium within the community, and to reconcile the accused with his or her own conscience and with the individual or family who has been wronged. This is a primary difference. It […] significantly challenges the appropriateness of the present legal and justice system for Aboriginal people in the resolution of conflict, the reconciliation and the maintenance of community harmony and good order. (AJI 1991, 1: 22)

The report discusses Elders' role in facilitating mediation and reconciliation in Indigenous communities (51), and argues that these values and processes underpinning Indigenous peoples' approaches to addressing harm and conflict are fundamentally at odds with the Canadian system:

> The concepts of adversarialism, accusation, confrontation, guilt, argument, criticism and retribution are alien to the Aboriginal value system, although perhaps not totally unknown to Aboriginal peoples. In the context of Aboriginal value systems, adversarialism and confrontation are antagonistic to the high value placed on harmony and the peaceful coexistence of all living beings, both human and non-human, with one another and with nature. Criticism of others is at odds with the principles of non-interference and individual autonomy and freedom. The idea that guilt and innocence can be decided on the basis of argument is incompatible with a firmly rooted belief in honesty and integrity that does not permit lying. Retribution as an end in itself, and as an aim of society, becomes a meaningless notion in a value system which requires the reconciliation of an offender with the community and restitution for victims. (37)[33]

In exploring these distinctions, their implications for Indigenous people's experiences in the Canadian legal system, and possible approaches for addressing the resulting harms, the AJI visited Indigenous tribal courts in the US and considered relevant programs in Australia and New Zealand (vol. 1, ch. 7), developing a comparative analysis of Indigenous justice systems and of Manitoba's court system (vol. 1, ch. 6). As Sinclair explained, pointing to the Peacemaker Courts of the Navajo Nation and approaches shared by Elders who spoke to the AJI, an orientation towards justice as healing is concerned with "fixing the problem, whatever the problem might be" in a relationship that harm or claims of harm bring to light, rather than with determining whether a crime against the nation has been committed (research interview, October 2018).

Throughout the AJI report, whenever "reconciliation" is used – whether it is used

[33] Other juxtapositions of retribution (e.g., incarceration) and reconciliation can be found on pp. 390 and 411.

generally to indicate a value or goal or as a proper noun, as in "victim-offender reconciliation program" – it is given this sense of mending broken relationships and restoring harmony.[34] Though generally not used in this fashion in the text,[35] the other meaning that speaks to whether something is (able to be rendered) compatible with something else is nevertheless implicit in much of the report. This yields an interesting and perhaps contradictory dual role for reconciliation in the assessment of the relationship between Indigenous people and Canadian criminal law. For example, the discussion of tribal courts in the US notes that judges are limited from employing sentencing alternatives to fines and incarceration – including "victim-offender reconciliation" – due to lack of resources, and concludes that perhaps "tribal courts may suffer the worst of both worlds. The common law adversarial model may be incompatible, in fact, with long-standing traditional values that promote harmony and reconciliation. Additionally, tribal courts may not be receiving sufficient resources" for people to be able to "benefit from the adversarial system" (296). In other words, not only is the system not effectively meeting its own standards due to under-resourcing, but it may not be reconcilable with reconciliation.[36]

In its findings and recommendations, the AJI decidedly comes down on the side of reconciliation of the restitution and restoring relationships variety, pushing back at avenues that implicitly contain other forms of reconciliation: that Indigenous people should resign – reconcile – themselves to the criminal law system as it is, or that Indigenous peoples' restorative practices can be simply incorporated into – reconciled with – the existing system (see AJI 1991, 1: 264).

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[34] See AJI (1991, 1: 22, 37, 51, 267, 296, 366, 390, 400-402, 411, 417, 435, 466, 496, 574, 576, 579, 584, 654).
[35] One exception deals with John A. Macdonald and Louis Riel disagreeing on whether the *Manitoba Act* constituted a treaty. The report states that while Riel saw this as an "arrangement between nations," Macdonald "regarded it as a domestic rearrangement, a transfer of responsibility within the British household. The existence of Manitoba was a political necessity, part of the price paid to acquire once and for all an extraordinary land and an ocean-to-ocean future for the new nation. The views of the two men were never reconciled, even to this day" (1991, 1:61).
[36] Indeed, a news article following the release of the AJI report, highlighting the centrality of reconciliation in Indigenous peoples' conceptions of justice, put the contrast in precisely those terms: "It is an imposed and foreign system; many of its terms and concepts cannot be translated into aboriginal languages; its adversarial and adjudicative nature cannot be reconciled with the goals of peace, harmony and reconciliation" (d'Eca 1992).

On matters ranging from sentencing and probation to the role of youth justice committees and diversion and rehabilitation programs, the recommendations stress the need to shift from an emphasis on retribution towards a greater place for reconciliation as an approach to addressing harm and conflict that makes room for the role and needs of the victim(s), the offender(s) and the broader community (1: 402, 411, 417, 496, 574, 584, 654). For seemingly both principled and pragmatic reasons (given the conceptual and epistemological incompatibilities noted above), these recommendations in favour of a (re)turn to reconciliation-oriented justice are rooted in a commitment to self-determination and an argument for Indigenous self-government. Noting that approaches favouring minor reforms like increasing the number of Indigenous people employed in the legal system or promoting education about how the system functions appear to be rooted in belief that "there is nothing wrong with the system, only with Aboriginal people," the report stresses that "in establishing a system of justice for Aboriginal people, the laws enacted by Aboriginal people themselves, or deliberately accepted by them for their purposes, must form the foundation for the system's existence. This calls for system change and it is clear that systemic change is necessary" (265; see also Sinclair 1994, 175). Moving away from the detrimental effects of a retribution-oriented legal system towards reconciliation within Indigenous communities is thus linked to realizing self-determination. It could also have implications for inter-group relationships. In presenting their recommendation regarding the establishment of distinct justice systems, the AJI draws on a statement from the AMC to

> propose […] the restoration of two concepts:
> - That the traditional system of Aboriginal justice served the needs of its society based on the objects of healing, reconciliation and re-establishment of the community in situations where the peace and harmony of the community was disrupted.
> - That the same object of peace and harmony was intended to serve the needs of two societies when conflict arose. (AJI 1991, 1: 267)

In this regard, the implementation of Indigenous self-determination might signal a return not

only to a focus on reconciliation in the resolution of conflicts within Indigenous communities instead of the imposition of Canadian criminal law in addressing those situations, but also to employing reconciliation as an approach in addressing conflicts between Indigenous communities and/or Indigenous and non-Indigenous peoples.

Sinclair reiterated many of these points a couple of years after the conclusion of the AJI at a conference on justice and Indigenous peoples. Sinclair's presentation laid out the differences between diverging understandings of justice (1994, 178-83), again highlighting the emphasis on reconciliation in Indigenous "value systems" and approaches to dealing with "problems of deviance and nonconformity" (182-83, 178-79). This divergence yields conflict, as the Canadian legal system's retributive approach undermines the courses of action that would constitute accountability and repair in the wake of wrongdoing in accordance with Indigenous peoples' conceptions of justice (181). In conclusion, Sinclair again emphasized the importance of self-determination for Indigenous peoples in enabling reconciliation:

> Clearly something must be done. Not only must we undertake reforms to the existing system […] but it seems clear to me as well – as it became clear to my colleague Associate Chief Justice A.C. Hamilton during the course of the work we did together on the Aboriginal Justice Inquiry of Manitoba – that we must also undertake reforms that allow and empower Aboriginal people to do justice for themselves. (184)[37]

Sinclair noted that a whole host of "conferences, studies, task forces, royal commissions and public inquiries" on the subject going back to the 1970s had all found "that the enforcement and administration of law in this country have had an adverse impact on Aboriginal people" (173). The AJI had joined this chorus; next, so did the RCAP. The two were connected not only in content but in participation, as the RCAP referred to the AJI's work throughout its tenure, and people who were involved in the AJI in one capacity went on to be involved in the RCAP in

[37] For Hamilton's reflections on this subject and on working on the AJI, see *A Feather Not a Gavel* (2001).

another.[38] SCC jurisprudence presented a consistency-oriented vision of reconciliation in law focused on squaring Indigenous peoples' rights with the maintenance of state sovereignty; the AJI drew attention to a different orientation wherein reconciliation as relationship is law's purpose. While the RCAP's approach to reconciliation bore more resemblances to the AJI, both visions made appearances throughout its work, and one of its initiatives contributed to the negotiation of an agreement that used a third legal vision of reconciliation (see sec. 7.4).

7.3.2 "Looking for a path of reconciliation": The Royal Commission on Aboriginal Peoples[39]

The work of the RCAP took place in the years between *Sparrow* and *Van der Peet*. It was called in 1991 following the standoff at Kanehsatake and the collapse of the Meech Lake Accord and it issued its final report in 1996. In his introductory remarks at a public hearing in Waswanipi in June 1992, RCAP co-chair René Dussault explained how the information from the hearings and research work would be connected, and expressed "hope that you will recognize yourself at the end of the process, in the discourse of the Commission" (RCAP 1992j, 6). Delving into the RCAP archive allows us to consider not only how participants' statements can be seen in the RCAP's reconciliation discourse, but also how the RCAP's own discourse can be recognized in participants' statements throughout the process. This reveals both discontinuities and continuities in how different discursive threads in the records do or do not connect with each other or link backwards or forwards in time. The RCAP coincided with several other major developments in the political relationship between Indigenous peoples and Canada, including those detailed

[38] For instance, Sinclair hosted the opening public hearing of the RCAP, at which he noted that RCAP commissioner Paul Chartrand had done some work on the AJI (Chartrand also later served on the Aboriginal Justice Implementation Commission that followed up on the AJI in 2001 – see ch. 9), and also chaired the RCAP's roundtable on justice issues; Morse co-wrote a research submission for the RCAP and participated in hearings; and individuals and organizations, such as the AMC and Mayor of The Pas Bruce Unfried, participated in the proceedings of both commissions (AJI 1991, vol. 1, Appendix IV; Assembly of Manitoba Chiefs 1993; Morse and Giokas n.d.; RCAP 1992b; 1992f; 1992y; 1993j, 1; 1993x).

[39] Brief passages of this section are adapted from Wyile (2017b, 395-98).

elsewhere in this chapter and the previous one. As such, beyond the RCAP absorbing input and reflecting it in its final report, the possible patterns of discourse in this period (and others) likely entailed multidirectional, criss-crossing influences as participants encountered, were informed by, and employed different uses of reconciliation, and brought them into other spaces.[40]

While use of the term itself did not figure strongly in interviewees' recollections,[41] the documentary record shows that reconciliation was woven through the RCAP's work from the beginning of the first public hearings through to the final report.[42] It was variously used by the commissioners (at hearings and in reports), members of the public who appeared before the RCAP, and the authors of research reports and submissions by organizations. The RCAP has also been identified as an origin point of reconciliation discourse in scholarship on reconciliation and the politics of recognition in Canada (Coulthard 2014, 115-20; Million 2014, 4; Stanton 2017, 22-24; Turner 2013, 102-5). In my analysis of the RCAP archive, I looked at every detectable

[40] Many individual actors in the various events that were informing public debate at the time were also involved in multiple fora, participating in mega constitutional negotiations and negotiations with governments, commission hearings, dialogues with churches, intervening in court cases, speaking with the media, delivering public talks, attending conferences, and so on. Presentations made in front of the RCAP, interventions by commissioners, excerpts from RCAP interim reports, and analyses of those reports were occasionally published in the media (e.g., Brodeur 1996; Dussault 1996; W. Johnson 1993; *The Province* 1996a, 1996b; Trudel 1993).

[41] My conversations with people who were involved with the RCAP in various capacities cannot be considered representative of the RCAP as a whole, as I only interviewed a few participants in the vast undertaking, and those conversations were subject to the same limitations resulting from the passage of time and memory as all of the interviews. There was a general sense among those I talked to, though, that there had not been a conscious or explicit focus on the *term* reconciliation during the RCAP, yet that an underlying *spirit* of reconciliation informed all its work. The RCAP also does not loom particularly large in James's (2017) study of reconciliation in news media, which reached back to 1995, encompassing the final year of the RCAP's mandate and the release of the final report. As James notes, his sample – derived by searching for articles with "reconciliation" in the title – only turned up one item that engaged with the RCAP's substantive vision, and "the first major cluster of *reconciliation* titles in the media search emerged not from RCAP but from the attempts of Jean Chrétien's Liberal federal government to evade the Royal Commission's recommendations" (2017, 369). I searched the same database (Canadian Major Dailies) and one with French-language newspapers (Eureka) for the whole RCAP period (from 1991-1997 to capture the report release and intervening period up until the government's response) using the same search terms ("reconcil* + Aboriginal" in English, along with "concil* + Autochtone" in French) but anywhere in the text rather than only the title. This yielded some articles that refer to the term alongside the RCAP's mandate (Cayouette 1993a, 1993b; Nagle 1993; *Vancouver Sun* 1993), but these are few in number and do not substantively engage with reconciliation beyond describing it as "ambitious" (Cayouette 1993a, 1993b) or "worthy" but expensive (*Vancouver Sun* 1993).

[42] Reconciliation occurs more frequently in the RCAP final report than in earlier reports explored in this genealogy, appearing over a hundred times, though as one interview participant pointed out this should be considered in proportion to the fact that the report is several thousand pages long (F. Wien, research interview, January 2018).

use of the term that appeared in the collection of documents.[43] There were many, including uses that were not directly speaking to political reconciliation between Indigenous peoples and Canada (e.g. references to reconciling financial accounts, family members, environmental and economic imperatives, etc.).[44] I focus here on a few key threads that are important for understanding the RCAP's relation to the broader development of reconciliation discourses in Canada. To follow these threads, I first consider the presence of reconciliation from the outset of the RCAP's work in both the initial and ongoing framing of its purpose. I then go on to look at how reconciliation was used by people speaking at the public hearings and in reports submitted to the RCAP, considering the dialogue with intervenors embodied in the Commission's use of reconciliation in discussion papers and interim reports. Finally, I look at how the term is used in the final report in the wake of these various inputs and exchanges, and what legacies this leaves

[43] Due to the very large volume of documentation involved, this research relied on the use of databases and searchable PDFs to seek out the uses of "reconciliation." Some results may have been missed due to search issues stemming from the digitization process potentially resulting in some documents not being able to be searched effectively and/or the word sometimes being split in ways that would not be found by the search term "concil*." I found some of the latter by chance but may well have missed other cases.

[44] The term appears in some form in at least 258 documents, including hearing transcripts, commissioned research studies, and RCAP publications. In an earlier publication, I erroneously stated that it appeared in twenty-one documents (Wyile 2017b, 395). This error was due to a problem whereby my initial search of the database did not successfully conduct a search with an asterisk wildcard despite the site's suggestion to use this method. After this came to my attention in February 2021, I conducted individual searches for "reconciliation," "reconcile," "reconciling," "conciliation," and "concilier". This process, along with one additional result the searches did not yield but that was located thanks to a reference in another document, turned up 258 documents, which I then searched individually for "concil" (in the PDFs this turns up all variations of the term). This tally includes several duplicates due to translation (within which the number of references to (re)conciliation varies, reflecting both overlap and differences in how those terms are used in French and in English – for more on this see Wyile [2016]). There were also two cases of collated transcripts for multi-day hearings being included along with the individual transcripts for each day and one where several research reports are included individually and in a compilation, and one case where a document that does not correspond to the item listed in the database is a duplicate of one of the other items containing the term. Both tallies exclude the volumes of the Final Report, as I treated them separately. The archive contains 640 documents in total. Sixty of these (accounting for both French and English) are publications issued by the RCAP itself, ten of which are the final report; "reconciliation" (or one of the variations) appears in every volume in both languages. With the other 258 documents, "reconciliation" thus appears in a little over 40% of the RCAP documents. However, its appearances are not equally significant in all of these. In many, it appears only once and, in some cases, only in a form of use that does not speak directly to the political relationship between Indigenous peoples and Canada. I focus here particularly on those uses that do speak to this relationship and contribute to understanding how contemporary reconciliation discourses bear a relation to the RCAP. The RCAP database is available here: http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/royal-commission-aboriginal-peoples/Pages/introduction.aspx

for subsequent discursive development. In the process, I explore the intersections between the work of the RCAP and international political developments, other ongoing processes in the Canadian context, and Canadian scholarship on reconciliation.

Reconciliation was present from the outset in the RCAP's terms of reference and, on several occasions, in the way its purpose was introduced to the public during the early stages of its work. The mandate was based on a report by Brian Dickson, who Brian Mulroney appointed Special Representative to consult on the Commission's terms of reference and membership. In his report, Dickson notes that he "firmly believe[s] the proposed Royal Commission has the potential to be an important instrument of education and reconciliation" (1991, 29), and says the proposed commissioners "share a common determination to make this Royal Commission a positive force for change and reconciliation" (20-21).[45] The expansive terms of reference he proposed, which were adopted verbatim, included the following:

> the Commission may make recommendations promoting reconciliation between aboriginal peoples and Canadian society as a whole, and may suggest means by which aboriginal spirituality, history and ceremony can be better integrated into the public and ceremonial life of the country. (B. Dickson 1991, 11)

Dickson later reiterated his statements from the report at the April 1992 launch of the RCAP's public hearings, noting that everything he had "heard or read since about the work to date of the Commission, has tended to confirm those views" (RCAP 1992b, 13, 21). Co-chair Georges Erasmus also linked the RCAP's work to reconciliation in his opening statement that day:

> Despite the greatest of odds, over the past century Aboriginal Peoples have survived policies of paternalism, suppression, evasion and indifference. These policies have created an enormous gap between Aboriginal and non-Aboriginal people in this country; a gap that must be bridged by both groups, working together.
>
> This hearing, and the many others that will follow, will help bridge that gap. They will contribute to the reconciliation of Aboriginal and non-Aboriginal People; a reconciliation that must occur if Canadians are to build a new relationship between First Peoples and

[45] The Commission had seven members: co-chairs Georges Erasmus and René Dussault along with Paul Chartrand, Viola Robinson, Mary Sillett, Bertha Wilson, and Allan Blakeney who was later replaced by J. Peter Meekison.

> those who have joined them in this land. A relationship based on partnership, trust, sensitivity and respect; one that will form the basis for a stronger, brighter and more honourable future for the Aboriginal Peoples and for all Canadians. (28-29)

Erasmus emphasized that this must be "a relationship of equals" akin to that laid out in the treaties and enshrined in the Royal Proclamation of 1763 (29).

Commissioners linked the mandate to reconciliation and sought guidance on the topic from participants on other occasions too. For instance, during a hearing in Montreal, Mary Sillett stated, "We are in the business of reconciliation, so I was wondering if you could offer any advice on public education or what can be done to address the different types of understanding that exist, particularly with the non-Aboriginal people, on these kinds of issues" (RCAP 1993bb, 903). Discussing the RCAP's work on Residential Schools, Viola Robinson noted the RCAP was unsure what should be done in response to the intergenerational suffering the Schools caused and stated, "I think it would be helpful to know what kinds of things people are looking for as a sort of reconciliation?" (RCAP 1993k, 84). While I found at least one use of the term by nearly all the commissioners,[46] it was used more frequently by the co-chairs than the others. The latter's uses are mostly more general, typically comprising statements about the RCAP being mandated to seek ways to foster reconciliation and build "a new partnership" between Indigenous and non-Indigenous people, comments and inquiries about what would contribute to such a reconciliation, and statements about the need to hear from "both" or "all" sides.[47]

Collectively, statements made by co-chairs Dussault and Erasmus throughout the 1992-1993 public hearings provide more substance to the idea of reconciliation as it pertained to the RCAP's work and aspirations, linking it to other concepts and speaking with some greater specificity about whose responsibility it needed to be and why it was an objective. In Dussault's

[46] The exception is Meekison, who joined the RCAP after Blakeney left and was not there for most of the hearings.
[47] See e.g., RCAP (1992d, 195, 141; 1992e, 10-11; 1992j, 6-7; 1992l, 273; 1992o, 27-28; 1992u, 26; 1992x, 107; 1992cc, 17; 1992ff, 16; 1993c, 7; 1993f, 8-9; 1993o, 171; 1993bb, 1143).

description, “le travail de la Commission est un travail délicat de réconciliation entre les peuples autochtones du Canada et les divers gouvernements, ainsi que le grand public canadien, dans le cas de la Province du Québec, bien sûr, tous les Québécois” (RCAP 1992cc, 11). For him, “to work toward a reconciliation” meant “to restructure a relationship on a different basis made of respect, self-sufficiency and other principles” and to “enable partnership and positive feeling on both sides” (17; 1993a, 15). In his view, “[y]ou don’t build a country only out of a feeling of guilt, but you build a country because you feel that it will be pleasant and fruitful to work together toward the future” (RCAP 1992e, 10). Both he and Erasmus evoked a vision of reconciliation closely entwined with justice, addressing racism, and establishing dialogue, collaboration, and respect for difference, all of which would require fundamentally restructuring the power relations between Indigenous peoples and the Canadian state. At a consultation with the major national Indigenous organizations in Ottawa, Erasmus stated:

> We are convinced that simply offering a patchwork of programs, policies and regulations will not change the way in which Aboriginal peoples are forced to live, as we saw and heard so graphically in the 112 communities we have visited. Neither will it change the power relationship that existed between Aboriginal and non-Aboriginal people for the past 500 years. The key is reconciliation and partnership within the context of justice.
>
> There must be change on both sides. The anger within Aboriginal communities, which turns itself inward into abuse, hopelessness and violence, cannot be hidden away any longer. The non-Aboriginal people […] must learn to feel more than simply guilt, which manifests itself in denial. Aboriginal peoples cannot blame non-Aboriginal peoples for all their problems, but non-Aboriginal peoples must also accept responsibility for their share of the current polarized situation. […] dialogue and negotiations in an atmosphere of trust and respect is preferable to confrontation and violence. (RCAP 1993v, 3-4)

Speaking at a special consultation with the churches, Dussault also emphasized the centrality of justice: “Il ne saurait bien sûr y avoir réconciliation sans justice. Il n’y aura de justice véritable que lorsque nous aurons effacé toutes les traces de ce racisme profond et insidieux qui imprègnent encore trop souvent nos institutions. Ces institutions doivent changer et la mentalité des Canadiens doit changer elle aussi” (RCAP 1993y, 9). He went on to suggest the churches

should lead efforts to address cultural stereotypes and racism: “La réconciliation de tous les Canadiens doit se concrétiser dans une atmosphère d’acceptation et d’appréciation des différentes cultures, des différentes langues, des différences philosophiques et spirituelles car, après tout c’est le Créateur qui a voulu ces différences” (10). Erasmus also recognized the churches’ “great efforts towards reconciliation with Aboriginal people” thus far and suggested they should “hel[p] to foster changing attitudes in Canadian society as a whole” and support Indigenous people as they pushed for change in “the other institutions that will have to go through this same process if we ever are really going to have a true reconciliation between Aboriginal people and everyone else that has come to share this part of the world with Aboriginal people” (6-7; 1993z, 297-98).

Reconciliation was thus the goal and the means of getting there. Thanking speakers at a Montréal hearing, Dussault concluded: “Dans le fond ce que nous souhaitons c’est d’amener – réconciliation, c’est un grand mot, mais d’une façon très concrète une collaboration et un travail en commun à tous les niveaux de la société dans les divers secteurs entre Autochtones et non-Autochtones” (RCAP 1993h, 375). At a hearing about the High Arctic Relocations (see sec. 7.4), he emphasized that “la réconciliation n’est pas seulement un résultat, mais c’est aussi un processus comme celui-ci,” and argued that the goal of reconciliation needed to guide the RCAP’s approach to exploring the issues and conflicts that had come before it as well (RCAP 1993p, 8). The broad overall goal was also taken to encompass reconciliations on specific issues, such as addressing divergent perspectives regarding the relocations, working towards healing between the churches and Indigenous peoples (1993y, 8), balancing economic “development and the traditional way of life and the various uses of the lands” (1992gg, 3), or more broadly the “rights and interests of all groups” (1992d, 141), and many more. Piecing together these different

statements from the commissioners, and particularly Dussault and Erasmus, collates the overarching message being transmitted to participants at the RCAP's public hearings: Reconciliation, while it might involve different specific work for differently situated people,[48] was the work of both Indigenous and non-Indigenous people (individuals, organizations, institutions, and governments). It was opposed to conflict, violence, and guilt. It was intertwined with justice and required the disruption and transformation of the prevailing power relations between Indigenous peoples and Canadian society, at the levels of both structure and feeling. In this, it encompassed both interactional and structural dimensions, both of which were required in order to address negative interpersonal and inter-group interactions and the structural imbalance of power as well as existential alienation and its ramifications within Indigenous communities. The RCAP was guided by an ethos of reconciliation in approaching its own work as well as seeking to provide recommendations for the country as per its mandate. Finally, participants were encouraged to inform the RCAP's thinking about the goal of reconciliation as well as to approach their own internal workings with that goal in view.

In addition to these uses of reconciliation in the framing of the RCAP's purpose by the creator of its mandate and the commissioners in their public remarks, the term also featured prominently on an RCAP informational pamphlet.[49] The two-sided pamphlet summarizes the mandate on one side in a point-form list itemizing the topic areas laid out in the terms of

[48] Victoria Freeman's "In Defence of Reconciliation" (2014) reflects on the different kinds of orientations towards reconciliation that might be needed on the part of Indigenous and non-Indigenous people. Freeman suggests that a certain degree of reconciliation as resignation (defined as "submit[ting] to or accept[ing] something unpleasant") is required on both sides as well as the restoration of a harmonious relationship (217-18). This process requires intra- as well as inter-group reconciliation, which Glen Coulthard argues is undermined by the state's approach to reconciling sovereignties (2014, 107). On the legal paradigm that informs the latter and inhibits the other forms of reconciliation described by Freeman and Coulthard, see J. Nichols (2020) and Walters (2016), among others.

[49] Photos on file with the author. This pamphlet is not among the documents in Library and Archives Canada's RCAP database. I was shown a copy by an interview participant. I do not know whether there was more than one pamphlet and am not certain it is the one referred to but based on comments made during the first round of hearings – as described below – I believe this pamphlet was probably created and distributed at the outset of the RCAP's work no later than April 1992.

reference, and on the other provides a brief description of the RCAP's purpose, approach, goals, and contact information. This second side includes the bolded headline "A path of reconciliation…" above the description and mentions reconciliation in three out of its five sections. The description begins: "The Royal Commission on Aboriginal Peoples will take a fresh approach to the challenges facing the relationship between Aboriginal peoples and Canada. This is a Royal Commission with a mandate for change. We are looking for a path of reconciliation." The pamphlet then goes on to describe it as a solution-oriented commission whose roles are to "investigate," "explain," and "recommend," and elaborates briefly on each of these three activities. Under "Explain," the pamphlet states:

> There is confusion in Canada. This causes fear and misunderstanding. The Royal Commission on Aboriginal Peoples will undertake a process of education and consciousness-raising which will almost be as important as the recommendations in our final report.
>
> As we look for a path of reconciliation, a basis for sharing, we will try to interpret different cultures one to the other. Aboriginal history, spirituality, systems of justice, political institutions, and ways of governing will be explained. The world-views of different peoples cohabiting in the same land will be brought together.

The pamphlet concludes with a section entitled "A final word," which reads: "Aboriginal peoples have always lived in every part of Canada. They want to share their histories and hopes for the future. The work of the Royal Commission will help begin the journey down the path of reconciliation. We want everyone to journey with us." On a couple of occasions, presenters referred to the pamphlet in their statements, including remarking on its use of the term reconciliation. Looking at these and other uses at the hearings allows us to consider the understandings of reconciliation members of the public brought to their engagement with the RCAP's work as well as how the Commission may have influenced public discourse in advance of its final report.[50] It also shows what kinds of issues were at the forefront with respect to what

[50] In addition to the pamphlet, media reports occasionally framed the RCAP's goals in terms of reconciliation (e.g.,

reconciliation was variously understood to involve or require.

Some participants appear to have taken note of the place of reconciliation in the RCAP's framing of its work (see e.g., 1993cc, 1072), with a number using the phrase "path of reconciliation" in their presentations, seemingly evoking the bolded headline from the pamphlet. Some refer directly to the pamphlet, either questioning reconciliation's meaning (RCAP 1992c, 485), or responding to the RCAP's solicitation of suggestions on its quest for this path (RCAP 1993g, 165). In speaking to finding a "path of reconciliation," several intervenors expressed skepticism or limitations and enunciated priorities that reconciliation would require. The presentation from the Flat Bay Indian Band Council at a hearing in Gander stated:

> The rift is great; the hardships endured by these people are plenty. The path of reconciliation will be a journey of history. How can governments compensate for an act of genocide? Our culture is lost! our language gone! our traditional values are stripped!
>
> There will be no going back. We are a realistic people. We have to maintain the few fragmented pieces of our heritage and move forward. Although it is impossible to place a monetary figure on the irreparable damage inflicted on this community, we believe compensation will come in the form of conscious raising [*sic*], awareness of our history, and the willingness of the dominant governments to help settle long time grievances. (RCAP 1992s, 3-4)[51]

Senator Fortunate Guiboche of the Metis Senate of Manitoba reacted by questioning why reconciliation was being asked of Indigenous people:

> First of all, you talk about a 'path of reconciliation.' When I first looked at that, I said to myself, now, what does this mean? What is there for us to reconcile? Maybe the consulting with [*sic*] the wrong people. Maybe we should have a Royal Commission to consult with white people, to find out exactly what they wish to reconcile, or what offer they're prepared to put on the table.
>
> Reconciliation means that something has happened, I guess, and people have to get together. Anyway, that was a view I had, that perhaps there should be a Royal Commission to discuss these points with white people to find out what they are prepared to put on the table. (RCAP 1992c, 485)

Guiboche then went on to suggest that there was a very long way to go in shifting the dynamic of

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Cayouette 1993a, 1993b; Nagle 1993; *Vancouver Sun* 1993), and a 1993 survey described reconciliation as one of the principles informing its key objectives (Canadian Chamber of Commerce and Environics-DRZ 1993, 24).

[51] The presentations in this hearing transcript are paginated separately; these pages are pp. 14-15 of the PDF file.

relations between Indigenous and non-Indigenous peoples:

> I know that there have been calls to say that there is support, but I feel that's superficial support, very soft. We see the attitudes. We walk the streets. We see the expressions of white people towards us. We see their body language. We know what the expressions say.
>
> If there's going to be a reconciliation, it's a very deep and wide reconciliation that has to take place. (494)

Similar comments were made at another hearing by René Tenasco of the Kitigan Zibi Anishinabeg Council, who talked about how attitudes would not change in the fashion they needed to in order to achieve justice, freedom and democracy for Indigenous peoples until Canadians had learned and reckoned with "what exactly has been done, how our dignity and our integrity and our value system has been stripped and exploited, along with our country and resources" (RCAP 1992cc, 323). Tenasco described being involved with the constitutional working group and how the previous years had involved much discussion of the development of a new relationship, and then noted, "We talked and we heard about reconciliation without even discussing what reconciliation was" (323). From his perspective, Indigenous peoples "don't owe any apology to Canada whatsoever," and a new relationship would rather require an apology from Canada and "that retribution will be given the way […] that it should be given" (323).

Guiboche and Tenasco's suggestions that reconciliation would require a major change in non-Indigenous people's attitudes resonated with other statements about how the path of reconciliation required educating non-Indigenous people about the history of the relationship (RCAP 1992i, 147), with one person asking the RCAP to recommend "an intensive education program aimed at every facet of Canadian society" (224). Others focused on what the path of reconciliation would need to comprise for and within Indigenous communities. Chief Samuel Sam, speaking in Esquimault, discussed the need to address divisions wrought by the *Indian Act*:

> And I see one word in the little pamphlet there. It says 'reconciliation.' It is very important to me because I see our people drifting far apart because of the elective system that is in

> the Indian Act.
>
> When that elective system came about and we started to use the white man's way of getting people in office that divided us right down the middle. And not only divided us as communities, but as a whole, in the Province of British Columbia.
>
> I have seen relationships deteriorate because of it and it does not do our people any good. (RCAP 1992g, 3-4)

For Sam, repairing these divisions also required addressing the communicative rifts resulting from colonial policy, as he then went on to say, "But I think my biggest concern today, if we are going to come together and use that word 'reconciliation,' our young people have to start learning the language," noting that this was key to enabling sharing between generations and understanding of their people's stories, ceremonies, and connections to their territory (5). Throughout the RCAP hearings, several speakers used the term reconciliation to refer to reparative work that needed to be done within Indigenous communities, whether in addressing cycles of violence and social issues stemming from the legacies of colonial policies including Residential Schools or in resolving conflicts over competing political priorities and approaches (RCAP 1992g, 154-55; 1992k, 50; 1992m, 14, 16-17; 1992p, 39).[52] Others emphasized the importance of Indigenous peoples' autonomy, arguing that the path of reconciliation lay through recognizing and funding Indigenous peoples' rights to control their own child and family services (1992q, 25-26),[53] or more broadly through the recognition of self-determination. Alice Jeffrey, representing the Gitksan and Wet'suwet'en Government, requested that the Canadian government "do away with the Indian Act and replace it for us as an independent nation to become a Gitksan Act," which would recognize Gitksan political authority according to Gitksan

[52] "Reconciliation" made a couple of such appearances in research reports submitted to the RCAP as well (Alfred et al. 1994, *24*; Mountain and Quirk 1996, 2:43). At one community sharing circle summarized in a report appendix, "reconciliation" was listed among several "traditional values" needed to replace attitudes that were fostering conflict and lack of communication between generations and contributing to "community breakdown" (RCAP 1995a, 114).
[53] "Reconciliation" also sometimes refers to reuniting families, as in a child services context (RCAP 1992g, 72).

traditions of governance (RCAP 1993g, 167).[54] Author Boyce Richardson also argued for replacing the *Indian Act* with something conceived of by Indigenous peoples in negotiation with Canada, and suggested that this should be accompanied by "an act of reconciliation […] to establish that we are heading into a completely new relationship" (RCAP 1992cc, 177). He did not specify what was meant by an "act of reconciliation," though he did qualify it by saying that "such an act must provide for the handing back to Aboriginals of the powers over their own lives that all other Canadians enjoy and the resources the [*sic*] need to build viable lives as communities enjoying the benefits of life in the modern state of Canada" (177).

In many, if not indeed most cases where the term "reconciliation" is used in the public hearings and in the reports submitted to, and those published by, the RCAP, it is used as Tenasco described (RCAP 1992cc, 323) – without discussion of what it meant. Meanings and associations explored earlier in this genealogy reappear in various forms. There are quotations of passages with references to (re)conciliation from historical documents similar to those explored in chapter 2.[55] There are references to reconciling seemingly conflicting or contradictory goals, priorities, perspectives, arguments, roles, provisions, factors, theories, laws, approaches, levels, responsibilities, and so on.[56] There are also references to conciliators or conciliation in the dispute resolution mechanism sense (Indian Association of Alberta 1993, 59-65; Opekokew n.d.,

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[54] In another demonstration of the criss-crossing nature of the forums through which these discussions were taking place, Jeffrey referred to the *Delgamuukw* litigation in her presentation, wherein she noted to Bertha Wilson – a former SCC justice – that she was surely aware of their testimony in the courts about "our position in regard to the future of our people" and that "[t]he status in regard to our feelings about who we are and the direction of where we're going haven't changed" (166). *Delgamuukw* later came before the SCC, and the judgment in that case further elaborated on the conception of reconciliation introduced in *Van der Peet* and *Gladstone*.

[55] These include references about needing to "conciliate" Indigenous peoples or "reconcile them to the new order," and some framed in the negative as colonial officials are described as being "anything but conciliatory" or as having arrived with a treaty whose "terms were prepared in advance to be imposed upon [the Dene] rather than freely discussed in a spirit of reconciliation and mutual concessions" (Egremont quoted in Dupuis 1995, *25*; Egremont quoted in RCAP 1993s, 15; Hudson's Bay Company quoted in Tompkins et al. 1995, 10; Morrison 1996, 36; Breynat quoted in Fumoleau quoted in S. Smith 1993, 3 [*21*]; Murray quoted in Joffe and Turpel 1995, 210).

[56] See e.g., Barham and Boadway (1995, 3); Chamberlin and Brody (1993, 2); Chapeskie (1993, ii, 2, 16); Graham (1995, *5, 28-29, 51*); Hogg and Turpel (n.d., *19*); Lajoie et al. (1996, 109, 256, 261); Monture-Angus (1994, 73); Penn (1995, 33); RCAP (1992e, 149-50; 1992t, 11; 1992x, 40; 1992m, 75); Wachowich (1994, 40).

70; Morden 1993, 28; RCAP 1992z, 43; 1993l, 74), to "bank reconciliation" (Council for the Advancement of Native Development Officers 1993, *49*), and to reconciling in the general sense of fixing/addressing a problem (RCAP 1992m, 14, 17; 1992p, 147). These are all types of reconciliation as consistency. Reconciliation as resignation/acceptance makes one appearance. Contemporary critiques often highlight discourses that seem to ask Indigenous peoples to resign themselves to the colonial status quo (see e.g., Borrows 2017a, 33), but here the Canadian government was the subject in one participant's suggestion that "[p]erhaps the Government is having a difficult time reconciling itself to the magnitude of the expense of fulfilling its treaty obligations" (RCAP 1992w, 35). Likely reflecting the fact that the public hearings coincided with the Charlottetown Accord negotiations and the broader debates around constitutional reform and reconciliation with Québec, there are also a couple of references to an overall context of reconciliation. For example, the president of the Société franco-manitobaine stated that "en cette période de réconciliation nationale, nous nous engageons à continuer le dialogue avec tous les groupes du pays, y inclus les peuples autochtones qui cherchent des solutions dans le cadre du fédéralisme canadien" (RCAP 1992c, 705), while a research report on policy trends noted that provincial constitutional committees tended to see "Aboriginal and treaty rights and self-government […] as parts of a broader agenda of national reconciliation and constitutional reform" (Graham, Dittburner and Abele 1996, 177). These types of uses present reconciliation as a "circumstantial premise" by framing it as given and ongoing, thus comprising "the context of action" (Fairclough and Fairclough 2012, 4, 40, 44). Importantly, "dans le cadre du fédéralisme canadien" or "the benefits of life in the modern state of Canada" in the quotes above also denote integral components of the premises shaping the circumstances of reconciliation, setting a specific context for interactional change, and implying limits for any potential structural change.

The close association between reconciliation and the paradigm and mechanisms of restorative justice came to the fore at many points during the RCAP's work too. In these cases as well, the term's meaning is taken for granted and not explicitly conceptualized, theorized, or critiqued (though its appropriateness in certain cases is questioned – see LaRocque in RCAP 1993t, 86[57]; see also Wilson's questions in RCAP 1993w, 344-45, 350-51). Paul Chartrand did "vividly recollect a discussion about restorative justice" during the RCAP, but not whether there had been any similar discussion of reconciliation (research interview, June 2018). However, even if it was not consciously focused on in the same way, the term appears peppered throughout discussions of restorative justice and Indigenous legal traditions in the RCAP's records. Some of these uses indicate specific initiatives or program proposals like Victim-Offender Reconciliation Programs (VORPs) or other mechanisms referred to as reconciliation processes (RCAP 1992y, 652; 1993m, 62-63, 205; 1996b, 118, 194), but most talk about reconciliation as a value that is central to Indigenous social and legal systems, linked to other values and goals such as healing, harmony, and restitution, and/or frame it as representing the opposite goal to the Canadian legal system's adversarial focus on punishment.[58] Some of the uses in submissions and research reports are quoted from AJI documents (Aboriginal Women's Council 1992, 29; Graham, Dittburner and Abele 1996, 231-32; Metis Nation Council n.d., 204), the RCAP special report *Bridging the Cultural Divide* draws significantly on the AJI's work, and many of the report's uses of reconciliation are linked either to the AJI report or Sinclair's 1994 paper (1996b, 59-65).

While the other commissioners' uses of reconciliation generally referred either to the RCAP mandate, a broad societal goal, or to making two things compatible, Bertha Wilson's uses

[57] For a further elaboration of this argument, see also LaRocque (1997).
[58] For examples, see Angeconeb (1993, 16); Barsh (1993, *15*); Depew (1994, 27); Graham, Dittburner and Abele (1996, 231-32); Jackson (1994, *10*); ManyFingers (1994, 24); Metis National Council (n.d., 204); RCAP (1992i, 17; 1992r, 122; 1993m, 53; 1993k, 253-54; 1995a, 114); Stout and Bruyere (1996, 36).

were primarily on the topic of criminal law and the legal system – perhaps an unsurprising focus for a former judge. At a number of hearings, she shared reflections with the presenters about how the RCAP had heard about Indigenous peoples across the country establishing restorative justice processes outside or in conjunction with the Canadian legal system, describing their goal as being to (re)establish healing, harmony, and reconciliation in communities rather than to hand down punishments (RCAP 1992aa 86; 1992dd, 35, 37; 1992ee, *49*; 1993e, 580; 1993l, 153). On one occasion, she noted that the RCAP had heard "over and over again" that "[p]unishing people isn't the answer. That it has to be done through a process of healing and reconciliation" (1992dd, 37). Wilson explained to presenter Garnet Angeconeb that she was sharing the stories of other projects as a possible alternative model and to indicate the RCAP's understanding of the critiques he had advanced, saying "I know the justice system inside out and I am completely persuaded that it does not work for Native people and that either it has to be changed quite radically or there has to be another way of dealing with Native offenders" (37). There were also many different perspectives on how and with what scope such change should be undertaken. Some advocated a separate justice system for Indigenous peoples, as had the AJI, and the RCAP stated in its report on the topic that "the pursuit of justice is an integral part of the pursuit of self-government" (1996b, 65). Others, like Charlene Belleau of the Cariboo Tribal Council, argued that the problem was even broader, as "the criminal justice system has failed not only Aboriginal people, but non-Native people as well," and should be changed "from an adversarial to a model of restitutive justice, reconciliation and healing process" (RCAP 1993m, 53). While the growing adoption of restorative justice in the Canadian penal system during this period indicates some acceptance of these ideas, there remain both a significant distinction between reform and transformation, and important questions of intercultural translation and power relations.[59] When

[59] A report on public policy prepared for the RCAP raised these issues, pointing to the AMC's submission to the AJI

it comes to the questions of consistency that surround renewing or implementing reconciliation-oriented practices, federalism inevitably also comes into the mix in considering the relationship of Indigenous self-determination to the authority of the various levels of Canadian government, as Wilson highlighted in one of her interventions on the topic (RCAP 1992ee, *49*).

In addition to the AJI, uses of reconciliation that appear among the RCAP's records also connect to other events and sources of reconciliation discourse that were part of the public conversation in the early 1990s. When the RCAP held a hearing in Charlottetown in May 1992, PEI's Minister of Native Affairs spoke about Ghiz's proposal for a National Treaty of Reconciliation (RCAP 1992d, 58-59). Native Council of Canada president Ron George also referred approvingly to Ghiz's treaty plan (RCAP 1993x, 600-601), and a discussion of the proposal and a reference to the minister's comments about it appear in two RCAP publications (RCAP 1992a, 30-33; 1993b, 25).[60] While the timing of the RCAP's work was such that it did not engage with the more pointed use of reconciliation that emerged from the SCC's decisions in *Van der Peet*, *Gladstone*, *Delgamuukw*, and later cases, references to *Sioui*, *Sparrow*, and the lower court decision in *Delgamuukw* appear, generally either quoting or describing the court's use of the term or using reconciliation as consistency in discussing a case.[61] There is also

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about how the way Indigenous peoples' understandings of justice were being incorporated into criminal law "demonstrates acceptability of aboriginal concepts so long as they can be conceptualized or described in non-aboriginal languages" (quoted in Graham, Dittburner and Abele 1996, 232). This is reminiscent of *Van der Peet*'s insistence on definitions of Aboriginal rights that are "cognizable to the non-Aboriginal legal system" (para. 49). On definitions, varying interpretations of concepts, and diverging policy priorities between Indigenous peoples and the state when it comes to restorative justice, see also Hewitt (2016).

[60] The treaty proposal also came up at a May 1992 hearing in St. John's, where Jerry Wetzel noted that he was pleasantly surprised by the RCAP's 1992 report mentioning "a national treaty of conciliation and unification," as in his view "the solution for aboriginal people and aboriginal nations to become part of this country […] can only be done through a process of treaty federalism" (RCAP 1992h, 184).

[61] See e.g., Chartrand and Callihoo (1993, 41); Dupuis and McNeil (1995, *24, 35-36, 41*); Inuit Tapiriiksat Kanatami (1994, 20-22); Joffe and Turpel (1995, 240, 293, 317); Monture-Angus (1994, 73, 80); Opekokew (n.d., 36); RCAP (1992v, 484-85); Spaulding (1996, 139). One exception is found in a much older (though as J. Nichols [2020] shows, still importantly foundational) SCC case quoted in a research study footnote. Richard Spaulding notes that in *St. Catherine's Milling and Lumber Co. v. The Queen*, "Chancellor Boyd declared that the 'rude red-men of the North-West' could make the 'transition from barbarism to civilization' by surrendering their lands through treaties,

significant crossover with respect to the discussion of church apologies and reconciliation efforts in part 1, as representatives of various churches participated in several RCAP hearings as well as a special consultation held in November 1993 (see RCAP 1993y and 1993z as well as the overview in 1994a, app. 1). These discussions included descriptions by church representatives of reconciliation as a key objective of their institutions, with Henri Goudreault calling it "la mission fondamentale de l'Église" and Rev. Pierre Goldberger presenting it as "the true goal of all these exercises and all these structural adjustments" (which for him included dismantling the *Indian Act* and recognizing Indigenous peoples' right to self-determination) (RCAP 1992x, 103; 1993i, 1302). Church representatives linked reconciliation to justice, healing, truth-telling, acknowledgment, repentance, and redress (ARC 1993; RCAP 1993i, 1302, 1308; 1993y, 50, 86, 89-90; 1993z, 273, 286); many also raised the question of the responsibility of government (ARC 1993, 18, 37; RCAP 1993y, 50-51; 1993z, 285). There was some recognition of the churches' efforts thus far (RCAP 1992bb, 377-78; 1993y, 6), as well as several occasions on which the RCAP inquired about churches' plans or encouraged them to take actions geared at reconciliation (RCAP 1992x, 102-3; 1992bb, 377-78; 1993y, 10, 66; 1993z, 267-68).[62]

On the international front, the RCAP's work in Canada took place in a global context where reconciliation was coming to the fore in other locations around the same time, and these connections are also reflected in the uses of reconciliation found in the RCAP archive. With one exception (Jull 1994, 65), all of the reconciliation references pertaining to other countries refer to

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accepting 'conciliat[ion] … in the presence of an ever-advancing tide of European and Canadian civilization' (at 211, 228). For Boyd C. this alternative required that the Indians be 'train[ed] and restrain[ed]', and their occupation of territory 'necessar[ily] … constrict[ed]' (211). The object of the reserve system thus created 'is to segregate the red from the white population, in order that the former may be trained up to a level with the latter' (228)" (1996, 175n186; brackets and ellipses in original). This use of "conciliation" rings much more of resignation to submission and hearkens back to Edmonds's (2016) discussion of the conciliation policies of the encounter period.

[62] Bertha Wilson in particular, noting her own commitment to encourage action within the United Church community, suggested that the International Year of Indigenous People could offer an occasion "for the churches to come out with a declaration of reconciliation and a commitment on their part to furthering the cause of a new relationship between Native people and other Canadians" (RCAP 1992ee, *131-32*; 1993l, 142-43).

either Australia or Aotearoa/New Zealand, both contexts with histories of British colonialism that are distinct from but also linked to Canada's.[63] Some are of the consistency type, referring to reconciling jurisdictions or laws and customs (Jackson 1994, *127, 154*), and unsurprisingly considering it was formed in the same year as the RCAP, several findings are simply references or bibliography references to the CAR (see e.g. Jull 1995, 69; H. Reynolds 1994, 4, 22[64]). Studies on Aotearoa/New Zealand and Australia demonstrate the presence of reconciliation in official documents in those two countries. In the former, reconciliation is linked to the "Principle of Redress," one of the five Principles for Crown Action on the Treaty of Waitangi laid out by Prime Minister David Lange in 1989.[65] The Principle states that "the Government is responsible for providing effective processes for the resolution of grievances in the expectation that reconciliation can occur" and notes that this could take place through "the courts, the Waitangi Tribunal, or direct negotiation" (O'Regan n.d., *32-33*). Henry Reynolds's report on Australia (1994) discusses the establishment of the CAR – which was preceded by the 1991 report of the Royal Commission into Aboriginal Deaths in Custody's calls for political leaders to commit to reconciliation – and recounts the functions Australia's minister of Aboriginal Affairs envisioned

[63] Cole Harris (2002) urges us to keep in view the global geography of empire, demonstrating how the manifestation of colonial relations in any given time and place is produced through a complex interplay of both patterns and anomalies informed by local specificities, colonial administration, and the Colonial Office in London, with certain actors moving through these different spaces around the globe over time. This historical geographical production of empire marked by continuities and discontinuities across time and space has produced colonial contexts in these three settler colonial countries that bear significant resemblances to each other and yet also important differences when it comes to land, treaties, intercultural relations, and the intergenerational reverberations of specific events. These similarities and differences interweave to form the backdrop for discussions of reconciliation in each of these places, just as exchanges between them continue to take place as they have done since the beginning of the colonial period. These range from correspondence and colonial officials that moved between England and its colonies and contemporary exchanges between officials and politicians of their successor regimes, to scholarly exchanges through conferences and visiting fellowships, to delegations, summits, and international working groups bringing together Indigenous peoples from these different contexts to find common cause in working to understand and challenge colonial power relations (on the latter, see e.g., J.(S.)Y. Henderson 2008). For instance, at least four of the people I interviewed who were involved with the RCAP and/or the constitutional negotiations of the late 1980s and early 1990s spent time in Australia or Aotearoa/New Zealand prior to or during that period (P. Chartrand, R. Kuptana, B. Morse, and P. Russell, research interviews, 2018), and the RCAP final report cites a speech by Ovide Mercredi published as part of a conference collection by the CAR (1996a, 5: 105n4).

[64] These numbers correspond to what is listed in the table of contents, though the document itself is unpaginated.

[65] This document is available at: http://www6.austlii.edu.au/nz/journals/VUWLawRw/1989/20.pdf

for it, which included several references to reconciliation (24). By the end of the first three-year mandate of the CAR, Reynolds noted, it had "been able to establish the idea of reconciliation as part of the national discourse" (25). In another report submitted to the RCAP the following year, Peter Jull (who also attached in appendix a report he had submitted to the CAR entitled *Reconciliation: From Public Relations to Public Policy*[66]) advanced that a key significant policy idea emerging from the North in Canada that the rest of the country might fruitfully draw on was "civil reconciliation,"[67] and pointed to Australia as an example (1995, 60-61). Jull notes that the idea has a long history in Canada, giving the examples of the accommodation of Québec in the late 18th century, and more recently "the reconciliation of pro- and anti-development sentiment, of varying concepts of environmental protection, of views on the evils of 'special status' vs. a philosophy of rights, etc." (61). He states: "In Australia success in the sort of bridging of racial divides we see emerging in Northern Canada is called *reconciliation*, a term which has now become a national policy and purpose there. It should be no less in Canada" (61). It's not clear that Jull's argument or reconciliation's uses in Australia had a direct influence on the RCAP's uses,[68] and at any rate the RCAP had already been using the term for several years by that point,

[66] See Appendix B (Jull 1995, 66-69). There, Jull issues caveats about reconciliation of the type that are generally much less present in the uses of reconciliation we see in Canada during this period – at least those documented uses surveyed for this genealogy – than they are today: "Reconciliation is not a generalised dawning of community niceness across racial and cultural divides. It is a matter of political and social equality, of power relationships in society. When one culture has brought its laws and recreated the political apparatus of its ancestral society in the lands and islands of other cultures, equality has been destroyed. […] Goodwill is not the same as reconciliation. Goodwill is a pleasant emotion or state of mind indulged in by persons when they have not too much else on their minds. Reconciliation must be something which survives many moods, many conditions, and many crises. It is not a privilege for some dark-skinned people some of the time; it is a right of all indigenous peoples all of the time. It is not dependent on the whim or preoccupations of British or other immigrant élites. It is not episodic or discretionary. It is a legal and political order which provides the framework for equality in society" (66-67). Jull also notes that reconciliation in this context "may seem somewhat paradoxical" in that the prospect of Indigenous peoples fully participating in Australian society requires the recognition of autonomy and distinct rights (66).

[67] This seemingly pairs consistency and relationship: a reconciliation "of peoples, cultures, ideologies, development philosophies, and laws is producing civil harmony and a renewed respect for shared public purposes" (7, 60).

[68] Discussion of the CAR and reconciliation in Australia in the RCAP final report is quite brief (and less is said of Aotearoa/New Zealand) (1996a, 1:19n12, 5:86-87), but it is presented as a model worth following: "Its mandate includes educating non-Aboriginal Australians about Aboriginal history and cultures and developing proposals for a treaty or some other form of national reconciliation. It has produced an impressive series of booklets outlining major

but this does ultimately appear to be consistent with what the RCAP was advancing, as the final report itself called for "a national policy of reconciliation and regeneration" (1996a, 1:211).

Key among the indicators of the importance the RCAP placed on reconciliation throughout its mandate were the discussion papers published in conjunction with the public hearings. These documents describe input the RCAP received on the topic, reiterate that "reconciliation between Aboriginal and non-Aboriginal people is at the heart of the mandate of the Royal Commission" (RCAP 1993b, 18), and flag the emphasis placed on dialogue and reconciliation by some hearing participants (RCAP 1993u, 70, 81). For instance, the overview of the second round notes that "[a] good deal was said in Round Two about the need for reconciliation between Aboriginal peoples and the rest of the population of Canada, in many cases by non-Aboriginal intervenors" (M. Cassidy 1993, *7*). It also observed differences in Indigenous and non-Indigenous participants' approaches even as they advanced similar themes and concepts to talk about the relationship: "Aboriginal intervenors put a priority on resolving the issue of self-government, creation of a land base or settling land claims, respect for treaties, and repeal of the Indian Act" while non-Indigenous participants "accepted this approach, but […] had far more to say about the quality of the future relationship that should be created. Some non-Aboriginal intervenors expressed misgivings about Aboriginal demands" (*79*).[69] The overview of the fourth round highlighted general expressions of support for self-government but little attention to specifics, implementation, and implications on the part of non-Indigenous intervenors (RCAP 1994a, 37). The uses of reconciliation from the hearings that were quoted in the overviews and discussion papers, though they include a couple of references to reconciliation of the consistency variety or conciliation as a specific mechanism (M. Cassidy 1993, *63*), mostly

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issues and calling for public response. Similar initiatives would be of benefit in Canada" (5:86-87).

[69] Similar observations were also made of the Round Three hearings (RCAP 1993u, 70).

speak of reconciliation as a positively framed general goal, hope, need, or commitment.

