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Avigail Eisenberg

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## The challenges of structural injustice to reconciliation: truth and reconciliation in Canada

Avigail Eisenberg

Political Science, University of Victoria, Victoria, Canada

### ABSTRACT

Lu's distinction between interactional and structural injustice helps to clarify both the normative significance and some of the shortcomings of recommendations adopted by Canada's Truth and Reconciliation Commission (TRC). At the same time, the TRC highlights three challenges to addressing structural injustice in the context of reconciliation.

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Catherine Lu's *Justice and Reconciliation in World Politics* clarifies the normative principles and subjects of reconciliation and injustice while providing a compelling account of what is at stake for victims and perpetrators in reconciliation. Lu identifies several reasons why states and transnational actors often fail to respond effectively to historical injustice. Leading amongst these reasons is their failure to address social and political structures that render some people, especially vulnerable to being victims of injustice. The aim of the book 'is to take structural injustice and alienation into account in thinking about historic injustice and political reconciliation' (Lu 2017, 15) and to trace the linkages between cases of injustice and the larger structures of social and political systems that obstruct justice and impair the success and permanence of reconciliation. The structures of particular interest to Lu are colonialism, statism, civilizational ideology, and pathologies of victimhood.

Lu draws on an impressive range of cases and different types of injustice – not only structural injustice – to motivate and illustrate her arguments. She includes cases about reconciliation after genocide, colonization, slavery, and war; cases from throughout the twentieth century; cases involving ethnic minorities, ideological opponents, and states defeated in war; and victimization based on race, gender, and sometimes age. Some leading examples mentioned in the book include the terms of reparation imposed on Germany following WWI; redress following the genocide of the Herero and Nama peoples under German colonial rule in Southwest Africa; the enslavement of Korean women under Japanese imperial rule of Korea; devastation caused by war between the USA and North Vietnamese Communists; and the victimization and coercive assimilation of Indigenous peoples in the Americas.

I mention this variety by way of contrast with my own path into this material, which is specific and narrowly focused on recent efforts by the Canadian state to address a

legacy of settler colonialism towards Indigenous peoples through Canada's Truth and Reconciliation Commission (TRC). Here I follow Lu's analysis to illustrate how the TRC addresses what Lu calls 'interactional' and 'structural' injustice. The distinction between these two types of injustice is helpful at clarifying both the normative significance of the TRC's recommendations and some of its shortcomings. At the same time, I show that the case of the TRC highlights three challenges to addressing structural injustice in the context of reconciliation.

### The TRC and interactional injustice

The TRC was established in 2008 as part of a court-mandated settlement for the survivors of a residential school system. Residential schools were established in the late nineteenth century across Canada to assimilate Indigenous children. They were federally mandated and church-run schools. They reached their zenith in the 1930s, with approximately 80 schools operating at the time. Thereafter, the schools began to close amidst allegations of mistreatment and abuse until finally, in 1996, the last school closed. By then, 150,000 children had gone through the school system. The schools leave behind an appalling legacy of child sexual and physical abuse, high disease and death rates, coercive assimilation, loss of language, cultural dislocation, and the destruction of kinship structures and familial bonds as some children were forcibly removed from their families. The schools have been described as a form of cultural genocide. Their legacy has been profound both as a matter of historic record but also in terms of how they impact Indigenous peoples living in Canada today, most of whom experienced the ill effects of residential schools one way or another.

The 2006 court-mandated settlement to survivors of the residential schools was the largest class action lawsuit in Canadian history. The legal settlement included a 'Common Experience Payment' (\$1.9 billion); an independent assessment process for individual claims (\$1.7 billion); health and healing services (\$125 million); the establishment of a TRC (\$60 million); commemoration (\$20 million); and the creation of a residential school archive, which was established in 2015 in Winnipeg, Manitoba, to house the proceedings of the Commission.

The Commission's mandate was broad. It called for a commitment from the 'people of Canada', whether or not they were directly involved in the schools, to participate in reconciliation. Over a 5-year period, it gathered statements from 6750 people. When the TRC released its report in 2015, it established the agenda for a nation-wide reconciliation project aimed at changing relations between Canadians and Indigenous peoples. The Report identifies 94 'calls to action' to redress the legacy of residential schools by revising policies and practices in six domains: child welfare, education, language, culture, health, and justice.

