

39. Michael Dodson, Speech at Southern Highlands Community Center, May 1997, available at <http://www.hinet.net.au/~sally/cultures/reconc4.htm>.

40. Sir William Deane, 1996, *Some Signposts from Daguragu: The Inaugural Lingari Lecture*, Kingston, ACT: The Council for Aboriginal Reconciliation.

41. Jaspers, *op cit.* p. 81.

The BIA's Apology to Native Americans: An Essay on Collective Memory and Collective Conscience

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1. Introduction

The year 2000 marked a new millennium for the global populace, and thus, a particularly important occasion for collective reflection on where we—as distinct nations and peoples—had been, and where we were headed. An important part of this process, of course, was to acknowledge who “we” are: what is the collective identity of the United States of America as a nation? Who are “Americans” as a people? Moments like these are rare, and the process of self-reflection comes at a significant cost. Because, of course, to understand who “we” are, we must acknowledge where “we” come from.

The creation of the United States has its own mythology, reflected in notions of “pilgrim pride,” the brash forging of a new “democracy” free of European hierarchies and monarchies, and the scrappy and entrepreneurial “pioneers” who “settled” the “Wild West.” The reality of the United States, however, reflects a seamier and more unsavory side based on the plantation labor of enslaved Africans and the massive dispossession of Native peoples from their lands, cultures, and lives. We all know that equality never was an organizing principle of this Nation. And today, hundreds of thousands of Americans, including the survivors of these past horrors, continue to experience the often profound social, political, cultural, and economic inequalities that permeate our society.

It was against this fabric of emerging social conscience and consciousness that Kevin Gover, the Assistant Secretary for Indian Affairs during the Clinton administration, apologized to Indian nations and to Indian people, for the past harms wrought by the Federal Indian policy, as implemented by the Bureau of Indian Affairs. The occasion was the 175th anniversary of the establishment of the Bureau of Indian Affairs. In Assistant Secretary Gover's speech, delivered on September 8, 2000, he commented on the appropriateness of self-reflection:

We have come together today to mark the first 175 years of the institution now known as the Bureau of Indian Affairs.

[...]

It is appropriate that we do so in the first year of a new century and a new millennium, a time when our leaders are reflecting on what lies ahead and preparing for those challenges. Before looking ahead, though, this institution must first look back and reflect on what it has wrought and, by doing so, come to know that this is no occasion for celebration; rather it is a time for reflection and contemplation, a time for sorrowful truths to be spoken, a time for contrition.²

Specifically, Assistant Secretary Gover extended “a formal apology to Indian people for the historical conduct of this agency.”³ The apology speech inspired sorrow, relief, resentment, skepticism, anger, and a host of other strong emotions from Native Americans across the country. Perplexed reporters were unable to glean whether “Native Americans” perceived the apology as “good” (for example, sincere, helpful) or “bad” (for example, an insincere political ploy). Subsequent critics have pondered whether “words alone” are ever sufficient, and why Native people should believe a government that continues to appropriate their lands, resources, and basic rights to sovereignty, culture, and self-determination. Hoopa leader, Lyle Marshall, for example, who spoke at the conference that inspired this volume of essays, found the apology “inadequate” because “it came from the wrong person” and “offensive” because “it was not followed by any action to right the offenses it mentioned.”⁴ Marshall firmly concluded: “Until the government and Congress are bound to action, no apology will be sufficient. Indian survival depends on the American conscience.”⁵

This essay analyzes the BIA’s apology to Native Nations and peoples, and Native peoples’ reactions to it, within the intercultural context that frames the use of apology by public entities to acknowledge historic wrongs. The essay evaluates the context of the apology, its function, and its significance to broader notions of “reparation” or “reconciliation” for Native peoples. The essay concludes that the “success” of this apology cannot be measured by its significance as an “event.” Rather, in accordance with Trudy Govier’s notion that apology is “a process, not an event,” I argue that the significance of this apology was to probe the collective memory of Americans on the historical events it related, and to inspire a dialogue to inform the “collective conscience” of contemporary Americans, which, as Lyle Marshall observed, is essential to the future of US/Native relations in this country.⁶

2. The Context of the BIA Apology

To understand the significance of this apology, several preliminary questions are in order. First, was the speech actually an “apology?” If so, who was the apology from? What was the apology for? Who was the apology directed to? At each level, one could ask whether the apology was adequate or inadequate: for example, did it come from the right entity? Did it identify the relevant harms? Was it made to the appropriate parties? To engage these questions, I will use a particular framework and structure that I have found helpful in my thinking about the questions. I would like to acknowledge at the outset that the scholarly discourse on apology illustrates considerable disagreement on whether this is the appropriate structure, and I do not engage that debate. I merely employ the structure as a means to critique this apology and reserve the larger scholarly debate for another day.

The Structure of Apology

The word “apology” has been used to cover a variety of acts. As Trudy Govier and Wilhelm Verwoerd observe, there are at least three basic senses of apology: “the apology as a defense (as in Socrates’ Apology), the apology as excuse or account (“Sorry I was late, but I was interrupted just as I was leaving”), and the moral apology, which is an expression of sorrow for moral wrongdoing.”⁷ Assistant Secretary Gover’s remarks in no way offered a defense for past actions, nor any excuse for these actions. The role of the speech as an apology was purely an expression of sorrow for moral wrongdoing and an attempt to accept “the moral responsibility of putting things right.”⁸

In that sense, the moral functions of apology represent “a cluster of interrelated beliefs, attitudes, emotions, and intentions.”⁹ In the context of interpersonal apology, Kathleen Gill distills this complex universe into five specific elements:

1. An acknowledgment that the incident in question did in fact occur.
2. An acknowledgment that the incident was inappropriate in some way.
3. An acknowledgment of responsibility for the act.
4. The expression of an attitude of regret and a feeling of remorse.
5. The expression of an intention to refrain from similar acts in the future.¹⁰

Gill observes that not every element will be present in every apology; however, she claims that there are certain necessary conditions for apologizing, which must be present in order for the apology to be sincere. For

example, “at least one of the parties involved” must believe “that the incident actually occurred” and at least one of the parties must believe “that the act was inappropriate.”¹¹ Moreover, the party making the apology must either take responsibility for the act, or be in the type of relationship with the responsible party that makes it justifiable for her to offer an apology.¹² The apologizer must also express an attitude of regret and remorse, and the person to whom the apology is made must be justified in believing that the offender will refrain from similar offenses in the future.¹³

Examining the BIA apology in this context raises several important issues. First, what was the significance of the historical events outlined in the apology speech, given the fact that the collective memory of Native peoples is likely to differ from that of non-Native peoples? In other words, would all Americans agree that the enumerated events happened? If so, would they all agree that the events were morally reprehensible and therefore, a “wrong” had been committed?

Secondly, was Assistant Secretary Gover making the apology on behalf of a government—the United States? On behalf of an institution—the Bureau of Indian Affairs? Was he making the apology in his capacity as a Pawnee Tribal member whose family had personally suffered the wrongs he described? Was he making the apology as a government official who was in a relationship with the culpable party?

Finally, and perhaps most problematic, in the context of the relationship between the US government and Native nations, is there a sense in which the US can be viewed as having “regret” or “remorse” for the actions it took in past centuries? What if these events are directly responsible for its contemporary status as a global superpower? Would it not be disingenuous for a superpower to express “regret” for the very actions that enabled such status? How should contemporary Native people evaluate the sincerity of the United States government? By its current actions? By its commitment to “do better” in the future?

