

# TRUTH AND RECONCILIATION COMMISSIONS: A NEEDED FORCE IN ALASKA?

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INTRODUCTION.....	28
BACKGROUND AND DEFINITIONS.....	31
<b>Truth Commissions</b> .....	31
<b>Reconciliation</b> .....	34
<b>Context for Alaska</b> .....	35
<b>History of Occupation</b> .....	36
<b>Forced Assimilation Policies</b> .....	37
<b>Government-Endorsed Discrimination</b> .....	38
<b>Aftermath of Assimilation and Discrimination Policies in         Alaska</b> .....	40
COMPARISON AND OVERVIEW OF SELECT INTERNATIONAL COMMISSIONS.....	42
<b>South Africa’s Truth and Reconciliation Commission (1995) ...</b>	42
<b>Commission on the Truth for El Salvador (1992)</b> .....	46
<b>South Korea Truth Commissions (2000 and 2005)</b> .....	50
<b>Canada Truth and Reconciliation Commission (2007)</b> .....	53
TRUTH AND RECONCILIATION IN THE UNITED STATES.....	57
<b>Greensboro Truth and Reconciliation Commission (2004)</b> .....	58
<b>Metro Detroit Truth and Reconciliation Commission (2011) ...</b>	60
<b>Maine Wabanaki-State Truth and Reconciliation Commission         (2013)</b> .....	61
<b>Alaska</b> .....	62
CONCLUSION.....	66

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## ABSTRACT

*Truth and Reconciliation Commissions are official, temporary bodies used for communities to come to terms with past violence, promote education and awareness of historic trauma, and to provide recognition and closure for victims and successors. By bringing past issues to light, such commissions promote healing and allow these communities to move forward. Although the Commission on Truth and Reconciliation in South Africa after the Apartheid-era is best known, several similar commissions have been established throughout the globe and within the United States. This paper compares commissions from South Africa, El Salvador, South Korea, and Canada with those that have been established in the United States to examine whether such a commission would be useful in Alaska to address current social problems in the state.*

## INTRODUCTION

Truth commissions are official, temporary bodies used to investigate human rights violations and to provide a mechanism for countries and communities to come to terms with a past marked by prolonged conflict, civil strife, and violence.<sup>1</sup> While often used after countries have experienced major political changes, commissions can also occur years after a discriminatory or racially-motivated policy or practice ceases to exist.<sup>2</sup> While the Commission of Truth and Reconciliation in South Africa after Apartheid is most widely known,<sup>3</sup> over thirty other examples exist, including the Commission on the Truth for El Salvador (1992), the Truth Commissions in South Korea (2000 and 2005), and the Truth and Reconciliation Commission in Canada (2007).<sup>4</sup>

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1. See Angela Schlunck, *Truth and Reconciliation Commissions*, 4 INT'L L. STUDENT ASS'N J. INT'L & COMP. L. 415, 417-19 (1998) (explaining the purpose and function of truth commissions).

2. See *id.* at 415-17 (explaining the various time frames of truth commissions).

3. *Id.* at 415.

4. Truth commissions have also been established in Argentina, Bolivia, Chad, Chile, Democratic Republic of Congo, Ecuador in 1996 and 2007, El Salvador, Germany in 1992 and 1995, Ghana, Guatemala, Haiti, Honduras, Kenya, Liberia, Morocco, Nigeria, Panama, Paraguay, Mauritius, Peru, Serbia & Montenegro, Sierra Leone, South Korea in 2000 and 2005, Timor-Leste (East Timor), Uganda in 1974 and 1986, and Uruguay. *Truth Commission Digital Collection*, U.S. INST. OF PEACE, <http://www.usip.org/publications/truth-commission-digital-collection> (last visited Jan. 24, 2017).

Truth and reconciliation commissions can serve a variety of purposes.<sup>5</sup> Beyond providing an opportunity and forum for victims to speak, these commissions allow disadvantaged populations to have recognition of and closure for tragic or traumatic events.<sup>6</sup> Truth commissions are not courts—they cannot legally prosecute or punish people—but their findings and reports can result in states or jurisdictions prosecuting perpetrators of violence and promoting justice for victims.<sup>7</sup> Often vested with certain powers—such as granting partial or full amnesty to individuals, subpoenaing certain witnesses, sponsoring investigations or exhumations, and granting recommendations to national governments—truth commissions can be effective in uncovering details about a certain policy or period of time.<sup>8</sup> By raising awareness of historical inequities, bringing past issues to light, and educating the general public about former injustices, such commissions can stimulate dialogue and other reform. In many instances, there has been hope that the existence of such a commission would mend racial tensions, improve societal problems, ease relations between federal, local, and tribal governments, and effectuate positive social change.<sup>9</sup>

In recent years, truth and reconciliation commissions have been proposed in a number of communities throughout the United States, particularly to acknowledge slavery, racism, and treatment of minority populations.<sup>10</sup> A truth and reconciliation commission was created in 2004 as part of a community response to the November 1979 deaths of five black anti-Klan demonstrators in Greensboro, North Carolina.<sup>11</sup> The Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission was established in 2011 and continues as the nation's first state-sponsored Truth and Reconciliation Commission to address child welfare and Native people.<sup>12</sup> Truth commissions to address racial

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5. Schlunck, *supra* note 1, at 418.

6. *Id.* at 418–19.

7. Eric Brahm, *Truth Commissions*, BEYOND INTRACTABILITY (June 2004), <http://www.beyondintractability.org/essay/truth-commissions>.

8. *Id.*

9. See *infra* Part II (discussing background and definitions).

10. See, e.g., Ronald C. Slye, *A Truth and Reconciliation Commission for the United States*, THOMSON REUTERS: THE GREAT DEBATE (Aug. 10, 2015), <http://blogs.reuters.com/great-debate/2015/08/09/a-truth-and-reconciliation-committee-for-the-united-states> (exploring the possibility of a truth commission to confront past racial injustice in the United States).

11. GREENSBORO TRUTH AND RECONCILIATION COMMISSION, REPORT: EXECUTIVE SUMMARY 2–3 (2006), [http://www.greensborotrc.org/exec\\_summary.pdf](http://www.greensborotrc.org/exec_summary.pdf) [hereinafter GREENSBORO REPORT].

12. *Background*, ME. WABANAKI-STATE CHILD WELFARE TRUTH & RECONCILIATION COMM'N, <http://www.mainewabanakitrc.org/about/background> (last visited Jan. 24, 2017); *Timeline*, ME. WABANAKI-STATE CHILD WELFARE TRUTH & RECONCILIATION

injustice have been proposed or established in other states and communities, as well, including Detroit, Michigan; Wilmington, North Carolina; Rosewood, Florida; New Orleans, Louisiana; Abbeville, South Carolina; Tewa Pueblo, New Mexico; as well as statewide in Mississippi and Alaska.<sup>13</sup>

As racism became an increasing part of the political dialogue during the 2016 presidential election,<sup>14</sup> now may be an important time for communities across the United States and within the state of Alaska to consider establishing truth and reconciliation commissions. Racial stratification and polarization continue to shape the social landscape of the country.<sup>15</sup> Local truth and reconciliation commissions could help Americans confront the nation's or their community's past and address current racial injustices.<sup>16</sup>

In Alaska, the social landscape is also changing. As the state continues to face a serious budget deficit, its legislature must prioritize spending affecting all Alaskans. Some of those decisions—willingly or not—have underlying racial implications. For example, in January 2016, to reduce the budget deficit, one legislator proposed closing rural schools with less than twenty-five students, a move that would disproportionately affect the Alaska Native population.<sup>17</sup> This proposal perhaps highlights the lack of awareness of the historic injustice

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COMM'N <http://www.mainewabanakitrc.org/about/timeline> (last visited Jan. 24, 2017).

13. LISA MAGARRELL & BLAZ GUTIERREZ, INT'L CTR. FOR TRANSITIONAL JUSTICE, LESSONS IN TRUTH-SEEKING: INTERNATIONAL EXPERIENCES INFORMING UNITED STATES INITIATIVES 18–24 (2006), <http://www.racialequitytools.org/resourcefiles/magarrell.pdf>.

14. See, e.g., Dana Milbank, Opinion, *Donald Trump Is a Bigot and a Racist*, WASH. POST (Dec. 1, 2015), [https://www.washingtonpost.com/opinions/donald-trump-is-a-bigot-and-a-racist/2015/12/01/a2a47b96-9872-11e5-8917-653b65c809eb\\_story.html?utm\\_term=.5c4de0679c5f](https://www.washingtonpost.com/opinions/donald-trump-is-a-bigot-and-a-racist/2015/12/01/a2a47b96-9872-11e5-8917-653b65c809eb_story.html?utm_term=.5c4de0679c5f) (discussing racist campaign rhetoric); Nicholas Kristof, Opinion, *Is Donald Trump a Racist?* N.Y. TIMES (July 23, 2016), <http://www.nytimes.com/2016/07/24/opinion> (discussing racist campaign rhetoric).

15. Jamelle Bouie, *How Trump Happened*, SLATE (Mar. 13, 2016), [http://www.slate.com/articles/news\\_and\\_politics/cover\\_story/2016/03/how\\_donald\\_trump\\_happened\\_racism\\_against\\_barack\\_obama.html](http://www.slate.com/articles/news_and_politics/cover_story/2016/03/how_donald_trump_happened_racism_against_barack_obama.html).

16. See, e.g., Slye, *supra* note 10 (outlining benefits of holding a truth commission in the United States).

17. Tony Kaliss, Opinion, *Proposal to Close Rural Schools Strikes at Heart of Alaska, Native and Non-Native Alike*, ALASKA DISPATCH NEWS (last updated June 26, 2016), <http://www.adn.com/article/20160103/proposal-close-rural-schools-strikes-heart-alaska-native-and-non-native-alike>. Over fifty-seven percent of the Alaska Native population in Alaska lives in a rural area throughout the state. MINORITY RIGHTS GRP. INT'L, WORLD DIRECTORY OF MINORITIES AND INDIGENOUS PEOPLES—UNITED STATES OF AMERICA: INUIT AND ALASKA NATIVES (Apr. 2009), <http://www.refworld.org/docid/49749c882.html>.

committed against the Alaska Native population in the state, and it demonstrates the need for an active, transparent dialogue to address racial injustice. Hence, the need for a full truth and reconciliation system should be examined. Such a system could address past wrongs and improve future relations between the state, federal, and tribal governments.

This Article will provide a general overview of truth and reconciliation commissions, and outline the context of why such a commission is needed in Alaska. This Article will then describe and compare select truth and reconciliation commissions used in the past two decades in four countries from across the globe: South Africa (1995), El Salvador (1993), South Korea (2000 and 2005), and Canada (2007). Next, this Article will address some commissions that have been used or attempted in the United States, including the Greensboro Truth and Reconciliation Commission (2004), the Metro Detroit Truth and Reconciliation Commission (2011), and the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission (2011). Lastly, this Article will examine previously-convened commissions in Alaska and will consider whether a truth and reconciliation commission could contend with historic injustice, promote healing throughout Alaska communities, and work to address current social problems within the state.

## BACKGROUND AND DEFINITIONS

### Truth Commissions

Generally, the term “truth commission” refers to a wide variety of temporary official bodies set up to investigate and report on past periods of human rights violations in a given jurisdiction.<sup>18</sup> As non-judicial bodies, these commissions aim to establish a factual narrative of past events, but lack any power to prosecute.<sup>19</sup> However, some commissions are granted quasi-judicial powers, such as the ability to award partial or full amnesty to individuals, subpoena certain key witnesses, request or

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18. “Truth commissions” are distinct from “commissions of inquiry.” *Truth Commission Digital Collection*, *supra* note 4. Commissions of inquiry have a narrower scope and typically focus on specific events or geographic areas. *Id.* Examples include Rwanda’s Commission of Inquiry in 1993 and Nepal’s Commission of Inquiry to Locate the Persons Disappeared during the Panchayat Period in 1990–1991. *Id.* By contrast, truth commissions are generally broader in scope. *Id.* This paper will largely focus on truth commissions, as opposed to commissions of inquiry.

