“Reparatory justice,” according to Ruti Teitel, establishes a form of redress within transitional justice movements that obligates the state to balance a competing set of interests in remedying injustices that victims suffer due to state wrongs. These interests oppose forward-looking political goals to backward-looking recovery objectives in ways that call into question the aspirations of compensation: does reparation advance the rights of the individual or collectives, victims or the state? Rather than analyzing reparations as compensatory or punitive, Teitel argues that reparatory justice should be informed by historically-governed social expectations that do not oppose the interests of victims to the state but rather connect them dialectically. Because reparations comprise both rituals of incorporation that mediate the transition of the victim back into society and social acknowledgements of state-wrongdoing, their enactment requires that reparatory procedures take place at all levels of the social order, not only by restoring to victims what has been taken from them, but also by accounting for tangible and intangible losses that may include harms to identity, social status, material wealth, reputation, and public acceptance.

“In accounting for state responsibility and repair, debates about reparations are also inherently political. They concern assessments of ‘what justice demands’ and of ‘what is administratively possible,’ yet they also raise questions about the balancing of these corresponding goals in ways that oppose one justice claim to another, obscuring the public’s understanding about whose injustice reparatory justice is meant to serve: should historic injustices suffered by Indigenous peoples be superseded to account for conditions that “no longer obtain” and “structures of expectation” that individuals have acquired through no fault of their own, despite the problem of adverse possession of Indigenous lands? Does ongoing injustice experienced by “overlapping generations” of subaltern groups make an obligation by society to “fulfil restitutive and compensatory” claims for acts of injustice inherited from the past morally relevant? Are the shortcomings of liberal justice, in its focus on “individual rights and modest redistribution of resources,” offset by understanding victims’ descendants’ “current suffering” as an “enduring injustice with historical roots” that their contemporary social status makes visible? Does pursuing “justice as equity” take into account how historical injustice represents an ongoing social harm directed not only “against family lines” but also against particular kinds of “family relations” with different kinds of contemporary effects that require remedies?"
I raise these questions to introduce the case studies that follow because, by foregrounding
the state as the constitutive entity for fostering reparatory justice, these arguments limit the
justice claims launched by Indigenous communities. They do so in several ways. First, the
arguments engage in “baseline” thinking which requires justice actors to “choos[e] among
victims of varying persecutions and their political interest groups,”7 level the political playing
field within which competing claims arise, and minimize the ways in which these claims may be
at odds with each other, permitting states to choose among their justice priorities and thereby
alter international norms that they have agreed to. “Selective endorsement”9 provides states with
the moral force of assent, which “preserve[s] their identity as human rights supporting” actors
within a wider political community, but maintains their local autonomy to safeguard “their legal
and institutional status quo regarding Indigenous issues.”10

Second, by prioritizing reparative frameworks that are state-authorized, these arguments
re-centre the state’s capacities as the source for justice initiatives even though its goals to
“reconstruct the boundaries of the political community”11 may be at odds with Indigenous
communities’ justice objectives,12 thus ignoring the historical and ongoing specificities of
Indigenous harms. “Everybody suffered”13 represents a short-hand way of advancing reparatory
schemes committed to universality and egalitarianism that call into question other forms of
justice-thinking and the particular circumstances of historical wrongs that matter to Indigenous
communities.14

Third, by side-stepping the key insight raised by feminist transitional justice scholars that
the state’s role in historical injustice is in no way neutral and that conditions of inequality that
existed prior to historical wrongs continue to bear on current circumstances,15 these arguments
fail to reform unjust relations by misunderstanding the historical role that victims held and the
deliberateness of the state’s indifference to them. “Build[ing]-in … [victim] consent” while
“building-out” the state’s agency represents the moral standpoint theorized by Elaine Scarry to
account for attributions of agency that conceal the material workings of power.16 As Scarry
explains, “it is a universal fate of those from whom the power to author their own fate has been
retracted that later populations reattribute to them the power of authorship and speak of them as
‘permitting’ it.”17 In contrast to a top-down approach that prioritizes state objectives, “[l]ooking
to the bottom,”18 represents an approach that makes visible other “normative priorities” to
address “the concrete experience[s] of oppression” that victims suffer from, while also
permitting the issue of “moral relativism” to recede and new justice initiatives to be brought into
view.19