The BIA Apology

Assistant Secretary Gover started the apology by reciting several historical harms that BIA policy and actions perpetrated upon Native peoples. Most importantly, he acknowledged that the original mission of the Office of Indian Affairs, which started out in the Department of War and then was moved to the Interior Department after most of the Indian Wars had been concluded, was to pave the way for the United States to appropriate lands from tribal ownership for the benefit of US citizens.¹⁴ This, in turn, was accomplished

by “ethnic cleansing,” intentional physical harm “on a scale so ghastly that it cannot be dismissed as merely the inevitable consequence of the clash of competing ways of life”—“the deliberate spread of disease, the decimation of the mighty bison herds, the use of poison alcohol to destroy mind and body, and the cowardly killing of women and children” in massacres such as those at “Sand Creek, the banks of the Washita River, and Wounded Knee.”¹⁵ Assistant Secretary Gover then listed the BIA’s subsequent efforts to “annihilate Indian cultures,” and destroy Indian economies by inculcating a forced dependency upon the United States and the Bureau of Indian Affairs. Gover concluded: “poverty, ignorance, and disease have been the product of this agency’s work.”¹⁶

Under Gill’s matrix, the acknowledgement of historical harm by a representative of the culpable party (the United States) appears central to the integrity of the apology. It is not unusual to hear tribal leaders relate this litany of harms and others similar to these. However, until this speech, it was unheard of for a US government official to talk about the United States’ Indian policy as “ethnic cleansing.”¹⁷ The American public easily dismisses the comments of tribal leaders about historical harms as a “gripe” by a “special interest group” looking for increased government benefits. After all, the “official version” of the US dispossession of Native Nations generally hinges upon the justification that because of the “savage” character of the tribes, they were unable to “hold property rights” on the same level as civilized people, and thus were “necessarily” conquered by a more civilized nation. As the US Supreme Court found in *Tee-Hit-Ton Indians v. United States*: “Every American schoolboy knows that the savage tribes of this continent were deprived of their ancestral ranges by force and that, even when the Indians ceded millions of acres by treaty in return for blankets, food and trinkets, it was not a sale but the conqueror’s will that deprived them of their land.”¹⁸ It is not so easy, however, to dismiss the comments of an appointed public official speaking on behalf of an agency of the US government.

That brings us to the next inquiry. Who made this apology and to whom was it made? Lyle Marshall emphasized that Assistant Secretary Gover’s apology was inadequate “because it came from the wrong person: It was not Gover’s place to apologize.”¹⁹ Similarly, the popular response to the apology included the following query in a Letter to the Editor: “One has to wonder why it was not a senior ranking official selected to offer the apology? Surely an apology should not have to come from a member of the very group that has been treated so abysmally. [...] What significance does that have and

what message does it send? Would the government ever dare ask an African-American official to apologize for slavery?"²⁰

This response indicates a perception that the United States may have been motivated by the contemporary need to gain popular support for the BIA so it "sent" an Indian to deliver an "apology" for past misdeeds, which put the Indian in a very uncomfortable position because it looked like a "victim" was being sent to apologize to "other victims" for the perpetrator's bad acts. How could that be a credible apology? In fact, however, Assistant Secretary Gover is the one who generated the apology on behalf of a federal agency that he was appointed to lead. Assistant Secretary Gover clearly emphasized that he did not intend to speak "for the United States." That, he says, is the "province of the nation's elected leaders." He acknowledges, however, that he is "empowered to speak on behalf of this agency, the Bureau of Indian Affairs," and that his words "reflect the hearts of its 10,000 employees."²¹ Assistant Secretary Gover is clearly an enrolled citizen of the Pawnee Nation, and yet he was making the apology not in his role as a Pawnee tribal member, but in his role as an US official and the leader of the BIA. He made the apology on behalf of the Agency to all Native peoples who have been harmed by the bad acts of the BIA, which, in a very real sense, includes himself as a Native person, his family, and his Nation. In that respect, one should query whether the personal identity of the speaker is in fact the true marker of the credibility of the statement. In his official capacity, Assistant Secretary Gover could well have focused on the better moments of the Agency in "celebration" of the 175th Anniversary of the BIA. He could have trumpeted the fact that the BIA today supports a variety of tribal services and programs that are invaluable to Native communities, or that employment within the BIA is today predominantly Native, making the BIA the single largest employer of Native people. After popping some balloons and cutting the cake, everyone could go home happy. Right? Wrong. Assistant Secretary Gover specifies that the anniversary is *not* an occasion for celebration. It is, rather, a "time for reflection and contemplation [...] a time for contrition."²² Why does he say this? Simply because he perceives the Agency's mission as not merely to deliver social services. Rather, by accepting the historical legacy of the Institution as one of "racism and inhumanity," the Agency must also accept "the moral responsibility of putting things right."²³ And Assistant Secretary Gover, as the leader of that Agency, has a pivotal role in accepting that moral responsibility.

On the first and second levels of Gill's matrix, the BIA apology is clearly an attempt to acknowledge moral responsibility for past wrongs by an institution,

the Bureau of Indian Affairs, which is in privity with the historical wrongdoers. There is also an unbroken chain of identity in the group that is the subject of the apology. Assistant Secretary Gover acknowledges the intergenerational consequences of these harms for all Native peoples in the United States. However, the final inquiry is quite perplexing. What measure should we use to assess whether this apology embodies sincere regret and remorse? Should contemporary Native people be justified in believing such a statement of remorse? Is there a potential for future bad acts? If so, this would indicate that, as Lyle Marshall opined, these words were "hollow" and do not "jibe with actions taken by the Feds" in contemporary federal policy.²⁴ In order to evaluate the sincerity of the apology, it is necessary to look at its function. What was the apology intended to do? What was it NOT intended to do? Did the apology succeed or fail in its intended purpose?

3. The Function of the BIA Apology

To understand the function of the BIA apology, we must first understand what the apology was NOT intended to do. It was *not* meant to be an official apology from the US government for its brutal and still troubled history with Native Nations. That would be a complex political undertaking for the United States, and the United States has, to date, been unwilling to acknowledge broad and general responsibility for past bad acts toward either African Americans or Native Americans.²⁵ So, although a White House spokesperson acknowledged that Gover had sent the President a copy of his speech, and that "the White House didn't object to it" that was hardly a ringing endorsement of the sentiments expressed by the BIA apology.²⁶ No, the BIA apology is purely an apology by one federal agency, which is charged with implementing Indian policy. Nor is the apology intended to ask forgiveness from Native Americans for the BIA's misdeeds. Assistant Secretary Gover clearly states that it would be inappropriate to ask forgiveness while "the burdens of this agency's history weigh so heavily on tribal communities."²⁷ So, if this is not an apology from the United States and it is not a mechanism to ask forgiveness, what, if any, utility does the apology have? In this respect, it is necessary to evaluate the functions of the apology according to its intended purpose.

