Reckoning with the Concept of Reconciliation

Examining Reconciliation Discourses in Northern Ireland and Queensland, Australia

Submitted by

Erin Leach

LLB in Law and Social Anthropology (University of Edinburgh) (2015)

LLM in Human Rights (University of Edinburgh) (2017)

In fulfilment of the requirements for the degree of

Master of Philosophy (Indigenous)

College of the Indigenous Education and Research Centre

James Cook University

March 2024

Acknowledgements

Acknowledgments and Welcome to Country

This thesis was written across many lands, including Townsville, lutruwita/Tasmania and Norway. I honour the Traditional Owners of these lands: the Wulgurukaba and Bindal people where our Indigenous Education and Research Centre is located in Townsville, the palawa kani people of lutruwita/Tasmania and the Sámi of Sápmi. As a visitor to each place, I promise to move within these landscapes with care. This care extends to the words I use as I probe the painful and complex terrain of this thesis. As a non-Indigenous person, my homeland is Scotland. To you, dear reader, I would like to acknowledge my thanks by saying *fàilte* and *tapadh leibh,* which means welcome and thank you in Scots Gaelic.

Acknowledgment of the Indigenous Education and Research Centre

I am deeply thankful to the Indigenous Education and Research Centre for welcoming me and holding space for this project and my ideas. I am so keenly aware that this thesis would have taken on a drastically different form if it had been raised in another home. To Professor Martin Nakata: thank you for your persistence. I've learned to notice the light that flickers in your eye, when you realise I have understood. It is a guiding light (without making any references to jetties) and I so appreciate the concerted measures you take to ensure each student receives this guidance in their work. To my brilliant supervisors: Dr Ailie McDowall, who has had eyes on the evolution of this thesis from the beginning. Thank you for teaching me. There are many aspects of my education in writing a thesis that I could talk about here but the one that I had no anticipation of learning was confidence. A confidence and empowerment to undertake works of this length and depth with structure and efficiency. It is such a gift in all modes of life. To Dr Vincent Backhaus: thank you for your radical honesty and insight. It takes a lot of energy to give, and I am so very grateful to have received it, alongside your laughter and support.

Acknowledgment of friends, strangers and those in-between

Finally, to friends. Over the course of this thesis, I have benefitted immensely from conversations with friends to strangers (the full spectrum) that have pushed this work into realms of thought I could not have conceived of. For me, these conversations are one of the greatest joys of participating in this work. To those individuals who met me with curiosity and entered discussion with a stranger about vulnerable topics, thank you. To those of you that knew me and continued to do so, *thank you*. To Sarah: from strangers, to co-conspirators, to sisters (my grandmother has declared it so). If I were to be allowed to begin an entire MPhil thesis again, it would be *a genealogy of Sarah's train-of-thought*. To those that hold me steady (and have fed me): Tom, Jo, Jamie, Luke, Elsie, Glen, Dawn, Signe, Kirsten, Ricardo, Matilde, Robyn and Carolyn. My gorgeous grandmother Elizabeth, my dad Richard, mother Alison, stepdad Stephen; my siblings: Alie, Hannah and Sam; and my fantastic aunty and uncle, Anna and Stevie.

Statement of the Contribution of Others

This thesis would not have been possible without the significant contributions of others. This has included the two one-week learning intensives hosted by Dr Ailie McDowall and the Indigenous Education and Research Centre; the Indigenous Research Support Network Masterclass, focusing on The Cultural Interface as hosted by Professor Martin Nakata; the extensive guidance and feedback from my primary supervisor Dr Ailie McDowall; the support and feedback from my secondary supervisor Dr Vincent Backhaus; the skills and time of JCU's library services; and the ears and feedback of my trusted colleague Sarah Burke. I am very grateful to have received JCU Fee Sponsorship for International HDR Candidates, alongside the James Cook University Postgraduate Research Scholarship (JCUPRS), provided by the Australian Government through the Department of Education's Research Training Program.

Abstract

In the 21st century reconciliation has acquired an assumed, almost-elite status, earmarking it as the go-to 'answer' for colonial violence. Offered as a promise of justice, it is sought after by millions of people around the world, and increasingly proffered to those persons who have and continue to face harm by the settler-state. Ambiguity plagues the popular concept, however, and clarification of the assumptions that underpin reconciliation policies remain scarce. This dynamic has created a climate where the word 'reconciliation' can create the illusion that violence is being addressed, regardless of what is occurring. This is deeply problematic, particularly in scenarios where reconciliation processes and promises are not being honoured.

Like many settler-states, Northern Ireland and Queensland, Australia continue to face a demand for reconciliation processes that 'address' colonial violence. Over 2022 and 2023 each country deliberated and enacted new reconciliation legislation. This thesis takes the UK's *Northern Ireland Troubles (Legacy and Reconciliation) Bill* 2022-2023 and Queensland, Australia's *Path to Treaty Act* 2023 and examines how each produce and problematise meanings of reconciliation using Bacchi's '*What is the Problem Represented to Be*?' methodology. The discourses of each policy (including parliamentary debates and inquiries, ministerial statements and news media discourse) reveal reconciliation is being constructed in various ways.

In the Northern Irish context, the United Kingdom (UK) Government looks to address the period of conflict known as The Troubles (1968-1998) and aid reconciliation via the *Legacy Bill* (UK Government, 2022). Primarily, the Bill produces reconciliation as a 'problem' of securing information and truth whilst it is still available. In this instance, information-recovery is positioned as time-sensitive due to the aging of the Troubles generation and, therefore, a finite resource for accessing truth. The Bill also produces reconciliation as a 'problem' of memorialisation. Namely, a 'problem' of how to present and preserve information and truth. For example, public access to memorial materials via online exhibitions or museums. In

producing reconciliation as ‘information and truth recovery’ and ‘memorialisation’, the *Legacy Bill* fails to give space to those elements of justice that are significant to the Northern Irish people, such as the principle of consent, political autonomy and the consideration of reparations.

In the Queensland context, reconciliation is produced as a ‘problem’ of accessing the truth of colonial history—a sub-‘problem' of redemption for non-Indigenous people—and a 'problem' of unity between non-Indigenous communities and Aboriginal and Torres Strait Islander communities. In each instance the reconciliation lens is turned toward the needs of non-Indigenous Queenslanders. The logic put forward for reconciliation as accessing history is: if non-Indigenous Queenslanders knew the truth of the past they would be on board with reconciliation. For redemption: if non-Indigenous Queenslanders can divest their guilt, they won’t resist the process. Then, the final ‘problem’ of unity looks to secure a single identity, perhaps so non-Indigenous Queenslanders (and the state) will not feel threatened during treaty-making.