In this essay, I explore three case studies that depict how Indigenous communities engage
in self-determination practices that depict “rituals of reparation” in the determination of new
forms of justice practices. I argue that these examples not only convey Indigenous communities’
“concrete experiences of oppression,” but also enact rituals of justice-making that go beyond
reparatory initiatives undertaken by the Canadian state. I analyze these activities as forms of
justice as self-determination to call into question the centrality of state-authorized reparative
schemes and permit us to grasp how Indigenous communities enact a different understanding of
justice, one that requires the community that suffered the loss to determine the form of reparation
most appropriate to the harm inflicted. In the three case studies that follow, I examine the Sahtu
Dene’s efforts to restore land polluted through uranium mining, Heiltsuk resistance to the
Northern Gateway Pipeline Project, and Canada’s Truth and Reconciliation Commission.

Reparatory Justice Practices by Indigenous Women

Reparatory Justice Practices by Indigenous Women
The reparatory practices that follow depict social acts that comprise Indigenous justice as self-determination. Abdullahi Ahmed An-Na`im explains this critical turn in transitional justice initiatives as one that abandons a colonial model that relies on a logic of progression of “predetermined phases for societies to go through” as “normative ideals imposed from above,” in favour of Indigenous conceptions of justice, which incorporate “organic and spontaneous” elements that “emerg[e] out of local context and [are] adapted by the people themselves to the specific conditions of their country.” As An-Na`im explains, “If it does not make sense to the members of the community concerned in its local context, it is not justice to them.” I call these practices rituals of reparation because they express Indigenous justice goals by connecting local experience to the public sphere through the realm of the symbolic which, in ritual practice, “point[s] to the achievement of something that lies beyond what is immediately apparent.” The ritual aspects of these practices transcend historical limitations to articulate transitional justice for Indigenous communities that engages in ceremonial and political acts that perform and augment Indigenous knowledge systems, localize experience in its social embeddedness, and link contemporary events to a historical past that is specific to Indigenous communities.

In taking up the concept of Indigenous justice as self-determination as a ritual of reparation, my analysis prioritizes gender-justice initiatives undertaken by Indigenous women. Indigenous women in Canada enact gender-justice through self-determination struggles by emphasizing forms of community activism that may be best characterized as “active silence.” They foster community regeneration according to the principles of kinship respect and intergenerational-inheritance and renewal by working ‘behind the scenes’ to practise political sovereignty in ways that facilitate Indigenous social-justice claims. Their activism engages “the call to be just” by showing how Indigenous communities take responsibility for historic wrongs in ways that situate injustice in the context of “social and political practices” that precede and go beyond the specific moment in which the injustice occurred. Indigenous women’s justice may be defined as both situated and normative: situated because their “sense of justice” makes claims upon people to take responsibility for unjust acts, and normative because their justice practices “clarif[y] the meaning of concepts and issues, describ[e] and explain[ ] social relations, and articulat[e] and defend[ ] ideals and principles.” Justice practices by Indigenous women translate culture into social and political meanings that further reparative goals. The turn toward abstraction that generally follows justice talk—“asserting and mastering a state of affairs” is eschewed by Indigenous women in favour of a critical stance toward the achievement of justice that prioritizes community experience and socially-situated normative aspirations. The term “active silence” articulates their agency in that it captures a representational double-bind that concerns Indigenous women’s gender-justice activism. Although they may authorize the justice initiatives that propel their communities into wider social relations to address historic wrongs, their activism is often appropriated by other community members as a form of Indigenous self-determination that obfuscates the role that gender meanings played. The effect of this appropriation is to obscure how gender and justice coalesce in forming new social relations. Gender-justice activities undertaken by Indigenous women thus require new forms of meaning-making to show how Indigenous self-determination and gender issues are both co-implicated and justice-oriented.