19. Eric Brahm, *Truth Commissions*, BEYOND INTRACTABILITY (June 2004), <http://www.beyondintractability.org/essay/truth-commissions>.

sponsor investigations or exhumations, and provide recommendations directly to national, state, or local governments.<sup>20</sup>

Truth commissions can be established in a variety of ways. They can be convened as part of the outcome of a peace accord or judicial decision.<sup>21</sup> They can also be required by legislative act or executive mandate.<sup>22</sup> Truth commissions may be managed internally or can be sponsored and run by international groups.<sup>23</sup> Made up of a one or more commissioners,<sup>24</sup> truth commissions are funded through a variety of sources including private groups, state or local government, or the international community.<sup>25</sup>

Truth commissions have the dual purpose of exposing facts and acknowledging past wrongs.<sup>26</sup> These commissions generally produce a final report which summarizes findings and provides reform recommendations within the government or institution that perpetuated the human rights violations and abuse.<sup>27</sup> Recommendations may suggest reparation for victims, propose reconciliation plans, or implicate certain bodies, groups, or individuals most responsible for abuses – sometimes providing names of specific perpetrators.<sup>28</sup> Some commissions additionally provide for a final ceremony or event at the closing of the commission.<sup>29</sup>

The overall impact of a truth commission depends on a variety of factors, namely, political will, financial resources, and societal support.<sup>30</sup> Findings of a commission “can only have an impact if the public takes notice and if the policymakers allow for significant changes.”<sup>31</sup> In some

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20. See *id.* (giving examples of commissions with distinctive powers); Priscilla B. Hayner, *Fifteen Truth Commissions – 1974 to 1994: A Comparative Study*, 16 HUM. RTS. Q. 597, 630-31 (1994).

21. Schlunck, *supra* note 1, at 417-18.

22. *Id.*

23. Hayner, *supra* note 20, at 603.

24. See *id.* at 606, 612 (giving examples of commissions with varying membership structures). The Commission on the Truth in Honduras, for example, was run by a single commissioner. *Id.* at 606. The Commission of Inquiry into the Disappearances of People in Uganda in 1974 had four commissioners. *Id.* at 612.

25. See *id.* at 628, 644 (citing funding sources of different commissions).

26. *Id.*

27. *Truth Commission Digital Collection*, *supra* note 4.

28. *Id.*

29. Hayner, *supra* note 20, at 624. The Canada Truth and Reconciliation Commission held a National Closing Ceremony in 2015. Press Release, Governor Gen. of Can., Their Excellencies to Host the National Closing Ceremony of the Truth and Reconciliation Commission (June 1, 2015), <https://www.gg.ca/document.aspx?id=16085&lan=eng>.

30. Schlunck, *supra* note 1, at 419.

31. *Id.*

cases, truth commissions have been forced to end their mandates early due to insufficient funding or political opposition.<sup>32</sup>

Truth commissions have at times been criticized as being ineffective, serving only to re-traumatize victims without bringing meaningful change. A 1997 *New York Times* article highlighted that during the Truth and Reconciliation Commission in South Africa, many victims suffered psychotic episodes after testifying in public, were not provided continued support after participating, and received little immediate benefit from testifying.<sup>33</sup> The Truth and Reconciliation Commission in El Salvador produced a well-documented report, but little change has been made in the subsequent twenty years as few actions have been taken to support victims or prosecute perpetrators.<sup>34</sup>

By contrast, a 1998 study by the International Law Students Association documented five reasons why truth commissions are “particularly valuable” for reconciliation.<sup>35</sup> First, commissions work to provide a thorough and accurate record of events.<sup>36</sup> Second, they can serve as an appropriate forum to discuss and address “issues like reparations, rehabilitation, and compensation for victims.”<sup>37</sup> Moreover, commissions’ reports, documents, and activities serve to educate future generations.<sup>38</sup>

While imperfect, truth commissions and the accompanying awareness and education can assist in the creation of well-informed policies and can provide a step towards social equity for previously

32. See, e.g., *Truth Commission: Ecuador* 96, U.S. INST. OF PEACE, <http://www.usip.org/publications/truth-commission-ecuador-96> (last visited Jan. 27, 2017) (explaining that Ecuador’s 1996 truth commission only operated for five months of its twelve-month mandate due to political changes).

33. Suzanne Daley, *In Apartheid Inquiry, Agony is Relived but Not Put to Rest*, N.Y. TIMES, (July 17, 1997), <http://www.nytimes.com/1997/07/17/world/in-apartheid-inquiry-agony-is-relived-but-not-put-to-rest.html>.

34. *El Salvador: No Justice 20 Years on from the UN Truth Commission*, AMNESTY INT’L NEWS (Mar. 15, 2013), <https://www.amnesty.org/en/latest/news/2013/03/el-salvador-no-justice-years-un-truth-commission> [hereinafter *El Salvador: No Justice*].

35. Schlunck, *supra* note 1, at 421–22.

36. *Id.* at 421. One of the mandatory functions of the Canada Truth and Reconciliation Commission, for example, was to “create a permanent record of what happened” in the Indian Residential Schools, leading the Commission to attempt to gather statements online to reach a wider audience. *Share Your Truth*, TRUTH AND RECONCILIATION COMM’N OF CAN., <http://www.trc.ca/websites/trcinstitution/index.php?p=807> (last visited Mar. 19, 2017).

37. *Id.*

38. *Id.* at 421–22. Public education and outreach was a major focus of the Truth and Reconciliation Commission of Canada. *What is the TRC?*, TRUTH AND RECONCILIATION COMM’N OF CAN., <http://www.trc.ca/websites/trcinstitution/index.php?p=10> (last visited Mar. 19, 2017).

victimized populations. With over thirty chartered since the 1995 Commission on Truth and Reconciliation in South Africa, truth commissions have increased in use and popularity and will continue to promote racial equity, reconciliation, and justice in the future.<sup>39</sup>

### Reconciliation

Like the term “truth commission,” the term “reconciliation” has a host of meanings. The Oxford English Dictionary defines reconciliation as the “restoration of friendly relations.”<sup>40</sup> However, in the context of truth and reconciliation commissions, the term generally has deeper meaning: it means coming to terms with past wrongs and actively working to address those issues to overcome conflict. It can be defined differently with respect to those who were victimized, those who were perpetrators, and those who were unaffected by regional conflict. Reconciliation can also be uniquely defined for each conflict or precipitating motivation.

In Greensboro, North Carolina, for instance, those who were perpetrators or were otherwise unaffected by the context and violence of the racially-motivated killing of five anti-Klan demonstrators in 1979 defined reconciliation in terms of “increased trust in relationships” and “forgiveness.”<sup>41</sup> By contrast, those who were negatively and directly affected by those same events judged reconciliation by institutional reform.<sup>42</sup> Jill Williams, executive director of the Greensboro Truth and Reconciliation Commission, observed that reconciliation for Greensboro probably included and continues to include both elements of increased trust and institutional reform that allowed injustices to occur in the first place.<sup>43</sup> These conflicting views show that reconciliation can be interpreted in a variety of different ways, even among people affected by the decisions and recommendations of the same truth commission and stemming from the same context.

In another example, reconciliation was defined in more resolutely personal terms. In Canada’s final Truth and Reconciliation Commission report, published in December 2015, the Commission defined reconciliation as an ongoing process of establishing and maintaining respectful relationships. In its report, the Commission observed:

[Reconciliation] requires that the paternalistic and racist foundations of the residential school system be rejected as the

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39. See *supra* note 4 and accompanying text (listing truth commissions).

40. OXFORD ENGLISH DICTIONARY 1484 (3d ed. 2010).

41. Jill E. Williams, *Legitimacy and Effectiveness of a Grassroots Truth and Reconciliation Commission*, 72 L. & CONTEMP. PROBS. 143, 144, 149 (2009).

42. *Id.* at 149.

43. *Id.*



basis for an ongoing relationship. Reconciliation requires that a new vision, based on a commitment to mutual respect, be developed. It also requires an understanding that the most harmful impacts of residential schools have been the loss of pride and self-respect of Aboriginal people and the lack of respect that non-Aboriginal people have been raised to have for their Aboriginal neighbours. *Reconciliation is not an Aboriginal problem; it is a Canadian one.*<sup>44</sup>

The report stated that for reconciliation to occur, there needed to be “an awareness of the past, acknowledgment of the harm inflicted, atonement for the causes, and an action to change behaviour.”<sup>45</sup>

Uniquely defined, reconciliation—facilitated by dialogue and community healing initiatives—can be an important step for addressing new and past social discrimination and wrongs, and should be considered in creating new policies for countries, states, and local communities moving forward.

### Context for Alaska

In Alaska, a truth and reconciliation commission should be considered, particularly regarding discrimination against indigenous peoples. The Alaska Native population has suffered a history of discrimination and assimilation, one that was institutionalized by a series of state and federal policies over hundreds of years.<sup>46</sup> The long-term effects of assimilation and destruction of traditional cultures continue today. A 1994 final report by the Alaska Native Commission, a Joint Federal-State Commission created by Congress in 1990, described the challenges faced by the Alaska Native community in Alaska as follows:

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44. TRUTH AND RECONCILIATION COMM’N OF CAN., *HONOURING THE TRUTH, RECONCILING FOR THE FUTURE* vi (Dec. 2015), [http://www.trc.ca/websites/trcinstitution/File/2015/Honouring\\_the\\_Truth\\_Reconciling\\_for\\_the\\_Future\\_July\\_23\\_2015.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Honouring_the_Truth_Reconciling_for_the_Future_July_23_2015.pdf) (emphasis added) [hereinafter *HONOURING THE TRUTH*].

45. *Id.* at 6–7.

46. Indigenous peoples of Alaska (referred to here collectively as the “Alaska Native” population or community) include speakers of at least twenty different language groups, such as Yupik, Inupiaq, Gwich’in, Aleut, and Alutiiq, among other dialects. According to the U.S. Census, the percentage of Alaska residents who identified as either American Indian or Alaska Native was approximately 24.2 percent in 2010. TINA NORRIS ET AL., U.S. CENSUS BUREAU, *THE AMERICAN INDIAN AND ALASKA NATIVE POPULATION: 2010* 7 (2012), <http://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf>; see also MINORITY RIGHTS GRP. INT’L, *WORLD DIRECTORY OF MINORITIES AND INDIGENOUS PEOPLES—UNITED STATES OF AMERICA: INUIT AND ALASKA NATIVES* (Apr. 2009), <http://www.refworld.org/docid/49749c882.html>.

So much cultural destruction has taken place, such a large proportion of Alaska's most valuable natural resources have been taken from Natives' ownership and control, and so much potential for social and political equity has been foregone that it is difficult to envision, let alone articulate, a basis for achieving total fairness for this and future generations of Alaska Natives.<sup>47</sup>

### History of Occupation

Alaska's history of discrimination dates back to the era of Russian occupation and settlement.<sup>48</sup> When Russian settlers arrived in Alaska in the 1740s to develop seaside outposts and export resources, the tribal rights of the Alaska Native population were disrupted and many Alaska Natives were forced to assist the Russians in the seal fur trade.<sup>49</sup> By some reports, nearly ninety percent of the Aleut population perished during the first period of Russian contact from the 1740s–1830s.<sup>50</sup> The Russians, and later the Americans, imposed a legal system that dispossessed Alaska Native peoples of their traditional lands while otherwise diminishing their legal rights and power.<sup>51</sup>

After the United States purchased Alaska in the 1867 Treaty of Cession, federal Indian policy focused on the process of assimilating American Indian and Alaska Native peoples into Western culture.<sup>52</sup> After the purchase of Alaska, several Western groups moved in, each with its own impact on dismantling Alaska Native culture. Miners and trappers brought European disease and epidemics; missionaries discouraged traditional beliefs and cultural practices; and teachers and government workers changed other social, political, and economic systems.<sup>53</sup> Alaska

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47. ALASKA NATIVES COMM'N, FINAL REPORT, VOL. I: PART ONE, <http://www.alaskool.org/resources/anc/anc00.htm> (scroll to bottom and select "Next Section") (last visited Jan. 27, 2017).

48. ALASKA ADVISORY COMM. TO THE U.S. COMM'N ON CIVIL RIGHTS, RACISM'S FRONTIER: THE UNTOLD STORY OF DISCRIMINATION AND DIVISION IN ALASKA, 3 (2002), <http://www.usccr.gov/pubs/sac/ak0402/ak02.pdf>.

49. *Id.*

50. Paul Ongtooguk, *Alaska Natives Fight for Civil Rights*, ALASKA HUMANITIES FORUM <http://www.akhistorycourse.org/alaskas-cultures/alaska-natives-fight-for-civil-rights> (last visited Feb. 22, 2017).