Together, the problematisations identified in the two case studies demonstrate how reconciliation can be used to de-centre the interests of those who have been harmed. Practical acts of reconciliation and symbolic acts of reconciliation have an important role to play in delivering justice, but what role does performative reconciliation play? Can it be called reconciliation at all? This thesis concludes quite simply that it cannot. In line with those authors who name this ‘type of reconciliation’ ‘*transitional injustice*’, this thesis concludes that reconciliation as anything other than practical and symbolic, is not reconciliation. Moreover, performative reconciliation is often harmful, centralising the interests of the state and/or the non-Indigenous settler population whilst appearing to cater for the needs and desires of First Nations people.

Table of Contents

Acknowledgements i
Statement of the Contribution of Others iii
Abstract iv
Table of Contents vi
Abbreviations xi
List of Cited Legislation xiii
Australia xiii
The United Kingdom xiii
Additional Jurisdictions xiv
List of Figures xv
1 Chapter One: Introduction 1
1.1 Welcome 1
1.2 Why Northern Ireland? Why Queensland, Australia? 3
1.3 The Names We Know Reconciliation By 8
1.4 A Genealogy of Reconciliation? A Very Brief History 9
1.5 Mapping this Thesis 12
2 Chapter Two: Deconstructing Reconciliation: A Literature Review of Global Concepts of Reconciliation and Resistance 14
2.1 Introduction 14
2.1.1 Practices and Relations of Reconciliation 14
2.2 The Rhetoric of Reconciliation 17
2.3 Reconciliation and Transitional Justice 17
2.3.1 Transitional Justice 18
2.3.2 Truth Commissions 19
2.3.3 Truth 21
2.3.4 Transitional Injustice 23
2.4 Resistance to Reconciliation 24
2.4.1 ‘Post-conflict’ Societies and Spaces 24
2.4.2 Relationships of Resistance 25
2.4.3 Macro and Micro Currents of Resistance 27
2.5 Conclusion 28
3 Chapter Three: Methodology 30
3.1 Introduction 30
3.2 Discourse Analysis 30
3.3 The Cultural Interface 31
3.4 A Bacchian Policy Analysis: the ‘WPR’ Method 33
3.5 Study Process, Text Selection and Data Sources 35
3.5.1 Text Selection: Choosing the Legacy Bill and the Treaty Act 36

3.5.2 Data Sources ... 38
3.5.3 Observing the AIATSIS Code of Ethics ... 39
3.5.4 Passing of Legislation ... 41
3.6 Notes on Terminology ... 42
3.6.1 Settler Population ... 42
3.6.2 State Sovereignty ... 42
3.6.3 Power ... 43
3.6.4 Violence ... 43
3.6.5 Truth ... 44
3.7 Conclusion ... 44
4 Chapter Four: A Short Introduction to Northern Ireland ... 46
4.1 A Celebration of Land and People ... 46
4.2 Waves of Invasion or Influence? ... 47
4.3 English Waves of Invasion and Colonisation ... 48
4.4 Two Parliaments: An Independent Ireland and Northern Ireland ... 49
4.5 The Troubles ... 50
4.6 The Third Parliament: Westminster ... 52
4.7 Tension ... 53
5 Chapter Five: What is the 'Problem' Represented to be? Analysing the UK's *Northern Ireland Troubles (Legacy and Reconciliation) Bill 2022-2023* ... 55
5.1 Introduction ... 55
5.2 What is the 'Problem' Represented to Be? ... 56
5.2.1 Reconciliation as an Information-Recovery Problem ... 57
5.2.2 Reconciliation as a Memorialisation Problem ... 59
5.2.3 Shifting from Criminalisation ... 59
5.3 What Presuppositions or Assumptions Underlie these Representations of the 'Problem'? 60
5.3.1 Key Binaries ... 61
5.3.1.1 The *State/Citizen* Binary ... 61
5.3.1.2 The *British/Irish* Binary ... 63
5.3.2 Key Categories ... 64
5.3.2.1 Veterans ... 65
5.3.3 Key Concepts ... 66
5.3.3.1 Truth ... 66
5.3.3.2 Remembrance ... 69
5.3.4 Summary ... 71
5.4 How has this Representation of the 'Problem' Come About? ... 71
5.4.1 Gaelic Ireland 1100's ... 72
5.4.2 Emergence of the Modern State 1580's ... 73

5.4.3 Plantation Policies 1550-1641 74
5.4.4 The Great Famine 1845-1852 75
5.4.5 State Responsibility and Human Rights 1914-1948 75
5.4.6 Civil Rights Movements and Political Instability in Ireland 1950's-1970's 76
5.4.7 International Demand for Responsibility 1995 77
5.4.8 Policing the Past 78
5.4.9 Summary 78
5.5 What is Left Unproblematic in this Problem Representation? Can the 'Problem' be Thought About Differently? 79
5.5.1 Ethos of Justice 80
5.5.2 Reparations 81
5.5.3 Consent 82
5.5.4 Political Autonomy and Budget 84
5.6 What Effects are Produced by this Representation of the Problem? 84
5.6.1 Discursive Effects 85
5.6.1.1 Risk of a Return to Violence 85
5.6.2 Subjectification Effects 86
5.6.2.1 Veterans and the Invisibilised Victims 86
5.6.2.2 The Victims of the Troubles 87
5.6.3 Lived Effects 89
5.6.3.1 Truth as Justice 89
5.6.3.2 Project Funding and Economic Deprivation in Northern Ireland 90
5.6.3.3 The Youth of Northern Ireland 91
5.7 How and/or Where is this Representation of the 'Problem' Produced, Disseminated and Defended? How could it be Questioned, Disrupted and Replaced? 92
5.7.1 Voices of Resistance in Academia 93
5.7.2 Murals and Truth as Justice 93
5.7.3 Memorialisation and Pop Culture Challenges 97
5.7.3.1 Differences in Derry Girls 97
5.8 Chapter Summary 99
6 Chapter Six: A Short Introduction to Queensland, Australia 102
6.1 65,000 years+ 102
6.2 'Two Centuries' of English Colonisation 103
6.3 Indigenous Responses to Colonisation 106
6.4 Australia's Reconciliation Decade(s) 107
7 Chapter Seven: What is the 'Problem' Represented to be? Analysing Queensland, Australia's '*Path to Treaty Act 2023*' 111
7.1 Introduction 111
7.1.1 The Truth-telling and Healing Inquiry (Part 3, Section 64-93) 112