Indigenous self-determination may be understood as an instrument of governance that is both constitutive of “an aboriginal community standpoint” and distinct from self-government yet hierarchically inter-related with it. Self-determination, according to Val Napoleon, expresses a two-part process that engages the “right of an aboriginal nation to choose how it will be
governed,” and grounds the community’s “collective power of choice.”

Within the human rights regime, self-determination is the core concept that articulates a new source of Indigenous rights. These rights are expressed as “human rights to culture” in which culture is understood as a “capacity [held] by both peoples and persons to engage in [particular practices]” and as a “basic component of human dignity.” Cindy Holder describes this shift in international legal fora in three ways: “culture is treated as an activity rather than a good (or object), culture is taken to be as basic a component of human dignity as are freedom of movement, freedom of speech, and freedom from torture, and cultural rights can be understood only against the background of a basic right to self-determination.”

Despite recognition of self-determination and culture rights, Indigenous communities confront the constant erosion of their self-determination practices by both state and international forums. This erosion occurs because legal and state institutions do epistemic violence to Indigenous communities in two ways: first, through the discursive framing of the “legal personality of Indigenous peoples;” and second, because self-determination struggles are viewed through a historical presentism that tends to erase the historical past in foregrounding future-oriented politics that omit recognition of prior and continuing Indigenous self-determination practices. Mark Franke argues that state and international discourses demonstrate a conclusionary logic in the way they describe Indigenous communities that adds to Indigenous struggles by conceiving of them as ‘blank slates’ in which three conditions prevail: 1) they have no inherent authority to contest state incursions; 2) their self-identity is constrained by a focus on cultural rights determined through the historical colonial encounter to the exclusion of contemporary practices; and 3) their local sovereignty remains unrecognized by national and international objectives that prioritize state development.

Active Silence and “Deep Colonizing”

A concept such as “active silence” addresses this erosion by calling attention to other forms of organizing and resistance in which Indigenous communities have engaged to assert their self-determination practices in their local and historical embeddedness. “Active silence” also articulates a different framework for Indigenous justice as self-determination, a framework that is not dependent solely on legal mechanisms for its authority.

“Active silence,” according to Deborah Bird Rose, counters the ideological and material implications of law’s historical erasure of Indigenous peoples which takes effect in two ways: first, as a passive condition in which Indigenous peoples consent to their erasure even as their historical and contemporary presence continues; and second, as a form of “deep colonizing” through which “conquest [practices] embedded in institutions aimed toward reversing the effects of colonisation” amplify existing colonial relations through practices that reconfigure and erase Indigenous life-ways. Active silence contributes to Indigenous self-determination struggles by raising questions about women’s knowledge claims and their contributions to decolonization practices. It also addresses law’s ideological framing by drawing attention to gender identity as a political identity while also opening up the historical record to new forms of knowledge recovery. Framed another way, through gender analysis, the concept politicizes the foundational goals of Indigenous decolonization processes. It engages with the issues of voice and agency by preventing the legal construction of Indigenous peoples from defaulting to a universal stance. That is, it accords race and gender identity to the historical narrative by establishing a politics of reciprocity and dialectical engagement with the meaning of injustice and prior state acts signaled by the contemporary activism of Indigenous women.
Case Study I: The Community of Délînê and Peter Blow’s Village of Widows
The community of Délînê, N.T. has a Dene population of 800 people. It is located on the shore of Sahtu (Great Bear Lake) about 300 miles north of Yellowknife NT. It is the only tribe and the only human community on Sahtu, which is the ninth largest lake in the world and the fifth largest in Canada. The area on the north shore of Sahtu was the site of radium mining from 1934 to 1939, uranium mining from 1943 to 1962, and silver mining from 1962 to 1982.38