51. *Id.*

52. CHERYL EASLEY & KANAQLAK (GEORGE P. CHARLES), NAT'L RES. CTR. FOR AM. INDIAN, ALASKA NATIVE, AND NATIVE HAWAIIAN ELDERS, UNIV. OF ALASKA ANCHORAGE, BOARDING SCHOOL: HISTORICAL TRAUMA AMONG ALASKA'S NATIVE PEOPLE 2 (2005), <http://www.theannainstitute.org/American%20Indians%20and%20Alaska%20Natives/Boarding%20School%20Hist%20Trauma%20Alaska%20Native.pdf>.

53. ALASKA NATIVES COMM'N, *supra* note 47.

Native languages were banned in schools starting in 1884,<sup>54</sup> and Alaska Natives were not granted U.S. citizenship until 1936.<sup>55</sup>

### Forced Assimilation Policies

In Alaska, forced assimilation policies removed children from their homes and communities into institutions, with the goal of “cultural elimination.”<sup>56</sup> Boarding schools were established “far enough away to discourage families from easily visiting their children, since family members would only hinder and detract from the goals of assimilation.”<sup>57</sup> Reverend Sheldon Jackson, a Presbyterian minister who oversaw the education of Alaska Native children, observed: “The children must be kept in school until they acquire what is termed a common-school education, also a practical knowledge of some useful trade. We believe in reclaiming the Natives’ improvident habits and transforming them into ambitious and self-helpful citizens.”<sup>58</sup> Authorities gave parents no choice over the decision to send their children to boarding schools, and any parent who “resisted the mandate was threatened with jail.”<sup>59</sup> This practice had the effect of removing all children from villages, severing the children’s ties to families and traditional culture.<sup>60</sup> A boarding school attendee noted: “A Yupik schoolmate, now in his late 50s, recalled what his older sister, who did not have to go to boarding school, said, ‘There were no school-age children in the village, it was eerily quiet that winter.’”<sup>61</sup>

At boarding school, all topics were taught in English and “there was a constant message that Native cultures, heritage, and languages were of no use, including singing, dancing, and drumming.”<sup>62</sup> Students caught speaking their Native language endured various punishments.<sup>63</sup> Many were also subjected to emotional, psychological, physical, and sexual abuse.<sup>64</sup> One former student of the Wrangell Institute, a boarding school for younger students that became infamous for abuse, observed:

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54. *See, id.* (noting language discrimination following passage of the Organic Act of 1884).

55. Act of May 1, 1936, ch. 254, 49 Stat. 1250, 1250 (1936).

56. ALASKA NATIVES COMM’N, *supra* note 47.

57. EASLEY & KANAQLAK, *supra* note 52, at 4.

58. ALASKA NATIVES COMM’N, *supra* note 47.

59. EASLEY & KANAQLAK, *supra* note 52, at 4.

60. *Id.* at 4, 7–8.

61. *Id.* at 4.

62. *Id.* at 7.

63. *Id.* at 7–8.

64. *Id.* at 9.

But at home I remember on Christmas we'd sing our songs and our dances and then my cousin was telling me this he said, this one kid from (a village), on Christmas they [Alaska Native students] went into the shower room to sing and they were caught and beaten and whipped for singing their songs—our Athabascan songs. So that was really hard, you know? Not only did I feel like they were taking away our identity, they were taking away our language and our culture and they were trying to make us into another culture that we were not familiar with or at least I wasn't.<sup>65</sup>

Another former student of the Wrangell Institute noted:

Boarding school taught me that everything I knew about my culture, language, and world view were [sic] evil and must be pushed away. Wrangell Institute Elementary school did its best to eradicate everything I identified with as an Inupiaq. After six years at Wrangell, graduating at age 14 in 1961, I was happy to get away from a place of routine punishments and abuse.<sup>66</sup>

In later reports, former students explained that boarding school felt like "jail" or a "concentration camp."<sup>67</sup> School administrators opened and censored mail.<sup>68</sup> Students were not allowed to return to their communities for funerals, often only learning of family deaths once the school year ended.<sup>69</sup> There were high rates of suicide or attempted suicide among students, both during and after school years.<sup>70</sup> One year, nine students at a particular boarding school committed suicide.<sup>71</sup> A graduate of that school observed: "It was safer, you had a higher statistical rate of survival doing a tour of combat in Viet Nam at the time than of graduating from [that boarding school]. It was an Alaska Native hell."<sup>72</sup>

### Government-Endorsed Discrimination

Government-endorsed discrimination continued throughout the past century. In June and July 1942, nine Native communities from the

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65. DIANE HIRSHBERG & SUZANNE SHARP, INST. OF SOC. AND ECON. RESEARCH, UNIV. OF ALASKA ANCHORAGE, THIRTY YEARS LATER: THE LONG-TERM EFFECT OF BOARDING SCHOOLS ON ALASKA NATIVES AND THEIR COMMUNITIES 12 (2005), <http://iser.uaa.alaska.edu/Publications/boardingschoolfinal.pdf>.

66. EASLEY & KANAQLAK, *supra* note 52, at 9.

67. HIRSHBERG & SHARP, *supra* note 65, at 12.

68. *Id.*

69. *Id.*

70. *Id.* at 13.

71. *Id.*

72. *Id.*

Aleutian Islands were evacuated as part of the war effort.<sup>73</sup> Their homes and villages were then burned consistent with federal “scorched earth” policy to prevent potential Japanese invaders from using them.<sup>74</sup> Over 880 people were sent to internment “duration villages” in Southeast Alaska with inadequate housing, sanitation, and supplies.<sup>75</sup> During this time Alaska Natives were also subject to rampant social discrimination, from “white hire” policies at businesses to prohibitions on providing court testimony.<sup>76</sup> These blatant discriminatory practices continued until the Alaska Territorial Legislature adopted the Alaska Anti-Discrimination Act in 1945.<sup>77</sup>

Yet even after the Anti-Discrimination Act, which criminalized display of “any printed or written sign indicating a discrimination on racial grounds,”<sup>78</sup> subtler forms of discrimination endured. A handful of Bureau of Indian Affairs-run boarding schools continued well into the 1970s.<sup>79</sup> In the early part of the Twentieth Century, Alaska Native youth were sent out of rural villages—either to the BIA-operated Mt. Edgecumbe in Sitka, Alaska, select church-run schools, or out-of-state—to complete their high school education.<sup>80</sup> This practice ended following a civil lawsuit initiated by Alaska Native children of secondary school age in 1972<sup>81</sup> which resulted in a 1976 settlement.<sup>82</sup>

In sum, the federal and Alaska state governments took express steps to “acculturat[e] indigenous peoples in the ways of dominant society and dilut[e] or eliminat[e] their sovereignty and collective rights over lands and resources.”<sup>83</sup> By pushing Alaska Natives into the social and economic mainstream of Western society, both governments severely undervalued and disassembled important tenants of Alaska Native society, including

73. Christopher Cueva, *The Aleut Evacuation—A Grave Injustice*, ALASKA HUMANITIES FORUM (1998), <http://www.akhistorycourse.org/american-territory/the-aleut-evacuation-a-grave-injustice> (last visited Feb. 22, 2017).

74. *Id.*

75. *Id.* See also *Aleutian World War II, Evacuation and Internment*, NAT’L PARK SERV. <https://www.nps.gov/aleu/learn/historyculture/unangan-internment.htm> (last visited Mar. 19, 2017)

76. Ongtooguk, *supra* note 50.

77. Act of Feb. 21, 1945 Alaska Sess. Laws ch. 2, 35–36 (codified at ALASKA STAT. §§ 18.80.200–.295).

78. *Id.*

79. EASLEY & KANAQLAK, *supra* note 52, at 4.

80. HIRSHBERG & SHARP, *supra* note 65, at 1. See also *Hootch v. Alaska State-Operated School System*, 536 P.2d 793, 800 (Alaska 1975) (Rabinowitz, J. dissenting).

81. *Hootch v. Alaska State-Operated School System*, 536 P.2d 793 (Alaska 1975).

82. *Tobeluk v. Lind*, 589 P.2d 873, 874–875 (Alaska 1979).

83. Special Rapporteur on The Rights of Indigenous People, *Addendum to The Report of The Special Rapporteur on The Rights of Indigenous Peoples: The Situation of Indigenous Peoples in the United States of America* 8, 12 U.N. Doc. A/HRC/21/47/Add.1 (Aug. 30, 2012).

traditions, ways of acquiring knowledge, and social and community structures.<sup>84</sup>

### Aftermath of Assimilation and Discrimination Policies in Alaska

Today, Alaska Natives still feel the aftermath of such policies in the form of resounding social and economic problems. Boarding-school era students who faced a loss of cultural identity, language, and tradition now suffer from high percentages of substance abuse, alcohol-fueled accidents, domestic violence, murder, and suicide.<sup>85</sup>

Many former students faced and continue to face trauma as a result of their boarding school experiences.<sup>86</sup> In one study, a number of them described having difficulty integrating back into their home communities.<sup>87</sup> Some former students directed anger at their parents for allowing them to attend boarding school; others received anger from parents and elders for losing their cultural identity.<sup>88</sup> Others reported sadness at missing the opportunity to learn subsistence practices and traditions from their parents and grandparents and not being able to pass those cultural traditions to their own children.<sup>89</sup>

Moreover, students felt their boarding school tenure prevented them from developing parenting skills important for later life.<sup>90</sup> One former student observed:

I came away from boarding school confused and ashamed about my identity. And institutionalized. . . . I had no role models. So, when my own children were born, I parroted what I saw [at boarding school]. When my kids misbehaved (such as breaking a rule from my school's past), I took out my belt or whatever was handy and whipped them. And I did it with lots of anger. It took some years for my wife, who managed to hold on to traditional ways of child rearing, to show me a more nurturing and caring way to raise children.<sup>91</sup>

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84. See *id.* at 9–15 (discussing legacy of disadvantage stemming from past wrongs).

85. EASLEY & KANAQLAK, *supra* note 52, at 8.

86. HIRSHBERG & SHARP, *supra* note 65, at 18.

87. *Id.*

88. *Id.*

89. *Id.* at 19.

90. *Id.* at 19–20.

91. EASLEY & KANAQLAK, *supra* note 52, at 10.

Trauma from boarding schools and other past assimilation practices has been correlated with current social problems.<sup>92</sup> According to the 1994 final report of the Alaska Native Commission:

What is seen in village Alaska today are the tattered remains of traditional societies and cultures mixing in with confusing, marginally accepted Western social, governmental, educational, and legal structures. Alcohol, used as medication for the soul, has served as an inexorable wedge, blunting individuals' feelings and erasing spiritual and cultural values.<sup>93</sup>

Today, Alaska ranks among the first in the nation in terms of rates of substance abuse, suicides, and domestic violence.<sup>94</sup> According to the 2012–2013 National Survey on Drug Use and Health, Alaska was ranked as one of the top ten states for rates of illicit drug use in a number of different categories.<sup>95</sup> With one of the highest per capita alcohol consumption rates in the nation, Alaska's prevalence of alcohol dependence and alcohol abuse exceeds the national average.<sup>96</sup> Moreover, according to a 2011–2012 annual report prepared by the Alaska Statewide Suicide Prevention Council, Alaska's suicide rate is twice the national average.<sup>97</sup> In 2014, the rate of Alaska Native males who committed suicide was 50.9 per 100,000—nearly four times the national average.<sup>98</sup> Domestic

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92. ALASKA NATIVES COMM'N, *supra* note 47.

93. *Id.*

94. Dorothy Chomicz, *Alaska among top states in illicit drug use*, FAIRBANKS DAILY NEWS-MINER (Mar. 3, 2015), [http://www.newsminer.com/news/local\\_news/alaska-among-top-states-in-illicit-drug-use/article\\_0f6569c0-c187-11e4-99b8-1b5c8b4b0320.html](http://www.newsminer.com/news/local_news/alaska-among-top-states-in-illicit-drug-use/article_0f6569c0-c187-11e4-99b8-1b5c8b4b0320.html); Kaysie Ellingson, *Looking at Alaska's high suicide rate*, ALASKA PUB. MEDIA (2016) [http://www.alaskapublic.org/interactive/?page\\_id=264](http://www.alaskapublic.org/interactive/?page_id=264); ALASKA DEP'T OF HEALTH & SOCIAL SERVS., DIV. OF PUB. HEALTH, ALASKA VITAL STATISTICS 2015 ANNUAL REPORT 31 (2017), [http://dhss.alaska.gov/dph/VitalStats/Documents/PDFs/VitalStatistics\\_Annualreport\\_2015.pdf](http://dhss.alaska.gov/dph/VitalStats/Documents/PDFs/VitalStatistics_Annualreport_2015.pdf); Paula Dobbyn, *Alaska leads the nation in rate of women murdered by men, new study finds*, KTUU NEWS (Sept. 20, 2016), <http://www.ktuu.com/content/news/Alaska-leads-the-nation-in-the-rate-of-women-murdered-by-men-new-study-finds-394195761.html>.