7.1.2 The First Nations Treaty Institute (Part 2, Section 9-63) 113
7.1.3 Is the Treaty Act an Act of Reconciliation? 113
7.1.4 A Review of Key Data Sources 114
7.2 What is the ‘Problem’ Represented to be? 115
7.2.1 A 'Problem' of Accessing the Truth of Queensland's Colonial History 115
7.2.1.1 Who Needs to be Educated? 116
7.2.1.2 Who is the Educator? 118
7.2.1.3 Who has the Agency to Learn? 121
7.2.2 A Sub-‘problem’ of Redemption for Non-Indigenous People 122
7.2.3 A 'Problem' of Unity and Shared Identity 124
7.2.4 Summary 125
7.3 What Presuppositions or Assumptions Underlie these Representations of the ‘Problem’? 126
7.3.1 Key Concepts 126
7.3.1.1 Treaty 126
7.3.2 Key Categories 129
7.3.2.1 The ‘Queenslander’ 129
7.3.3 Key Binaries 131
7.3.3.1 Truth as Education 132
7.3.3.2 Truth as Healing 132
7.3.4 Summary 134
7.4 How has this Representation of the ‘Problem’ Come About? 134
7.4.1 Treaties with the British Crown 135
7.4.2 Assimilation 140
7.4.3 The Nation State for Unity and Shared Identity 141
7.4.4 Emergence of Reconciliation 144
7.4.5 Maintaining a Human Rights Record 145
7.4.6 Summary 146
7.5 What is Left Unproblematic in this Problem Representation? Can the ‘Problem’ Be Thought About Differently? 147
7.5.1 Self-determination and Sovereignty 148
7.5.2 The Responsibilities of the Settler Community and Government 150
7.5.3 Summary 152
7.6 What Effects are Produced by this Representation of the Problem? 153
7.6.1 Discursive Effects 153
7.6.1.1 Progress 153
7.6.2 Subjectification Effects 155
7.6.2.1 Aboriginal and Torres Strait Islanders as Superficial Political Subjects 155

7.6.3 Lived Effects 156
7.6.3.1 Political Tokenism and the Displacement of Aboriginal and Torres Strait Islander People's Interests 156
7.7 How and where is this Representation of the 'Problem' Produced, Disseminated and Defended? How Could it be Questioned, Disrupted and Replaced? 158
7.8 Chapter Summary 160
8 Chapter Eight: Discussion 161
8.1 Reconciliation *as* Truth 162
8.2 'Real' Reconciliation 163
8.3 Reckoning with Reconciliation 164
8.4 Limitations 168
8.5 Areas for Future Research 169
8.6 Final Remarks 169
References 171
Appendix A: An Overview of Part 4 of the *Northern Ireland Troubles (Legacy and Reconciliation) Bill 2022-2023* 213
Oral History (Section 43) 213
The Memorialisation Strategy (Section 44) 213
Academic Research (Section 46) 213
Appendix B: The Legacy Bill Visual Overview 215
Appendix C: An Overview of Parts 2 and 3 of the *Path to Treaty Act 2023* 216
The Truth-telling and Healing Inquiry (Part 3, Section 64) 216
The First Nations Treaty Institute (Part 2, Sections 9-63) 217

Abbreviations

ADR	Alternative Dispute Resolution
AHRC	Australian Human Rights Commission
ATSIC	Aboriginal and Torres Strait Islander Commission
CAR	Council for Aboriginal Reconciliation
CARA	Council for Aboriginal Reconciliation Act (1991)
CERD	Committee on the Elimination of Racial Discrimination
ECtHR	European Court of Human Rights
ICRIR	Independent Commission for Reconciliation and Information Recovery
IERC	Indigenous Education and Research Centre (Townsville, Queensland)
ITTB	Interim Truth and Treaty Body
JLOM Act	Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984
LNP	Liberal National Party of Queensland
PRO	Peace and Reconciliation Organisation
QHRC	Queensland Human Rights Commission
RAP	Reconciliation Action Plan
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
SA TRC	South African Truth and Reconciliation Commission
The Committee	The Queensland Parliament Community Support and Services Committee
The Inquiry	The Path to Treaty Act's Truth-telling and Healing Inquiry
The Institute	The Path to Treaty Act's First Nations Treaty Institute

The Legacy Bill	The Northern Ireland Troubles (Legacy and Reconciliation) Bill 2022-2023
The Treaty Act	The Path to Treaty Act 2023 (Qld)
TRC	Truth and Reconciliation Commission
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNDRIP	Universal Declaration of Indigenous Rights
US	United States of America

List of Cited Legislation

Australia

Queensland Legislation

The Aboriginal Land Act 1991

The Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984 (JLOM Act)

The Human Rights Act 2019

The Path to Treaty Act 2023

The Torres Strait Islander Act 1991

Western Australia Legislation

The Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Act 2016

Commonwealth Legislation

The Council for Aboriginal Reconciliation Act 1991

The Native Title Act 1993

The United Kingdom

The Belfast Agreement 1998 (also known as the Good Friday Agreement 1998)

The Government of Ireland Act 1920

The Identity and Language (Northern Ireland) Act 2022

The International Criminal Court Act 2001

The Northern Ireland (Sentences) Act 1998

The Northern Ireland Troubles (Legacy and Reconciliation) Bill 2022-2023

The Republic of Ireland Act 1948

The Treaty of Union 1707

Additional Jurisdictions

Aotearoa/New Zealand

He Whakaputanga /The Declaration of Independence (1835)

Te Tiriti o Waitangi /The Treaty of Waitangi (1840)

The Land Claims Ordinance (1841)

Canada

The Peace and Friendship Treaties (1725-1779)

The Reciprocity Treaty (1875)

The Treaties of Peace and Neutrality (1701-1760)

The Treaty of Cession (1867)

The United States of America

The Upper Canada Land Surrenders and the Williams Treaties (1764-1862/1923)

International

The Rome Statute of the International Criminal Court

List of Figures

Figure 1 Mural on Divis Street, captured 2014 95

Figure 2 Mural on Lendrick Street, captured 2013 96

Figure 3 The Derry Girls Chalkboard on display at the Ulster Museum, 2023 97

1 Chapter One: Introduction

1.1 Welcome

Like many pursuits into the realms of philosophical conjecture, this thesis emerged from a nag: a re-emerging, unsettling doubt that nestled itself behind the word *reconciliation*. The closer I listened to the discourse, the more I believed that reconciliation–in many places across our globe–sings a similar story: a promising song which can mask important silences. The story, it seems, is that at a time when state leaders have vast resources at their fingertips, the people whose kin, land, culture and languages have come under and continue to face genocidal threat from colonial policies are statistically more likely than the majority settler population to face hardship, roadblocks and white noise in relation to the realisation and celebration of their rights and cultures.

First Nations people around the world may be prevented from enforcing boundaries on their own lands as Traditional Owners, such as the Sámi people in Finland (Junka-Aikio, 2023). Across Australian states, Aboriginal and Torres Strait Islanders are unable to pass an innocent or guilty verdict in their own courts, for example in the Koori Courts and Nunga Courts (Pascoe, 2012). The people of Northern Ireland have effectively lived without a functioning government for seven years, having to find loopholes to pass meaningful policy and legislation (Haughey, 2024). The Greenlandic people are enduring the highest rate of suicide in the world (Fayaz, 2022). If funding is granted, it is prefaced with conditions and criteria. Where services are provided, they are often designed by the settler state and frequently exclude the cultural expectations and needs of the population it is intended to serve.