The Dene of Délînê, mostly men, worked as laborers carrying gunny sacks of radioactive uranium ore and concentrates on the transportation route. Tons of tailings, both radium and uranium, were dumped directly into the lake and used as landfill. Port Radium was owned and operated by a crown corporation of the Government of Canada.39 Uranium ore and concentrates were extracted, milled, and sold to the United States government for the Manhattan project. Because of their subsistence livelihood, the Dene travelled extensively on and around the lake following food sources. Not just men but families were generally exposed to the various waste landfills and lake dumps over the years. They were not warned about the hazardous nature of these ores and tailings, and took no precautions with regard to working with this toxic substance, drinking water, or harvesting their traditional foods. They were advised of “hot spots” of radioactivity in the Sawmill Bay area, one of the areas for which they traded other territory in their land claims agreement because of its subsistence priority use. Efforts to remediate soils and surface water began in 2005 through a joint Canada-Délînê partnership making the area around Port Radium safe for human activity for a period of up to three months.40

In 1998, a delegation of Dene elders, traditional leaders, and community activists travelled from this remote community to Tokyo, Japan, to participate in ceremonies commemorating the victims of the bombings of Nagasaki and Hiroshima during the Second World War. Their purpose was to apologize for their unwitting role in mining the uranium that went into making the atomic bombs. The journey, captured on film by Peter Blow in his documentary Village of Widows, tells the story of their travels, reception, and participation in the commemorative events.41 It also describes the long-term effects of mining for the Délînê community, effects that Blow characterizes as creating a “village of widows” due to the devastating impact of cancer-causing agents that killed two generations of men involved in the mining operation. As part of their attempts to recover from the impact of these losses, the traditional women of the community invited Blow to record the story of their 20-year struggle to persuade the Canadian government to clean up the tailings that pollute the water sources and lands surrounding the community, as well as to document their public apology for participating in these devastating historical events.

The documentary foregrounds the interaction between legal constraints and community justice initiatives by recording the community ethics and principles of reciprocity that inspire Dene representatives to meet with members of the Article 9 Society in Hiroshima, participate in commemorative ceremonies that honour the injustice and devastation of the past, and undertake what Mary Louise Pratt in “Planetary Longings” describes as an “assertion of equivalence” between the Dene people and the Japanese community.42 “The beginning is meeting the end,” an expression of solidarity uttered at their first meeting, metaphorically captures this sense of social parity and transformation. As the film shows, the Dene members undertake strategies of reciprocal engagement that depend on a foundational premise of understanding that “regimes of knowledge” may be shared, resonances between communities asserted, and intersections of experience and coalitional struggle envisioned in the formation of justice practices. The interactions between the Dene and their Japanese hosts convey these goals. When the two
communities meet, there is much laughter, awkwardness, and mutual goodwill, and an agreement to work together to foster respect and social relations that will continue into the future.

In contrast, when the Dene travel to Ottawa to meet with then Minister of Indian Affairs, the Honorable Jane Stewart, they encounter endless conflicts and struggles, from insufficient resources to purchase tickets, to problems with flights and delays in terminals, to a general sense of the struggle to travel within Canada and to bridge its bureaucratic divides, a struggle that culminates in the delegation’s arrival in Ottawa only to be met by an empty room when no minister or representative from the Department of Indian Affairs’ office is present for the meeting. The film makes apparent the following sense: that as a community the origins of Dene humanity, justice, and sovereignty are to be found in “assertions of equivalence” with other justice-seeking communities which emphasize “points of intersection and resonance across societies and histories,” but that these practices of reciprocity may not be initiated by them within the Canadian nation-state. Tellingly, the film also makes clear the foundational role that Dene women play in fostering the reciprocity process between the Dene and Japanese communities and in participating in their meetings as equal and authoritative representatives.