95. ALASKA DEP'T OF PUB. SAFETY, ALASKA STATE TROOPERS BUREAU OF INVESTIGATION STATEWIDE DRUG ENFORCEMENT UNIT 2014 ANNUAL DRUG REPORT, <http://www.dps.state.ak.us/ast/ABI/docs/SDEUreports/2014%20Annual%20Drug%20Report.pdf>.

96. *Health Indicator Report of Adverse Child Experiences: Substance Abuse in Household*, ALASKA DEP'T OF HEALTH AND SOC. SERV., DIV. OF BEHAVIORAL HEALTH, <http://ibis.dhss.alaska.gov/indicator/view/xacesubs.DRNK.html> (last visited Mar. 18, 2017).

97.  *Casting the Net Upstream: Alaska Statewide Suicide Prevention Council Annual Report, FY 2011–FY 2012*, ALASKA DEP'T OF HEALTH AND SOC. SERV., [http://dhss.alaska.gov/SuicidePrevention/Documents/pdfs\\_sspc/2011-12SSPCAnnualReport.pdf](http://dhss.alaska.gov/SuicidePrevention/Documents/pdfs_sspc/2011-12SSPCAnnualReport.pdf).

98. ALASKA DEP'T OF HEALTH AND SOC. SERV., ALASKA SUICIDE FACTS AND

violence statistics in the state are also staggering: 50% of adult women in Alaska experience intimate partner or sexual violence (or both) in their lifetimes.<sup>99</sup> Alaska has the highest homicide rate for female victims killed by a male perpetrator in the nation.<sup>100</sup> More than three out of every four women who identify as Alaska Native or American Indian are physically assaulted during their lifetimes.<sup>101</sup>

These sobering statistics show that past trauma—particularly the trauma from forced assimilation—needs to be addressed in Alaska. A truth and reconciliation commission could be an effective means of addressing this trauma, informed by lessons learned from other international and national truth and reconciliation commissions.

### COMPARISON AND OVERVIEW OF SELECT INTERNATIONAL COMMISSIONS

#### South Africa's Truth and Reconciliation Commission (1995)

One of the most well-known truth and reconciliation commissions was convened in South Africa. The Truth and Reconciliation Commission was established under the Promotion of National Unity and Reconciliation Act in 1995.<sup>102</sup> The Commission was created to investigate gross human rights violations—including abductions, police brutality, administrative detention, limitations on freedom of expression, killings, and torture—perpetuated during the period of the institutionalized racism of the Apartheid regime from 1960 to 1994.<sup>103</sup>

The Commission was composed of seventeen commissioners (nine men and eight women) and was chaired by Anglican Archbishop Desmond Tutu.<sup>104</sup> These commissioners were supported by approximately 300 staff members.<sup>105</sup> Over the course of seven years, the

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STATISTICS 2015, [http://dhss.alaska.gov/SuicidePrevention/Documents/pdfs\\_sspc/AKSuicideStatistics2015.pdf](http://dhss.alaska.gov/SuicidePrevention/Documents/pdfs_sspc/AKSuicideStatistics2015.pdf).

99. André B. Rosay & Lauree Morton, *Alaska Victimization Survey: Intimate Partner and Sexual Violence in Alaska - 2010 to 2015*, presentation at University of Alaska Anchorage (Feb. 25, 2016), [http://www.legis.state.ak.us/basis/get\\_documents.asp?session=29&docid=52313](http://www.legis.state.ak.us/basis/get_documents.asp?session=29&docid=52313).

100. NAT'L COAL. AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE IN ALASKA (2015), <http://www.ncadv.org/files/Alaska.pdf>.

101. *Id.*

102. Promotion of National Unity and Reconciliation Act, No. 34 (S. Afr.).

103. *Truth Commission: South Africa*, U.S. INST. OF PEACE, <http://www.usip.org/publications/truth-commission-south-africa> (last visited Feb. 22, 2017).

104. *Id.*

105. *Id.*



Commission took the testimony of approximately 21,000 victims.<sup>106</sup> The Commission presented a final, five-volume report to South African President Nelson Mandela in October 1998.<sup>107</sup> Among the recommendations were specific steps for the country to prevent similar human rights violations from occurring in the future and a process for designating reparation awards to victims.<sup>108</sup>

Justice Albie Sachs of the Constitutional Court of South Africa, described the foundation for the Truth and Reconciliation Commission in South Africa. He observed that, in 1994, South Africa's Constitution was amended to link amnesty to the truth commission concept: "[P]eople could get amnesty to the extent that they owned up to what they had done, and told the truth on an individual basis."<sup>109</sup> This amnesty concept had not previously been part of truth and reconciliation commissions. Subsequent legislation for the Truth and Reconciliation Commission was drafted over the course of a year.<sup>110</sup> During that time, it was determined that the proceedings would be transparent and public – held "in front of the television screens, the radio people, the journalists . . ." <sup>111</sup> This idea of transparency – as opposed to a commission gathering all information confidentially, then producing a final report – was also a new concept.

The Commission was divided into three sections.<sup>112</sup> The first collected data by listening to thousands of people stories of torture or abuse told first-hand.<sup>113</sup> Justice Sachs described the atmosphere created by this section as follows:

The atmosphere was intimate. It was humane, it was personalized. It wasn't the usual forensic gladiatorial dialogue. The people just spoke and spoke and spoke with some guidance, some direction, and a few questions being asked. And the pain came pouring out from all over the country. The people who had never had a chance to testify. . . . The people who had suffered not only the indignity of what had been done to them, but the extra pain of not even being able to communicate it – not having it acknowledged. In a way, this is what the whole TRC was about. It was converting knowledge into acknowledgement.<sup>114</sup>

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106. *Id.*

107. *Id.*

108. 5 TRUTH AND RECONCILIATION COMM'N OF S. AFR., REPORT 308-13 (Oct. 29, 1998), <http://www.sahistory.org.za/archive/trc-final-report-volume-5>.

109. Albie Sachs, *Truth and Reconciliation*, 52 SMU L. REV. 1563, 1563 (1999).

110. *Id.*

111. *Id.*

112. *Id.* at 1568.

113. *Id.*

114. *Id.*

Justice Sachs observed the importance of this section acknowledging – as opposed to denying or repressing – the pain and suffering of all people affected by the apartheid.<sup>115</sup>

The second section focused on reparations, while the last section was the Amnesty Commission.<sup>116</sup> The Amnesty Commission heard the perpetrators to determine “if they were acting in the course of political conflict under political command.”<sup>117</sup> This group was controversial. But because of the policy of granting partial or full amnesty, many perpetrators came forward, seeking amnesty in exchange for the truth.<sup>118</sup>

After years of gathering information – including hearings, testimony from over 21,000 victims, and amnesty applications from over 7,000 perpetrators – a final report was published. Published as a series of books with photographs and excerpts of testimony, the report covered Apartheid’s structural and historical background of the violence, highlighted individual cases and regional trends, and focused on the broader institutional and social environment.<sup>119</sup>

This report named individual perpetrators<sup>120</sup> as well as individual victims.<sup>121</sup> It also provided detailed recommendations for reparations and offered proposed reforms to South Africa’s social and political systems.<sup>122</sup> In its report, the Commission suggested including faith communities, businesses, the judiciary, prisons, armed forces, the health sector, media, and educational institutions in a reconciliation process.<sup>123</sup> It further recommended the prosecution of perpetrators who had not sought amnesty or whose amnesty requests were denied.<sup>124</sup>

Justice Sachs noted that far from being “one of those long governmental reports that only people doing Ph.D.s would bother to

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115. *Id.* at 1569.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.* at 1571.

120. See 5 TRUTH AND RECONCILIATION COMM’N OF S. AFR., REPORT 259-70 (Oct. 29, 1998), <http://www.sahistory.org.za/archive/trc-final-report-volume-5> (quoting various perpetrators discussing motives).

121. See generally 3 TRUTH AND RECONCILIATION COMM’N OF S. AFR., REPORT (OCT. 29, 1998), <http://www.sahistory.org.za/archive/trc-final-report-volume-3> (reporting on violations in various regions and quoting victims by name).

122. *Truth Commission: South Africa*, *supra* note 103; 5 TRUTH AND RECONCILIATION COMM’N OF S. AFR., REPORT 174-95, 312-24 (Oct. 29, 1998), <http://www.sahistory.org.za/archive/trc-final-report-volume-5>.

123. *Id.* at 312-324.

124. *Id.* at 309 (“Where amnesty has not been sought or has been denied, prosecution should be considered where evidence exists that an individual has committed a gross human rights violation. . . In order to avoid a culture of impunity and to entrench the rule of law, the granting of general amnesty in whatever guise should be resisted.”).

read,” they had the “passion, the power, the emotion of the Truth Commission proceedings themselves.”<sup>125</sup> However, according to Justice Sachs, the lasting impression of the Truth and Reconciliation Commission was not this single report. Instead, it was the transparent, involved process of the Commission:

[T]he Truth Commission in general was not simply reporting on South African history, it was part of South African history. It engaged with people who responded to it in all sorts of different ways. It had its own resonance. It was not outside of the process it was dealing with, but part of it. . . . The very way in which it functioned, the open manner in which the stories were told, was the greatest guarantee that these things shouldn’t happen again, far more telling than the actual report.<sup>126</sup>

The report was fully endorsed in its entirety by the government; President Mandela apologized to all victims on behalf of the state after its release.<sup>127</sup> Yet payment of reparations and implementation of the recommendations were slow to occur.<sup>128</sup> Amnesty International and Human Rights Watch criticized the South African government in 2003, expressing concern that, despite the release and acceptance of the Truth and Reconciliation Report, “reparations ha[d] not been paid, . . . prosecutions ha[d] not been mounted against individuals about whom there [wa]s credible evidence of involvement in gross [human rights] abuses,” legislation suggesting further amnesty was being discussed, and the publication of certain volumes was delayed.<sup>129</sup> After receiving pressure from these organizations and South African society, the South African government established a body to monitor the implementation of the Commission’s recommendations.<sup>130</sup> Reparations were eventually paid to the 21,000 victims. The amount, though, was far lower than the amount recommended by the Commission.<sup>131</sup>

Nevertheless, South Africa’s Commission was significant and hailed as innovative in a number of ways. First, it was public and transparent— even broadcast on radio, television— and was the first commission to hold public hearings where both victims and perpetrators spoke and were

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125. Sachs, *supra* note 109, at 1571.

126. *Id.* at 1573.

127. *Truth Commission: South Africa*, *supra* note 103.

128. *Id.*

129. AMNESTY INT’L & HUMAN RIGHTS WATCH, TRUTH AND JUSTICE: UNFINISHED BUSINESS IN SOUTH AFRICA 1 (Feb. 2003), <https://www.hrw.org/legacy/backgrounder/africa/truthandjustice.pdf>.

130. *Truth Commission: South Africa*, *supra* note 103.

131. *Id.*

heard.<sup>132</sup> Second, it provided amnesty for some perpetrators, motivating them to publicly air the truth of the human rights violations committed during the Apartheid era.<sup>133</sup> Lastly, it provided a prototype of restorative and alternative justice for the world.<sup>134</sup> To this day, South Africa's Commission of Truth and Reconciliation is a model for truth commissions for federal, state, and local governments.

### **Commission on the Truth for El Salvador (1992)**

Even prior to the South African Commission of Truth and Reconciliation, truth commissions had been used throughout Central and Latin America.<sup>135</sup> One such example is the Commission on the Truth for El Salvador, which was used to address conflict and identify human rights violations following a civil war.

In 1992, the Commission on the Truth for El Salvador was established pursuant to the Salvadoran Peace Accords.<sup>136</sup> The Commission followed the conclusion of the Salvadoran Civil War, in which the U.S. government supported the Salvadoran government while Cuba, Nicaragua, the Soviet Union, and other Soviet bloc countries supported the insurgent groups.<sup>137</sup> The war resulted in the loss of 75,000 lives.<sup>138</sup> Numerous atrocities were committed on both sides during the war, including the "assassination of Archbishop Oscar Arnulfo Romero, the killings of six Jesuit priests, the rape and murder of four American churchwomen, the assassinations of mayors in certain conflictive areas of the country, . . . and the disappearance and torture-deaths of large numbers of civilian sympathizers."<sup>139</sup>

Due to distrust of the ability of the Salvadoran government and courts to resolve the conflict, the United Nations decided that the Commission on the Truth for El Salvador would consist of three

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132. Desmond Tutu, *Truth and Reconciliation Commission, South Africa*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/topic/Truth-and-Reconciliation-Commission-South-Africa> (last visited Feb. 22, 2017).