The beacon of reconciliation promises to 'resolve' past (and sometimes, current) conflict between the state and the populations harmed by its institutions. The core idea that runs concurrently through the many definitions for reconciliation, is that the process will bring some form of peace to those populations and perhaps, justice. When these resolutions fail to transpire, we come back to what was promised. *What does reconciliation really promise?*

The existing body of literature on reconciliation agrees that the concept evades definition (Dwyer, 2003; Meierhenrich, 2008; Palmer & Pocock, 2020; Quinn, 2009; Rettberg & Ugarriza, 2016; Sarkin & Daly, 2004). Some argue that this has occurred through a process of conceptual stretching, wherein the term reconciliation has become meaningless (Meierhenrich, 2008). In this condition and given its broad application, the concept becomes ripe for exploitation and negligent use. Hay's (1998) infamous claim that reconciliation is "one of the most abused words in recent history" (p. 13) is, therefore, worthy of exploration.

The purpose of this thesis is, thus, to examine two examples of reconciliation discourse in two separate case studies: Northern Ireland and Queensland, Australia. Each case study provides an opportunity to examine the ways that realising reconciliation has been problematised by the settler state, affected communities and news media. Exploring the underlying assumptions of reconciliation legislation discourse permits further analysis of what, if any, viable responses to violence might look like. *What changes may be put in place to ensure affected communities receive the version of justice they seek?* The selected pieces of legislation are the *Northern Ireland Troubles (Legacy and Reconciliation) Bill 2022-2023* and the *Path to Treaty Act 2023*.

The core research question that this thesis seeks to answer is, accordingly:

Q1. What assumptions underpin reconciliation discourses in Northern Ireland and Queensland, Australia?

While the title of this thesis may be suggestive of a comparative study between Northern Ireland and Queensland, Australia, it is not. This research question will be answered as two independent Bacchian 'What is the Problem Represented to Be?' discourse analyses (Bacchi, 2009). By viewing each case in isolation, the emphasis of analysis is directed toward the specifics of how reconciliation has been produced in each place, today. Despite not following a formal comparative process, the opportunity to reflect on the similarities between the two studies demonstrates an issue that emerges in many places where people seek justice in response to state violence: that the framing of state responses do not enable the interests

of the aggrieved to be centred. Thus, while comparison is not the focal point, a discussion of the similarities between the two cases will be made in Chapter Eight.

Two important questions remain before this Chapter delves into an overview of the concept (or concepts) of reconciliation.

1.2 Why Northern Ireland? Why Queensland, Australia?

Most countries that exist today could have been the subject of a reckoning of reconciliation, so: *Why Northern Ireland? Why Queensland, Australia?* My choice to analyse Northern Ireland and Queensland, Australia was both personal and academic. I have grown up with an awareness of the conflict that occurs in Northern Ireland and across Australia through second-hand exposure to the acts of violence in each place. The people that raised me spent their formative years in Victoria, Australia (dad), Ireland (uncle) and Northern Ireland (aunty). It is their stories (and importantly, their silences) that have charged my curiosity to understand the detail of what happened in each place. What permitted this level of violence to happen, particularly by the hands of the state?

I am a non-Indigenous, white researcher. As far as my family knows, we have long lines of English ancestry on my father's side, and long lines of Scottish and Welsh ancestry on my mother's side. My parents had me in London, England and from the age of two I was raised in Fife, Scotland. I *see* myself as Scottish. *Seeing* oneself as holding a particular ethnicity has implications: from my understanding of the conflict in Northern Ireland, the notion that one group of people see themselves as British and the other see themselves as Irish remains one of the main points of contention and a core reason for division today. As a researcher, I want to continuously challenge my capacity to think beyond what I feel I know and what I have been taught as fact. It is important for me to sit in uncomfortable spaces, and, on many occasions, it has felt that there was no choice. I grew up knowing that my ‘real’ ethnicity would not be accepted by my classmates and was genuinely afraid of their retaliation. I sat in the uncomfortable space and clung to my decided ethnicity out of love for the land of Scotland and out of fear. A core factor that differentiates my experience is that I could decide my ethnicity.

My English heritage was not visible to my classmates. They couldn't see it by the colour of my skin, and they couldn't hear it in the intonation of my voice. The notion of decided ethnicity and the occurrence of this theme in Northern Ireland is a core uncomfortable space that surfaced in this thesis.

Another uncomfortable space I encountered as I began this research, was my learned beliefs in relation to the history of the British Isles. Despite living so close to Northern Ireland, I have never understood 'the conflict'. Whilst canvasing the region as a possibility for this study, it quickly became apparent to me the number of discrepancies and silences between my Scottish education of the British Isles and what historical documents and authors relayed as the truth. I surprised myself with the level of resistance I had toward accepting these new-to-me narratives of the past. 'I didn't like' the involvement of Scotland or Scottish people. This personal disquiet prompted me to pursue Northern Ireland as my first case study.

Australia, (categorised by my foreigner's mind) as an expansive, unknown, stereotypically hot and wild place, was the destination my father's family immigrated to from England in the 1960's. My dad, around the age of four or five travelled by boat to Victoria. He and his five siblings were detained in an accommodation camp until his dad secured enough work to take care of the family. My dad has fond memories of Melbourne, most of them being connected to the wildlife he and his siblings sought to catch and of working with his dad on the farm. However, when it came to whether he was accepted by white Australian society in Victoria, a very clear narrative of discrimination and hate shaped his stories. His stories prompted a deep sense of loss within me and lodged a question in my mind. What happened in Australia that would prompt a community to be so cruel, even to young children?

Later, as I grew older, my dad would share more stories. Of how his friend and neighbour, Clem, was never welcome in school. Of how Clem's father was treated, then disappeared. Of how Clem disappeared. I learned of the Stolen Generation and the woeful racism that by 2017—my first visit to Queensland, Australia—still operated in every institution I had the opportunity to observe. The work I undertook in 2017 was with the Anti-Discrimination

Commission Queensland (ADCQ) and I was fortunate enough to work directly with Aboriginal and Torres Strait Islander Unit Coordinator Liz Bond. Over five months we undertook a human rights review of the conditions in women's prisons across Queensland (Anti-Discrimination Commission Queensland, 2019).