Case Study II: Bella Bella Resistance to Enbridge’s Northern Gateway Project

The Northern Gateway Pipeline Project is a proposal by Canadian oil and gas company Enbridge to build pipelines stretching 1,177 kilometers from the Alberta oil sands to the west coast of British Columbia. The pipelines’ capacity would transport 525,000 barrels of oil per day. The project’s cost is $5.5 billion dollars and would consist of two pipelines: one pipeline transporting oil in a westerly direction from Bruderheim, Alberta, to the port of Kitimat, British Columbia. From Kitimat, the oil would be shipped to international markets in Asia and the northwestern United States. A second pipeline would carry imported natural gas condensate in the opposite direction. The condensate is a toxic mix of liquid hydrocarbons that forms during the extraction of natural gas and is used as a thinning agent to dilute and help transport heavy oils like bitumen. The majority of the pipeline would be buried underground, with the exception of a few water crossings where it has been deemed safe to run the pipes above water. The project would also require the building of a new marine terminal in Kitimat.

The Heiltsuk First Nation, known more widely as Bella Bella, is located at the north end of Campbell Island on Indigenous territory that marks the southern end of the proposed tanker route. They oppose the pipeline. They agree with environmental groups, fishermen, and municipalities that the pipeline process pollutes the air and nearby lakes, rivers, streams, and watersheds, destroying wildlife habitats and releasing large amounts of greenhouse gases that threaten surrounding communities. Local activist, Ms. Jessie Housty, has been at the forefront of organizing community knowledge about and resistance to the project. In 2010, Ms. Housty began raising awareness about the threat to local communities through education workshops that focused on “tankers and pipelines,” while also registering the community for public hearings. Initial events were sparsely attended, but Ms. Housty continued to take a leading role, entering classrooms and reaching out to youth from the community to inform them about the environmental dangers associated with tanker transport. Ms. Housty’s objectives for each event were to instill pride in culture and support for each other within the community. In March 2012, Heiltsuk youth organized a 48-hour hunger strike in the local school to register their opposition to the pipeline plan. A hearing between the Chief and Council and Enbridge representatives, following a few days later on April 1, 2012, was cancelled by Enbridge representatives arguing that they feared for their safety in light of community resistance. When talks resumed, William Housty, Ms. Housty’s brother, provided expert testimony before the committee conveying the
traditional knowledge, Heiltsuk culture and customs, and kinship relations that have sustained and fostered ceremonial and political practices by the Heiltsuk people that are put at risk by the Northern Gateway Project. Should a spill occur, Mr. Housty asserted, Heiltsuk First Nation will live out its consequences in ways that do not affect other communities. Ms. Housty is quoted as stating, “If the Northern Gateway goes through … the only jobs we’ll get are cleaning oil off our beaches.”

Case Study III: The Indian Residential School Experience and Canada’s Truth and Reconciliation Commission

Canada launched the Truth and Reconciliation Commission (TRC) on Indian Residential Schools by Order-in-Council in 2008. Its mission was to “reveal the complete story of Canada’s residential school system, and lead the way to respect through reconciliation … for the child taken, for the parent left behind.” The TRC originated out of the Indian Residential Schools Settlement Agreement (IRSSA), “the largest class-action settlement in Canadian history,” a settlement that brought to an end “more than 11,000 legal cases” by former students against the “churches that ran the schools and the federal government that funded them.” The schools operated for over a century; there are an estimated 80,000 former students still living today. The last school closed in 1996, and by that time, approximately 150,000 children had been in attendance from First Nations, Inuit, and Métis communities. The schools inflicted gross violations of human rights on children and their parents by subjecting children to physical and sexual abuse and punitive forms of discipline, and by preventing parents from acting on their children’s behalf in withholding them from the schools. One scholar notes that because “the schools aimed to ensure that distinct self-governing Indigenous communities would no longer exist,” Canada’s behavior toward Indigenous communities represents a form of genocide aimed at the eradication of a community of people.