One quote of the latter variety echoes a couple of times in the RCAP collection. At a May 1992 hearing, The Pas mayor Bruce Unfried spoke at some length about reconciliation, spring-boarding from Dickson's earlier comment about the RCAP being an "instrument of education and reconciliation"[70] to emphasize the importance of the RCAP playing such a role in order to address "the politics of conflict and confrontation" he saw taking hold in the early 1990s (1992f, 20-22). In the middle of his presentation, he posited an orientation towards reconciliation as being a feature of Canadian identity of sorts: "To me, Canadians are a fair-minded people. They want to correct injustices and they want to become involved in a reconciliation process" (23). Reflecting on recent experiences in The Pas, he noted that the choice ahead was to double down on denial or to be part of addressing racism (23-24). Allan Blakeney thanked Unfried for a "thoughtful and sensitive presentation" wherein he had put forward a "message of hope" and openness to seeking reconciliation rather than defensiveness (29). Unfried's comments about the fair-mindedness and desire for reconciliation of Canadians and choosing change over denial were later quoted by another RCAP participant (Institut culturel et éducatif Montagnais n.d., 6; RCAP 1992v, 497), and also highlighted in the RCAP's first discussion paper, *Framing the Issues* (1992n). The first part of that paper, "What We Heard," includes a longer version, and the lines quoted above are also highlighted in bigger print in an inset text box on the same page (6). This repeated message indicates that pursuing reconciliation is both the fair thing and the *Canadian* thing to do, though one wonders how this connects with the unstated reality that Canadians do not only "want to correct injustices" but committed those injustices in the first place, as well as with observations like Fortunate Guiboche's about what a "deep and wide reconciliation" would

[70] Mercredi and Turpel (1993) also cite this statement of Dickson's. They argue that the frustration and disappointment he had observed among Indigenous people prior to the RCAP remained, calling into question the semblance of "entering a new phase of reconciliation" (243-44).

be required given the prevailing attitudes among Canadians (RCAP 1992c, 494). The RCAP recognizes these challenges in its broader framing in the discussion papers, presenting hope for the possibility of reconciliation while also recognizing "that barriers and tensions block the way" (1993b, v, 6). While the term is presented wholly positively in the RCAP's publications, it is framed with qualifications about what is needed to enable a "genuine" or "lasting" reconciliation, leaving the implicit impression that not all reconciliations are created equal.

The discussion papers provide interim versions of the RCAP's understanding of what should characterize its goal of reconciliation, building towards the vision put forward in the final report.[71] Among these characterizations are the suggestions that reconciliation is everyone's responsibility and must be attitudinal as well as structural, with change "go[ing] beyond government structures and reach[ing] into the consciousness of all Canadians" and requiring "the full engagement of both sides" (RCAP 1992n, v; 1993u, viii). One paper notes, "Presenters have told us that reconciliation […] will elude us unless conspicuous progress is made toward self-determination, self-sufficiency, and healing for all First Peoples," and explains how this led the RCAP to develop four proposed "touchstones for change" – self-determination through self-government, self-sufficiency, and healing for Indigenous peoples, and "a new relationship between Aboriginal and non-Aboriginal people in Canada" (RCAP 1993b, 2). Its second discussion paper, *Focusing the Dialogue* (1993b), includes a section called "The Goal: Equality, Respect and Reconciliation," under which the RCAP discusses several aspirations and challenges linked to reconciliation (5). Concluding with a series of questions for consideration at the next round of hearings, it asserts that "[t]he goal for change is twofold: transformation in Aboriginal

[71] These discussion papers provide a demonstration of the RCAP showing its work, as it were, but as Georges Erasmus and Paul Chartrand emphasized at an Edmonton hearing, they are intended to present the public with provisional interpretations of the key takeaways from hearings to prompt feedback and further discussion rather than the RCAP's conclusive assessments and recommendations (RCAP 1993n, 236-38).

lives and reconciliation with non-Aboriginal people" (63).[72] The RCAP observed that the role of non-Indigenous people in the process required more attention (9), commenting that some presenters had "argued that non-Aboriginal people must change first, that they must come to understand and accept the cultural uniqueness and independence of First Peoples as a first step to equality. It is their contention that the relations of power between non-Aboriginal and Aboriginal peoples are the major barrier to change and reconciliation" (3). It emphasized that "[a]s useful as the elements in the solutions presented here may be in helping us move toward reconciliation, that goal cannot be reached without a rebalancing of the power relations between Aboriginal and non-Aboriginal people" (13). A later RCAP special report also declared the Crown's policy of extinguishing Aboriginal rights and title to be "incompatible with the principles of respect, recognition, and reconciliation that ought to underpin relationships between Aboriginal peoples and the Crown," and that continued insistence on extinguishment undermined its seeming "newfound willingness to embark on a voyage of reconciliation with Aboriginal peoples" (1995b, 66, 34). The normative vision of reconciliation in the discussion papers thus also comprises interactional, structural, and existential dimensions.

All in all, aside from the hesitant comments made about the meaning of the concept at some of the hearings and the RCAP's qualifications about the nature of the reconciliation that was required, there was almost no engagement in the course of its work with the ideas that reconciliation might mean a lot of different things or have potentially problematic or negative implications. Two main exceptions to this are worth noting, however. One is a report by Roland

[72] A later paper recapping the fourth round of public hearings was titled *Toward Reconciliation* (RCAP 1994a). Despite the title, however, it contains less elaboration of reconciliation as an objective than *Focusing the Dialogue*. The references to reconciliation in *Toward Reconciliation* all refer to the RCAP's engagement with the churches, consisting either of direct quotations or descriptions of the statements made by individuals or organizations representing churches (37, 90, 91, 95), excepting one passage about Dussault stressing the RCAP's hope "to further a *rapprochement* that would lead to genuine reconciliation between Aboriginal people and the churches" (89).

Chrisjohn and Sherri Young with Michael Maraun (1994), *The Circle Game*, which includes a sharp critical focus on rhetoric and power relations, taking to task the "word-magic" being used in representations of the history of Residential Schools (14).[73] The authors, who "dismis[s] reconciliation as bogus" (86), pay particular attention to emphases on therapy, healing, and reconciliation as responses to the effects of the Residential Schools policy. They observe that "[t]he body of the testimony given before the Royal Commission on Aboriginal peoples is […] replete with calls for 'the healing process' and 'reconciliation'" (11), acknowledging that much of this testimony comes from Indigenous people (13-14). The main proponent of these responses though, they note, are the churches, who sometimes "volunteer to just go ahead and do the therapy themselves" (12). Chrisjohn, Young, and Maraun are deeply skeptical of this response (13). They question the applicability of a framework of reconciliation to a situation where, as they see it, "there was never any 'conciliation' to 're'" (69). They also challenge the individualistic pathologizing of Residential School Survivors that results from failing – or refusing – to see them as having been collectively subjected to a genocidal policy. They point to how this yields calls for individual therapeutic interventions to help Survivors overcome their inability to cope with their personal experiences, rather than collective legal and political redress (85-88).[74] Their report shows that there was criticism of the rhetorical use of reconciliation as a term that might have pernicious effects in reinforcing underlying power relations in the context of relationships between Indigenous peoples and state and religious institutions during the early 1990s, but it appears to be a relatively isolated case. *The Circle Game* is cited once in the

[73] The report highlights, for instance, the language of "mistakes" superseding that of "crimes," and language and culture being described as "lost" rather than "stolen" (14, 17). These critiques of "word-magic" are distinct from claims of non-performativity but invite similar reflections on the rhetorical operation of particular uses of language.
[74] For other analyses of healing and reconciliation that consider the denial and/or pathologization of resentment as a reaction to colonial trauma and the logic and effects of individualizing, "cure"-oriented therapeutic responses, see Coulthard (2008; 2014, ch. 4); R. Green (2012); J. Henderson (2015); and Million (2013).

RCAP's final report,[75] but there is no discussion of the authors' critique of reconciliation, and the RCAP does not consider the concerns raised about the risks of rhetorical uses of terms like reconciliation and healing in conjunction with its own mobilization of those concepts.

The other example that shows that the general embrace of reconciliation was not wholly unquestioned during this period came from a member of the RCAP. Commissioner Paul Chartrand raised concerns about it in a question to church representatives in 1993:

> My last question has to do with […] a proposed need for reconciliation between Aboriginal peoples and other peoples. I confess nervousness with the idea and, before I can defend it with conviction, I would like to invite people's views about it.
>
> I am worried that the idea of reconciliation might be a second-best, perhaps second-best to a notion of true justice.
>
> I noted that in Australia, for example, some years ago there was a proposal for a national treaty […] But that wasn't accepted by the government, purportedly on their view of what the country was prepared to accept. Instead, they established a Council for Reconciliation. When I see those sorts of things and when I am reminded that one scholar said, 'Reconciliation means that one party has all the power, and the other side had better reconcile itself to that,' I wonder if there might be a touchstone that might be more appealing. It […] is the notion of justice. (RCAP 1993aa, 86-88)

These comments raise the spectre of resignation and reflect an understanding of the potentially asymmetrical nature of reconciliation, as described by Walters and others, that is largely absent from most of the reconciliation discourse surrounding the RCAP (though a different version is embodied in Guiboche's comments suggesting it is non-Indigenous rather than Indigenous people who have reconciling to do). They also present a somewhat different relationship between reconciliation and justice than the RCAP's co-chairs put forward at other hearings. Whereas Erasmus and Dussault presented justice as a necessary component of or precondition for reconciliation, Chartrand's question introduces the prospect of a more conflicting relationship between the two. Here, reconciliation may be pursued in lieu of justice, at best because justice appears unfeasible and at worst as a choice of the dominant party to reinforce power relations of

[75] It is cited in a discussion of the roots of family violence and the limits of individual-level violence reduction measures for addressing structural poverty and relations of power (RCAP 1996a, 3: 68).

domination, leaving reconciliation *to* those relations of power as the only option on the table.

None of the few concerns raised over the course of the RCAP's mandate served to impede the use of the term in the final report. However, the types of uses that the RCAP employs during this period attend to some of the critiques that later come to be levelled at the state's approach to reconciliation in the post-RCAP era. The RCAP's uses are also significantly more attentive to questions of relationality in comparison to the conceptions put forward by the SCC at the time, as the RCAP aims to enable a transformation of structural relations that brings about justice for Indigenous peoples and improves the relationship between Indigenous and non-Indigenous people. This approach reflects Lu's insight regarding the normative significance of accompanying interactional reconciliation with structural reconciliation. While the critiques and concerns about reconciliation described above are not taken up in association with the term reconciliation *per se* in the final report, some elements of them are addressed implicitly in the particular way that the RCAP characterizes reconciliation.[76] This is borne out in the final report as well, which Kim Stanton describes as putting forward a "particularly important enunciation of the concept" of reconciliation (2017, 22). The report speaks of the importance of recognizing historical and ongoing injustices against Indigenous peoples and promising that they will not be continued or repeated (RCAP 1996a, 1:7, 603). It presents a vision of reconciliation as relationship that is rooted in treaty relations and highlights the responsibilities of both Indigenous and non-Indigenous people for enacting it (1:7, 2:17). While most of the references to reconciliation within the presentation of this vision are of a broad, transformation of relationships variety, the consistency form makes a number of appearances as well to speak to specific factors that are in tension and require some kind of harmonization as part of an overarching project of

[76] This may have been inadvertent or implicit on the RCAP's part. While I only interviewed a few people who were involved with the RCAP and those I did not talk with may remember differently, no one I spoke to recalled deliberate use of reconciliation as a concept or discussions about what it meant and whether/how it should be used.

change.[77] In the mix are both forms of reconciliation that are understood as a long-term ongoing process and forms that seem to call for a short-term intervention that will arrive at a point of closure, such that reconciliation is presented as both a journey and a destination, as well as a sort of umbrella vision containing many smaller and more delineated reconciliations underneath it.

Consistent with the RCAP's mandate that it make "recommendations promoting reconciliation between Aboriginal people and Canadian society," the proposals and recommendations it issued are described in the report as "avenues of reconciliation" (1:12). At the centre of its vision are treaties, which are presented as "instruments of reconciliation" (2:63): "It is the treaty relationship that will establish a genuine reconciliation between Aboriginal peoples and other Canadians, based on the principles of mutual respect and sharing" (2:657; see also 2:430, 5:93). Approaching reconciliation through treaties is favoured over resolving conflicts via the courts which, due to their operational logic and structural limitations, tend towards costly and time-consuming division rather than reconciliation (1:9, 2:33, 587), and thus "can only be one part of a larger political process of negotiation and reconciliation" insofar as they may contribute to bringing the parties together outside of the context of litigation (2:539).[78]

Several different forms of the term are invoked in the description of treaty relations as an avenue of reconciliation. Building on the notion that treaties were historically used as a "means of reconciliation" to avoid conflict in shared territory (2:11), the RCAP recommends a reinvigorated treaty process as a "means to secure justice for Aboriginal nations and a reconciliation of their rights with the rights of all Canadians" that will serve as an overarching

[77] See e.g., RCAP (1996, 1:201-2, 292, 2:437, 524, 651, 731, 734, 3:555, 4:110, 209, 327-28).

[78] This is consistent, at least in part, with the SCC's approach to reconciliation, which has repeatedly emphasized that Indigenous peoples' rights and title should be determined through political negotiation rather than the courts. Ryan Beaton argues that the call for negotiations pairs with the Court's description of Crown sovereignty as "*de facto*" in decisions subsequent to the *Van der Peet* trilogy and *Delgamuukw*, suggesting the SCC was "rais[ing] questions about the *legitimacy* of Crown sovereignty in the absence of treaties, while continuing to uphold the *legality* of Crown sovereignty," and so prompting the Crown "to repair the questionable foundations of its sovereign claims" by negotiating treaties (2018, 28, 30; italics in original). See also J. Nichols (2020, 24) and Stanton (2017).

framework within which the varying areas that made up its mandate "such as governance, land and resources, and economic issues will ultimately be addressed" (2:16). This route would enable moving away from the existing state approach of categorizing Indigenous peoples' claims to be addressed through discrete processes. These would be replaced by a new negotiation process that would have dispute resolution mechanisms and the activity of reconciling Indigenous peoples' and Canadians' rights built in (though it is also emphasized that there should be recourse to an independent tribunal in the instance where "all other means of reconciliation fail") (2:547-48). In introducing this alternative to the government's approach to comprehensive and specific claims, the report states: "We have struggled to find a more appropriate vocabulary to describe the range of unresolved lands and resources issues — one that embodies the four principles of the new relationship: mutual recognition, mutual respect, sharing and mutual responsibility [...] We have found it in the language of relationships, rights and reconciliation" (2:547). Reflecting the idea that a broader reconciliation of relationships might entail a nested series of smaller and/or more delimited acts of reconciliation, the RCAP points to the importance of "lay[ing] a foundation for reconciliation" by carefully assessing where there is agreement and where there is conflict between the Crown's and Indigenous peoples' perspectives and positions (2:35), and working to establish a new framework to address areas where those positions have historically been "irreconcilable" (2:42, 1:16). The RCAP saw its role in the process as being to make "proposals designed to find common ground" (1:16). At the same time, reconciliation also resided within the perspectives in need of reconciling themselves: describing the different understandings guiding the two parties throughout their history of treatymaking, the report notes that "[w]hile European treaties borrowed the form of business contracts, Aboriginal treaties were modelled on the forms of marriage, adoption and kinship. They were aimed at creating living

relationships and, like a marriage, they required periodic celebration, renewal, and reconciliation" (1:121-22). The distinct but overlapping meanings of resolving specific conflicts or injuries, addressing inconsistencies or contradictions, and repairing a broadly damaged relationship are all enveloped in the RCAP's vision of reconciliation.

The report also outlines several prerequisites for and characteristics of reconciliation. These include airing and acknowledging the violence and injustices to which the state subjected Indigenous peoples – as the RCAP put it, "a great cleansing of the wounds of the past" needed to precede "the work of reconciliation" (1:17) – and recognizing how "the fundamental contradiction of building a modern liberal democracy upon the subversion of Aboriginal nations and at the expense of the cultural identity of Indigenous peoples continues to undermine our society" (1:582). The RCAP argued that the harms of the past continued to "impede [Indigenous peoples'] aspirations to assume their rightful place in a renewed Canadian federation," and that its contradictory foundation threatened "the legitimacy of Canadian institutions" (1:581-82). It stated, "We believe the time has come to move out of an age of disrespect and intolerance, and into a new era of reconciliation with Aboriginal nations" (1:582). This required first implementing existing rights, before which "treaty nations cannot be expected to embark on further discussions aimed at deeper reconciliation with other Canadians. It is not enough for governments to say, 'Trust us'" (2:34). Reconciliation was also necessarily a mutual exercise, which as a baseline could not rest on "policies of assimilation based on the surrender or extinguishment of Aboriginal title" (2:534). It might include the consistency-style reconciliation of specific conflicts of rights or interests but also encompassed a broader relational vision:

> By reconciliation we mean more than just giving effect to a treaty hunting right or securing the restoration of reserve land taken unfairly or illegally in the past. We mean embracing the spirit and intent of the treaty relationship itself, a relationship of mutual trust and

> loyalty, as the framework for a vibrant and respectful new relationship between peoples. (2:35)

In this, reconciliation was animated by other related concepts such as coexistence and shared jurisdiction (2:437). "Strategies of healing and reconciliation" were presented as a route for "rebuilding and reclaiming nationhood" for Indigenous peoples (2:312), but also as being a matter of "common interest" that would benefit Canada as well, as it would allow the country to put an end to "a continuing clash of cultures and interests" and provide an "opportunity for Canadians to move beyond policies that are the failed relics of colonialism. This will change Canada's reputation abroad and people's self-respect at home" (2:423, 5:84). Resonating in interesting ways with Stéphane Dion and others' pleas for reconciliation in the wake of the Québec referendum around this same period, the RCAP report states:

> If Canada has a meaningful role to play on the world stage (and we would like to think that it has) then it must first set its domestic house in order and devise, with the full participation of the federal government, the provinces and the Aboriginal peoples, a national policy of reconciliation and regeneration of which we can all be proud. (1:211)

Dussault reiterated this description of the report as a call for a "national policy of reconciliation" upon the tenth and twentieth anniversaries of its release (Dussault 2007, 93; 2021, 80).

The RCAP report, which concluded with an ambitious 20-year road map for the initial stages of transforming the relationship (1996a, vol. 5), met with an attenuated political response, the first steps of which are described in the next chapter. As Marlene Brant Castellano (co-director of research for the RCAP) described, within months of its release, the report was no longer available in print, with the Liberal government that had come to power in the middle of the RCAP's mandate seemingly averse to tackling what it perceived as overly broad and expensive recommendations of a commission established by another government (research

interview, September 2018; Castellano and Wien 2021, ix-x).[79] While the government response was slow and partial, the RCAP report had a significant impact on scholarship and on Indigenous activism, providing an extensive body of research that has been widely cited and "a set of recommendations with a significant degree of democratic legitimacy to them," and that "virtually the whole Indigenous movement can rally around," in that they served to "raise the minimum," particularly by recognizing the authority of Indigenous governments and calling for a repudiation of the Doctrine of Discovery (Coulthard 2014, 119; Manuel and Derrickson 2015, 107-8). This is not to suggest that the RCAP vision was wholeheartedly embraced by scholars and Indigenous peoples. Indeed, the report's proposals sparked significant debates, with some faulting the RCAP for going too far and others for not going far enough in challenging the existing bounds of the Canadian constitutional status quo. Many of these debates centred specifically on the proposed approach to reorganizing Indigenous nations for the purposes of self-government and on how they would be situated within an already-constituted Canada.[80] The RCAP's work, and these

[79] In the longer term the RCAP vision has found somewhat more purchase among Jean Chrétien's Liberal successors and has been reignited by being echoed in the Calls to Action of the TRC. In Frederic Wien's view, reconciliation had not been an "organizing principle" for the RCAP in the way it was for the TRC, but in spirit "almost everything about RCAP is about reconciliation" and "there isn't a lot of daylight between" how the two commissions understood the concept (research interview, January 2018). On the Trudeau government and RCAP recommendations, see Canada (2016) and Munson (2017). For a critical assessment of the belated adoption of the recommendation to split the Department of Indian Affairs, see Coburn (2018). On discussions of the RCAP in the TRC report, see e.g., TRC (2015b, 6, 239-40, 258, 268); Castellano and Wien (2021, x); Dussault (2021, 81).

[80] Patricia Monture-Angus (1999, 12-13) and Kiera Ladner (2001) critiqued the RCAP vision for catering too much to what the Canadian government would accept and for failing to sufficiently disrupt, and in some ways for even replicating, colonial power relations. Such concerns were also raised during the public hearings; see e.g., RCAP (1993n, 209, 218-26). Others, such as Alan Cairns (2000) and Thomas Flanagan (2000), though they described it in varying ways, saw in its vision an ill-advised threat to the unity of the Canadian political community. Turner (2006) highlights a central deep divergence marking these debates, writing of Cairns's critique: "By invoking the unilateral assertion of Canadian sovereignty, and its concomitant proviso that any form of Aboriginal self-government will have to be 'within' Canada, he is ignoring what many Aboriginal peoples are asserting about the nature of the political relationship. Instead of engaging in a difficult moral and political dialogue with Aboriginal peoples, he is unilaterally setting down limits for *any* political dialogue to occur, and justifying these limits by appealing to the colonial assumptions that have maintained the status quo. […] The meaning of 'within' Canada is itself up for negotiation precisely *because* it is a contested concept in the political relationship" (55). See also Dobrowolsky and Devlin (2002). Andrée Lajoie inquired why the RCAP had ruled out "*le pluralisme extra-étatique*" and Dussault responded that largely, while there were a couple of exceptions, the commissioners "n'avons pas perçu généralement que le souhait [*sic*] des Autochtones de s'autodéterminer à l'extérieur du Canada" (Dussault and Lajoie 2002, 19;

subsequent debates, also informed and were informed by scholarship that increasingly embraced the term reconciliation, including by some who had been involved in research and writing for the RCAP report. For instance, James Tully, who authored a background paper that formed the basis for the "Principles of a Renewed Relationship" section of the final report (1996a, 1:643-63), has come to root his work on democratic constitutionalism around reconciliation (2000; 2001a; 2001b; 2004; 2008; 2018; 2020; 2023, 444-47, 455-63). While that section does not contain the term, Tully later published reworked versions of his paper under the titles "Aboriginal Peoples: Negotiating Reconciliation" and "The negotiation of reconciliation" (1999; 2008, ch. 7).[81]

From the official federal response to the RCAP report onwards, "reconciliation" took on an increasingly prominent role in policy, as is laid out in the next chapter. Not only did the term become more prevalent in jurisprudence, but it also moved from courts, media, and commissions to be adopted more and more by politicians and other state actors. As it did, it brought along all the etymological and political complexities it had carried with it, as seen in the developments considered thus far, since its early emergence. Prior to the government's response to the RCAP, however, another set of events brought together actors who had also been involved in other developments explored in parts 1 and 2, culminating in a negotiation yielding a 1996 agreement that included a particular legalistic understanding of reconciliation. This document showcases another blend of law and politics shaping a conception of reconciliation, adding to the versions in Aboriginal rights jurisprudence and restorative justice one focused on liability and closure.

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italics in original). As Turner notes, many questions remain about the meaning and structure of 'within Canada' for different peoples even if "[m]any Aboriginal peoples do not question that they are Canadian" (2006, 55).

[81] While there is now a large and growing field of political theory centring on political reconciliation, with Tully's oeuvre – including his revised RCAP paper – among this work, there is no engagement with academic scholarship on reconciliation theory in the RCAP report. One item in the RCAP archive contains a discussion of political theory that links Indigenous self-determination with communitarianism and refers to an approach termed "reconciliationist communitarianism" (Lange 1995, 24-26; on "reconciliationist" vs. "participatory" communitarianism, see Benhabib [1992, 77-82]), but while it is cited several times in the final report, none of these references engage with its use of reconciliationist communitarianism (RCAP 1996a, 2:944, 973n244, 3:55, 95n88, 4: 265, 339, 361n4, 379n182).

7.4 The Inuit High Arctic Relocation: A Reconciliation Agreement

The RCAP, political negotiations, and an Indigenous people's movement for redress were all brought together in the mid-1990s by efforts to address the matter of the federal government's relocation of Inuit from Inukjuak and Mittimatalik to the High Arctic in the 1950s.[82] The encounter with Canadian colonial policy and administration changed Inuit's lives dramatically. They were relocated, settled into sedentary communities, children were taken to Residential Schools, *qimmiit* (sled dogs) – who had been central to Inuit autonomy and mobility – were killed by the RCMP, and contact with and control by bureaucrats, missionaries, and police increased (Goldring 2015, 498-501; Simon 2011, 880). Canadian government officials and Inuit have perceived the nature of responsibility for and significance of these changes very differently (Goldring 2015, 498). The High Arctic Relocation is a case in point. Government officials perceived and represented it as being "a well-intentioned and largely successful effort to support struggling Inuit" by moving them somewhere with more resources (Slotta 2015, 131-32, 142). Inuit who were relocated, however, experienced great hardship and suffering as they were separated from their communities by vast distances and placed in an unfamiliar environment. Many were unable to return home despite three decades of requests and a government promise at the outset that they could if they asked (141). There was also the question of whether the policy's underlying motivation was truly supporting Inuit, or rather bolstering Canadian sovereignty in the Arctic at the height of the Cold War. As Pauline Wakeham writes,

> The question of sovereignty is the specter that haunts both the High Arctic Relocations and the subsequent struggles over state recognition of and redress for these events. Sovereignty is the motive that would transform this forced displacement from a so-called humanitarian intervention into a gross human rights violation. For if Inuit were moved to remote locations in extreme High Arctic environments not because conditions in Inukjuak were as

[82] For details on the relocation, see the RCAP special report *The High Arctic Relocation* (1994b). See also Audlaluk (2020), Kunuk (2009), Lepage (2008), and Tassinari (1995), as well as the interviews and short films made available through the Iqqaumavara project at http://www.iqqaumavara.com/en/, for first-hand accounts.

> dire as the government has claimed, but because the settler state exploited Inuit as pawns in a scramble to secure control of the Queen Elizabeth Islands, then the problems of coercion, lack of informed consent, and the suffering that relocatees endured could not be so easily discounted as unfortunate failings of a well-intentioned government program. (2014, 95)[83]

These debates all came to a head in the late 1980s and early 1990s, as the Makivik Corporation, an organization representing Inuit of Nunavik, pushed for compensation for the relocatees,[84] several of whom also appeared before a Commons committee and called for a government apology and compensation (Slotta 2015, 141-42). The government refused to offer more than funding for relocation, housing, and visits for the relocatees, and a partial recognition that the policy had had some shortcomings. In response, the ITC requested that the RCAP get involved and hold further hearings (143; RCAP 1993c, 1-5).[85] The result is significant to the development of reconciliation discourses in several different ways. In addition to the term being used at the dedicated hearings on the relocations and in the special report the RCAP issued the following year, both the RCAP itself and subsequent scholarship framed its involvement in the dispute – which was at an impasse at that point – as a reconciliatory undertaking. Then, after this intervention, the government offered Inuit a compensation package in 1996. This took the form of a Reconciliation Agreement that advanced a distinct, legalistic framing of reconciliation.

The RCAP held eight days of hearings on the High Arctic relocation in April and June

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[83] For an analysis of the complexities of the relationship between Inuit and the Canadian state around the question of sovereignty, see Christie (2011).

[84] Makivik Corporation advocated for a $10 million trust fund to compensate the families who had been relocated. Demonstrating the dialogical nature of redress politics, its 1989 request gestured to the government's compensation of Japanese Canadians the previous year as a part of the redress package for their dispossession and internment during WWII (Gunther 1992 quoted in Slotta 2015, 142; on another of its influences, see note 7 in ch. 8). Brian Mulroney's 1988 acknowledgement to Japanese Canadians did not mention "reconciliation" (House of Commons 1988, 19499-500). In comparison, and of note given their other uses of the term that same year (see ch. 4), Stephen Harper's 2006 apology to Chinese Canadians for the head tax policy stated that the apology was "not about liability" but "about reconciliation with those who endured such hardship and with the broader Chinese Canadian community, one that continues to make such an invaluable contribution to this great country" (House of Commons 2006b, 2863-4), while NDP leader Jack Layton's statement after Harper's, which contained more uses, called for "full justice, full reconciliation and full closure" and stated that the apology was "not about liability" but "about justice" (2864-65).

[85] On the RCAP's decision to pursue a more detailed investigation of the relocations and how this was informed by its 1992 visit to Inukjuak, decisions by government, and the ITC's request, see RCAP (1993c, 1-5; 1993q, 492-96).

1993.[86] Reconciliation was raised generally during those hearings in references to the RCAP's mandate and to public education (RCAP 1993a, 7; 1993r, 761), and the preface to its special report opened with the statement that "[t]he need for reconciliation between Aboriginal peoples and non-Aboriginal people led to the creation of the Royal Commission on Aboriginal peoples in 1991" (RCAP 1994b, xi). Beyond these few statements, however, the references to reconciliation in the documents relating to the relocations all speak much more specifically to the RCAP's mediation role regarding the matter at hand.[87] Comments about this role by Dussault and statements in the special report shed light on how the RCAP characterized its reconciliatory role, and how it can be understood as being informed by a couple of different meanings of the term.

James Slotta notes that "[t]he High Arctic Relocation hearings were some of the most widely publicized and the most controversial hearings held by the Royal Commission" (2015, 140), consciousness of which seems laced through Dussault's repeated emphasis on how the issue had been brought to rather than initiated by the RCAP and how it would employ a cautious approach in its investigations (RCAP 1993p, 132; 1993q, 494-96; 1993r, 1060-61). Linking this work to its broader mandate, Dussault presented the RCAP's role as being both animated and circumscribed by the goal of reconciliation. This provides some insight into what the RCAP understood reconciliation to mean and require. Introducing the June hearings, Dussault stated:

> La Commission a pour mandat de formuler des recommandations qui favorisent la réconciliation. Or, la réconciliation n'est pas seulement un résultat, mais c'est aussi un processus comme celui-ci. Notre façon d'aborder les questions doit donc s'inspirer de ce désir de réconciliation. Une confrontation ne favoriserait certainement pas la réconciliation. Il n'a jamais été dans nos intentions de faire subir un procès aux autochtones ni à qui que ce soit. (1993p, 8)

[86] The first set of hearings was to hear from Inuit who had been relocated; the second was to speak with government officials and the authors of studies about the relocation. The transcripts for these hearings and two special phone consultations on the relocations are Items 99-102 and 152-157 in the Library and Archives Canada RCAP database.
[87] It is mainly the RCAP that frames it this way, though some researchers at the June hearings echo this framing (1993r, 744, 879). James Slotta's (2015) more recent analysis of the hearings also frames the RCAP as reconciler, as he argues that it performed the "phatic function" of a truth and reconciliation process by turning the communicative relationship between Inuit and the state from one of not listening into one of "giving voice" and hearing.

The next day, Dussault described how the RCAP had come to the file. He emphasized that the RCAP did not yet know what it would do with the gathered information and did not intend to approach the matter in a quasi-judicial way, despite being empowered to do so (1993q, 494-96):

> I wanted to state that very clearly. This is the stand that we took from the beginning. We felt that acting in a quasi-judicial way, using our subpoena powers – and we have been asked often in all kinds of situations – would defeat the purpose of the Commission, which is working toward a better understanding and toward reconciliation. We are a research, public policy-oriented Commission, and we intend to stay that way. (496)

The day after that, Dussault reiterated that "anything the Commission does as a result of these hearings" would be geared towards reconciliation, and that it "has been careful to adopt an approach and procedures which are consistent with a process of reconciliation" (1993r, 1061). These are interesting statements considering that some critiques of the later TRC's mandate, sometimes comparing it to the RCAP's, have highlighted its lack of subpoena powers.[88] This evinces tensions around the relationship between truth and reconciliation and what kinds of mechanisms and approaches are most appropriate for pursuing each (not to mention when an institution is tasked with both). The RCAP later went on to call on the government to empower the Canadian Human Rights Commission to investigate historical relocations of Indigenous communities including by granting subpoena powers (though noting it "anticipate[s] that such powers will be used sparingly, if at all") (RCAP 1996a, 1: 480, 492, 688-89), and to establish a public inquiry into "the origins and effects of residential schools policies and practices" (687).[89] Yet, despite possessing those powers itself, the RCAP cited an orientation towards reconciliation as a reason for eschewing using them.[90] So, this framing is also notable for the light it sheds on

[88] See e.g., Henderson and Wakeham (2009, 12); Turner (2013, 109). For more on the absence of subpoena powers in the TRC's mandate, see Mahoney (2014, 519); Nagy (2013, 64; 2014, 211, 215); and Stanton (2011, 5-6).
[89] Under Part I of the *Inquiries Act*, commissioners can summon witnesses and subpoena documents (s. 4).
[90] Similar arguments were made for the TRC not subpoenaing witnesses or naming perpetrators: along with concerns about getting bogged down in litigation (Mahoney 2014, 519), there was a strong preference for focusing

how the RCAP conceptualizes reconciliation. It implies that a certain orientation towards uncovering truth – approached through a quasi-judicial mode of inquiry – is understood to conflict with reconciliation, presented by Dussault as both goal and process.

At the same time, airing unheard truths was also an important component of the reconciliatory undertaking of the hearings, which was justified on the basis of Inuit having been previously denied the chance to share their experiences, leaving the official record comprising only of government documents (RCAP 1993p, 131; 1993q, 493). As a truth-telling process though, these hearings and the report that emanated from them were framed as a conflict resolution exercise rather than one of forensic or judicial inquiry. The conflict resolution in question was twofold, invoking both reconciliation as consistency and as relationship, as it involved addressing both a specific conflict of evidence between Inuit and government accounts of the relocations ("to see if the record should be put on a more balanced way" [RCAP 1993p, 131]) and the negative state of the parties' relationship more generally.[91] In the RCAP's framing, the first form of reconciliation was hoped to serve the latter. For Slotta, the very act of staging the hearings constitutes an act of reconciliation, as it performs a "phatic ritual" that transforms the relationship between Inuit and state officials through a change in communication patterns (2015).[92] More than just hearing previously unheard stories, however, the RCAP also staked out a place in the process for addressing the conflicts between stories, and for pursuing a bigger goal of reconciliation as a destination by way of "the resolution of the complaints of the High Arctic

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on healing among Residential School Survivors and, per at least one church representative, subpoena powers were at odds with "the spirit of restorative justice" – though, as Rosemary Nagy notes, church and government officials also had "strategically defensive reasons" for wanting a mandate without subpoena powers (2014, 211). On the Canadian TRC's non-forensic, "victim-centred" approach, see Bonner and James (2011); James (2012); Nagy (2013).

[91] A media report after the hearings presented the RCAP's task largely in the former terms: "There are two versions of the 40-year-old story of 17 Inuit families relocated from northern Quebec to the High Arctic. […] The [RCAP] heard both versions and must now come up with a way to reconcile the stories" (Day 1993).

[92] This is on a view of reconciliation rooted in liberal ideals of communicative democracy; as Slotta points out, such an approach fails to address the implications of Indigenous peoples' sovereignty and what "a communicative relationship grounded […] in the fact of First Nations' sovereignty" might require (2015, 155).

relocatees," which it suggests "will facilitate reconciliation generally between the Inuit and the government of Canada" (RCAP 1994b, xii).[93] Entangled in reconciliation as seeking consistency with respect to conflicting evidence is the task of reconciling oral and written history (2).[94]

Reflecting on this latter task, it bears recalling that consistency can be achieved symmetrically or asymmetrically, with adjustments made on one or both sides (Walters 2008, 167). The RCAP describes of the conflicting evidence it faced how "[p]eople on both sides of the controversy have suggested that these conflicts can be reconciled only by finding that one side or the other is failing to tell the whole truth about what happened" (1994b, 2). Discussing the different kinds of evidence that Inuit and government officials put forward and reflecting on how to parse the two together, it argues especially against dismissing oral history:

> The challenge in understanding this relocation is to open one's mind to the oral history and to read the documentary record in an inquiring spirit, ever mindful of the people who were relocated. The object is not to seek validation of the oral history in the written record. Rather, the first step is to ask whether the information about the relocation tells a substantially consistent story – taking account of the different perspectives – or whether there is substantial conflict. This involves asking, for example, whether the oral history – the experience of the relocatees – reflects what is found in the documentary record. It involves asking how the oral history might help us understand and interpret the documentary record. It involves understanding the broader cultural and institutional contexts from which the oral history and the documentary record come. (2)

This approach is illustrated with an example about diverging perspectives over payment of family allowances. The RCAP determined that there was in fact no conflict between the oral and

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[93] The RCAP final report reiterated this statement (1996a, 1:480). It also stated, "After weighing all the evidence, the High Arctic relocation seemed to us a prime example of how erroneous assumptions by administrators concerning Aboriginal people can lead to abuses of authority and power. We believe that a March 1995 statement about the High Arctic relocation by the Minister of Indian Affairs and Northern Development, Ron Irwin, is a good first step in a process of reconciliation" (1:396). Irwin stated that such a relocation "would not be done in the same way today," recognized the contribution made by Inuit presence in the High Arctic regardless of disagreements over the purpose of the relocations, and committed to a cabinet discussion of the matter (quoted in RCAP 1996a, 4:279). The 1996 Reconciliation Agreement is footnoted in the report, but the details are not discussed (4:362n2).

[94] As Slotta underlines, part of the broader context here included the BC Supreme Court and later SCC hearings and decisions in *Delgamuukw v. B.C.*, in which the tensions between the primacy of documentary evidence in the Canadian legal tradition and Indigenous peoples' oral histories were centrally at issue (2015, 138-40). For more on this, see Borrows (1999); Bryan (2011); Cruikshank (1992, 1994); Napoleon (2005); and Sparke (1998).

written accounts, but rather a "problem […] of interpretation and understanding" (3). Another example diagnoses the issue as confusion caused by ambiguous phrasing in internal government communication rather than genuinely conflicting evidence between Inuit and government accounts (73). Ultimately, the RCAP determines that its approach has clarified the situation:

> The Commission's process has allowed new light to be shed on the relocation. The apparent conflicts in the evidence have been reconciled. The government's characterization of the relocation, as set out in its response to the Standing Committee, has been seen to be based on misconceptions. These misconceptions have existed for decades. The oral testimony of the relocatees has provided the insight needed to recognize the long-standing misunderstandings that lie at the heart of the relocatees' complaints. (161)

In this way, reconciliation as consistency would seem to have been attained, not by performing the type of asymmetrical adjustment asked of the RCAP by the different parties, but by determining the inconsistency to not have been what it appeared. The hope is then that this clarification will enable a sort of mutually reinforcing reconciliation of the general and the specific as "[t]his reconciliation of the evidence makes it possible for those who hold conflicting views about the relocation to reconcile their differences," though the RCAP also notes that the report cannot "resolve [individuals' specific] grievances" but hopefully "reconciliation on the broader issues will contribute to a resolution of specific grievances" (3, 7).[95]

The RCAP is nevertheless clear that while the needed reconciliation as consistency with respect to conflicting evidence may have been provided by this clarificatory report, it views further steps as being needed to enable reconciliation as relationship between Inuit and the

[95] This perspective on the clarification was not uncontested, however. As per Slotta (2015, 154): "Many former government officials felt that their voices had been silenced in the Royal Commission's report on the High Arctic Relocation and the media reporting on it. In their view, the Commission did not create a context of open, equal, and free communication, but instead worked to suppress the officials' version of events as part of a 'politically correct' whitewash. To accept the Royal Commission hearings and other truth and reconciliation processes as transformative phatic rituals requires accepting that previous relations between indigenous peoples and the state were marked by communicative illiberality, and not everyone agrees with this premise." Weighing the ways that the work of truth and reconciliation commissions can be understood in relation to liberal democratic communicative ideals, Slotta reminds us that "politics plays out through competing designations of communicative contexts as open, equal, and free" (154). This lack of agreement about the premise in question is reflected in the Reconciliation Agreement discussed below that required Inuit to acknowledge the "good intentions" of government officials.

government. In introducing its recommendations, it states, “Reconciliation of the evidence concerning the relocation provides a basis for reassessing the government’s responsibilities concerning the relocation and is a first step in a more fundamental reconciliation between the relocatees and the government” (135). The RCAP determines the relocations were an “ill-conceived” and “inhumane” policy that the government undertook without proper authority, disclosure, or informed consent from Inuit, and concludes, “Great wrongs have been done to the relocatees, and it is incumbent on the government to accept the fundamental merit of the relocatees’ complaints. This acceptance is the only basis upon which reconciliation between the Inuit and the government is possible” (162). It then recommends redress measures that might underpin a more “fundamental reconciliation,” including acknowledging the injustices faced by the relocatees as well as their contribution to bolstering Canadian sovereignty in the Arctic, compensation, and funding for visits, relocation to home communities, and housing (163).

After the RCAP released its report on the matter, public pressure pushed the government to take more significant steps than it had previously agreed to (Wakeham 2014, 85). This came in the form of a “Reconciliation Agreement” in 1996 that included the $10 million trust fund Makivik Corporation had been requesting, “but adamantly withheld an apology” (85). In the agreement, a recital reading “WHEREAS Canada and the High Arctic Relocatees want reconciliation between themselves” led into a “Statement of Reconciliation, Recognition, and Acknowledgement with respect to the High Arctic Relocations of Inuit in the 1950s” (Minister of Indian Affairs and Northern Development and Makivik Corporation 1996, 1, 2). Inuit had to sign this agreement to receive the allocated compensation. In addition to recognizing and acknowledging the relocation of Inuit, the contribution this made “to a Canadian presence in the High Arctic,” and the fact that Inuit suffered as a result of the relocations “in part because of

government planning and implementation," it also stated that "[t]he High Arctic Relocatees and Makivik Corporation hereby recognize and acknowledge that in planning the relocation to the High Arctic the government officials of the time were acting with honourable intentions in what was perceived to be in the best interests of the Inuit at that time" (2). Scholarship about this agreement observes that Inuit signed "under duress" so that older relocatees could have "some measure of redress in their lifetime" (Wakeham 2014, 85; James 2008, 143). Per Wakeham, the agreement served as "contractual assurance" for the government that it was absolved of liability that also "implicitly den[ied] the sovereignty motive behind the relocations" (2014, 96). Further, she suggests, it "articulated that denial through the ventriloquized voice of the relocatees – all of whom, the government's news release emphasized, 'signed the reconciliation agreement,'" thus "transform[ing] a contractual concession into a validation by the injured parties of the government's good intentions" (2014, 96). Unlike the RCAP's approach, which spoke to a broader relationship and ongoing process as well as the event of addressing conflicts between evidence, the government's version in this case asserted reconciliation as a singular moment of closure: it required Inuit to attest that the agreement "adequately finalizes the reconciliation" between the parties, and then in a news release declared the "High Arctic Inuit Relocation Reconciled" (quoted in Wakeham 2014, 96).[96] This was an interactional form of reconciliation – one might also call it transactional – that was expressly unaccompanied by structural change.

[96] Despite this attempt at closure, the movement for redress for the relocations did not end there. Inuit kept organizing for commemoration and a government apology, which they ultimately received from Minister of Aboriginal Affairs John Duncan in Inukjuak in August of 2010. For more on this movement and an analysis of how both the relocations and redress are shaped by contests over sovereignty, see Wakeham (2014). Wakeham notes, "for many Inuit, the campaign for the 2010 mea culpa sought to redress not only the original relocations of the 1950s but also the compounded injuries incurred by the 1996 reconciliation agreement," suggesting that their continued efforts to push for an apology "constituted a challenge to the power asymmetries structuring dominant reconciliatory frameworks" (97). Wakeham's exploration highlights the complexity and ambiguity of reconciliation by analyzing both how redress mechanisms (such as compensation and apology) and associated reconciliation discourses can serve to reinscribe and reinforce rather than challenging state power while also demonstrating that receiving an apology remained an important priority for Inuit despite these significant drawbacks (88, 98-100).

With the advent of this memorandum, the term "reconciliation" now appeared in an official document pertaining to the relationship between the government and Indigenous peoples. Yet there seems to be little public awareness of its existence, much less its character, in the policy trajectory of reconciliation with Indigenous peoples in Canada. This likely has much to do with its signing in 1996 having been "poorly publicized," not attended by the prime minister, and not effectively preserved in public government records (James 2008, 143).[97] These factors contribute to James's classification of the Agreement as an "aggressively preemptive non-apology leavened by compensation" through which the government sought "to impose counterfeit reconciliation on an oppressed and politically weak group" that, by virtue of the low visibility and impermanence of the public record, "contribute[d] little to broader long-term public understandings of the injustices in question" (2008, 144, 148). The next government document with reconciliation in the title, the "Statement of Reconciliation" issued in response to the RCAP report discussed in chapter 8, has perhaps retained a somewhat greater place in public memory, though it too "is not part of Canada's official parliamentary or legal record" (140).

7.5 Conclusion

In 1996, several developments that had been brewing since 1990, if not earlier, came to a head as the SCC released the *Van der Peet* trilogy, the RCAP released its final report, and the federal

[97] To my knowledge, the text is only available online via *Nunatsiaq News*. Writing in 2008, James states that "the only written record of the Agreement seems to be an appendix to a press release which has since been removed from the Indian Affairs website. The press release itself scolds the Inuit: 'We cannot continue to dwell on the past, we must move on and concentrate on the future'" (143). Despite other records from this period – including the RCAP archive – being restored to public availability and even being made more easily accessible via government websites following the work of the TRC, the same does not appear to apply to the Reconciliation Agreement. I searched Canada.ca for "reconciliation agreement" and found only two results related to the High Arctic Relocation: a reference to the 2010 apology and a Minister's foreword in an archived 1996 annual report where Jane Stewart states that she is "pleased to report that a reconciliation agreement with the Nunavik Inuit who were relocated in the High Arctic in the early 1950s was ratified in April 1996" (Government of Canada 2021b; 1996). Searching "high arctic relocation reconciliation agreement" on the Library and Archives Canada website turned up only RCAP documents. Both searches were conducted on June 25, 2021.

government signed the Reconciliation Agreement with Makivik Corporation.[98] Earlier public disclosures by Survivors and the RCAP's hearings and recommendations on the subject had brought the matter of Residential Schools into the public conversation, and churches had begun to acknowledge their role in the violence wrought by this policy as well as the spiritual violence conducted in the name of Christianity as part of colonization more generally. All the while, the country was absorbing the aftermath of the 1995 Québec referendum that prompted other talk of reconciliation within Québec and across Canada. Between 1987 and 1996, the term was much more frequently used than in the period surveyed in chapter 5, by a range of actors including politicians, churches, the SCC, commissions of inquiry, the media, and members of the public to address a variety of issues relating to the relationship between Indigenous peoples and Canada, including constitutional negotiations, apologies, legal rights, and more, as well as the relationship itself in general. As previously, reconciliation was used by both Indigenous and non-Indigenous people and in differing ways that reflected the word's multiple iterations, variously carrying religious, financial, legal, and other inflections as well as differing normative political visions. At the same time, reconciliation was also becoming significantly more prominent internationally.

While the term was being used more often and by more people in Canada, it remained far from being the sort of buzzword of relations between Indigenous peoples and the state it is now. While some uses substantiated the term with specific meaning, its uses often still seemed inadvertent, and it was not actively centred as a primary concept. Some aspects of this are obscured by the passage of time and appear somewhat contradictory in retrospect – for instance, there were various appearances of reconciliation throughout the work of the RCAP and scholars

[98] Significant as all these events and those in the years leading up to 1996 are for understanding the development of reconciliation, they remain only a fraction of the key events that marked this period. These also included, among others, the creation of Nunavut, the conflicts at Ipperwash and Gustafsen Lake, and the imposition by the federal government of a funding cap on increases to the budget for programs for Indigenous communities (J. Smith 2016).

have linked it to the development of reconciliation. Yet the people I talked to who were involved in the RCAP drew little to no association between its work and the term "reconciliation" (though several emphasized to me that the idea or spirit of reconciliation was ever-present despite the word itself not being prominent), which they saw as only coming to the fore later. While the SCC's reconciliation jurisprudence may not have entirely been "pulled from thin air" and there are some threads to follow to understand its uses of the term, it is also not entirely clear from where and how deliberately its uses of the term itself were pulled. There were also projects that used the term that appear to have largely fallen out of public memory altogether, such as Ghiz's National Treaty of Reconciliation, which seemingly received little discussion even at the time, and the Reconciliation Agreement, which was little publicized and does not often come up in histories of reconciliation policy, though some attention has been drawn to it in studies of Canadian redress culture (James 2008; Wakeham 2014).

The contrasts between the varying uses of reconciliation explored in this chapter highlight the multifaceted relationships between law and reconciliation in shaping the term's political implications. The SCC's vision of reconciliation as the purpose of s. 35 links it to a preoccupation with sovereignty, laying out an approach to Indigenous peoples' rights that aims to render them compatible with the affirmation of Crown sovereignty. Reconciliation as a goal of restorative justice practices, on the other hand, centres the fostering of healing and balance in relationships in lieu of punishment as a response to harm and conflict. Finally, the Reconciliation Agreement advances a reconciliation whereby compensation is offered in return for closure and a release from liability. All of these legal visions of reconciliation emerging during this period bear a certain family resemblance in that they are all aimed at achieving some form of harmony, reconciliation's conceptual companion, through the resolution of a conflict. However, much

depends on who is attaining harmony or unity, and by what means, as well as how these are conceptualized. Is harmony understood to mean the acceptance and legitimization of state sovereignty, healing/balance rather than punishment, or the end of legal claims for redress? Will harmony be attained through symmetrical or asymmetrical compromise yielding consistency, through reciprocal relationship, or through resignation? Will this harmony mitigate interactional alienation or also produce structural change in the context of political relationships? Power relations make all the difference in distinguishing between these harmony-oriented visions.

The increasing use of reconciliation during this period and the meanings that were coming to the fore, including the term's varied entanglements with law, constitute an important stage of discursive development, even if, in comparison to the zeitgeist of twenty years later, the early 1990s were far from marked by an omnipresence of reconciliation discourses. The term's introduction in these spheres, deliberate or not, presented it as a prospect for policy uptake. The word had begun to be used to talk about relations with Indigenous peoples by government actors in BC. The fact that the term was put forward via multiple vectors, including the SCC and commissions of inquiry as well as churches, politicians, and civil society actors, made it perhaps all the more likely that it would subsequently be more widely adopted and centred by governments. Apart from the Reconciliation Agreement and some references in speeches by the NDP government in BC, this had not yet happened. It was therefore perhaps less likely that the term would have been subject to significant critical scrutiny and theoretical inquiry as a political concept at that point. Certainly, as the term came into increasing use by state actors, critical scholarship on the subject burgeoned and has continued to grow. The pivot points at which this development took place and reconciliation became enshrined in institutions, both provincially and federally, during the period between 1996 and 2006, are explored in the last two chapters.

Chapter Eight

The Emergence and Development of Discourses of Reconciliation Between Indigenous Peoples and Canada: 1996-2006, Part I

8.1 Introduction

In comparison to earlier decades, and in contrast with the Québec-Canada case where its use rose and then fell again, the use of the term reconciliation with regard to Canada's relationships with Indigenous peoples took flight in the decade after 1996, rising to ever greater heights and still showing no signs of slowing down. The previous decade had seen "reconciliation" presented to policymakers in different forms, including commission reports and court decisions, and the term had appeared in a government redress agreement. The years from 1996 to 2006 saw the addition of a third phase of discursive development as the term made its way into state policy and "reconciliation" was enshrined in the names and mandates of institutions.

This chapter and the following one trace the developments that led to this culmination and laid the foundation for reconciliation discourses' multifaceted nature and contemporary omnipresence. *How* reconciliation discourses were used between 1996 and 2006 resembles how they were used in the periods explored in earlier chapters in that they reflected the term's various meanings, were used by a wide range of actors, and were used both to promote and to resist or critique state policy. Many uses remained vague and unspecified rather than detailing which meaning was intended and how the term was being substantiated. However, there were gradually more cases of actors noting that it had different meanings and invoking specific definitions or even explicitly endorsing some while rejecting others. A nascent body of research also began to engage critically with the term and its application in state policy and social initiatives during this

decade (e.g., Chrisjohn, Young and Maraun 1997[1]; Giokas 2000), though the Canadian branch of a growing global scholarship on reconciliation really began to develop in earnest after 2006.

As in the last three chapters, various actors continued to link reconciliation to multiple aspects of the relationship between Indigenous peoples and Canada. Broadly, however, these different applications can be divided (if loosely and imperfectly) into two general types, which also reflects the ascendent association between the Residential School policy and reconciliation. The first of these is a set of uses of reconciliation that speaks to the need to address individual and social traumas emanating from colonial policy, particularly the Residential School system. The second is a set of uses that focus on questions of land, governance, and rights. For the sake of organization, I have divided my consideration of the 1996-2006 period into two parts: this chapter is dedicated to the first set of uses and chapter 9 is dedicated to the second. However, I would like to foreground a few caveats about this division. As with chapters 6 and 7, a neat division is impossible; the same actors are at times involved in multiple contexts where the term is used, and some apply it to both sets of topics. The developments in chapters 8 and 9 build in criss-crossing ways on those covered in the previous chapters. Finally, and crucially, some actors distinguish between the personal and social traumas caused by the Residential School system and other colonial policies on the one hand, and the matters of land, governance, and rights on the other, and treat them as issues to be addressed separately, while others understand and speak about these as intimately interrelated. This is evidenced, for instance, by the divergent conceptions of healing discussed later in this chapter. The division of the two chapters along this line is done with the aim of considering the development of distinct (but overlapping) strands of discourse during this period. It should not be taken as endorsing a conceptual or practical

[1] *The Circle Game*, published by Theytus Books in 1997 and reprinted in 2006, originated as a submission to the RCAP (Chrisjohn, Young and Maraun 1994; see sec. 6.3.2), and was later revised for broader distribution. See Chrisjohn, Young and Maraun (2006, 11) for a summary of the changes.

separation between the social/symbolic/affective dimensions of the relationship and of redress for past injustices on the one hand and the material/political/structural on the other.

The chapter is divided into four sections. The first (8.2) picks up after the RCAP by exploring the federal government's response to its report, which is often heralded as the inauguration of official state reconciliation. This policy plan, which featured a Statement of Reconciliation, is a launching point for subsequent state use of reconciliation discourses relating to both redress for the Residential Schools policy and to treaties and land claims. Part of the policy entailed creating the Aboriginal Healing Foundation (AHF), which then became a key actor in the work of healing and reconciliation in response to the legacy of Residential Schools. The next section (8.3) explores the AHF's uses of reconciliation. In so doing, it also considers the intertwining of reconciliation with healing more broadly, as not only does pairing the two shape a certain construction of reconciliation, but "healing" is subject to diverging interpretations as well. The third section (8.4) examines the processes – unfolding parallel to (and sometimes overlapping with) the work of the AHF – that brought together Residential School Survivors, the federal government, and representatives of the churches who had run the Residential Schools to seek means to resolve Survivors' redress claims outside of litigation. These processes ushered another pairing of terms – truth and reconciliation – to the fore and led to the IRSSA, which yielded the TRC. Finally, the fourth section (8.5) considers the role of grassroots activism in the discursive developments of this period by looking at an initiative to establish a National Day of Healing and Reconciliation. This movement focused strongly on the Residential Schools but also emphasized a much broader conception of reconciliation that spoke to a range of injustices faced by different groups in Canadian society. Reconciliation continues to appear as consistency, relationship, and resignation, and in visions that are variously interactional and/or structural, in

the policy statements, speeches, reports, newsletters, and other documents explored in the chapter. While different actors most frequently promoted reconciliation in terms of building or renewing a partnership, they pursued goals under this banner that varied widely in specificity and character and, as always, were conditioned by power relations.