Liz and I spoke constantly on our drives back and forth from the correctional centres and in relation to present day racism, Liz would often refer to British colonisation with the words "*your* people did this". And so, came the questions that captured me personally in relation to Australia: What have my people done since? Why am I disconnected from my people? Did we disconnect ourselves from our ancestors in order to disconnect from our colonial actions? How is it that we have allowed the atrocities designed and led by some of my ancestors to separate us? As Scots, we have largely lost our native language, our ancestor's culture, faith and livelihoods. I am separated from the land I live in, I believe, because I was not raised with the knowledge that would help me care for it. After spending time in Townsville and discovering the MPhil (Indigenous) programme offered under the Indigenous Education Research Centre, I felt strongly that the questions posed during my work with Liz and the ADCQ would be best explored by returning to Queensland.

In addition to these personal motivations, both Northern Ireland and Queensland, Australia offered very recent and highly controversial items of reconciliation legislation which attempt to respond to the 'past' violence of each place. Northern Ireland is an important case study of reconciliation given its position as the 'template' of English colonisation (Ó Siochrú & Ciardha, 2021). The study of Northern Ireland and the crown's[1] introduction of the plantation policies (1550 and 1641) provides access to those very early ideas that the English coloniser used to position its subjects as 'other', then 'colonised'. With new legislation—the *Northern Ireland Troubles (Legacy and Reconciliation) Bill 2022-2023*—that sought to bring long-

[1] When referring to the British monarch(s), this thesis makes an explicit choice not to capitalise their titles. As such, it does not capitalise 'the Crown'. This choice is made to prompt the reader to reflect on the operation of our "civic vocabulary" (Johnson and Rowse, 2022) and how it affords currency and creates specific representations of society. This position follows authors such as Edwards (2015).

awaited reconciliation to those harmed during the Troubles, I moved quickly at the opportunity to assess what the legislation was trying to do. Given its level of rejection—the Bill was opposed by every victim's group and political party in Northern Ireland—I perceived it as a poignant example of the gap that exists between those who have been harmed and the institutions that exist to serve their interests.

I was curious to observe whether similar subject positions emerged in another place that experiences conditions of colonialism created by the British crown. In academic terms, Queensland, Australia was a clear selection for this. As is often cited (see Chapter Seven), Australia is the only former British colony that does not have Treaty with the First Nations of the land. The introduction of the *Path to Treaty Bill 2022* in Queensland presented a significant opportunity to observe how the conflict within the state was being described and addressed by reconciliation.

Of great advantage to this analysis was that each selection created a significant opportunity to follow their discourses in real time. I was able to visit Belfast, Northern Ireland on two occasions and able to attend the Townsville public forums of the *Path to Treaty Bill* in person. This generated the opportunity to watch and listen and hear the nuance of people's statements. In terms of data, it is pivotal when seeking to determine the meaning of legislation. The opportunity to have one off conversations with members of the public was also essential learning in terms of the terminology that locals use to describe and make sense of the conflict.

Importantly, that each of these case studies experiences conditions of colonialism created by the crown does not imply that the type of violence experienced by each place was or is the same, nor that the responses from the people would be. England initially characterised both the Irish and Aboriginal and Torres Strait Islander people as beastly, primitive and savage (pertaining to Ireland Margey, 2018; Ohlmeyer, 2018; pertaining to Queensland Kiernan, 2007; Nakata, 2007b; Tatz, 2003) and adopted different methods to try and control each 'problem' population.

The acts undertaken by England in each place are discussed as exceptional by virtue of their cruelty (pertaining to Ireland Jones, 2009; Kennedy, 2015; Ó Siochrú, 2007; pertaining to Queensland Anti-Discrimination Commission Queensland, 2017; Baldry et al., 2020; Evans, 2004, 1993; Henriss-Andersen, 2002). The categorisation of English policy as an act of genocide, however, is contested in both Ireland and Australia (pertaining to Ireland Edwards, 2015; Fields, 1975; Jenkins, 2021; Kennedy, 2022; King, 2009; McGowan, 2017; Mcveigh, 2008; pertaining to Queensland Barta, 2001, 2008; Bartrop, 2001, 2018; Bloxham et al., 2013; Finnane & Richards, 2024; Ghattas, 2023; Jalata, 2013; Kiernan, 2007; Moses, 2005, 2008, 2019; Reynolds, 2001; Robinson & Paten, 2008; Rogers & Bain, 2016; Short, 2010; Tatz, 1999, 2003). Despite records of these acts, contestation remains for some around the intent of England in each place, to destroy the Irish or Aboriginal and Torres Strait Islander populations through the introduction of their various policies. In the Irish example, the intent of English policy during the Great Famine is attributed by some as an effort to save lives (Kennedy, 2022, p. 8), with an arguable failure to extend the understanding of this intention to saving *certain* lives. In the Queensland example, the mass killings by the Native Police[2] continues to be contested. Recent studies look to refer to the collected acts under the crime of genocide as cultural genocide (Short, 2010).

There is a hesitancy in the literature to compare *white suffering/non-white suffering*, especially where *white/Indigenous* people are concerned (Coleman, 2001). As stated, this thesis is not comparative. While it may be uncomfortable to look at the similarities between *white suffering/non-white suffering,* the conditions faced by both populations are similar enough to warrant their joint study. Understanding where their treatment differed is an important part of examining the governmentalities that thrived and continue to thrive/permit violence to be committed by the state at these levels. Though the *self/other* and *coloniser/colonised* binary positions are key to understanding the production of ideas that

[2] See the Anti-Discrimination Commission Queensland's 'Aboriginal people in Queensland: A brief human rights history' p. 6 for a definition of the Native Police.

create reconciliation in Northern Ireland and Queensland, Australia today, this thesis is not an examination of settler colonialism. Rather, this thesis is an examination of reconciliation and how it is being used in societies that have faced violence by the state.

This Chapter will now provide a short introduction to the complexity that is presently the concept of reconciliation.

1.3 The Names We Know Reconciliation By

Reconciliation as a concept has attracted an expansive score of terminology. A large section of reconciliation literature defines reconciliation around the condition of finality. For example, reconciliation is said to signify a type of closure following a difficult past (Vaisman, 2022) or a leaving behind of the past (Lane, 2013), marking an endpoint or conclusion after a conflicted period (Muldoon & Schaap, 2012). It can be part of a political decision to "close the books" (Elster, 2004, p. 2) following silence from state officials, or part of a mutual commitment towards a “project of departure from violence” (Borneman, 2002, p. 282) which requires all parties to self-reconcile with the permanence of loss. Meierhenrich refers to it as “departures from historic injustice” (Meierhenrich, 2008, p. 195) and Bloomfield et al. (2003) as a movement to transcend the past together. Such descriptions suggest a desire to get away from the past, move on, finalise and sometimes even forget the legacy of violence altogether (Palmer & Pocock, 2020; Shaw, 2005).