Seven national events by the TRC were held between June 2011 and September 2013. Each began with a sacred fire which was kept burning throughout the event, with the ashes placed in a special bowl and conveyed to an Indigenous representative who would participate at the next gathering. The ashes provided a sense of ceremonial and sacred continuity between events, and the hope is that they will be incorporated into the national ceremony to be held in Ottawa in June 2015. Each event also began with ritual elements that included a “Grand Entry,” led by Indigenous peoples, the participation of “Honorary Witnesses,” whose role it is to validate and provide legitimacy to the work undertaken and to keep open a path into the future by “stor[ing] and car[ing] for the history they witness … [and] shar[ing] it with their own people when they return home,” and the affirmation of grief and loss, as well as the recognition of personal achievement. Tissues used to wipe away tears were collected and burned at the sacred fires, and events concluded with cupcakes and the singing of Happy Birthday in recognition of the fact that birthdays were not generally celebrated at Residential School. Depending on the location, the song could be sung in any number of different Indigenous languages. According to Mr. Stephen Allen, Associate Secretary for the Justice Ministries of the Presbyterian Church in Canada, the singing represented one aspect of the ceremony and ritual undertaken at each event to link reconciliation to the wider goals of national healing.

Theorizing Gender-Justice as Self-Determination for Indigenous Women

Of the three case studies analyzed here, the TRC is the example that fits best within the reparatory goals of transitional justice practices. In Canada, these measures have included “reparations, a truth commission, commemoration and an official state apology.” It remains to be seen if its work will prioritize gender justice initiatives by Indigenous women and how it will
do so. Feminist transitional justice scholars have argued that for women in Western-style democracies that have not undergone a regime change, the erasures of women’s voices and agency are compounded by their location in states that are not subject to the same human-rights scrutiny as countries rebuilding from systemic war or political and civil strife. The attempt to “look to the bottom” to account for Indigenous women’s voices and experiences may be particularly difficult in a country such as Canada which has not been forced into a fundamental reconstructive process.

I have used these case studies as examples of rituals of reparation that raise the problem of how to conceptualize reparatory justice practices by Indigenous women in ways that recognize historical harms experienced by Indigenous communities as “enduring injustice[s]” with continuing effects into the present. The Sahtu Dene women’s struggle to repair the Délînê community’s relations with the Japanese community through comparable acts of historical loss situate kinship as a reparatory justice concept that gives new meaning to the struggle for political recognition to overcome historical loss and to make amends for acts of injustice however unknowingly undertaken. The efforts by Ms. Jessie Housty to protect Indigenous homelands by expanding kinship relations to incorporate the defense of Indigenous homelands resonate with the articulation of an Indigenous common humanity asserted by the collective singing of Happy Birthday. My argument in light of these examples has been that reparations matter most for Indigenous communities when they express the goals of those who have been victimized. For the women of Délînê, reparations included recording their struggle to convince the Canadian government of deaths in their community due to cancer-causing agents. For activists from Heiltsuk First Nation, they concerned educating commissioners to the realities that the community of Bella Bella would live out an oil spill disaster in ways that would not affect other communities. For survivors of Canada’s residential school system, the goal may be to inform the Canadian public of inter-generational harms not currently understood or sought by the Commission that are gender-specific.

Within the mainstream, debates about reparations accept the caveat that “Not all of the harms caused by the injustice are within its scope.” For Indigenous women activists, this qualification represents precisely the category of thinking that marginalizes and erases their experiences of injustice and the reparations that they most strongly hope for. To reorient how we think about Indigenous reparations, I conclude with a set of principles developed in dialogue with Ms. Jessie Housty, as problems of knowledge translation and lived experience that require incorporation into our language of justice-thinking. I include these principles by way of conclusion. They are the following: We must find ways to conceptualize how the intangible as a way of life is made tangible in government terms; we must find creative ways to set deep cultural knowledge into a format that commissions may hear; we must find a language to frame the things that are true for each other so that they can be communicated and understood; we must overcome the fundamental unwillingness to understand that these things are true; we must recognize the ethical reckoning required by insider and outsider knowledge systems: if these issues are not a part of your identity, then you can only understand these issues intellectually.