First, the apology is intended to issue a corrective history to evaluate past conduct. American history books and law books are replete with the justificatory approach to past bad acts toward Native Americans. In the words of the *Tee-Hit-Ton* Court, it is no wonder that "every American schoolboy" knows that "conquest" of a savage people is responsible for the birth of a "civilized"

nation.²⁸ After all, most history textbooks used to teach American students are written by the descendants of the “conquerors.”²⁹ This understanding, in turn, is used by Supreme Court justices and policy makers in issuing current policies. In *Tee-Hit-Ton*, the “savage” nature of the Tee-Hit-Ton Indians, as a group of itinerant “hunter-gatherers” excuses the United States from any contemporary Constitutional obligation to pay “just compensation” for the taking of their traditional lands. In a different context, Chief Justice Rehnquist’s dissent in *United States v. Sioux Nation* relies on the same rationale to excuse the obligation to pay the Lakota for the taking of treaty guaranteed lands. Relying on the “Oxford History of the American People,” Rehnquist alludes to the “savage” nature of the Lakota people, who “lived only for the day, recognized no rights of property, robbed or killed anyone if they thought they could get away with it, inflicted cruelty without a qualm, and endured torture without flinching.”³⁰ Rehnquist’s conclusion is telling:

That there was tragedy, deception, barbarity, and virtually every vice known to man in the 300-year history of the expansion of the original 13 Colonies into a Nation which now encompasses more than three million square miles and 50 states cannot be denied. But in a court opinion, as a historical and not a legal matter, both settler and Indian are entitled to the benefit of the Biblical adjuration: ‘Judge not, that ye be not judged.’³¹

In other words, the longstanding approach within American history and law has been to neatly sanitize the litany of harms to Native peoples into a broad and glorious justification based on the triumph of civilization over savagery. This “evolutionary approach” relies on commonly shared understandings about the “way the world works,” which excuses Americans from any deep contemplation about their history. The impact of this history and popular understanding upon Native peoples, however, is profound. Not only does the United States fail to acknowledge the vast and complex nature of the harm that it has wrought upon Native peoples, but it also appears to place the blame for this harm squarely upon the Native people themselves. The American version of history blames Native people for their “savage” nature, for their failure to adhere to the “civilized norms” of property ownership and individual rights that Christian peoples hold, and for their “brutality” in defending themselves against the onslaught of non-Indian settlers. The message to Native people is simple: “If only you had been more like us, things might have been different for you.”³²

A classic example of this sentiment is reflected in Chief Justice John Marshall’s famous 19th Century case, *Johnson v. McIntosh*, which holds that

the Doctrine of Conquest, within the Law of Nations, which protects conquered citizens of European nations from complete divestiture of property and civil rights upon a change in government, cannot extend to Indian people because of their savage nature. These protective rules, Marshall says, could not extend to “the tribes of Indians inhabiting this country,” because they were “fierce savages, whose occupation was war and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave the country a wilderness; to govern them as a distinct people, was impossible, because they were as brave and as high spirited as they were fierce, and were ready to repel by arms every attempt on their independence.”³³ Instead, the applicable rule that defines Native rights is the Discovery Doctrine, which was designed to determine the ownership interests of European nations to “vacant” or “uninhabited” land. Because the Indian nations are characterized as “uncivilized” and “non-Christian” peoples, their occupancy of land is legally irrelevant.³⁴ Marshall notes, however, that the “potentates of the old world” saw no injustice in applying this rule. Rather, they considered themselves to have made “ample compensation to the inhabitants of the new [world], by bestowing on them civilization and Christianity” in exchange for taking “title” to their lands.³⁵

One of the most valuable aspects of Assistant Secretary Gover’s apology, then, is to change this perception of history. For once, a US official acknowledges the version of history that Native people know to be true. Gover specifically acknowledges that the United States, through its agents and instrumentalities, intentionally destroyed the buffalo, introduced alcohol into Native communities, massacred helpless women and children, outlawed the speaking of Native languages and the practice of Native religions, outlawed traditional governments, suppressed traditional economies, and created a culture of “shame, fear, and anger” among American Indian peoples. It is not Native people who are to blame for this history, Gover’s words instruct. It is the United States, who intentionally committed these acts to assure its status as a superpower among world nations.

Secondly, and building upon this historical foundation, Assistant Secretary Gover’s apology locates responsibility where it belongs: on the original wrongdoers and those in privity with them. Gover acknowledges that “the BIA employees of today did not commit these wrongs,” but they must “acknowledge that the institution [they] serve did.”³⁶ All employees of the BIA “accept this inheritance, this legacy of racism and inhumanity. And by accepting this legacy, we accept also the responsibility of putting things right.” In this sense, Assistant Secretary Gover’s approach builds upon what Peter

French and others call “collective responsibility.”³⁷ Some scholars locate collective responsibility for past wrongs under a “benefits theory.”³⁸ Peter French, however, makes a compelling case for collective responsibility among contemporary governments, groups, and institutions for past wrongs based upon the idea of collective ownership of “public memory.”³⁹ “Public memory casts the past into our present,” French argues, “and well it should because it is our past or what we are jointly committed as a group to being our past. We, as a collective, are the continuation of the projects of our collective’s past.”⁴⁰ Public memory is the repository of our collective identity, and to the extent that it is managed by public officials, governments, and institutions, it represents our commitment to a collective past for our contemporary group. Thus, Assistant Secretary Gover’s remarks are particularly important because they recast the collective memory of the United States and American citizens as a way to acknowledge collective responsibility for past wrongs.

In that respect, the third important function of Assistant Secretary Gover’s apology is to differentiate the impacts of the harms and show the continuing nature of the historical wrongdoing. So, Gover’s apology speaks not only to the historical physical harm (for example, “ethnic cleansing”) perpetrated upon Native peoples, but also the economic harm (destruction of traditional food sources and economies, forced dependency), and the cultural harm (prohibiting Native language and religion). All of these harms resulted from tangible and overt laws and policies of the United States.⁴¹ However, the result of these harms is far more complex: a constellation of emotional and spiritual trauma that extends from generation to generation within Native communities. The primary instrumentalities for this broad and intangible harm were the BIA boarding schools, which forcibly seized Native children, sent them to distant locales to be “civilized,” banned them from speaking their Native languages or practicing Native customs, and often forbade them from visiting family members.⁴² Assistant Secretary Gover comments: “the Bureau of Indian Affairs committed these acts against the children entrusted to its boarding schools, brutalizing them emotionally, psychologically, physically, and spiritually.”⁴³ The intergenerational harm of these misdeeds continues to haunt Native people:

The trauma of shame, fear, and anger has passed from one generation to the next, and manifests itself in the rampant alcoholism, drug abuse, and domestic violence that plague Indian country. Many of our people live lives of unrelenting tragedy as Indian families suffer the ruin of lives by alcoholism, suicides made of shame and despair, and violent death at the hands of one another.⁴⁴

Assistant Secretary Gover affirmatively states that “[t]hese wrongs must be acknowledged if the healing is to begin.”⁴⁵ And in that sense, the single most important purpose of the apology was to set the process for healing in motion. What does it mean to “heal” Native communities? What is the moral responsibility of the BIA in this process? Assistant Secretary Gover’s apology is intended to do several things to facilitate the process of healing. First, it is intended to set a moral boundary against which to measure future behavior:

Never again will this agency stand silent when hate and violence are committed against Indians. Never again will we allow policy to proceed from the assumption that Indians possess less human genius than other races. Never again will we be complicit in the theft of Indian property. Never again will we appoint false leaders who serve purposes other than those of the tribes. Never again will we allow unflattering and stereotypical images of Indian people to deface the halls of government or lead the American people to shallow and ignorant beliefs about Indians. Never again will we attack your religions, your languages, your rituals, or any of your tribal ways. Never again will we seize your children, nor teach them to be ashamed of who they are. Never again.⁴⁶

Secondly, the apology is intended to inspire a policy template to deal with legal and political redress for past wrongs, which are often reflected by the current needs of Native communities. It is clear from Gover’s remarks that the harms are much too complex and serious for a “quick fix.” Perhaps Native economies can be bolstered by gaming policies. Perhaps Native governments can be supported by the self-determination and self-governance acts and policies. But the process of healing for Native communities will require a much more nuanced version of federal policy dedicated to a moral, as well as legal, commitment to the notion of self-determination. Moreover, the “moral debt” clearly requires a substantial commitment of material resources. What does it mean to facilitate “tribal self-determination” if tribal governments are still controlled by the federal government and its larger agenda to American citizens? How can tribes become “autonomous” if the majority of their populations lack the educational or material resources to be fully autonomous citizens of either their own government or the United States? If a significant number of Native adults are incarcerated and in poverty, if a significant percentage of Native families are torn apart by substance abuse and domestic violence, how can a “tribal community” be a vibrant repository for self-determination? These are the paradoxes of contemporary Indian policy that Gover acknowledges, and this is what the process of healing must engage.