Although it is not Lu's central example, in many ways, her analysis is especially helpful at providing normative clarity about the approach taken by the TRC. First, a central feature of Lu's analysis is that injustice and redress for injustice each have two distinct dimensions. *Interactional injustice* occurs through the 'interactions' between victims and perpetrators. It is assessed on the basis of these interactions and rectified by developing better and more just interactions. *Structural injustice* focuses on underlying social, political, and economic structures that have contributed to or resulted from past

injustice. Structural injustice is potentially a much broader and more sweeping category of injustice, which requires assessing the way in which people are positioned in relation to each other by structures within and outside the state by institutions, regulations, and discourses. Reconciliation, according to Lu, is a 'regulative ideal' that allows agents to live peaceably together in a social order they mutually affirm (Lu 2017, 19). The TRC contributes to establishing this regulative ideal by calling for changes, not only to policies, but also to patterns of social relations and discourses that have contributed to unjust structures and interactions. For instance, one aim of the TRC is to improve communication and agency between Indigenous and non-Indigenous Canadians so as to enhance the agency of both parties and help to establish terms of coexistence that reflect and facilitate interactional justice.

An interactional approach to justice and reconciliation involves a narrower set of concerns than a structural approach. But it would be mistake to interpret it too narrowly. As Lu describes it, interactional injustice encompasses much more than discrete interactions that generate blame or liability for instances of wrongdoing. Liability, in particular, is narrowly focused on compensating victims by translating harms done to them into a monetary figure. As such, liability does nothing to respond to the existential and agential alienation often felt by victims of injustice and sometimes also by perpetrators. According to Lu, reconciliation needs to address this alienation. The interactional approach helps in this regard by seeking ways in which victims can recover their agency so that they can participate in reparatory and dialogical relations. To this end, interactional justice requires assessing the variety of ways in which injustice has damaged relations amongst people by damaging people. It ambitiously aims at re-establishing relations between victims and perpetrators so that 'interactional justice' is possible between them, rather than merely finding out who is to blame and extracting compensation from them.

The difference between liability and interactional approaches is important in order to understand the Canadian settlement agreement but also raises questions about the powers the Commission did not have and perhaps, according to Lu's analysis, should have had. Two key components of the Agreement – the 'Common Experience Payment' and 'individual claims assessments' – fit well with a liability approach because they issue some financial compensation to surviving residents of the schools. The 'common experience payment' is 'common' because it is paid to residential students regardless of whether they claim to have been abused or not, thereby avoiding the need for victims to prove abuse or to face their abusers. In contrast, the 'individual claims assessment' requires that claimants follow a quasi-judicial process where victims make claims, courts consider evidence, and perpetrators are called to account. Both components potentially satisfy a responsibility to settle accounts through tangible and direct compensation. But, as Lu recognizes, mere compensation neglects the conditions that might repair relations. In particular, it fails to address the kinds of support survivors often need to participate in processes of reparation.

The additional components of the Canadian settlement contribute to this more ambitious project of 'interactional justice' by establishing a forum for victims to relay their experiences and providing mental health and healing services for victims and their families. These kinds of services address the alienation survivors commonly experience not only in relation to those who have directly victimized them (in Canada's case, the

churches and the state) but also in relation to harm they may have internalized. Lu calls this latter harm ‘existential alienation’, which for those who have suffered such abuse, ‘denotes anxiety and uncertainty about what constitutes [their] authentic agency’ and impairs agents from re-establishing themselves as effective actors in their communities or in reparatory dialogue with others. By addressing ‘existential alienation’, the TRC and the interactional approach it adopts go well beyond individual liability to consider more broadly how relations can be repaired and how survivors can re-establish themselves as agents in these relations.