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3 Jeremy Waldron, “Superseding Historic Injustice,” *Ethics* 103 (October 1992): 25, 16, arguing that “Repairing historic injustice is ... a difficult business ... The only thing that can trump that enterprise is an honest and committed resolve to do justice for the future, a resolve to address present circumstances in a way that respects the claims and needs of everyone” (27).

4 Daniel Butt, “Nations, Overlapping Generations, and Historic Injustice,” *American Philosophical Quarterly* 43 (October 2006): 358, countering the morally repugnant claim that “individuals cannot be deemed to have been harmed by historic events which caused the said individuals to come into existence” (365) and asserting that “Nations do not face the question of whether to meet their (restitutive) obligations every year ... (but rather) face them constantly, in that an ongoing refusal to (do so) represents a continuous act of injustice” (364).

5 Jeff Spinner-Halev, “From Historical to Enduring Injustice,” *Political Theory* 35 (October 2007): 575, 579, proposing that political communities “share space” with victims’ descendants in such a way as to comprise a “political community” that may not bear responsibility “for an enduring injustice, in either its history or its present form, but ... still may have a responsibility to end the injustice” (588).

6 Janna Thompson, “Historical Injustice and Reparation: Justifying Claims of Descendants,” *Ethics* 112 (October 2001): 133, contending that the belief that “Individuals ought to be recompensed for the injustices they have suffered is a basic moral and legal idea” and that “Justice as equity might require that they be compensated for being born into a disadvantageous social position” (114, 117).

7 Teitel, *Transitional Justice*, 135. “Base-line thinking,” Teitel explains, is a consequence of “retroactive thinking” which attributes rights retrospectively through the “redress calculus” but remains confronted by “where to draw the line” when states must alone for the “acts of their predecessors” (134, 135).


9 Ibid.

10 Ibid., 103.


12 Courtney Jung, “Canada and the Legacy of the Indian Residential Schools: Transitional Justice for Indigenous People in a Nontransitional Society,” in *Identities in Transition: Challenges for Transitional Justice in Divided Societies*, ed. Paige Arthur (Cambridge: Cambridge University Press, 2013), 230, assessing the appropriateness of transitional justice mechanisms to account for Indigenous demands for justice in the context of Canada’s state-authorized Truth and Reconciliation Commission which is designed “to address only the legacy of Residential Schools” and may permit “governments ... to use transitional justice to reassert their sovereignty and legal authority, whereas indigenous peoples may try to resist this strategy and even make competing claims to sovereignty and legal authority” (218).


14 Stephanie Irlbacher-Fox, *Finding Dahshaa: Self-Government, Social Suffering, and Aboriginal Policy in Canada* (Vancouver: University of British Columbia Press, 2009), 90, arguing that Indigenous peoples in Canada “in speaking of injustice, often articulate specific events or categories of experiences” that “require[e] change and substantive measures for healing” (91).

15 As Katherine M. Franke explains, “It now goes without saying – largely because important legal authorities have said it – that the kinds of harm caused by this sort of sexual violence is
normatively and legally on a par with the kinds of harm that men have traditionally suffered in war and in grossly unjust societies;” see “Gendered Subjects of Transitional Justice,” Columbia Journal of Gender and Law 15 (2006): 820. See also Genevieve Painter, “[R]eturning victims to the point they were in before the conflict is not an understanding of reparations that can work if one is concerned with a gender-sensitive approach to reparations,” “Thinking Past Rights: Towards Feminist Theories of Reparations,” Windsor Yearbook of Access to Justice 30 (2012): 14, and Rosemary Nagy, “In the privileging of legalistic approach, transitional justice tends to focus on gross violations of civil and political rights … Consequently, structural violence and social injustice are peripheral in the ‘from’ and ‘to’ of transitional justice;” “Transitional Justice as Global Project: Critical Reflections,” Third World Quarterly 29 (2008): 284.