Finally, Assistant Secretary Gover's apology is intended, on a spiritual level, to set in motion the process of redirecting blame, healing spiritual trauma, and promoting a larger sense of collective responsibility on the part of the US government and its citizens. Importantly, the apology alone *cannot actually do any of those things*. Rather, it is intended to start that process in motion and begin a dialogue about what must be done to heal the past. As Gover says, "we desperately wish that we could change this history, but of course we cannot." The most that can be done is to "accept the moral responsibility for putting things right."⁴⁷ The next section of this essay looks at the intercultural context of apology and its spiritual and emotional, as well as social and political, contours.

4. Coming to Terms with the Past: The Role of Apology in Achieving Intercultural Justice

In their introduction to this volume, Elazar Barkan and Alexander Kam suggest that apology "can perform two different, though not necessarily contradictory, tasks: it can function as the right thing to do (because it is viewed as a step toward justice and the settling of accounts), and it can function to rebuild damaged relationships (because reconciliation is sometimes viewed as primary to justice)."⁴⁸ Is Assistant Secretary Gover's apology a step toward social, political, or legal "justice" for Native Americans? Is it a step toward "reconciliation" between Indians and non-Indians, or between Indian governments and the US government?

It would be difficult to argue that the history of US/Indian relations is not replete with moral and legal wrongs, or that the injustice that Native people face in their involuntary incorporation into the United States is merely a historical phenomenon. Injustice continues today in every federal law and federal court decision denying the political and cultural rights of Native peoples.⁴⁹ It continues today in the overwhelming poverty rate among Native Americans, their disproportionate rates of incarceration, alcoholism, infant mortality, and suicide. The question is: what can we, as a society, do to overcome the legacy of the past?

Assistant Secretary Gover's apology makes two important suggestions in the context of relations between the BIA and Native peoples. First, the BIA as an institution must acknowledge its own role and complicity in the historic wrongs committed by the United States against Native peoples, as well as the contemporary impact and consequences of those wrongs on Native peoples. Second, the BIA, as the government agency that continues to have the most

significant duties to Native peoples, must assume a responsibility to work *with* Native governments and communities to begin a "healing" process.

In the first sense, Gover's apology corresponds to Nicholas Tavuchis' notion that apology requires "not detachment but acknowledgment and painful embracement of our deeds, coupled with a declaration of regret."⁵⁰ Similarly, Martha Minow argues that apologies must "acknowledge the fact of harms, accept some degree of responsibility, avow sincere regret, and promise not to repeat the offense."⁵¹ Gover's apology clearly acknowledges the painful history and contemporary injustices that Native people suffer, as well as the BIA's role in these injustices. In the second sense, Gover's speech suggests that apology is a fundamental part of healing historic trauma and its contemporary manifestations because it acknowledges the reality of the past and places the blame for the wrongdoing, not on the victim, but on the responsible party. Importantly, this transfer of blame occurs through the *acceptance* of responsibility by the wrongdoer and not through the accusations of the victim. This is important, because the US government's general approach has been to blame the victim (for example for being "uncivilized" or "violent") and to dismiss the victim's accusations as instances of "politically correct revisionist history." If we do not acknowledge the past, Gover suggests, we cannot heal the future.

Assistant Secretary Gover's apology, however, raises some interesting connections and distinctions between the conceptions of "justice," "reconciliation," and "healing." First, although the concepts are importantly distinct, there is a tangible connection between the concepts of "justice" and "reconciliation." As Professor Jeffrie Murphy argues in his analysis of the South African Truth and Reconciliation Commission, "reconciliation" is a "process" that allows groups with a history of conflict to work together toward a "democratic and just future."⁵² Professor Murphy is careful to note that, in the South African case, the perpetrators were required to make a full confession and accept responsibility, but they were not required to "repent, show remorse, or even apologize."⁵³ Consequently, the victims had no obligation (nor any motivation) to grant "forgiveness" or even try to achieve a "change of heart." It was enough that each group committed to "a viable transition from apartheid to democratic government." Thus, under this analysis, "reconciliation" entails a mutual commitment to achieve "justice," but does not necessarily require groups to go beyond this and engage in demonstrations of remorse, regret, forgiveness, or any of the other emotions that we might believe are necessary to emotionally or spiritually resolve historic trauma.⁵⁴

Assistant Secretary Gover's remarks, however, concentrate on the role of apology as a way to commence healing. His remarks focus on the harms of historic trauma that continue to manifest in Native communities, and his apology indicates that healing is a dynamic and necessary process between groups that suffer a damaged relationship caused both by historical trauma and by contemporary inequality. The link between "healing" and "reparative justice" has been made in several scholarly accounts on how to rebuild damaged relationships between nations, peoples, and groups. Some of these accounts focus on the dynamic of apology, some on the idea of reparation, and some on the notion of reconciliation. The common element, however, as Eric Yamamoto observes, is that some notion of intergroup "justice" is necessary in order to establish a foundation for the process of healing to begin.⁵⁵ In the context of American race relations, Yamamoto suggests that justice involves four components of "combined inquiry and action": (1) recognition of group harms and grievances; (2) accepting group responsibility for healing the wounds; (3) reconstructing intergroup relations through particular acts (for example, apology, forgiveness); and (4) reparations, which involves making material changes (social, economic, and political) to rebuild the structure of the relationship in a tangible way (not "just talk").⁵⁶

To the extent that Native peoples seek to renegotiate their relationship with the dominant society upon a more principled and just basis, it becomes important to examine this process of reconstructing group relations. Building on Professor Yamamoto's account, it appears that there are at least two critical aspects to the process. First, the groups must reconstruct their relationship through acts that indicate acknowledgment of wrongdoing and a commitment to "make things right." Secondly, the process depends upon a material commitment of resources, rights, political/cultural/social recognition, or whatever else might be needed to facilitate the economic, social, and political changes necessary to overcome past and present injustice.

Using this framework, it is clear that Assistant Secretary Gover's apology was purely intended to function at the first level. By acknowledging wrongdoing and a commitment to "make things right," the apology was intended to *start* the healing process. There was no intent to offer reparations, or to suggest that "mere words" could substitute for tangible resources in a process of reparation. In fact, Assistant Secretary Gover limits his remarks to the BIA's side of the intergroup dynamic and disclaims any intent to ask Native people for forgiveness. Because of these limitations, some Native respondents were cynical about the sincerity or merit of the apology. Lyle Marshall, for example, finds it offensive that the BIA attempted to

"apologize" when it was not prepared to take substantive action to remedy injustice.

The problems of insincerity are endemic in the contemporary apology literature, and thus, it is both appropriate and important to inquire whether the apology is "sincere" or whether it is "hollow." For purposes of this article, I will assume that this apology was sincere in the BIA's acknowledgment of the harm, acceptance of responsibility for causing the harm, and commitment to work with Native people on a process of healing. I would also like to suggest that acknowledging *responsibility* for causing the harm is a necessary prerequisite to accepting liability to *make appropriate amends* for the harm. Those are two separate acts and, although both are necessary to effect reparative justice, they should not be conflated. Finally, I would like to suggest that the process of healing from historic trauma has intangible and tangible components. The emotional and spiritual (intangible) components of healing must be experienced for the healing to be complete. In that sense, even material (tangible) reparations made to a group without the necessary spiritual and emotional components would be insufficient to heal the wounds. Assistant Secretary Gover's apology could not accomplish all of these ends, nor could it bind the United States as a Nation. However, the apology is historically significant because it establishes a precedent for the United States and suggests a model to commence healing.