In contrast, various international and state bodies define reconciliation as a continuous exercise. During a debate on the growing complexities of present-day conflicts, Ambassador and Deputy Permanent Representative of Canada to the United Nations (UN), Richard Arbeiter, specified that “reconciliation is not an event or even a single process” (United Nations, 2019), rather, it is an ongoing activity. The Australian Human Rights Commission (AHRC) state that “genuine reconciliation remains an ongoing journey” (Australian Human Rights Commission, 2022, Journey Towards Reconciliation section). The Northern Irish Government likewise determine that the pathway of reconciliation and peace is ongoing (Northern Irish Executive, 2015a, p. 12). Such language suggests that reconciliation is an ever-evolving

shared practice that requires commitment from generation to generation: a moving-forwards, as opposed to moving-on.

Regardless of whether reconciliation is a continuous process or one with an endpoint, reconciliation promises to be transformative. The practice of reconciliation plays in the contested space between peace and pardons (Frayling, 2009) and sometimes goes by the name of “transforming rituals” (Walker, 2011, p. 225). It can be discussed as a process “probing” for peace (Brown & Poremski, 2015, p. 3), capable of generating transformation across communities from hostility to a coexistence marked by peace (Bilali & Mahmoud, 2017; Rafferty, 2020).

Overall, current reconciliation research illustrates an area overwhelmed by many names. This may be why much of the research appears to be hyper focused on attaining conceptual clarity. By participating in this endeavour, most studies begin from the premise that this template, this strategy for peace, is inherently good (Hutchinson, 2001). In doing so, the study of reconciliation has continued to utilise a concept unchecked and a process few seek to measure. These issues beg further questions: *how did the concept get here? Where did reconciliation come from? Why is the assumption behind its morality so strong, that most factions of society embrace it?*

1.4 A Genealogy of Reconciliation? A Very Brief History

When authors seek to clarify the meaning of reconciliation, two approaches emerge in the literature: Foucauldian inspired genealogies and refinement of definition. A genealogy of reconciliation is the basis of various books (Stricklin, 2000), book chapters (Kerr & Redwood, 2021) and the subject matter of several journal articles (Meierhenrich, 2008; Wyile, 2017). The aim of a Foucauldian genealogy is to document the emergences of a concept across time, investigating what understanding of the concept existed at each point and how it has been produced – what in society made it possible for that understanding to emerge at that time?

It is worth noting, however, that points of emergence are often limited by what has been ‘recorded’—where a 'record' refers to the written word—and therefore tends to prioritise

Western knowledge (written histories) over Indigenous knowledge (oral histories) (Nakata, 2007b). An emerging body of reconciliation literature is taking note of this, however, which allows for a fuller consideration of the concept's history.

To situate the reader into the context of reconciliation's history, some of major emergences that have been discussed in the literature will be outlined in this section. Writing on the Truth and Reconciliation Commission of Canada (the Canadian TRC), Nagy (2014) argues that the notion of 'balance as reconciliation' emerged centuries ago. Chief Joseph of the Gwawa'enuk First Nation is quoted:

> "We always had this notion that we are connected, because we're connected, that those things need to be balanced. We always view that the harm of one would eventually impact and affect all... that's fundamental to all of the teachings that we have. And so reconciliation is not new" (p. 213).

Chief Joseph's version of reconciliation has restorative connotations, focusing on the restoration of balance in the community. Similar versions of reconciliation have surfaced across the world. Centuries old judicial processes in Eastern Africa have utilised an 'equilibrium solution', namely, the restoration of balance (*ubuntu*), instead of punishment of the guilty. The aim here, again, is to restore relations so as to reinstate harmony to community (Sarkin & Daly, 2004). This is done with the participation of the people's Gods, spirits and elders to "accompany the community towards peace" (Osamba, 2006). In Australia, *Makarrata* is a Yolngu word which refers to "the coming together after a struggle" (Little, 2020; Maddison & Nakata, 2020, p. 2). As per the *Uluru Statement from the Heart*, it is another word for treaty or making an agreement (The Referendum Council, 2017).

In his paper *Varieties of Reconciliation*, Meierhenrich (2008) identifies *equilibrium* as the first of four 'background concepts' to reconciliation. He writes that this form of justice is deeply anchored in human history, rooted firmly in most ancient societies. However, with the the Anglo-Norman Conquest of Ireland (1169) came the arrival of the early modern state in Ireland. A retributive model of justice entered, alongside a shift in desirable outcomes.

Punishment was given preference over reconciling parties in conflict. While property was keenly protected by law, persons who had been harmed were decentred. Meierhenrich suggests conciliation, resolution and restoration are the remaining background concepts.

On the idea of *conciliation,* Meierhenrich (2008) writes the concept emerged across early modern Europe, largely inspired by the Christian method of "reconciliation of disputants" (p. 199). Indeed, reconciliation refers to a particular sacrament in the Roman Catholic Church, which once initiated, allows the member of the church to continue partaking in confession. It permits the member to reset their sins to zero and therefore creates the foundation upon which members repeatedly participate in confession (Australian Catholic Bishops Conference, 2021). Of course, the concept of reconciliation can be traced across the Judeo-Christian tradition over millennia. Barth's (2004) *Doctrine of Reconciliation* details how the Old Testament, for example, refers to sacrifice as a method to reconcile yourself before God. This concept of reconciliation speaks to the practice of a person ridding themselves of their sins. The New Testament cites Jesus' sacrifice of his own life for the sins of humanity as the ultimate sacrifice which created a new covenant between God and humanity. This new covenant was said to offer forgiveness and reconciliation. Later, under the early Church, baptism and communion were adopted as sacraments of reconciliation.

The primary objective of conciliation mirrors that of equilibrium: to sustain social order. This method of managing disputes, however, began to be utilised at a commercial level, for example in Norway (1795) and France (1797), in addition to the individual level, and the courts quickly became overwhelmed. The United States of America (US) adopted the model in the late 1800's and a call for an alternative was first recorded from the US in 1976 amid what was thought to be an unhealthy, litigation-obsessed society. Meierhenrich writes that this paved the way for *resolution* (what we now call Alternative Dispute Resolution (ADR)) (Meierhenrich, 2008).

ADR was popular for the two following decades and spread into the international community. It was, however, primarily used for civil cases. Gradually, this version of conflict

resolution emerged in criminal law and was referred to as ‘victim-offender reconciliation’. Van Ness (1993) defines the concept of 'victim-offender reconciliation' as a process of mediation where the involved parties come together to talk about the crime, it's consequences, and to strategise a solution which will “make things right” (Meierhenrich, 2008, p. 201). This practice came to be known as *restorative justice*. Meierhenrich argues that this concept of restorative justice triggered the emergence of reconciliation in the international community. As will be discussed in Section 2.3 Reconciliation and Transitional Justice, transitional justice has been the primary field in which reconciliation, as a state-drive mechanism, has been practiced over the last four decades. As a concept, the field is said to have arisen during the late 1980s in response to calls for justice in Latin America and Eastern Europe (OHCHR, 2014).