At the same time, the demands of interactional justice expose some weaknesses in how the Commission was conducted. One weakness is that commissioners were not empowered to investigate the complexities of victimhood, which according to Lu is a central feature of successful reconciliation (see especially Lu 2017, 67–79). Doing justice to victims, Lu argues, ‘entails recognizing and evaluating the agency of both victims and perpetrators...’ (Lu 2017, 75). Without this kind of critical evaluation, the TRC can provide limited resources to repair interactional alienation between Indigenous people and settler Canadians. A second weakness originates in a decision made early on not to give the Commission power to compel unwilling witnesses to give testimony. This decision meant that most of those who ran the schools did not participate in the TRC’s events. The result was a highly victim-centric commission that, laudably, protected victims from confronting perpetrators but at the cost of never forcing perpetrators to confront the testimony and experiences of survivors (Niezen (2016, 2017).

### The TRC and structural injustice

In addition to confronting interactional injustice, Lu argues that justice and reconciliation require that we confront structural injustice by looking beyond victims and perpetrators to the ‘institutions, norms, practices and material conditions that played a causal or conditioning role in producing or reproducing objectionable social positions, conduct and outcomes’ (Lu 2017, 19). The unjust structures of interest to Lu are globally pervasive and transcend state borders. They include social structures and processes embodied in institutions, discourses, and practices that ‘establish patterns of exclusion, domination, subordination, exploitation, and marginalization’ (Lu 2017, 148–9) as well as persistent patterns of privilege (Lu 2017, 155).

From the perspective of structural injustice, reparations are not only about what states owe and what states can do. Structural injustice exists within and between states. This means that approaches to reconciliation must be sensitive to the transnational nature of historical injustice and responsibility for redress. Statism can blind us to vulnerabilities that cross borders. In particular, Lu argues that the statist bias of the international system perpetuates injustice. It obscures the continuity of a colonial international order, entrenches the inferior status of Indigenous peoples, and perpetuates socially oppressive constructions of civilization, modernity, race, class, and gender (Lu 2017, 20). Statist bias reproduces injustices that have played a causal or conditional role in conflicts and obscures the connections between victims across borders and national divides.

In this regard, one important innovation of Lu’s book is that it attempts to conceptualize reconciliation and redress beyond state borders. Just as structures of injustice

transcend borders, so must the responsibility to address injustice, including borders between states and between different communities. According to Lu's account, the need to address structural injustices can impose joint rectificatory duties on colonizer and colonized states and societies (Lu 2017, 161–2) because unjust structures are upheld both by perpetrators and by victimized communities. For instance, children and women have been and continue to be vulnerable to victimization within most states and societies, including those societies that have suffered from the victimization of their child and female members.<sup>1</sup> The projects of remedying injustice and achieving reconciliation in such cases impose responsibility, not only on the perpetrators who have victimized women and children, but also on communities that have been victims of injustice insofar as they have also relied on structures that contribute to the mistreatment of (some of) their own people. The burdens of responsibility of victim and perpetrator groups are different, but insofar as each group is implicated in structural injustice, which contributes to or results from past injustice, each bears some responsibility for addressing injustice.

As mentioned, the structures implicated in any given injustice are likely to be broad and pervasive, which makes it extremely difficult to pin down the kind of change a structural approach requires in any given context. But before considering this challenge, it is worth reviewing the reasons why addressing structural injustice is important to Lu's analysis. The first reason is that crucial elements of injustice and redress are not addressed by the interactional approach. Though robust in some respects, interactional justice does not take into account the institutions, norms, practices, and material conditions, i.e. the structures that produce and reproduce problematic social positions, conduct, and outcomes which have enabled and perpetuated conflict.<sup>2</sup>

Second, in the absence of addressing structural injustice, the scope of responsibility for injustice and redress tends to be narrowly focused only on those involved in unjust interactions. Where the focus of redress is only on interactional injustice, the risk is that actors who were not directly involved in a conflict will view themselves as falling outside the scope of responsibility and fail to contribute to redress. This risk is certainly apparent in the Canadian case. One significant challenge of the TRC is to convince Canadians today to understand that they are implicated in the injustice that occurred in residential schools and as responsible for redressing it. Following Lu's argument, a structural approach is more likely to be successful at drawing Canadians into the scope of responsibility by highlighting the ways in which societal structures have positioned them, as settlers, to benefit from, rely on, and even perpetuate social structures that marginalize Indigenous peoples.