5. Healing from Historic Trauma: Notions of Reconciliation and Intercultural Justice

The process of healing from historic trauma caused by intercultural conflict is both a *cultural* and an *intercultural* process. In order for any people to heal from historic trauma, there must be a cultural process that comes from within the group or community, as well as an external, dynamic process that engages both parties to the original wrongdoing. The latter process may be linked with reconciliation efforts (although it is clearly not coextensive with such efforts). There are important cultural, emotional, and spiritual qualities to the healing process, which will be reflected in the internal process. I would like to suggest, however, that those qualities must at least be *acknowledged* by the external, intergroup process for that process to have any credibility or impact. Let me offer an example.

Native Hawaiian peoples have a long tradition of resolving interpersonal conflicts through a process called "Ho'oponopono," which means "to make things right."⁵⁷ Within this tradition, the healing process is considered to

be both emotional and spiritual, and is premised upon the idea that the perpetrator and the person wronged are bound together in a relationship of negative entanglement called "hihia." The healing process must "untangle" these negative emotions to facilitate a mutual understanding of the "emotional truth" of what happened, a sincere appreciation of the effects of the bad behavior, a confession of the wrongdoing and seeking of forgiveness by the perpetrator, the act of granting forgiveness, and the ultimate "release" of negative emotions. The final phase of "kala," which means to "release, untie, and free each other completely"—follows the phase of forgiveness. Thus, the idea of "kala" is importantly distinct from that of forgiveness. The actual phrase, "Ke kala aku nei 'au ia 'oe a pela noho 'i 'au e kala ia mai ai" means "I unbind you from the fault, and thus may I also be unbound by it." As Manu Meyer observes, "kala seeks to strip the incident of its pain-causing attributes."⁵⁸

Interestingly enough, the only other official apology to Native Americans was contained in P.L. 103-150, the 1993 Native Hawaiian Apology Resolution, which acknowledged the complicity of the US government in the illegal overthrow of the Hawaiian monarchy in 1893, and expressed regret for the resultant hardships that occurred for Native Hawaiians. Congress issued the apology resolution to begin the process of "reconciliation" between the United States and the Native Hawaiian people.⁵⁹ The Apology Resolution expressly responds to an earlier public apology by representatives from the United Church of Christ to Native Hawaiians for that institution's historical complicity in the overthrow.

Senator Daniel Akaka from Hawaii linked the reconciliation process with the Hawaiian cultural concept of "ho'oponopono." He said:

The process of reconciliation is a process of healing, which should not be viewed as one particular issue or a narrowly defined process. It should be viewed as a multitude of positive steps between Native Hawaiians and the federal government to improve the understanding between each party, to improve the social and economic conditions of Native Hawaiians, and to resolve long standing matters of political status and land claims.⁶⁰

Culturally, the process of reconciliation with Native Hawaiian people would lack any credibility without some overt acknowledgment of an egregious historical wrong—the overthrow of the Hawaiian kingdom—by the US government, its agents, and instrumentalities, and without a commitment to "heal" the wounds caused by that painful past. The values of the "internal" process must be present, to some extent, in the "external" process.

Most Native cultures share this emphasis on "restoring balance" and "right relations" after conflict and trauma. The sincerity of the wrongdoer is of utmost importance in healing the damaged relationship. Thus, regardless of whether or not Indian Nations ever "forgive" the United States or whether the United States is willing to make appropriate material reparations, the process of reconciliation—of healing—could not even *begin* without an acknowledgement of responsibility for the historical wrongs and their continuing effect. This was the primary purpose of the BIA apology: to start the process of healing, which is required to overcome the insidious harms that continue to affect Native peoples in the United States.

Thus, the two most important aspects of the BIA apology as a precedent for future acts of the US government are its effort to acknowledge the truth of the history and accept responsibility for that history and its commitment to a dynamic, intergroup process of healing. I will situate those two aspects of the apology in my discussion of the intercultural value of apology.

Collective Memory and Collective Conscience

Is the United States responsible for the harm suffered by Native Americans in the process of its efforts to "conquer" Native peoples and colonize them? Much of the philosophical literature on governmental apologies for historic wrongs focuses on the problems of imposing a moral responsibility on contemporary nations for the wrongs committed by other actors in a past generation. If the current government of the United States is not responsible for those bad acts, then why should it apologize for them? Assistant Secretary Gover's apology indicates that the current representatives of an institution are in privity with their predecessors, and thus, they share in the moral responsibility for past wrongs.

To build on Peter French's notion of the collective responsibility of modern governments for past wrongs, the "collective memory" invoked by Gover's apology is central to a notion of a "collective responsibility" for the US government's past wrongs toward Native nations. Professor French argues that our "public memory 'historicizes the present for us.' It makes the distant past of our society and culture (as well as the recent past) present 'by situating it in our midst.'" "Collective memory" is morally important because "it links us to shared collective responsibilities."⁶¹ Professor French claims that public institutions are often the "stewards" of such collective memory. They manage this history and promote it as the collective "heritage" of the Nation. Members

of the Nation have access to that shared history as their own heritage and identity. Consequently,

You as an American, we as Americans, should be ashamed that we permitted slavery on our soil and that we massacred native peoples at Sand Creek and Wounded Knee though you never owned slaves, couldn't own slaves, and had no control with respect to the massacres of native peoples, and [...] regardless of any benefits you do or do not now enjoy because of slavery or the massacres of native peoples in our past."⁶²

In sum, the "shared ownership" of this history and memory permits, and indeed, may require, the contemporary citizens of a collective to assume responsibility for past wrongs.

Up until Assistant Secretary Gover's apology, none of the institutions, agencies, and entities that represent the US government and embody the "public memory" of its citizens had ever publicly acknowledged the nature and severity of the wrongs committed against Native Americans. This apology set a precedent for the US government to assume moral responsibility for its past bad acts, and for the continuing legacy of those acts in Native communities.

In addition, the apology works to build a shared cultural understanding of the past. In the context of intergroup historic trauma, collective memory differs dramatically from group to group. Assistant Secretary Gover evoked the collective memory of Native people when he named the wrongful acts deliberately perpetrated against Native people: the spread of disease, the decimation of the buffalo herds that sustained many Native Nations, the use of alcohol to destroy Native minds and bodies, the massacre of helpless women and children. He dismantled the justificatory approach of American "public memory" when he described those acts as deliberate and not "accidental"—a "tragedy on a scale so ghastly that it cannot be dismissed as merely the inevitable consequence of the clash of competing ways of life."⁶³ But most of all, he confirmed what Native people know to be true: "We will never push aside the memory of unnecessary and violent death at places such as Sand Creek, the banks of the Washita River, and Wounded Knee."⁶⁴ "Great nations of patriot warriors fell" during the US/Indian Wars, but the descendants of those Nations survive today, and the collective memory they share continues to inspire an active resistance to US laws and policies that have sought to further dismantle tribal governmental and cultural autonomy.

A shared understanding of the past is necessary if contemporary non-Indian citizens are to have any sense of "conscience" toward Native peoples. Lyle Marshall's claim that "Indian survival depends upon the American

conscience" is correct in a very real sense.⁶⁵ The contemporary legal status of Native peoples depends upon an accurate understanding of their sovereign nature and the duty of the United States government to protect tribal sovereignty and rights to culture, land, and resources. Both features are a product of the historic, often treaty-based, interactions between the United States and the Native nations. Why should Congress continue to respect its historic bargain with Native peoples if the citizens of the United States begin to doubt the existence or validity of those agreements? Current controversies between non-Indians and tribes over water rights, hunting and fishing rights, language rights, gaming rights, and land rights are often beset with accusations that Indians are somehow not entitled to these "special" rights and that they should be content to be "equal citizens" and not separate governments. These arguments largely rest on the "justificatory approach" of American history. Thus, quite apart from any argument for "reparations," it is vital to the continued legal rights and status of Native Nations that Americans have an *accurate* understanding of how the past informs the political and legal requirements of the present and the future. Assistant Secretary Gover's apology is intended to emphasize that historical understanding.