8.2 "[N]ew verbal garb": The Government of Canada, *Gathering Strength*, and the Statement of Reconciliation

At the beginning of 1998, the federal government released *Gathering Strength: Canada's Aboriginal Action Plan*, its response to the RCAP's final report, after a year of Indigenous leaders pushing the government to address its recommendations (Anderson 2002, 373-4; Milloy 1999, 304). Both *Gathering Strength*'s timing and substance drew sharp criticism (Cairns 2000, 121; Land 2002; M. Murphy 2006, 168-70). This reflected the government's choice, after waiting so long to issue any response, to ignore most of the recommendations and to fail, in Alan Cairns's assessment, to either engage with the RCAP's "constitutional vision" or to put forward one of its own (2000, 121; see also M. Murphy 2006, 169). *Gathering Strength* "responded to only a handful of the Commission's 444 recommendations and it did not constitute the radical transformation in public policy that RCAP envisioned" (Ladner 2001, 241; see also Bhandar 2004, 837). According to Lorraine Land, it instead did "exactly what the Royal Commission said should not happen": it presented an approach centred on "tinkering around the edges of existing Aboriginal policy" by "[p]umping more money and effort into making existing programs work better, without addressing the rot at the foundation of the relationship" (2002, 135). John Giokas suggests that while the commitments in *Gathering Strength* "may well be simply restatements of ongoing federal programs, services, and policy," the government was aiming for a reset in its

relationship with Indigenous peoples by "clothing them in new verbal garb and issuing a Reconciliation Statement and Statement of Renewal" in the wake of the last decade and a half's acrimony-inducing developments (2000, 23).[2] *Gathering Strength*'s approach was in line, Michael Murphy posits, with the Chrétien government's "instincts for smaller-scale and piecemeal reform" and preference for focusing on the future over addressing the past (2006, 169). It also reflected a context wherein, as Scott Serson (who was Deputy Minister of Indian Affairs at the time) reminded me, the RCAP report had been received while the department was also dealing with the creation of Nunavut, the Nisga'a treaty negotiations, and the introduction of the 2% funding cap that formed part of the Chrétien government's deficit reduction efforts (research interview, February 2018). This busy agenda was accompanied by a sense, described by then-Minister of Indian Affairs Jane Stewart, of being daunted and uncertain about "where and how do we begin" in the face of a massive report with hundreds of recommendations (J. Stewart 1998). While *Gathering Strength* lays out four core government priority areas all linked to a key theme of (re)building a partnership between Canada and Indigenous peoples, it was decided at this juncture to prioritize Indigenous people's socioeconomic wellbeing through a "closing the gap" orientation to policy and an emphasis on healing over focusing on a fundamental restructuring of political relationships. This served to sever the link between components of necessary change that the RCAP had advocated be undertaken in concert (Bhandar 2004, 837; James 2017, 369; Land 2002, 134).[3]

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[2] Krista Maxwell argues that while the Statement "has been interpreted as the government's defensive response to mounting court cases and the RCAP report," analytical consideration should also be given to "the role of public apology and sympathy in settler-state-building" (2017, 995). Maxwell suggests that the Statement "signaled the re-emergence of settler-humanitarianism in Canadian policy discourse" (995), a term she uses to conceptualize the seemingly paradoxical co-existence of concern for the suffering of Indigenous people with the continuation of policies embodying the underlying rationale and motivation for settler colonialism (976, 985). This argument might also be considered in relation to Ahmed's observations about discursive commitments as "a mode of subject constitution" (2012, 116), and how nonperformative speech acts can produce illusory institutional identities (119).

[3] Serson later described this choice as having been a mistake, as "they both have to be dealt with at the same time"

In foregrounding an emphasis on healing and partnership, a key element of *Gathering Strength* and the government's announcement of the action plan was a "Statement of Reconciliation" that was included in the policy and read by Stewart at a launch event in January 1998.[4] Both scholars and public officials have pointed to this Statement as constituting the beginning of the state's focus on reconciliation (Coulthard 2014, 121; AANO 2005c, 1; APPA 1998, *2*; S. Serson, research interview, February 2018; Spear 2014, 16). Its adoption of the language of reconciliation in response to the harms perpetrated in and by the Residential School system appears to have been previously signaled in June 1997, when the BC regional director-general for Indian and Northern Affairs Canada (INAC) acknowledged the destructive nature of the policy and stated "that 'nowhere is the need for healing and reconciliation more urgent' and […] promised unspecified federal support," but the move was not paired with acknowledgement of federal responsibility at that juncture (H. Ross 1997). A news report at the time concluded that "Ottawa […] is not ready to act. It remains divided over the legal implications of apologizing and whether there is an easier way to assist in reconciliation without assuming a major financial liability in a flood of lawsuits" (H. Ross 1997). When the higher profile and more detailed government response was issued in January 1998, it centred "reconciliation" via the Statement of Reconciliation. This opened new avenues for the use of reconciliation discourses. The complexities of these discourses are once again highlighted by how "reconciliation" is mobilized both by the state in *Gathering Strength* and subsequent statements and policies, and by others to

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(research interview, February 2018).

[4] It is unclear to me what, if any, engagement took place between the federal government and Indigenous organizations over the inclusion of this Statement in the government's response, or its content. A 2004 biography states that AFN National Chief Phil Fontaine was "instrumental in the negotiation of the Federal Government's Statement of Reconciliation" (AFN 2004, iii). Meanwhile, John Giokas, prefacing that he "was involved in the policy work preceding the Reconciliation Statement and in its drafting" (2000, 34n31), states that the government did "not consul[t] the Aboriginal organizations in drafting and releasing its Reconciliation Statement" (23).

critique state policy, including *Gathering Strength*.[5]

Scholars have highlighted Stewart's role in pushing for *Gathering Strength* and the Statement of Reconciliation (Anderson 2002, 374; Cairns 2000, 121; Spear 2014, 14-15),[6] as well as the impact that Residential School Survivor Donna Dixon sharing her experiences and the audience's response at a gathering of the National Action Committee on the Status of Women attended by Stewart and Minister of Finance Paul Martin had in motivating the government to act (Spear 2014, 15). The January 1998 *Gathering Strength* event marked an increase in formality and profile of government statements regarding the Residential Schools. Former INAC Assistant Deputy Minister Bill Van Iterson had issued an expression of regret on behalf of public servants at the First Canadian Conference on Residential Schools held in 1991 (Milloy 1999, 301); this drew critiques that an apology should come from the government rather than the public service (Dorrell 2009, 27). In contrast, the Statement of Reconciliation was presented by a cabinet minister as part of a dedicated ceremony. Still, it fell short of hopes for a full prime ministerial apology in the House of Commons – the prime minister did not even attend – that would be preserved in the public record, or for a statement from the Queen (Anderson 2002, 374; James 2008, 140-41; Nobles 2008, 74-75; Regan 2010, 121; Spear 2014, 17).[7]

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[5] Other critiques are explored below, but for instance, Land argues that absent in *Gathering Strength* "was a response to the most significant themes and recommendations of the commission's report" (2002, 135). The differences among visions of what reconciliation entailed and its desirability were evident in diverging reactions to the Statement in 1998 as well as in reactions to references to it amidst subsequent developments in negotiations between Indigenous peoples and Canada in later years. For an example, see Regan (2010, 113, 181-82).

[6] Stewart described initially facing significant resistance, giving the example of how one person reacted to her proposal by stating that "governments don't apologize; they move on" (quoted in Spear 2014, 14).

[7] Interpretations of the Statement as an apology varied, as did reactions to it generally (DeGagné 2001, 3; Erasmus 2003c, 196). While some have described it as an apology (Fontaine quoted in Anderson 2002, 374; Nobles 2008, 74; M. Murphy 2006, 168), others suggest it deliberately avoided constituting an apology and critique its narrow framing in only expressing being "deeply sorry" in relation to physical and sexual abuse in the Residential Schools (Coates and Wade 2007, 516-18; Dorrell 2009, 29; Hough 2020, 145; James 2008, 141; Regan 2010, 120). Spear recounts that Stewart later "maintain[ed] that she had indeed given an apology 'in everything but name,' rejecting the common assertion then and later that lawyers had shaped her statement and pressured her not to say anything which would incriminate Canada. Nonetheless, […] the Minister was told that it 'wasn't appropriate formally' to call her statement an apology" (2014, 18). The liability concern about apologizing stemmed from the fact that

In her speech, Stewart introduced the Statement of Reconciliation by declaring: "Today we are here to say that we have listened and we have heard. The time has come to state formally that the days of paternalism and disrespect are behind us and that we are committed to changing the nature of the relationship between Aboriginal and non-Aboriginal people in Canada" (J. Stewart 1998). The Statement acknowledged the disruption of the ways of life that this paternalism and disrespect had fueled and recognized the contributions Indigenous peoples had made to Canada's development (1998). It then stated that "[t]he Government of Canada today formally expresses to all Aboriginal people in Canada our profound regret for past actions of the federal government which have contributed to these difficult pages in the history of our relationship together" (1998). The Statement emphasized that the Residential Schools "requir[e] particular attention" and avowed that "we are deeply sorry" to those who "experienced the tragedy of sexual and physical abuse at residential schools" (1998).

Following the Statement title's emphasis on reconciliation, the term is not used again until the end, first to address a very specific issue, and then to speak more generally to a vision of the future. After saying that the government would work with Indigenous peoples and the churches to develop a "healing strategy" to address the legacy of the "sad era" of Residential Schools, the Statement declares: "No attempt at reconciliation with Aboriginal people can be complete without reference to the sad events culminating in the death of Métis leader Louis Riel"

Survivors were suing Canada and the churches over the Residential Schools policy (Hough 2020, 142; S. Serson, research interview, February 2018). Melissa Nobles suggests that this concern may partially explain the prime minister's absence from the *Gathering Strength* release (2008, 75). According to Giokas, there was much confusion over the nature of the Statement, and "two weeks after it was issued […] [Stewart] was forced to clarify that any federal government apology for residential schools was not intended as an admission of legal liability" (2000, 22). Former INAC public servant Shawn Tupper offered another explanation for it not being presented as an "apology," suggesting the government was guided by lessons learned during the earlier apology for the internment of Japanese Canadians. Tupper explained: "We understood from colleagues at the Department of Heritage that they had purposely not apologized to Japanese Canadians because the victims had said they didn't want an apology. Their view was that apologies were things you had to live up to, and they were about building relationships. And Japanese representatives in that instance weren't convinced that the government was prepared to do that. So we kind of avoided the word apology and talked about reconciliation and building relations" (quoted in Spear 2014, 17).

(1998). This matter is briefly addressed in one sentence, which declares that though the past cannot be undone, affirmative attention will be given to the role of Riel in particular, and Métis in general. The Statement then concludes with the following description of reconciliation:

> Reconciliation is an ongoing process. In renewing our partnership, we must ensure that the mistakes which marked our past relationship are not repeated. The Government of Canada recognizes that policies that sought to assimilate Aboriginal people, women and men, were not the way to build a strong country. We must instead continue to find ways in which Aboriginal people can participate fully in the economic, political, cultural and social life of Canada in a manner which preserves and enhances the collective identities of Aboriginal communities, and allows them to evolve and flourish in the future. Working together to achieve our shared goals will benefit all Canadians, Aboriginal and non-Aboriginal alike. (1998)

After reading the Statement, Stewart announced the healing fund before going on to speak about renewal, which reflected the contents of the subsequent section of *Gathering Strength*. The Action Plan part of the policy also closely links reconciliation with healing, renewal, and partnership (DIAND 1997).

These links are indicative of what Serson – whose team produced the response to the RCAP – described to me regarding the thinking that influenced the crafting of the Statement. In his recollection, "that was the first time reconciliation was put in any significant document" (research interview, February 2018). However, it was not his intention that "reconciliation" would then become "a word that was going to colour the policy dialogue from thenceforth"; his conceptual focus lay elsewhere (research interview, February 2018). Reconciliation did not strike Serson as a particularly prominent term in the RCAP report, but rather as something used more incidentally in its recommendations. What stuck out to him "out of RCAP that [he] tried to elevate, to the extent that [he] could as Deputy Minister, in documents, and certainly with [the] minister, and then through the department, was the concept of 'partnership'" (research interview, February 2018). This was so "[b]ecause the idea of partnership started to break down the old

kind of paternalistic approach," and Serson explicitly "pulled [this concept] from RCAP," as informed by the four principles that the RCAP laid out as defining a partnership (research interview, February 2018). *Gathering Strength* cites these principles – mutual respect, mutual recognition, mutual responsibility, and sharing – in the foreword and in the "Statement of Renewal" that follows the Statement of Reconciliation (DIAND 1997, *3*). The "Canada's Aboriginal Action Plan" section then lists "Reconciliation" as the first item in a list of "Elements of a Renewed Partnership" (*5*).[8] However, the elaboration on reconciliation provided there is scant, and the description is shorter than most, if not all, of the items that follow it. It reads,

> As the Royal Commission states in its final report, before the renewal of the relationship can begin, 'a great cleansing of the wounds of the past must take place.' It is for this reason that Gathering Strength begins with a Statement of Reconciliation in which the Government of *Canada formally acknowledges and expresses regret for the historic injustices experienced by Aboriginal people.* (*5*; emphasis in original)

The following section, "Healing," adds that "[a]ny attempt at reconciliation would be incomplete without reference to Residential Schools" and action to support those who were abused there. It also reiterates that the government had expressed it was "deeply sorry" about this in the Statement of Reconciliation (*5*). The action plan component of *Gathering Strength*'s discussion of reconciliation thus refers back to what the Statement of Reconciliation already stated at the outset. Unlike the clear link to the RCAP report with "partnership," Serson did not recall why the term "reconciliation" was chosen and where it was drawn from (research interview, February 2018). In his view, at least in retrospect, the title of the statement was a way of referring to the

[8] A whole other genealogy could surely be written about the uses of the term "partnership" in Canadian constitutional politics and the myriad ways it has been understood and discursively mobilized by different actors. While that is beyond my scope to take up here, it is a term that crosses paths with reconciliation often in the Canadian context, regarding relations with Québec as well as with Indigenous peoples. For instance, despite what the title may indicate, the 1998 IRPP collection of essays on Canada and Québec entitled *Beyond the Impasse: Towards Reconciliation* placed a greater conceptual emphasis on partnership than on reconciliation (Gibbins and Laforest 1998). The authors of *The Circle Game* are critical of the application of the language of "partnership" to Canada and Indigenous peoples, as they are of reconciliation and healing, suggesting it constitutes another example of "word-magic" that reflects and masks relations of power (Chrisjohn, Young and Maraun 1994, 17-18).

exercise of acknowledging truths presented in the RCAP's "historical assessment of the evolution of the relationship" (research interview, February 2018). In her speech, Stewart framed the Statement as an affirmation of "the government's commitment to reconciling the past and building a better future together with Aboriginal people," and she led in by presenting it as a "solemn offer of reconciliation" on the part of the government (J. Stewart 1998).

However consciously or not the word was chosen, and whatever influenced its selection, "reconciliation" stuck.[9] Ministers and officials cited the Statement of Reconciliation as a starting point, and the term began to appear more frequently in government documents. At a March 1998 parliamentary committee, INAC's Director General of Strategic Policy listed one of the three key themes of *Gathering Strength*'s renewal vision as "commencing reconciliation, healing and renewal," and referred to the Statement as being the initiation of this "commitment to renew the partnership" and "a sweeping statement that marks a very significant departure from past approaches by the federal government" (APPA 1998, paras. 25-28). Reiterating her earlier statements and the core elements of *Gathering Strength*, Stewart reinforced the emphasis on reconciliation in an April 1998 House of Commons committee appearance: "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. In order to renew partnerships with aboriginal peoples, we first need to heal old wounds" (AAND 1998, 11:10).[10] The following

[9] Thinking about this occurrence from a genealogical perspective, it appears to be another instance where an accident or coincidence of word choice can influence subsequent discursive development, as other actors may pick up on different concepts than the one(s) a writer/speaker intended to centre. In this case, one possibility Serson noted about the crafting of the Statement of Reconciliation is that there may have been a "difference between where [his] mind was focused and what people decided to do in terms of communications" (research interview, February 2018).
[10] This statement echoes the passage from the RCAP report quoted in *Gathering Strength* (cited above). The degree to which the Chrétien government undertook such an effort has been a matter of some critical examination. For instance, Murphy titled a chapter on Indigenous policy during the Chrétien years "Looking Forward Without Looking Back," in which Chrétien is quoted as stating in 2001 that he was concerned that too much time, money, and effort was being spent on the past and that he intended "to focus on the future" instead (2006, 169). On how this outlook has surfaced at treaty tables, see Woolford (2005, 118).

year, she again reaffirmed the depiction of the Statement as an origin point for "[r]enewing our relationship with aboriginal people," and linked the elements of *Gathering Strength*, particularly the creation of the AHF, to "the process of reconciliation" (AAND 1999a, 9:10). From 1999 onwards, the term "reconciliation" (framed as a normative goal as well as used in its financial capacity in references to departmental budgeting) began to appear yearly in INAC's departmental planning and priorities reports.[11] The Statement was also the catalyst for an increase in media articles with titles containing the term reconciliation (James 2017, 369). Ministers appearing before the Commons committee continued to invoke it in later years, with Stewart's successor Robert Nault describing it as a "principal pilla[r]" of *Gathering Strength*, before going on to laud the progress made in "improving and modernizing" the relationship with Indigenous peoples in the two years since the action plan's release (AAND 2000a at 15:31). In 2005, Anne McLellan, then Deputy Prime Minister and Minister of Public Safety and Emergency Preparedness, pointed to the Statement as the beginning of the process of "address[ing] the residential schools issue" (AANO 2005c, 1).[12]

While members of the government continued to refer to the Statement of Reconciliation in framing a supportive narrative about their policy agendas during the period leading to 2006, Indigenous people also used it to challenge the government's actions and push it to honour its promises of building a better relationship, when it came to both matters of land and governance (see sec. 9.2) and Residential Schools redress. On the latter topic, for instance, Chief Robert Joseph of the Indian Residential Schools Survivors Society spoke to the (now renamed)

[11] Later Aboriginal Affairs, then Indigenous Affairs, and most recently split into Indigenous Services Canada and Crown-Indigenous Relations and Northern Affairs Canada in a belated and partial implementation of one of the RCAP's recommendations (Coburn 2017). Departmental reports' uses of reconciliation are discussed in section 9.2.
[12] Such reiterations have continued in recent years. At a conference marking the 20th anniversary of the RCAP report, then-Minister of Indigenous Affairs Carolyn Bennett (2016) highlighted the Statement as well, suggesting that the Statement and *Gathering Strength* generally continued to reflect the government's thinking and priorities.

committee about how the Statement and the ADR process that had been set up to address Residential School claims had both proven to be inadequate (AANO 2005a, 6).[13] He spoke supportively of reconciliation in general and of the Statement defining it as an ongoing process, saying: "Survivors agree. We want reconciliation, reconciliation with ourselves, with our families, with our communities – and also with Canada. While we struggle with our pain, suffering, and loss, we know that our culture and traditions are embedded in the need for balance and harmony – reconciliation" (7). However, he also used the Statement to push for steps the government had been refusing to take, arguing that "[o]ne obvious reconciliatory process is of course a public inquiry," and also calling for an apology by the prime minister in Parliament, compensation, more funding, and a mandate extension for the AHF (7). "In summary," Joseph said in advocating these measures, "we need to give new life and meaning to the statement of reconciliation that was so boldly made by Canada. Canada must be continually guided by the principles and goals set out in this expression" (7).[14] In Ahmed's terms, such reactions might be seen as a call for the government to demonstrate that its commitment to reconciliation was performative rather than non-performative. Joseph's invocation of the Statement, as with others discussed in the next chapter, also shows that while there was some receptivity to it,[15] and

[13] The ADR program and related discourses of reconciliation are discussed further in section 8.4 below.

[14] Similar calls for accountability and follow-through from the government were made in the years after Stephen Harper's apology for the Residential School policy that came in 2008, as people called for the government to "Honour the Apology." Events that prompted such calls included Harper's comments at the 2009 G20 meeting that Canada had "no history of colonialism," the revelation that nutritional experiments had been conducted on children in the Residential Schools, and the government's refusal to turn over all records relating to the Schools to the TRC (Hui 2009; Chen 2013; L. Simpson 2013b; The Canadian Press 2013).

[15] Gordon Shanks, Assistant Deputy Minister of Corporate Services at INAC, suggested that the Statement was largely well-received (AAND 2000b, 16:15). Others suggested a "mixed" and sometimes negative reaction (Regan 2010, 120, 181). Regan describes attending a 2004 conference (discussed further in sec. 8.4) where Survivors confronted a cabinet minister after he referred to the Statement in a speech (2010, 113). She writes: "I saw a wide gap between the positive messaging put forward and the angry response it received" (113). For more detailed analysis of the power relations the Statement's crafting reflects and its place in the broader government response to calls for redress for colonial policies, see Bhandar (2004, 837); Coates and Wade (2007, 516-18); Coulthard (2014, 121-2); Hough (2020, 145); James (2008; 2017, 370); Jung (2011, 230); Llewellyn (2002, 260-61n31); Rymhs (2006, 117); Stanger-Ross and James (2018, 295). Some critiques attend to its use of the word "reconciliation."

agreement on the conception of reconciliation as an ongoing process, there were substantive differences of procedural vision regarding what this process should entail.

Many discussions of the Statement of Reconciliation have focused on its connection to Residential Schools redress and healing. It did nevertheless also include acknowledgement of other harms that were perpetrated as part of the broader colonial project – albeit without any direct mention of colonialism (Henderson and Wakeham 2009, 10-11) – and made a commitment to creating a partnership with Indigenous peoples that included addressing matters relating to governance and land claims. The Statement had cast reconciliation in broad relational terms of "renewing the partnership" between Indigenous peoples and the Government of Canada in linking to both matters. However, while departmental reports occasionally raised both sets of issues in tandem (see sec. 9.2), there was a significant degree of bifurcation between these two conversations about reconciliation. This served to curb its scope, reducing the object of reconciliation from the underlying colonial relationship to narrower sets of policy issues, and in each of these areas the federal government sought to limit its legal and financial responsibility as much as possible. This can be seen, for instance, in the limitations that were placed on the mandate of the AHF, as well as in the processes that led to the IRSSA.

8.3 "[T]ransition[ing] from healing to reconciliation": The Aboriginal Healing Foundation

The major initial legacy of the reconciliation agenda put forward by the RCAP was the creation

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Linda Coates and Allan Wade, for instance, argue this use "is mutualizing in that it proffers the image of two parties who share responsibility for their relationship problem and have therefore come together to make amends" (2007, 517). Coates and Wade also take issue with linking reconciliation to the subtitle "Learning from the Past" for implying that both parties have mistakes to learn from, and "that the oppression of Aboriginal people in Canada is limited to the past, or strictly a matter of history" (517). Critiques did not only come from Indigenous people who found its pronouncements and form lacking or felt it was insufficiently substantiated by transformative action. The Statement was also denounced by Canadians who felt criticisms of the Residential School system were bound up with "political correctness" and ignored the positive experiences of former students (J. Henderson 2015, 26-27). Such perspectives remain prevalent (see e.g., Carleton 2021a, 2021b; Goldstein 2017; Jago 2018; Tasker 2021).

of the AHF. Funding its establishment accompanied the Statement of Reconciliation as the main component of the federal government's response to the RCAP report. "Taking care to employ RCAP's language of relationship and renewal," Spear writes, "*Gathering Strength* appeared to signal the Government's acceptance of RCAP's assessment that healing and reconciliation were important public goals," and "formally inaugurated the federal healing and reconciliation agenda that would culminate in the 2007 Indian Residential Schools Settlement Agreement" (2014, 16). The creation of the AHF was the first step on this trajectory.[16] The AHF was set up and run by Indigenous people as a non-profit corporation that distributed grants for community healing projects to address the legacies of Residential Schools. As with the circumscription embodied in the Statement of Reconciliation, the negotiations of the AHF's mandate were also marked by efforts to limit the scope of its activity (22-24). The AHF was created incredibly quickly, as the funds earmarked in the federal budget had to be deposited by April 1, 1998, meaning that the national Indigenous political organizations had "less than three months to establish or identify an agency and to negotiate a funding agreement between that entity and the feds" (18). Spear observes that the AHF was importantly novel as it "yield[ed] […] the prospect of community empowerment" by enabling Indigenous people to "tak[e] control of their healing," rather than presenting them with another program created and delivered by the federal government (2014, 131-32). At the same time, its operations were limited by its funding structure,[17] timeline of operations,[18] and mandate to fund only community healing projects focused specifically on the

[16] In its final report, the AHF described itself as "a cornerstone of *Gathering Strength* […], a government of Canada strategy to initiate the process of reconciliation and renewal with Aboriginal people" (AHF 2006, 2:2).
[17] Despite its name, the AHF was not structured like other foundations as it was not able to invest its base funding as an endowment and operate by funding grants over the long term using the interest accrued, but rather was given ten years to disburse the $350 million provided by the government, and restrictions were placed on what it could invest in (Spear 2014, 72-76). Efforts to change this structure over the course of the life of the AHF failed (75-80).
[18] The AHF received some additional funding in the 2005 budget that allowed it to extend grants to existing projects for a time, and a further $125 million as part of the IRSSA in 2007, but after the federal government opted not to renew its funding in 2010 it began to wind down operations and dissolved in 2014 (AHF 2014a; *CBC News* 2010).

effects of physical and sexual abuses perpetrated in the Residential Schools (though this did include addressing intergenerational effects).[19] Despite and within these constraints, the AHF ultimately took a fairly broad approach to its mandate, including by developing a growing focus on reconciliation and eventually making it a priority to foster public conversation on the subject.

The AHF followed from the work of the RCAP and was the direct product of the federal government's *Gathering Strength* policy, operated alongside the processes that led to the IRSSA, and can be seen as a predecessor of sorts to the TRC.[20] Several people who had played key roles in previous developments then worked with the AHF. The Chair of the Board and President was Georges Erasmus, former co-chair of the RCAP and National Chief of the AFN from 1985 to 1991 amidst the constitutional reform negotiations. Other Board members included people who had also been involved in the RCAP and the constitutional negotiations, as well as the movements for redress for the Residential Schools policy and for the High Arctic relocations, such as John Amagoalik, Paul Chartrand, Yvon Dumont, Phil Fontaine, and Viola Robinson. The involvement of individuals with connections to these developments created prospective pathways for traces of earlier reconciliation discourses to inform the AHF's work, and for placing them in dialogue with the influences stemming from other experiences in political and healing work that may have shaped their colleagues' perspectives on reconciliation. In light of the nature of the Board members' expertise and the earlier events that they collectively had connections to, it is not unexpected that the AHF's approach to reconciliation most closely resembled previous

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A full timeline of its activities from 1998-2014 is available in its final annual report (AHF 2014b, 11-13).

[19] As per the AHF's 2006 final report, this limitation "clashed from the outset with Aboriginal perceptions of healing needs and generated ongoing criticism of the AHF" (1:178). Maxwell argues that the circumscription of the AHF's mandate, which led to it being "obliged to reject the majority of Indigenous communities' proposals for healing projects since they lacked th[e] prescribed focus" on physical and sexual abuse, serves as an example of how "Native healing praxis, whose proponents understood Indigenous suffering and healing as collective social experiences linked to kinship, language, and territory, was pushed to the margins of public discourse" by the rise of a "settler-humanitarian" "ethos of healing the child-victim of the residential schools" (2017, 989).

[20] This was not a full or direct passing of the torch, however (for an account that suggests a complex relationship between the two institutions, see Spear 2014, 236-37).

iterations connected to restorative justice.[21] In the five sub-sections that follow, I explore uses of reconciliation by and connected to the AHF over its first eight years of operation.

8.3.1 Healing and Reconciliation: The AHF's Mission, Vision, and Values

Though a concerted effort to publicize and ruminate on reconciliation only came later in its mandate, the term was present from the outset in the AHF's Mission, Vision, and Values statement. A statement of purpose was first produced by the interim Board of Governors that negotiated the creation of the AHF with the government, and then finetuned into the mission statement by the first full AHF Board (M. DeGagné, research interview, October 2018).[22] Reconciliation appears in four of the Mission, Vision, and Values statement's six paragraphs:

> The Aboriginal Healing Foundation's mission is to encourage and support Aboriginal people in building and reinforcing sustainable healing processes that address the Legacy of Physical Abuse and Sexual Abuse in the Residential School system, including intergenerational impacts.
>
> We see our role as facilitators in the healing process by helping Aboriginal people help themselves, by providing resources for healing initiatives, by promoting awareness of healing issues and needs, and by nurturing a supportive public environment. We also work to engage Canadians in this healing process by encouraging them to walk with us on the path of reconciliation.
>
> Ours is a holistic approach. Our goal is to help create, reinforce and sustain conditions conducive to healing, reconciliation and self determination. We are committed to addressing the Legacy of abuse in all its forms and manifestations, direct, indirect and intergenerational, by building on the strengths and resiliency of Aboriginal people.
>
> We emphasize approaches that address the needs of Aboriginal individuals, families and the broader community. We view prevention of future abuse, and the process of reconciliation between victims and offenders, and between Aboriginal people and Canadians as vital elements in building healthy, sustainable communities.
>
> […]

[21] This is not to say that all of these other versions were wholly absent, nor can different iterations of reconciliation always be neatly extricated from each other. In particular, there is often significant overlap between spiritual conceptions of reconciliation and certain visions of reconciliation as relationship, which may take different forms in Indigenous and Christian spiritualities. In some cases, these approaches may be seen by those who hold them as being compatible, as at the 1995 Sacred Assembly. Later AHF publications about reconciliation included contributions that reflected on these connections (see e.g., Kelly 2008; Hodgson 2008, 364; D. MacDonald 2008; McKay 2008). These points of convergence have also been considered in recent scholarship (for considerations regarding the Canadian context specifically, see Colorado 2020; see also generally Philpott 2012).

[22] For more on the Board and the creation of the mission statement, see AHF (1999c, 1, 8); Spear (2014, 24, 36-38).

> Our vision is one where those affected by the Legacy of Physical Abuse and Sexual Abuse experienced in Residential Schools have addressed the effects of unresolved trauma in meaningful terms, have broken the cycle of abuse, and have enhanced their capacity as individuals, families, communities and nations to sustain their well being and that of future generations. (AHF 1999c, 9)

The approach presented here lays out a dual vision of and role for reconciliation by applying the term to relations affected by harm both between individuals and at a broader societal level between Indigenous peoples and Canadians. Its sense in this context is also further developed by the link with healing and self-determination, emphasized in the statement's conclusion of a commitment to enabling the wellbeing and continuity not just of individuals but of nations. The presentation of these component elements in the mission statement suggests that reconciliation operates as both a goal premise and a means-end premise (Fairclough and Fairclough 2012, 4, 11). In the first sense, the goals of "healing, reconciliation and self determination" guide AHF decision-making around how to distribute funds, what projects to provide with grants, how to engage in the public sphere, and what research activities to undertake as well as how to communicate the results (AHF 1999c, 9). At the same time, the AHF conceives of "reconciliation between victims and offenders, and between Aboriginal people and Canadians" as part of the means toward achieving the goal of having "healthy, sustainable communities" (9).

Where the TRC later had to grapple with the dual mandate of "truth" and "reconciliation" and the relationship between them, the "two related components" of the earlier AHF's mandate were "healing and reconciliation" (Spear 2014, 134). In several different senses, healing is understood to precede reconciliation within the AHF's work. In a later AHF collection, Marlene Brant Castellano[23] suggests that once healing (in conjunction with acknowledgement and redress) takes place, there may be a "transition from healing to reconciliation" in relations

[23] Castellano, who had been research co-director at the RCAP, later worked with the AHF, writing volume 1 of its 2006 final report and co-editing this volume on truth and reconciliation (Castellano, Archibald and DeGagné 2008a).

between people, and between peoples, which entails "trust that former antagonists can enter into relationship" (2008, 397-98). In this account, forgiveness is the "key" bridging healing to reconciliation (298). The second volume of the AHF's 2006 final report considered how forgiveness fit into a process undertaken on both individual and community levels. At the individual level, it explained,

> Survivors appear to live through a natural sequence on their healing journey that can begin with awareness, followed by an understanding of the Legacy's impact on self and family, which precipitates reflection, discovery and acknowledgement that can lead to healing. Of course, a crisis alone can also catapult individuals into seeking help. Once in a therapeutic environment or relationship, Survivors need to *feel safe*, and this is where the hard work begins for both the Survivor and the healing team. In the next phase, past trauma is faced and resolved and the individual develops relationships with others on the journey. Finally, there is reclamation of healthy productive lives and the rightful expectation of the same outcomes as non-Aboriginal people in Canada. The reclamation phase takes *considerably more time* and requires immense discipline as well as continued support and guidance to establish stability. Reconciliation fits at end stages because healing is not complete without forgiveness. (AHF 2006, 2:71, italics in original)

At the collective level, "Reconciliation, another desired long-term outcome, is expected to become more evident once a critical mass of individuals, families and communities have progressed further along the healing path" (2:92). Per Maggie Hodgson, in this context reconciliation entailed confronting historic trauma, and first required developing willingness and readiness to do so (2008, 368). The AHF also initially focused on healing in its own work before adopting a greater focus on reconciliation, for "practical and logical reasons" (Spear 2014, 236).

Mike DeGagné, the former Executive Director of the AHF, suggested that in addition to being conceived as a practical predecessor, healing had also been a conceptual predecessor to reconciliation. DeGagné explained how the healing paradigm had emerged from the movement to address the widespread addictions problems that had developed in Indigenous communities as a product of the harms of colonialism (research interview, October 2018; see also Hodgson 2002; 2008, 366-67; Million 2013, 58-59). This movement's interconnected sources included

> the radical Indian politics of the 1960s and 1970s, the defining characteristics of which were critical analysis of capitalism and the state, international solidarity with indigenous peoples, the sobriety movement and the reclamation of Indian cultures and political rights. Across the intervening years […] the focus of the healing movement had shifted […] to the intergenerational effects of historic trauma. (Spear 2014, 88-89)[24]

The shift involved a gradual development from focusing specifically on addiction, to a broader holistic focus on healing a whole person, to situating that healing of the whole person "within the context of a larger society" (M. DeGagné, research interview, October 2018; see also Erasmus 2003c, 195). DeGagné suggested that the discursive transition from healing to reconciliation stemmed from the introduction of this latter stage of the conversation: "the political reality of the word reconciliation, I think, came from healing" (research interview, October 2018).

8.3.2 Diverging Meanings and Visions of Healing

Like reconciliation, healing can also refer to an activity or state that can be understood and pursued in different ways, carry different meanings within different frameworks, and operate at multiple levels. The AHF stresses that "healing is both individual and collective" (2006, 1:218). A 2002 research study on healing it co-sponsored sought to map out various definitions drawn from practitioners and Indigenous communities that were undertaking healing initiatives. The conceptions it covered include a wide range of individual- and collective-level visions that variously encompass physical, emotional, mental, spiritual, social, economic, political, and educational elements of healing with affective and material dimensions that are oriented towards the past, present, and future (Lane, Jr. et al. 2002, 13-15, 35-36).[25] Like the AHF mission

[24] See Maxwell (2017) for a discussion of the "close relationship between Native healing praxis and anticolonial political activism during the 1970s and 1980s," and how the conceptions of healing that informed those practices differ from those interwoven with what she calls "settler-humanitarianism" (978).

[25] Though not surveyed here for reasons of scope, the AHF also published several other studies on healing, including a comparative study of decolonization and healing in the US, Aotearoa/New Zealand, Australia, and Greenland (see e.g., Archibald 2006; Waldram 2008; Wesley-Esquimaux and Smolewski 2004). The complete collection of AHF

statement, some linked healing with self-determination or "decolonization therapy" (13-14, 36). This linkage points to a set of conceptual divergences with respect to healing that can be understood as both analogous to and nested within those that exist with respect to reconciliation.

Much of the public conversation around Residential Schools and redress in the 1990s and early 2000s came to be shaped around damage, loss, trauma, and healing (R. Green 2012; J. Henderson 2015; Maxwell 2017; Million 2013).[26] However, depending on the framework within which the harms stemming from the Residential Schools and the prospects for and modes of healing from them were situated, the terms of the conversation could lead to significantly different conclusions. Robyn Green (2012) contrasts the key conceptions at stake, writing:

> Conceptualizations of *healing* advanced by Indigenous scholars and activists are often informed by three distinct points: first, that healing is a process that does not arrive at an 'end,' and therefore operates outside the parameters of a biomedical 'cure'; second, that the term 'healing' subverts tropes of 'pathology' that are often used to describe Indigenous experiences, thereby placing these labels onto the colonial project; and, finally, that the notion of healing and health is not limited to mental and physical well-being but is deeply tied to acquiring justice and self-determination and to instituting policies that ensure the social welfare of Indigenous peoples. (138; italics in original)

This distinction between differing healing paradigms is captured in two pieces in the AHF's newsletter *Healing Words*[27] in 2000. A feature on the healing movement in the Atikamekw community of Manawan draws the contrast explicitly, distinguishing a holistic conception of healing that includes physical, spiritual, and psychological dimensions from one that "see[s] healing as the closing up of a wound, the repair of a body hurt" that it linked to a perceived tendency among non-Indigenous people to understand "healing as a phenomenon that affects the surface of things" (AHF 2000c, 15). Thinking about healing holistically in Manawan meant

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research studies is available at https://www.ahf.ca/publications/research-series.

[26] This period was also broadly marked by a policy focus on the suffering of children, including in institutions, as well as by increased attention to institutional abuse and discrimination against other groups (J. Henderson 2013; 2015, 14; Maxwell 2017; Million 2013, 50-51, 61, 80-81; S. Phillips 2013, 126-28; Spear 2014, 2, 26-30).

[27] *Healing Words*' goals included "[c]elebrating and encouraging" healing and reconciliation (AHF 2001a, 4, 5).

grappling with "the historical context of colonisation, of forced assimilation and oppression" by "breaking the cycle of abuse and violence, whatever its form," "replac[ing] our anger, shame, guilt and vulnerability with the seven traditional teachings: honesty, love, courage, truth, wisdom, humility and respect," and "tak[ing] again ownership of the responsibilities of our identity and our destiny" (15). An earlier piece that year links healing and justice, another concept about which it recognized there were many "extremely diverse and complex" perspectives (AHF 2000a, 8). It quotes Sákéj Henderson's "Exploring justice as healing" on how the diversity among Indigenous peoples gives rise to "many methods of healing and views of justice" but with a key common theme among them being "the necessity of our knowledge of our people and ourselves" (Henderson 1995 quoted in AHF 2000a, 8). Henderson emphasizes: "The goal of healing is not to assimilate the other, but rather to allow ourselves to live in a world as Aboriginal people who feel connected with our unique shared culture. We do not desire to be healed in a manner that we feel disconnected from our identities or feel that our identities are better suited to other societies" (8). Such a conception sits in tension with a therapeutic cure-oriented approach aimed at integration into the dominant non-Indigenous society and economy.

The risk is then that the use of the language of "healing" by the Canadian state and society, understood to be geared at curing the trauma-induced pathologies of "an individualized victim subject," will obscure and undermine Indigenous peoples' conceptions and practices of healing as a collective and holistic transformative undertaking (R. Green 2012, 135-36; see also Maxwell 2017). Krista Maxwell cautions that wariness is warranted towards state and societal narratives of healing as individual improvement, reminding that similar logics yielded the Residential Schools in the first place (2017, 976-77). Emphasizing that these different conceptions imply different means and ends, Green notes that Indigenous peoples' conceptions of healings

encompass a much broader array of elements "including cultural and language revitalization, decolonization, the redistribution of land, and the introduction of Indigenous methodologies into the public sphere" (2012, 136). Such approaches diverge significantly from individualized therapeutic practices seeking an endpoint of cure and closure (135, 138, 144).

In considering the emphasis that the AHF and participants from the *Mapping the Healing Journey* study placed on the link between healing and self-determination, it is also worth noting that conceptions of healing can differ not only in making this connection or not, but also in how they conceptualize self-determination and what implications this carries for constitutionalism in Canada. The AHF vision of healing speaks to the well-being and sustainability of "individuals, families, communities and nations" (AHF 2006, 1: 178). Reflecting on the constitutional reform debates in the 1990s, Patricia Monture-Angus writes that "healing is a constitutional issue for Aboriginal peoples" (1995, 155). Sidestepping the conventional Canadian agendas that preoccupied much of those debates, she draws on the teachings of Elder Rolling Thunder about individual and collective healing resting on respect for "all things and all people" to explain how Indigenous peoples' "constitutional aspirations" include "healing and health," and "a return to balance in our relationships" (153). These elements are at the heart of her understanding of self-determination (1999, 8). She argues that if Canada's constitution is to include Indigenous peoples, then it must "embrac[e] our central value, which is to heal our nations" (1995, 155). Implicit in Monture-Angus's vision of healing-oriented constitutional change is a (re)turn to balanced relationships not only within and between Indigenous people in their own communities, but also between Indigenous and non-Indigenous peoples, and between "all things and all people" (153, 155). This is a significantly broader vision of change than any of those advanced by the Canadian federal and provincial governments in the constitutional reform negotiations. It

is also a broader vision of healing than the federal government appeared to have in mind in response to the RCAP, considering the critiques levelled at *Gathering Strength* and the limiting of the type of healing the AHF could support (Ladner 2001; Land 2002; Million 2013, 101).

Differences of vision regarding the nature of self-determination and its connection to healing, and regarding who needs healing and from what, are embedded in this divergence between conceptions of healing. Among the stakes in the struggle between conceptions of self-determination underpinning diverse healing and reconciliation discourses is a distinction between a form that would see Indigenous peoples governing themselves in accordance with their own worldviews, and one that amounts to "neoliberal self-management and self-sufficiency" through delegated administrative power (Million 2013, 4). Dian Million argues that the latter view characterizes the Canadian state's approach, which also situates healing as the sole purview of individual Indigenous people and envisions it as a therapeutic practice geared at integrating those individuals into the capitalist economy and thus contributing to, rather than challenging, the broader state development project (2013, 52, 116-19). The vision of reconciliation that comes with "this therapeutic ethos," Million argues, is one "that does not change the colonial structures but adapts the colonized to the colonial systems as they change" (178; see also Coulthard 2014, 127; Maxwell 2017). Indeed, it can be understood as requiring healing from past trauma to adapt to present conditions that themselves involve new or ongoing colonial trauma, while those causing the harm do not cease, interrogate the reasons behind, or take responsibility for causing it (Million 2013, 106; L. Simpson 2011, 21). According to Million, such conceptions of healing – and the associated circumscribed version of self-governance through self-management or self-administration – are antithetical to Indigenous conceptions of self-determination (149-50), depoliticize Indigenous "relational practices […], ways of living in places" (116), and

conceptualize Indigenous peoples "as medicalized victims […] rather than as societies who vie for political presence" (52). Also implicit in this approach is that insofar as healing is needed to make changes in the relationship between Indigenous and non-Indigenous peoples, it is understood as needing to be undertaken by Indigenous people, not by non-Indigenous people at either the individual or collective levels.[28] Within such an approach, which Maxwell categorizes as "settler-humanitarianism," "settler expressions of sympathy for Indigenous suffering, and the interventions they justify, serve to simultaneously enable and conceal ongoing Indigenous dispossession" (2017, 1001). Such conceptions of healing and self-determination thus conflict in several ways with Monture-Angus's framing, wherein the restoration of Indigenous self-determination is a constitutional issue and a matter of healing because the exclusion of Indigenous peoples from being a part of the Canadian constitution on their own terms "is a significant source of the pain that Aboriginal people seek to heal from" (Monture-Angus 1995, 155). On the latter view, healing would entail the creation of constitutional space that enables living the balanced relationships with all peoples and all things in accordance with Indigenous peoples' own epistemologies and constitutional law and politics, which surely requires not only Indigenous peoples practicing self-determination on their own terms but transformation in the modes of engagement in political relationship on the part of non-Indigenous people as well.

The phrasing in some areas of the AHF mission statement and final report seem to imply

[28] The exception to this is the pathologization of perpetrators of abuses in Residential Schools in line with a 'bad apples' perspective that limited the harms of the Schools and the lasting trauma they caused to the behaviour of individual abusers, to the exclusion of also recognizing the harmful character of the system itself along with the other colonial policies with which it was entangled. (As an aside, the genealogy of the 'bad apples' expression itself, which now gets used to convey the opposite sentiment from its original meaning, bears consideration here – on this, see e.g., Cunningham [2020]; Merriam-Webster [n.d.]; Nunberg [2011]; Rosner [2020]). In such a view, any necessary healing is also characterized at the individual level, as the problem is seen to be only one of individual pathologies leading a person to commit abuses, rather than a societal-level affliction that requires investigation of the pathologies of colonialism – as structure and as mentality – followed by efforts among all members of society to heal individually and collectively from them. Some non-Indigenous people employing discourses of healing and reconciliation have, to varying degrees, recognized a broader need for healing and deconstruction of colonial mentalities among the settler population (see e.g., Peers quoted in DeGagné 2001, 4; Regan 2010, 115-17), but this thinking is not characteristic of the neoliberal therapeutic orientation highlighted by Million and others.

that insofar as non-Indigenous people are involved in "healing and reconciliation," it is the reconciliation component that is their purview (AHF 2006, 1:17, 40). However, there are also signs that the AHF – or at least many who were involved with it – possessed a much broader vision of healing, including who the need for healing all applied to, than what its narrow mandate encompassed. For instance, both Castellano and DeGagné mentioned discussions at the AHF about avoiding framing Indigenous people as being singularly "sick" and in need of healing. Rather, healing was required by and between all parties, and there was a need to grapple with this along with what implications the different necessary forms of healing carried for policymaking and the distribution of resources (research interviews, September and October 2018). Castellano framed the matter in the following way in a 2008 AHF collection:

> The kind of healing that leads to reconciliation between peoples is not solely an Aboriginal need and concern. Canadians and the institutions that represent them in dealings with Aboriginal peoples also need healing from the false assumptions and blind spots that led to the imposition of the residential school system and today perpetuate powerlessness, dependency, and lack of trust. (2008, 397)[29]

The notion that Canadians and Canadian institutions require healing as well as Indigenous people and peoples is among the key elements of the divergences between the state and Indigenous peoples when it comes to the conceptions of healing and self-determination that inform diverging uses of reconciliation. Another is the perspective that healing requires looking at *and* beyond the individual traumas of physical and sexual abuse when identifying the harms to be healed, and also requires linking that project with holistic visions of decolonization and self-determination. Though the AHF turned to the concept of reconciliation in a more concerted fashion after 2006,[30]

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[29] Other contributors express similar or related sentiments (Kelly 2008, 27-28; Mussell 2008, 332; R. Ross 2008, 156). Stan McKay, for instance, writes, "I submit that healing is also about the transformation in Canadian society. The perpetrators are wounded and marked by history in ways that are different from the victims, but both groups require healing" (2008, 107). The essays are not necessarily representative of the AHF, however – not all the contributors worked for the AHF, and the collection presented a range of views on trust, healing, and reconciliation.

[30] DeGagné noted that between 2009-14 the AHF had moved from focusing on healing to talking more about reconciliation. He described this turn as being initially inadvertent, that "the Healing Foundation found that in the

there are also some glimpses of critical attention to those diverging uses in its 2006 final report,[31] as well as in speeches by Erasmus and DeGagné throughout the years prior to 2006. The report is also important for understanding how the AHF mobilized the term in its own work before undertaking to initiate a broader public conversation on the topic of reconciliation.

8.3.3 Uses of Reconciliation by the Aboriginal Healing Foundation Leadership

The AHF followed in the RCAP's wake both structurally and discursively, though in some ways with a narrowed focus when it came to reconciliation, owing to the nature of its mandate. Since the AHF was created in response to the RCAP recommendations and its Chair had previously been the co-chair of the RCAP, it is no surprise that Erasmus, DeGagné, and the 2006 final report all highlighted the RCAP's recommendations on healing and reconciliation in situating the AHF's efforts on that front (AHF 2006, 1:10-11, 176-79; DeGagné 2001, 1-2; Erasmus 2003b, 10). The mission statement's reference to inviting Canadians to walk "the path of reconciliation," as well as echoes of this in later speeches and documents, is evocative of the RCAP's earlier use of the phrase (sec. 6.3.2).[32] Because the AHF mandate dealt only with the legacies of physical and sexual abuse in the Residential Schools, Erasmus and DeGagné's uses of reconciliation in their speeches in the early 2000s primarily related it to Residential School redress, but both noted that this comprised only a fraction of the RCAP recommendations and of the overall work of reconciliation. In a speech wherein he was encouraging a group of journalists "to consider how

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last five years of its mandate, we were talking about reconciliation […] much more than we were talking about healing, which is what the dialogue was at the beginning." Discussion of whether producing a book on reconciliation would fall within the AHF's mandate then led to the realization that "[t]he word reconciliation is in [the AHF mission statement] more often than healing." Though the term appeared in AHF communications earlier on, the degree of attention to reconciliation was much greater in those subsequent years wherein the AHF built on that component of its mission statement "to essentially create a communication wing […] that did nothing but talk about reconciliation and its relationship to residential schools" (research interview, October 2018).

[31] As a result of uncertainties around mandate extensions, the AHF ended up issuing several "final" reports (Spear 2014, 1). Given the timespan of my study, I focus primarily on its first final report from 2006.

[32] See also AHF (2000a, 2, 16; 2000b, 2, 28); Erasmus (1999, 4; 2001, 2-3; 2004, 6; 2006b, *2*).

you may help to advance healing and reconciliation," Erasmus stated: "On the matter of reconciliation, there is much to be done. The Healing Foundation plays a relatively small yet vital role in the overall healing and reconciliation process" (2001, 3). Explaining that, "[c]oncerning reconciliation and healing, RCAP recommended apologies by those responsible, compensation of communities (to assist them in designing and administering programs that promote healing and the rebuilding of communities), and funding for treatment of affected individuals and their families," DeGagné also observed that "[t]hese recommendations were among many others addressing all facets of Aboriginal life" (2001, 2). Erasmus underscored these other recommendations in a section of a speech to a General Council of the United Church entitled "Reconciliation and Solidarity," recommending, among other things, that they

- revie[w] the recommendations of RCAP and, with attention to the needs and aspirations of the communities, suppor[t] Aboriginal people in their quest for the honouring of their rights;
- influenc[e] the elected leaders of Canada to act upon the recommendations of RCAP – especially, but not only, in the areas of land rights and governance; [and]
- challeng[e] government to fulfil their historical obligations and agreements […]. (Erasmus 2003b, 10)

Despite the constraints built into the AHF mandate, then, Erasmus nevertheless seemed to see the work of the AHF as being related to broader questions of governance (2006a, *3*).

In contrast with reconciliation and healing discourses' current prevalence, it bears highlighting that both leaders perceived the context they were operating in as one unused and not necessarily welcoming to those concepts, particularly at the outset of their work. Erasmus stated to his United Church audience: "You know well that we live in a culture not accustomed to the language of healing and reconciliation" (2003b, 11). In a later speech, describing healing and reconciliation as the "policy challenge" to which he was "principally committed," he called for "a concerted and sustained national commitment to healing and reconciliation" to address the

"historic institutional trauma" of Indigenous peoples and the "pain, mistrust and shame in the relationship between Aboriginal peoples and Canadians" that emanated from it, while also suggesting that his message was one "not readily heard or accepted in the world of policy formulation" (Erasmus 2006a, *2-3*). At the same time, DeGagné's speeches indicated a gradual shift in openness to this message. In a 2001 speech, having just discussed the Statement of Reconciliation and the churches' apologies, he stated that "[a] 'reconciliation agenda' has been set by the churches and the government, but not all Aboriginal people are prepared to follow along" with that agenda, and he emphasized that reconciliation would require Indigenous people to "have a meaningful role in setting the agenda" (2001, 4). Four years later, DeGagné indicated that a "consensus" and "momentum" were emerging from the healing movement's work, and that there was "now a coalition of the willing, of one mind in the understanding that we must go forward with the long-term project of healing and reconciliation" (2005, 2).[33] Both leaders stressed that reconciliation would be a long-term project requiring significant dedication and patience (AHF 2005a; DeGagné 2001, 4, 2005, 2-3; Erasmus 2003b, 12). They also recognized that there was resistance, both in Indigenous communities and in Canadian society (AHF 2001a, 5; DeGagné 2001, 4; 2005, 3; Erasmus 2003b, 12). To the extent that specifics of this resistance were discussed, they pertained particularly to the Residential School system and associated redress, including the work of the AHF. Erasmus observed that the media tended to fixate on "the latest controversy" related to redress (2001, 3; 2003b, 11-12),[34] and drew attention to the

[33] In detailing this emerging consensus, DeGagné suggests that "although there is not universal agreement on every detail," there was "principled and practical agreement" on the need for an apology from the prime minister, compensation for Residential School Survivors, "truth-telling, healing and reconciliation activities," public education, and "adequate long-term support for healing projects" (2005, 2). For more, see section 8.4.

[34] Spear writes, "From the establishment of the [AHF] in 1998 to the apology […], the Indian residential school was a high-profile issue. Only over time, however, was the centrality of the survivors and their healing established. Throughout the early years of the [AHF], the focus of media reports was above all else on the enormous sums of money the claims would likely cost the beleaguered Canadian taxpayer. […] The cultural dominance which had yielded the Indian Residential School System in the first place was now yielding a media which wouldn't help but

issue of Residential School denial (AHF 2001a, 5).[35] This emphasis highlights that – while there is a risk to healing discourses that focus only on building awareness and understanding around one aspect of colonial policy and its legacies while eliding questions of material restoration in the face of the dispossession of land, governance, cultures, and languages[36] – a dearth of understanding of the Residential School system and its effects poses a significant impediment to the possibility of any kind of healing and reconciliation (Carleton 2021b). In the face of widespread stereotypes and misinformation, reconciliation was linked to a need for truth about the history of Residential Schools, debunking falsehoods about Indigenous peoples, and attitudinal change in Canadian society (AHF 2001a, 4; 2001c, 5; DeGagné 2001, 4).