1.5 Mapping this Thesis

Let us return now to Hay’s (1998) claim that reconciliation is “one of the most abused words in recent history” (p.13). As is apparent, many scholars are dedicating their work towards a refinement of reconciliation's definition. Nonetheless, in practice, reconciliation processes appear to leave many of the aggrieved feeling unheard and as if justice has not been met. This thesis suggests that if Hay’s claim is true, it has created a climate where, regardless of what definition is attached to reconciliation, use of the word will create the illusion that violence is being addressed. This is deeply problematic, particularly in scenarios where reconciliation processes and promises are not being honoured by the settler state.

In a thorough investigation of the doubt that sits behind reconciliation, this thesis will begin with its literature review in Chapter Two: *‘Deconstructing Reconciliation: A Literature Review of Global Concepts of Reconciliation and Resistance*’. Chapter Three will detail the method and methodology to be utilised. Time will then be taken to provide briefs ahead of each analytical chapter: an historical overview of the conflicts and reconciliation profile of each place will be made, respectively. Each has been written in agreement with the view that history itself is “a deeply contested political space” (Elder, 2017, p. 7).

Chapter Four will provide a brief on Northern Ireland, while Chapter Six will provide a brief on Queensland and wider Australia. Chapter Five and Chapter Seven are this thesis' core analytical chapters. Each will conduct a Bacchian analysis, with Chapter Five considering *Northern Ireland Troubles (Legacy and Reconciliation) Bill 2022-2023* and Chapter Seven examining Queensland, Australia's *Path to Treaty Act 2023*. Chapter Eight will then discuss the crossover findings that occur between the two independent studies and embark upon a deeper consideration of what this research reveals.

2 Chapter Two: Deconstructing Reconciliation: A Literature Review of Global Concepts of Reconciliation and Resistance

2.1 Introduction

To provide a proper introduction to the wealth of knowledge, needs and desires that accumulate into the ideas of reconciliation we hold today, this thesis has dedicated its literature review to break down and examine the understandings of reconciliation across the globe. The work of uncovering the assumptions that underpin discourses of reconciliation is tied into the ways in which reconciliation is produced and resisted. Thus, this literature review is not an exhaustive overview of global concepts, rather, it is the initial inquiry into this thesis' research question. *What underpins global concepts of reconciliation? What underpins its resistance?*

As will be further unpacked in Section 2.1.1 below, reconciliation is practiced—and it is a practice—in many ways. This thesis has chosen to address reconciliation responses to communities that have and continue to endure violence from settler states, commonly referred to as 'legacies of violence' (Mason, 2016) or 'colonial violence' (Klose & Geyer, 2013). Section 2.2 provides the reader with a short introduction to the semantics of reconciliation, and Section 2.3 unpacks the discipline of transitional justice, which presently dominates the field of reconciliation. This literature review will then turn to investigate the ideas of resistance that appear across the literature towards reconciliation, exploring what resistance to reconciliation looks like and questioning what kind of impact it is having in Section 2.4.

2.1.1 Practices and Relations of Reconciliation

The diversity of reconciliation as a concept is illustrated by the many practices captured by the term: inclusive of truth telling (Isaacs, 2009), healing (Frayling, 2009), acknowledgement (Govier, 2009), apology (Hartley et al., 2013; Mellor et al., 2007; Philpot et al., 2013; Short, 2012), amends (McIntosh, 2014), recognition (Muldoon & Schaap, 2012) and forgiveness (Biggar, 2011; Thomas, 2009; Traverso & Broderick, 2020). The range of practices included within one concept also nods towards the ambiguity that plagues the term. While it has been suggested that this diversity is what permits the concept to expand into the nuances of spaces

touched by violence (Chandra-Shekeran, 1998), other researchers advance the argument that reconciliation is a term where no conceptual agreement exists: a troubling “methodological malaise” (Meierhenrich, 2008, p. 195).

The major practices of reconciliation are recited as the ‘Rs’ of reconciliation: remembrance, recording, re-historicising, recompense, reparation and restitution (Dodds, 2012; Maddison et al., 2016, p. 105) and representation, recognition and redistribution (Dahl et al., 2004). Transitional justice has been described as the three R’s of reparation, responsibility, and reframing (Bonner & Matt, 2011) whereas the connected field of restorative justice has been described as revolving around the values of “personalism, reparation, reintegration, and participation" (Meierhenrich, 2008, p. 202).

Conceptually there are also entirely other types of reconciliation. These practices do not necessarily connect to the political practice of reconciliation, as detailed above. Bank reconciliation statements are used in finance (Yudin, 2013), and medical practitioners use medication reconciliation interventions to optimise medication results (Jue & Khanna, 2019). Reconciliation Plans or the Reconciliation Action Plans (RAPs) are used in classrooms in Australian schools and institutions (Fredericks et al., 2017). It follows on that the concept is studied across many disciplinary backgrounds, not least: Indigenous studies, peace and conflict studies, history, law, human geography, sociology, social anthropology. Given its diversity, there is considerable room for dispute in relation to the meaning of the term, even within one discipline. This has created frustration for researchers seeking a comprehensive framework to study the concept within. Some scholars have looked to curb the issue.

Rettberg and Ugarriza (2016) encourage breaking down the multifaceted concept of reconciliation through the use of seven scales, the first being *perspective,* focusing on the disciplinary background that is being emphasised. Their study details the differing approaches and foci that tend to be adopted from each discipline: where works are influenced by religion they tend to focus on forgiveness, apologies, repentance, and guilt; where the lens is psychology, focus is paid to attitudinal and/or emotional change and personal healing;

philosophical discussions tend to deconstruct the concept itself; and legal studies tend to fixate on justice, truth, memory and reparations. They write that historical studies tend to work towards the same goal as legal studies—focusing on how to come to terms with the past—but do so via different measures (Rettberg & Ugarriza, 2016, p. 520).

As stated within this Chapter's Introduction, this thesis focuses on reconciliation used to address legacies of violence or colonial violence. The *perspective* of this study of reconciliation is philosophical and legal in nature, given the selection of legislation as its practical texts. As such, the content produced in this thesis is limited to reconciliation operating in the philosophical and legal sphere.

Beyond the concentrations of academic literature, reconciliation also incorporates aspirations of relational healing. As the South African Truth and Reconciliation Commission (SA TRC) affirms, reconciliation is a “multi-layered healing of human relationships” (1999, p. 350). The SA TRC views many different variations of reconciling relationships:

> relationships of individuals with themselves; relationships between victims; relationships between survivors and perpetrators; relationships within families, between neighbours and within and between communities; relationships within different institutions, between different generations, between racial and ethnic groups, between workers and management and, above all, between the beneficiaries of apartheid and those who have been disadvantaged by it (1999, pp. 350–351).