The Process of Healing from Historic Trauma

I feel like I have been carrying a weight around that I've inherited. I have this theory that grief is passed on genetically because it's there and I never knew where it came from. I feel a sense of responsibility to undo the pain of the past, the history and the trauma. It has been paralyzing to us as a group.

—A Lakota/Dakota woman (Brave Heart & DeBruyn, 1998)⁶⁶

"Collective memory" also has a very negative legacy for contemporary Native communities. Assistant Secretary Gover acknowledged that legacy as the "trauma of shame, fear, and anger" that has passed from one generation to the next, and "manifests itself in the rampant alcoholism, drug abuse, and domestic violence that plague Indian country."⁶⁷ This legacy has been described under the rubric of "historical trauma"—the "cumulative emotional and psychological wounding, over the lifespan and across generations, emanating from massive group trauma experiences."⁶⁸ Therapists and physicians, in turn, have documented a range of individual reactions to this trauma, which may include substance abuse and "other types of self-destructive behavior, suicidal thoughts and gestures, depression, anxiety, low self-esteem, anger, and difficulty in recognizing and expressing emotions."⁶⁹ At the heart of this phenomenon is "historical unresolved grief," which reflects strong

emotional responses to trauma that are “impaired, delayed, fixated, and/or disenfranchised.” Resolution of historic trauma and its manifestation in Native communities and individuals will entail many different strategies, and a great deal of both individual and community work. An “apology” is obviously insufficient to effect complete resolution of such deep-rooted trauma. However, the importance of Assistant Secretary Gover’s apology is to acknowledge this phenomenon as a *reality* for Native peoples and to suggest that government agencies and institutions have a role to play in the healing process. Thus, “historic trauma” is not just a reflection of “Indian problems,” like poverty, alcoholism, or social dysfunction. It is a reflection of past and current social policy and the US government’s consistent efforts to victimize Indian people (for example, by inculcating group dependency and stripping individuals of a secure cultural context) and then to *blame them* for the victimization.⁷⁰

The “Indian Wars” of the 19th century clearly had a tremendous physical cost for Native peoples, which can only be described as “genocide.” The estimates of population loss among Native people in the United States during the process of colonization—from disease, forcible removal, and warfare—are staggering.⁷¹ In California alone, scholars estimate that there were approximately 300,000 Indians at the time of contact with Europeans. “By 1850, when the miners were pouring in, there were 100,000 left. By 1870, there were some 30,000; by 1880, 20,000; and by 1910, 16,000.”⁷² These deaths resulted from a lethal combination of forces (disease, warfare, alcohol, and murder) officially ordered and condoned by the US government and its agents in some cases, and tolerated surreptitiously by the government in other cases. The corruption and graft of the Bureau of Indian Affairs during Westward settlement is legendary. Many of the Indian “uprisings” that the American public feared so much were the direct result of the exploitive practices of BIA agents who pilfered and sold at a profit rations that were treaty-guaranteed to Indians who consented to go onto reservations.⁷³ The spoiled, maggot-infested remains went to the starving Indian families, who were in most cases barred from hunting or trapping in their traditional areas.⁷⁴

It is ridiculous to assume that Indian people can or should “forget” the horrific events of this very recent “past.” Indeed, the response of the descendants of the survivors to Gover’s apology is telling. One White Mountain Apache student said:

It should have been my great-grandmother who was witness to this. [...] While I was listening to [Assistant Secretary Gover] say those things about what we, as Native Americans, have gone through [...] I felt sad because I knew that all of those statements

were in fact true. [...] We have gone through much in just 100 years. We have been waiting for so long for that apology, too long. Yet, at the same time, I felt anger. [...] It angered me because I feel that I should not have been witness to this event. It should have been my great-grandmother who was witness to this, an apology to what her mother and even what she has gone through.”⁷⁵

Sue Masten, Chairwoman of the Yurok Nation and then-President of the National Congress of American Indians, also acknowledged the sadness of the historic memories revived by the apology. However, she stated that Gover’s apology marked “a very heroic and historic moment. “For us, there was a lot of emotion in that apology. It’s important for us to begin to heal from what has been done since non-Indian contact.”⁷⁶

Masten’s comments evoke the emotional and spiritual consequences of these traumatic historic events. The psychological cost of the Indian Wars, both for survivors and for their descendants, is tremendous: a pervasive sense of guilt, impotence, and loss characterizes the response of the survivors. Black Elk, a Lakota survivor of the Wounded Knee Massacre, told his story about witnessing the carnage left by the soldiers who fired their Hotchkiss guns on helpless men, women, and children that cold December day in 1890: “When I saw this, I wished that I had died too, but I was not sorry for the women and children. It was better for them to be happy in the other world, and I wanted to be there too.”⁷⁷ Looking back, Black Elk says that the deaths that day went beyond that of the individuals who were murdered. “Something else died there in the bloody mud, and was buried in the blizzard. A people’s dream died there. It was a beautiful dream.”⁷⁸ Black Elk’s comments refer to the Ghost Dance, a messianic movement among many of the Plains tribes during the late 1800s, which promised a vision of rebirth and strength for Native people at a critical point in their struggle for survival. Big Foot, the leader of the Lakota people massacred at Wounded Knee, was a compassionate and spiritual man who encouraged his band to follow these teachings and pray for a better time to return. The US military justified its conduct at Wounded Knee by claiming that the Indian Agent “feared” that the Ghost Dancers would “become violent” and would “disrupt” the “peaceful” Indians who had surrendered to the Agency. The murders at Wounded Knee were intended to strip the Lakota people of their “dream” that they would rise again as a powerful and independent Nation.

Of course, the tragic qualities of historic memory for the Lakota people are replicated for countless other Native Nations, tribes, and bands: the descendants of the California tribes, the descendants of the Cherokee and other

Southeastern tribes that were removed from their treaty-guaranteed homelands on the "Trail of Tears," the descendants of the Cheyenne people who lost their lives in the massacre at Sand Creek, the descendants of the Apache people who were shipped to Florida and then to Fort Sill, Oklahoma, after the US Army routed the "hostile" Apaches from their homes in Arizona and New Mexico. Thus, to borrow the phrase from "ho'oponopono," the "negative entanglements" caused by historic bad acts and contemporary inequalities continue to cause a great deal of trauma and pain for Native peoples.

The BIA apology, of course, does not prescribe the manner in which healing should occur. Rather, it is up to the Native Nations to define the terms of the healing according to their own understandings of what "justice" entails and what steps are necessary for "healing" to occur. Thus, although the process of healing is set in motion by these words, the template for healing is still a work in progress.

Some might be tempted to employ a "common" understanding of healing from intergroup trauma as assuming responsibility, expressing regret, and asking for forgiveness and reconciliation. Assistant Secretary Gover, however, did not suggest that such a process would be a possible or appropriate outcome for his apology. In fact, he specifically says that it would not be appropriate to ask for forgiveness while the "burdens of this agency's history weigh so heavily on tribal communities."⁷⁹ Native nations will have to reach their own understandings of what the healing process must entail, at both the internal and external levels.

As Professor Jeffrie Murphy acknowledges, "forgiveness" is not an essential element of "reconciliation."⁸⁰ The nature of the past harms to Native peoples may embody an evil that cannot and should not be forgiven. In fact, Professor Murphy suggests that victims often demonstrate their essential commitment to "self-respect" by refusing to forgive those who have wronged them and by sustaining attitudes of moral resentment for past wrongs.⁸¹ However, as the tradition of ho'oponopono demonstrates, "forgiveness" may be a culturally necessary condition of "healing" for groups who believe that forgiveness possesses a unique and spiritual agency in the healing process.