DeGagné and Erasmus also directly engaged with definitions of the word in using it in their speeches. They both foregrounded the meaning of restoring friendship and harmony, and in doing so drew links to historical treaty relations. Speaking at the 2005 National Reconciliation Week in Australia, DeGagné stated, "Reconciliation of course means 'to bring back into harmony; to become friends once again.' It is a matter of looking back and moving forward – addressing both the errors of the past and the requirements of the future. In Canada, we have the examples of the earliest agreements between Aboriginal peoples and those newly-arrived from distant shores to guide and inform us" (2005, 3). In an earlier speech, Erasmus highlighted the same definition, but also contrasted it with reconciliation as resignation. He noted, "It can also mean 'to become content, to reconcile oneself to something,'" and then declared: "Let us not become reconciled to the ugly prospects of expedience. Let us instead look to the once and future

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see the issue foremost as an institutional crisis, a dangerous challenge to the establishment by […] 'the native victims industry.' This prejudice – that the healing fund was a shakedown scam orchestrated by Native 'fat cats' – was evident in the Canadian media from the beginning" (2014, 104-5). In a 2001 *Healing Words* piece analyzing news media over a month, Spear found a predominant focus on litigation and costs to the government and churches, concluding at the time that "[h]ealing and reconciliation are not prominent media concerns" (AHF 2001a, 10).

[35] On Residential School denial as well as "settler denial" more broadly, see e.g., Carleton (2021a, 2021b); Howell and Ng-A-Fook (2022); Mudde (2020); Nagy (2012).

[36] Such approaches might be seen as a form of "conscientization" (Tuck and Yang 2012, 19; see p. 472 below).

friendship of our peoples" (2003b, 10). In detailing the AHF operating principles, a key tenet for Erasmus and DeGagné regarding the "restoration and renewal" of the "relationship between peoples" was that "the principles and substance of the healing and reconciliation processes must be guided by Aboriginal peoples" (Erasmus 2006a, *3*; DeGagné 2001, 5-6; Erasmus 2003a, 11). These various considerations with respect to the meaning(s) and requirements of reconciliation that appeared in Erasmus and DeGagné's speeches and in messages in AHF newsletters up to 2006 were then also reflected in the AHF's 2006 final report. Before turning to the AHF's report though, it is important to first survey an earlier report by the Law Commission of Canada (LCC) to consider its use of reconciliation, as the AHF's model for addressing the legacy of Residential Schools is informed by the work presented in the LCC report (AHF 2006, 1:177).

8.3.4 Restoring Dignity: Assessing Acknowledgment, Apology, and Reconciliation

The LCC's report, *Restoring Dignity*, was published in 2000 and followed a November 1997 request by then-Minister of Justice Anne McLellan for a study of processes for responding to "institutional child physical and sexual abuse," which included abuses committed in the Residential Schools as well as "in institutions such as orphanages, schools for the Deaf, long-term mental health care facilities, sanitoria and training schools" (LCC 2000, 1-2).[37] The term reconciliation appears frequently throughout the LCC report, in the titles of source material and references to the Statement of Reconciliation (which had followed shortly after the Reference to the LCC), as well as in comprising a key element of the framework used to assess different

[37] In addition to the LCC's use of reconciliation as an assessment criterion of redress mechanisms, as discussed here, *Restoring Dignity* is also of interest to the genealogical exploration of the emergence of reconciliation as it draws attention to redress efforts in other contexts of institutional violence that employed the term reconciliation. This included the Reconciliation Process Implementation Committee struck to address abuses at the St. Joseph's and St. John's Training School for Boys, the resulting Helpline Reconciliation Model Agreement, and the Reconciliation Agreement between the Primary Victims of George Epoch and the Jesuit Fathers of Upper Canada and the related Reconciliation Implementation Committee, along with various church programs related to the Residential Schools and truth commissions in other countries (for references, see LCC 2000, 451-52; see also Shea 1999).

policy mechanisms as responses to institutional abuse. It appears that in this instance, the provenance of reconciliation can be directly traced to the Minister: "According to the Minister, the goal of the Reference was to identify 'what types of processes would best address wrongdoing, while according appropriate remedies, and promoting reconciliation, fairness and healing'" (2). The report reiterates this goal of "find[ing] or creat[ing] appropriate remedies that will promote reconciliation and healing" on a few occasions, describing it as a "key concern" and "fundamental question" (12, 105-6, 303, 425). The LCC then includes the promotion of reconciliation among the criteria it uses to analyze the different redress processes it studied, rearranging the concepts it is paired with in the process. Fairness is listed on its own as one of the eight assessment criteria, while reconciliation is grouped with acknowledgement and apology: "Does the process promote acknowledgement, apology and reconciliation in cases where the abuse has occurred?"[38] For each redress mechanism considered, there is then a section on "Acknowledgment, apology and reconciliation" that assesses its prospects in terms of including or leading to those three things (131, 168, 200, 214, 231, 256, 275, 295, 330).

The LCC report does not provide an explicit definition of reconciliation. However, some sense of intended meaning is conveyed by how it is used. The report also provides some indication of what is required to enable reconciliation to happen. This is accomplished especially by the grouping of reconciliation with acknowledgement and apology, with these latter two practices framed as being enabling conditions for reconciliation, or the three perhaps forming a trajectory whereby acknowledgement might lead to apology, which then facilitates reconciliation

[38] The eight criteria are: 1) respect, engagement, and informed choice; 2) fact-finding; 3) accountability; 4) fairness; 5) acknowledgement, apology and reconciliation; 6) compensation, counselling and education; 7) needs of families, communities and peoples; and 8) prevention and public education (LCC 2000, 106-7). Healing is not explicitly mentioned in the elaboration of the list of criteria, but could be understood to be implicit in several of them, and the term appears nearly as frequently as "reconciliation," often paired with it ("reconciliation" appears on 90 pages of the report and "healing" on 78, references included; the search results are higher for "concil*" and "heal").

(210, 228, 256, 275, 325). A conceptual connection between truth – an implicit element of acknowledgement and apology – and reconciliation is highlighted in the report's discussion of truth commissions, as it notes that "[f]inding facts and creating a historical record of wrongs are the foundations for reconciliation and healing" (273). Public knowledge of the wrongs that occurred is also identified as necessary for shifting "public attitudes that may prevent a more general reconciliation" with victimized groups (232). At the same time, the policy substance of reconciliation is clearly stated to require more than discursive practices of repair. The report underscores on several instances that reconciliation requires pairing symbolic and material redress. For instance, it states that "[w]hen official gestures of acknowledgement and apology are made in combination with the financial compensation offered, reconciliation is facilitated," and that "[i]f a redress program is designed to combine material and spiritual benefits, and is administered in a manner sensitive to the needs of survivors, it can be an effective vehicle for promoting reconciliation" (214, 325). In considering the relationship between these elements in the context of truth commissions, the LCC acknowledges that redress programs can involve "competing and conflicting goals," such as "the need for justice and to discover the truth, and the need for peace and harmony through which perpetrators can be reconciled with survivors. Yet justice without at least some retribution is unlikely, as is reconciliation without at least some compensation" (268). It also points to potential conflict between the individual and collective dimensions of reconciliation, as "reconciliation, education and prevention" are identified as "societal needs" but the pursuit of "collective reconciliation may result in a loss of respect for the experiences of individual survivors" (343, 271-72). Finally, the LCC identifies some qualitative requirements for redress programs to produce reconciliation: "The desire for reconciliation must be sincere, and it must be mutual. In order to be able to promote reconciliation, those offering

redress must overcome the distrust and the cynicism of former residents of these institutions. A redress program that responds to key survivor needs may pave the path to reconciliation" (331). How well this is done, along with whether survivors had to fight for redress or whether it was offered by the responsible institution, and whose interests are prioritized in the process, are presented as factors that will shape how "smooth or rocky" the process will be (331).

While some of the complexities of pursuing this kind of reconciliation through a variety of policy mechanisms are contemplated, the conceptual complexities of reconciliation itself are not addressed. The use of reconciliation in the assessment criteria renders reconciliation as a goal against which means-end evaluations of different redress options are made (Fairclough and Fairclough 2012, 4, 11), but beyond the qualifications described above, the (desired) nature of and reason(s) for pursuing reconciliation associated with its role as an animating purpose are not clearly laid out. Collectively, what is conveyed by the passages discussing reconciliation throughout the LCC report is a vision of reconciliation as relationship, with that relationship clearly being shaped by both symbolic and material dimensions. The report does not engage with the existence of other meanings of the term or the implications of what reconciliation as consistency or as resignation might entail in the contexts under investigation, or with the religious trappings of the concept,[39] nor does it consider concurrent uses of the term in jurisprudence or political debates. That reconciliation is perceived as a positive goal/state is further emphasized by the inclusion of a text box towards the end of the first part of the report featuring the following quotation from John Ralston Saul's *Reflections of a Siamese Twin*:

> Reconciliation is a great human quality. One of the more important. Those with power know it can be neglected, abased, deformed, ridiculed in the name of various emotional or financial imperatives. Reconciliation is the most difficult of human states to defend. It is dependent on an acceptance of the idea of the public good. It invariably stands in the way

[39] The Christian dimension of reconciliation is of particular note for considering the use of the term in response to abuses in the institutional contexts in question as many of them were church-run institutions.

of power, narrow self-interest and self-righteousness. (1997, 289 quoted in LCC 2000, 94)

The quotation is presented on a page that falls in between sections on "financial compensation" and "prevention and public awareness," in a part of the report discussing a list of the identified needs of survivors of institutional abuse. It is paired with another text box containing a quote from a survivor excerpted from a report on the Helpline Reconciliation Model Agreement entitled *The Vision to Reconcile*, which speaks to the desire to pursue redress for the benefit and well-being of the survivor's grandchildren (94). While the subsequent section on prevention and public awareness takes up this latter theme, neither section on either side of this intervening page discusses reconciliation or takes up Saul's statement, nor is the passage discussed or any further references to Saul's work made elsewhere in the report. Absent any further discussion, elaboration, or direct linking with the report's other uses of the term reconciliation, this free-floating quotation serves as a seeming endorsement of Saul's statement and implicit qualification of a term that the LCC then uses as an evaluative tool throughout the rest of its report. That Saul's approach to reconciliation eschews contemplation of the prospect of "reconciliation" being used *for* "power, narrow self-interest and self-righteousness," rather than to counter it (though we might ask what discursive practices constitute abasing or deforming reconciliation, in addition to who constitutes "the public" and determines what "the good" is that is to be maintained through reconciliation) (1997, 289), is then mirrored in the LCC's use of the term as a positively-framed goal and evaluative metric without contemplating the variety of meanings of the term and of ways that it might be entwined with power relations.

8.3.5 Reconciliation in the 2006 Aboriginal Healing Foundation Final Report

The AHF 2006 final report uses the term reconciliation in a few different ways, both echoing

others' uses of the term and advancing a particular conception as central to the AHF's own work. In situating the AHF's work in relation to both past and upcoming initiatives, the report presents church efforts in addressing Residential Schools, the federal government's 1998 Statement of Reconciliation, and the IRSSA package in terms of reconciliation (AHF 2006, 1:11-12, 176, 207. 2:2).[40] The broader global context of reconciliation discourses is recognized in references to South Africa and Argentina being precedents for "the conviction that truth-telling was a necessary first step in reconciliation" embodied in the RCAP recommendations (2006, 1: 10). It is also recognized indirectly in that the AHF's approach to addressing the legacy of Residential Schools is informed by the LCC report which looks at truth commissions as a redress mechanism (LCC 2000, 7, 26-27). In these and other uses, such as in describing the federal government's Statement as "a solemn offer of reconciliation," which was how Stewart had herself described it (AHF 2006, 1:12), or in citing the LCC's discussion of truth and reconciliation processes (1: 178), the report is simply mirroring others' uses of the term. In other areas, reconciliation is used to describe the work of the AHF itself and its desired outcomes (1:1, 207, 219, 2:92, executive summary: 32, 46). This includes a reiteration of the mission statement and an explanation that one of the tasks of the AHF Communications section was "raising awareness among the Canadian public of the need and possibilities for reconciliation" (1:40). A particularly notable passage for considering the AHF's use of the term is a discussion of reconciliation as a component of its resolution model for addressing the legacy of Residential Schools. Unlike other areas where reconciliation is used with little or no qualification, this section of the report includes a discussion of the definition of reconciliation and demonstrates that the membership of the AHF grappled with the tensions emerging from the different meanings the term carries.

[40] References to the Statement and *Gathering Strength* constituting the beginning of "the process of reconciliation" can also be found in earlier AHF publications and speeches by the Chair and Executive Director (AHF 1998, 1; 1999a, 1; 1999b, 1, 2; 2001b, 18; 2001c, 14-15; 2003a, 21; DeGagné 2001, 2-4; Erasmus 2003a, 7; 2004, 6).

The AHF was already established by the time *Restoring Dignity* was published,[41] but while the LCC's use was not the original source of the AHF's use of reconciliation (the mission statement predated the LCC report, for instance), it did inform the AHF's use of the term in its resolution model.[42] This model is rooted around four core components: acknowledgement, redress, healing, and reconciliation (AHF 2006, 1:177). Significantly, however, while the AHF notes that "[t]he Law Commission's research and analysis […] has been adapted in the AHF framework" (177), its approach is distinct in observing that reconciliation has different meanings and that, unless it is qualified and pursued in a particular fashion, it risks reinscribing rather than upending the power relations contributing to oppression. A key passage reads:

> *Reconciliation* has been cited in relation to residential school resolution since the Minister's *Statement of Reconciliation* in 1998. […] What does it mean? One definition of "to reconcile" is "make resigned or contentedly submissive [to one's fate]." Some Aboriginal people, including members of the AHF Board, maintain that reconciliation in this sense, without the prerequisites of acknowledgement, redress and healing, serves to perpetuate the original violence. (1: 179; italics in original)[43]

The AHF notes a preference for a conception of reconciliation drawn from peace studies, providing the following definition drawn from the work of psychology of trauma and political violence researchers Ervin Staub and Laurie Anne Pearlman:

> Coming to accept one another and developing mutual trust. This requires forgiving. Reconciliation requires that victims and perpetrators come to accept the past and not see it as defining the future as simply a continuation of the past, that they come to see the humanity of one another, accept each other and see the possibility of a constructive relationship. (AHF 2006, 1:179)[44]

While this definition does not necessarily signify restoring rather than simply establishing a

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[41] Indeed, the report discusses the AHF (LCC 2000, 291, 294, 324, 333, 389).
[42] This is noted in the AHF report and was also emphasized by DeGagné as being a source of the notions of truth and reconciliation in this context (AHF 2006, 1: 176-77; M. DeGagné, research interview, October 2018).
[43] A further gesture to this concern is referenced in the 2006 final report's second volume, wherein a discussion of a healing project in Kinngait included concerns expressed about some people, including particularly in the church, "believ[ing] that forgiveness and reconciliation can occur without adequate processing of past trauma" (2:100).
[44] The link cited in the AHF report to Brahm (2004) wherein this definition is quoted is no longer active. The essay is currently available at http://beyondintractability.org/essay/trauma-healing.

constructive relationship, the AHF's elaboration on it does suppose that "[t]he language of reconciliation implies that a harmonious relationship once existed between parties" (179). The report accepts the RCAP's proposition that there were "relations of mutual benefit" during the period of initial contact between Indigenous peoples and settlers in this regard, but notes that this is not reflected in the experiences of Residential School Survivors for whom encounters "with agencies of Canadian society ha[ve] been harsh and alienating" and that the work to be done is "the reestablishment of dignity and mutual respect" between Indigenous and non-Indigenous peoples (179; see also 211). Reflecting on its four-part model and the developments that had taken place by the time of the report's publication in 2006, the AHF concluded that new possibilities for reconciliation were coming into being because of the possibility of pursuing healing and reconciliation in conjunction with acknowledgement and redress, where previously limitations placed on healing projects and refusals to acknowledge harms that had been committed (because of the legal implications they might hold for redress-seeking actions) had stymied such prospects (179). Acknowledgement and redress are linked primarily with the Statement of Reconciliation and the IRSSA (177-78), while the section on healing then focuses on the contribution of the AHF itself through the community healing initiatives it funded (178-79). Owing to the magnitude of the task and to the limitations with which it had been beset, particularly prior to the signing of the IRSSA, the AHF concluded that "the mission [was] far from complete" in 2006 (179-81). It called on the government to extend its mandate for another thirty years with renewed parameters that would enable it to address "the legacy of abuse, and social, psychological, cultural and spiritual injuries, including intergenerational impacts" and "to complement and advance the interrelated goals of acknowledgement, redress, healing and reconciliation" (2006, executive summary: 43). The responsibilities for such a renewed mandate

included "a public education role to conduct research and share knowledge related to the legacy of abuse in residential schools and promote healing and reconciliation" (43).

The AHF was not granted such a mandate extension, though it ultimately remained active until 2014. In the time between the ratification of the IRSSA and the cessation of its operations, the AHF did turn its attention to a series of research and public education projects on the subject of healing and reconciliation. While I do not analyze these projects here as they fall outside the temporal parameters of my study, they merit at least mentioning as they were explicitly aimed at "promot[ing] the truth and reconciliation discourse" (Younging, Dewar and DeGagné 2009b, 5). Beginning in 2008, the AHF commissioned a wide-ranging series of articles reflecting on the concept and practice of reconciliation in the Canadian context to create publicly available collections that were aimed at generating public conversation to coincide with the establishment of the TRC. It published three edited collections (Castellano, Archibald and DeGagné 2008a; Younging, Dewar and DeGagné 2009a; Mathur, Dewar and DeGagné 2011),[45] which "aired diverse survivor perspectives and […] featured scholarly explanations of the [residential] schools as instruments of dispossession and genocide," and ultimately constituted "some of the AHF's most widely distributed work" (James and Stanger-Ross 2018, 304; Spear 2014, 163). The collections brought together a range of different perspectives on reconciliation, including critical analyses of the term's meanings, the appropriateness of its uses in the Canadian context, and the power relations surrounding its application. In the work of the AHF up to 2006, "reconciliation" had been most closely discursively bound up with "healing," but a concurrent set of processes that were taking place in response to Survivors' claims for justice for the harms of the

[45] Smaller editions with selections from the larger collections were later issued in collaboration with CBC radio host Shelagh Rogers to increase accessibility and distribution, and to enable discussions of reconciliation through radio shows and book club meetings and the like (Rogers, DeGagné, Dewar and Lowry 2012; Rogers, DeGagné, Lowry and Fryer 2014; Charles, Rogers, DeGagné and Lowry 2018; M. DeGagné, research interview, October 2018).

Residential School system were bringing a new companion term to the fore, leading the editors of the 2008 AHF collection on reconciliation to open the volume by declaring: "Truth and reconciliation are new words in the vocabulary of Canadians speaking about our history and our future in this land" (Castellano, Archibald and DeGagné 2008b, 1).

8.4 "[S]hap[ing] the terms of their reckoning": Three Parties, the Courts, and the Indian Residential Schools Settlement Agreement

Operating alongside *Gathering Strength*, the Statement of Reconciliation, and the creation of the AHF were the legal processes and political negotiations that eventually led to the signing of the IRSSA in 2006. These processes built on earlier developments, including public revelations by Survivors of abuses experienced in the Residential Schools, church apologies, work by the RCAP, grassroots organizing by Survivor groups,[46] and individual and class action lawsuits filed against the churches and the federal government for the harms caused in and by the Residential School system.[47] The path to the IRSSA thus created spaces for the encounter of earlier threads of reconciliation discourses by bringing together Survivors, Indigenous political organizations, church representatives, and federal government officials. These steps were catalyzed by the flood of lawsuits launched by Survivors, which began in the hundreds the year the RCAP report was

[46] This mobilization dated back to the 1980s and early 1990s and included community-based research and truth commissions, conferences, and the creation of Survivors' associations. For examples, see J. Henderson (2015, 13); Hodgson (2002, 104); Nagy (2014, 213); and TRC (2015a, vol. 1, pt. 2, 556-57). In June 1998, there was an "Inter-Tribal Tribunal on Residential Schools in Canada" in Vancouver (D.B. MacDonald 2007, 1008). A paper by one of the tribunal judges reflecting on the event includes a repeated emphasis on "Truth, Justice, Healing, Reconciliation and Prevention of Future Abuses" (Craven 1998, 1-5, 7, 10-13, 21), but does not elaborate on what is meant by reconciliation, and I have not found any other documentation associated with the tribunal or discussions of it in scholarship. A 1997 *Globe and Mail* article noted that a number of Indigenous communities, including Alkali Lake, "conducted their own public inquiries into the effects of residential schools on their communities" (H. Ross 1997).

[47] These were not the first lawsuits associated with the Residential Schools. This era saw a tidal wave of civil suits along with the criminal prosecution of certain specific abusers, but there were also earlier criminal cases going back to the 1940s (IAP Oversight Committee 2021, 13). For more on the contextual factors that contributed to bringing the Residential Schools issue to the fore during this period, see e.g., D.B. MacDonald (2019, 17-19); Woods (2017); Woolford (2015, ch. 8). For an overview of the civil litigation cases, see TRC (2015a, vol. 1, pt. 2, 559-64).

released and increased massively to over 5000 by the year after the Statement of Reconciliation, and three times that by the time the settlement agreement was reached (J. Henderson 2015, 13; Regan 2010, 120; Miller 2017, 99; Nagy 2014, 206). The government and churches were particularly propelled to action by the courts' certification of several major class action suits that had significant financial, and for the churches, potentially existential, implications (Miller 2017, 107; Nagy 2014, 206). As such, while the litigation process posed major drawbacks for Survivors in terms of potential for re-traumatization, time, cost, and narrow common law tort-based conceptualization of the harms they had endured, the approach was strategic in compelling the government and churches to address an issue they had sought to avoid (J. Henderson 2015, 6; IAP Oversight Committee 2021, 14-15). Interested as they all were, if for different reasons, in finding another approach, the parties undertook to collectively establish alternative means to litigation. This process, which took close to a decade after the Statement of Reconciliation and was fraught with contention, mutual distrust, and conflicting visions of the harms at stake and the appropriate means of addressing them, ultimately yielded the IRSSA.

The road to the IRSSA included several precursors to its ultimate provisions. In 1998 and 1999, representatives of the three parties held a series of exploratory dialogues, which yielded a set of guiding principles for engagement around the issue. In 2001, the federal government created a department whose sole purpose was to resolve claims relating to the Residential Schools – Indian Residential Schools Resolution Canada (IRSRC). Negotiations between the parties yielded an agreement to launch twelve pilot projects to test a variety of methods of alternative dispute resolution (ADR) to inform the creation of a broader ADR program, which followed the dialogues prior to the full process being launched in late 2003 (but not all of which were ultimately undertaken and very few of which were completed) (Hodgson 2002, 106;

Mahoney 2014, 508; Miller 2017, 106-21; Regan 2010, 120-1). Despite some smaller-scale positive assessments of individual projects and support for the ADR program in IRSRC (Regan 2010, ch. 7; Miller 2017, 124), this first attempt to resolve claims through ADR met with widespread condemnation and calls for its replacement. Prominent among these calls was a March 2004 conference co-organized by the University of Calgary Faculty of Law and the AFN that questioned whether the program could lead to reconciliation. The conference was followed by an AFN task force report that assessed the existing model and proposed an alternative (AFN 2004), as well as a scathing parliamentary committee report on the program (AANO 2005g; Nagy 2014, 208; Regan 2010, 125-37). The ADR program's failure, along with the growing wave of litigation, set the stage for a new process. The federal government and the AFN signed a political accord in May 2005 committing to as much, after which came negotiations with the churches. An agreement-in-principle was signed just prior to the fall of Paul Martin's Liberal minority government that autumn. Further negotiations with the Catholic Church followed. The IRSSA was ultimately concluded as a court-supervised resolution to the collection of class action suits brought by Residential School Survivors against the churches and the federal government in May 2006 (though due to a mandated opting-out period and its scope requiring subsequent approval by courts across the country, it was not fully ratified until late 2007).

There is of course much more to the story of the exploratory dialogues, the pilot projects, the formation of IRSRC, the ADR program, and IRSSA's creation than this brief outline.[48] I focus here on uses of the language of reconciliation throughout these developments, looking at each in turn in the sub-sections that follow. These various processes produced particular forms of discourse in the lead-up to the advent of the IRSSA and the resultant TRC. James writes,

[48] Others have traced these processes in detail. See AFN (2004); Fontaine and Schwartz (2018, 83-89); Hodgson (2002); Hough (2019, 2020); IAP Oversight Committee (2021, ch.3); Mahoney (2014, 2018); Miller (2017); Nagy (2014); Regan (2010, ch. 4 and 7); Spear (2014); TRC (2015a, vol. 1, pt. 2, ch. 45); Woolford (2015, ch. 8).

> Primarily affective conceptions of reconciliation […] were promoted by the Canadian federal government in response to RCAP's unwelcomely substantive conception; by the Christian churches in response to civil litigation from survivors; and by an increasingly wide array of voices in the years following the 2006 Settlement Agreement. By the time of Canada's June 2008 apology, which occurred before the TRC's public events began, *reconciliation* was already a Canadian keyword referring to harmonious relations achieved by a combination of survivor healing through truth-telling and settler knowledge acquisition through learning. (2017, 373)

Building on and intertwined with the work of the RCAP on Residential Schools, the Statement of Reconciliation, and the activities of the AHF, the actors involved in the various processes leading to the IRSSA contributed to the prominence of the strand of reconciliation discourse James describes, which subsequently became only more widespread following the establishment of the TRC. As with earlier stages and other discursive strands, however, this was by no means a homogeneous discourse. While by this juncture all of the parties had begun using reconciliation to frame the matter of Residential School claims, each of them brought differing perspectives and concerns to the table which shaped their uses of the term. Shared commitments that used the term were issued at various stages, but key core differences in the goal premises embodied in uses of reconciliation by members of the different parties are also apparent from the exploratory dialogues through to the rejection of the ADR program and the turn to the settlement agreement.

8.4.1 The Exploratory Dialogues and the Beginnings of ADR

The exploratory dialogues held in 1998 and 1999 were jointly sponsored by the federal government and the AFN. They involved discussions between Survivors, government and church representatives, and lawyers, "marking the first time these parties had met to find solutions to the tragic history resulting from the schools" (Hodgson 2002, 106; see also Miller 2017, 100; Nagy 2014, 206; WGTRED 2000). Accounts of the dialogues describe them as characterized by tensions, pain, anger, mistrust, and "acts of recolonization," but also highlight their significance

as a "transformative learning process" for non-Indigenous participants and as an important relationship-building foundation for the eventual negotiation of the IRSSA (Hodgson 2002, 106; Nagy 2014, 206-7; Miller 2017, 102-3). According to J.R. Miller, they "consistently incorporated Aboriginal practice and gave pride of place to Aboriginal leaders" (2017, 100). Miller particularly emphasizes the involvement of "long-time advocates of healing and reconciliation" Chief Robert Joseph and Maggie Hodgson (100).[49] Joseph, Hodgson, and a number of other participants, including facilitator Glenn Sigurdson, who had conceived of the dialogues along with Phil Fontaine and special advisor to the Minister of Justice George Thomson (100),[50] took notes that formed the basis of a report published under the auspices of the Working Group on Truth and Reconciliation and the Exploratory Dialogues (2000).[51] The report is entitled *Reconciliation and Healing: Alternative Resolution Strategies for Dealing with Residential School Claims*. The title's pairing of terms reflects the prevailing emphasis of the time, in step with the Statement of Reconciliation and the creation of the AHF. The report presents the Statement, along with the church apologies, as context for the dialogues (2000, v),[52] and comments throughout refer to the Statement several times (41, 66, 71, 83). Other uses of reconciliation are also peppered through the report, most notably in a set of principles for subsequent efforts to address Residential School claims entitled "Guiding Principles for Working Together to Build Restoration and Reconciliation" (106).

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[49] Joseph later co-founded an organization called Reconciliation Canada. For a description, see: https://reconciliationcanada.ca/about/about-us/. On some of Hodgson's later advocacy work, see sec. 8.5.
[50] Sigurdson writes of his involvement here: https://www.glennsigurdson.com/reconciliation-will-take-part-2/.
[51] It is difficult to trace the specifics and origins of the uses of reconciliation in this report as it does not include verbatim transcripts or direct quotations, but rather "amalgams of comments made at the dialogues" (WGTRED 2000, vi). As the introduction explains, "It reflects what was said, but does not represent the position of any person or institution, or any agreements or consensus from the dialogues. Indeed, what appears as a single point is often drawn from paraphrases of comments by more than one individual or from more than one institutional perspective" (vi), though one can sometimes determine which entity is being spoken for or to in certain comments. The notetakers varied by event, with some repeats, and included people from the different participating groups (for details see pp. 11, 24, 38, 45, 62, 73, 79, 89, 105).
[52] The text of the Statement and the apologies are also printed in appendix to the report (2000, 117-28).

The nature and structure of the report makes systematic analysis of the uses of reconciliation in the description of the dialogues themselves difficult (see note 51). Some general observations can be made based on the text, however, including that "reconciliation" was used in the discussions, and that there was some discussion of the term's meaning (4, 43). Reconciliation was frequently presented as a goal (19, 43, 48, 60), but also sometimes as already happening. For instance, a healing circle held by the Survivors of the Grollier Hall institution was presented as producing "the start of reconciliation," and the churches were described as "*feel[ing] privileged to have the hand of reconciliation extended to them*" (94; 35, italics in original). Reconciliation was variously linked with healing, apology, and compensation (21, 40, 43, 48, 60, 61, 85, 88), distinguished from vindication (4), and said to require beginning from the victim's perspective (88). One passage links it with a shared commitment among the parties "to the continued existence of the other institutions": "'Reconciliation shouldn't wipe any of us out,' said a senior government official" (93). Broadly speaking, the dialogues appear to have been wide-ranging in their engagement with the nature of the harms at issue and the kinds of action required to address them, reflecting a mix of interactional and structural approaches (Lu 2017), as well as what Rosemary Nagy and Emily Gillespie have called "reductive" and "expansive" conceptions of reconciliation (2015, 11). While some contributions focused more on individual healing, closure, and ending litigation (WGTRED 2000, 19, 86, 88), others framed the Residential School policy as part of a cultural genocide (83, 95, 105), called for the return of stolen lands (14, 19, 78), and put forward holistic conceptions of healing that included monetary compensation for a wide range of harms, the restoration of Indigenous languages, addressing dysfunctions perceived in non-Indigenous society as well as those afflicting Indigenous families, communities, and nations stemming from the harms of the Residential School policy, and decolonization (7, 14, 57-58, 61).

Reconciliation is most prominent and prevalent in the list of guiding principles devised by the participants to inform future resolution efforts. Unlike the other components of the report that comprise an amalgam of points raised (rather than a consensus), the principles were produced and endorsed collectively.[53] The list played a significant role in later developments as it was invoked in assessing the ADR efforts that followed and in informing the negotiation of the IRSSA (AFN 2004, 2, 14, 37; Mahoney 2014, 508, 518-19; 2018, 218; Miller 2017, 213; Nagy 2014, 207, 214). These Guiding Principles introduced a new pairing: rather than "healing and reconciliation" or "truth and reconciliation" (though these also appear in the list and the report), here the titular emphasis is on "Restoration and Reconciliation" (WGTRED 2000, 106). This is of interest given the more recent debates on the appropriateness of invoking reconciliation *as* restoration (Wyile 2016, 90-92), and opens the question of what restoration is held to mean.[54] The sixteen principles are listed in three categories – Participants, Process, and Outcomes – and followed by a discussion of awareness and training about the use of the principles, closing comments, and a "Mission Statement for Dispute Resolution." Reconciliation appears in some form under nearly half of the principles,[55] as well as in the three sections that follow.

In the list of guiding principles, reconciliation shifts somewhat vaguely between goal, process,[56] and principle. It is presented as a "strong" desire of Survivors – "[d]espite the abuse

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[53] As the document explains, these "guiding principles/lessons/values […] were drawn from the discussions at the dialogues and experiences in the pilot dispute resolution processes" and "were given expression in this form through the efforts of the participants in the Wrap-up Dialogue held in June 1999" (107).

[54] This question implies both "what?" and "how?" The notes from the dialogues in the report mention the need to restore "*trust in government and churches*" (19), language (7), and "*peace and reconciliation with church, state, families, communities*" (43; all italics in original), as well as considering the need for a restorative justice approach (30, 43). As noted above, there is also the implication that for some, resolution requires the restoration of land (78). Some areas speak broadly to a restoration of relationships (7, 115-16), but the appropriateness of this framing is also questioned: "*The churches need healing as well – should talk about a new relationship where we sit at the table as equals rather than a restored one because the old one was based on a willingness to be part of a conquest*" (4).

[55] These are: 1. Building Relationships Through Mutual Respect and Understanding (107); 5. Community Participation (109); 10. All Decisions Consensus Based (111); 11. Honour the Process (111); 14. Fair Result (112); 15. Appropriate Remedies (112); and 16. Effective Linkages (113-14).

[56] While nearly all of the uses of reconciliation to denote a goal or process imply a connotation of reconciliation as

they suffered" – and linked several times with healing, closure, and renewal (112, 109), as well as with restoration and "respect for the future viability of all participants" (107, 111). Creating a "restoration and reconciliation process" is said to require consensus, as well as, somewhat tautologically, or perhaps prefiguratively, "act[ing] in accord with the underlying principles of restoration and reconciliation" (111). Despite its prominence, there is no direct discussion of what reconciliation is understood to mean or require. Closest to such discussion is a list of examples of potential appropriate remedies to claims of abuse (principle 15) that are framed as "further[ing] the goals of healing, closure and reconciliation" (112). These include compensation, acknowledgement, apology, activities to raise awareness and reduce stigmatization, training programs, commemoration, prevention of the repetition of harm, *"funds for healing, education and cultural recovery*," and "*any other creative remedies the participants may develop*" (112-13, italics in original). The next section of the report states that participants entering a resolution process will require training in, among other things, the "dynamics of reconciliation" (114). The section also presents reconciliation as a practice (listed with peacemaking and restoration) and as a "process goal" (listed with healing and renewal) (114). Reflecting on the interpersonal experiences of the dialogues' participants, the conclusion states: "*Progress toward restoration and reconciliation, healing, closure and renewal will be made by grasping the truth that human relationships are the heart of the matter*" (115; italics in original). Finally, the report closes with the following Mission Statement for Dispute Resolution:

> As Aboriginal people, the federal government and religious organizations working together, respectfully and guided by the principles developed through the dialogues we are:
> - Committed to just redress for residential school claims and restoring and enhancing their relationships for the future.
> - Developing a framework of alternative approaches and additional tools to resolve disputes and historic grievances which address physical and sexual abuse issues and seek

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relationship, there is also one reference to reconciling "*inconsistencies*" (114, italics in original). Finally, one other instance is a reference to a title (the Reconciliation, Solidarity and Communion Fund of the CCCB) (113).

> ways to respond to the broad impact of the schools.
> - Providing a broader framework from which to make informed choices about redress, healing and reconciliation to enable people to bring closure to these issues and find new directions or beginnings in their lives.
> - Continuing in the spirit of the dialogues to create means whereby information and ideas can be received, stored and shared. (116)

This statement was later reprinted in a 2004 IRSRC update (IRSRC 2004b, 32), and echoed in then-IRSRC minister Denis Coderre's statement that "[t]he Government has always been committed to healing and to ensuring that people are able to make informed choices about redress, about healing and about reconciliation" (quoted in IRSRC 2004b, 34).

My research has not led me to any publicly available documentation around the pilot projects and the ADR process following from the dialogues that enables analysis of whether participants in those processes were using reconciliation discourses and, if so, who and how. Given the term's use in preceding developments, it seems plausible that some may have.[57] Paulette Regan's 2010 book *Unsettling the Settler Within* discusses her involvement in one of the pilot projects that centred on a repatriation feast for Gitxsan Survivors who had been taken away to a Residential School in Edmonton (ch. 7).[58] The account includes partial excerpts from the federal government and United Church representatives' speeches at the feast (206-8), but neither of the quoted passages mention reconciliation.[59] Regan herself uses the term, describing the Gitxsan Feast Hall as "a place of reconciliation" and reflecting on how her participation in the pilot project caused her to "rethink [her] cultural assumptions about the meanings of history,

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[57] Indeed, discussing her time as an IRSRC claims resolution manager in the early 2000s, Regan notes having "heard regularly about the need for Native people and communities to heal and reconcile among themselves and with us" (2010, 112). She adds: "the talk made me uneasy because it was so one-sided. What I heard little about was the need for non-Native people to examine what it means to be a colonizer and our own need to heal and decolonize" (112).
[58] Regan later went on to work as the director of research for the TRC.
[59] Regan notes she is quoting from her own personal copies of the speeches and states that "[c]opies of both apologies were distributed in press kits and may be held in the institutional records of government and church, but they are not widely available" (272n19). I am unsure how widely distributed the speeches were and whether reconciliation was invoked in the parts of either that were not quoted in the book or not.

truth, justice, and reconciliation" (210).[60] Beyond this discussion, however, the scope of my research makes it difficult to discern whether (and how) other participants in the pilot projects engaged with and used the term in the process or not. The language of reconciliation is more prominent in the remaining documentation around the ADR program that came next, evident in the framing of the program itself and particularly palpable in critiques calling for its replacement.

8.4.2 Indian Residential Schools Resolution Canada

Uses of reconciliation to assess and challenge government responses to Residential School claims occurred against a backdrop of the government itself employing the term in framing its own activities. "Reconciliation" appears throughout the reports of IRSRC from the department's inception. IRSRC's uses of the term shifted slightly from its earliest years to the period surrounding the collapse of the ADR program and the negotiation and implementation of the IRSSA. However, consistent throughout are an emphasis on reconciliation as a focus of government policy and framing that remains general and vague. The word "truth" does not appear a single time in any of the reports from prior to 2005 that I located (IRSRC 2002a, 2002b, 2003a, 2003b, 2004a, 2004b, 2004c),[61] and during the 2001-04 period the word "reconciliation" was solidly affixed to the word "healing" in virtually every instance of its use that was not a reference to the Statement of Reconciliation.[62] In some cases this pairing was accompanied by

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[60] The understanding that emerged for Regan was that "reconciliation is not a goal but a place of transformative encounter where all participants gather the courage to face our troubled history without minimizing the damage that has been done, even as we learn new decolonizing ways of working together that shift power and perceptions" (211). While the project is not named specifically, it may be this event that a 2003 IRSRC report description of commemoration funding alludes to: "Community commemorative projects, such as healing conferences, monuments and reconciliation feasts, will be supported under the Resolution Framework" (IRSRC 2003a, sec. 3.3).

[61] At the time of writing, the Government of Canada Web Archive was undergoing maintenance and links to some archived departmental reports were not functioning, so I was not able to determine whether there were any reports from prior to the 2001-2002 performance report.

[62] For references to the Statement, see IRSRC (2002a, 5; 2002b, 8; 2003a, sec. 2.1; 2003b, 3; 2004a, 5-6; 2004b, 4-5; 2004c, 6). Most of these passages are effectively identical, though a new section added in 2003 with respect to

other terms, which speak to the government's interests in pursuing claims resolution: on several occasions it was linked with "closure" (2003a, secs. 1, 3.3; 2004a, 13; 2004b, 32),[63] and the 2001-02 performance report following the department's creation in mid-2001 concluded a discussion of the challenges and opportunities shaping the resolution of claims by stating that "as we address the legacy of the residential school system, we will begin to create a climate of trust and cooperation that will lead to healing, reconciliation and harmony between Aboriginal and non-Aboriginal Canadians" (2002a, 10). Closure was an oft-reiterated theme, sometimes presented as a desire of "all the parties" (2003a, sec. 1), but more often framed as something that Survivors needed so that they could "move forward" (2004a, 13; 2004b, 32; 2003a, sec. 3.3; 2004c, 4). While the latter framing speaks to concern for the well-being of Survivors, the question of closure is also evidently a matter of concern about liability for the government and the churches. For instance, this concern is palpable in the Deputy Prime Minister's message in the 2002-03 *Report on Plans and Priorities*, which describes IRSRC as "centraliz[ing] all federal resources and monies to create ways to resolve those claims for which the Government believes it is legally responsible," and emphasizes that "the federal government is committed to finding a solution that is equitable to the former students, church organizations and Canadian tax payers" (IRSRC 2002b, a).[64] The question of liability and deep tensions between the federal government and the churches over their respective degrees of responsibility for compensation meant that

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litigation further specified, after noting the Statement and *Gathering Strength* as background context for current claims resolution policy, that in cases where Survivors chose to continue to pursue their claims through the courts rather than an alternative process, "strategies have been put into place which respect the Government's Statement of Reconciliation and which recognize the need to resolve claims in a respectful and humane manner" (2003a, sec. 2.1, 2004a, 6). This line was no longer included later (2004c, 7). References to reconciliation and healing can be found in IRSRC (2002a, 3, 8, 10, 12; 2002b, 1, 5, 6; 2003a, secs. 1, 2.2, 2.4, 3.1, 3.3; 2003b, 1, 5, 6, 8, 10; 2004a, 1, 8, 9, 12-14; 2004b, 4, 5, 9, 32, 34; 2004c, 3, 4, 8-9, 12, 13, 19).

[63] The link with closure had also appeared in the dispute resolution principles produced during the exploratory dialogues, which are reproduced in IRSRC (2004b, 8-9).

[64] For an incisive analysis of how debates over Residential School redress were framed around the figures of the "traumatized subject" and the "taxpayer-citizen," see J. Henderson (2015).

reconciliation, though primarily oriented towards the relationship between Indigenous peoples and non-Indigenous institutions and society, was also sometimes applied to government-church relations and "within church communities" (2003b, 10; 2004c, 13).[65] Throughout the reports preceding the abandonment of the ADR process, healing and reconciliation were framed as "wider objectives" of the government to which IRSRC's work was contributing (2002a, 12; 2003a, sec. 2.2; 2003b, 8; 2004a, 8), a "general theme" under which it was "engaging Aboriginal and other Canadians" around commemoration and education (2002a, 8; 2002b, 5; 2003b, 6; 2004c, 8), and also sometimes as a component of a resolution package. A description of the ADR pilot projects, for instance, stated that "[w]here abuse is established, the outcome will include elements of healing and reconciliation as well as monetary compensation" (2002a, 8).

While healing and reconciliation references were already prevalent in the earliest reports, including in descriptions of the programs the department was committed to supporting (IRSRC 2002b, 6; 2003a, sec. 3.3), beginning in 2003 reconciliation also features as a promised outcome of the department's undertakings. For example, the 2003-04 *Report on Plans and Priorities* lists six plans and priorities geared at achieving its strategic outcome of resolving Residential Schools claims; five mention reconciliation either in the priority itself or in the discussion of planned activities and expected results. The second priority, "Supporting programs which promote healing and reconciliation," is geared at co-sponsorship of commemoration projects, moving more cases out of litigation, and "[r]educed pressures on existing health support programs" stemming from addressing the root causes of demand, and is touted as leading to greater "public sensitivity" and better relationships (2003b, 8). The third priority, which centres on resolving claims out of court, more assertively states that, "For Canadians, this will result in: […] Reconciliation with the Aboriginal community" (9). This is accompanied by its elaboration on

[65] On the "severely troubled relationship" between these institutions during this period, see Miller (2017, ch. 4).

the fourth priority, "Prioritizing claimants with a particular focus on elderly and ill claimants," which includes an expected result of reconciliation because "elders are highly respected" in Indigenous communities (9). The fifth priority is "Negotiating with churches to determine the shared cost of compensation" with the aims of increasing out-of-court settlements, "[e]liminat[ing] […] administrative and legal costs," and "expedit[ing] the resolution of claims" through the "[o]ptimum utilization of resources" (10). Promised results for this priority include "[r]econciliation between governments, churches, [and] the Aboriginal communities" and "[r]econciliation with church communities" (10). Finally, the sixth priority of "[f]unding dispute resolution processes […] will result in," among other things, "Stronger working partnerships leading to healing and reconciliation" (10). The follow-up performance report reflected the same sentiments and projected optimism about the level of interest in the new ADR program, stating,

> Resolving claims outside of the court will result in reduced […] costs for the Government, improved administration of claims through better control, monitoring and reporting and increased speed of resolution of claims. The resolution of Indian residential school claims will also result in stronger working relationships with Aboriginal peoples and organizations and reconciliation with the Aboriginal community. (IRSRC 2004a, 15)

The next planning report, though its three outlined priorities differed slightly from the previous year's six,[66] made the same promises about how the department's activities "will result in" reconciliation, with the subjects involved in the reconciliation shifting slightly between the elaboration on each of the promises (2004c, 10, 11, 13).

While these aspirations of reconciliation appear often, the reports do not explicitly describe what it is envisioned to entail. An implied conception can at best be gleaned from the other outcomes listed alongside reconciliation under the headings below each priority and its

[66] Prioritizing claimants became a sub-section of a priority on timely claims resolution; supporting healing and reconciliation programs became "Maintaining and building collaborative working relations with Aboriginal organizations and their communities that address the Indian residential schools legacy and encourage healing and reconciliation;" and the third priority again addressed shared liability with the churches (IRSRC 2004c, 10-13).

associated activities: “For Canadians this will result in” and “Our planned results are.” For example, along with “[r]econciliation with the Aboriginal community,” Canadians are promised

- Improved relationships and understanding between Aboriginal and non-Aboriginal people in Canada;
- Stronger working relationships and partnerships with Aboriginal people and organizations that reflect their common values; […] and [that]
- Former claimants [will be] able to fully reintegrate into the economic and social life of their communities. (IRSRC 2004c, 10).

The department’s planned results then largely focus on efficiency, transparency, and reducing costs to be achieved by moving claims through ADR rather than litigation, though some emphasis is also placed on “mutual respect” and a “compassionate process for claimants” (10-11). The projected outcomes listed alongside reconciliation under the other priorities echo these ones (11-12), and also include “[i]ncreased self-sufficiency within Aboriginal communities” (11), “[i]ncreased awareness” and “sensitivity” about the legacies of Residential Schools and other issues affecting Indigenous peoples (12), increased participation by Survivors and churches in settling claims out of court (11, 13), and the development of “[c]lear understanding by Canadians that the government of Canada is committed to the continued financial integrity of the churches” (13). It also projects: “[i]n the medium term, the creation of a positive environment where hope for the future by Aboriginal people is restored and the legacy of abuse passed from generation to generation is finally broken,” and “[i]n the longer term, new communities, and the evolution of regional and national partnerships, that will lead to reduced violence and addiction and decreased need for existing health support programs,” (13), along with, generally, “[s]tronger Canadian communities, enriched by new partnerships” (13).

8.4.3 Appeals for an Alternative to ADR

The language of reconciliation was thus already solidified in the federal government’s approach

to addressing Residential School claims at the point when the ADR program was established. The new program was in many ways heralded as a continuation of previous efforts, including in how it was linked to "ongoing healing and reconciliation," and the government continued to use the term reconciliation in framing the pursuit of its goals through ADR (IRSRC 2004c, 8-9).[67] Introducing the ADR program in 2003, IRSRC Minister Ralph Goodale celebrated it as an alternative to litigation, arguing that ADR "could help in a major way to handle and resolve the unprecedented number of these claims across Canada in a more efficient and humane manner – designed to help move victims of sexual and physical abuse toward healing and reconciliation" (quoted in Spear 2014, 152-53). However, others used reconciliation as a metric against which the program could be measured and found wanting. Scholars who were involved in the dispute resolution and negotiations processes have noted that while it was "framed in the language of reconciliation," many Survivors' experiences with the ADR program were deeply at odds with such a notion (Regan 2010, 125; Mahoney 2014, 506). This disconnect has been attributed to, among other things, a departure from the Guiding Principles crafted during the exploratory dialogues (Nagy 2014, 207), Survivors' exclusion from the process of program design (Mahoney 2014, 508-9), and the abandonment of "some of the most creative and potentially beneficial innovations that had been tried" during the pilot projects (Miller 2017, 121). The program's flaws drew sharp criticism (Hough 2020, 148-50; Mahoney 2014, 510-12; Regan 2010, 123-26), which Regan and Kathleen Mahoney both cast as failures of reconciliation. Mahoney argues that the government "demonstrated a fundamental misunderstanding of the central element of reconciliation" by unilaterally designing the ADR program without Survivor and AFN input (2014, 509). In her view, its approach represented a "retreat from a reconciliatory, restorative

[67] Later reports also included a few uses of the financial meaning of reconciliation in reference to the department's budget (IRSRC 2006a, 24, 25, 28, 2007, 25, 28, 29).

justice model towards a British-common-law torts model that was not only rigid and unresponsive to the notion of reconciliation but inherently biased against Aboriginal experience and perspectives" (509). Regan takes up the matter of discourse in noting that rather than further reconciliation, "Indigenous people said [ADR] had achieved the opposite, that talk of healing and reconciliation was just pretty-sounding language wrapped around a program that was creating harm, not healing" (2010, 111). She suggests the harms caused by the program itself were "made all the more insidious because they were cloaked in a language of healing and reconciliation" (132). Whether this was failed performativity or non-performativity is open to debate and likely the subject of competing perspectives, but either way it seems that for many, the ADR program not only did not enact the promised reconciliation, but its opposite. Notably, however, the skepticism over the link between ADR and reconciliation did not lead to a rejection of the notion of reconciliation. Instead, the term featured in several ways in critiques of the program and proposals for alternatives, being used both to assess the existing approach – could/ would the ADR produce reconciliation? – and to name policy options that should replace it.

8.4.3.1 The 2004 AFN/University of Calgary Conference: Is Reconciliation Possible?

A pivotal moment in the turn from ADR was the organization of a conference at the University of Calgary in March 2004.[68] The conference was a joint initiative of the University's Faculty of Law and the AFN and was entitled "Residential Schools Legacy: Is Reconciliation Possible?" The conference programme reveals an emphasis on reconciliation that extends beyond the title of the gathering to include the titles of two panels and five presentations, including both keynote addresses by Phil Fontaine ("Residential Schools and the Imperative of Reconciliation") and

[68] For background regarding the organization of the conference and the efforts to persuade the government to change the ADR program that preceded it, see Mahoney (2014, 513-14). For further discussions of the conference, see Fontaine and Schwartz (2018, 86-87); Miller (2017, 131-32); Regan (2010, 112-15, 182); Spear (2014, 177-81).

then-Minister of Justice and Attorney General Irwin Cotler ("Human Rights, Reconciliation, and the Administration of Justice") (University of Calgary and AFN 2004). The conference "was framed around one simple question: 'Will the Government's ADR solution achieve reconciliation?'" (Mahoney 2014, 514). The programme explains:

> *The purpose of this conference is to examine the requirements of reconciliation and whether it can be achieved between Canada, the Churches, and the First Nations Peoples. But reconciliation is not easy to achieve; it raises the most politically and morally sensitive issues which face the country as a whole. It will require a clear and complete understanding of the multi-faceted harms that were caused, fair and reasonable reparations by those responsible, and forgiveness by the survivors.* (University of Calgary and AFN 2004; italics in original)

The description concludes by warning: "*Whether or not the solutions proposed at present will lead to reconciliation is a real concern. If present efforts fail, not only will they be an expensive waste of resources, more importantly, they could deepen the wounds and victimize the survivors all over again. In the interest of all Canadians, we cannot allow this to happen*" (University of Calgary and AFN 2004; italics in original). It appears that the participants, even representatives of the federal government that had developed the program, clearly believed that ADR was not the path to reconciliation (Mahoney 2014, 514; Miller 2017, 131).[69]

Without further documentation from the proceedings, I am unable to assess the specific reconciliation discourses that informed the discussions in any detail beyond the points raised in the programme description and the topics present in the schedule of talks. As revealed by the one speech I have come across though, at least one speaker invited reflection on reconciliation's meaning. Introducing his talk for a panel on the history of the Residential Schools policy, Erasmus stated: "We begin, correctly I think, with the context. After all, if we are going to

[69] Miller suggests that, in some ways, "the question was misguided: as its design and operations showed, DR [dispute resolution] was not intended principally to promote reconciliation, but rather to deal with survivors' claims for compensation for damages experienced at residential school" (2017, 131). However, as noted above (and discussed further below), the program had been discursively associated with reconciliation.

discuss Reconciliation, it is necessary to ask, 'What are we reconciling?'" (Erasmus 2004, 2). While Erasmus's presentation focuses particularly on the Residential Schools, his framing of the policy points at something much bigger needing reconciling. He notes that the Residential Schools were only "a small part of a history of assimilation and domination of Aboriginal peoples" and suggests that "it demonstrates what happens when a relationship based on agreement is distorted into something else" (2). The remainder of his talk does not seem to delve any further into the concept than this,[70] only employing the term in referring to the Statement of Reconciliation and *Gathering Strength* and reiterating the AHF's aim of "encouraging [Canadians] to walk with Aboriginal people on the path of reconciliation" (6). What this brief passage points to, however, is at least some engagement at the conference with the nature and focus of the exercise of reconciliation, as well as the implication that it might apply not only to resolving Residential School claims but to addressing the broader violations of consent- and sharing-based relationships between Indigenous peoples and settlers established through treaties.

A significant focus of the conference appears to have been expansion of scope, if not necessarily to that same degree, as other presentation topics touched on addressing harms emanating from the Residential Schools policy not traditionally intelligible to a torts-based system and modes of doing so using alternative mechanisms. As with earlier developments, the conference was also marked by points of connection with other cases both in Canada and internationally, including a panel dedicated to considering approaches used in other contexts.[71]

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[70] The writing stops mid-way down the sixth of six pages in the file on the AHF website, but the bottom of the page reads "Page 6 of 18," so I am unsure if there was more to the speech than this and, if so, what it discussed.

[71] The RCAP, Elijah Harper, and ecumenical networks all also partook in international exchanges about reconciliation. Some cases discussed at the conference were also raised during the exploratory dialogues (WGTRED 2000, 3, 42, 60). Examples from Ireland, South Africa, and Australia were also considered at a March 2004 AHF event (Spear 2014, 161). Other Canada–Australia connections included AHF participation in reconciliation events in Australia (DeGagné 2001, 2005). The Irish case was also cited as having informed IRSRC's National Resolution Framework, along with the RCAP and LCC reports, the pilot projects, and "a report on handling of claims for youth institutions in Nova Scotia" (IRSRC 2003a, sec. 3.3).