133. *Id.*

134. *Id.*

135. Many commissions of inquiry were also used in Latin America prior to the South African Commission of Truth and Reconciliation, such as the Commission of Inquiry to Investigate the Massacre of Prisoners in Peru from 1986-1988 and the independent inquiry undertaken by the National Commissioner for the Protection of Human Rights from 1993-1994 in Honduras. *Truth Commission Digital Collection*, *supra* note 4.

136. Thomas Buergenthal, *The United Nations Truth Commission for El Salvador*, 27 VAND. J. TRANSNAT'L L. 497, 498 (1994).

137. *Id.* at 501-02.

138. *Id.* at 502.

139. *Id.* at 503.

individuals, appointed by the United Nations Secretary-General, after consultation by the parties.<sup>140</sup> The Commission consisted entirely of well-known and well-respected foreign nationals: the former President of the Inter-American Court of Human Rights, the former Foreign Minister of Venezuela, and the former President of Colombia were all appointed.<sup>141</sup> In addition, no Salvadorans were hired to work for the Commission.<sup>142</sup> The Commission's work was paid for by a special fund directed to the United Nations and bankrolled by the United States, the European Community, the Netherlands, and the Scandinavian countries.<sup>143</sup> While the staff lived in El Salvador for approximately six months, the Commissioners did not fully relocate, instead traveling to the country twice a month.<sup>144</sup> The Truth Commission in El Salvador was unique in that it was the first such commission entirely sponsored by, paid for, and staffed by the United Nations.<sup>145</sup>

The Commission's main task was to "investigate the 'serious acts of violence' that occurred in El Salvador . . . 'and whose impact on society urgently require[d] that the public [] know the truth.'" <sup>146</sup> The Commission was to consider the importance attaching to (1) the "acts to be investigated, their characteristics and impact, and the social unrest to which they gave rise;" and (2) the need to "create confidence in the positive changes" to assist the transition to national reconciliation.<sup>147</sup> In searching for the truth, "the Commission was not to lose sight of the fact that the promotion of national reconciliation was an overarching aim of the investigation."<sup>148</sup> Like many truth commissions, El Salvador's Commission was also tasked with creating a report and recommending specific legal, political, or administrative measures, including those "to prevent the repetition of such acts."<sup>149</sup> The Commission was to submit its report to the parties and the United Nations within six months; however, it took eight to complete its mandate.<sup>150</sup>

To accomplish its mission, the staff and Commissioners met with victims and witnesses, and received large amounts of testimony and evidence from governmental and non-governmental organizations.<sup>151</sup>

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140. *Id.* at 499.

141. *Id.* at 499-500.

142. *Id.* at 504.

143. *Id.*

144. *Id.* at 504-05.

145. Hayner, *supra* note 20, at 599.

146. Buergenthal, *supra* note 136, at 500.

147. *Id.*

148. *Id.*

149. *Id.* at 501.

150. *Id.*

151. *Id.* at 505.

The Commission advertised via television, radio, and print that it had a broad “open door” policy and was open to all information.<sup>152</sup> Commissioners spoke with local political and church leaders, traveled throughout the state to meet people, and inspected the sites of alleged atrocities.<sup>153</sup>

Unlike later commissions, the Commission on the Truth for El Salvador was not public. Instead, most information provided was confidential. In interviews, witnesses were advised that their testimony was confidential “if they so desired, and most requested it.”<sup>154</sup> Many witnesses chose confidentiality, expressing fear of reprisal in the interviews.<sup>155</sup> However, confidentiality was one of the only protections the Commission could offer because it lacked police power or any other authority to protect the witnesses.<sup>156</sup>

Due to the limited timeline, the Commission was not able to address all cases.<sup>157</sup> While the Commission was successful in interviewing a number of individuals, obtaining relevant documents from the Salvadoran and United States governments proved difficult.<sup>158</sup> The Commission presented its final report on March 15, 1993, documenting thousands of killings, disappearances, and torture, and setting out a series of recommendations.<sup>159</sup> These recommendations included the dismissal of culpable army officers and civil servants from government employment; a need for extensive judicial and legal reform; reparations for victims, including both memorials and monetary compensation; and the implementation of a forum to monitor recommendation adoption.<sup>160</sup> The report also named individual actors allegedly responsible for the crimes.<sup>161</sup> One week after the release of the final report, the legislature

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152. *Id.*

153. *Id.* at 505–06.

154. *Id.* at 510.

155. *Id.* at 510–11.

156. *Id.* at 511.

157. *See id.* at 501 (lamenting lack of time to fully examine issues).

158. *Id.* at 507–08.

159. *Truth Commission: El Salvador*, U.S. INST. OF PEACE, <http://www.usip.org/publications/truth-commission-el-salvador> (last visited Feb. 5, 2017).

160. *Id.*

161. *Truth Commission: El Salvador*, *supra* note 159. While some U.S. participation was recognized in the final report—for example, the U.S. provided weapons and in some cases, “the United States Government tolerated, and apparently paid little official heed to the activities of Salvadorian exiles living in Miami”—recommendations were directed at El Salvador and its government. U.S. INST. OF PEACE, FROM MADNESS TO HOPE: THE 12-YEAR WAR IN EL SALVADOR: REPORT OF THE COMMISSION ON THE TRUTH FOR EL SALVADOR 129 (Jan. 26, 2001), <http://www.usip.org/sites/default/files/file/ElSalvador-Report.pdf>.

passed a general amnesty law covering all crimes related to the civil war.<sup>162</sup>

Commissioner Thomas Buergenthal, former President of the Inter-American Court of Human Rights, later observed the obstacles present at the time: that in gathering and evaluating the evidence, the Commission had to “balance the safety of potential witnesses against the due process interests of those persons accused. Meanwhile, the Commission had to recognize that unless it protected the confidentiality of its sources, it would be unable to discharge its mandate.”<sup>163</sup> In 2002, the Commissioner articulated the reason for this dichotomy: unlike in South Africa, where there was a new government in power when the Commission was established, the same government and individuals “responsible for many of the most egregious acts of violence in El Salvador” remained in power.<sup>164</sup> When the Commission published its final report, it received pushback from those who did not want to publish the names of those involved in violent tactics.<sup>165</sup>

In a 2002 summary of the Commission, Buergenthal observed:

The real contribution of the Truth Commission is at once more profound and much less concrete. The release of the *Report* had a very significant psychological impact on the people of El Salvador. While the Peace Accords ended the armed conflict, the *Report* put the country on the road to healing emotional wounds that had continued to divide it. The *Report* told the truth in a country that was not accustomed to hearing it.<sup>166</sup>

In other words, by acknowledging the harm that was suffered, and by bringing the truth to light, the Commission had a “cathartic impact” on the people of El Salvador.<sup>167</sup> Commissioner Buergenthal reiterated the importance of bringing the truth forward, observing that “[a] nation has to confront its past by acknowledging the wrongs that have been committed in its name” before it can move forward in national reconciliation. Commissioner Buergenthal concluded by stating, “If basic truth about the past is suppressed, it will prove very difficult to achieve national reconciliation.”<sup>168</sup> Instead, “[t]he wounds left behind by the past will continue to fester and endanger the peace.”<sup>169</sup>

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162. *Id.*; *El Salvador: No Justice*, *supra* note 34.

163. Buergenthal, *supra* note 136, at 512.

164. *Id.*

165. *Id.* at 521.

166. *Id.* at 539.

167. *Id.*

168. *Id.* at 544.

169. *Id.*

The effectiveness of El Salvador's Commission on the Truth has since been called into question. Although the Commission's final report included a recommendation to investigate and prosecute perpetrators, those investigations were prevented by the passage of the amnesty law.<sup>170</sup> Over two decades later, many identified perpetrators have never been held accountable.<sup>171</sup> Benjamin Cuellar, Executive Director of the Human Rights Institute of the Central American University and a member of one of the organizations consulted by the United Nations at the time the final report was produced, observed:

We had great expectations and it was a good report. Despite the fact that it didn't include all cases . . . the report recorded what happened, the disappearances, the extrajudicial executions, massacres, and torture. . . However, the most important recommendations, related to the issue of national reconciliation, of recognizing the need for material and moral reparations, they were never fulfilled. There were general apologies, but nothing else.<sup>172</sup>

El Salvador's Commission on the Truth may highlight some of the issues that can accompany truth commissions. While truth commissions can be useful in documenting history and promoting dialogue, such commissions are most effective if they also stimulate change. In El Salvador, many victims have been left without justice because few perpetrators have been prosecuted and reparations have not been paid.

### **South Korea Truth Commissions (2000 and 2005)**

Similarly, two separate truth commissions have not been entirely successful in South Korea. The first—the Presidential Truth Commission on Suspicious Deaths—was established in 2000 by President Kim Dae-Jung to “investigate the deaths of citizens in South Korea between 1975 and 1987, report on the findings, make recommendations to the President, and identify perpetrators for prosecution.”<sup>173</sup> During this period, the country experienced significant political turmoil and political opposition members were allegedly detained and tortured.<sup>174</sup> The Commission's 3,000-page final report concluded that “dictatorial regimes were responsible for fifty-two deaths,” and the Commission “recommended

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170. *El Salvador: No Justice*, *supra* note 34.

171. *Id.*

172. *Id.*

173. *Truth Commission: South Korea 2000*, U.S. INST. OF PEACE (Oct. 1, 2000), <http://www.usip.org/publications/truth-commission-south-korea>.

174. *Id.*



legal action against the perpetrators.”<sup>175</sup> When the Commission dissolved in 2004, it also recommended that the National Assembly establish a new commission to continue investigations and suggested “the passage of a law barring statutes of limitations for state crimes against human rights.”<sup>176</sup>

In 2005, a new truth commission was established and tasked with examining the time period between the Japanese occupation and annexation of Korea (1910–1945) and the present time—in particular focusing on “Japanese colonialism, the partition of the Peninsula, and decades-long anticommunist dictatorships.”<sup>177</sup> The purpose of this second commission was “to foster national legitimacy and reconcile the past for the sake of national unity.”<sup>178</sup> This commission was further directed “to screen petitions received by individuals, investigate and decide cases, and [provide] recommend[ations].”<sup>179</sup>

This fifteen-member commission—including eight members recommended by the National Assembly, four appointed by the President, and three nominated by the Supreme Court—began their work in December 2005 and ended in December 2010.<sup>180</sup> The Commission employed nearly 250 staff and had an annual budget between 15–20 million U.S. dollars.<sup>181</sup> An independent organization, the Commission had some limited powers to request affidavits, appearances for inquiry, and evidence submissions.<sup>182</sup> It could also impose administrative fines and compel appearances from individuals who refused to appear.<sup>183</sup> The Commission dissolved in 2010 amidst a sea of criticism from both advocates and opponents.<sup>184</sup>

Overall, the Commission received over 11,000 cases based on petitions from individuals.<sup>185</sup> Of these petitions, over 80 percent linked wartime massacres to state agents (including the South Korean military

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175. *Id.*

176. Paul Hanley, *Transitional Justice in South Korea: One Country’s Restless Search for Truth and Reconciliation*, 9 E. ASIA L. REV. 138, 155 (2014).

177. *Truth Commission: South Korea 2005*, U.S. INST. OF PEACE (Apr. 18, 2012), <http://www.usip.org/publications/truth-commission-south-korea-2005>.

178. TRUTH AND RECONCILIATION COMM’N, REPUBLIC OF KOREA, TRUTH AND RECONCILIATION: ACTIVITIES OF THE PAST THREE YEARS 13 (2009), [http://www.dhnet.org.br/verdade/mundo/coreia/cv\\_11\\_coreia\\_do\\_sul.pdf](http://www.dhnet.org.br/verdade/mundo/coreia/cv_11_coreia_do_sul.pdf) [hereinafter TRUTH AND RECONCILIATION: ACTIVITIES OF THE PAST THREE YEARS].

179. *Truth Commission: South Korea 2005*, *supra* note 177.