A great deal of the contemporary philosophical literature defines and analyzes the "spiritual" qualities of "forgiveness" within a Christian framework.⁸² Thus, the words of Jesus and interpretations of Biblical text by theologians define the essential moral nature of human beings and their duties to other human beings. In the process of healing intercultural historic trauma, it will be necessary to evaluate other cultural conceptions of the spiritual quality of healing. Christianity, for example, is not the cultural benchmark for Native

peoples' views on "forgiveness" or "reconciliation." Those notions will be evaluated within Native communities using their own cultural understandings.

Native cultures are often founded upon a spiritual understanding of the Universe, which ties their own existence to the other aspects of Creation. Although philosophers often dismiss the notion of "spirituality" as a "New Age" concept, and resort to the canons of Judeo-Christian religious traditions to assess the "spiritual" content of human existence, this is a mistake within the context of reparative justice for intercultural harms.

The concept of "healing" within Native traditions is a powerful one, shaped by cultural notions of spirituality and the appropriate relationship of thought, emotion, and belief to one's physical well being.⁸³ Native spiritual leaders from various tribes have expressed differing views on the appropriate ways to think about historical trauma, including their understanding of "forgiveness." There is no simple way to "unify" these views or suggest a "solution" to the often staggering problems that confront Native communities. I merely suggest in this essay that the process of reconciliation should include an intercultural dialogue on healing and a commitment to mutual respect for the need of particular cultures and groups to have their fundamental values respected in this process. In sum, "reconciliation" is not a "one-size fits all" proposition.

6. Conclusion

Assistant Secretary Gover's apology opened the door to an intercultural dialogue on reconciliation, and thus, started the process of healing. It is now incumbent upon the Indian Nations and the United States to continue the process, even if that means confronting facts about the past and the present that are tragic and uncomfortable. The statistics on Native poverty and rates of substance abuse, suicide, incarceration, and domestic violence provide empirical proof that the past is not behind us. However, if we do not acknowledge the past, we will not heal the future.

Assistant Secretary Gover's apology acknowledges that Native governments have endured and will endure into the future, despite the challenges and harms that they have suffered. Consequently, the United States will always have the obligation to respect and work cooperatively with these governments and peoples. Given this reality, engaging the process of healing is not even an "option." It is a requirement to achieve intercultural justice in the future.

Now, skeptics may still insist that the United States is not likely to accept this perspective. After all, why should the "dominant" society care about a

numerically small and impoverished group like Native Americans? To the skeptics, I would argue that no nation can defend its position of “dominance” purely by force. As Justice Black commented in his dissent in *Federal Power Comm’n v. Tuscarora Nation*, just because the United States has the power to divest Indian nations of their lands in violation of its treaties and agreements with them, does not mean that it should do so. Rather: “Great nations, like great men, should keep their word.”⁸⁴ There is a moral quality to leadership that is important to its ability to sustain itself over time. This is true of individuals, and it is also true of nations. By accepting responsibility for past wrongs, the United States can help heal the wounds that could dismantle this society. If it does not, the United States’ greatest strength—the diversity of cultures and peoples that comprise “America”—could also prove to be its greatest liability.

Notes

1. I am indebted to my colleague, Professor Kevin Gover, for offering me his views on the context and function of this apology. I am also very appreciative to my colleagues, Dr. Jeffrie Murphy, Regent’s Professor of Law and Philosophy, and Dr. Peter French, Professor of Philosophy and Director of the Lincoln Center for Applied Ethics, for generously sharing with me their work and their thoughts on many of the themes that frame this essay. I also acknowledge the hard work and contributions of my administrative associate, Sunny Larson Reedy, my research assistant, Christopher Love, and my librarian, Alison Ewing.

2. *Congressional Record*, 106th Cong. 2d. sess., 2000, vol. 146, pt. E 1453–03. (Hereafter referred to as Gover, Apology Speech). Remarks of Kevin Gover, Department of the Interior Assistant Secretary of Indian Affairs, at the Ceremony Acknowledging the 175th Anniversary of the Establishment of the Bureau of Indian Affairs, September 8, 2000.

3. *Id.*

4. Record of conference proceedings prepared by Alexander Karn.

5. *Id.*

6. See Trudy Govier and Wilhelm Verwoerd, “Taking Wrongs Seriously: A Qualified Defence of Public Apologies,” *Saskatchewan Law Review* 65 (2002): pp. 139, 143. Govier and Verwoerd argue: “Commitments to reform and practical amends are forward thinking aspects of apology. These aspects suggest that apology should be construed as a process and not simply as an event.”

7. Trudy Govier and Wilhelm Verwoerd, “The Promise and Pitfalls of Apology,” *Journal of Social Philosophy* 33,1 (Spring 2002): pp. 67–82.

8. Gover, Apology Speech.

9. Kathleen Gill, “The Moral Functions of an Apology,” *The Philosophical Forum* 31,1 (Spring 2000): pp. 11–27.

10. *Id.* at p. 12.

11. *Id.* at p. 13.

12. *Id.*

13. *Id.*

14. Gover, Apology Speech.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Tee-Hit-Ton Indians v. United States*, 348 US 272 (1955).

19. See *supra* note 3.

20. Barbara L. Taverna, “Letters to the Editor: Apology to Indians Hollow Without Action,” *Rochester Democrat and Chronicle*, September 22, 2000, p. 11A.

21. Gover, Apology Speech.

22. *Id.*

23. *Id.*

24. See *supra* note 3.

25. There have been several attempts over the past few years to introduce legislation into Congress to apologize to African Americans and to Native Americans for the various historic wrongs committed against these groups, and to study the need for reparations to these groups. See, e.g., H.R. 40, 108th Congress, 1st Session (2003), Commission to Study Reparations Proposals for African Americans Act; S.J. Res. 37, 108th Congress, 2nd Session (May 6, 2004), Joint Resolution to “acknowledge a long history of official depredations and ill-conceived policies by the United States Government regarding Indian tribes and offer an apology to all Native People on behalf of the United States.” To date, none of these proposals has achieved the necessary political support to be enacted into law.

26. “Indians Receive Apology from BIA,” *Seattle Post-Intelligencer*, September 9, 2000, sec. News, p. A1. (quoting Lynn Cutler, President Clinton’s “chief advisor on Indian affairs”).

27. Gover, Apology Speech.

28. *Tee-Hit-Ton*, 348 US at p. 289.

29. It should be noted that this situation is changing, as school districts, textbook authors, and teaching professionals seek to incorporate more critical views of American history into the required curriculum. It should also be noted that in many regions of the country, conservative educators have challenged these critical approaches as “revisionist” history. In American college and university settings, the critical approach has achieved a great deal of success. See, e.g., McKay, *History of World Societies*, 6th ed. (A world history textbook for college students, which refers to the “Native-American Holocaust” and presents the story of “westernization” in a critical light).

30. *United States v. Sioux Nation of Indians*, 448 US 371, 437 (1980). The majority of the Court held that the treaty-guaranteed nature of these lands did require the US to pay just compensation to the Lakota for the taking of these lands.

31. *Id.*

32. See e.g. *Johnson v. McIntosh*, 21 US (8 Wheat.) 543 (1823).

33. *Id.* at p. 590.

34. *Id.* at p. 573.

35. *Id.*

36. Gover, Apology Speech.

37. *Id.*

38. See, e.g., Howard McGary, "Morality and Collective Liability," *Journal of Value Inquiry* 20 (1986).

39. Peter French, "You Must Remember This/We'll Always Have Paris" (mss., 2003); Peter French, "Memories are Made of This" (mss., 2004). Both manuscripts address the issue of public memory and collective responsibility, and are hereafter referred to as "French manuscripts, 2003, 2004."