8.4.3.2 The AFN Task Force Report

Following the March 2004 conference, the AFN, with the support of IRSRC (Fontaine and Schwartz 2018, 86; Miller 2017, 131; Nagy 2014, 208), struck a task force organized by Mahoney to conduct "a comprehensive study with the assistance of national and international experts to determine what practical and reasonable changes can be made to the DR [dispute resolution] plan in order to make it more acceptable and accessible to survivors to achieve the final goal of fair and just compensation with reconciliation" (AFN 2004, 1; Mahoney 2014, 515). International influences played a role here too, as the task force included members who had worked with the TRCs in South Africa and Sierra Leone (AFN 2004, iv, vi), and the report argued that in determining its next steps, Canada should compare itself to other countries where "[t]here have been reconciliation programs for breaches of human rights" (39). Rosemary Nagy traces how the AFN's work was informed by transnational influences[72] and how this advocacy developed in parallel but also sometimes overlapped with "more grassroots and community-focused" organizing by Survivor and church groups, both of which ultimately influenced the provision for a TRC in the IRSSA (though asymmetrically so) (2014, 200-1). The AFN was not the only entity to engage with international influences; as Nagy describes, discussions about South Africa also played a role in an informal roundtable gradually shifting from calling for a public inquiry to calling for "a People's Commission on Truth, Hope and Reconciliation" and starting to refer to themselves as "the Truth and Reconciliation Roundtable" (2014, 210). However, in Nagy's view, differing "levels of transnational consultation" contributed to differing understandings of truth and reconciliation and differing aspirations for and ideas about the design of a truth commission between the groups (213, 211, 201). With these shifts came a growing

[72] For more on transnational policy transfer when it comes to transitional justice mechanisms such as truth commissions generally, see also Ancelovici and Jenson (2013); VanAntwerpen (2008, 2014).

focus on “truth and reconciliation” to join “healing and reconciliation.”

The AFN task force’s report identified reconciliation as a government objective and employed it as a metric (along with fairness and a series of other factors) to assess the failures of the ADR program (2004, 9, 24, 29). The report also used reconciliation to underpin its proposed alternative approach. It opened by declaring that “the DR plan is not meeting its goals of just and fair compensation leading to reconciliation” and that it was instead “causing additional harm to survivors,” while emphasizing that the “final goal” of a resolution to Residential School claims should indeed be “fair and just compensation with reconciliation” (1, 13). This emphasis built directly on the reference to reconciliation and healing in the exploratory dialogue principles (2, 37). Though centring mainly on the compensation question, the report also notably advocated for adding truth into the mix alongside healing and reconciliation, highlighting this as a key component of the type of “holistic process” that was needed (2, 3, 5, 7, 13, 36-37). #20 in the report’s list of recommendations advanced that “[t]he compensation plan must be in tandem with and part of a larger healing plan which includes a voluntary truth-sharing and reconciliation process designed to investigate the nature, causes, context and consequences of all the harms resulting from the residential schools legacy,” with subsequent items providing further proposed specifics for a truth and reconciliation process (5). Part II of the report – entitled “Truth-Sharing, Healing and Reconciliation” – was dedicated to a more detailed elaboration of the proposal (36-38). Such a “truth-sharing component,” it was argued, which was “presently absent for the DR model, will promote reconciliation and healing” (7). The AFN stressed that a new and “comprehensive” approach that addressed “a broader range of compensable harms” and that included these other elements as well as compensation was needed (14). Otherwise, it warned, there was “a very real danger that new harms in the relationship between First Nations, non-

Aboriginal peoples, and government will be created in addition to the profound harms that have already occurred" and that "[i]f that is the result, reconciliation will become impossible for the indefinite future" (14; see also 40). Should the AFN's recommendations be adopted, on the other hand, it "believe[d] that true reconciliation and healing [were] possible" (41).

In addition to this broad use of reconciliation as a goal premise that could either be achievable or unachievable depending on the government's policy choices, the task force report also used reconciliation as a title for policy mechanisms in two different ways. The first was in proposing that redress for Residential Schools should include a truth and reconciliation process, drawing "reconciliation" into the naming of a truth-sharing forum – a role which would later be solidified with the creation of the TRC provided for in the IRSSA. The other had to do with the legal release Survivors were obliged to sign upon coming to a settlement of their claim through the ADR process. The documentation associated with the conclusion of these claims calls forth echoes of both the Statement of Reconciliation and the Reconciliation Agreement for the High Arctic Relocation. Miller notes that one of the changes in the government's approach that began with the pilot projects was that it "offered a 'Statement of Reconciliation – Learning from the Past' to claimants after the conclusion of their case" (2017, 124). Concluding ADR cases also involved releasing the government from further liability, and the AFN report argued that "[t]he present Release is one-sided in favour of Canada": "It connotes that once the settlement monies are paid, Canada's responsibilities are complete and reconciliation is achieved" (2004, 32). While accepting that it would keep "the standard provisions with respect to promise to pay in return for a promise not to sue whether as a new cause of action or a new category of damages" (33), the task force proposed that the Release should be re-named the "Agreement Towards Reconciliation" as this would constitute "a more accurate reflection of the reality that

reconciliation will be an ongoing process," and suggested that it should also "include a commitment by Canada to recognize and deal with the ongoing needs of survivors and their communities arising from the harms caused by residential schools" (32; bolding removed). This attention to the framing of the Release highlights that while the Statement of Reconciliation had described reconciliation as an ongoing process and that some degree of rapprochement and changes of approach may have occurred through the exploratory dialogues and moving from litigation to ADR, the government maintained the strong association between reconciliation and the conclusion of its liability embodied in the 1996 Reconciliation Agreement. The AFN's response to this was not to eschew reconciliation but to reorient it temporally and to de-link it from the matter of liability, reframing it as an ongoing responsibility that would persist in the wake of the release. This proposal thus constitutes a challenge to not only the government's wording of the release but to its conception of reconciliation as well.

At the same time, the AFN also spoke directly to the government and churches' own interests in how it related its proposals to reconciliation. It argued that "[i]f a value is put on reconciliation and healing past harms, it will certainly result in our proposal being a cost effective one" and suggested that a reformed approach to ADR "will finally put behind us, in an honourable way, the most disgraceful, harmful, racist experiment ever conducted in our history" and shore up Canada's human rights bona fides, serving as "a long-term investment for the country, the people of Canada and for the well-being of First Nations" (40, 7). In considering these discursive choices as argumentation (Fairclough and Fairclough 2012, 1), the passages emphasizing closure, cost-effectiveness, and Canada's international reputation in the framing of reconciliation, alongside the other uses of the term in the report, appear as strategic choices

geared at persuading the government to heed the AFN's plan for reform (6-7, 17, 40-42).[73]

The AFN's proposals, which also called for a lump sum payment for all Residential School Survivors and additional payments for those who had been subjected to abuse (3-4), were supported by the Canadian Bar Association (CBA) (2005, 6).[74] The CBA echoed the calls for a lump sum payment, a truth and reconciliation process, and, generally, the use of "a restorative justice approach that is conducive to reconciliation and healing and may ultimately be able to provide Aboriginal peoples with the 'peace and comfort' they seek" (3, 5). Along with such uses of reconciliation to refer to a longer-term goal, the CBA also used it to label a redress package component by referring to the lump sum as a "reconciliation payment" (1, 7). It described such a payment as the "next logical step towards reconciliation and restoration of the health, vitality, pride and culture of Aboriginal communities" (1). This use of reconciliation is framed in terms of repair but also evokes its financial and consistency meanings. The AFN and CBA reports were both submitted to the House of Commons Standing Committee on Aboriginal Affairs and Northern Development, which conducted a study on the ADR program in early 2005.[75]

8.4.3.3 The House of Commons Committee's Study of ADR

While a full analysis of the Commons committee hearings is beyond my scope here, a few observations emerge from these hearings that are worth noting for considering some of the differences of vision shaping the parties' varying uses of reconciliation discourses. As explored above, the federal government framed its approach to Residential School redress claims in terms

[73] See Maxwell (2017) for a critical reflection on how these and other proposals relate to settler-humanitarianism. Maxwell argues that such "politically savvy move[s]" in the face of "neoliberal fiscal retrenchment" may bring some relief for social suffering but also risk reinforcing settler colonial power relations (981).
[74] Proposals for issuing lump sum payments had also been floated in the media in 2003 and 2005, with the later piece also referring to them as "reconciliation payments" (J. Henderson 2015, 27). See J. Henderson (2015), James (2017), Mudde (2020), and Nagy and Gillespie (2015) for analyses of the representation of Residential School claims in the media in the lead up to the IRSSA and coverage during the TRC.
[75] Representatives of both organizations also appeared before the committee during its hearings (AANO 2005c).

of reconciliation.[76] Meanwhile, legal practitioners and representatives of Survivor groups used the same terminology to characterize their own goals, variously contesting the idea that the government was trying to achieve reconciliation and arguing that its approaches for doing so would fail. One lawyer who spoke at the committee hearings, for instance, accused it of "hid[ing] behind legalisms and platitudes" rather than "vigorously pursuing a policy of comprehensive national settlement, reconciliation, and healing" (AANO 2005b, 1). Reiterating the positions presented in the AFN's report, Fontaine emphasized that the ADR process "will never achieve reconciliation for our people" and argued that the postures the government was taking in that process were indicative of an adversarial framework rather than a "reconciliation framework" (2005c, 13-14).[77] His critique intimated that the government was trying to have it both ways by taking an adversarial approach to reconciliation and that this could not hold – an adversarial approach and reconciliation could not be reconciled, as it were (14). The AFN and those it represented had chosen reconciliation, and so too "[t]he government must choose" one or the other (14-16). While Fontaine cast Survivors and the federal government as sharing an interest in certainty and finality (17), for him a "paradigm shift" was required to produce an approach geared towards healing and reconciliation, which were not and could not be forthcoming from the government's "rigid tort approach, this insurance claim approach" (15). Fontaine and the other Survivors who appeared before the committee representing Residential School Survivor groups, Ted Quewezance, Michael Cachagee, and Chief Robert Joseph, all pushed back against

[76] This was also true of members of the government's appearances before the committee regarding Residential Schools (and other matters), both prior to and after the introduction and evaluation of the ADR program (AAND 2000a, 15:40; 2005c, 1-3).

[77] Examples of this adversarial approach provided by the witnesses included the government hiring private investigators to "check out the abuse claims of the survivors" (AANO 2005a, 5; 2005c, 17), appealing even small compensation amounts (2005a, 14; see also 2005b, 1-3), and having "never given up any defences, never eschewed any opportunity to appeal, never given up the opportunity to pursue a religious organization who might be co-culpable with them" (2005a, 16). They also questioned the skewed economics of the government spending vastly more on administrative costs and legal fees than on any compensation packages resulting from the process (13-15).

the "western and narrow legal perspective" they saw embodied in the government's approach and called up a more expansive and holistic vision of healing and reconciliation (AANO 2005a, 6 and generally 2-7; 2005c, 12-15). Drawing on his work with Survivors in BC, Joseph emphasized that addressing the harms of Residential Schools should include "an apology, compensation, funding for healing, and future reconciliation" (2005a, 6), and that a public inquiry would "be at the heart of ultimate reconciliation" as Canadians needed to learn and understand what had happened to Survivors in order for reconciliation to be possible (7). Quewezance highlighted the need for truth-sharing and public education as well. His call for "healing, empowerment, restoration, justice, and reconciliation" spoke to individual Survivors' concerns but also cast reconciliation as a much broader project than compensating the victims of government policy, both in character and scope of participation (3). For him this needed to involve "all aboriginal and non-aboriginal Canadians" and to entail a recognition of how the Residential School policy had affected all of them in "a project of sharing, healing, and learning and of putting back what was taken away," a project that was one of reconciliation not just between individual citizens but between nations: "The legacy of this policy is an important part of Canada's history, mosaic, and culture, one that will continue to impact negatively upon all of us, upon who we are, what we do, and all of our relationships, until we come together under the leadership of our governments to heal, restore, and reconcile our nations" (4). Quewezance's comments were joined by Cachagee's emphasis that in addition to individual compensation, "[r]econciliation also has to provide due consideration to the restoration and retention of the indigenous languages and cultures" and was linked to Canada's treaty responsibilities (5). Cachagee also offered sharp criticism of a narrow therapeutic conception of healing that he saw as pathologizing Survivors as mentally ill in a fashion characterized by "revictimization […] and

[…] an extreme lack of respect" while eliding "the real acts of justice and reconciliation" (5). He then concluded his statement by calling on the committee to accept its "responsibility to find and implement an honourable solution, a solution that will help heal and restore the sacred treaty relationship that the Crown has with many of the first nations people of Turtle Island" (5). These comments and appeals provide examples of how, for all the discursive overlap between the government and Survivors when it came to using the terms "healing" and "reconciliation," there was significant distance between the goal premises underpinning their respective uses of those terms. Survivors' conceptions called for an expansion of the components of a settlement package and a reorientation away from an adversarial approach to settling claims. At the same time, they also presented expanded conceptions of what healing ought to mean, who the entities were that reconciliation might implicate, and what kind of relationships needed restoring as part of that process. In so doing, they might be understood to have pushed back against an expectation that they would experience existential reconciliation as a result of the interactional reconciliation measures on offer from the government and the churches in the absence of more transformative structural changes in these institutions' relationships with Indigenous peoples.

Following these hearings, the Commons committee tabled a report in early April 2005 that was "scathing in its condemnation" and recommended ending the ADR program in favour of "court-supervised negotiations […] 'to achieve a court-approved, court-enforced settlement'" (Regan 2010, 135).[78] The report also heralded the adoption and endorsement of "truth and reconciliation" by a state institution, as it called on the federal government to "cause a national

[78] For more detail on the committee's hearings and the "political wrangling" that surrounded its report owing to disagreements between members of different parties on the recommendations as well as the broader political context in which its study was undertaken, see Regan (2010, 124-41; see also Miller 2017, 134-8). References to reconciliation throughout these meetings can be found at AANO (2005a, 2-7; 2005b, 1, 3, 8; 2005c, 1-4, 7, 10-19; 2005d, 3, 5, 9-10; 2005e, 1-2, 5-6, 10; 2005f, 1-2, 6). The first meetings include hearings with witnesses while the latter three include the committee's deliberations over motions, the wording of its report, and the like.

truth and reconciliation process to take place in a forum that validates the worth of the former students and honours the memory of all children who attended the schools" (quoted in Regan 2010, 136). Bilateral talks between the federal government and the AFN had begun in January 2005 (Nagy 2014, 209), but the committee's report, along with the SCC's decision not to grant the government leave to appeal the certification of the *Cloud* class action, provided significant additional motivation to find an alternate means of settling the conflicts between the government, the churches, and Survivors (Miller 2017, 134; Nagy 2014, 208-9; Regan 2010, 137).[79]

8.4.4 The Indian Residential Schools Settlement Agreement

Canada and the AFN signed a political agreement in May 2005 that launched the negotiations that produced the IRSSA. Reconciliation appeared throughout the text as a shared goal, commitment, and recognition of past limitations, and as a name for the sought-after settlement and some of its component elements as well.[80] The opening recitals included the following:

> *Whereas* Canada and First Nations are committed to reconciling the residential schools tragedy in a manner that respects the principles of human dignity and promotes transformative change; […]
>
> *Whereas* the Assembly of First Nations prepared 'The Assembly of First Nations Report on Canada's Dispute Resolution Plan to Compensate for Abuses in Indian Residential Schools' (the AFN Report) identifying the problems with the ADR process and suggesting practical and economical changes that would better achieve reconciliation with former students; […]
>
> *Whereas* Canada and the Assembly of First Nations recognize that the current ADR process does not fully achieve reconciliation between Canada and the former students of residential schools;
>
> *Whereas* Canada and the Assembly of First Nations recognize the need to develop a new approach to achieve reconciliation on the basis of the AFN Report; [and]

[79] Several accounts also emphasize the importance of an April 2005 dinner conversation between Phil Fontaine and Prime Minister Paul Martin while they were in Rome for Pope John Paul II's funeral, wherein Martin committed to Fontaine to resolve the issue (Fontaine and Schwartz 2018, 87-88; Miller 2017, 135; Nagy 2014, 209). Fontaine played a central role in negotiating the IRSSA and James suggests that in the process he may also have "contributed to the overall character of a nascent Canadian reconciliation discourse that emphasized comity and understanding" after having "been elected Grand Chief 'on a platform of reconciliation with the government'" (2017, 373).

[80] Similar wording to the agreement appears in a letter from Anne McLellan (2005) to Fontaine dated the same day.

> *Whereas* Canada announced today that the first step in implementing this new approach is the appointment of the Honourable Frank Iacobucci as its representative to negotiate with plaintiffs' counsel, and work and consult with the Assembly of First Nations and counsel for the churches, in order to recommend, as soon as feasible, but no later than March 31, 2006, to the Cabinet through the Minister Responsible for Indian Residential Schools Resolution Canada, a settlement package that will address a redress payment for all former students of Indian residential schools, a truth and reconciliation process, community based healing, commemoration, an appropriate ADR process that will address serious abuse, as well as legal fees […] (Canada and AFN 2005a, *1*)

Working from these premises, the parties agreed to a series of points including that they both "firmly believe that reconciliation will only be achieved if they continue to work together," and that certain specific elements – with the details to be negotiated – would characterize what the document referred to as "a broad reconciliation package" (*2*). Among the elements on which the government's appointed representative would work with the AFN was the development of "truth and reconciliation processes" (*2*). After this political agreement was signed, legal proceedings were undertaken to enable the AFN – with Fontaine, being the National Chief and a Residential School Survivor, serving as the lead plaintiff in a class action suit filed in the summer of 2005 – and Survivors of Residential Schools in Nunavut and the Northwest Territories to take part in the negotiations (TRC 2015a, vol. 7, pt. 2, 571),[81] which were structured as a court-supervised settlement to the amalgamated class actions. By this point, then, building on the calls from Survivor groups, the Truth and Reconciliation Roundtable, and the AFN, and their endorsement by the House of Commons committee, as the settlement negotiations began, "the idea of truth and reconciliation was effectively a pre-set agenda item" (Nagy 2014, 209).

These developments are also reflected in changes around the use of reconciliation in IRSRC's reports from 2005 through to the period of implementation of the IRSSA. The shift to negotiating the IRSSA in May 2005 is presented as enabling the possibility of achieving "true

[81] Reconciliation appears twice in the plaintiffs' statement of claim in *Fontaine et al v Canada (Attorney General)*, which frames the Statement of Reconciliation as an admission of wrongdoing and lists "truth and reconciliation hearings" as a program that should be part of addressing the damages of Residential Schools (2005, 13-14, 6).

reconciliation" (IRSRC 2006a, 8). The approach thus was modified, but resolution was still framed in terms of reconciliation, with Minister Jim Prentice's opening message after its conclusion declaring the IRSSA to be "just and honourable and […] intended to foster reconciliation and the renewal of relationships between Aboriginal Canadians, their families and communities, the Government, the Churches involved in the running of Indian Residential Schools, and all Canadians" (2006b, 3). The language in these later reports is similar to those described above with regard to the promotion of healing and reconciliation (see e.g., IRSRC 2005a, 7, 11, 12, 21; 2005b, 2, 7; 2006a, 5-8; 2006b, 5; 2007, 4). At the same time, reconciliation comes to occupy an even more central position in IRSRC's framing of its mission, and the notion of "truth and reconciliation" is introduced alongside "healing and reconciliation," reflecting the direction of the inter-party negotiations. For instance, the 2005-06 *Departmental Performance Report* states: "The Department has one strategic outcome which is to advance reconciliation between former Indian Residential School students and the Government of Canada" (2006a, 6). The emphasis on reconciliation as the singular strategic outcome is reiterated often (2005a, 9-12, 13, 18; 2005b, 9, 10; 2006a, 9, 13, 16, 17; 2006b, 5, 9, 13; 2007, 5, 9). This strategic outcome is presented as "support[ing] Canada's desired outcome of a strengthened and renewed partnership between the Government of Canada and Aboriginal peoples" (2005a, 13), and the resolution of claims is highlighted as central to this reconciliation (18; 2005b, 3, 9; 2006a, 9). Some statements, however, seem to present reconciliation as more tentative or farther away than it was in previous reports, as earlier statements about how certain activities would result in reconciliation were replaced with lines such as "*For Canadians, this will result in:* […] Further steps toward reconciliation with Aboriginal communities" and "*Our planned results are:* A contribution to the creation of a more positive environment for reconciliation with Aboriginal

peoples" (2005b, 4, 6; italics in original). Prior to 2006, "truth" only appeared once in an IRSRC report, in a statement about Iacobucci's appointment as the federal government's representative that echoed the description of his role laid out in the political agreement (IRSRC 2005a, 4). Once the IRSSA – which included among its provisions the creation of the TRC – was concluded, "truth and reconciliation" began to appear throughout the reports, all in references to the TRC (2006b, 8, 11-13; 2007, 5, 7, 11, 15). At this point, Priority 1 in pursuing IRSRC's strategic outcome of advancing reconciliation became the implementation of the IRSSA (2006b, 7).

The contents of the IRSSA can be understood to reflect a compromise between the federal government, the AFN and a consortium of lawyers representing Residential School Survivors, and the churches, each of whom were fighting for their own interests and may also have had internal disagreements and shifts in perspective over how those interests should best be pursued. Nagy (2014) traces, for instance, the different visions for the TRC advanced by the AFN and the Truth and Reconciliation Roundtable and how each informed the resulting model (see also Miller 2017, 140). There were also significant tensions within the different churches and between the churches and the government, as well as differences in the approaches taken by each denomination, both prior to the approval of the IRSSA and throughout its implementation (see e.g., Miller 2017, 108-16, 139, 141-42; Spear 2014, 204-16). The settlement package must thus be recognized as the product of a successful long struggle by Residential School Survivors to achieve key redress measures they were seeking,[82] and as a result that was nevertheless deeply shaped by power relations weighted in favour of perpetrator institutions that continued to seek to

[82] The components of the IRSSA were a lump sum payment based solely on attendance (the Common Experience Payment), additional compensation for abuse (the Independent Assessment Process), the TRC, and funding for the AHF and for commemoration projects. The IRSSA did not include an apology, but the Martin government had recognized the need for one at the time of the political accord with the AFN (Fontaine and Schwartz 2018, 88-89; McLellan 2005, 3; Miller 2017, 189), and an apology delivered by Prime Minister Stephen Harper in the House of Commons in June 2008 ultimately accompanied the implementation of the IRSSA provisions. On the power relations surrounding the apology and its reception, including connections to reconciliation, see Mackey (2013).

protect themselves and the status quo as much as possible.

It is thus important to heed the details, as well as the power relations that influenced Survivors to pursue redress via the avenues that they had and to favour the type of "victim-centred" truth commission the IRSSA provided for (J. Henderson 2015, 6-7; James 2012). Nagy highlights a section the government inserted in the mandate that "largely affirms, in the negative, what the truth commission is *not*: it is not a public inquiry, it does not have powers of subpoena, and it shall not name names unless the person has already been convicted" (2014, 215). The Roman Catholic entities also strongly supported this provision (James 2021, 378). While Survivors had long called for a public inquiry, there had been a gradual shift away from a more forensic model due to concerns about achievability and the possibility that, as in other contexts, it might prove "counterproductive" (Nagy 2014, 200, 205-6, 209-10; Mahoney 2014, 519). Further, Mahoney, a key figure in the AFN legal team, explains that having a TRC that was "a non-adversarial, co-operative, and transformative process led and informed by indigenous legal traditions" was rooted in "respect[ing] the wishes of survivors and in keeping with the overall goal of the agreement" (2018, 225). James asserts, however, that the relationship between the nature and details of the IRSSA and the broader context that yielded it must also be kept in view:

> This surface agreement on a no-fault mandate reflected the legacies and power relations of settler colonialism. The imbalances of respect and voice bequeathed by residential schooling made Survivors relatively uninterested in a forensic, expert-driven inquiry. The entities responsible for Canada's colonial assault on Indigeneity shaped the terms of their reckoning in the mandate negotiations. […] Rather than drawing momentum from some complementary process of regime change or constitutional change, the TRC faced the implacable ongoingness of a system that continues to exploit Indigenous territories and that subjects Indigenous governance systems to the overriding power of a state and legal system dedicated primarily to the interests of the settler majority. (2021, 378-79)

Survivors' motivations to avoid revictimization through a more adversarial and forensic process and to have a TRC informed by Indigenous principles (Mahoney 2018), then, were also paired

with state and church interests in avoiding "a potentially more damaging and expensive public inquiry" and preventing the TRC from making any findings of culpability regarding violations of domestic and international law (Nagy 2014, 214; D.B. MacDonald 2019, 107-10, 125). In situating the IRSSA within the broader context of relations between Indigenous peoples and Canada, scholars have also highlighted that "financial reparations for residential schooling can be individualized and contained in a way that land claims cannot" (J. Henderson 2015, 67), and that such a reconciliation-oriented redress package can serve the state by shoring up its image and legitimacy and diverting attention from underlying structural issues (Woolford 2015, 270).

These factors shape how this period was characterized by a predominant focus on the Residential Schools, and how redress was discursively packaged as reconciliation. Certainly, the parties shared some overlapping interests and concerns, and the way the federal government used the term in this context was cast in more relational terms than the consistency framing that was being used in other contexts (i.e., with respect to sovereignties). This approach remained strictly interactional, however, eliding various structural dimensions many Indigenous people ascribed to reconciliation. Their contrasting relational visions raised deeper questions about the legitimacy and responsibilities of the state and the churches with respect to decolonization and the restoration of land, languages, cultures, governance systems, and relations rooted in consent and mutual respect and sharing through treaties. Such broader concerns are distinct from, and in some cases at odds with, the government's vision that framed reconciliation in terms of closure (in liability, and perhaps also political, terms), breaking cycles of abuse and healing damaged individuals to reintegrate them into the social and economic fabric of their communities and thus reduce demands on the state for services, engaging with shared history in ways oriented towards more copacetic relations, and ultimately, strengthening the Canadian community (IRSRC 2004b,

8-13). The IRSSA was a monumental achievement for Survivors who struggled for decades for recognition and redress for the harms inflicted on them through the Residential School system. However, recognizing this and the individual and societal shifts enabled by the settlement and the TRC does not preclude asking how such redress may also "transfe[r] the legitimate justice demands of Indigenous peoples into tidy boxes of repair, removing them as a challenge to the legitimacy of the settler colonial nation and potentially hiding the violence of settler colonialism within a language of reconciliation" (Woolford 2015, 287). Shared terms do not inherently imply shared premises or goals, and so it is important to probe beneath the surface of the "semblance of common ground or shared understanding" produced by use of common discourses (Henderson and Wakeham 2009, 16). This is evidenced by the varying uses of discourses of reconciliation (and healing and truth) used by all the parties during the processes leading to the IRSSA.

8.5 "[C]elebrat[ing] reconciliation in its most positive form": The National Day of Healing and Reconciliation and Beyond

Much of the groundwork for institutional developments and responses like the Statement of Reconciliation, the creation of the AHF, and the IRSSA's provision for the TRC has its roots in grassroots community group mobilization. This mobilization also continued alongside the other processes discussed in this chapter. Uses of reconciliation were not solely the purview of officials, politicians, and institutions; there have been many sites of discursive development outside of state and other institutional processes. Some of that community work converged at different points with various such institutional processes, or itself came to involve developing new organizations and institutions. Such initiatives are also key pieces of the broader story of reconciliation in Canada that this dissertation tells part of, though fully exploring this aspect of

its genealogy calls for dedicated research of its own. Community groups and gatherings serve as sites that shape and are shaped by reconciliation discourses, as participants draw on discourses they have encountered previously, and/or carry understandings and discourses developed in those spaces into others, including state and institutional processes. I offer one example of how such work has existed alongside and interacted with official processes. This example highlights how the type of criss-crossing of multiple actors and processes in the development and proliferation of reconciliation discourses traced in this genealogy takes place at multiple levels and scales, and presents another form of reconciliation that was developing at this point. This brief exploration also aims to ensure that we do not lose sight of the role of this grassroots work in the background of the state processes and institutional developments that typically receive more attention.

Between 1998 and 2002, a counsellor named Edward Colley partnered with Maggie Hodgson to start a movement to create a National Day of Healing and Reconciliation (NDHR). They collaborated with Carol Jenkins of the Visions Centre of Innovation web project at the Nechi Training, Research and Health Promotions Institute in Alberta to create a web platform for the initiative (NDHR 2003c, 2).[83] The NDHR was then established as a campaign hosted by the Nechi Institute in 2003 (2), and later a program of the Native Counselling Service of Alberta (NDHR 2006a).[84] It was connected to other Canadian and international threads in this genealogy

[83] Some place the origin as early as 1998 (Animiiki 2018; Regan 2010, 60), while others identify it as 2001 (Stevens 2005), or 2002 (Hodgson 2019, 39; Sutherland 2021; Szklarski 2005). Yet others point to events starting in 2003 or 2004, but it is unclear when planning began and whether this rather indicates the first involvement of particular organizations or of a wider campaign roll-out (see *Edmonton Journal* 2006; French 2004; "Healing Happens" in Indigenous and Northern Affairs Canada 2015; Remembering the Children 2008c). An NDHR booklet states that the campaign's website was published in August 2001 and "later officially launched on August 5, 2002 at the 'Survival and Beyond Conference' at the University of British Columbia" (NDHR 2003c, 2). Further to the timing, accounts of the initiative's creation also vary in how specific they are regarding the involvement of Hodgson, Colley, and Jenkins, with some obscuring their role and the grassroots origins of the movement entirely (see e.g., Everest 2009).

[84] The campaign website, www.ndhr.ca, is no longer operational. The sources in this section have been accessed via *The Wayback Machine*, which also allows for exploration of changes in content on the campaign's website between 2004 and 2006. Unless a date is specified on the linked page or document, the year provided for each reference is the year the webpage was captured by the archive. There are no captures of the NDHR website in this internet archive from prior to 2004. The website appears to have stopped being active after November 2013; the last archived version

of reconciliation from the outset. Co-founder Hodgson had played a key role in the exploratory dialogues and been an interim board member involved in the establishment of the AHF.[85] The initial NDHR date, May 26, reflected its inspiration by National Sorry Day in Australia, which started in 1998 on the first anniversary of the release of the *Bringing Them Home* report about the Stolen Generations (see sec. 2.3.2) (Buium 2003; French 2004; Retson 2007; Szklarski 2005).[86] The campaign invited people to proclaim their support for the declaration of a National Day of Healing and Reconciliation and to organize events around healing and reconciliation. Its model and spirit were cast in the very general terms of "healing and reconciliation among all races, creeds, and denominations now residing in Canada" (NDHR 2004a). This orientation enabled various kinds of crossover with community, church, and business organizations, and governments, and actively encouraged making connections between the injustices of the Residential School system and other forms of colonial trauma and injustices faced by other groups in Canada around the theme of reconciliation. These points of convergence took the form of participation in events, letters of support, and funding.[87] A template letter that the NDHR encouraged people to sign and submit, which appeared on its website and in its newsletters (NDHR 2003b, 2004b, 2004c, 2005b, 2006c), was also republished in the AHF's newsletter

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is available here: https://web.archive.org/web/20131127161750/http://ndhr.ca/wordpress/

[85] Hodsgon had long been involved in the Indigenous healing movement prior to those processes as well, through work at the Nechi Institute and other initiatives, including starting the Healing Our Spirits Worldwide gathering in 1992. See Alberta Sweetgrass Staff (2006); Hodgson (1996).

[86] The Australian–Canadian influence was bidirectional: a 2005 NDHR newsletter update noted that the Canadian campaign "followed Australia's May 26th date for their 'Sorry Day' when we launched 'National Day of Healing and Reconciliation'. They then followed us and changed their name from 'Sorry Day' to 'National Day of Healing'" (NDHR 2005b, 6). After Harper's 2008 apology for the Residential Schools policy, the date was changed to June 11 to coincide with its anniversary (CIRNAC; Regan 2010, 60). In 2011, INAC Minister John Duncan announced that the government was "pleased to acknowledge June 11th as the National Day of Healing and Reconciliation throughout Canada" (Duncan 2011).

[87] After the certification of the IRSSA, the NDHR received funding from the Advocacy and Public Information Program (APIP) INAC established to "inform former students and the general Canadian population about the Settlement Agreement and the impact of the Indian Residential Schools legacy on Aboriginal communities" (INAC 2009, v). Though outside the timeframe of my study, a 2009 departmental evaluation of the program notably found that "[k]ey terms such as 'advocacy' and 'reconciliation' are not well defined or clearly understood by stakeholders" (16). APIP funding for the NDHR ceased at the end of March 2013 (NDHR 2013).

(AHF 2003a, 19). The letter supported the declaration of a NDHR, describing it as "an opportunity for all Canadians to be engaged in activities that acknowledge how far we have come on the reconciliation movement and to examine what challenges we still have to deal with in strengthening relationships when examining some of our collective history" (NDHR 2003b).

A 2001 message from Colley explains that he was motivated to undertake a healing and reconciliation-oriented project by his first experience hearing a Residential School Survivor's story (NDHR 2003a). The apology to Japanese Canadians also informed the idea for a "campaign to engage Canadians to petition the Prime Minister of Canada to apologize to the Aboriginal people of Canada for past wrongs and to offer opportunities for Canadians to apologize personally to Aboriginal Peoples" (NDHR 2005b, 2). Collaboration with Hodgson and Jenkins yielded the plan to "submit a formal petition requesting a nationally recognized day observing healing and reconciliation be signed by the non-Native peoples of Canada and presented to their Government" (NDHR 2003a), and the decision to echo Australia's "Sorry Day" by marking the day on May 26 (NDHR 2005b, 2). As the project developed, its vision of reconciliation expanded: "People began to see reconciliation was bigger than just the first peoples and the newcomers. Reconciliation could be about many issues and touch many lives. Reconciliation can happen between parents and children, husbands and wives, sisters and brothers, neighbors, community members, provinces, and sovereign nations" (NDHR 2003a). Discussions around the NDHR included engagement with injustices faced by Japanese Canadians, Muslim Canadians, Ukrainian Canadians, Jewish Canadians, Chinese Canadians, and other groups as well as those to which Indigenous peoples had been subjected (Buium 2004; French 2004; NDHR 2005b; Retson 2007; Szklarski 2005). The movement was emphatically "for Canadians" and not only for Indigenous peoples; the NDHR noted and refused the trend

whereby "if a campaign is started by Aboriginals the assumption is that it only focuses on Aboriginal issues" (NDHR 2005b, 2). This broad, inclusive sense of reconciliation is reflected in the NDHR's description, mission statement – "National Day of Healing and Reconciliation is a movement of people committed to moving forward collectively within our families, communities and across Canada for the purposes of healing and reconciliation," and objectives:

- To celebrate a positive, collective healing and reconciliation movement within our families, communities, churches and government on May 26th of each year.
- To educate ourselves and other Canadians about our collective history of government policies which impacted Aboriginal communities and other ethnic groups.
- To develop commemoration sites and to encourage communities to join in the National Day of Healing and Reconciliation. (NDHR 2005a)

The NDHR published booklets with ideas and activities for events that could be organized in pursuit of these objectives along with event planning tips (NDHR 2003c, 2006b). Suggested activities focused on building awareness of and commemorating historic injustices, intercultural exchange, and reflecting on the themes of healing, reconciliation, and unity. Examples of NDHR events can be found on its archived webpage (see e.g., NDHR 2006e), as well as in newsletter write-ups profiling a selection of events (NDHR 2004b, 2004c, 2005b, 2006c).

The NDHR also explicitly acknowledged the existence of multiple definitions of the term "reconciliation," and implicitly recognized that not all of them necessarily suited the endeavour being advocated by the campaign. The website and a descriptive brochure cited *Merriam-Webster* in defining "reconcile" as meaning "(in part)"

1. to restore to friendship or harmony
2. to make consistent or congruous. (NDHR 2004a, 2006d)

These definitions are reiterated in the 2003 *Activities Ideas Booklet*, which also notes, "There are as many methods as there are motivations to reconcile"; the activity ideas presented in the booklet are described as "celebrat[ing] reconciliation in its most positive form" (NDHR 2003c,

2). Omitted from the list of definitions is reconciliation as resignation, and the latter line indirectly rules this version out. The highlighted definitions also made their way into at least some of the community events associated with the NDHR. For example, Hinton, Alberta's proclamation of May 26th as a National Day of Healing and Reconciliation began:

> WHEREAS In respect of the need to create an awareness of reconciliation for people throughout Canada; and
> WHEREAS Reconciliation is defined as to restore to friendship or harmony, to make consistent or congruous. (NDHR 2004b, 4)

A 2005 newsletter backgrounder recounts a story of interpersonal reconciliation shared at one event to stress that "reconciliation was not started by NDHR;" rather, it is a campaign aimed at "strengthen[ing] and focus[ing] attention on the benefits of reconciliation" (NDHR 2005b, 2).

A few things can thus be observed about the kinds of reconciliation discourses associated with the NDHR movement, and the implications of its existence, even if the decentralized nature of the movement renders it impossible to pinpoint with much specificity. The NDHR had a national office in Edmonton and a website that served as centralizing points for distributing information and funding and promoting events. As such, there was some degree of institutional infrastructure. However, the vision was that "NDHR would not have a membership, but would be a movement of individual people, groups committed to the Mission and Objectives" (2). The overarching campaign can therefore be seen as being underpinned by reconciliation as a value premise as well as being oriented towards it as a goal (Fairclough and Fairclough 2012, 11). Though framed within a push for state recognition of a National Day, the focus was promoting a conception of reconciliation as relationship as a form of personal ethos and individual responsibility – and possibility. Unlike forms that speak to legal questions of sovereignty and authority to be resolved between governments, for instance, this kind of reconciliation can be embarked on by anyone, with everyone, casting it in a hopeful and accessible light. As one of the

newsletters states, “The campaign’s energy comes from the daily efforts each person makes to open the door to their heart to form a relationship” (NDHR 2005b, 2). The implication is that Canadian society will be improved if all those living in it get to know each other better by learning about each other’s cultures and about the myriad traumas of our individual and collective pasts, with healing and reconciliation thus being achieved through awareness- and relationship-building. Despite the invocations of the second consistency/congruity definition of reconciliation, it is less clear how that form is related to the NDHR vision and applied by groups in recognizing it. NDHR documents’ framings of reconciliation generally seem to distinguish it from more evidently transactional approaches focused, for instance, on concluding liability or rendering consistency between competing legal and political frameworks. At the same time, the prospects for general observations are limited, as these documents cannot account for all of the variations in how reconciliation may (or may not) have been used by the organizers and participants of individual events associated with the NDHR. Given the wide cross-section of societal groups taking part and what has been observed at earlier stages in the genealogy of reconciliation, I would surmise that this ran the gamut of available definitions and uses.

The movement’s structure also makes it difficult to consider the specific interplay of reconciliation discourses and power at work in this context, though we can imagine the power relations in evidence at any given event likely reflected the intersections of power in the broader society. Still, some general considerations emerging from the framing of reconciliation in NDHR informational and promotional materials suggest a couple of broad avenues for reflection. These pertain to how an awareness- and relationship-building approach to reconciliation as a personal commitment fits into the broader mix of reconciliation discourses during the 1996-2006 period as well as this approach’s prospective relationship to the power dynamics of Canadian society.

First, this approach seems to fit with the version of reconciliation as relationship James describes as having risen to the fore during this period that rests on "survivor healing through truth-telling and settler knowledge acquisition through learning" (2017, 373). Second, though politicians and state officials sometimes participated, and some governments and councils recognized the NDHR, the types of events the movement focused on and the fact that it cast a wide net so as to encompass a wide spectrum of injustices in Canadian society suggest goals and effects that were broad and primarily social rather than specific and constitutional or political. This is not to say that some events may not have aligned themselves with specific political struggles or articulated more specific goals, however. With respect to power, the focus on injustices perpetrated against specific groups suggests an approach to reconciliation that is concerned with addressing relations of oppression (van Roermund 2001, 175-76), and the emphasis on linking conversations about injustices faced by different groups creates the prospect for building solidarity among historically oppressed groups, which could have an impact on shifting the dynamics of power relations when it comes to political struggles. On the other hand, a predominant orientation towards building awareness carries the risk of resulting in what Eve Tuck and K. Wayne Yang refer to as the "settler move to innocence" of *conscientization*, whereby "the cultivation of critical consciousness" stands in for the work of material redress for oppression (i.e., "decolonizing the mind" but not "relinquishing stolen land") (2012, 19-22; Matsunaga 2016, 31-32). This is not necessarily inherent to visions of reconciliation that emphasize the agency of individuals and the importance of shifts in consciousness, which may also be oriented around prefigurative practices ultimately geared at transforming power relations of domination (see e.g., Tully 2018, 2020). As seen with other examples, interactional approaches to reconciliation may be accompanied by structural reconciliation, or they may – consciously or unconsciously – preclude it. Dedicated

study of the nature and dynamics of specific NDHR-affiliated events would be required to determine how they related to specific struggles for political change, whether they encouraged participants to embark on action towards substantive structural change or contributed to conscientization, and what role different discourses of reconciliation played in the process.

Regan suggests that the NDHR is "the notable exception" to Canada's lack of a "wide-spread grassroots reconciliation movement" (2010, 60). I am unsure how much other organizing using "reconciliation" may have taken place during this period,[88] but whether there were many or few other reconciliation-focused events beyond the NDHR, what bears noting is that, first, grassroots spaces also existed as sites of the discursive development of reconciliation alongside the processes taking place through the AHF, the ADR program, and the IRSSA negotiations, as well as the other uses at work in jurisprudence, legislative debates, and government policies around governance, land claims, and treaties discussed in the next chapter. Second, in some of these spaces, the term was being used in ways that overlapped with some of the forms of reconciliation discourse used in relation to Residential Schools in those other processes, but that also promoted a much broader conception of reconciliation as an ethos for Canadian society and as a mode for interpersonal relations between the members of different groups. Finally, some grassroots organizing included explicit references to specific definitions of reconciliation.

8.6 Conclusion

By 1996, varying reconciliation discourses encompassing the term's range of meanings were being developed in and employed by several different institutions and groups to speak about the relationship between Indigenous peoples and Canada. The term had entered SCC jurisprudence

[88] Church groups, who had already been using the term, used it in organizing learning and healing initiatives during this period (see e.g., Remembering the Children 2008a, 2008b, 2008c).

and been used by commissions making recommendations to governments, but apart from its use in the 1996 Reconciliation Agreement regarding the High Arctic Relocations, had yet to be embraced as a significant government policy goal. This changed in the decade after 1996. The decision to respond to the RCAP recommendations with a Statement of Reconciliation was a pivotal moment in this trajectory at the federal level. In the wake of this Statement in 1998, the federal government increasingly turned to this term to name and promote its policy goals. This came in two broad forms, the predominant one regarding the resolution of claims related to the Residential School system. The other, which associates "healing and reconciliation" with resolving claims relating to land and treaty rights, is discussed in chapter 9, as is the engagement with reconciliation as a policy goal also beginning to take hold in some provinces.

Through Residential School Survivors' struggles for justice and the efforts of the involved parties to arrive at an agreement on redress measures, paired with growing public attention owing largely to the lawsuits launched by Survivors, a particular strand of discourse came to the fore during this period that linked reconciliation with Residential Schools and with healing and truth. Like the field of reconciliation discourses writ large, however, this strand was far from monolithic. Despite a widespread practice of associating reconciliation with healing and with truth, those doing so did not necessarily have the same visions of what healing encompassed and who was in need of it, or of what truth should be pursued and by what means. By and large, the rhetorical practice of different actors was to frame reconciliation in terms of relationship, but the implications sometimes carried other meanings. Most notably, the federal government's emphasis on reconciliation revolved in substantial part around the goal of resolving claims in order to be released from further liability – an approach that conveys the image of a balance sheet, even if it is clothed in the language of relationship, as it signifies that once specific actions

have been taken, the sides will be even, and the matter closed. This did not go unnoticed, though, and Survivors and their legal teams advanced their own conceptions of reconciliation that critiqued and provided alternatives to the government's approach, just as they – and the AHF itself – challenged the narrow conception of healing reflected in the AHF mandate. As such, reconciliation discourses continued to be used both to promote state policy and to resist it, but now in a context where the term was significantly more prevalent and becoming increasingly institutionalized. The greater institutional focus on the term in relation to this discursive strand is reflected in government policy between 1998-2006 and in the creation of the TRC, which has arguably most greatly contributed to reconciliation's current prevalence.

What the multiple discursive threads, competing conceptions, and parallel but sometimes overlapping institutional developments charted in this chapter – along with those that precede it – show is that: 1) the term reconciliation was well established prior to the advent of the TRC, and was being used in a variety of ways by different actors; 2) the actors that negotiated the IRSSA that created the TRC did not share the same conception of reconciliation; and 3) the same statements about reconciliation could be used both to promote and to challenge a particular policy approach. Furthermore, at the same time as these contrasting uses of reconciliation were developing in institutional settings and formal processes, they were also being used in different ways in grassroots social movements. In some cases, these spaces of discursive development remained distinct; in others, they converged as events or processes brought them together or actors crossed between contexts. While there was greater attention to explicitly engaging with the meaning of reconciliation by some people in both institutional roles and social movements during this period, including some disavowals of the resignation connotation of the term, many uses remained unspecified and vague, and did not acknowledge the term's multiple meanings.

This contrary dynamic remains today, but there is now also a large body of academic and social critique on the use of reconciliation discourses in Canada. This had not yet materialized by 2006, though kernels of it were present. Concerted critical engagement with meanings and practices of reconciliation followed shortly after, an effort in which the AHF played a significant part.

In parallel to these dynamics developing in the context of addressing the legacy of the Residential Schools policy through the lens of reconciliation, similar dynamics were also playing out in other contexts where the term was being used. Reconciliation was becoming more prominent in discussions about land, treaties, and rights, as demonstrated by developments in Manitoba, BC, and at the federal level. Here too, reconciliation was often rhetorically cast in terms of relationship, yet different actors chose contrasting ways that sometimes implicitly invoked other meanings, suggesting a need to go further than assessing surface-level distinctions between consistency, resignation, and relationship to consider the power relations shaping and being shaped by the various discourses of reconciliation in use. These other contexts of the term during the period from 1996-2006, their implications, and their role in laying the foundation for contemporary debates over reconciliation are the subject of the next chapter.

Chapter Nine

The Emergence and Development of Discourses of Reconciliation Between Indigenous Peoples and Canada: 1996-2006, Part II

9.1 Introduction

At the same time as reconciliation was playing a significant and growing role in relation to redress for the Residential Schools policy, it was also increasingly featuring in negotiations and debates around treaties, governance, and rights at both the federal and provincial levels. Exploring the term's uses in these policy areas demonstrates the ongoing development of various threads of reconciliation discourse from earlier periods as they continued to split off in new directions and/or get woven together, as actors drew on these different influences in legislative debates, parliamentary committee hearings, political negotiations, commissions, and the creation of departmental reports. The uses in these policy fields resemble those presented in chapter 8 in that they also draw on a range of different meanings of the term, are sometimes linked to the same companion concepts (mostly notably healing), and are used by a variety of actors to both promote and challenge state policy. While there are similarities in the tensions around such discussions regarding the matter of liability and closure, the uses of reconciliation detailed in this chapter draw much more frequently on the type of consistency meaning used by the SCC, which provides a significant influence for ongoing negotiation and debates about treaties, litigation, and economic development. The Statement of Reconciliation and broader conceptions of reconciliation as societal repair and achievement of unity are also common themes.

The structure of Canadian federalism and the uneven patterns of historical treatymaking and development of the Canadian state both play a significant role in shaping the spaces in which discussions about land, governance, and rights take place and the nature of those discussions in

different contexts across the country. By association, this also informs the circulation and development of discourses of reconciliation linked to those topics. While for reasons of scope it is not possible here to undertake a systematic exploration of reconciliation discourses across all provincial and territorial contexts during this decade, I explore developments in two provinces between 1996-2006 in addition to discourses appearing in federal politics at that time that are shaped by these historical and structural influences. These cases permit us to consider the development of regionally specific sets of reconciliation discourses as well as how discourses can travel within the Canadian political context. Both of these cases, in Manitoba and BC, flow from developments explored in previous chapters and deal with matters that fall (at least in significant part) under provincial jurisdiction. They therefore invite province-specific policymaking and political debate while also being informed by the previous work of institutions with countrywide mandates such as the RCAP and the SCC. At the same time, discourses from the provincial level may travel to the federal level as a result of tri- or multipartite negotiations or legislative debates around treaties that require both provincial and federal ratification.

Collectively, the exploration of uses relating to land, governance, and rights in these parts of the Canadian polity also rounds out the account begun in chapter 8 of how the 1996-2006 period constituted a third phase of reconciliation discourses' development. In addition to the continuing use of multiple meanings of the term by different actors for diverging purposes, the decade saw some more critical attention to its multifaceted meanings and its conceptualization as a policy goal to be enacted through specific mechanisms, in the case of Manitoba, and the concerted institutionalization of the term, in the case of BC. The decade's developments also invite further critical reflection on the sufficiency of various analytical distinctions between uses of the term, as the discussions around reconciliation in these contexts saw governments using

language about fundamental structural change while other actors, including opposition politicians and representatives of Indigenous peoples' governments and political organizations, continued to challenge their visions as perpetuating or reinforcing the status quo.

The chapter is divided into three sections. The first (9.2) examines reconciliation discourses relating to land, governance, and rights at the federal level, homing in first on uses of reconciliation during Jean Chrétien's government with particular attention to a set of three bills it introduced addressing land claims, governance, and rights, exploring how these subjects were addressed in INAC departmental reports (9.2.1) and at parliamentary committee hearings (9.2.2) before turning briefly to uses of reconciliation under Chrétien's successors in 2004-06 (9.2.3). The next section (9.3) returns to Manitoba to examine reconciliation's appearances in the work of the Aboriginal Justice Implementation Commission (AJIC) that followed up a decade later on the findings and recommendations of the AJI. The final section (9.4) picks up from the discussion in chapter 6 to explore the growing prominence of reconciliation in debates about treatymaking in BC, considering how the term was embraced by opposing political parties to promote divergent stances about treaty negotiations as well as by both Indigenous groups and non-Indigenous state and non-state actors to describe and promote contrasting visions of treaties.

9.2 "These are words that are meant to guide the entire federal government": Reconciliation in Federal Reports, Committees, and Negotiations

Gathering Strength and the Statement of Reconciliation are often attended to as the point of origin for the AHF and an important moment in the timeline of Residential School redress, and the language of "healing and reconciliation" that rose in prominence in their wake was primarily associated with Residential Schools. However, its use was not restricted to that context: these

concepts were also associated with other policy areas in *Gathering Strength*, whose four policy objectives encompassed matters relating to, among others, treaties, land claims, and governance (DIAND 1997), as the proceedings of the House of Commons Committee on Aboriginal Affairs and Northern Development[1] and INAC's[2] annual reports reveal. A systematic review of all uses of reconciliation in these settings is not possible here. However, a glance at some examples shows that legislators, the federal government, and witnesses who testified at the committee all used the term during this period. Collectively, they used a variety of different meanings, many of which connected to different strands of reconciliation discourse introduced earlier in this genealogy, including the healing-oriented version, and did so in the context of various different policy issues, sometimes to promote government policy and sometimes to challenge it.

In the early 2000s, INAC Minister Robert Nault introduced a series of reforms to various aspects of the relationship between Indigenous peoples and Canada relating to governance, land claims negotiations, and fiscal relations. Nault's reform package was motivated in part by an SCC decision requiring a change to the provisions governing band council elections, litigation challenging the *Indian Act*, public pressure to speed up self-government negotiations and address perceived accountability issues, and the growing popularity of theories about good governance linking economic and institutional development (F. Cassidy 2003, 47; Hurley 2003b, 4; Provart 2003, 126-29, 133). It was also situated as pursuing *Gathering Strength*'s policy objectives (Ladner and Orsini 2004, 59). The trio of legislative reforms comprised the *First Nations*

[1] The Standing Committee had several names during the period covered by this chapter: Aboriginal Affairs (35th Parliament), Aboriginal Affairs and Northern Development (36th and 38th Parliaments), and Aboriginal Affairs, Northern Development and Natural Resources (37th Parliament). References to committee transcripts correspond to the name in use at the time of each meeting using the acronyms employed on the House of Commons website.
[2] I am using this as a short form as the department's name and structure has varied over time and because this is the aspect of it from which the uses of "reconciliation" stem, but the reports are also associated with the Canadian Polar Commission and, from 2005, the Indian Specific Claims Commission. As noted previously, the department later underwent further renaming and restructuring in the decade after the period covered in this chapter. At present it has been replaced by Crown-Indigenous Relations and Northern Affairs Canada and Indigenous Services Canada.

Governance Act (*FNGA*), the *Specific Claims Resolution Act* (*SCRA*), and the *First Nations Fiscal and Statistical Management Act* (*FNFSMA*).[3] Reactions varied between the bills, which were not uniformly received by different Indigenous groups (Bélanger and Newhouse 2004, 178-80; F. Cassidy 2003, 47-48; Hurley and Tiedemann 2004, 2n2; Prince and Abele 2005, 254-55; Provart 2003, 143-49). Overall, however, there was a stark difference between how the government pitched its proposed changes and the reaction they drew from Indigenous peoples, especially with regard to the *FNGA*. This dynamic was mirrored in how the government used reconciliation in detailing its policy approach regarding relationships with Indigenous peoples during this period, and how its opponents used reconciliation to challenge its policy choices. Nault described the *FNGA* as "creat[ing] a governance system *for* First Nations *by* First Nations" and enacting a "fundamental shift from the colonial approach" (quoted in F. Cassidy 2003, 46; italics in original). Meanwhile, many decried his reforms as a coordinated effort to assert more federal control over the internal affairs of Indigenous communities, to legitimize and solidify the *Indian Act* system, and to configure Indigenous communities as municipalities rather than substantively recognizing nations' inherent right to self-determination, all the while failing to address key concerns and incorporate provisions developed through joint policymaking bodies, thus continuing a longstanding state approach rather than departing from it (Bélanger and Newhouse 2004, 178-81; J. Dickson 2018, 155-58; Ladner and Orsini 2004, 60, 64).

In this section, I explore how different actors employed varying reconciliation discourses in relation to issues regarding land, governance, and rights, with a particular focus on the debates that surrounded this set of legislative reforms, paired with a glimpse at how the term continued to

[3] For details of the provisions contained in these initiatives, background context, and an overview of the legislative process in each case, see Hurley (2003a, 2003b); Hurley and Tiedemann (2004). At the time these reforms were being debated in the committee meetings discussed below during the 2nd Session of the 37th Parliament, the *FNGA* was Bill C-7, the *SCRA* was Bill C-6, and the *FNFSMA* was Bill C-19.

be used in relation to these matters when policymaking took different directions amid changes in leadership of the federal government. First, I look at how INAC used the term in yearly reports between 1999 and 2003, showing how it employed language about healing and reconciliation in relation to these issues as well as to Residential School claims, but also used it in other forms in framing its policy objectives and activities relating to settling land claims, governance, and rights (sec. 9.2.1). Then, I survey the uses of reconciliation in hearings of the Commons committee dealing with the *FNGA*, the *SCRA*, and the *FNFSMA* to show how witnesses and opposition MPs contested the government's vision of reconciliation and employed the term to critique the proposed legislation (sec. 9.2.2). Finally, in sub-section 9.2.3, I explore how the term continued to appear in political negotiations, discussions at the parliamentary committee, and INAC reports during Paul Martin and Stephen Harper's governments after Martin turned away from the *FNGA* approach and initiated new modes of engaging in policymaking with Indigenous peoples.