180. *Id.*

181. *Id.*

182. Hanley, *supra* note 176, at 157.

183. *Id.* at 157–58.

184. *Id.*

185. Trisha D. Olsen, et al., *When Truth Commissions Improve Human Rights*, INT’L J. OF TRANSITIONAL JUSTICE, Nov. 1, 2010 at 457, 473.

and U.S. armed forces).<sup>186</sup> The Commission determined that “massacres” were widespread during the period of study, identifying a total of 1,222 during the war period.<sup>187</sup> The Commission’s investigators excavated mass graves, recovering victims’ remains and verifying stories of mass executions.<sup>188</sup> The Commission focused largely on victims, revealing facts about the massacres and “restoring the honor” of victims’ reputations.<sup>189</sup>

In general, the Commission did not endorse punishment for offenders and refrained from making many recommendations for institutional reform.<sup>190</sup> Rather, it “recommended a policy of memorialization” by “establishing historical records and monuments, and furthering peace education.”<sup>191</sup> It also recommended legislative action on reparations and medical services for victims.<sup>192</sup>

In 2008, President Roo Moo-Hyun made an official apology on behalf of the state for the massacres of the Korean War.<sup>193</sup> That year, conservative President Lee Myung-Bak took office, and replaced the head of the Commission, resulting in dramatic budget cuts and restrictions on investigative powers.<sup>194</sup> Two years later, in 2010, the Commission was disbanded even though it could have been extended for another two years.<sup>195</sup> Ostensibly shut down because of cost, many have suggested that the Commission was instead disbanded because of President Lee’s personal hostility toward the Commission.<sup>196</sup> Some groups have since advocated for a reactivation of the Commission.<sup>197</sup>

The South Korean government has received criticism over its handling of these issues, specifically regarding incomplete investigations of identified crimes and the abrupt end of the Commission.<sup>198</sup> As in El

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186. *Truth Commission: South Korea 2005*, *supra* note 177, at 40–41.

187. TRUTH AND RECONCILIATION: ACTIVITIES OF THE PAST THREE YEARS, *supra* note 178.

188. Choe Sang-Hun, *Unearthing War’s Horrors Years Later in South Korea*, N.Y. TIMES (Dec. 3, 2007), <http://www.nytimes.com/2007/12/03/world/asia/03korea.html>.

189. Hanley, *supra* note 176, at 162.

190. *Id.*

191. *Truth Commission: South Korea 2005*, *supra* note 177.

192. *Id.*

193. *Id.*

194. Hanley, *supra* note 176, at 161.

195. *Id.*

196. Mark Seldon & Kim Dong-choon, *An Interview with Kim Dong-choon, Recently Retired Standing Commissioner of South Korea’s Truth and Reconciliation Commission*, FOREIGN POLICY IN FOCUS (Mar. 1, 2010), [http://fpif.org/south\\_koreas\\_embattled\\_truth\\_and\\_reconciliation\\_commission](http://fpif.org/south_koreas_embattled_truth_and_reconciliation_commission).

197. Hanley, *supra* note 176, at 162.

198. *Id.* at 164. Benjamin Silberstein, *South Korea’s Own History Problem*, THE DIPLOMAT (Aug. 21, 2014), <http://thediplomat.com/2014/08/south-koreas-own-history-problem/>.

Salvador, the Truth and Reconciliation Commission in South Korea is not necessarily considered truly “successful,” as little change has occurred. Moreover, the Commission was unable to accomplish its healing and reconciliation purposes before its shuttering.<sup>199</sup> Professor Paul Hanley opined that this unfinished Commission has left the country out of balance: “There can be no harmony in a society where untold numbers had their lives torn asunder without official recognition, where there is no accountability for those who visited egregious injustice upon the innocent, and where unexcavated mass graves dot the landscape.”<sup>200</sup> The lack of follow-up to the Commission’s recommendations by the Korean government demonstrates that truth commissions may be the most effective if provided continued support by state government that is not later withdrawn.

### Canada Truth and Reconciliation Commission (2007)

In contrast to the El Salvador and South Korean governments, Canada’s government has been fully supportive of its Truth and Reconciliation Commission.<sup>201</sup> However, the full effectiveness of this Commission is yet to be seen, as the Commission’s final report was only recently released in December 2015.<sup>202</sup>

The Truth and Reconciliation Commission of Canada was established in 2007 to address past wrongs committed against indigenous populations, particularly on account of the nationwide Indian Residential School (IRS) program.<sup>203</sup> The Commission was established as part of a settlement agreement after a number of former IRS students and families brought a class action lawsuit against the Canadian government.<sup>204</sup>

The IRS program operated in Canada from 1883 to 1988.<sup>205</sup> Like state and federal forced assimilation policies in Alaska, the IRS program was a “residential school system for Aboriginal children” which removed thousands of Aboriginal children from their communities and placed them into full-time residential schools.<sup>206</sup> During this time, Aboriginal

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199. Hanley, *supra* note 176, at 164.

200. *Id.* at 165.

201. John Paul Tasker, *Justin Trudeau announces 3 steps to help enact Truth and Reconciliation calls to action*, CBC NEWS (Dec. 15, 2016 9:22 PM), <http://www.cbc.ca/news/politics/trudeau-indigenous-leaders-trc-1.3897902>.

202. *See id.* (referencing report publication one year prior to article date).

203. HONOURING THE TRUTH, *supra* note 44, at v.

204. *Id.*

205. *Id.* at 3, 353–56.

206. *University of Manitoba Statement of Apology and Reconciliation to Indian Residential School Survivors*, UNIV. OF MAN. (Oct. 27, 2011), <https://umanitoba.ca/about/media/StatementOfApology.pdf>.

children were banned from practicing traditional ceremonies or speaking their own languages.<sup>207</sup> Residential schools were often located far from home communities, making regular contact with family nearly impossible.<sup>208</sup> In justifying Canada's residential school policy, Canadian Prime Minister, Sir John Macdonald, stated in 1883:

When the school is on the reserve the child lives with its parents, who are savages; he is surrounded by savages, and though he may learn to read and write[,] his habits, [sic] and training and mode of thought are Indian. He is simply a savage who can read and write. It has been strongly pressed on myself, as the head of the Department, that Indian children should be withdrawn as much as possible from the parental influence, and the only way to do that would be to put them in central training industrial schools where they will acquire the habits and modes of thought of white men.<sup>209</sup>

The goals of assimilation were promulgated in 1920 by Canada's Deputy Minister of Indian Affairs and reiterated as late as 1969 through government policies aimed to end Indian status and terminate all treaties with First Nations.<sup>210</sup>

The IRS institutions were infamous for physical, sexual, and emotional abuse against children.<sup>211</sup> These schools worked to indoctrinate children into the "legally dominant, Euro-Christian Canadian society."<sup>212</sup> Tragically, due to trauma, disease, and for other reasons still unknown, more than 4,100 Aboriginal children never returned to their home communities after starting the IRS program.<sup>213</sup>

Years later, former students began to speak out publicly about their experiences, and launched a series of class action lawsuits against the churches involved in the schools as well as the federal government.<sup>214</sup> These cases were resolved in the Indian Residential School Settlement Agreement—the largest class action settlement in Canadian history—

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207. TRUTH AND RECONCILIATION COMM'N OF CAN., CANADA, ABORIGINAL PEOPLES, AND RESIDENTIAL SCHOOLS: THEY CAME FOR THE CHILDREN 2 (2012), [http://www.myrobust.com/websites/trcinstitution/File/2039\\_T&R\\_eng\\_web\[1\].pdf](http://www.myrobust.com/websites/trcinstitution/File/2039_T&R_eng_web[1].pdf).

208. *Id.* at 6, 9-11.

209. HONOURING THE TRUTH, *supra* note 44, at 2.

210. *Id.* at 3.

211. *Id.* at 163.

212. *Id.* at v.

213. *Missing Children Project*, TRUTH AND RECONCILIATION COMM'N OF CAN., <http://www.myrobust.com/websites/trcinstitution/index.php?p=823> (last visited Feb. 22, 2017).

214. *Residential Schools Overview*, UNIV. OF MAN., <http://umanitoba.ca/centres/nctr/overview.html> (last visited Feb. 22, 2017).

which came into effect in 2007.<sup>215</sup> As part of this agreement, compensation was provided to all former students who resided at the schools, with additional compensation being provided to those who suffered sexual or other abuse,<sup>216</sup> and the Truth and Reconciliation Commission was established.<sup>217</sup>

The goals of the Commission were to “acknowledge [IRS] experiences, impacts, and consequences;” “provide a holistic, culturally appropriate and safe environment for former students and their families;” “facilitate truth and reconciliation events at both the national and community levels;” “promote awareness and public education of Canadians about the IRS system and its impacts;” “identify sources and create . . . an historical record” of the IRS legacy; produce a report “including recommendations to the Government of Canada;” and “support commemoration of former [IRS] students and their families.”<sup>218</sup> The Commission was built upon principles developed by the Working Group on Truth and Reconciliation and of the Exploratory Dialogues.<sup>219</sup> These principles included: “accessib[ility]; victim-cent[rism]; confidentiality . . . ; transparen[cy]; open and honorable process; comprehensive[ness]; inclusi[on]; just[ice] and fair[ness], respect[]; . . . and forward looking in terms of rebuilding and renewing Aboriginal relationships and the relationship between Aboriginal and non-Aboriginal Canadians.”<sup>220</sup>

The Commission was composed of an appointed Chairperson and two Commissioners who were “persons of recognized integrity, stature, and respect.”<sup>221</sup> For membership, consideration was to be “given to at least one of the three members being an Aboriginal person.”<sup>222</sup> Candidates were nominated from a pool recommended by “former students, Aboriginal organizations, churches, and government;” the Assembly of First Nations was “consulted in the making a final decision as to the appointment of the Commissioners.”<sup>223</sup> The Commission was assisted by an IRS survivor committee which included ten Aboriginal

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215. Indian Residential School Settlement Agreement (May 8, 2006), <http://www.residentialschoolsettlement.ca/IRS%20Settlement%20Agreement-%20ENGLISH.pdf>

216. *Id.* at art. 17.01, 18.02.

217. *Id.* at art. 7.

218. Indian Residential School Settlement Agreement, Schedule N (May 8, 2006) at para. 1, [http://www.trc.ca/websites/trcinstitution/File/pdfs/SCHEDULE\\_N\\_EN.pdf](http://www.trc.ca/websites/trcinstitution/File/pdfs/SCHEDULE_N_EN.pdf).

219. *Id.* at 1.

220. *Id.*

221. *Id.* at para. 5.

222. *Id.*

223. *Id.*

people, some survivors.<sup>224</sup> The Commission was required to complete work on all of the mandated goals—including all investigations, reporting, and events—within five years.<sup>225</sup>

A formal Closing Ceremony was held in Ottawa from May 31 through June 3, 2015, including activities such as survivor sharing circles, a group walk, actions of reconciliation, interactive education, traditional ceremonies, cultural performances, and film screenings.<sup>226</sup> At the Closing Ceremony, the Commission released its Executive Summary, which included ninety-four Calls to Action to “redress[] the legacy of IRS and advance[d] the process of reconciliation in Canada.”<sup>227</sup> The final report was published six months later.<sup>228</sup>

In total, the Commission met with over 6,000 witnesses, many of whom survived the IRS experience.<sup>229</sup> The Commission’s report highlighted the importance of education in the healing process, observing that a “lack of historical knowledge has serious consequences” for both indigenous peoples and Canadians collectively.<sup>230</sup> In particular, this lack of historical knowledge resulted in “poor public policy decisions,” the “reinforce[ment] of racist attitudes,” and “civic distrust” between the First People and the majority population.<sup>231</sup> The report’s “Calls to Action” to the federal government included the request to reduce the number of children in state care; collect information on Aboriginal children in state custody; eliminate discrepancies in federal education funding for First Nations children; enact an Aboriginal Languages Act; and recognize the role of prior policies in current health disparities.<sup>232</sup>

Since the release of its report, the Canadian government appears supportive of change efforts. Prime Minister Justin Trudeau reiterated the Canadian government’s commitment to working with indigenous communities and to fully implementing recommendations of the Truth and Reconciliation Commission.<sup>233</sup> In addition, Indigenous and Northern Affairs Minister Carolyn Bennett publicly stated that the federal

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224. *Id.* at para. 7.

225. *Id.* at para. 8.

226. *Closing Events*, TRUTH AND RECONCILIATION COMM’N OF CAN., <http://www.trc.ca/websites/trcinstitution/index.php?p=830> (last visited Feb. 22, 2017).