A third reason why addressing structural injustice is important to Lu's account is because it minimizes the risk that injustice will be understood as historically distant and superseded by circumstances that follow the passage of time (see Waldron, 1992). As Lu argues, highlighting structural injustice 'helps to clarify the grounds on which contemporary agents far removed in time from historical injustice may come to bear any responsibilities for addressing injustices of the distant past' (Lu 2017, 20). These agents

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<sup>1</sup>See, for example, Lu's discussion (2017, 126–39) of Korean comfort women under Japanese imperial rule.

<sup>2</sup>As Lu argues, the coverage of a structural approach may also be incomplete; even broad and potentially radical structural change may do little to address the alienation experienced by victims of conflict.

need not benefit from the structures in place in order to be responsible for changing them. Rather, their responsibility is based on ‘inherited burdens of historic injustice – in the form of contemporary structural injustices’ (Lu 2017, 170).

In the case of residential schools, the history is recent and many victims are still alive. The effects of abuse persist today, and some of the structures that contributed to the vulnerability of these children are well known and uncontested. But even so, an evident challenge throughout the process of reconciliation so far has been to convince Canadians that the structures that helped to facilitate residential schools are a problem *today* rather than a problem in the distant past and that survivors continue to be directly impacted by their experiences in the schools, even though most schools closed a long time ago. The challenge in this respect is to resist a tendency to narrow the scope of responsibility and minimize the need for redress. The significance of structural injustice in this third respect is that it ties collective responsibility to the persistence of unjust structures regardless of how much time has passed.

As these three reasons suggest, satisfactory processes of righting wrongs and reconciling relations rely on addressing structural injustice, not just interactional injustice. For this reason, it is important to understand precisely what it means to address structural injustice in any given case and what kinds of change a structural approach requires. In one sense, Lu’s answers to these questions are clear. Colonialism, statist bias, racism, capitalism, and civilizational discourses are the leading structural injustices that need to be addressed and are mentioned throughout the book. But the more difficult question here is, what counts as disassembling structural injustices such as colonialism, statist bias, racism, or capitalism?

One might consider in this regard the recommendations of the TRC, many of which go beyond focusing only on interactions between survivors and perpetrators. The Report highlights the need to change narratives of citizenship, understandings of territory, approaches to health and to history that many Canadians accept without question (Truth and Reconciliation Commission of Canada, 2015). For instance, it calls on government to change the citizenship oath so that it includes an obligation to respect treaties with Indigenous peoples (#94). It calls for a mandatory course on Aboriginal people to be taught in law schools (#28); the incorporation of Aboriginal healing practices into Canadian health care (#22); training for nurses and doctors in anti-racism skills (#24); the public repudiation of the Doctrine of Discovery and *terra nullius* through a constitutional proclamation (#45.i); and the requirement that child-welfare workers consider the impact of the residential school experience on children and their caregivers in the decisions they make today (#1.v). The calls for action also require, in various ways, that Canada live up to its obligations under the United Nations Declaration on the Rights of Indigenous peoples (UNDRIP) (#24, 27, 28, and more).

If fully adopted, these recommendations could dramatically reposition Indigenous peoples within Canadian society. But, they won’t have the far-reaching impact to which some of the more radical aims of Lu’s project seem to aspire. For instance, rather than challenging the statist bias and international order, many of these calls reaffirm the power of the state by calling for actions that will legitimate state governance and allow the state to govern more securely. Moreover, by protecting the state and state-based organizations such as the United Nations, the calls to action do little to disassemble the



colonial international order. They might even be interpreted as having the unintentional affect of reaffirming that order.

Reading the TRC in these ways highlights the first and most crucial challenge to overcoming structural injustice, which is the challenge of distinguishing between reforms that advance structural justice and those that, however subtly, entrench injustice. This challenge is a basic feature of most struggles against colonial injustice. In Canada, for instance, First Nations communities located in resource-rich areas struggle over whether or not to participate in land-development projects such as oil and gas exploration, the construction of pipelines, mining, and timber industries. One view is that these projects enrich communities through employment and economic development. Another view is that these projects co-opt Indigenous people into capitalist accumulation, assimilate them, and destroy their distinctive relationship with the land (see Coulthard, 2007). Along similar lines, some critics argue that the TRC is an extension of the colonial order, part of what some Indigenous scholars have called a process of ‘recolonization’ (Alfred, 2014). Another view is that the TRC is a means to restructure relations between settler and Indigenous societies so that they are more just.