9.2.1 Settling Grievances and Building Partnerships: Reconciliation in INAC Reports

Governance and the resolution of claims are key themes in INAC's planning reports between 1998 and 2006.[4] Interestingly, the term "reconciliation" does not appear at all in the 1997-98 and 1998-99 planning reports (INAC 1997, 1998), though *Gathering Strength* is foregrounded, and Jane Stewart and INAC's Director General of Strategic Policy did discuss the Statement of Reconciliation in presentations at parliamentary committee hearings in 1998 (AAND 1998a, 11:10; APPA 1998).[5] From 1999 onwards, however, the term began to appear consistently in

[4] The Government of Canada Web Archive was unavailable at the time of writing, hampering access to reports previously accessible at < https://www.canada.ca/en/treasury-board-secretariat/services/planned-government-spending/reports-plans-priorities.html>. I discuss those I could find elsewhere, including most *Reports on Plans and Priorities* but excluding all 1996 and 1997 reports and all but the 2005-06 *Departmental Performance Report*.
[5] The government also did use the term in referring to *Gathering Strength* in the 1999 Speech from the Throne (Senate of Canada 1999).

INAC reports, if to fluctuating degrees.[6] This section explores the uses in reports released under the Chrétien government, while the later reports are taken up in section 9.2.3. Uses took a few different forms over the course of the decade, variously configuring reconciliation as an objective and a principle, which sometimes reflected the orientation articulated in jurisprudence, or other forms of reconciliation-as-consistency, but also an ascendant focus on reconciliation as repair embodied in repeated emphasis on "reconciliation and community healing."

This latter form overlaps with and is reminiscent in many ways of the use of the language of healing and reconciliation with respect to Residential School claims, which appears more in the IRSRC reports surveyed in chapter 8, but in INAC's reports it is also associated with the specific claims process dealing with land and governance matters. In 1999, INAC announced a shift whereby, after having "focused on reconciliation and on fostering healing for victims of physical and sexual abuse at Indian residential schools through the establishment of an Aboriginal Healing Foundation," the next stage of implementing *Gathering Strength* would aim at "ensuring that our partnership with Aboriginal organizations accelerates wealth creation and job access for Aboriginal communities through open, stable and accountable First Nations governments and expansion of partnerships with provincial and territorial governments and the private sector" (INAC 1999, 20). The emphasis on health and healing along with reconciliation persisted through this shift, with the next year's report stating that "[e]arly investments in healing and reconciliation under *Gathering Strength* have positioned us to move forward with our partners on a range of key initiatives that will contribute to the establishment of healthy and self-sufficient First Nations, Inuit and northern communities" (2000, 2), and linking these concepts to

[6] In the reports surveyed, the term appeared between one (INAC 2004) and ten (INAC 2003) times. Use did not progressively increase during the period in question; both the first (INAC 1999) and last (INAC 2006b) reports during this period each contain three uses, with intervening years containing between four and eight uses, and the report with the fewest coming the year after that with the most.

the department's goals and activities in broad terms. Echoing the first *Gathering Strength* policy priority, INAC's 2000-01 *Report on Plans and Priorities* highlights the following as a strategic objective: "Renewing the Partnerships through reconciliation and resolution to help First Nations and Inuit communities bring closure to historic grievances, identifying common priorities, increasing public awareness of Aboriginal issues, and achieving practical solutions for the needs of Aboriginal people, through working together in partnership" (2000, 13). "Reconciliation and Community Healing" is listed as an outcome of pursuing this objective, which a table then elaborates will be demonstrated by "[r]econciliation through healing and settling grievances" (14). Given this circular framing, details of the meaning must be inferred from the activities listed alongside the highlighted outcomes. In this case, the associated deliverables refer specifically to the resolution of Residential School claims (14); the following year, the phrase "reconciliation and community healing" is reiterated in association with the Renewed Partnerships priority (2001, 2, 10, 57), but it is linked to more broadly framed grievances dealing with "issues ranging from Indian Act administration, to the implementation of historical treaties, residential schools and the protection of First Nations women's rights" (19). While healing and reconciliation are not explicitly defined, some qualification is provided by the suggestion that "economic marginalization and social and geographic isolation" present obstacles to achieving them within a relationship shaped by "a legacy of mistrust, stemming from historical interactions that were characterized by dispossession, control and dependency" (19).[7] One specific identified target of reconciliation with respect to grievances about the state of this relationship is "divergent

[7] Framing like this, as with the 1998 Statement's presentation of abuses at Residential Schools as a "tragedy" that Survivors "experienced," brings to mind what Alexis Pauline Gumbs calls "the problem of the passive past tense," as it "obscures the relationship between subjects and action, between what we do and how it impacts other people" (2018). Here reconciliation is both challenged by, and necessary due to, factors that are said to shape the relationship without any naming of which and whose actions brought this about and why – conditions that, per van Roermund (2001, 175-76), need to be dealt with for reconciliation addressing relations of political oppression to be possible.

views on the meaning of treaties" (19) – a form of reconciliation as consistency nestled within what more generally is presented as reconciliation as relationship. In this report, the key expected results listed under the "Reconciliation and Community Healing" commitment focus on the settlement of specific claims and changes to the specific claims process alongside addressing Residential Schools litigation (20). The following year, these are bundled together, as the description about dealing with the past in order to address the present and future is echoed and then followed by a list of "Benefits/Results for Canadians" beginning with "Reconciliation and Community Healing/Specific Claims Settlements" (2002, 28). The associated planned results revolve primarily around resolving and preventing litigation, or diverting cases into ADR (30).

Pairing healing and settlements this way is consistent with IRSRC's alignment between the two in relation to Residential Schools, and INAC's discussion of the challenges and risks associated with not pursuing reconciliation indicates an orientation towards closure as in this other context too. In addition to the "mistrust" stemming from "historical interactions," INAC identifies three key challenges facing attempts to "renew the partnerships": jurisdictional disputes between federal, provincial, and territorial governments; "lack of public understanding or support for historical treaties and the claims process" despite "the public appear[ing] to want all First Nations and Inuit to enjoy the same economic and social opportunities as other Canadians;" and the profusion of litigation being brought by Indigenous peoples (2001, 19-20; 2002, 28-29; 2003, 32-33). It acknowledged some Canadian governing structures – particularly the *Indian Act* – had drawbacks that, along with the exclusion of Indigenous peoples from the development of past policies, impact the task of "building and sustaining effective partnerships" (2001, 20). These critiques are levelled based on Canadian standards and priorities that may not necessarily entirely align with Indigenous peoples' concerns and priorities. The reports stress

particularly that the *Act* "does not provide the kind of governance structures and other basic tools that First Nations need to take advantage of economic development opportunities" and "may not be compliant with the *Canadian Charter of Rights and Freedoms*" (20; 2003, 33).[8] The 2002 *Planning and Priorities* report also indicates somewhat of a shift from the immediate post-RCAP decision to focus on a "closing the gap" orientation to social issues rather than on the restructuring of the relationship (S. Serson, research interview, February 2018),[9] stating that "[a]ddressing relationship issues in tandem with quality-of-life issues provides the greatest chance of success" (INAC 2002, 29). The following year, this sentiment was reworded in terms that included reconciliation, and framed against the backdrop of litigation: "Progress on negotiations to address Aboriginal rights, grievances and reconciliation is intertwined with progress on quality of life" (2003, 24). A focus on litigation and economic development recurs throughout the discussions of settling claims and the healing to which the settlements will contribute. As seen in previous chapters, lawsuits had become a primary arena for the pursuit of change in the relationship between Indigenous peoples and Canada. Litigation during this period included lawsuits about "treaty rights and obligations; the nature and extent of Aboriginal rights and title; the nature of the fiduciary relationship between the government and First Nations and related obligations; and day-to-day operations governed by the Indian Act," as well as Residential School claims (2001, 19). Concern about lawsuits pervade the INAC reports, which include yearly updates on how much the "cost of managing litigation" had increased (2001, 20; 2002, 29; 2003, 33), and highlight the impediments posed to "efforts to renew partnerships" by the "adversarial nature of litigation" (2003, 33; 2001, 19). Intertwined with budgetary

[8] On the *Charter* in relation to Indigenous peoples' epistemologies, justice systems, and conceptions of political relationship, see e.g., Milward (2012); Monture-Angus (1995); Patzer and Ladner (2022a, 2022b).
[9] Serson noted that the title of *Gathering Strength* was reflective of this choice, as it was taken from the RCAP report's chapter on socioeconomic issues (research interview, February 2018).

considerations is the matter of the persistence of government liability (2002, 32; 2003, 36).[10] In response, the reports include proposals to develop mechanisms for "early identification of significant legal and business risk" and to improve relationships with a view to the "non-litigious and mutually respectful" resolution of grievances and the "creat[ion of] a climate favourable to investment and […] reduc[tion of] disparities in social and economic conditions" (2001, 20; 2002, 30). "Reconciliation" is listed among the "issues related to renewed partnerships" to be addressed in order to "hel[p] […] avoid costly, adversarial litigation and forge more timely and constructive solutions to ongoing problems" (2002, 32; 2003, 36). The reports emphasize that further to "mounting liabilities and costly litigation," failing to address these issues risks yielding "opportunity costs for sustainable development of land and resources that could realize significant investments and socio-economic benefits" (2003, 36, 24), and endangering "efforts to build future arrangements between Canada and First Nations based on a strengthened relationship" (2002, 32). One report asserts that "[r]econciliation of historic grievances between Canada and First Nations through the specific claims process is an important part of the healing process" (2002, 32). What precisely this healing and reconciliation entail is not clarified further than this; the implication is that with claims settled, the government will be relieved of liability, obstacles to resource development will be removed, Indigenous peoples' "quality of life" will improve, and their communities will become "self-reliant, healthy and functional" (2003, 24, 36), with all of these factors contributing to reduce claims against the state.[11] While the subject of the litigation was distinct, this application of the language of reconciliation and healing is akin to that used in relation to Residential Schools, as it is linked to claims being made against the

[10] A desire to avoid litigation costs and contain the scope of liability in response to both specific claims and Residential School claims can be seen in statements about using ADR to "satisfy outstanding lawful obligations" and settling out of court for claims "where substantiated and liability clear" (2003, 34; 2000, 14; 2001, 20).
[11] For a critique of the pathologization of Indigenous peoples' grievances and the state-centric politics of recognition in Canada, see Coulthard (2007; 2014, esp. ch. 4).

state that it had an interest in bringing to a close as fully, swiftly, and conclusively as possible.

In addition to incorporating these kinds of uses of reconciliation as linked with healing and repair, INAC's reports also include a selection of various uses of the term's consistency/ compatibility-oriented meanings. Examples of this deal with, for instance, consistency between different views and/or interests, such as a reference to "reconciling divergent views on the meaning of treaties, the lack of dispute resolution options, and First Nations' distrust of the specific claims process and other processes" (2001, 19), along with more general references to "reconciling different approaches" and "diverse interests and perspectives" (2002, 29; 2003, 33, 44). Other consistency meanings such as allusions to the SCC's vision of reconciliation, uses of the term in its budgetary connotation, and, somewhat analogously to the latter, references to reconciling land transactions that are used in later reports are explored in section 9.2.3 below.

9.2.2 "[I]t destroys the very essence of the reconciliation of which it spoke": Debates at the Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources

Hearing transcripts from meetings of the Standing Committee bring into view how the government's commitments to reconciliation and proposed reform package were received by witnesses who appeared before the committee as well as by opposition MPs. While there were other uses of reconciliation by government representatives at the committee between 1996 and 2006, at the meetings dealing with the *FNGA*, the *SCRA*, and the *FNFSMA*, the term was used primarily by witnesses, and occasionally a couple of opposition MPs, and not the government. A presentation by Minister Nault to the committee about the *SCRA* in late 2002 is an exception to this. Arguing that "a better quality of life for first nations people cannot happen without an economy," Nault declared that the *SCRA* would yield a "more efficient and cost-effective

method" to settle land claims, which would provide "cash and land," "remove the current cloud of uncertainty that hinders resource development," and "[r]emov[e] a longstanding impediment to a better relationship by addressing […] grievances" relating to land claims (AANR 2002a, 11:15).[12] Nault positioned the proposed changes as being "not mere administrative measures, but a reflection of a reconciliation long in the making and long overdue" (11:15). Even as this framing can be taken as discursively linking the *SCRA* with the government's broader commitment to reconciliation in *Gathering Strength* and the Statement of Reconciliation, a number of witnesses who spoke on the *SCRA*, as well as the *FNGA* and the *FNFSMA*, used the state's language about reconciliation – as used by both the Liberal government and the SCC – to critique the government's legislative agenda and question its commitment to reconciliation.

Reconciliation circulated in these discussions in a couple of different ways. Participants used the term explicitly but also invoked the notion of reconciliation as consistency implicitly, charging that the government's proposals were incompatible with a host of pre-existing political commitments and legal provisions, including its statements about reconciliation. For instance, witnesses argued that the *FNGA*[13] was inconsistent with the Constitution, SCC jurisprudence,[14] the RCAP's guiding principles and recommendations, the draft United Nations Declaration on the Rights of Indigenous Peoples and other international human rights instruments, the terms of treaty relations, and the inherent right to self-government (AANR 2003b, 16:25; 2003c, 15:30; 2003e, 15:40; 2003g, 13:35, 15:45-50). Within these broader assessments of inconsistency can

[12] That the committee's mandate pairs "Natural Resources" with "Aboriginal Affairs" and "Northern Development" during this Parliament presents a notable conceptual linking of policy areas given the Chrétien government's reform objectives and the arguments mobilized in support of them.
[13] Of the trio of bills, the term reconciliation was the most used in relation to the *FNGA*, appeared a couple of times in relation to the *SCRA*, and was minimally linked to the *FNFSMA*.
[14] For instance, witnesses Ron Bernard and Dennis Callihoo referred to the SCC's s. 35 jurisprudence, including passages dealing with reconciliation, and the Secession Reference (2003b, 16:25; 2003f, 14:25).

be found arguments that both the substance of the *FNGA* and the process of its development ran counter to the Statement of Reconciliation and the SCC's description of reconciliation.

Appearing before the committee to discuss the *FNGA*, AFN National Chief Matthew Coon Come cited *Gathering Strength* to support his rejection of the bill. Leading in by remarking, "These are words that are meant to guide the entire federal government and they are worth stating for the record," he read aloud the passage from the Statement of Reconciliation about the harms to Indigenous peoples that had been perpetrated as a result of "[a]ttitudes of cultural and racial superiority" and about the need to ensure the full participation of Indigenous peoples in Canadian society "in a manner that preserves and enhances [their] collective identities" (AANR 2003a, 10:20). He then asked of the committee:

> Tell me, where in Bill C-7, and the process that created it, is the recognition of past mistakes and injustices? Where is the reconciliation, the healing, and renewal? Why do we find ourselves in the current environment of mistrust and conflict between first nations peoples and the government, generated by the Minister of Indian Affairs and Northern Development's unilateral, adversarial approach. [*sic*] What happened to the partnership approach? Where in Bill C-7 is the preservation of collective identities of first nations communities? Bill C-7 is another expression of the racial and cultural superiority of the proponents of the bill. (10:20-25)

Demonstrating Ahmed's observation about how an institutional statement of commitment that does not seem to do what it says can be used "to show that an individual action is inconsistent with the statement" (2012, 120), Coon Come's invocation of the Statement of Reconciliation and assessment of the *FNGA*'s incompatibility with it challenged the government to render its commitment to reconciliation performative: "Our people believe in the primacy and honour of the spoken word. We believe in honouring our commitments. We took those words to heart when they were spoken, and we look forward to a new era" (10:25). A similar critique was levied by Grand Chief Leon Jourdain of the Grand Council Treaty #3, who reiterated the things that the government had supposedly repudiated in the Statement and then submitted: "The proposed First

Nations Governance Act reclaims everything this country apologized to my people for. It reclaims colonialism, and it destroys the very essence of the reconciliation of which it spoke" (2003m, 9:15). BQ MP Yvan Loubier then later also invoked the Statement during clause-by-clause consideration of the bill. He highlighted that the bill did not mention reconciliation and called this "une grosse lacune" (AANR 2003q, 7:10). After suggesting that "[a]vant de parler de reconstruction et de réconciliation, il faut que nous soyons assez modestes pour reconnaître que nous avons besoin de cette réconciliation," Loubier read aloud part of the Statement, concluding with the description of reconciliation as an ongoing process that required avoiding repeating past mistakes (7:10). He noted that he found this "tellement révélatrice" as he felt this was just what the *FNGA* was doing: "on se retrouve dans une situation où on répète effectivement ces erreurs et où on oublie d'inscrire des choses fondamentales dans le cœur du projet de loi C-7, c'est-à-dire le droit inhérent à l'autonomie gouvernementale" (7:10).[15] Meanwhile, other witnesses drew on another strand of reconciliation discourse to assess the *FNGA* by citing the SCC. Law professor Larry Chartrand pointed to *Delgamuukw*'s preference for negotiation as a means to achieve the SCC's vision of s. 35, arguing that "Bill C-7, if it is a unilaterally imposed framework on first nations, is inconsistent with that vision of reconciliation" (2003c, 15:30). Also drawing on *Delgamuukw*, Council Member Ron Bernard of the Algonquins of Pikwakanagan assessed the *FNGA* in light of the SCC's judgement that reconciliation ought to put equal weight on Indigenous peoples' and common law perspectives and found it wanting for "express[ing] only the non-aboriginal view of first nations governance" (2003b, 16:25-30). Bernard insisted that the consistency-rendering exercise this reconciliation entailed must not be asymmetrical: "The proper approach to developing self-government should be to ensure that first nation and

[15] The committee hearings were not the only forum in which the government's approach with the *FNGA* was derided for failing to honour the Statement of Reconciliation. See e.g., Frank Cassidy's (2003) critique in *Policy Options*.

Canadian perspectives are reconciled and one cannot dominate over the other" (16:30).

Other witnesses, including Grand Chief Francis Flett of the Manitoba Keewatinobi Okimakanak, Grand Chief Joseph Tokwiro Norton of the Mohawk Council of Kahnawake, and Chief Rod King of the Lucky Man Cree Nation, also invoked explicit and implicit notions of consistency in conjunction with uses of reconciliation in their speeches opposing the *FNGA*. Their statements all pointed to some kind of reconciliation being necessary but objected to the government's approach. They emphasized the centrality of treaties in their visions of governance and political relationship with Canada in contrast with the vision provided for in the *FNGA*. Contrary to how "resource-benefit, revenue-sharing, and other fiscal and economic arrangements necessary to reconcile the original aboriginal title of the lands and natural resources" might provide a contemporary mode of fulfilling the terms of historic treaties, Flett argued, the *FNGA* would amount to effectively yielding "imposed acceptance" in negotiations between Indigenous peoples and the Canadian government (AANR 2003k, 10:25).[16] King insisted that "the treaty-based government-to-government relationship cannot be reconciled by legislative imposition nor the unilateral exercise of authority of one government over the other" (2003j, 9:25). Norton also spoke against imposition, and presented reconciliation in a way that both invoked the meaning of conflict resolution and rejected the notion of an asymmetrical rendering of consistency implicit in the government's general approach to negotiating with his people:

> We believe very strongly in our traditional customs and in the right to self-determination. We do not want to be imposed upon, and we in turn do not wish to impose upon everybody else. We believe very strongly in sitting at the table and resolving our differences – reconciliation, as it's called. But it has to be done on a level playing field, not sitting across the table from bureaucrats who do not understand or really care whether or not we are successful […]. (2003p, 11:35)

[16] The idea of imposed acceptance can be understood to align with reconciliation as resignation, in that it implies that Indigenous communities would be required to resign themselves to the government's negotiating positions and timelines, and to the FNGA's "regime templates and codes" (AANR 2003k, 10:25); however, this does not align fully with Walters's framework as the acceptance entailed in his sense of resignation cannot be imposed (2008, 168).

Norton then explained that the Kanien'kehá:ka sought to "re-establish a relationship with Canada based on the Two Row Wampum" but had not yet encountered either the political will or the reciprocity needed to bring this about (11:35). These three witnesses all point to a need to render consistency but in a fashion that would align their peoples' relationships with Canada with the Two Row Wampum and other treaties as they understand them, and emphasize the importance of political equality, consent, and self-determination. They evidently do not perceive Canada to hold the same vision of what is to be reconciled, whether that reconciliation is framed as a consistency-rendering exercise or a broader understanding of conflict resolution.

All in all, the statements in which committee witnesses' various references to reconciliation are found collectively point to the range of procedural and substantive objections to the *FNGA* and its companion pieces of legislation that were raised by witnesses and others. The government's process in developing the bill was taken to task for involving inadequate consultation, leaving insufficient time for Indigenous peoples to provide feedback, failing to incorporate input into revising the legislation, and constituting a unilateral crafting of the bill. The substance of the bill was denounced for imposing a uniform non-Indigenous conception of governance on diverse Indigenous peoples in contravention of their right to self-determination, treaty rights, and the Crown's fiduciary obligations to them, and without regard for Indigenous peoples' own conceptions and practices of good governance and accountability. This approach was charged with bolstering the *Indian Act* system instead of implementing the inherent right to self-government that Canada had ostensibly recognized (see e.g., AANR 2003a, 10:05-55; 2003b, 16:25-35; 2003c, 15:30-55; 2003e, 15:40-16:00; 2003i, 9:15-20; 2003m). Because bands would be subject to both the *FNGA* and the *Indian Act* (Hurley 2003b, 10), Bernard stressed, as well as potentially the *FNFSMA*, the result would be that the federal government was

"unilaterally impos[ing] further control over first nations" rather than getting rid of the *Indian Act* (AANR 2003b, 16:25).[17] Similar critiques were levelled at the *SCRA*, which caused particular frustration among Indigenous peoples as the matter of reforming the specific claims process had been the subject of a joint AFN-Canada task force that had produced a report in 1998 whose recommendations did not seem to be reflected in the bill (AANR 2002c, 11:15; J. Dickson 2018, 150-55).[18] Coon Come presented the task force report as having provided for a specific claims process that would succeed in resolving claims towards the end of "reconciling first nations and Canada so that we can move forward as partners into the future" in a way that the *SCRA* would fail to do (AANR 2002c, 11:15). Asked if he agreed with Nault's suggestion that the *SCRA* "reflects the essential elements" of the joint task force report, Union of British Columbia Indian Chiefs (UBCIC) President Chief Stewart Phillip retorted that it was rather "the exact opposite of what the joint task force report called for" (AANR 2002b, 19:35). Chief Phillip drew a line from Jean Chrétien having introduced the White Paper in 1969 as Minister of Indian Affairs to the legislation Nault was introducing as Chrétien's Minister of Indian Affairs and bluntly stated: "We certainly don't agree with the Prime Minister's world view concerning what reconciliation between the Government of Canada and our people should be" (19:35). The term also appeared in a more specific critique of the *SCRA* when First Nations Summit (FNS) representative Lydia Hwitsum advocated removing provisions in the bill she argued would be more restrictive than the previous specific claims process, stating that the "clause would not assist in moving towards agreement or reconciliation on the outstanding specific claims put forward" (20:40). In broad and specific ways, these statements declared that from the federal

[17] This is the range of critiques voiced by witnesses within the vicinity of uses of reconciliation at the committee rather than a comprehensive account of reactions, though it is also consistent with scholars' broader discussions of responses to the bill. See e.g., Borrows (2003); F. Cassidy (2003); Ladner and Orsini (2004); Provart (2003).
[18] For more detail on the nature of critiques of the *SCRA*, see J. Dickson (2018, 150-55); Hurley (2003a, 27-28).

government's interlocutors' perspectives, the government's actions were not performing the reconciliation it was understood to have rhetorically committed to.

This did not mean that those interlocutors rejected the notion of reconciliation itself, though. While they challenged the government's approach to reconciliation, several witnesses offered their own visions of what they understood it to require, or spoke of other reconciliation projects they saw the government's efforts as undermining. When Phillip reappeared before the committee several months later to discuss the *FNFSMA*, for instance, he concluded: "the reconciliation between the Government of Canada and provincial governments and first nations people is no easy accomplishment. It's going to take time. It's going to take genuine consultation. It's going to take a genuine and real partnership. To date that hasn't happened, unfortunately" (AANR 2003s, 19:20). Among other things, for him, reconciliation and partnership would involve creating the conditions for being "able to jointly develop legislation" (19:20). Coon Come raised the same issue the previous year in relation to the *SCRA*, and on that occasion as well, called on the government to honour its commitments to treat its relationship with Indigenous peoples as a partnership. He drew a line between the treaties, *Gathering Strength*, and the desired course of withdrawing the bill and returning to the approach in the joint task force report, concluding: "We want to work on this issue. We want to move forward. We are seeking a path of reconciliation, recognition, and respect" (2002c, 11:25-30). Meanwhile, other witnesses invoked various discursive threads discussed in chapters 6 and 7, pointing to work by the RCAP and initiatives being undertaken by various churches as sites where reconciliation was being pursued or advocated in ways they felt the government was at best failing to part take in and at worst marring (2003d, 11:00; 2003g, 15:45; 2003i, 9:15-20; 2003n, 19:55; 2003o, 11:00).

There were also echoes of the kind of comments about Canada's international reputation

that were highlighted in chapter 4 in statements urging the withdrawal of the *FNGA*. One witness argued that "Canada has until this year been respected in the world community as a country that values power, peace, and reconciliation. So don't let us fail to seize this moment of opportunity; it has global implications" (2003g, 15:40), while another encouraged the government to show the same "clarity and courage" in its relations with Indigenous peoples that it had just demonstrated in deciding not to join the American invasion of Iraq (2003o, 11:00). Here, though there is also an implied notion of consistency involved in the call for the government to render its behaviour in relation to Indigenous peoples consistent with something, reconciliation serves as a value premise rather than the name of the consistency-rendering exercise. While the latter speaker did not employ the term reconciliation specifically within the point about Iraq, Long Plain First Nation Chief Denny Meeches drew a more direct connection between reconciliation and Canada's approach abroad: "the question Canada must ask itself is, how does Canada begin this reconciliation process? It can begin, one, by initiating definite commitments to fulfill its treaty obligations, which would introduce some morality into Canadian foreign policy" (2003l, 10:35). Here, reconciliation operates as both the name of a normative vision and a conflict resolution process, as well as a call for consistency between Canada's actions and projected image on the world stage and its approach to its political relationships with Indigenous peoples.

For Meeches, such a reconciliation process that would "build a moral record in [Canada's] dealings with the Anishnabek nations" required respecting their treaty rights and their "right to self-determination, self-governance, and sovereignty" under which they could "return to traditional systems of governance based on nationhood" (10:35). He highlighted that this was not what would be offered by the *FNGA*, which he called "invasive and destructive" (10:35). He proposed instead the creation of a treaty commission through which to channel political relations

along the lines of the Waitangi Tribunal in Aotearoa/New Zealand that he described as "contribut[ing] to the resolution of treaty claims and provid[ing] for reconciliation under a permanent commission of inquiry" (10:35). Not choosing to undertake such a reconciliation process, Meeches argued, would see Canada remain on a "path of quiet genocide" that he traced back to Duncan Campbell Scott's infamous statement about "want[ing] to get rid of the Indian problem" (10:35). In another instance demonstrating that emphasis on reconciliation was not the sole purview of the federal government that also echoed a desire to direct relations through treaties rather the *FNGA*, Kathryn Teneese of the Ktunaxa/Kinbasket Tribal Council stated:

> For the last decade, the KKTC, both independently and as part of the first nations collective known as the First Nations Summit, has repeatedly advanced the themes of reconciliation, good faith, accommodation, respect, and recognition as the cornerstones of our new relationship and the basis for finding fair and workable solutions. It's frustrating for us that, in the midst of our concerted efforts to advance the treaty negotiation process, so much of the federal government's energy is put on an initiative to rework portions of the Indian Act, which we hope to be rid of in the future. (2003h, 14:15)

Also drawing attention to the inherent right to self-government, which many asserted would be negatively impacted by the *FNGA*, Teneese argued that by virtue of being inherent, the right did not depend on recognition by the federal and provincial governments for its existence, but that "[n]evertheless, the recognition of the inherent right could facilitate a process of reconciliation between first nations and the federal and provincial governments" (14:15). The FNS's approach to reconciliation with Canada and BC is discussed further in the last section of the chapter.

Seen through the conceptual lenses offered by Walters, Lu, and Ahmed and Carastathis, the appearances of reconciliation in the committee hearings on the Chrétien government's legislative reforms serve to demonstrate that while a range of actors were using the term to describe ongoing or desired efforts to change the relationship between Indigenous peoples and the federal government, they did not concur on what courses of action constituted reconciliation.

In fact, many argued that what the government was doing was not reconciliation and contravened its stated commitments to it, and/or they employed the term in calling for something other than what the government was seeking to do. Minister Nault spoke of making "fundamental change," and if commitment is "a mode of subject constitution" (Ahmed 2012, 116), the government could be interpreted as endowing itself with the attribute of an entity extricating itself from a historical policy approach marked by colonialism and paternalistic control. However, many opponents of its proposals suggested that not only would they not lead to structural change, they would further cement existing structures. In this way, many of the critiques of the bills and, by extension, the government's broader stated commitment to reconciliation that was ostensibly being advanced by its legislative agenda, might be understood in Ahmed's terms to criticize the government's claims for being non-performative and serving "to reproduce, rather than to transform, existing relations of power" (Carastathis 2013, 237). This reception of the bills in relation to reconciliation might thus be taken to call out a successful failure to bring it about if reconciliation is understood as a transformation of structural relations of oppression (Carastathis 2013, 239; van Roermund 2001), or to highlight incompatibility between contesting visions of reconciliation, whereby the government's consistency-rendering and conflict resolution vision is received as an asymmetrical imposition ultimately asking for resignation rather than as the reparation of a relationship through changes that are mutually consented to.

9.2.3 "Reconciliation was and is the key": Reconciliation After the Chrétien Government

In late 2003, Paul Martin replaced Chrétien following his retirement. Martin had publicly opposed the *FNGA* prior to becoming prime minister (Barnsley 2003a), and his arrival to that

office marked a shift in the course of the legislative reforms Nault had introduced.[19] Then, between early 2004 and the fall of his government in late 2005, Martin undertook a series of initiatives to change the relationship between the Government of Canada and Indigenous peoples, creating new spaces for direct dialogue between Indigenous peoples' national political organizations and government leaders and committing significant funding for a set of policy initiatives geared at "closing the gap" that saw Indigenous people faring significantly worse on virtually every socioeconomic metric than others living in Canada. This process began with the Canada-Aboriginal Roundtable held in Ottawa in April 2004 and ended with a FMC that yielded what is now commonly known as the Kelowna Accord in November 2005.[20] Reconciliation does not seem to have been a significant term in the framing of these dialogues and negotiations, though it appears in three political accords signed in May 2005. The term appeared much more frequently in some BC-specific developments that followed and coincided with these federal initiatives, including a FNS response to the Roundtable report and a tripartite agreement signed by Canada, BC, and the First Nations Leadership Council (FNLC)[21] in conjunction with the Kelowna FMC. I discuss these developments in section 9.4. The political winds then shifted again at the beginning of 2006, but while the Harper government took a different policy direction than the Liberals and decided not to proceed with key initiatives of Martin's, the federal

[19] Of the three initiatives, ultimately only the *FNFSMA* was to survive. The *FNGA* died on the order paper when Parliament prorogued and was not reintroduced (Hurley 2003b, 2). The *SCRA* received royal assent just prior to the prorogation of Parliament in November 2003 (Hurley 2003a). Despite requests from Indigenous leaders not to implement the statute (Barnsley 2003b), the Martin government initially announced that it would proceed with the *SCRA* as well as the *FNFSMA* (Taylor 2004), but then in late 2005 declared it would not implement the *SCRA* after all (J. Dickson 2018, 160). The *FNFSMA* was reintroduced during the next two sessions of Parliament and ultimately adopted in March 2005 (Hurley and Tiedemann 2004).

[20] The actual title of the document reads *First Ministers and National Aboriginal Leaders Strengthening the Relationship and Closing the Gap*. In addition to the Roundtable and the FMC in Kelowna, this period also included a series of sectoral tables in late 2004 and early 2005 and a policy retreat in May 2005 with the leaders of the five major national Indigenous peoples' political organizations. For an overview, see Patterson (2006). For an account of the Kelowna process that includes interviews with participants, see Alcantara and Spicer (2016). The Kelowna Accord itself does not mention reconciliation (First Ministers and National Aboriginal Leaders 2005).

[21] The FNLC comprises the BC AFN, the FNS, and the UBCIC.

government continued to employ the language of reconciliation after the Conservatives came to power, with INAC even moving to centre it as a guiding principle.

Reconciliation only appeared briefly in three speeches at the April 2004 Roundtable,[22] where it was used in the forms linked with healing and truth and was associated by AFN National Chief Phil Fontaine and Métis National Council (MNC) Vice-President Audrey Poitras with the specific matters of Residential Schools redress and the need to address the state's execution of Louis Riel (CAPR 2004, 44, 54, 68-69). A couple of statements also alluded to a broader federal vision of reconciliation, however. As elsewhere, IRSRC Minister Denis Coderre related his department's mandate to "the federal government's wider objectives of healing and reconciliation" (69), and linked these objectives with a nation-building project by stating: "Addressing the legacy of over 100 years of residential schools is one of the most challenging areas for our renewal and reconciliation as a nation. However, we must continue to address our collective past because our future as a just and inclusive nation relies on it" (68). This once again links reconciliation with a subject-constituting commitment (Ahmed 2012, 116).

While there are a few other instances of this type where the term is used in relational form to refer to pursuing or achieving a state of healing or resolved conflict, the consistency/ compatibility type is the primary form of reconciliation in the documents that came out of the engagement process leading up to the Kelowna Accord and in INAC reports and committee discussions from during that time. These uses reflect the SCC's version specifically and the type's more general form. In May 2005, the day after the AFN signed the accord on Residential Schools redress with the government, the Cabinet Committee on Aboriginal Affairs held a policy retreat with the leaders of the AFN, the MNC, the Congress of Aboriginal Peoples (CAP), the

[22] Other than the speeches by representatives of Indigenous peoples' national political organizations, Prime Minister Martin, and three members of his government, the Roundtable report (CAPR 2004) consists of summaries rather than verbatim transcripts. If other participants used the term verbally, that is not reflected in the summaries.

Inuit Tapiriit Kanatami, and the Native Women's Association of Canada. These organizations represent different constituencies with different needs and interests and each preferred to sign their own specific agreement regarding their goals for change instead of an all-encompassing umbrella agreement, so the retreat yielded five distinct political accords (Alcantara and Spicer 2016, 190; Patterson 2006, 5-6). Three included the term reconciliation, all in its consistency form. The accord signed with the CAP used it to address the existence of relations of opposition between the interests of differently located constituencies of Indigenous people, stating that part of achieving *Gathering Strength*'s objective of "Strengthening Aboriginal Governance" required "[c]ollaboration to develop accountable and sustainable governments and institutions in a modern world to reconcile the political, social, cultural and economic interests of Aboriginal people on- and off-reserves" (Canada and CAP 2005, *6*). The *Métis Nation Framework Agreement* used the term in the same form but to speak of the relationship between the Métis Nation and Canada, and in a way that acknowledged potential limitations to the degree of consistency that might be reached. Its opening recitals concluded with: "AND WHEREAS the parties aspire to reconcile their respective interests and legal views, to the extent possible, on a basis of mutual respect and partnership" (Canada and MNC 2005, *3*). The *First Nations-Federal Crown Political Accord on the Recognition and Implementation of First Nation Governments* between the federal government and the AFN used the term more than the other two accords, drawing its form of reconciliation directly from the SCC. The recitals in this accord included "Whereas the Supreme Court of Canada has in numerous cases referred to reconciliation as the basic purpose of section 35 of the *Constitution Act, 1982*," accompanied by quotations from passages mentioning reconciliation from *Van der Peet* and *Haida Nation v. B.C. (Minister of Forests)* [2004], and "Whereas First Nations and Canada recognise that evolving jurisprudence is

creating pressure for new approaches for achieving reconciliation" (Canada and AFN 2005b, *1-2*; bolding removed). After the recitals, the document stated that "[t]he intent and purpose of this Accord is to commit the Parties to work jointly to promote meaningful processes for reconciliation and implementation of section 35 rights," and then enumerated a list of guiding principles that would inform this cooperation (*3*). A Joint Steering Committee would be created to "undertake and oversee joint action and cooperation on policy change, including the establishment of a framework or frameworks, to promote meaningful processes for the recognition and reconciliation of section 35 rights, including the implementation of First Nation governments" (*6*). The Committee's work would include "consideration of […] [a] statement of guiding principles for reconciling section 35 rights in the context of ongoing relationships with First Nation peoples, their governments, and Canada" (*7*). Reconciliation as used in these latter two statements is somewhat less clear on what entities are being reconciled than in the other two accords, as they do not explicitly state what s. 35 rights are being reconciled to or with, but the reference to the SCC's framing suggests that the other part of the equation is Crown sovereignty.

This type of use of reconciliation also appeared in some INAC reports and committee witness presentations during the Martin government as well, though sometimes in critiquing rather than describing the government's approach. Like the political accords, INAC reports speak of program activities and relationships being geared at "the reconciliation of Aboriginal and other interests" (INAC 2005, 29), and of the objective of reconciling "the pre-existence of Aboriginal societies with the sovereignty of the Crown" (31). Here the latter is presented as the outcome of comprehensive claims and self-government agreement negotiations (31). The SCC's framing of s. 35 also echoes in a 2005 report's statement that "INAC and the federal government are committed to providing opportunities for First Nations, Inuit, Métis and Northerners to more

fully participate in and benefit from Canada's political, social and economic development. Helping to facilitate this commitment and to reconcile the existence of Aboriginal societies within the Canadian federation will be the ongoing work of INAC" (2005, 5). Most of the financial uses of the term in INAC reports refer to reconciling figures in the departmental budget rather than applying it to the relationship with Indigenous peoples,[23] but the financial logic is also present in two reports' identified consistency-oriented objective of "[r]econciliation of outstanding land transactions" (2004, 37; 2005, 47), which is listed under the "Result Theme/Ongoing Priority" of "Certainty of Title and Access to Land and Resources" (2004, 37). As with the healing-oriented version used in the earlier reports, then, the focus on reconciling in the sense of achieving consistency, compatibility, or sameness between two things as used in these reports is also typically entwined with matters concerning the creation or improvement of conditions for economic integration and resource development.[24]

Discussions of certainty and associations of reconciliation with settling specific and comprehensive claims also appeared during meetings of the Standing Committee during this period, where, as with the Roundtable speeches and the INAC reports, they reflected different consistency-related connotations, connected to notions of healing and redress, and drew on SCC jurisprudence. Examples from uses of the term by three different witnesses demonstrate how these varying uses ranged from employing reconciliation to describe an instance of agreement

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[23] See e.g., INAC (1999, 12; 2000, 9; 2001, 13; 2002, 9; 2003, 10; 2005, 7).

[24] The language of reconciliation and healing itself also appeared a couple of times in these later reports, in these instances particularly in relation to the mandate of the Indian Specific Claims Commission (ISCC), which had been created as an interim mechanism for resolving specific claims in 1991 (J. Dickson 2018, 6). INAC described the ISCC's inquiry process as "emphasiz[ing] principles of fairness, equity and justice, which promotes reconciliation and healing between Aboriginal and non-Aboriginal Canadians" (2005, 21, 72; 2006a, 45). I searched all the ISCC reports I could find, which range from 1994 to 2009, when it was "decommissioned by the Harper government" (J. Dickson 2018, 6), to see if the ISCC used the term to describe itself. It only does so once up to 2006, in presenting its mediation services as geared at "helping First Nations and Canada negotiate agreements that reconcile their competing interests in a fair, expeditious, and efficient manner" (ICC 2004, 11). The only other uses from during my period of study are a quotation from *Sioui* and a reference to the execution of Thomas Scott undermining the reconciliation of "the interests of Canada and the provisional 'authorities'" in Manitoba led by Riel (2001, 119, 8).

between an Indigenous nation and the federal government to presenting a vision of reconciliation that required significant interactional and structural change on the government's part.[25] In late November 2004, Phil Fontaine spoke to the committee about the *Tłı̨chǫ Land Claims and Self-Government Act*, describing it as "a real and tangible example of reconciliation between first nations' constitutional rights and federal Crown and territorial interests" (AANO 2004a, 1). In his view, "there is already room in Canada's constitutional framework to recognize and give effective self-government regimes for first nations" and this agreement served as a demonstration of how the necessary compromises could be achieved (1). In suggesting that "[r]econciliation was and is the key to this process" of achieving land claims and self-government agreements, he focused in particular on the provisions the parties had settled on to recognize Tłı̨chǫ title and avoid using the language of extinguishment in relation to their rights (1).[26] He also cited the SCC on s. 35's goal of reconciling the pre-existence of Indigenous societies and Crown sovereignty and argued that the agreement represented the successful achievement of this goal by protecting the right to self-government emanating from the Tłı̨chǫ's "inherent sovereignty" (2). Here, reconciliation is presented as an exercise of rendering consistency that is undertaken as a mutual exercise whose result the parties have all consented to, and by having acceded to the recognition of title and avoidance of the term extinguishment, the federal and territorial governments are regarded approvingly for being on-side with reconciliation in this instance.

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[25] Witnesses also used the term in other ways during this period, such as to describe the need for "regulatory harmony" between jurisdictions in relation to urban reserves (AANO 2005k, 9), to discuss the tensions between preserving traditional values and economic integration in Canadian society (2005i, 10), to argue for the courts' role in reconciliation (2005j, 7), to celebrate the Labrador Inuit land claim agreement (2005h, 8), and to argue that the *FNFSMA* did not substitute for "the national healing and reconciliation process that should take place" (2004c, 11).

[26] Instead of including a clause establishing certainty of rights and title through extinguishment, the Tłı̨chǫ agreement provided certainty through a provision in which the Tłı̨chǫ agreed not to assert rights beyond those laid out in the agreement. For some, this effectively amounts to extinguishment by another name, but for those who negotiated and ratified the agreement, it was a politically more preferable option (Alcantara 2009, 331, 335-37; Helis 2019, 5-6). Christopher Alcantara argues that this shift from insisting on an extinguishment clause to adopting alternative forms of certainty provisions demonstrates "instrumental" rather than "social policy learning" on the part of the federal government, as it constitutes a change in tactics rather than policy goals (2009, 336).

In the other two examples, reconciliation is rather presented as requiring Canada to change its perspective and behaviour. Speaking after Fontaine, Chief Bill Erasmus turned to the question of treaty implementation in an exchange with Conservative MP Jim Prentice. When asked why treaties were not being implemented after being negotiated, Erasmus employed the consistency sense to describe the conflict he saw as producing the status quo:

> I tried to understand the way Canada sees the world. I think it is the question of property. Canada believes it owns the land. On the other hand, we believe we own it. It is a question of reconciling these positions. […]
>
> Right now it is original title; it is Dene title. It is either Tlicho or Denesutine or Gwich'in or Sahtu or Deh Cho. It is a particular title. It's not crown title; it's not crown land. The courts have clarified that.
>
> Canada wants it to be crown land so that it feels secure. We're neglecting to do that. We are saying no, it's not crown land; let's talk about how we can work together. (2004a, 9)

Noting the RCAP had previously called for addressing the ownership issue, Erasmus went on to say he thought "that is what Canada has to come to grips with" (9). The use of reconciliation in this response might be read a couple of different ways. Broadly, it declares that the conflicting positions on ownership require some kind of resolution. On the one hand, Erasmus's subsequent statement that "[b]y putting in abeyance some of those authorities Canada has problems with, this agreement will allow us to step forward, because people can still function" suggests that the Tłı̨chǫ agreement's answer is to bracket off the conflict (9), and this resolves the consistency problem, at least for immediate practical purposes. On the other hand, the coming to grips phrase might be taken as a suggestion that in this case it is reconciliation as resignation or acceptance that is required as Canada needs to accept that it does not own the Indigenous peoples' territories it wants to claim. This could be construed as a sort of *de jure* flipside to forms of reconciliation as resignation shaped by the imbalance of political power between Indigenous peoples and the Canadian state where the implication of reconciliation is that Indigenous peoples ought to resign themselves to the *de facto* reality of colonial domination (see e.g., Borrows 2017a, 20, 33, 37).

Lawyer Alan Pratt also spoke to the committee regarding the Tłı̨chǫ agreement on behalf of a client, and then returned a year later in an independent capacity when the committee was studying the specific claims process.[27] He highlighted reconciliation on both occasions. Pratt's uses of reconciliation drew on, and in some ways mirrored, uses by state institutions, and yet at the same time his uses were lodged within presentations that were critical of government practice and called for significant changes in its approach. His uses also call up the complexities of the different ways that reconciliation can relate to law discussed in chapter 7. Like the federal government, Pratt cast the settling of claims in terms of reconciliation, and focused on benefits to settling grievances that appear to align with the government's approach to specific and other claims, such as the "important economic value" of settlements, as well as the contribution they offered to "societal catharsis" as they "have value in clearing the air about historical wrongs, in bringing truth and reconciliation so that the parties can move forward unencumbered by their harmful legacy" (2). However, Pratt's reconciliation as consistency also offers a slightly different focus than the other common versions of this period. Rather than speaking of reconciling interests or sovereignties, the object of reconciliation here is "our past history of neglect and breach of faith with our current acceptance that the Crown must be honourable" (2). For this to be possible, Pratt saw the federal approach and the structure within which claims are settled as requiring significant changes – in this sense, he cast reconciliation not as something that would result from the specific claims process, but as something that it could and should yield if done differently. Among other things, Pratt called for the government to scrap the *SCRA* and create a new approach rooted in the work of the joint task force, create a "truly independent body" to

[27] On the latter occasion, Pratt provided a written submission as well as an oral presentation to the committee, both of which were entered into the record; the quotations included here draw on both components.

oversee the claims process,[28] undertake "governmental restructuring to remove the conflicts of interest insofar as possible" from the implementation of Indigenous peoples' rights and title and the settlement of claims, and ensure that claims processes addressed "social and cultural damage caused by the Crown's breaches of duty and faith" as well as their economic impacts (5).

Like Fontaine, Pratt also quoted from SCC jurisprudence. [29] Contrasting with, for instance, the legalistic vision of reconciliation as closure embodied in the High Arctic Relocation Reconciliation Agreement, Pratt highlighted that the SCC's recent decision in *Haida Nation* had stated that reconciliation was a "process" rather than "a final legal remedy in the usual sense" (quoted in AANO 2004b, 6). As the Reconciliation Agreement had done (see sec. 7.4), Pratt argued that "the paradigm of federal claims practice and policy" had centred on reaching "an agreement that brings certainty or finality to a claim" (AANO 2004b, 6). In his view, the reading of reconciliation contained in the SCC's decision called for "a new code of conduct for the crown to deal honourably not only while a claim is in negotiation, but before a claim is accepted and after a treaty is made" and carried obligations for how legislation should be assessed, as well as potentially "requir[ing] a review of all federal legislation touching upon aboriginal issues" (6). In this regard, Pratt challenged the government's legal vision for being overly centred on closure in a way that did not serve reconciliation. However, he also challenged its legalistic approach for undermining reconciliation by not allowing closure in another regard. During his second

[28] On the Government of Canada's structural conflict of interest in the claims process, see J. Dickson (2018).
[29] This and the others noted are select examples among several of the SCC's uses of reconciliation being cited at Standing Committee meetings. Its approach continued to evolve between 1996 and 2006 through key cases such as *Delgamuukw v. B.C.* [1997], *Haida Nation v. B.C. (Minister of Forests)* [2004], *Taku River Tlingit v. B.C. (Project Assessment Director)* [2004], and *Mikisew Cree First Nation v. Canada* [2005]. I do not treat the post-*Delgamuukw* jurisprudence in this chapter, having discussed the term's emergence at the SCC in chapter 7, but others explore the continuing development of the SCC's reconciliation doctrine in detail. See esp. J. Nichols's (2020) genealogical account, as well as Bhandar (2004, 2007); Borrows (2017a); Christie (2002, 2005); Hamilton and Nichols (2019); Hewitt (2014); Hoehn (2012, 2019); Ladner and McCrossan (2009); Lambert (2009); MacIntosh (2011, 2014); Macklem and Sanderson (2016a); McCrossan (2013, 2015, 2018, 2019); McNeil (2003); Minnawaanagogiizhigook (2007); Newman (2008); J. Nichols (2015a, 2015b); Stanton (2017); Vermette (2011); Walters (2006, 2008).

appearance at the committee, Pratt submitted that "a heartfelt" apology" might be necessary "to reconcile First Nations and the Crown" during the settling of specific claims (AANO 2005j, 4). As it stood, however, the government's approach to specific claims at that time was that "no admission of liability ever takes place," which, he suggested, "makes for a limited and curious form of reconciliation in the eyes of anyone who is not a lawyer" (3). These comments highlight the conflict between competing conceptions that emerges when reconciliation in the form of the conclusion of legal liability comes at the cost of reconciliation in the form of repair and/or closure that might be brought about through an admission of responsibility. Pratt also positioned reconciliation as the desired outcome of settling specific claims but for him, contra the government approach he saw at work, this necessitated an ongoing change of behaviour and "not simply settling reluctantly and minimally the legal entitlement to compensation" (6).

Pratt noted Martin's recent initiatives and that the government had declared "that its past ways of operating and creating policies will no longer be followed," and expressed some hope that the claims process could be transformed "[i]f this is a real change in attitude" (4). These initiatives proved to be short-lived, however. Later that month, and just days after the Kelowna Accord was signed in late November 2005, Martin's government fell. While the Conservative government under Stephen Harper that succeeded it did ultimately proceed with the IRSSA agreement-in-principle that had also been signed just before the Liberals lost the confidence of the House of Commons, it determined it would not follow through on the Kelowna Accord, whose status it minimized (Alcantara and Spicer 2016, 192; Castro-Rea 2016, 269-70; Larocque and Noël 2015, 240, 249). While the Kelowna Accord largely fell by the wayside – at least at the federal level – under the Harper government, [30] discourses of reconciliation remained.

[30] Martin later put forward a private member's bill calling for the government to implement the Accord, but while the *Kelowna Accord Implementation Act* passed in 2008 and the government introduced some measures and tabled

The first year of the Harper government – during which reconciliation discourses were also in use in relation to the IRSSA and to the debates over recognizing Québécois nationhood – saw reconciliation continue to appear in INAC's planning and priorities report. It also made a handful of appearances at the Standing Committee, with examples again showing it being used to describe government action and to critique it. In 2006, another form of reconciliation was introduced in an INAC report. Now, rather than indicating an objective of some kind, it became one of a list of principles with which "all partners must adhere […] to ensure that results are effective, tangible and transparent to all Canadians" when it came to making policy regarding Indigenous peoples and northern communities (2006b, 4). The final principle in the list[31] is "Mutual Respect and Reconciliation," described as follows: "The principles of mutual respect and reconciliation must also be observed. They include enhancing the level of understanding and acceptance of First Nations, Inuit and Métis cultures as a vibrant and integral part of Canadian society; ensuring that treaties are implemented in a manner that fosters an improved understanding among Canadians; and negotiating settlements that bring tangible benefits to all parties" (4). The phrasing is ambiguous as to whether "mutual" is intended to modify only "respect" or also "reconciliation," but the reference to settlements that benefit all parties could be taken to imply a version of reconciliation as consistency whereby both sides make changes. The nature of and degree to which these adjustments are symmetrical or asymmetrical must be assessed within the context of power relations between the parties and interpretations of the parameters set by the other principles. These guiding principles are invoked one further time

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progress reports in accordance with its requirements (de Bruin 2013), full resourcing of the Accord's commitments was not provided, the negotiated model was not followed, and "[t]he Accord eventually expired" (Larocque and Noël 2015, 240-41; Mashford-Pringle and Webb 2023, 70). It is not analyzed here as it falls outside of the dissertation's period of study, but the last of these progress reports contains uses of the term reconciliation throughout, including in a section entitled "Reconciliation, governance and self-government" (INAC 2012). On the implementation of the Kelowna Accord at the provincial level, see Larocque and Noël (2015).

[31] The others are "Working within Canada's Constitutional Framework," "Respect for Basic Democratic Values," "21st Century Standards for Programs and Services," and "Clearly Identified Roles and Responsibilities" (2006b, 4).

later in the report, in a description of how negotiations regarding self-government and land claims further the identified program activity of building cooperative relationships. Here it is stated that "[n]egotiations fulfil constitutional obligations, address historic lawful obligations, promote mutual respect and reconciliation, build partnerships, help define common agendas, and reduce conflict," in addition to "creat[ing] favourable conditions for socio-economic and cultural growth of communities" (19). Similar language was also used by a senior INAC public servant and Prentice, now Minister of INAC, at the Standing Committee, who both linked the settlement of claims with reconciliation, certainty, and economic opportunity (AANO 2006a, 1; 2006b, 3). Meanwhile, however, the prospect of reconciliation, cooperative and trusting relationships, and the amelioration of Indigenous peoples' socioeconomic circumstances were all also seen as being endangered rather than promoted by the government's approach due to the decision to back away from the Kelowna Accord. Rosemarie McPherson of the MNC told the committee:

> Kelowna also represents so much more than a concrete plan for closing the gap between aboriginal peoples and other Canadians. It represents hope, trust, respect, and compromise on the part of all parties. Kelowna is an attempt to reconcile the claims, interests, and ambitions of the Crown with those of aboriginal peoples. The importance of ensuring that the Crown fulfils its obligations to aboriginal peoples as a part of this reconciliation process cannot be understated. […]
>
> Reneging on Kelowna would be a new symbol of dishonour of the Crown and would only further entrench a mistrust that exists between the Crown and aboriginal people. An entire generation of aboriginal young people will grow up knowing that even if you see your leaders on television with the Prime Minister and every premier in the country agreeing to a plan to improve your future, you cannot place any trust in that. (2006c, 7)

Despite several changes in federal leadership and policy direction, within and between parties, 2006 closed with the persistence of reconciliation discourses and the recurring refrain whereby the government invoked the term to describe and promote its approach while detractors of that approach used it to advocate for a different course or to reproach the government for failing to bear out its commitments. In the process, all actors continued to employ a mix of different

meanings that reflected the significant influence of SCC jurisprudence on discussions about land, governance, and rights along with discussions about healing and social repair and other strands of reconciliation discourse stemming from earlier developments such as the RCAP and the Statement of Reconciliation. These earlier developments also shaped discussions taking place in specific provinces at the same time, which then contributed further applications of reconciliation to the broader process of discursive development as actors, legislation, and coverage of events moved between contexts. While other conversations about reconciliation during this period saw the term frequently accompanied by healing and truth, discussions about land, governance, and rights in Manitoba and BC also increasingly paired reconciliation with "recognition."