227. Press Release, Prime Minister of Can., Final Report of the Truth and Reconciliation Commission of Canada (Dec. 15, 2015), <http://pm.gc.ca/eng/news/2015/12/15/final-report-truth-and-reconciliation-commission-canada> [hereinafter TRC Press Release].

228. HONOURING THE TRUTH, *supra* note 44, at 8.

229. *Id.*

230. *Id.*

231. *Id.*

232. HONOURING THE TRUTH, *supra* note 44, at 319–22.

233. TRC Press Release, *supra* note 227.

government was seeking to “overhaul” the country’s child welfare system.<sup>234</sup> These public announcements indicate that the Canadian Commission could provide a model for a successful commission for the United States or Alaska.<sup>235</sup> With the final report being released just recently in December 2015, the full effect of this Commission and report remains to be seen, but the initial reaction appears promising.

### TRUTH AND RECONCILIATION IN THE UNITED STATES

Like Canada and the other countries addressed above, the United States has a history of violence against its own citizens—in particular, minority groups. Federal policies and judicial decisions institutionalized centuries of minority disenfranchisement, discrimination, and racism.<sup>236</sup> In addition, recent violence against minority citizens in conjunction with a political election cycle highlighting discrimination issues has resulted in requests for truth and reconciliation commissions nationwide.<sup>237</sup> Yet, such proposals have not received much traction.<sup>238</sup> Instead, a number of local commissions—of much smaller scale than their international counterparts—have been proposed or implemented across the country.<sup>239</sup>

Of the domestic commissions, many have grown out of grassroots efforts and activism following revelations of state complicity in past violence.<sup>240</sup> Some focus on events that may be considered distant past and viewed by the broader community as irrelevant to contemporary society.<sup>241</sup> Resulting discussions often reveal unresolved tensions which exacerbate structural, societal, and economic inequalities for the

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234. Susana Mas, *Truth and Reconciliation Commission Final Report Points to ‘Growing Crisis’ for Indigenous Youth*, CBC NEWS (Dec. 14, 2015), <http://www.cbc.ca/news/politics/truth-and-reconciliation-final-report-1.3361148>.

235. Bennett Collins & Allison Watson, *Examining the Potential for an American Truth and Reconciliation Commission*, CARNEGIE COUNCIL (Feb. 5, 2015), [https://www.carnegiecouncil.org/en\\_US/publications/ethics\\_online/0102](https://www.carnegiecouncil.org/en_US/publications/ethics_online/0102).

236. See, e.g., *Dred Scott v. Sanford* 60 U.S. 393 (1857) (holding that people of African descent could not be U.S. citizens and therefore could not sue in federal court; also prohibiting the abolition of slavery); *Plessy v. Ferguson*, 163 U.S. 537 (1896) (upholding segregation laws for public facilities under the doctrine of ‘separate but equal’). See generally David E. Bernstein & Ilya Somin, *Judicial Power & Civil Rights Reconsidered*, 114 YALE L.J. 593 (2004).

237. Collins & Watson, *supra* note 235.

238. Slye, *supra* note 10.

239. MAGARRELL & GUTIERREZ, *supra* note 13, at 18–24.

240. Joshua Inwood et al., *Addressing Structural Violence Through U.S. Reconciliation Commissions: The Case Study of Greensboro, NC and Detroit, MI*, 52 POL. GEOGRAPHY 1, 3 (2015).

241. *Id.* at 4.

oppressed groups.<sup>242</sup> These commissions show promise for truth and reconciliation, and can provide a useful vessel for addressing national, statewide, and local issues of discrimination and racism.

### **Greensboro Truth and Reconciliation Commission (2004)**

In 2004, the Greensboro Truth and Community Reconciliation Project established a Commission to examine and address racially-motivated killings by the Ku Klux Klan and American Nazi Party on November 3, 1979.<sup>243</sup> On that day, a “caravan of white supremacists had confronted demonstrators” preparing for an anti-Klan rally.<sup>244</sup> Klan and Nazi members, some of whom were filmed in action, shot into the crowds, killing five demonstrators and wounding at least ten others.<sup>245</sup> All-white juries acquitted those accused of all charges on two occasions.<sup>246</sup>

Decades later, a group called the Greensboro Truth and Community Reconciliation Project was launched, ultimately leading to the creation of an independent, seven-member commission.<sup>247</sup> The Commission’s task was to examine the “context, causes, sequence [of events], and consequences,” and to make recommendations for community healing.<sup>248</sup> The Commission was not government-sponsored.<sup>249</sup> In fact, after the Commission submitted a petition with 5,300 signatures asking for the Greensboro City Council’s endorsement of the committee, the petition was denied in a six-to-three vote.<sup>250</sup> The Commission assessed evidence gathered from trials, internal records, newspaper and magazine articles, academic literature, interviews, and personal statements from private interviews and public hearings, publishing a final report in 2006.<sup>251</sup>

The Commission determined that the Klan and Nazi group traveled to Greensboro with at least a minimal desire to disrupt the rally and assault the demonstrators.<sup>252</sup> The Commission named specific perpetrators in the killings and also found both demonstrators and the Greensboro police at fault.<sup>253</sup> Further, the Commission outlined the negative consequences of the killing, including: “individual

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242. *Id.*

243. GREENSBORO REPORT, *supra* note 11, at 2-3.

244. *Id.* at 2.

245. *Id.*

246. *Id.*

247. *Id.* at 3.

248. *Id.* at 2.

249. *See id.* (noting the Commission was created and organized by community members).

250. Williams, *supra* note 41, at 148.

251. GREENSBORO REPORT, *supra* note 11, at 3.

252. *Id.* at 6.

253. *Id.*



psychological trauma, depression, anger, and fear;" "strained relationships;" "economic retaliation . . . including loss of jobs and economic hardship;" increased "distrust of police;" "exacerbated race and class tensions;" "an upsurge in racist violence;" and "tacit approval of violence against political dissenters."<sup>254</sup> The Commission provided a number of recommendations, including: formal recognition of the tragedy by the City of Greensboro; issuance of formal apologies by the City and Police Department "for their failure to protect the public;" provision of community forums and healing workshops; and erection of a public monument.<sup>255</sup> The Commission also recommended that the City provide all employees with anti-racism training; pay employees a living wage to reduce the local socioeconomic divide; issue annual reports on race relations; and develop elementary and secondary school curricula about the event.<sup>256</sup>

It remains to be seen whether the Truth and Reconciliation Commission in Greensboro was "successful," yet there is some promise.<sup>257</sup> Jill Williams, former executive director of the Commission, observed that both Greensboro residents and local media outlets have provided a more accurate representation of the facts of the 1979 events as a result of the Commission's work.<sup>258</sup> Ms. Williams also observed that while the City itself had neglected to work towards any of the Commission's recommendations, several independent groups had chosen to do so.<sup>259</sup> Further, Greensboro's Truth and Reconciliation Commission has become a model and inspiration for other local communities and states. In July 2006, following release of the report, the International Center for Transitional Justice convened a meeting of representatives from truth recovery efforts around the world.<sup>260</sup> At the meeting, participants discussed and assessed Greensboro's Truth and Reconciliation process.<sup>261</sup> Community leaders and participants from Northern Ireland, Peru, South Africa, Sri Lanka, Florida, Georgia, Louisiana, Maryland, Mississippi, New Mexico, North Carolina, and South Carolina also discussed best practices and lessons learned from the group's collective experiences with truth commissions.<sup>262</sup>

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254. *Id.* at 24.

255. *Id.* at 29–30.

256. *Id.* at 31–32, 34.

257. Williams, *supra* note 41, at 149.

258. *Id.*

259. *Id.*

260. MAGARRELL & GUTIERREZ, *supra* note 13, at 1.

261. *Id.*

262. *Id.*

Since this meeting, at least two localized truth and reconciliation commissions – the Metro Detroit Truth and Reconciliation Commission and the Maine Wabanaki-State Truth and Reconciliation Commission – have been formed in the Greensboro model.

### **Metro Detroit Truth and Reconciliation Commission (2011)**

In Detroit, Michigan, a Truth and Reconciliation Commission on racial inequality was established in 2011 to “spotlight the legacy of race-based housing policies.”<sup>263</sup> Inspired in part by the Greensboro Commission, the Metro Detroit Truth and Reconciliation Commission was directed to: “discover and disseminate a truthful history of structural and institutional racism;” “invite industries to address their own individual histories of . . . racial privilege and oppression;” “invite individual residents to participate in the truth and reconciliation process;” “suggest ways to reconcile and heal;” and “provide Detroit and Southeast Michigan with a set of findings and concrete recommendations . . . to build a more just, equitable, inclusive, and prosperous future.”<sup>264</sup> The nine-member Commission was directed to “build upon and extend contemporary understandings of structural racism,” with reference to the International Convention for the Elimination of all forms of Racial Discrimination.<sup>265</sup> The Commission was given a period of at least one year, not to exceed two years, to fulfill the terms of the Charter.<sup>266</sup>

Two years after its inception, the Commission had lost three members, due partly to personal reasons, but also due to issues surrounding the clarity of the mandate.<sup>267</sup> Today, the final outcome of this Commission is unclear.<sup>268</sup>

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263. Nichole Christian, *Truth and Reconciliation Comes to Detroit*, WNYC: THE TAKEAWAY (Nov. 21, 2011), <http://www.wnyc.org/story/171612-truth-and-reconciliation-comes-detroit/>.

264. CHARTER FOR THE METROPOLITAN DETROIT TRUTH & RECONCILIATION COMMISSION ON RACIAL INEQUALITY 3 (2011), <http://www.miroundtable.org/Roundtabledownloads/FinalMandate2011.pdf+%&cd=1&hl=en&ct=clnk&gl=us> [hereinafter CHARTER FOR METROPOLITAN DETROIT].

265. *Id.* at 4 (referencing the International Convention for the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195).

266. CHARTER FOR METROPOLITAN DETROIT, *supra* note 264, at 6.

267. Rev. Thomas H. Priest, Jr., *The Truth About Racial Reconciliation: Too Many Missed Opportunities*, NETWORK NEWS: PRESBYTERIAN VOICES FOR JUSTICE, at 2 (Winter 2013), <http://www.pv4j.org/network-news/network-news-winter-2013-2.pdf>.

268. See JASON REECE & DWIGHT HOLLEY, KIRWAN INST., DETROIT AT A CROSSROADS: EMERGING FROM CRISIS AND BUILDING PROSPERITY FOR ALL 1 (Jan. 2013), [http://www.kirwaninstitute.osu.edu/reports/2013/01\\_2013\\_MI-Roundtable-FINAL-3.pdf](http://www.kirwaninstitute.osu.edu/reports/2013/01_2013_MI-Roundtable-FINAL-3.pdf).

**Maine Wabanaki-State Truth and Reconciliation Commission (2013)**

In 2013, Maine established a Truth and Reconciliation Commission that focused on what happened to the Wabanaki children and their families between the 1978 passage of the Indian Child Welfare Act (ICWA) and the present day.<sup>269</sup> Developed in part due to the state's repeated non-compliance with ICWA requirements, the Commission focused on the State of Maine's child welfare practices.<sup>270</sup> In 1999, a federal pilot review found that a disproportionate number of Native children were being placed in the foster care system outside of Native families.<sup>271</sup> This pattern resurfaced in a review in 2003 and 2009.<sup>272</sup> In response, the Commission was established as a "collaborative effort" to address those failings of the state.<sup>273</sup> The Commission partnered with the state, developing a declaration of intent and mandate signed by the governor and five tribal chiefs.<sup>274</sup>

In particular, the Commission was tasked with "promot[ing] individual, relational, systemic and cultural reconciliation."<sup>275</sup> The Commission was further directed to: give a voice to both the Wabanaki people and tribal and state child-welfare staff; better document the history of the Wabanaki people in the child welfare system; provide healing and cultural understanding opportunities; improve overall child-welfare practices; and formulate recommendations.<sup>276</sup>

As part of the process, listening times and ceremonial gatherings took place in each of the five Wabanaki communities.<sup>277</sup> The Commission was directed to conclude with a final report.<sup>278</sup> The Commission received no funding from the state or tribal governments, and instead was funded entirely by private, Maine-based, and national donors.<sup>279</sup> However, the state government was involved in some parts of the process – Department

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269. *About*, ME. WABANAKI-STATE CHILD WELFARE TRUTH AND RECONCILIATION COMM'N, <http://www.mainewabanakitrc.org/about/> (last visited Jan. 28, 2017). The group was authorized by the governor of Maine and five tribal chiefs in February 2013. *Id.* at 6.