17 Ibid., 157. Each of the case studies that follow brings to bear this recognition—Indigenous men mining uranium ore, community members opposing pipelines, and children sent to residential schools—that the targets of government policy “ceased to exercise political autonomy over their bodies.” Rebecca Tsosie takes up this problematic of attempting to theorize the agency of those communities who have “ceased to exercise political autonomy over their own most intimate property, the human body” (Scarry, The Body in Pain, 156) in the context of Native Nations in the United States who were “coerced into a forced dependency” (49) giving rise to a “profound legacy” of harms that continues to “haunt Native people” (50), harms that may be understood as intergenerational and ongoing yet lacking in redress. See Rebecca Tsosie, “Acknowledging the Past to Heal the Future: The Role of Reparations for Native Nations,” in Reparations: Interdisciplinary Inquiries, ed. Jon Miller and Rahul Kumar (New York: Oxford University Press, 2007), 43-68.

19 Ibid.
21 Ibid.
25 Ibid., 4.
26 Ibid., 5.
27 Ibid.
30 Damien Short notes an important shift in how self-determination has been conceptualized and embraced by Indigenous peoples in the post-1994 era that followed from ratification of the
United Nations Draft Declaration on the Rights of Indigenous Peoples. Short distinguishes between Indigenous-citizenship rights as these have been imposed by settler states and the Draft Declarations’ articulation of “rights to self-determination and land” which recognize the “centrality of land to indigenous culture” (273). In this context, self-determination refers to “the right to political autonomy, the freedom to determine political status and to freely pursue economic, social and cultural development” (273); see, “Reconciliation and the Problem of Internal Colonialism,” *Journal of Intercultural Studies* 26 (August 2005): 267-82.


Stephanie Irlbacher-Fox notes that the mine represented a “symbol of frontier progress” and was “celebrated in a 1938 painting” by A. Y. Jackson, a member of the Group of Seven (Irlbacher-Fox, *Finding Dahshaa*, 95). Irlbacher-Fox argues that the Délînê communities’ “rationale for negotiating self-government” was “unique” in that community elders were motivated by issues concerning the impacts of “uranium mining,” inadequate health services, and tensions between the government and community due to the state’s agencies’ “cultural non-understanding” and “decision-making” (93).


Peter Blow, *Village of Widows* (Toronto: Kinetic Video, 1999), DVD.


Kopecky, “$273 Billion Question.”


Ibid., 1.


Ibid., 2.


James, “Uncomfortable Comparisons,” 24.


Ibid.


Stephen Allen, Class Presentation, 8.

Ibid., 7.

The Honorable Justice Murray Sinclair, Commission Chair, stated at McGill University on March 13, 2014, that the work of the TRC was to engage in transitional justice.


A tremendously important illustration of one survivor’s testimony disobeying the conventions of statement-gathering is analyzed by Ronald Niezen as an example of “Survivor of intergenerational processes” or “those whose lives were in some way adversely affected by the actions of a close relative,” when the testifier, a woman, publicly addresses her comments to both the audience and her abusive husband (Niezen, Truth and Indignation, 98). For an analysis of how gender dynamics inform the ways in which Indigenous women writers address residential school practices in the pre-truth and reconciliation period, see Élise Couture-Grondin and Cheryl Suzack, “The Becoming of Justice: Indigenous Women’s Writing in the Pre-Truth and Reconciliation Period,” Transitional Justice Review 1, no. 2 (2013): 97-125.


Thompson, “Historical Injustice and Reparation,” 118.
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