Even though the argument that the TRC co-opts and recolonizes Indigenous people does not reflect the views of most who have commented on the TRC, it reveals a perspective that needs to be taken seriously by Lu in light of the emphasis she places on addressing structural injustice. As Lu recognizes (2017, 185–88), arguments against reconciliation take us to the heart of contemporary debates about the state’s role in perpetuating injustice. They also lead us to confront the difficult task of distinguishing between actions that reform and actions that entrench colonial injustice. Lu argues that Indigenous people require ‘structural dignity’ in order to take on this task, which can be attained, in part, through the terms established by UNDRIP (Lu 2017, 202) and include the right to self-determination. But her analysis needs to go a step further and show how this addresses the problem. Is structural dignity a solution to the problem of recolonization or does it merely move the problem to another level?

A second challenge to overcoming structural injustice is to ensure that the scope of injustice does not become so broad that it defeats the purpose it means to serve. As Lu points out, a structural approach is more likely to be successful than an interactional approach at drawing people into the scope of responsibility because it highlights the ways in which societal structures position people as inheritors and beneficiaries of structural injustice. But, in Lu’s account, the potential exists for the scope to become far too broad and for responsibility for remedying injustice to become diluted. If addressing structural injustice implicates everyone who has inherited the burdens and benefits of structural injustice, and if it extends both to those within and beyond state borders, the risk is great that its scope will be unmanageably broad. Rather than motivating everybody to take responsibility for injustice, such a broad scope could work to excuse everyone from taking responsibility on the grounds that responsibility is too diffuse to implicate anyone in particular. This risk seems especially great in contexts, such as Canada today, where it is already challenging to convince people that they are responsible for conflicts in which they did not directly participate. It might seem that structural injustice demands broadening the scope of responsibility, but increasing the scope too dramatically places the very project of remedying injustice at risk.



A third challenge is to specify what it means to address the bias of statism, which, in Lu's view, is a leading structural injustice. One way to address statism, according to Lu, is to include non-state actors in domestic and international state-based decision-making (Lu 2017, 212). But, the effectiveness of this solution is doubtful for two reasons. First, the puzzlehow can 'statism' be defeated without first reforming other structures and ideas – such as sovereignty and territory – upon which statism relies? Will including non-state actors in state-based decision-making institutions be an effective catalyst to radically altering how states operate? It seems unlikely. At most, including non-state actors might tone down elements of statism, and perhaps, this milder, reformist aim is more compatible with Lu's approach. But if a milder set of statist reforms is compatible with Lu's approach to reconciliation, she needs to offer a clearer sense of what this milder statism looks like, how it is sustained, and, if not sovereignty and territory, what kinds of structures and ideas it relies on.

The second reason to doubt that including non-state actors is an attractive solution is that it depends on which non-state actors are included. One needn't be a strong defender of the sovereign state to be sensitive to the argument that, in the international sphere, attempts to replace a fully statist paradigm with a more pluralist one are sometimes built on a naive hope that non-state actors will voluntarily wield power more fairly than state-based sovereigns. History indicates otherwise. But how to avoid incorporating the wrong kinds of actors in a world where injustice and co-optation continue to be perpetuated by the state, capitalist development, and so-called liberal governance is not clear to me and is surely one of the central challenges of our era.

Along with Lu, I have no doubt that structural injustice contributed to the abuse of children in residential schools in Canada. Pinpointing how to remedy this injustice in terms that are practically efficacious is a challenging task. One question for Canadians to consider, in light of Lu's analysis, is whether the residential school settlement agreement and the TRC's calls to action are practical and efficacious responses to structural and interactional injustice even if they fall short of some of the more ambitious aims suggested in Lu's book. Another question is what is required of us to ensure that such abuses will never happen again. Lu provides a convincing argument that we must address structural injustice in addition to interactional injustice. This is both a worthy and ambitious task. In the context of thinking about the political catastrophe of residential schools, Lu's book is thought provoking and helpful. It urges us to take on an ambitious project and to tackle the difficult issues. It provides a transformative perspective on what just and credible solutions look like and provides a convincing case for taking these solutions seriously.

### Disclosure statement

No potential conflict of interest was reported by the author.

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