40. *Id.*

41. See, for example, the Code of Federal Regulations, which in the 19th century, expressly criminalized the practice of Native religions and customs.

42. Allison Dussias, "Let No Native Child Be Left Behind: Re-Envisioning Native American Education for the Twenty-First Century," *Arizona Law Review* 49 (Winter 2001): p. 819.

43. Gover, Apology Speech.

44. *Id.*

45. *Id.*

46. *Id.*

47. Gover, Apology Speech.

48. Elazar Barkan and Alexander Karn in their introduction to this volume, "Group Apology as an Ethical Imperative."

49. See, for example, *Oliphant v. Suquamish Tribe*, 435 US 191 (1978) (holding that tribes may not prosecute non-Indians for misdemeanor crimes committed against the tribe and its members on the reservation); *Montana v. US*, 450 US 544 (1981) (holding that Crow tribe could not exercise hunting and fishing jurisdiction on non-Indian owned fee lands within the reservation); *Lyng v. Northwest Indian Cemetery Protective Ass'n* 485 US 439 (1988) (holding that free exercise clause did not protect Native peoples from federal road projects that would desecrate sacred lands and preclude practice of religion); *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 US 878 (1990) (holding that free exercise clause did not protect right of Native American Church members to use peyote in Church sacraments).

50. Nicholas Tavuchis, 1991, *Mea Culpa: A Sociology of Apology and Reconciliation*, p. 19 (Stanford: Stanford University Press).

51. Martha Minow, 1998, *Between Vengeance and Forgiveness*, p. 112 (Boston: Beacon Press).

52. Jeffrie Murphy, 2003, *Getting Even: Forgiveness and Its Limits*, p. 15 (New York: Oxford University Press).

53. *Id.*

54. *Id.*

55. Eric Yamamoto, 1999, *Interracial Justice: Conflict and Reconciliation in Post-Civil Rights America* (New York: New York University Press).

56. *Id.*

57. See Manu Meyer, "To Set Right—Ho'oponopono: A Native Hawaiian Way of Peacemaking," *The Compleat Lawyer* 30 (Fall 1995).

58. *Id.*

59. As previously noted, *S.J. Res. 37*, which was introduced into the Senate on May 6, 2004 and has been referred to the Committee on Indian Affairs, would, if passed, constitute an official "apology to all Native Peoples on behalf of the United States." It remains to be seen whether this Resolution can garner the broad political support needed to pass through Congress. The Resolution, as currently drafted, recognizes the "special legal and political relationship" between the Indian tribes and the United States, acknowledges the "official depredations, ill-conceived policies, and breaking of covenants by the United States," "apologizes on behalf of the people of the United States to all Native Peoples for the many instances of violence, maltreatment, and neglect inflicted on Native Peoples by the citizens of the United States" and calls for healing and reconciliation between the people of the United States, the US government, and the Indian tribes. *S.J. Res. 37*, 108th Cong., 2nd Session (May 6, 2004).

60. See "Reconciliation at a Crossroads: the Implications of the Apology Resolution and *Rice v. Cayetano* for Federal and State Programs Benefiting Native Hawaiians: Summary Report of the August 1998 and September 2000 Community Forums in Honolulu, Hawaii," Hawaiian Advisory Committee to the US Commission on Civil Rights (June 2001) at p. 19 (quoting Senator Akaka's statement at a community forum held in Honolulu, Hawaii, on September 29, 2000).

61. French manuscripts, 2003, 2004.

62. *Id.*

63. Gover, Apology Speech.

64. *Id.*

65. See supra note 5.

66. As cited in Maria Yellow Horse Brave Heart, "The Historical Trauma Response Among Natives and its Relationship with Substance Abuse: A Lakota Illustration," *Journal of Psychoactive Drugs* 35 (January–March 2003): p. 1.

67. Gover, Apology Speech.

68. Yellow Horse Brave Heart, "The Historical Trauma."

69. *Id.*

70. James P. Sterba, "Understanding Evil: American Slavery, the Holocaust, and the Conquest of the American Indians," 106 *Ethics* 424 (January 1996).

71. Id.

72. Robert Burnette and John Koster, 1974, *The Road to Wounded Knee*, p. 3 (New York: Bantam Books).

73. See Id. at p. 1 (quoting an interview with Captain Fred Benteen after the Battle of the Little Bighorn in which Captain Benteen alleged that the "Indian outbreaks," which plagued the frontier, were the result of the "enormous pilfering and stealing" of the agents of the Indian Bureau: "No agent can save \$13,000 or \$15,000 annually legitimately out of a salary of \$1,500, and yet numbers of them do it. [...] It is this constant robbery which goads [the Indians] to outbreaks.").

74. See testimony recorded in Roxanne Dunbar Ortiz, 1977, *The Great Sioux Nation: Sitting in Judgment on America Based on and Containing Testimony Heard at the Sioux Treaty Hearing Held December, 1974, in Federal District Court, Lincoln, Nebraska* (San Francisco: American Indian Treaty Council Information Center, Moon Books).

75. Brenda Norrell, "American Indians Respond to the Bureau of Indian Affairs 'Reign of Terror,'" *Indian Country Today*, September 15, 2000 (quoting Cricket Johnson, a student at St. Mary's High School in Phoenix).

76. Brian Stockes, "Bureau of Indian Affairs Official Apologizes for Atrocities of the Past," *Indian Country Today*, September 15, 2000.

77. John G. Neihardt, 1961, *Black Elk Speaks* p. 221 (Lincoln: University of Nebraska Press).

78. Id. at p. 230.

79. Gover, Apology Speech.

80. Murphy, *Getting Even*, p. 13.

81. Minow, p. 10, citing Murphy.

82. See, for example, Murphy, *Getting Even*, pp. 87-93.

83. See, for example, Bear Heart and Molly Larkin, 1996, *The Wind is My Mother: The Life and Teachings of a Native American, Shaman* (New York: Clarkson Potter/Publishers) (reflections of a Muscogee Creek spiritual leader); Pete Catches, Sr., 1999, *Sacred Fireplace (Oceti Wakan): The Life and Teachings of a Lakota Medicine Man* (Santa Fe: Clear Light Books).

84. *Fed. Power Comm'n v. Tuscarora Nation*, 362 US 99, 141 (1960).

The New Patriotism and Apology for Slavery

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1. Introduction

In the wake of the terrorists' attacks on the World Trade Center and the Pentagon on September 11, 2001, Americans on both sides of the color line have become self-consciously patriotic in ways we have not seen since the days of World War II. Some fly the American flag from their porches. Others display it proudly in their car windows. Both children and adults recite the pledge of allegiance with deep conviction, if not reverence. The country's national anthem plays everyday at noon on many radio stations, and even high-priced professional athletes, perhaps the most egotistical of all Americans, seem less distracted during the singing of the nation's hymn at the beginning of professional sporting events.

This, then, would not seem to be the proper time for African Americans to point an accusatory finger at our government, let alone raise the issue of apology for slavery. What could be more unpatriotic than to raise the ugly specter of slavery at a time when Americans should be pulling together, closing ranks behind our President to fight a protracted war on terrorism? What could be more socially divisive than to resurrect a national embarrassment that ended some 140 years ago? In the wake of September 11, in short, patriotism and apology for slavery would seem to be as incompatible as George Washington and Osama bin Laden.

In this essay, I should like to offer a dissenting view that at first glance may seem somewhat curious. I shall develop two lines of thought that attempt to demonstrate how and why an official government apology for slavery might materialize in the aftermath of September 11. The first line of thought has historical and political elements and goes as follows. Given the fact that, historically, the most significant advancements in racial progress have come during times of major wars, the war on terrorism, should it escalate into a major conflict, might precipitate racial progress that could include the federal