9.3 "[M]ultiple but related meanings appropriate to the context": Recognition, Reconciliation, and the Aboriginal Justice Implementation Commission

The AJI in Manitoba had been created by an NDP government that fell shortly thereafter and was replaced by Gary Filmon's PCs, who did little in the way of implementing its recommendations during the years they were in office following the release of the final report (P. Chartrand 2001). The NDP under Gary Doer campaigned on taking action on the report and, upon their election in 1999, established the AJIC (P. Chartrand 2001). The AJIC's creation was itself the delayed implementation of an AJI recommendation (Government of Manitoba 1999). This follow-up to the AJI was co-chaired by former RCAP commissioner Paul Chartrand and Wendy Whitecloud, who reviewed the AJI recommendations directed at the Manitoba government, engaged in focused consultations, and issued a report regarding the implementation of those recommendations in mid-2001. The AJIC report provides an interesting window into the development of reconciliation discourses over a decade. The AJIC has direct links to previous

elements of that development due to explicitly being a sequel to the AJI and being co-led by someone who had been a member of the RCAP in the intervening period.[32] The discourses of reconciliation that grew in prominence in the interval between 1991 and 2001 are reflected in the AJIC report, in that even though it directly revisits the contents of the AJI report and highlights its emphasis on a "need for recognition and reconciliation" in response to the injustices faced by Indigenous people (AJIC 2001a, ch. 2), the uses of reconciliation throughout the AJIC report largely vary from the type used in the AJI report.

In the AJI report, as seen in chapter 7, reconciliation appears most often in descriptions of principles and values animating Indigenous peoples' approaches to justice and descriptions of restorative justice mechanisms such as victim-offender reconciliation programs. A decade later, the term features more prominently in the AJIC report. It is listed among the AJIC's priorities and is the subject of an entire chapter, and its meaning has shifted to refer to a societal issue of relations between Indigenous and non-Indigenous peoples broadly speaking. This is reminiscent of (and draws on) the RCAP's call for healing historical injustices and transforming the character and structure of the relationship (AJIC 2001a, ch. 2). Three uses of reconciliation in the report invoke other meanings and contexts,[33] but all others are of this broader societal healing variety.

In its statement of priorities, which is reiterated in the executive summary, chapter 1, and the introduction to section 2 of the report, the AJIC notes five characteristics of the measures to which it will give priority in its recommendations. One is that they "approach Aboriginal issues in a manner that leads to a recognition and fulfillment of Aboriginal rights, and to reconciliation

[32] Chartrand, a lawyer and law professor, also later published work on reconciliation's significance in law that engages with SCC jurisprudence and international law, focusing on "the basic project of reconciliation in Canada" as a "reconciliation of conflicting public interests" that must attend to "the *political action*" as well as "the *existence* of Aboriginal peoples, and the possession of their lands" (2011, 27; italics in original).

[33] Two of these speak to victim-offender or community reconciliation in a criminal law context (AJIC 2001a, ch. 5, ch. 6). The third cites "a reconciliation or the commencement of divorce proceedings" as reasons why someone might choose not to pursue prosecution for domestic violence (ch. 9).

between Aboriginal people and other Canadians" (2001a, ch. 1). Reconciliation is then primarily elaborated on in chapter 2, which is entitled "Recognition and Reconciliation." Here, a link is established between the kind of focus on reconciliation as a characteristic of restorative justice that was the primary form in the AJI report and reconciliation's application to society as a whole. The report notes that in addressing the relation between Indigenous people and the criminal law system, "[b]oth [the AJI and AJIC] reports stress restorative approaches that seek to bring communities that are out of balance back into balance" and then goes on to state: "There is, however, a societal imbalance that arises from a continuing sense of grievance and injustice among Aboriginal people" (AJIC 2001a, ch. 2). The AJIC echoes both the AJI and the RCAP on the subject and then frames itself as aiming "to contribute to the dialogue on recognition and reconciliation" (ch. 2). It links reconciliation with recognition, asserting that "before Aboriginal and non-Aboriginal people can move forward to live in harmony, relations must be reconciled and healed. Some form of recognition of the historical relations between Aboriginal and non-Aboriginal people […] might contribute to this reconciling and healing" (ch. 2). The AJIC emphasizes that any such recognition requires Indigenous people's active participation (citing the failures of previous unilateral attempts by governments) and that "[t]he next steps on a path to reconciliation and healing will require improved and constant communication" (ch. 2). It thus recommends that Manitoba establish a dedicated institution that would bring together representatives of Indigenous peoples and the provincial government and have an agenda that would include "the issue of recognition and reconciliation policies and actions" (ch. 2).

The AJIC's contribution to the dialogue on reconciliation and its recommendations to the Government of Manitoba on the subject relies primarily on a discussion paper it commissioned

from John Giokas entitled *Recognition, Reconciliation and Healing* (2000).[34] It draws on this paper to advance eight ways the government might recognize Indigenous peoples in Manitoba and their contributions to the province, noting that each carries different purposes and legal implications, but then leaves it to the proposed "implementation institution" to consider the different options rather than weighing in on any beyond or in response to any of the assessments Giokas provides (AJIC 2001a, ch. 2). The AJIC then revisits reconciliation one final time later in its report in elaborating on the recommendation to create such a Roundtable on Aboriginal Issues, stating: "The injustices of the past can be overcome, reconciliation and healing are possible, and balance can be restored to our community. It is more than a matter of righting past wrongs or of improving the position of certain groups in society – it is a process that will benefit every member of Manitoba society" (ch. 14). This is the note on which the report concludes.

Compared to the work of both the AJI and the RCAP, Giokas's paper for the AJIC marks an interesting shift in two ways. First, it specifically focuses on reconciliation as an identified policy goal and considers different mechanisms for pursuing it, detailing initiatives undertaken in other jurisdictions in the process. While previous reports had engaged in similar comparison and evaluation, and the term sometimes appeared in the surrounding discussion, they did not centre their focus on reconciliation directly in this way. Secondly, while recognition is given primacy of place in Giokas's analysis, which details various forms and uses of that term and notes the risk that stems from "[t]he overlaps between the technical and common meanings of recognition" (2000, 8), his paper is also novel for acknowledging reconciliation's multiple meanings (9).

[34] Giokas was also involved with the work of the RCAP. While several of his contributions to its work contained the term reconciliation, they did not focus on it as a term framing a policy objective as in this report, but rather generally used it in the consistency sense to speak about reconciling competing approaches/explanations/factors/etc. (see e.g., Giokas 1993, 188, 201, 215, 217; 1995, 13, 143; Morse and Giokas n.d., *4*).

Reconciliation gets used as both a descriptive label and an objective in Giokas's paper in ways that place it in a somewhat circular relationship to the concept of recognition. Perhaps unsurprisingly, coming as it did after the federal government's Statement of Reconciliation, the paper uses the term "recognition and reconciliation statements" to describe statements issued by governments and other institutions regarding historical injustices in Canada and abroad (1, 30). In some places, Giokas uses the two terms alongside each other in this way, while in others he uses one or the other in ways that suggest they are distinct, but the line between them remains blurry. This is due at least in part to the conceptual ambiguity that attaches to recognition, which he notes "has many shades of meaning depending on who recognizes whom, in what context, and for what purpose. Some meanings import legal consequences while others are political and yet others lead directly to related concepts such as reconciliation and healing" (2). The question of reconciliation's relationship to law is highlighted in two different ways here, connecting to different sets of actors' uses of the term. Giokas notes that the statements issued by governments and churches "have an apparent and avowed reconciliation and healing goal" and "[o]ften […] were explicitly designed to avoid or minimize potential legal consequences" (2). In these cases, reconciliation as healing is used as a deflective shield of sorts to avoid forms of recognition that would entail accepting liability for harm or the legal and constitutional implications for Canada of recognizing Indigenous peoples' sovereignty and jurisdiction. On another front, when it comes to the SCC's use of the term (in the form introduced in *Van der Peet*), Giokas suggests that there is necessarily "a dimension of reconciliation to the meaning of recognition" (9). This is because, in his view, contemporary circumstances make it impossible for the Canadian state to engage with Indigenous peoples "solely on the basis of their former autonomy and to deal with them on the basis of principles derived from international law" because they are all now inextricably part

of "the broader fabric of Canadian society" (9). This necessitates the reconciliation as consistency the SCC calls for between Indigenous peoples and Crown sovereignty.

Giokas acknowledges that reconciliation is thus "a term with multiple but related meanings appropriate to the context of this discussion," highlighting its applications in terms of both relationship and consistency (9). His discussion does not address the potential asymmetry of reconciliation as consistency described by Walters (2008, 167), nor touch on reconciliation's other form – resignation – or consider either how it might relate to the context at hand or muddy the conceptual waters. In considering the applicability of reconciliation as restoring relationship and as consistency, his assessment of past policy initiatives implicitly engages with relations of oppression by highlighting some of the reasons those attempts failed (van Roermund 2001). For instance, a 1985 resolution on Aboriginal rights by the Québec National Assembly fell flat on account of its unilateral nature and the government's choice to proceed without the input and consent of Indigenous peoples in the province (Giokas 2000, 20-21).[35] Giokas draws on studies of this case and others from around the world to characterize the benefits and drawbacks of the various recognition mechanisms he presents to the Manitoba government, noting that any successful such effort should include "(i) joint analysis of the history of the conflict; (ii) official acknowledgment of the injustice and historic wounds; and (iii) official acceptance of moral responsibility where due" (10). Among the examples he catalogues in evaluating the eight options[36] he presents are developments featured earlier in this genealogy, including the Sacred

[35] Paul Joffe prepared a paper for the AJIC on this resolution (2000). Weighing the prospect of Manitoba introducing a similar statement against Québec's experience, he cautions: "The government of Manitoba should only consider engaging in a process of formulating a recognition statement, if it is genuinely committed to the objectives that such a statement might entail" (8). He suggests several criteria, with the last pairing reconciliation with social justice in calling for a statement that is "aspirational" and "a principled and concrete initiative": "The statement should serve as a commitment to social justice, as well as a formal message of reconciliation, honour and fairness" (9).

[36] These are: "1) Government announcement of publicly funded historical project to focus on the past and present contributions of Aboriginal people to Manitoba" (14); "2) Meeting between Government and Aboriginal people to discuss possible courses of action to heal the relationship, reconcile opposing views of history etc." (15); "3)

Assembly (15-16), the Statement of Reconciliation (2, 21-22), and Australia's CAR (16-17).[37] In discussing the global breadth of such undertakings, Giokas adds another definition to the list (the others of which are more immediately familiar as versions of reconciliation as relationship and as consistency), stating that "[i]n light of the large number of international reconciliation processes currently under way, the term 'reconciliation' has also acquired a broader meaning: to 'balance radical reforms with a process based on consensus'" (9). He then suggests such a reconciliation might be understood to be the story of "most of Canada's recent constitutional history" (9). In a characterization that echoes the SCC's vision of s. 35, he writes, "Reconciling the recognized constitutional status of Aboriginal peoples with the interlocking nature of Canadian political, social and economic reality is the challenge facing all governments and institutions in Canada" (9). The eight recognition mechanisms he presents and assesses all take up this reconciliatory challenge, with varying degrees of political and legal significance. Rather than recommending any particular course of action, Giokas presents the government with a series of questions to ask itself regarding what it wishes to accomplish (12-13).[38] Even though his analysis does not explicitly tackle the full complexity of the term "reconciliation" or attend to it in the same detail as "recognition," it implicitly depicts some of that complexity by delineating the benefits and limitations of previous initiatives advanced under the banner of reconciliation, showcasing their variety, and linking them to the political and legal interests of the actors by whom they were advanced and received. The paper is thus doubly significant to the genealogy of reconciliation discourses in that, unlike contributions at previous stages, it engages with definitions of the

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Announcement of Government-sponsored reconciliation-type action and invitation to Aboriginal people to participate" (16); "4) Government statement in the Manitoba Legislature" (18); "5) Government Resolution in the Manitoba Legislature" (19); "6) Cabinet-approved statement of Manitoba Government policy" (22); "7) Protocol with Aboriginal organizations" (25); and "8) Legislation – either substantive or procedural" (27).

[37] The South African TRC is also briefly mentioned in a footnote (34n22).

[38] One (of nine) includes the term reconciliation: "Does it wish to signal its commitment to a process of healing and reconciliation that could serve as the springboard for further, more concrete actions in the future?" (13)

concept (and acknowledges that they are multiple), and it links reconciliation to a variety of specific mechanisms (and draws connections to other threads in the genealogy in the process) in engaging with it as an explicitly named focus of policy in recommendations to government.

In addition to Giokas's paper, several other discussion papers prepared for the AJIC also engage with reconciliation, informing its emphasis on the term. A report on Métis policy refers to the SCC's call for reconciliation and the Statement of Reconciliation as well as presenting caveats of its own on the topic (AJIC Métis Policy Sub-committee 2001, ii, 10-11, 16, 21-22, 34, 45-47). A *Background Paper on Options for a Successor Body* assesses the RCAP's "approach to reconciliation" as context in considering the design of institutions (AJIC 2001b, 4), links the role of a prospective successor to the AJIC to the "implementation of a reconciliation agenda" (31, 32), and presents evaluations of other bodies (including the CAR in Australia and the South African TRC) as relevant models to consider (20-22). Perhaps the most notable though, particularly in complementing Giokas's analysis, is a report detailing the findings of a consultation with Indigenous leaders in the province on a range of subjects the AJIC was exploring, including "reconciliation and recognition" (Lajeunesse 2001).[39]

Twenty-seven First Nations and Métis leaders were surveyed for the consultation and asked whether they supported the AJIC's thirteen priority focus areas and which of them were their top priorities, with one being "recognition and reconciliation" (*35*). While relatively few respondents ranked this as one of their top four priorities (*10*), the report notes that "[a]ll respondents were in favour of reconciliation becoming an important part of Government Aboriginal policy" (*4*). They were also asked "What does reconciliation in this sense mean?" and "What specific policy recommendations would you make to promote reconciliation?" (*42-43*).

[39] In addition to the aforementioned reports, one other discussion paper employed the term reconciliation; however, its uses were limited to three references to reconciliation as consistency in general terms that did not foreground reconciliation as a policy objective in the same way as these other reports (P. Thomas 2000).

Many qualifications of the respondents' support for reconciliation emerge in their responses to these questions, making it clear that in the view of Indigenous leaders, it would need to go significantly beyond a recognition of historical wrongs and an apology in order to be meaningful. Some elements they mentioned included addressing material inequities, addressing stereotypes, misconceptions, and historical inaccuracies in public education, long term commitment to supporting the healing of past harms and making systemic structural changes in the relationship through programs, resolving treaty and land claims issues, and working on a nation-to-nation basis (*26-29*). In addition to highlighting what substantive concerns characterized the Indigenous leaders' engagement with the notion of reconciliation, this report is significant in that it shows that by 2001, conversations about the relationship between Indigenous peoples and Manitoba were being framed around reconciliation and had come to involve conscious consideration of the term's meaning and how it could be conceptualized and pursued as a policy objective. The potential for political divergence on these points is evidenced in the contrast between the caveats laid out by Indigenous leaders (Lajeunesse 2001, *26-29*), and some of the questions Giokas put to the province about the aims informing its choice of preferred policy mechanism:

> Does it wish to give symbolic recognition to Aboriginal people as distinct nations with legal standing and rights within Manitoba in lieu of recognizing their inherent right to establish Aboriginal justice systems as recommended by the AJI?
> […]
> Does it wish to do the minimum required to avoid the criticism that the government has done little to implement the AJI recommendations? (Giokas 2000, 13)

Other questions pointed to the prospect of potentially less conflicting approaches, but these two in particular signal that a general support for "recognition and reconciliation" in principle on the part of the Manitoba government and Indigenous peoples would not necessarily entail shared understandings of the meaning or the means of achieving reconciliation on the part of all parties.

The work of the AJIC, through both the final report and the commissioned background

papers, demonstrates how the relationship between the conversation around relations between Indigenous and non-Indigenous peoples in Manitoba and the term reconciliation had shifted by the turn of the century. Ten years earlier the AJI had drawn attention to the incompatibilities between the punitive nature of the Canadian criminal law system and the centrality of reconciliation and healing aimed at restoring balance in relationships between individuals and in communities in Indigenous peoples' approaches to justice, contested the continuing imposition of the Canadian system on Indigenous people, and argued for a new approach rooted in self-determination that would see Indigenous peoples administer their own justice systems. At that point, reconciliation was employed in several different ways, but these uses were largely incidental, and the term's varying meanings went unacknowledged and uninterrogated. A decade later, in the wake of the church apologies, the RCAP, the SCC cases, and the Statement of Reconciliation, the AJIC's use of the term in revisiting the AJI recommendations and envisioning their implementation denotes a shift that reflects those intervening developments. It casts reconciliation in broader terms as not only an objective for Indigenous peoples' own justice systems but for Manitoban society as a whole, and rather than speaking of reconciliation in passing in the process, it establishes a policy conversation centred directly on the term. The background work detailed in discussion papers prepared for the AJIC, particularly those by Giokas (2000) and Lajeunesse (2001), show how, along with becoming a more intentionally named policy objective, reconciliation's many meanings and the competing interpretations, interests and approaches that could attach to it were also beginning to attract more scrutiny.

9.4 "The right words at the right time"? Aboriginal Relations and Reconciliation in BC

In the late 1990s, a regional conversation about reconciliation began to take off in BC. Two key

developments noted in earlier chapters set the foundation for this. The first was the 1973 *Calder* decision. While the Nisga'a appeal in the case was ultimately dismissed on procedural grounds (see sec. 5.2.2), the closeness of the decision and the SCC's recognition of the existence of Aboriginal title pushed the federal government to reconsider its position on land claims and treaty negotiations and establish the Comprehensive Land Claims process.[40] Under this policy, the Nisga'a began to negotiate their land claim with the federal government in 1976, with BC joining the negotiations a decade and a half later (Penikett 2006, 124). The BC Claims Task Force created in 1990 led to the establishment of the BC Treaty Commission (BCTC), the second foundational development, which cemented a new tripartite negotiations process in the province.[41] Though distinct developments, these two processes became intermingled in debates over treaties and reconciliation as the Nisga'a treaty was perceived – particularly by its opponents – as setting a precedent for subsequent treaties negotiated through the BCTC process.

Michael Harcourt's NDP government set out to build on the Task Force's work in trying to change the relationship between the province and Indigenous peoples. In his recollection, the government had "a focus on a new relationship, and implementing that new relationship through the treaty process, through interim measures, through improving Aboriginal education results, health issues, and addressing other issues," but he did not recall the use of reconciliation "as a lead phrase" during that time (M. Harcourt, research interview, January 2018). Harcourt's Minister of Aboriginal Affairs made some use of the term, as discussed briefly in chapter 6, but it was not until the conclusion of the Nisga'a treaty negotiations and the introduction of the

[40] Jane Dickson suggests that along with a perception of "increased judicial intervention," a "rising tide of Indigenous activism" and concerns that developments in the US might influence Indigenous activists in Canada also motivated this shift, as the standoff at Wounded Knee took place the same year that *Calder* was released (2018, 35).
[41] As it predated the BCTC, the Nisga'a treaty proceeded separately under the federal comprehensive claims policy.

Nisga'a Final Agreement (*NFA*) for ratification in the Legislative Assembly in 1998[42] that reconciliation truly made its way to centre stage in discussions of treaties in BC.

These debates were a fiercely partisan affair, as well as being marked by differences between Indigenous and non-Indigenous people and among Indigenous peoples (Blackburn 2021, 39-42; Penikett 2006, 126-28; Sanders 1999, 104-5; Tully 2001a, 11-15). They transcended the legislature to become the subject of a wider societal debate particularly around a referendum on treaty-making initiated by the Liberal government in 2002 (Penikett 2006, ch. 10; Wood and Rossiter 2005). These events also prompted scholarly research that began to critically engage with the political use of reconciliation in the context of relations between Indigenous and non-Indigenous peoples in BC (Blackburn 2005, 2007; Egan 2011, 2012; Tully 2001a; Wood and Rossiter 2005, 2011; Woolford 2004, 2005). The trajectory of reconciliation's rise to prominence in this context can be loosely grouped into three stages, which were shaped by the partisan dynamics of BC politics. The first stage, from 1996 to 2001, which included the conclusion of the negotiations, the ratification, and the implementation of the Nisga'a treaty, was marked by support for the treaty by Glen Clark's NDP government and strong objections by the Liberal opposition. The second stage began with the election of a Liberal government in 2001, following which the Liberals continued to mobilize on the basis of those objections to the Nisga'a treaty. After losing a court challenge to the treaty, they channelled their opposition into a referendum on the future of treaty negotiations under the BCTC process. The third stage, inaugurated by the 2003 Throne Speech, saw a marked shift in the Liberal government's orientation towards treaties and its relations with Indigenous peoples. Throughout all three stages, members of both parties used the term reconciliation in advancing their divergent positions and criticizing those of their opponents during their respective stints in government and

[42] On the negotiation and details of this treaty, see Blackburn (2021); Rose (2000); Sanders (1999).

in opposition. The ways they did so raise important questions about the limitations of drawing analytical distinctions between whether reconciliation is framed as consistency, relationship, or resignation and addressed at relations of opposition or oppression for distinguishing between the implications of different uses of the term, and underscore the need to contextualize these uses in relation to the particular worldviews and relations of power from which they emanate.

Before diving into an exploration of these three stages, a third key development that took place in the latter part of the 1990s bears mentioning. In addition to the negotiations that had been ongoing since the early 1990s through the new land claims processes, Indigenous peoples' rights and title were also being addressed through litigation. The legal developments stemming from these court cases had significant impacts on debates in the political sphere generally, and on the development of reconciliation discourses specifically. In 1997, the SCC issued its decision in the next major Aboriginal law case following those explored in chapter 7, *Delgamuukw v. B.C.* The case dealt with Gitxsan and Wet'suwet'en hereditary chiefs' claims to ownership of and jurisdiction over their territories. BC claimed that the Gitxsan and Wet'suwet'en had "no right or interest in and to the territory" and that if they did, their claim should be one of compensation from the federal government (*Delgamuukw v. B.C.* [1997], para. 7). Though subjecting it to internal limitations and justified infringements by federal and provincial governments (paras. 160-69), and ultimately ordering a new trial rather than making a specific finding in the Gitxsan-Wet'suwet'en case, the SCC found that "Aboriginal title is a right in land" that is "held communally" and "confers the right to use land for a variety of activities, not all of which need be aspects of practices, customs and traditions which are integral to the distinctive cultures of aboriginal societies" (paras. 111, 115).[43] It recognized that Aboriginal title was rooted not only in

[43] The internal limit identified by the SCC is that these uses must not be "irreconcilable with the nature of the attachment to the land which forms the basis of the particular group's aboriginal title" (para. 111). Illustrating the

the Royal Proclamation of 1763 but also in Indigenous peoples' prior occupation of the lands claimed by Canada (para. 114), and held that common law Aboriginal title is protected by s. 35(1) and that the province of BC had not had the jurisdiction to extinguish Aboriginal title in the lands in question prior to its constitutional protection in 1982 (paras. 133, 173-75). The decision in *Delgamuukw* relies significantly on *Van der Peet*, including by citing its uses of reconciliation (paras. 81, 141, 148, 161, 186). The SCC thus reiterated its vision of reconciliation as the central objective of s. 35 in delivering a verdict that carried significant implications for relations between BC and Indigenous peoples. Leading into its now famous concluding line – "Let us face it, we are all here to stay" – the decision pointedly stated that this reconciliation would be achieved "through negotiated settlements, with good faith and give and take on all sides, reinforced by the judgments of this Court" (para. 186), a remark which reverberated through subsequent treaty negotiations and debates in BC and beyond.[44]

9.4.1 "It's about reconciliation": The BC Legislative Assembly Debates the Nisga'a Treaty

The *NFA*, the first major focus of treaty negotiation debates in BC, explicitly referred to the SCC's position from *Delgamuukw* in its preamble:

> WHEREAS Canadian courts have stated that the reconciliation between the prior presence of aboriginal peoples and the assertion of sovereignty by the Crown is best achieved through negotiation and agreement, rather than through litigation or conflict;

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principles he lays out for justifying infringement by governments, Chief Justice Lamer writes: "In the wake of *Gladstone*, the range of legislative objectives that can justify the infringement of aboriginal title is fairly broad. Most of these objectives can be traced to the reconciliation of the prior occupation of North America by aboriginal peoples with the assertion of Crown sovereignty, which entails the recognition that 'distinctive aboriginal societies exist within, and are a part of, a broader social, political and economic community' […]. In my opinion, the development of agriculture, forestry, mining, and hydroelectric power, the general economic development of the interior of British Columbia, protection of the environment or endangered species, the building of infrastructure and the settlement of foreign populations to support those aims, are the kinds of objectives that are consistent with this purpose and, in principle, can justify the infringement of aboriginal title" (para. 165; emphasis in original).

[44] See e.g., the preambles to the *Maa-nulth First Nations Final Agreement* (2009), the *Tla'amin Final Agreement* (2014), the *Tsawwassen First Nation Final Agreement* (2007), and the *Yale First Nation Final Agreement* (2012).

> WHEREAS the Parties intend that this Agreement will result in this reconciliation and establish a new relationship among them […] (1999, 1)

Heated debates took place in the BC legislature regarding the treaty. The NDP government touted it as a major accomplishment delivering long delayed justice, while the Liberal opposition portrayed it as constitutionalizing segregation and inequality without consulting the citizens of BC. In the debates, several MLAs invoked *Delgamuukw* along with speaking of reconciliation, with one member describing it as "the court case that has changed the nature of treaty-making" and as calling for a "reconciliation procedure" (BC 1998a, 6730). In moving second reading of the *Nisga'a Final Agreement Act*, Minister of Aboriginal Affairs Dale Lovick stated:

> The key principle of the bill before us today can in fact be summarized in one word. The word is reconciliation, and that's why the first statement in the preamble of the bill talks about "reconciliation between the prior presence of aboriginal peoples and the assertion of sovereignty by the Crown." (BC 1998f, 10818)

Lovick explained that reconciliation was necessary due to BC's failure to make treaties despite the terms laid out in the Royal Proclamation of 1763. Quoting from *Delgamuukw*, he presented the Nisga'a treaty as producing this reconciliation (10818). Lovick stressed three main reasons for the government to sign treaties with Indigenous peoples: "The first is that our laws and the courts tell us that we must negotiate; second, there are compelling economic reasons to do so; and third, […] because it's the right thing to do" (10819). In elaborating on the second reason, he pointed to *Delgamuukw*'s recognition of Aboriginal title as an Aboriginal right as meaning "that we must resolve land claims in this province. […] If we don't, clearly we could be in court, and we could have the end of any significant activity in this province" (10819).[45]

[45] Provincial and federal representatives cited removing uncertainty inhibiting resource development as a primary motivation for negotiating the treaty, with one of the former stating that outstanding issues about Indigenous rights and title were "causing grief in the primary resource sector in what we can do. And we just need to get on with developing British Columbia. We can't with this unresolved Aboriginal rights and title issue out there" (quoted in Blackburn 2019, 429). Carole Blackburn observes that to some degree, Indigenous peoples shared this objective, as they did not want to have to dedicate all their time and resources to litigation and civil disobedience either, but the kind of certainty desired differed because governments' "language around certainty also reveals a desire to legally

It was mainly the NDP linking reconciliation and *Delgamuukw* in their speeches on the *NFA* at this juncture, though at one point Liberal MLA George Abbott mirrored the SCC's framing and echoed *Delgamuukw*'s emphasis on reconciliation through negotiation over litigation (the object of which he presented as "aboriginal rights with the sovereignty of the Crown and […] with the rights which we all enjoy in common") (BC 1998g, 10861). Employing the Liberals' oft-repeated phrase, which remained their operative framing upon forming government, Abbott described the path to this reconciliation as being through "workable, affordable treaties […] which provide certainty, finality and equality" (10861), and then argued that the *NFA* failed on the latter criterion and was an "attempt to resolve one injustice by creating another" (10864). Meanwhile, NDP MLAs drew on *Delgamuukw*'s discussion of reconciliation to rebuke the opposition's stance on the treaty, suggesting it implied they preferred litigation or confrontation, both of which would yield worse outcomes for the province (1998l, 11034; 1999e, 12005), and that it was rooted in attitudes that conflicted with the SCC's position on Indigenous peoples' rights in *Delgamuukw* and the Crown's fiduciary obligations (1999a, 11059).

Both parties paired claims that their stances on the treaty were informed by *Delgamuukw* with broader statements about being in favour of reconciliation, while each advanced different visions for political relationships in the province. It was thus not an attachment to reconciliation or the lack thereof that distinguished BC political parties, but rather varying visions of what a commitment to reconciliation entailed.[46] Some features remained consistent, but these visions also shifted over time, particularly on the Liberal side. During this first stage, Liberal leader

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contain Aboriginal rights" in favour of "securing the kind of certainty that resource extraction industries want" rather than one supporting Indigenous peoples' visions of self-determination and treaty relations (2019, 430). See Egan (2013), Wood and Rossiter (2005), and Woolford (2005, ch. 7) on how Western conceptions of property and neoliberal global economic relations inform Canadian governments' and the private sector's approaches to certainty.

[46] Reconciliation also appeared in at least one joint venture. As Ian Waddell recalled during the debates on the *NFA*, in 1996 the Select Standing Committee on Aboriginal Affairs "put out a report […] 'Towards Reconciliation' was the title we chose. All the members of the committee – opposition and government – chose 'Towards Reconciliation: Nisga'a Agreement-in-Principle and British Columbia Treaty Process'" (BC 1999e, 12005).

Gordon Campbell paired favouring reconciliation with staunch opposition to the Nisga'a treaty, which he framed as "continu[ing] the pattern of paternalism and denial that has been the central hallmark of our country's sad relations with aboriginal peoples" because it was not being voted on by all British Columbians (BC 1998e, 10811). As he saw it, the government and the opposition "share a goal, but we differ on the path to achieve it" (10811). Campbell accused the government for several reasons of taking the wrong approach, arguing that it ought to have presented the entire agreement to the Treaty Negotiation Advisory Committee prior to announcing the final copy and that "the road to reconciliation does not start with a broken promise" (1998c, 10102). He also charged that it had failed to include an apology in the treaty (1998h, 10917-18), and that its approach had been divisive and would yield the opposite of the intended reconciliatory effect – "the course we are embarking upon in this template and the way we came to it is not the road to reconciliation" – because "all the people of this province" had not been included (1998h, 10914; 1999b, 11083; 1999e, 11999). In his view, recognizing distinct rights for Indigenous people "does not foster reconciliation; unfortunately, it fosters resentment," and he argued that the treaty would "constitutionalize inequality," "enhance and increase cultural friction," and "create more dependency, new economic uncertainty and not a single job for anyone save more bureaucrats and lawyers" (10919). Campbell stated that "the way to build that reconciliation is to make sure that the treaty, as a document, reflects the fundamental principles that our society, our community, has been built upon in the past" and that he believed this was what British Columbians wanted and would produce "treaties that work" (1998c, 10104). He suggested that "all members of this House share a common goal: we want to forge a new relationship with first nations that accommodates their rights and advances their interests within the context of our common values and the constitution. We want to blaze a new trail that will

reconcile aboriginal rights with the sovereignty of the Crown" (1998h, 10914). However, he rejected the path laid out by in the *NFA* and saw it as a bad precedent for future treaties (10919). He argued that treaties needed to "bear the stress test of direct democracy" and that with the *NFA* "[t]he vision we hope to achieve for reconciliation will never be fully realized – all because we failed to trust the people of B.C., because we failed to trust in each other" (10919).[47]

Campbell was not alone in using the term reconciliation in opposing the treaty, nor was this opposition restricted to the legislature. For instance, in December 1999, a non-profit society was formed to oppose the treaty that called itself CANFREE – Canadians for Reconciliation, Equality and Equity. The group has been described as a "major backroom player among anti-treaty forces" (Rose 2000, 194).[48] Among its activities, CANFREE arranged for former SCC justice Willard Estey to testify opposing the treaty as unconstitutional at the Senate Standing Committee on Aboriginal Peoples (de Costa 2002b, 313; McNulty 2000; Rose 2000, 194-96). After the treaty was ratified despite the organized opposition of the Liberals, groups like CANFREE, and prominent media figures,[49] Campbell and fellow Liberal MLAs Michael de Jong and Geoffrey Plant would later seek to challenge the *NFA* in court, on the grounds that it was inconsistent with ss. 91 and 92 of the *Constitution Act, 1867*, "interfere[d] with the concept of royal assent," and violated the rights of non-Nisga'a Canadian citizens on Nisga'a territory

[47] Campbell's caucus colleagues also sometimes used reconciliation in advancing similar points. For example, Liberal MLA and future premier Christy Clark prefaced advocating for a referendum on treaty-making principles rather than a ratification vote on the *NFA* by saying that her "need to find reconciliation is sincere" (BC 1998j, 10995), and argued a referendum was necessary "to build[ing] reconciliation and build[ing] new relationships" (10996). In varying ways, Michael de Jong and Geoffrey Plant challenged the notion of treaties necessarily constituting the path to reconciliation (1999a, 11056-57; 1999c, 11134). For other examples that refer to reconciliation in arguments against the Nisga'a treaty, see e.g., BC (1998i, 10974; 1998k, 11010).

[48] Other than its leader John Weston, CANFREE's membership was largely kept under wraps, though *The Province* reported on links to other vocal opponents of the treaty with affiliations to the BC Liberals, the Reform Party, the Canadian Taxpayers Federation, and the Fraser Institute, among others (McNulty 2000), and Weston stated that the group had the support of multiple retired high court judges (Fong 2000).

[49] On the latter, see e.g., Rose (2000, 183-86).

(*Campbell et al v. AG BC/AG Cda & Nisga'a Nation et al* [2000], 7).[50]

While the Liberals presented their opposition to the treaty in terms of it not being the way to achieve reconciliation, their opponents argued that the Liberals' resistance to it was hindering reconciliation. NDP MLA Tim Stevenson declared that the "court challenge is only one of any number of ways the opposition has been using to thwart the dream of reconciliation, self-determination and freedom" (BC 1998i, 10975). He accused the Liberals of "verbal acrobatics" whereby they used "sweet-sounding and sugar-coated" language in the legislature but "a whole different set of words" outside of it while their "actions have all been one great smokescreen to see the treaty fail" (10975). Gordon Wilson, who would later join the NDP government, lambasted Campbell's suggestion that treaties should be rooted in the principles and values on which BC and Canada had been built in the past, stressing that those had underpinned the oppression of Indigenous peoples in the first place and suggesting that the treaties rather needed to constitute reconciliation of such "past grievances" (BC 1998c, 10105). Michael Farnworth described the Nisga'a treaty as bringing "reconciliation to 125 years of injustice" and questioned the Liberal push for a referendum on treaty-making principles, suggesting it amounted to wanting a referendum on reconciliation (2001a, 17373). Premier Glen Clark questioned the sincerity of the Liberals' claim to be in favour of treaties and reconciliation in "com[ing] in here at this eleventh hour and say[ing] that you're in favour of treaty-making but not this treaty," suggesting the opposition was "pretend[ing] to be liberal, in the sense of wanting reconciliation and justice, while hiding behind elements of this treaty that you think are unacceptable" (1999b, 11076-77). In his view, this ultimately amounted to being "opposed to this kind of treaty-making

[50] For more on this lawsuit, see Blackburn (2021, 32-39). This was one of several challenging the *NFA*. Another saw CANFREE's Weston provide legal representation to some Nisga'a citizens who opposed it due to concerns about territories that had not received protection under the treaty (Blackburn 2021, 39-40; de Costa 2002b, 313; Fong 2000). A judge found the plaintiffs' and their lawyers' aims to be incongruous; according to Blackburn, the lawyers' opposition was more in line with the BC Liberals' reasons than the concerns over excluded lands (2021, 40-42).

process" and thus did not actually constitute support for treaty-making (11077; see also 1998d, 10367; 1998l, 11033). Clark later framed the choice that voters would face between his party and the opposition in the next election in these terms: "we believe in reconciliation and justice for aboriginal people, and you're opposed to the treaty process" (1999d, 11448).

The NDP's own uses of the term blended the consistency version and more relational forms of reconciliation as repair and healing, couched in a mixture of legal, economic, and moral rationales, as in Lovick's comments above. While the NDP did not institutionalize the term in the way that the Liberal government later did, it set the foundation for it becoming a central feature of the province's relations with Indigenous peoples. In 1998, cabinet minister Lois Boone stated, "It is part of our aboriginal strategy to do some reconciliation" (1998b, 10046); two years later Bill Goodacre spoke of "the three Rs in dealing with aboriginal people": "recognition, respect and reconciliation, with special emphasis on our need to reconcile the rights of aboriginal people with the sovereignty of the Crown" (2000, 15496). The premier presented the treaty as resolving part of "the great unfinished business of British Columbia" and often mentioned reconciliation in speeches advocating its adoption (1998g, 10858; 1998l, 11038). In doing so, he used the term in different ways: sometimes as a destination or threshold to reach (1998d, 10367; 1998l, 11032; 1999b, 11076), sometimes as a qualitative description ("What kind of province do we want for our children and for our future? Is it a place of conflict and confrontation? Is it a place, instead, of reconciliation?" [11039]), sometimes as a pragmatic exercise of rendering consistency between jurisprudence on Aboriginal rights and title, "the reality of economic development and provincial Crown responsibility," and the treaty process (1998d, 10366-67).

In the first of these types, Clark cast reconciliation, to be attained via the treaty, as an aspiration that would benefit the province and make it "stan[d] for all the world as a symbol of

justice, peace and reconciliation" (1998l, 11039):

> the settlement of treaties is very much about the future. It's about what kind of province we want […]. It's about coming to terms with the past so that we can get on with building our future. It's about reconciliation, about bringing British Columbians together so we can move forward into the new century of prosperity and social harmony, free from the divisions that for so long have held us back. This treaty is the first step in a long journey, the first step towards reconciliation and a brighter future for aboriginal people – not just for the Nisga'a but for all aboriginal people in British Columbia. (11032)

In this sense, reconciliation would represent a state of healing wherein the past had been overcome. Paired with other elements of Clark's framing of the treaty, the implication is that this reconciliation would see the Nisga'a liberated from adverse socioeconomic circumstances linked to the historical injustices perpetrated against them, but would also see BC liberated from the uncertainties of ownership and jurisdiction keeping it tied up in negotiations and litigation, and thus free to pursue resource development ventures (11034, 11038). The moral dimensions of reconciliation intermingled with practical activity, with treaty-making described as "be[ing] about reconciliation and about compromise" and making compromises being presented as the activity of working towards reconciliation (1998g, 10858; 1998l, 11038; 1999b, 11076-77). The emphasis on compromises calls up the consistency sense's notion of making adjustments to achieve a balance between the parties' negotiating positions. This conception also appears in party talking points repeated nearly verbatim by several NDP MLAs, including Clark, highlighting various factors needing to be made consistent: "Just as we have a legal and moral duty to reconcile aboriginal rights to land with today's modern realities, so too must we reconcile existing laws with the modern reality of aboriginal self-government. That's what the treaty does. It strikes a fair and workable balance" (1998i, 10962, 10965; 1998j, 10991; 1998l, 11036). The exercise of rendering consistency via the treaty was also conceived by some as balancing a moral deficit. As Rick Kasper put it, the creation of BC and the repressive policies towards Indigenous

peoples it involved "was not a proud time in our province – for that matter, in our country. This treaty is a way to reconcile that moral issue and the responsibility" (1998g, 10870). The consistency element in NDP MLAs' use of reconciliation was clearly informed by the SCC's conception, as evidenced by the frequent raising of the spectre of litigation and references to *Delgamuukw* and the courts' admonition of the parties to negotiate. The moral repair-oriented element seems to have been at least partly informed by religious and spiritual perspectives on reconciliation. In the latter half of 1998, faith leaders from throughout BC issued a collective statement of support for the Nisga'a treaty. This statement was referenced or read several times by MLAs in the Legislative Assembly (1998f, 10825; 1998g, 10875; 1998i, 10970; 1998l, 11034),[51] including by Premier Clark (1998k, 11002). The statement began:

> We, the undersigned, believe that it is common to our religious and spiritual traditions that:
> there is a universal destiny of the goods of the earth, where land is a gift to us all, not for us to exploit but to care for. We know from our experience of aboriginal spirituality that aboriginal people see themselves as inseparable from the soil from which they came and that they consider themselves as part of the land that has been entrusted to them to care for, to use and to share;
> there must be reconciliation and respect between neighbours;
> where there has been injustice and inequity, there must be justice and reconciliation. (11002)

It then endorsed negotiation as the best path to reconciliation and advocated for ratifying the *NFA* (11002). Clark invoked the statement on more than one occasion, emphasizing that there were both ethical and legal reasons to pursue the treaty (1998l, 11034). Reiterating the need for "justice and reconciliation" to replace "injustice and inequality," he also suggested that the treaty would be a better means of protecting the rights of non-Indigenous British Columbians in the resolution of conflicts over land than litigation because the courts would not necessarily protect their interests (11034). In his view, BC "simply can't afford" the growing economic costs and

[51] Not all of the MLAs who referred to the statement were in favour of ratifying the treaty, or felt that spiritual principles supported doing so. See Liberal MLA Val Anderson's comments on the subject in BC (1998g, 10875).

social tensions leaving the matter to litigation would produce (11034).

The mix of uses of reconciliation in the legislative debates around the *NFA* thus blend the consistency form and the relationship form to address a variety of aspects relating to the matter of treaty negotiations, including BC's balance sheet, the compatibility of Indigenous and non-Indigenous peoples' rights and interests, and the moral debt of unaddressed historical injustices. Carole Blackburn has incisively demonstrated how the blending of these forms of reconciliation discourse in relation to the treaty serves a dual function of "produc[ing] political legitimation by emphasizing modernist themes and a modern temporality, involving the progressive movement away from the past into an improved future built on enlightenment values" and of "mak[ing] [the Nisga'a's] rights fit within the framework of the contemporary Canadian state" that had been thus legitimized (2007, 622, 629). Blackburn stresses the asymmetry of power relations that characterize this dual reconciliation as a result of it failing to reckon with "the exclusionary tendency at the heart of modernity's universalizing pretensions" (622), "the cultural specificity of Canadian institutions" (630), and the way that the achievement of consistency between Indigenous peoples' rights and Crown sovereignty comes at the cost of "a greater burden of accommodation" on the part of Indigenous peoples (631). While the debates around the *NFA* in BC were marked by tensions between the Liberals and the NDP who advocated opposing positions on ratification, members of both parties invoked reconciliation in support of their views and drew on narratives about economic imperatives and moral repair. In 1999, the treaty passed and was sent to the federal Parliament for ratification. This provided another occasion for conceptions of reconciliation to travel as many of the people who negotiated it and participated in the provincial ratification debates spoke to the Commons committee studying the bill (see Blackburn 2007, 626, 628, 632-33; for uses of reconciliation, see e.g., House of Commons

1999b, 9:20-10:05; 1999c, 16:50-55; 1999d, 13:21, 14:50, 15:05). In BC, the focus of debates about treaties and reconciliation then shifted as the Liberals' opposition to the *NFA* moved to the courts and legislative debates turned to the treaties being negotiated through the BCTC process.

9.4.2 "[T]he platform of certainty and finality and equality that's needed to establish a new era of reconciliation": Reconciliation and the BC Liberals' Treaty Referendum

After the May 2001 BC election, the Liberals' resistance to the *NFA* moved from opposition into government. With this shift came a change in strategy. After losing their challenge to the treaty's constitutionality in *Campbell et al v. AG BC/AG Cda*,[52] Campbell and Plant, now Premier and Attorney General and Minister Responsible for Treaty Negotiation respectively, decided to drop their appeal of the decision on the grounds that "the provincial government could not sue itself" (Penikett 2006, 129; Wood and Rossiter 2005, 359), and instead set about establishing a provincial referendum on treaty-making. The referendum was held in the spring of 2002 and was strongly contested with regards to both concept and content (Wood and Rossiter 2005, 360).[53]

Reconciliation appeared once in the Liberals' first full Throne Speech,[54] which declared that "there's not an elected person […] who doesn't wish to forge a relationship of reconciliation with first nations through workable, affordable treaties which provide certainty, equality and finality" (BC 2001b, 40). This statement, along with the announcement of a referendum on the principles that would inform the government's position in treaty negotiations to be held within a year (44), echoed the Liberals' refrain on treaties and reconciliation while in opposition, now

[52] The Supreme Court of BC drew significantly on the SCC's earlier uses of reconciliation in deciding against Campbell et al., quoting passages including the term from *Sparrow*, *Van der Peet*, *Delgamuukw*, and *Reference Re Secession of Quebec*, and particularly centring the notion of "s. 35 as a 'framework' for the reconciliation of the prior existence of aboriginal peoples with the sovereignty of Canada" (2000, 10, 11, 31, 50, 69, 70, 71).
[53] On the referendum, see Blackburn (2021, 33-39); Penikett (2006, 128-36); Wood and Rossiter (2005, 2011).
[54] The government's broader legislative priorities were not announced until the opening of the second session as the brief first session of BC's 37th Parliament was dedicated entirely to passing back-to-work legislation (Matas 2001).

backed with the political power that accompanied winning an overwhelming majority of the seats in the legislature. The phrase's key terms, along with other themes voiced earlier by Campbell and others such as the desirability of the government issuing an expression of regret, appeared alongside uses of reconciliation throughout the second and third sessions of the Campbell government, most of which appeared in speeches by Plant.[55]

The uses of the term in the legislative debates in 2001 and 2002 rhetorically bear out the statement from the Throne Speech, and thus continue the trend from the period under the previous government, in that all of the MLAs using the term favoured it as an objective. The division between opposing parties was not over whether reconciliation should be pursued, but rather whether doing so was compatible with holding a referendum on treaty negotiations. Plant largely used the term in a fairly general fashion to speak about "the platform of certainty and finality and equality that's needed to establish a new era of reconciliation, if you will, among aboriginal and non-aboriginal British Columbians" that he argued his government's "workable," "affordable," and "fair" approach to treaty negotiations would bring about (BC 2001d, 422; see also 2001c, 257; 2001f, 816), For him, holding the referendum was a necessary and desirable component of pursuing reconciliation. While others felt it would have the opposite effect (BC 2004d, 10733; Penikett 2006, 129-36; Wood and Rossiter 2005, 353; 2011, 414-15), Plant cast the referendum as "a constructive, bridge-building, positive dialogue for constructive, bridge-building, positive change" (BC 2001f, 815). He argued that the treaty process had been stagnating due to the lack of direct participation of the province's citizens and the government needed to engage them to derive a clearer provincial mandate for negotiations (815-16). The referendum exercise would see British Columbians sitting down "to have a conversation with their family members about their vision for reconciliation and respect with the province's

[55] For the uses by other Liberals, see BC (2002a, 1787; 2002b, 1295).

aboriginal people" and their participation would "help reinvigorate a treaty process that's urgently needed in the province of British Columbia" (2002d, 2353). The Aboriginal Affairs committee was charged with studying and making recommendations regarding the referendum questions (2001f, 816). The government also accepted its recommendations "that a process of reconciliation, including an expression of regret by the government of British Columbia regarding the experiences of aboriginal people, be undertaken," with "treaties perhaps including specific language addressing reconciliation" and the expression of regret reflecting that "this is a process of community-based reconciliation and is not meant to attribute blame or guilt to individuals," and "that this reconciliation process will need to be undertaken in consultation with first nations" (2002c, 1877). Plant stated in response that "reconciliation, including an expression of regret by government, is an issue that the government of British Columbia wishes to introduce at the negotiation table because we believe it is significant to the new relationship between first nations and British Columbia" (1877-78). Detailing the eight principles that would be listed on the referendum ballot for British Columbians' approbation,[56] Plant declared the government to be in favour of all of them, and stated that public support would provide "a renewed and clearer sense of purpose" for provincial negotiators, thereby yielding more effective negotiations and "leading to agreements that will enjoy public support and build a strong foundation for enduring relationships built upon mutual recognition, reconciliation and respect" (1878). The language this position was cast in further demonstrates the malleable and contested nature of reconciliation

[56] These were: 1) "Private property should not be expropriated for treaty settlements"; 2) "The terms and conditions of leases and licences should be respected; fair compensation for unavoidable disruption of commercial interests should be ensured"; 3) "Hunting, fishing and recreational opportunities on Crown land should be ensured for all British Columbians"; 4) "Parks and protected areas should be maintained for the use and benefit of all British Columbians"; 5) "Province-wide standards of resource management and environmental protection should continue to apply"; 6) "Aboriginal self-government should have the characteristics of local government, with powers delegated from Canada and British Columbia"; 7) "Treaties should include mechanisms for harmonizing land use planning between Aboriginal governments and neighbouring local governments"; and 8) "The existing tax exemptions for Aboriginal people should be phased out" (Elections BC 2002, 2).

and its companion concepts, as mutual recognition, reconciliation, and respect were also principles that were invoked by the RCAP (1995b, 66) and, as seen in section 9.2 above, by Indigenous leaders and their supporters who advocated for transforming the treaty negotiations process in a manner that expressly resisted the approach of, among other things, conceiving of Indigenous peoples' governments as local governments with delegated powers. This was also on display in a statement by Jenny Kwan, one of the two opposition MLAs following the 2001 election, who argued that the Liberal government's efforts risked undermining reconciliation:

> I do believe that every British Columbian wants to ensure that there is reconciliation and that we move forward on the treaty process and that we build British Columbia from a strength perspective. But on the question around the referendum, I fear that what we'll do is divide the community and divide the aboriginal people versus the rest of the community. That process, I think, will hurt British Columbia, will hurt the progress that we've made to date and hurt the ultimate goal of reconciliation in this aspect. (BC 2001e, 748)

In Tully's view, the distinction between the conceptions of reconciliation in play here can at least in part be understood as a difference between noun and verb forms of the term. He suggests that the contrasting positions are informed by, on the one hand, an understanding of reconciliation as "a 'full and final settlement' of outstanding Aboriginal rights" whereby "the treaty process is something that is reconciled by bringing it to an end as quickly and effectively as possible" with an agreement that "exhaustively sets out section 35 rights," and on the other, an understanding of reconciliation as "an ongoing activity, a continuous process of cross-cultural dialogue over time, between the partners over matters of their shared concern" wherein "the treaty process never ends" because the activity of the relationship is itself the goal (Tully 2001a, 13-14).

At this juncture, the Liberal government's uses of reconciliation remained generally of the same form and stature as when the party was in opposition; the difference was that it could now undertake the initiatives it had associated with its reconciliation discourses. This began to change during the second half of the 37th Parliament as reconciliation increasingly became a key

concept for the Liberals, who began to institutionalize it more than any other Canadian government yet had. These developments, along with the correlated adoption of the language of "transformative change," underscore how contested terms can be employed in different ways for diverging ends and how qualifying adjectives may be insufficient for distinguishing between the different kinds of political work a term can be performing.

9.4.3 "From the words, we're heading in the same direction": Promising Transformative Change and the Institutionalization of Reconciliation in BC

Campbell's government increased its emphasis on reconciliation from 2003 onwards, with the term becoming "clearly identified as a key goal of government" (Egan 2011, 137). This has been presented as a significant turnaround on Campbell's part as it was also accompanied by a change in approach regarding treaty negotiations and the history of colonial injustices in BC (Penikett 2006, 254-57; Vernon 2010, 283-84; Wood and Rossiter 2011, 415, 420), though as shown above, it was the shift regarding the latter rather than his use of reconciliation that was new. Patricia Wood and David Rossiter observe that the 2002 referendum questions were presented to the public absent any context regarding the history of dispossession in BC and the transfiguration of Indigenous peoples' territories into "the private property, Crown land and recreational spaces that the questions […] make reference to" (2005, 361), but that then in the wake of a referendum result they took to affirm their initial approach,[57] the Liberals shifted to "openly acknowledging the existence of injustice and allotting a large portion of the responsibility to the provincial government" (2011, 415). Wood and Rossiter describe the earlier approach as relying on a

[57] In a speech delivered following the release of the results, Campbell declared that the result reflected "a resounding vote of confidence in […] the treaty-making process" and the government's principles, and demonstrated that British Columbians "are ready to forge a new era of reconciliation with First Nations measured not in words or good intentions, but in positive actions and outcomes" (Campbell 2002, 2, 1).

future-oriented rhetoric that performs a sort of historical erasure that discursively produces the playing field of treaty negotiations as already level in order to set the scene for discussions geared at establishing certainty and not concerned with redress (2005, 362). The shift to greater acknowledgement of the past does not necessarily preclude maintaining a specific vision with respect to the nature of and desired outcomes for treaty negotiations, however. The kinds of statements that MLAs made about reconciliation in the wake of the 2003 Throne Speech continue to align with Wood and Rossiter's assessment that "the vision of Aboriginal citizenship harboured by BC's Liberal Government […] turns squarely on an economic logic that identifies participation in regimes of capitalist accumulation as the ultimate sign of equality" (364).

The 2003 Throne Speech centred on the theme "opening up" and contained a section on "Opening Up Recognition and Reconciliation with First Nations" (BC 2003a, 15). It declared that "[w]e must move beyond the old approaches and flawed policies of the past" and expressed regret for "the mistakes that were made by governments of every political stripe over the course of our province's history" (15). The Speech then detailed various programs and funding commitments geared at "provid[ing] a new level of economic opportunity for First Nations communities and people" (15, 17). These included measures to encourage participation in various resource industries, tourism, parks and recreation, and the province's bid to host the Olympic Games, as well as funding for education and childcare (17-18). This was paired with commitments to pursue resolution at treaty tables and to 'earn' the future "through reconciliation and mutual respect" by concluding treaties and taking steps to "materially improve First Nations' quality of life" such as offering revenue-sharing agreements in the forestry industry (19). The formulation of the expression of regret reflected the Aboriginal Affairs Committee's report prior to the referendum and Campbell's earlier critiques of the *NFA* for not incorporating an apology.

Plant traced it back to these and earlier discussions around the Nisga'a agreement-in-principle in 1996 about treaties including "an apology or an expression of regret offered by the government of British Columbia," suggesting that "the throne speech clearly represents a significant expansion of the commitment of government to try to pursue these ideas" (2003i, 6164).