270. ME. WABANAKI-STATE CHILD WELFARE TRUTH & RECONCILIATION COMM'N, *BEYOND THE MANDATE: CONTINUING THE CONVERSATION - REPORT OF THE MAINE WABANAKI-STATE CHILD WELFARE TRUTH & RECONCILIATION COMMISSION 12-13* (2015), [http://www.mainewabanakitrc.org/wp-content/uploads/2015/07/TRC-Report-Expanded\\_July2015.pdf](http://www.mainewabanakitrc.org/wp-content/uploads/2015/07/TRC-Report-Expanded_July2015.pdf) [hereinafter *BEYOND THE MANDATE*].

271. *Id.* at 27.

272. *Id.* at 12.

273. *Id.*

274. *Id.*

275. *Id.* at 6.

276. *Id.* at 13.

277. *See id.* at 76-79 (describing the healing process of the five communities).

278. *Id.*

279. *Id.*

of Health and Human Services and university employees donated their time and resources.<sup>280</sup>

In its final report, the Commission acknowledged the “underlying racism still at work in state institutions” and expressed by the public, the “ongoing impact of historical trauma,” and the “differing interpretations of tribal sovereignty and jurisdiction.”<sup>281</sup> The report asserted that these conditions and disproportionate entry of Native children into foster care constituted “continued cultural genocide.”<sup>282</sup> In Maine, Native children entered foster care at an average of 5.1 times the rate of non-Native children from 2000–2013.<sup>283</sup> Yet historical data revealed that Indian children in Maine were placed into foster care at a rate 25.8 times higher than non-Indian children in 1972, 20.4 times higher than non-Indian children in 1973, and 19 times higher than non-Indian children in 1975.<sup>284</sup> For a particular county in Maine in 1972, the rate of removal for Indian children was 62.4 times higher than the state-wide rate for non-Indian children.<sup>285</sup>

The report made several recommendations regarding child custody. The Commission determined that the State needed to make greater efforts to: collaborate with tribes; improve identification of Wabanaki children; reduce turnover in the State workforce; challenge cultural assumptions; and study gaps in foster care.<sup>286</sup> The report listed fourteen additional specific methods for the state and tribal governments to collaborate to improve relations and move forward.<sup>287</sup> After the issuance of the report, a second commission was tasked to consider and implement the Truth and Reconciliation Commission’s recommendations.<sup>288</sup> This model of a state-endorsed truth and reconciliation commission could provide a model for Alaska and other states.

## Alaska

As in Maine and Canada, Native populations in Alaska have experienced intergenerational trauma. As described above, over the past century, Native traditions have been stripped away as populations were

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280. *About, ME. WABANAKI-STATE CHILD WELFARE TRUTH AND RECONCILIATION COMM’N*, <http://www.mainewabanakitrc.org/about/> (select “Who is involved?” tab) (last visited Jan. 28, 2017).

281. *BEYOND THE MANDATE*, *supra* note 270, at 8.

282. *Id.*

283. *Id.* at 21.

284. *Id.*

285. *Id.*

286. *Id.* at 29–37.

287. *Id.* at 66–67.

288. *Id.* at 70.

required to assimilate into the mainstream, white culture. In part due to this assimilation, Alaska faces many social ills. The state has some of the highest rates of suicide, domestic violence, and substance abuse, and some of the lowest education completion rates in the nation.<sup>289</sup> Reconciliation and acknowledgement of past wrongs may be essential to mitigating these issues.

One form of “truth” commission has been used in Alaska. In 1983, Canadian Judge Thomas Berger was selected by the Inuit Circumpolar Conference to head the Alaska Native Review Commission which aimed to record Alaska Natives’ experiences and expectations for what became the Alaska Native Claims Settlement Act.<sup>290</sup> He held hearings in over sixty villages and published his report in a book, titled *Village Journey*, in 1985.<sup>291</sup> His research, however, was not widely adopted,<sup>292</sup> although it influenced the work of a later commission.<sup>293</sup>

A few years later, in 1990, the Alaska Native Commission – officially named the Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives – was created by Congress.<sup>294</sup> This Commission, funded in part by the federal government and the State of Alaska, was tasked with conducting a comprehensive study of the status of Alaska Natives, the effectiveness of state and federal policies towards them, and recommendations for further improvement of social and economic opportunity.<sup>295</sup> The Commission was also to address the needs of Alaska Natives for self-determination, economic self-sufficiency, improved levels of educational achievement, improved health status, and reduced incidence of social problems.<sup>296</sup> The Commission was to accomplish its work while respecting unique traditions and cultures, and the special status of Alaska Natives.<sup>297</sup>

The first meeting of the Commission was held in February 1992.<sup>298</sup> In 1994, the Commission published a four volume final report.<sup>299</sup> This report has provided “the stimulus and the rationale for most subsequent

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289. See *supra* Part III, Context for Alaska.

290. THOMAS BERGER, *VILLAGE JOURNEY: THE REPORT OF THE ALASKA NATIVE REVIEW COMMISSION* vii-x (Inuit Circumpolar Conference, 1st ed. 1985).

291. *Id.*

292. CLAUD M. NASKE & HERMAN E. SLOTNICK, *ALASKA: A HISTORY* 304 (3d ed. 2011).

293. ALASKA NATIVES COMM’N, *supra* note 47.

294. Act of August 18, 1990, Pub. L. No. 101-379, § 12, 104 Stat. 473, 478-83.

295. *Id.* at § 12(a)(2).

296. *Id.* at § 12(c)(3)(B).

297. *Id.* at § 12(c)(3)(A).

298. Carol Barnhardt, *A History of Schooling for Alaska Native People*, ALASKA NATIVE KNOWLEDGE NETWORK <http://www.ankn.uaf.edu/curriculum/Articles/CarolBarnhardt/HistoryofSchooling.html> (last visited Feb. 23, 2017).

299. *Id.*

policy initiatives that continue to be implemented at both state and federal levels.”<sup>300</sup> Moreover, the Alaska Federation of Natives subsequently initiated several policies and programs to follow through on the Commission’s recommendations.<sup>301</sup>

Today, yet another commission for uncovering truth has been established. This program, entitled “Advancing Native Dialogues on Racial Equity,” is a project funded by the Kellogg Foundation and initiated by the First Alaskans Institute.<sup>302</sup> This project, like many truth and reconciliation commissions, seeks to “reset and reshape the dialogue on race in Alaska” by hosting community discussions and by working to raise awareness of racism.<sup>303</sup> However, the group is not governed by a board of commissioners, and unlike other truth and reconciliation commissions, this group does not have to prepare a report. Instead, it seeks to engage the community by identifying instances of institutional and systematic racism, hosting community conversations throughout Alaska, and promoting specific projects.<sup>304</sup>

Such a hybrid program or nongovernmental project has been used in other countries and within the United States. In some cases, where the government has refused or been unable to investigate the past, nongovernmental projects have documented history and acknowledged past wrongs.<sup>305</sup> Truth and reconciliation was therefore pursued in an alternate manner—through unofficial investigations and documentation. These investigations often serve by gathering information on the past, and can be perceived as a description of the past as opposed to an official record. In Uruguay, Paraguay, and Brazil, a “*Nunca Mas*” (“never again”) publication documented governmental use of torture and was produced by the offices of a national human rights organization.<sup>306</sup> In Brazil, the publication climbed to the top of the country’s best-seller list.<sup>307</sup> Although not government-sponsored, the publication brought attention to former policies and practices that had contradicted human rights.<sup>308</sup>

While the Advancing Native Dialogues on Racial Equity program is not sponsored by the State of Alaska, another state-sponsored council was

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300. *Id.*

301. *Id.*

302. *Advancing Native Dialogues on Racial Equity*, FIRST ALASKANS INST., <http://firstalaskans.org/alaska-native-policy-center/racial-equity/> (last visited Jan. 28, 2017).

303. *Id.*

304. *Id.*

305. Hayner, *supra* note 20, at 651.

306. *Id.* at 651–52. In Brazil, the publication was called “*Nunca Mais*.”

307. *Id.* at 652.

308. *See id.* (discussing how *Nunca Mais* revealed extensive torture and abuse by Brazil’s military regime).

recently established to look into Native issues in Alaska. In October 2015, Alaska Governor Bill Walker created a new Governor's Tribal Advisory Council.<sup>309</sup> The purpose of this group is to "improve the relationship between the state and the 229 federally recognized tribes in Alaska."<sup>310</sup> The council is composed of eleven members who represent Native interests on education, healthcare, subsistence, energy, public safety, justice, wildlife and fisheries, economic development, housing, language and culture, and transportation.<sup>311</sup> The group was established, in part, "to provide a forum for open, respectful, and informed dialogue on the full range of issues facing the Tribes and recommend action for opportunities for the Tribes and the State."<sup>312</sup> The work and mandate of this group are still in their formation stages.

Based on the research of this paper, it may be useful for either group—Advancing Native Dialogues on Racial Equity or the new Governor's Tribal Advisory Council—to establish a truth and reconciliation commission for Alaska. In particular, these groups could look to Maine and Canada's state-sponsored commissions as models, to investigate whether such a truth commission could help promote productive dialogue and community healing throughout the state. Either group, or both, may provide a means for Alaska to fully address its policies and programs of assimilation and the resulting trauma that has ensued for Alaska Native communities (without the need for such a commission). Either or both could also provide an outlet for Alaska Native peoples and the Alaska government to air out and address past policies and wrongs.

As stated above, the overall impact of a truth commission depends on a variety of factors; namely, political will, financial resources, and societal support.<sup>313</sup> Findings of a commission can only have an impact if "the public takes notice and if the policymakers allow for significant changes."<sup>314</sup> Hopefully, the work of both the Advancing Native Dialogues on Racial Equity project and the Governor's Tribal Advisory Council can work to address past trauma in a way that results in beneficial effects on Alaska Native communities and a corresponding impact on Alaska.

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309. Press Release 15-134, Off. of Governor Bill Walker, Tribal Advisory Council Established, (Oct. 14, 2015), <http://gov.alaska.gov/newsroom/2015/10/tribal-advisory-council-established/>.

310. *Id.*

311. *Id.*

312. *Administrative Order No. 277*, STATE OF ALASKA, OFF. OF THE GOVERNOR (Oct. 14, 2015), <http://www.gov.state.ak.us/admin-orders/277.html>.

313. Schlunck, *supra* note 1, at 419.

314. *Id.* at 420.

## CONCLUSION

Truth and reconciliation commissions have proven valuable and successful in the United States, and have the potential to be a useful model for Alaska. Truth and reconciliation commissions can play a key role in improving transparency and opening dialogue. As observed by Charlotte Bacon, the executive director of the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission, “Greater equity might emerge when we develop long, honest, transparent relationships with one another.”<sup>315</sup> As articulated by The Guardian’s Fania Davis, “This process of reconciliation is messy and challenging. But it is also a source of hope. Through deep dialogue, truth-telling and taking action to make things as right as possible, we can forge new futures based on the mutual recognition of one another’s humanity.”<sup>316</sup>

Alaska continues to be plagued by social issues that affect all Alaskans. Many of these issues may be traced back to institutional discrimination within the past century. Only by addressing that discrimination, uncovering the truth, and allowing victims to be heard can some of those larger social issues be addressed. Identifying and acknowledging violence and racial injustice is an important first step to addressing these issues.

As quoted by Professor Hanley: “If we triumph over the past, we can move forward with unity and reconciliation.”<sup>317</sup> By looking at past successful models of truth and reconciliation, or perhaps by endorsing or acknowledging a model that is currently in place, the State of Alaska and other organizations should work to acknowledge past harms and promote a better future for all Alaskans.

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315. BEYOND THE MANDATE, *supra* note 270, at 70.

316. Fania E. Davis, *Truth and Reconciliation is Coming to America from the Grassroots*, THE GUARDIAN (Feb. 26, 2015), <https://www.theguardian.com/commentisfree/2015/feb/26/truth-and-reconciliation-is-coming-to-america>.

317. Hanley, *supra* note 176, at 166 (quoting Song Ho-Jin, “National Security” Brings Family and Audience to Tears in Its First Showing, HANKYOREH (Oct. 8, 2012), [http://www.hani.co.kr/arti/english\\_edition/e\\_entertainment/554762.html](http://www.hani.co.kr/arti/english_edition/e_entertainment/554762.html)).