The acknowledgement of past mistakes in the Throne Speech was variously described by the Liberals with different combinations of the terms "reconciliation," "regret," "recognition," and "respect" (BC 2003e, 4820; 2003g, 4942; 2003h, 5099; 2004e, 10976).[58] Many MLAs' speeches in reply to the Throne Speech and thereafter celebrated this gesture and the general focus on reconciliation (2003b, 4716; 2003c, 4755; 2003d, 4766, 4771, 4786; 2003e, 4820; 2003f, 4855-56; 2003i, 6164), emphasizing their sincerity and heralding them as a "significant step in reconciliation" and "one of the most important elements" of the Speech (2003b, 4734, 4737; 2003d, 4764, 4782; 2003f, 4852). As scholars have highlighted with regards to both the BC and the federal governments' policy orientation towards their relationships with Indigenous peoples during this period (Blackburn 2007; Tully 2001a; Wood and Rossiter 2005; Woolford 2005), the references to reconciliation in these speeches were often linked to key themes of economic integration and moving on from the past. While these statements contrast with Wood and Rossiter's description of the Liberals' previous orientation towards historical injustices, the acknowledgements of past wrongs accompanying uses of reconciliation were also presented in future-oriented terms, as MLAs discussed the need to "gain a better understanding of that which may allow us to move on from the past injustices" and argued that "[w]e must live for today and plan for a successful future" (2003b, 4737), "admi[t] our failures, expres[s] our regrets and buil[d] a legacy for the future, not one for the past" (2003d, 4771), and "close the doors of the

[58] For analysis of this statement as an apology for historical injustices as it relates to the broader culture of memory politics in BC, as well as other initiatives of the Campbell government, see James (2009, 378-81).

tainted past and move ahead in true partnership" (2003h, 5099). This successful future and true partnership were recurrently presented in economic terms, as the term reconciliation was often paired with the phrase "economic participation," or its uses led into statements about economic measures the government was introducing or examples of joint development projects being undertaken with Indigenous peoples (2004a, 8610; 2004b, 8758). Liberal MLAs expressed optimism that joint business ventures meant "the economy will soon be booming" and indicated that "the key to the new relationship" was "provid[ing] opportunities for first nations to be constructive, full participants in the economic life of British Columbia" (2003d, 4766; 2003i, 6154; see also 2003e, 4829). Such language reflected the party having "shifted from defending provincial sovereignty against Aboriginal claims to defending treaties as good for business" (Penikett 2006, 254; see also Vernon 2010, 282-83). Plant explained in 2004 that outstanding treaty issues had "held back our development as a province economically" and the treaty process would solve this problem: "through the treaty process, we will achieve agreements that will build recognition, will build reconciliation and will build arrangements founded on trust and mutual respect. As we construct arrangements through treaty negotiations, we will build the certainty that is needed to make progress in developing the lands and resources of the province" (BC 2004c, 10585-86). One of his colleagues spoke supportively of recognizing the cultural individuality of each Indigenous nation, as this would enable "mov[ing] forward together secure in our uniqueness of spirit but commonality of purpose" (2003b, 4716); the implication of such a statement when read along with the party's uses of reconciliation is one of a common economic endeavour whereby cultural differences do not inhibit development projects.

On a couple of occasions, Plant offered more detailed qualifications of the meaning and nature of reconciliation. He framed the resolution of treaty conflicts as also comprising a moral

dimension (2004c, 10585-86), and cast reconciliation in a relational sense, in Walters's terms, by explicitly explaining that reconciliation could not be imposed and that it required both parties to agree that they were reconciling (2003i, 6154, 6164-65). Previously, he had also implied there was no push towards reconciliation as resignation in the treaty process, stating that "no one is bound to agree to that which they cannot accept," and that Indigenous peoples could always choose to pursue their rights via litigation rather than negotiation, though at the same time he also made the pitfalls of that option clear by pointing to *Delgamuukw* as an example of litigation being "expensive, adversarial and time-consuming" and producing a result that "is neither certain, nor does it achieve reconciliation" (2002c, 1877). While consistency notions appeared occasionally (see e.g., 2003j, 7509), the predominant use here was reconciliation as relationship, variously cast in terms of repairing historical wrongs or of creating new partnerships. This relational conception was clearly emphasized in the way the Liberals paired reconciliation with their emphasis on building a "new relationship," a phrase they already often used during their first term (see e.g., 2003e, 4829; 2003g, 4942; 2003i, 6153-54), but that only grew in prominence with the developments leading up to and following the May 2005 election, as did reconciliation.

In March 2005, the leaders of three major political organizations representing Indigenous peoples in BC – the FNS, UBCIC, and BC AFN – committed to collaborate through the FNLC to advance their shared interests in negotiations with Canada and BC (BC AFN, FNS and UBCIC 2005), and entered into discussions with BC on terms for engagement through what now became the proper noun New Relationship (BC n.d., *2*). Descriptions of the New Relationship reflect both reconciliation as relationship and consistency. A government brochure explains:

> Past relationships between Aboriginal people and the provincial government have been marked by confrontation, litigation and failure to reconcile our differences. Aboriginal people, government, industry and communities across British Columbia are now working together to establish positive relations that will define our collective future. […] Time and

> again, the courts have instructed government and First Nations to reconcile these matters through negotiation, not litigation. It has become clear that reconciliation involves building a positive, enduring relationship built on trust and mutual respect. (BC n.d.*, 1*)

The brochure then presents treaty negotiations as "a full and formal expression of reconciliation" (*2*). The courts' influence in this conception is directly invoked in the Statement of Vision section of *The New Relationship*, an "unsigned five-page accord [that] proposes replacing conflict and litigation with a new relationship based on sharing resource revenues, shared provincial-Aboriginal decision making, and provincial recognition of Aboriginal rights and title" and "contemplates measures to address Aboriginal deficits in health, education, and economic development" (Penikett 2006, 254). This section begins by evoking the SCC's reconciliation jurisprudence: "We are all here to stay. We agree to a new government-to-government relationship based on respect, recognition and accommodation of aboriginal title and rights. Our shared vision includes respect for our respective laws and responsibilities. Through this new relationship, we commit to reconciliation of Aboriginal and Crown titles and jurisdictions" (BC, BC AFN, FNS and UBCIC 2005).[59] The implication is that reconciliation as the creation of a new relationship requires reconciliation in the form of rendering consistency between competing claims to title and jurisdiction. Two other major developments followed the creation of the *New Relationship* accord. First, after winning the provincial election in May 2005, the Campbell government created a Ministry of Aboriginal Relations and Reconciliation (MARR), thereby enshrining reconciliation in the title of a government department. Later that year, Campbell "took a leadership role in the drafting of the Kelowna Accord," the negotiation of which was hosted in BC, and, the same day that Accord was signed, also signed a tripartite agreement with the FNLC and the Government of Canada entitled the *Transformative Change Accord* (Wood

[59] The opening line most directly invokes *Delgamuukw*, but the passage is likely also informed by the recent *Haida Nation* decision that emphasized treaties as a mode of reconciling sovereignties (2004, 524). The *New Relationship* brochure mentions both *Haida Nation* and *Taku River* in relation to the matter of consultation (BC n.d., *1*).

and Rossiter 2011, 416; BC, Canada and FNLC 2005). This document was explicitly positioned as riding in the wake of the political accord signed by Canada and the AFN in May 2005, the *New Relationship* accord, and the Kelowna Accord. Its stated purpose was for the parties "to achieve the goals of closing the social and economic gap between First Nations and other British Columbians over the next 10 years, of reconciling aboriginal rights and title with those of the Crown, and of establishing a new relationship based upon mutual respect and recognition" (BC, Canada and FNLC 2005, 1). Among the guiding principles that would inform activities towards these ends was "Belief that negotiations are the chosen means for reconciling rights" (2).

To understand how the foundations for these developments and reconciliation's role within them were laid, it is important to highlight that the growing use of the term by provincial politicians developed within a web of political and legal relationships wherein other actors were also using the term and advocating for reconciliation of different sorts and in different ways. This was stressed by the FNS in a *Framework for Recognition & Reconciliation* that it presented to Campbell's cabinet in 2003: "The Throne Speech embraces the concepts of recognition and reconciliation, which First Nations and the courts have been highlighting and pressing for years" (FNS 2003, 5). Noting that the FNS had brought the same message to cabinet the previous year, the document framed reconciliation as an endeavour initiated by Indigenous peoples that the province was at long last awakening to, stating that "First Nations have long advocated reconciliation" and "[b]y committing to reconciliation, the BC Government will join First Nations on this path" (9). This does not mean, however, that all Indigenous peoples were using the specific terminology of reconciliation, nor that, when they did, they were using it in the same ways or advocating for the same things, either as each other or as provincial or federal state

actors.[60] As discussed further below, the FNS's communications to the governments of BC and Canada about reconciliation provide an example of how while some Indigenous peoples were also employing the term and were open to participating in something called reconciliation with the state, they used the term in particular ways and were clear that as it stood the state's actions were in many regards not compatible with their view of reconciliation.

The New Relationship, the MARR, the Kelowna Accord, and the *Transformative Change Accord* might all be understood as responses to the suggestion in the FNS framework that there be "a mutual commitment by the BC Government and First Nations to embark on a journey of reconciliation and to demonstrate the leadership that is required" to lay the groundwork for a broader societal achievement of reconciliation (FNS 2003, 7).[61] The organization of a unity march to the BC legislature protesting the Campbell government's approach to Indigenous peoples' rights and title in 2004 has also been credited with influencing the shift towards recognition (Horter 2007), though according to the UBCIC it did not respond receptively at the time (UBCIC n.d., 48). Caitlyn Vernon notes that while SCC decisions about the duty to consult provided the initial impetus for BC to pursue the New Relationship with Indigenous peoples, the FNLC "managed to broaden the scope of the agreement," leading to an approach that included "recognition of Aboriginal title, the commitment to address past injustices, and the emphasis on shared decision-making" (2010, 283). Though not universally or unconditionally so, the

[60] For instance, Blackburn notes that in relation to the *NFA*, "Nisga'a didn't speak about reconciliation as much as whether the treaty provided them with enough land, money, and self-governing powers," while reconciliation narratives about progress and moving on were "largely a non-aboriginal phenomenon" (2007, 633). Given the close intertwinement of the term with treaty negotiations in BC, it also bears recalling that the Indigenous peoples whose territories BC sits on have different perspectives on and relationships to the BCTC process, as do the organizations that represent them. For instance, the FNS is one of the principals of the BCTC (though not a party to specific negotiations) and nominates the commissioners along with Canada and BC (BCTC n.d.), while the UBCIC has long opposed the BCTC model of treaty negotiations (UBCIC n.d., 42-43; Woolford 2005, 88-89, 155).

[61] The FNS drew on the example of the CAR in Australia in presenting its vision, demonstrating the ongoing transnational circulation of ideas about reconciliation. It argued that "There is no need to completely re-invent the wheel on reconciliation" and that "ideas and approaches" from other contexts such as Australia, Aotearoa/New Zealand, and South Africa could be explored and "tailor[ed] […] to circumstances here" (2003, 3).

provincial government's new policy direction was optimistically received by many Indigenous peoples (Penikett 2006, 255-56; Wood and Rossiter 2011, 416),[62] as well as by the NDP opposition, who welcomed the BC Liberals' apparent change of approach to relations with Indigenous peoples. Interestingly given that the party's use of the term reconciliation itself was not entirely new, its use at this juncture was nevertheless embraced as refreshingly novel. John Horgan, who later became premier, "applaud[ed] the government for this about-face on first nations issues" in having "initiated a reconciliation program" (BC 2005g, 331), while another NDP MLA stated: "I like the words that I have heard, and I'm encouraged by the commitment of startup funding. I would like to acknowledge that it represents progress for the party opposite. Reconciliation and renewal have long been urgent priorities but are only now being recognized" (2005e, 209). Several MLAs made comments celebrating emphasis on reconciliation in general and the creation of the MARR in particular (2005a, 13, 25; 2005d, 156), with some specifically noting the choice of name, which the new department's minister Tom Christensen described as "reflect[ing] our sincere intention to foster effective social and economic relationships with aboriginal people and to become partners for a better tomorrow right across British Columbia" (2005h, 1511). As one MLA put it, "I'm encouraged just by the name of the new ministry, the fact that we are acknowledging that there is a need for reconciliation. There is a need for apology. There is a need to bring people together and say: 'Look, this has been bad. Let's move forward'" (2005b, 39). Others welcomed the reconciliatory shift in a more qualified fashion, observing that it would be difficult due to the depth of the historical baggage or demonstrating skepticism emanating from their perceptions of the government's record when it came to relations with Indigenous peoples and promising to hold it to its word (2005c, 103, 117;

[62] Wood and Rossiter observe the relationship between Indigenous peoples and the BC Liberals under Campbell's leadership to have been somewhat of a rollercoaster, first soured by the *NFA* lawsuit and the referendum and then improved by the efforts around the New Relationship, before later deteriorating once more (2011, 408).

2005d,161; 2005h, 1527; 2005i, 2073). The NDP's Aboriginal Relations and Reconciliation critic Scott Fraser[63] remarked: "When I saw a new ministry created entitled Aboriginal Relations and Reconciliation, I thought: wow. We need a lot, a whole lot, of reconciliation after what's been going on specifically for the last four years" (2005f, 248). Commenting that he hoped the new relationship would bring "meaningful consultation and involvement" for Indigenous peoples, an end to the arrests of land defenders, and atonement for past policies – "atoning for the past" was "the definition of the word" reconciliation, he noted – in the wake of funding cuts, litigation, and the referendum, Fraser promised to hold the government accountable for "those good words" in the various new policy documents "to ensure that they are more than just words" (247-48). At the same time, he seemed approving of the words themselves and appeared to take them as a good omen, stating that he was "encouraged by the words, the name of the ministry — Aboriginal Relations and Reconciliation. They are the right words at the right time, I think" (2005h, 1512), and was "enthusiastic" and prepared to work cooperatively with Christensen because he felt that "[f]rom the words, we're heading in the same direction" (1543).

The sense that a shared vision could be signalled by use of the term reconciliation, as others' uses of phrases like "the issue of reconciliation" or "first nations reconciliation" as though they evidently signified something specific (2005a, 13, 25), suggests that reconciliation was not only becoming a common term but also coming to be used as a kind of shorthand.[64] However, unlike shorthand dictation where a symbol stands in for a specific word or sound, vague or broad uses of reconciliation often do not convey the specific political vision a person has in mind in using it. As Connolly underlines, the meaning of such terms can sometimes be

[63] Fraser became Minister of Indigenous Relations and Reconciliation when the NDP returned to power in 2017.
[64] The term was gaining in popularity in relation to the matter of treaty negotiations beyond legislative discussions as well. Former Yukon premier Tony Penikett shared an example of this in relating that his book on treatymaking in BC (2006) was originally going to have another title, but his publisher encouraged him to call it *Reconciliation* (research interview, June 2018).

deduced from context, but they tend to require further examination when linked to a societal vision (1993, 86). Scratching beneath the surface is necessary to consider to what extent the shared use and approbation of the term "reconciliation" by various parties, including Indigenous peoples and the Liberal government, was indeed indicative of 'heading in the same direction.' At this point there appeared to be widespread agreement on the prospect of pursuing a "new relationship" of "recognition and reconciliation," but the form, purpose, and means of achieving such a relationship were the subject of widely varying interpretations.

Others have already documented in detail how the BC government's approach to treaty negotiations and relations with Indigenous peoples in general as well as its use of the language of reconciliation during this period revolved around province-building narratives of progress, enabling the conditions for resource development, and securing the economy and identity of BC on terms that remained anchored in Western conceptions of property and political relations (Blackburn 2007; Egan 2011, 2013; James 2009; Vernon 2010; Wood and Rossiter 2005, 2011). This orientation is on display in speeches in the legislature that link reconciliation with the return of investment to the province and the onset of new tourism and resource development projects, 'moving forward,' and more fully integrating Indigenous peoples into the BC economy (2005c, 120; 2005d, 153-56; 2005h, 1523, 1526-27, 1537).

Indigenous peoples' visions of reconciliation in relation to treaty-making and their relationships with BC and Canada during this period were also deeply shaped by economic concerns. They too cited the SCC in presenting these visions and spoke about the reconciliation of their rights and title with the assertion of Crown sovereignty (see e.g., FNS 2004). However, despite such broad commonalities and a general mutual commitment to engagement rooted in "recognition and reconciliation," Indigenous peoples also made it clear that they had specific

requirements for reconciliation to be possible and many aspects of the BC and Canadian governments' approaches ran afoul of these conditions. Examples of this can be found in public communications issued during the Campbell government's early years, for instance. An October 2003 joint statement of "treaty, non-treaty and non-aligned nations from across British Columbia" about management of natural resources in the province concluded by declaring:

> we seek reconciliation with the provincial Crown. The terms of engagement for beginning this process include: jurisdiction over allocation and management decisions — at least equal decision-making authority; compensation for past activities; revenue sharing; exclusive use and occupation of specified areas within our traditional territories; and openness, fairness and accommodation of first nations in forestry and range law and policy changes. (quoted in BC 2003k, 7569)

The *Framework for Recognition & Reconciliation* the FNS presented to cabinet the month prior includes definitions of recognition and reconciliation and types of action the FNS saw as enabling or impeding them. Reconciliation is said to be "about building bridges to a new and ongoing relationship" that is "all-encompassing" and "not limited to land and resource issues, nor does it only capture social issues" (FNS 2003, 6). It requires "focusing on the full range of issues from social to economic and political to cultural […] from a substantive and, in some cases, symbolic perspective" (9). A key enabling step is recognition of Indigenous peoples "as Peoples with constitutionally-protected rights, including Aboriginal title, arising from their prior occupation of the province" (6). As had Plant, the FNS also emphasized that it could not be undertaken unilaterally, and that it required a felt commitment with reconciliation "tak[ing] root in our hearts and minds," which would require significant educational endeavours (7). The FNS presented "non-recognition," "insincerity," and "hollow expressions of recognition" as hindering the possibility of recognition, along with a list of "other approaches, actions and behaviour [that] undermine reconciliation" including, among others, "[u]nilateral determination of issues and imposition of policies," "[i]nconsistency and contradictions," and "[a] 'take it or leave it'

approach" (7). It argued that various elements of BC's approach were incompatible with these requirements and with its own commitments, including continued pursuit of extinguishment in effect even if the term itself and "cede, release and surrender" language had been abandoned, and it needed to "develop positions, policies and mandates consistent with the principles of recognition and reconciliation" (8). The document calls on BC to recognize Indigenous peoples' prior occupancy, rights and title, inherent right to self-government, and the need for substantive action to address how "past injustice gives rise to present disadvantage" (13).

The FNS built on its presentation to the BC government in a 2005 framework addressed to the federal government, responding to Martin's speech to the 2004 Canada-Aboriginal Peoples Roundtable. This document dealt with many of the same issues and presented reconciliation in a very similar fashion, but focused on the federal government's land claims policies and role in treaty negotiations as it laid out a series of recommendations including "process and structural changes required for reconciliation" (FNS 2005, 3). Both frameworks declared reconciliation's goal to be "achiev[ing] a more positive and peaceful coexistence that is no longer rife with conflict, denial, exclusion and suppression" (2003, 6; 2005, 8). This required treaties to aim for a type of certainty that was not limited to non-Indigenous people's economic interests: "Certainty is a two-way street and treaties must provide certainty to First Nations that they will be able to preserve their distinct cultures, achieve self-sufficiency and protect the exercise of their rights. Governments, acting honourably, cannot continue to seek certainty only for themselves and third parties through the negotiation of treaties and other agreements" (17). The framework's section on natural resources also emphasized a different kind of relationship to land than that expressed in MLAs' comments about how reconciliation would yield increased investment in the resource development sector. It comprised a financial dimension, but was also significantly broader:

> First Nations have long-standing and unique relationships with their homelands, and the resources on them. These relationships must be recognized and protected to ensure that First Nations can continue their roles as stewards of their natural environment, continue to exercise their domestic and commercial harvesting activities, continue to exercise other cultural activities, and to benefit economically from their lands and resources. (30)

The nature of Indigenous peoples' relationships with their lands and the rights stemming from them meant that "the Crown cannot continue to deal with the lands as though it owns them outright" and that natural resources should be subject to "intergovernmental management and revenue-sharing arrangements" set through negotiation rather than imposition (30). While the document expressed some hope that Martin's initiatives "may help to advance reconciliation," it also stressed that significant additional structural changes to the treaty negotiation process were necessary to enable the type of reconciliation the FNS was advocating (41).

The dynamics of relationships between BC and Indigenous peoples and of the tripartite treaty process shifted significantly between 1996 and 2006, and this was reflected in how the BC government came to talk about reconciliation in relational terms as well as emphasizing the need for consistency between Indigenous peoples' rights and Crown sovereignty. In some ways, the government's rhetoric had come to bear a closer resemblance to the vision of reconciliation as an ongoing relationship embodied in Indigenous peoples' understandings of treaties (Tully 2001a, 13-14; see e.g., Teneese quoted in BCTC 2006, 14). At the conclusion of its response to a 2006-07 report on treaty negotiations by the Auditor General of BC, the MARR stated: "*Government's relations with First Nations will continue to evolve over time as a result of the changing environment in which we all operate. Ultimately, reconciliation is a journey – not a destination*" (OAG 2006, 47; italics in original). 2006 closed with the first treaty negotiations through the BCTC to produce final agreements on the cusp of settlement. At the same time, assessments of the treaty process by the Auditor General and the BCTC made clear how wide the gulf remained

between differing conceptions of land, rights, treaties, the negotiating process, and associated visions of reconciliation at this juncture (BCTC 2006, 2007; OAG 2006). Some Indigenous peoples who had entered the treaty process felt their tables were being neglected (BCTC 2006, 4-5), while many others opted to stay out of the process (OAG 2006, 19). Over the course of the decade since 1996, engagement between opposing political parties and between Indigenous peoples and the BC government around a series of matters that implicated significant questions of consistency had come to see a fair degree of rhetorical confluence between the parties insofar as they came to concur on the need to address the legacy of relations of oppression and to situate the achievement of consistency within a vision of reconciliation as relationship. However, the distance that remained between the substance of different visions of reconciliation as relationship, which persisted in the period following the decade explored in this chapter,[65] serves as a reminder of how expansive even different sub-categories of reconciliation can be.

9.5 Conclusion

By the end of 2006, reconciliation discourses about relationships between Indigenous peoples and Canada had reached a third phase of development: in addition to uses in parliamentary deliberations, court decisions, commission and government reports, legal agreements, media coverage, and other documents, the term was now ensconced in the institutional landscape of Canadian politics. As traced in chapter 8, the processes dealing with the legacy of Residential Schools that produced the IRSSA led to the ratification of an agreement including a provision to

[65] Many examples illustrate this. In 2007, the BCTC's annual report paired announcing the ratification of the Tsawwassen and Maa-nulth treaties with observing that "while there is success at some treaty tables, there remains considerable distance among the parties at most others. The successful ratifications in Tsawwassen and Maa-nulth are taking place against a backdrop of growing provincial, national and international unrest surrounding the rights of indigenous peoples" (2007, 1). The BC Liberals sought to introduce a *Recognition and Reconciliation Act* in 2009, but it ultimately floundered (Egan 2011; James 2009; Wood and Rossiter 2011). The declarations of the death of reconciliation following the RCMP raids on Wet'suwet'en territory in 2020 are a prominent recent example.

create the TRC, an institution that would bring awareness of the Residential Schools and of the term reconciliation to a much greater audience across the country and spur significant further institutional engagement with reconciliation. As this chapter shows, another set of conversations around matters of land, rights, and governance was unfolding simultaneously that involved the further development and promulgation of other forms of reconciliation discourse. Alongside various oral and written uses of the term in this context, these conversations also yielded a recommendation to create an institution tasked with overseeing the pursuit of recognition and reconciliation in Manitoba, and the creation of one in the form of the MARR in BC.

In the discussion of these matters in those two provinces and at the federal level, the same trends observed from the outset of reconciliation's emergence persisted amidst its growing prominence and eventual institutionalization over the period from 1996 to 2006. While various actors declared their interest in and commitment to reconciliation, they did so in ways that implicitly or explicitly invoked different meanings and drew on varying conceptions of the term emanating from previous legal and political developments. Uses introduced earlier by the RCAP, the SCC, and the Statement of Reconciliation influenced the work of the AJIC and debates about treaties, governance, and rights in BC and Ottawa. At the same time, like in the context of Residential Schools redress, some actors began to engage more directly with the meaning and potential variability of reconciliation, as demonstrated by Giokas and the FNS's reports. Finally, the other aspect that remained consistent was that actors with diverging and sometimes opposing aspirations described their goals and approaches in terms of reconciliation.

A notable feature of how this dynamic of mutual commitment to reconciliation amidst contestation developed in this context in this period is the way competing visions could not necessarily be effectively distinguished by whether reconciliation was presented in terms of

relationship as opposed to consistency or resignation, as something that intended to address relations of oppression as opposed to opposition, or as a commitment to structural and not only interactional change. At different junctures, both the Canadian and BC governments used the language of reconciliation as healing relationships as well as reconciliation as consistency, and cast their undertakings as offering "fundamental" or "transformative" change. This highlights a challenge for using such language to qualify a vision that differs dramatically from the state's approach, captured for instance by the contrast between Tully's "transformative reconciliation" (2020) and the approach to reconciliation of governments promising "transformative change." As Vernon (2010) demonstrates, the Liberal government's approach to the New Relationship distinctly eschewed the type of transformation of the relationship between Indigenous and non-Indigenous peoples in connection to a broader web of ecological relations that Tully describes. These kinds of divergences reinforce the need for careful attention to various dimensions of specificity when engaging with and distinguishing between different uses of reconciliation, to consider how they relate to different epistemologies as well as etymologies and how they may be using the same language to advance distinct normative visions.

Conclusion

> "Words are not static. They're manufacturers of nuance and meaning, even contradictory nuances and meanings. To say that a culture uses a word in '*these* ways' is to deny that it also uses it countless *other* ways at the same time. […]"
>
> "[…] There is always the tragic necessity of being *in* language!"
>
> – André Alexis, *Ring* (2021, 89-90)

In the years since reconciliation began to be enshrined in institutions, the point at which my genealogy's inquiry closes, the term has risen to ever greater prominence in Canadian constitutional politics. This is not equally true in both sets of constitutional relations that the dissertation explores. However, while the term is now primarily used with regard to Canada's relations with Indigenous peoples, appeals for attention to reconciliation with Québec still appear occasionally in scholarship and public discourse (Joncas 2018; Laforest and Gagnon 2020, 38; Yakabuski 2017). Increased prominence is accompanied by amplification of the characteristics shaping uses of reconciliation during the period examined in the dissertation, as well as significant ongoing political contestation. In this conclusion, I review the contributions this genealogy offers to our understanding of when, how, and with what effects discourses of reconciliation emerged and developed in Canadian constitutional politics, and then offer some reflections on the implications of those effects with regards to what language we use in constitutional politics and how we use it, as well as on some of the limitations of my exploration.

Recontextualizing Reconciliation

This dissertation has sought to present an "account of the different kinds of work" reconciliation does in Canadian constitutional politics by delving into the term's emergence and rise to prominence (Little 2018, 89). It has done this by inquiring into the "conditions of appearance,

growth, and variation" of reconciliation discourses (Foucault 1972, 231-32), in order to detail how, and in doing what, different people have used the term in the process and thus show how it is "imbued with meaning and under what conditions this occurs" (Tully 2008, 137; Coburn 2019, 36). Taking a conceptualizing concepts approach (Little 2018, 2020), this genealogical inquiry has yielded a portrait of the emergence and development of reconciliation that depicts its uses in two different sets of constitutional relationships and compares those uses over time within and between the two contexts. This portrait highlights the etymologies, contexts of application, normative character, and rhetorical character and reception of the different uses of reconciliation, makes comparisons between uses, and cumulatively takes stock of the term's political work in Canadian constitutional politics.

Reconciliation has in some ways been entwined with the practice of constitutionalism in Canada since the polity's earliest days, inhering in conceptions of federalism and treatymaking, and yet has also taken on new redress-oriented forms and new prominence amidst a global rise of reconciliation discourses over the last forty years. Canada was drawn into this trend as it debated the terms of patriating its constitution from the United Kingdom, including the places of Québec and Indigenous peoples in the federation, then had to reckon with the aftermath of how this played out, and began to grapple more broadly with the legacies of its colonial foundations. As reconciliation moved from an occasionally used, often implicit notion to a more commonly used explicit term framing these constitutional relationships, it exhibited some common features and some significant differences in the two cases. In both contexts, multiple actors were drawn to this harmony-centred word in talking about the terms of relations between peoples amid debates that had significant implications relating to sovereignty and to the political and territorial unity of the country. However, this widespread gravitation to the term was itself marked by disharmony as

these actors did not all employ the same meanings or use it to pursue compatible goals, with some using it to try and protect the existing constitutional configuration of the country while others used it to push for transformation. These broad strokes are the same in both cases, but the nature and trajectory of reconciliation's development differs in some important respects in each instance as well. This also needs to be understood in relation to the structural differences between Québec's and Indigenous peoples' relationships to the Canadian state.

In Québec, while the term continued to carry its longer historical association with the theory and practice of federalism, the contemporary emergence of reconciliation was specifically linked to the patriation of the *Constitution Act, 1982* without Québec's consent and to debates about whether it was possible and desirable to redress this exclusion with forms of symbolic recognition and jurisdictional arrangements that would see Québec stay in Canada and sign onto the new constitution. As the dissertation shows, actors with varying political aspirations nevertheless used different forms of reconciliation in different ways to advocate for differing goals, diverging in some cases even as far as whether they advocated for unity or separation.

In closing their book on the 1995 referendum, Chantal Hébert and Jean Lapierre write:

> We were less interested in coming up with an approximate big picture than in preventing the ill-matched pieces of the referendum puzzle from being swept under the carpet of political history. They may not all fit together and form a coherent image of the day that almost was, but many of them have still found a place in the larger post-referendum political picture. (2014, 265)

Much the same is true of my exploration of reconciliation with Québec as part of the story of constitutional politics in Canada. It is not possible at this distance to find all of the puzzle pieces, much less fit them together in a coherent whole after the fact (if, indeed, they ever could be), but the scattered pieces I have related are nevertheless part of the story of how reconciliation came to occupy such a prominent place in contemporary Canadian politics. Two decades later, this has

not been wholly forgotten, but it has been largely obscured. Most of the people I interviewed about the subject matter of chapters 3 and 4 – all of whom were involved in the constitutional debates described in the dissertation at one point or another – associated the term primarily with relations with Indigenous peoples. It is not possible to surmise whether this is because its application to relations with Québec in earlier decades did not seem discursively noteworthy at the time, or because the primary contemporary context for using it has overshadowed that other version and changed how people understand its meaning and application even if they previously saw it differently. A few observations can be made, though. For one thing, the emergence of the term in its application to Québec seems to have been in several cases a coincidental rather than a deliberate word choice. While its uses varied as discourses developed in conjunction with political events in the Québec-Canada relationship, the term does not appear to have been theorized or critically analyzed by those who were using and hearing it at the time, though the possibility of achieving reconciliation was sometimes rejected or the use of the term met with skepticism. This remained the case throughout the decades studied, when it was much more common to link reconciliation to Canada-Québec relations than it is now. Reconciliation in this context is strongly associated with the orientation of federalism as establishing and maintaining some form of compatibility between unity and diversity. It began to take on a more normatively-tinged sense of moral imperative from 1984 onwards, and particularly after the 1995 referendum, but while for a time it was closely bound to visions of formal constitutional change to the configuration of the country, its last significant appearance in the decades covered by this genealogy was one that sought closure to these debates by employing a symbolic gesture that aimed for interactional reconciliation by foregoing structural change instead.

Though discourses of reconciliation between Canada and Québec have since ebbed,

discourses of reconciliation between Canada and Indigenous peoples are an ever-rising tide as the discourses that emerged and developed in that context by 2006 have continued to spread. In addition to not fading in the way that discourses of reconciliation with Québec did, discourses of reconciliation with Indigenous peoples also differ in that they sprang from a wider variety of sources and have seen a much greater range of applications. The constitutional changes of 1982 were a pivotal impetus for the emergence of certain kinds of reconciliation discourses in this context too, but these were also accompanied by forms of reconciliation stemming from Christian theology that informed ecumenical discussions about Residential Schools and the churches' role in colonization, from conflict resolution practices associated with restorative justice, and, relatedly, from a growing global interest in transitional justice that included mechanisms like TRCs. The other key difference between the cases is that the development of discourses of reconciliation with Indigenous peoples continued to the point of the term being enshrined in institutions. This began, at the point where the genealogy wraps up, with the creation of the Truth and Reconciliation Commission of Canada and BC's Ministry of Aboriginal Relations and Reconciliation, and it has proliferated from there since 2006.

The account of reconciliation's genealogy in Canadian constitutional politics provided in the dissertation makes a number of contributions to the scholarship on political reconciliation and constitutional politics in Canada. First, it shows that reconciliation has a longer history in this context that underpins the newfound prominence the term has gained since the advent of the TRC than is sometimes commonly understood. By contextualizing uses of the term, it maps the ways that reconciliation discourses have "developed relationally" with a variety of debates surrounding Canada's relations with Québec and with Indigenous peoples over time, as well as with developments relating to reconciliation in other global contexts (Little 2020, 31). Second, it

highlights the complex and multifaceted nature of that history by demonstrating the multiplicity of meanings of reconciliation that have been in use since the outset of the term's application in Canadian constitutional politics and how this conceptual multiplicity interacts with the variation and divergence of political actors' perspectives, interests, and goals. This produces an often ambiguous discursive field wherein different actors have wielded the same term within the same conversations in different ways and to different ends. By showing the variety of uses at work in the two cases over time, the genealogy contributes to understanding of reconciliation discourses' "substance […] and the disagreements about their meaning" in Canada and thus helps to illuminate the foundations underlying their omnipresence in contemporary Canadian politics and the contestation around their use (Little 2018, 89). By incorporating an examination of discourses of reconciliation with Québec into its exploration, it provides a broader account of the term's roles in Canadian constitutional politics, as this case has not previously received much in the way of analytical attention, nor been considered alongside how reconciliation has been used to frame relations between Indigenous peoples and Canada. This presents the possibility of a wider lens on how the links between reconciliation, democracy, legitimacy, and sovereignty materialize in the Canadian context by cataloguing the ways different actors have gravitated towards this term to conceptualize and debate a range of questions about sovereignty, self-determination, identity, relations between peoples, and the legitimacy of the Canadian state. By assembling a broad corpus of uses of reconciliation mobilized by different actors over three decades of constitutional politics and seeking to recontextualize these uses – that is, to consider them in their contexts of use and to try to parse their particular form of meaning – the dissertation also makes a case for the need to engage with the specifics of any given reconciliation discourse in order to try and understand the political work it is doing. Absence of

this kind of specific engagement opens the door to misleading impressions and unfounded optimism about the existence of a consensus around reconciliation in Canada or cynicism about the term being able to mean anything because it is too overloaded with different meanings. Both of these orientations act as obstacles for effective engagement with the normative political visions being advanced in conjunction with each particular use of reconciliation, and thus with how it performs, fails to perform, or is non-performative of what it says. Finally, the dissertation offers an array of conceptual tools for engaging with the specifics of the panoply of reconciliation discourses at work in Canadian constitutional politics. Such engagement is critical to the possibility of effective democratic dialogues about key normative questions regarding political reconciliation and how they manifest in the Canadian context, including matters relating to what the relationship between reconciliation and religion is or should be, what role reconciliation plays in the (re)legitimation of the state, how reconciliation can be measured and assessed, and whose responsibility it is to undertake reconciliation. A critical dimension of conducting these inquiries is engaging with how the entanglement of the conceptual complexities surrounding the term with relations of power shapes the tensions at the heart of contemporary debates about reconciliation in Canada.

"[I]l n'y a pas d'une part le discours et d'autre part les rapports de pouvoir"[1]

As we saw in chapter 1, genealogical approaches to political discourse ask us to think about how the "language of politics […] channels political thought and action in certain directions" (Connolly 1993, 1), and to understand that discourse does not operate independently of relations of power (D. Giroux 2013, 338). To this end, the dissertation highlights the importance of thinking etymologically and epistemologically about reconciliation in order to engage with what

[1] D. Giroux (2013, 338).

is at work in specific uses of the term, but it also argues that we need to think about each use's placement within a web of power relations, or we will miss a crucial part of the picture. The relationship between concept, context, and power is what brings the political work that reconciliation does into focus.

In the early 2000s, governments – albeit influenced or mandated to differing degrees by the courts – began to entrench their commitments to reconciliation with Indigenous peoples in policy and institutions. The dynamics around discussions of reconciliation in this context raise some important considerations for using the conceptual tools presented in the dissertation to engage with the substance of different discourses of reconciliation and their connections to power relations. This pertains to how the frameworks offered by Walters, van Roermund, Lu, and Ahmed and Carastathis interact with each other, and how they map onto engagement with the relationship between word and deed. In some cases, the differences – at least the broad strokes, at any rate – between the normative visions of political relationship that attach to contrasting uses of the term reconciliation are palpable. This is the case, for instance, with uses of reconciliation that are associated with preventing the separation of Québec in comparison to those that present it as something that could follow and be enabled by Québec's independence. Sometimes, though, the differences are less rhetorically obvious, as parties with distinct, and sometimes even divergent, visions may both describe their approach to reconciliation in terms of relationship, acknowledge the existence of relations of oppression, and/or present the changes they are advocating or introducing as structural. As observed in chapter 9, for instance, the substance of what Tully (2020) describes in his account of "transformative reconciliation" differs markedly from the political vision advanced by the BC government that committed to the *Transformative Change Accord*. Another example appears in the disputes over the Trans

Mountain pipeline discussed in the introduction. In *Coldwater*, the Federal Court of Appeal directly cites Walters's description of reconciliation as relationship (along with the RCAP's and the TRC's reports) in characterizing the meaning of reconciliation as a "controlling concept" it is using to assess the federal government's decision to approve the project (2020, 18-20). In its view, the conditions of such a relational reconciliation were met by the federal government. This position directly contrasts with that of the səlilwətaɬ, who cast Trans Mountain and reconciliation as opposites and assert that approving the pipeline in the face of their lack of consent will damage the government's relationship with them (Sacred Trust Initiative n.d.; Thomas 2016).

This shows that the kind of qualifying language around reconciliation can be as capacious as the term itself. Many different kinds of relationship might be envisioned by people using the language of reconciliation as relationship, even when promising to address the legacies of oppression and bring about structural change. That significant differences may exist not just between uses that reflect different forms and meanings of the word, but also between uses that are described in the same terms, highlights one of the potential limitations of using these conceptual frameworks to contextualize and distinguish between uses of reconciliation and raises an important consideration for how this task should be approached in order to keep the role of power in view. It also reinforces the importance of analyzing companion concepts and descriptors, which in these instances requires understanding what is meant by "transformative" and "relationship" (what kind of transformation/relationship? to what end? how will it be achieved/maintained?). To grapple with these dynamics, it is critical to draw on the insights from the different conceptual frameworks used in the dissertation in conjunction with each other, and, particularly, to employ the distinctions proposed by Walters, van Roermund, and Lu through the lens of the considerations raised by Ahmed.

In considering how reconciliation as relationship differs from resignation and consistency, the criteria required for reconciliation to address relations of oppression, and the mutual affirmation of the sociopolitical order required for something to constitute structural reconciliation, Walters's, van Roermund's, and Lu's frameworks all countenance the question of power when it comes to assessing policy and political action. However, these elements can risk getting lost when the frameworks' distinctions are used in descriptive rhetorical analysis focused so specifically on word choices such as that presented here. For this reason, the insight that reconciliation discourses may be performative or non-performative needs to be kept in view along with the application of these other frameworks (Carastathis 2013). *Discourses* of structural change are distinct from the *enactment* of structural change (M. Hébert 2020), and the latter too can come in varying forms. Distinguishing between them is critical to assessing the political work that is taking place when people talk about reconciliation. Statements of commitment to reconciliation may or may not do what they say, intentionally or otherwise, and/or may interpret doing what they say in very different ways. À la Ahmed (2012, 117), we need to follow them around "in the rough and agonistic sea of relations of power" to find out (Tully 2008, 130).

In recent years, public discussion of relations between Indigenous and non-Indigenous peoples in Canada has included growing acknowledgement of and attention to how they are shaped by the dimensions of historical and contemporary relations of power. However, this does not erase the ongoing effects of power relations in the present, nor prevent those conversations themselves from being shaped by them. Glavin's intervention in the debates about the death of reconciliation in 2020, which is itself an appeal to a particular conception of reconciliation and normative vision of the relationship between the Canadian state and Indigenous peoples, warns that if the term can "mea[n] anything you might want it to mean" then "the term can be

weaponized for any old rhetorical purpose you like." The array of uses that this dissertation collects from throughout reconciliation's emergence and early development in Canada shows that political actors can indeed, however consciously or unconsciously, deploy a wide variety of meanings of reconciliation for a wide variety of rhetorical purposes, and have done so from the outset of the term's use in this context. In considering how this plays out though, a genealogical orientation that is dedicated to understanding the relationship between language and power calls on us to heed the ways that not all rhetorical purposes are created equal. Framing such as that in the *Globe and Mail*'s (2020) editorial "Don't be so quick to bury reconciliation" suggests that reconciliation has been 'politicized' by the federal government's use of the term, and the collection of examples it advances seems to suggest that, while the government may be at fault for insufficiently defining its terms, at least in the context of debates over the death of reconciliation, insofar as rhetorical wielding of reconciliation is occurring it is by critics who feel the government is not doing enough. However, the term is also used by government actors to ward off criticisms of their approach in relations with Indigenous peoples. One example of this can be seen in a series of developments in Manitoba in 2021. That summer, then-Premier Brian Pallister faced opposition for comments he made about the intentions of settlers who had come to Canada that were criticized for "downplay[ing] the effects of colonialism" and his Minister of Indigenous and Northern Relations resigned from cabinet (Canadian Press 2021). When Pallister named her replacement, the portfolio was renamed Indigenous Reconciliation and Northern Relations. At a press conference following his swearing-in, the new minister made comments about the intent of the Residential School system that prompted then-Opposition Leader Wab Kinew to interrupt and state that a minister responsible for relations with Indigenous peoples should not be defending Residential Schools. While it was subsequently deleted, the immediate

response to this event by the government caucus was to post a tweet declaring its commitment to reconciliation and accusing Kinew of bullying and "political showmanship" and stating that his behaviour "does nothing to advance […] reconciliation" (Canadian Press 2021). In these kinds of examples, it is clear that in a landscape where "reconciliation has become institutionalized," the term can also be used as a pacifying or disciplinary tool to parry dissent – a power dynamic that Leanne Simpson has raised concerns about in suggesting that the institutionalization of reconciliation might fuel perceptions that "Indigenous Peoples no longer have a legitimate source of contention" vis-à-vis the Canadian state (2011, 22). Engaging with the ways that language is inextricably bound up with power and wading through the morass of different uses of reconciliation being aimed at different political purposes, then, requires attentiveness to the ways that power relations typically produce a tendency towards the dominance of the discursive forms that best suit those who benefit most in those power dynamics (Poerksen 1995, 26).

It has been observed that terms marked by the kind of flexibility and ambiguity that characterize reconciliation have a particular staying power in political discourse, which would seem to be borne out by the discursive developments in Canadian constitutional politics traced in this dissertation as well as those that have followed its period of study. While they may "ha[ve] currency because [they] can be interpreted in different ways by a variety of groups" though, it remains debatable whether they offer "constructive ambiguity" (Little 2020, 44), or whether "[t]hese terms may not, however, contribute to achieving dialogue" (Graham, Dittburner and Abele 1996, 352). This raises two questions. Is it better, then, not to talk about reconciliation, and to find other wording for discussions about constitutional relationships instead? And what is necessary to achieve dialogue? If the language we use to talk about politics "channels political thought and action in certain directions" (Connolly 1993, 1), then both the terms we choose to

use – whether reconciliation or something else – and *how* we use them have implications for how we understand and (re)constitute political community.

In Search of Other Words

A predictable reaction to the tableau of discursive complexity presented by this genealogy of reconciliation, as well as a position some take by virtue of specific normative opposition to use of the word, is that we should not use the term reconciliation. It holds objectionable meaning, or it is too empty or too full of meaning, and it is therefore problematic and either useless or useful to the wrong ends. It would be better, then, to find other language to articulate and engage in constitutional relations between peoples in Canada. On the other hand, it has also been suggested that even though reconciliation means different things, and some – the resignation form in particular – might appear to have troubling connotations in application to political relations, these varied meanings all speak to necessary components of transforming constitutional relations between Indigenous peoples and Canada in different ways and it therefore should not be abandoned (Freeman 2014, 216-18).

One suggestion when it comes to this relationship, which was part of the premise of a conference I attended in 2017 and also came up in a couple of my discussions with interview participants, is that we should turn to relational concepts from Indigenous peoples' traditions of political thought rather than remaining singularly wedded to the term reconciliation. Others focus on other concepts such as, notably, decolonization. The latter necessarily implies some kind of engagement with the fact of colonization, which reconciliation could but may not include depending on how it is conceptualized, and therefore may be a more direct concept for engaging with the structure of relations between Indigenous peoples and the Canadian state. The former

could have the benefits of contributing to addressing the power dynamic whereby English and French concepts and Western political thought have consistently been given an imposed precedence in constitutional discussions. It would also embody a recognition that in a vast territory inhabited by various configurations of different peoples across different places, a multiplicity of place-specific concepts may be needed to inform a constellation of constitutional relationships characterized by such pluralism. Generally speaking, whatever language and tradition of political thought they come from, other terms may provide greater contextually specific clarity than reconciliation in certain situations, and may allow us to get away from some or all of reconciliation's particular etymological baggage.

A couple of notes of caution must be sounded, however, one of which might be understood as a sub-component of the other. Broadly speaking, the key issue is that stepping away from the term reconciliation does not eliminate the existence of power relations. This is stressed in the insights of genealogical thinkers who highlight that there is "no space wholly outside them" (Connolly 1991, 181-82), and that simply turning to new discourses and new frameworks risks erecting new forms of domination (Jenkins 2011, 170). We cannot escape the inherent complexity that accompanies humans' need to use language to communicate with each other and the political nature of the exercise of constituting community through communication. Other terms will bring their own conceptual variation and contestation. For instance, extensive debates on the term decolonization and its application to the Canadian context show that while the specifics may vary from reconciliation, it too can mean many different things to different people and be mobilized towards divergent ends, and engagement with it is by no means immune to power relations (see e.g., Tuck and Yang 2012).

These factors mean that it is not so straightforward as that turning to concepts from

Indigenous peoples' traditions of political thought will necessarily neatly upend the status quo of power relations. Indeed, in understanding that turning to other terms will not itself step us out of the web of power relations in which we are currently grappling with reconciliation, particular attention to how those power relations affect non-Indigenous people's engagement with Indigenous peoples' constitutional concepts is needed. These concepts are rooted in wholistic ontologies and epistemologies connected to specific places and expressed in languages that embody them, and these differ substantially from the capitalist liberal democratic thought as conceptualized and practiced in English and French that informs Canadian constitutionalism[2] (Coulthard 2014; Mills 2021; L. Simpson 2017; Turner 2020; Umeek 2004; Young 2016). They cannot be extracted and transplanted into another paradigm and retain their sense. Those of us who come from different traditions must work to engage with them "in and on their own terms" (Turner 2020), and care must be taken regarding the risks of appropriation and misinterpretation. As Little demonstrates in his analysis of debates over *Makarrata* in Australia, there can be a strong tendency for non-Indigenous people and governments to reinterpret such concepts "in ways that are deemed to be non-threatening" rather than engaging with the ways they pose "a more fundamental challenge to the established settler order" (2020, 36-37). This raises significant issues of epistemic injustice (R. Nichols 2020; Sherwin 2021; Tsosie 2012, 2017).

In our conversation about reconciliation, Marlene Brant Castellano shared some reflections on the Haudenosaunee political tradition's emphasis on "making good relations" (research interview, September 2018). I do not profess knowledge of Haudenosaunee thought on the matter but have often reflected since on what this phrase makes me think about in relation to my own understanding of constitutional politics. It strikes me that it might be taken as either an

[2] Of course, as the debates over reconciliation between Canada and Québec – and other key concepts that featured in constitutional reform discussions – show, that itself is marked by internal contestation.

alternative focal point to the term reconciliation, or a conception of what reconciliation means. If we saw making good relations as the heart of constitutionalism, then perhaps it would be more direct to focus on that notion than to talk about reconciliation and get stuck along the way in sorting through what version of reconciliation is meant. However, reframing the name of the exercise does not necessarily simplify matters. To grapple with the matter of making good relations requires unpacking and contextualizing meaning and engaging with diverse and conflicting normative visions too. It involves asking: What kind of relationship? What does good mean/look like? How do we create and maintain that kind of good relationship? It then involves negotiating the many different and sometimes conflicting answers those questions will have, particularly in a context where so many peoples, each with their own internal diversity, share space. Given the "tragic necessity of being *in* language" as we navigate this (Alexis 2021, 90), because "le langage est ce moyen par lequel on fabrique une communauté" (D. Giroux 2013, 338), we will always have to deal with how language is bound up with power, how words can mean different things and be used for diverging purposes, and how we have to communicate across different epistemologies, ontologies, and languages in the work of constituting political relationships, whether we use the word reconciliation in the process or not.[3] This is not to say, however, that it does not matter what words we choose. As John Borrows reminds, "some stories are better than others" (2017a, 37). In choosing our terms, we might rather reflect on how no one term can convey everything, each one of our perspectives is particular and partial and so "[o]ur stories are never fully true, nor do we know all the answers" (38), and we share our vocabulary "imperfectly and incompletely" with our political interlocutors (Connolly 1993, 6), as "different perspectives entail different uses of language" (Turner 2020, 181). As we grapple with how to

[3] This communication is also not necessarily understood as limited to inter-human relationships and can embody varying relationships between time, space, subjects, objects, and activities. See Baker (2021); Cruikshank (2005); Karmis (2023, 11); Young (2016).

communicate with each other and to constitute political community among diverse peoples amid such conditions, we can then at least endeavour to favour political discourses "which constrain the offensive uses of power most fully" (Borrows 2017a, 37).

On Dialogue and the Limits of Language

These considerations about the complexities of political relations lived through language invite some reflections about the implications and the limitations of this genealogy of reconciliation when it comes to engaging with Canadian constitutional politics. Rebecca Solnit writes, "To use language is to enter into the territory of categories, which are as necessary as they are dangerous" (2017, 123). This observation speaks aptly to both dimensions of the dissertation. As I remarked at the outset, contemporary debates about reconciliation in Canada are somewhat contradictorily marked by the possibilities of both misleading impressions of consensus on a societal commitment to reconciliation and perceptions that reconciliation is ultimately meaningless due to under- or over-definition. The history of this present laid out in the dissertation traces how this state of things has developed over time and demonstrates that contemporary debates are built on a foundation of multiple diverging uses of different meanings of reconciliation that have been present as long as the term has been used in Canadian constitutional politics. This set the stage for the amplification of the conceptual confusion this produces upon reconciliation's institutionalization. Failure to dig into the specifics that underlie these overarching impressions carries the dual risk of disabling the possibility of effective and constructive democratic dialogue and of obscuring the role of power relations in shaping discourses of reconciliation and the political exchanges in which they are used. If turning to other discourses cannot mitigate these risks because there is no space where political dialogue can take place outside of relations of

power, then the crucial question is perhaps rather *how* we engage in dialogue.

This question is at the heart of the focus on recontextualizing political thought in Tully's (2016) contribution to the debates on "deparochialization" in comparative political theory. In accordance with his approach, we can understand the exercise of recontextualizing uses of reconciliation as part of the work of building the conditions of possibility for what he calls "genuine dialogue" on the question of reconciliation and the broader matters of constitutional relations between peoples that it has been used to speak to in the Canadian polity. Tully emphasizes that recontextualization needs to be accompanied by attending to the relationship between political theories and power and understanding the particularity and partiality of Western political thought as but one form among many (56), and describes a series of ethical practices including deep listening and non-attachment that dialogue participants can develop that will enable these tasks (60; see also Karmis 2023, 12-14). The goal is that through cultivating and enacting these practices, "each comes to understand and appreciate the concerns of others as they experience and articulate them in the terms of their own traditions without inclusion, assimilation or subordination" (Tully 2016, 52). The account of practices for engaging in genuine dialogues that Tully offers is particularly apt for reflecting on dialogues about reconciliation in Canada as it is oriented towards reflecting on the dynamics of dialogues between diverse peoples and attends to the risks of both the sense of conceptual meaninglessness and of false universality. Its emphasis on engaging with concepts, principles, and traditions of political thought in relation to context guards against the ways that "[a]bstract moral principles can literally mean anything the user wishes them to mean unless they are grounded and articulated in relation to the experiential self-understanding of those to whom they are applied" (52). At the same time, it seeks to counter terms being taken as "presumptively general or

universal" (56), an effect that is facilitated by them not being interpreted in relation to "their background traditions, practices and places" (59).[4]

As Tully stresses, bringing about and engaging in such genuine dialogues is immensely challenging, at both the individual and structural levels. He lays out six ways that what he calls "false dialogues" can undermine the possibilities of genuine dialogue, noting how easily the former can appear to be the latter (53), an observation that resonates with Ahmed's account of how non-performativity can generate an illusion of action that masks inaction. These include participants pretending genuine engagement for strategic reasons, a variety of overriding external factors, "secondary explanations" that obfuscate the nature of false dialogues, and an intergenerational deficiency of attention to and cultivation of the practices of ethical dialogical engagement (53-55). Particularly notable in relation to the work of recontextualization is that false dialogues can also result from participants deceiving themselves into thinking they are genuinely engaging across their differences with the other participants when they are not, and from the challenges of insufficient awareness of and attention to the limits of one's own way of thought that leads to transposing others' perspectives into the terms of one's own understanding rather than understanding them on their own terms (53).

This brings us back to the necessity and the danger of categories, and to the challenges facing participants in dialogues about reconciliation in Canada as well as to the risks and limitations of the genealogical account of reconciliation in this dissertation. In order to engage with the complexities of language and power shaping political discourses of reconciliation, I have had to use language in the process, and have had to employ categories in an attempt to make meaning among the discursive uses that I collected. In engaging with the unity/exclusion

[4] In relation to these elements of Tully's work and their relevance for approaching the discursive conundrums of reconciliation discourses, see also Karmis (2023) and Owen (2023) on the centrality of listening in Tully's approach and how it addresses the dual problems of "ignoring uptake" and "assuming uptake" of reasons in deliberations.

dynamics shaping and shaped by the uses of reconciliation discourses in Canadian constitutional politics (Grant 2018), I myself had to choose to include and use particular frameworks to the exclusion of others, to look at some sources of discourse to the exclusion of others, and to use categories to talk about groups of people whose boundaries are in reality porous and fluid, whose compositions are internally heterogeneous, and whose members all hold diverse perspectives on their identities, constitutional politics, and reconciliation. I could only do this from my own particular and partial perspective, and from within my place in the web of power relations as a white anglophone seeking to understand the ways that reconciliation discourses operate in shaping relations with other peoples in a political community that claims me as a citizen. These factors shape the inherent contingency of this genealogy, and yield the possibilities of ways that my account of uses of reconciliation discourses may be limited by the analytical categories I have used, and may fail to recognize ways my analyses remain stuck within the paradigm of my own tradition of thought due to limits I do not yet see and understand.

However, dialogues of what Tully describes as "reciprocal elucidation" are not a solitary activity (see Karmis 2023, esp. 3-6). What I have sought to do in this dissertation is to contribute to the first step of recontextualizing reconciliation, and to offer one set of tools that can be used to engage with the different specific meanings that reconciliation has and the different ways the term gets used in constitutional politics that can help us avoid being "too readily bewitched" into perceiving reconciliation as meaning everything, nothing, or one specific thing (Skinner 1998, 116). This contribution is not a complete story, but a recounting of parts of one from where I sit, and an invitation for others to chime in with other parts of it and with reflections on what this telling may have missed or misunderstood as part of an ongoing exercise of reciprocal elucidation about the language through which we constitute political relations in this place.

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