Given the expansive nature of the study of reconciliation, this thesis clarifies from the outset that the relations that are of interest for the purpose of analysing Northern Ireland and Queensland, Australia, are those captured in the SA TRC final statement: those that exist between the group that has been harmed by the state's institutions and the state proposing the reconciliation legislation.

2.2 The Rhetoric of Reconciliation

Semantics play a significant role in conflict resolution. A major rhetoric within reconciliation literature, whether conscious or not, is the use of the prefix '*re'*. Relationships between parties must be *re*stored (Maddison, 2017), *re*constructed and *re*paired (Quinn, 2009), *re*dressed (Muldoon & Schaap, 2012), *re*classified (Dudai, 2018), or *re*medied (Hough, 2020). The word choice irrefutably produces relations as broken and suggests that relations must be mended, healed or began anew. Within these assumptions, there is no room for *no* relations: the use of *re* makes a critical assumption—that these relationships existed before the conflict arose, in a balanced form and are thus capable of being *re*paired or *re*vived (Elder, 2017; Maddison & Nakata, 2020).

If we presuppose that a relationship existed in the first instance, several assumptions may be added on, for example: that the former relationship was wanted; that trust existed; and resources were shared equally. In view of the many accounts of colonialism, it is likely that the initial power dynamic that existed between said parties did not fit that description. It is also likely, within this dynamic, that the representation of this initial relationship may have been misrepresented or erased. To effectively study reconciliation, it is essential for new studies to swap the premise of an existing relationship and ask, *what was the relationship? What is the relationship now?*

2.3 Reconciliation and Transitional Justice

As explored in Section 1.4 *A Genealogy of Reconciliation? A Very Brief History,* Meierhenrich (2008) has detailed a possible pathway for the emergence of reconciliation as a field. This section digs deeper to consider the connection of transitional justice with reconciliation and its intentions as an emerging discipline.

2.3.1 Transitional Justice

A considerable section of reconciliation literature focuses on reconciliation as transitional justice. As a field of study barely two decades old, literature up until the close of 2023 indicates that transitional justice is a human rights law centred discipline, incorporating aspects of policy, ethics, social science, and the humanities. Its overarching definition closely aligns with, if not mimics, that of reconciliation. For example, transitional justice is described as the process of how political transformation incorporates legacies of past conflict (Connolly, 2006), or the process through which societies adjust their institutions as they move from war to peace, or from regime to democracy, through a lens of justice (Quinn, 2009). But where did it come from?

Transitional justice is said to have arisen during the late 1980s in response to calls for justice in Latin America and Eastern Europe (OHCHR, 2014). Consensus across early literature defines transitional justice as those processes undertaken by a state to address their specific legacies of mass abuse and go beyond the national state's traditional mechanisms for justice, i.e., their national courts. Four justice-seeking mechanisms may be identified within the field: (1) trials, including national, international, or foreign; (2) fact finding bodies, including truth commissions or similar investigative bodies; (3) reparations, referring to acts of compensation toward the victims; and (4) justice reforms, referring to legal and political steps which seek to remove the perpetrators from positions of power within society (Freeman, 2006, pp. 12–13).

These transitional justice processes have typically been studied as state-led initiatives. The narrative changed from 2004, however, with the assertion that such processes may also be undertaken by society (UN Security Council, 2004, p. 4). This definition has gained validation among various states via its dissemination within official documents (De Greiff, 2012). This opened up the study of transitional justice mechanisms to community-led initiatives, such as those decentralised transitional justice programmes in Northern Ireland (Aiken, 2010).

2.3.2 Truth Commissions

A dominant feature of transitional justice is the 'transition period' – the movement from A to B. Transitional justice is interested in those mechanisms that permit such movement, with truth commissions accounting for one of the most popular choices to achieve this (Parker, 2007). Characterised as narrowing the "range of permissible lies" (Ignatieff, 1996, p. 111), truth commissions create a platform for investigating and recovering the truth about past conflict and/or crimes. It is a procedure which promises to showcase a government's past wrongdoing alongside the potential for internal conciliation for victims (Isaacs, 2009). Unfortunately, the mechanism is reported as often falling short in carrying out effective reparations (M. Davis, 2021; Ottendörfer, 2019).

Named as the leading authority on truth commissions, Hayner (2010) identifies four integral characteristics of the mechanism: truth commissions examine (1) only past events; (2) patterns of abuse, as opposed to singular events; (3) are temporary, ending with an official report and conclusions; and (4) are sponsored in some way by the state (Hayner, 2010, p. 14). To date, truth commissions have primarily been associated as state-funded independent bodies (Clamp, 2013), however there is a lack of studies revealing the numbers of truth commissions which are considered more localised and/or occur through community initiatives with alternative sources of funding.

The overwhelming consensus within reconciliation literature is that the origin of truth commissions derive from the South African example. The history of truth commissions has therefore been divided by some into two parts: "before South Africa, and after" (Freeman, 2006, p. 26). Some initial reviews of the South African Truth and Reconciliation Commission (SA TRC) highlighted its success and claimed it provided a model template—one which has been adopted by most commissions since 1996 (Freeman, 2006). Other scholars question the effectiveness of the SA TRC (Boraine, 2001; Gibson, 2005; Meiring, 2002). Within these critiques Gibson (2006) argues that the SA TRC's effectiveness is evaluated on two levels: looking at the SA TRC's efficacy in attaining (1) truth and (2) reconciliation.

Consensus across South Africa's three major ethnic groups revealed that the Commission was effective in bringing out 'truth', but much less successful in bringing about reconciliation (Vora & Vora, 2004). A 2009 study marked a further departure from the consensus in the literature. Roper and Barria (2009) surveyed 44 sub-Saharan African countries, questioning each country's motivation for adopting a truth commission, pre- and post-the SA TRC. While their findings show that post-South Africa democratising states are more likely to adopt a truth commission, they also show that there is no correlation between the adoption of a truth commission by a state and its intentions towards putting democratisation or human rights into practice (Roper & Barria, 2009).

Alongside this discovery is the emerging theory that truth commissions are characterised as the "middle ground" choice or "compromise" (Roper & Barria, 2009, p. 375) between the other options of transitional justice. These include actions such as providing reparations and conducting trials—shifts which would involve change in structure from the state. It has been suggested that truth commissions may therefore be used by the state to "walk away" (Nagy, 2014, p. 215) from legal and public inquiries and the kinds of penalties that may be imposed on the state by established military justice procedures (Williams, 2020). By evading accountability, the state retains the 'right' to exercise control. In this way, truth commissions may be used to preserve the national. Indeed, a small body of literature argue that the SA TRC is a model template to do so (Elder, 2017; Snyder & Vinjamuri, 2003).

Despite these concerns, truth commissions persist as an avenue for attaining justice in Northern Ireland and across Australia. During the late 1990's, Northern Irish victims made a strong argument for a truth commission based on the SA TRC model (K. Bloomfield, 1998). The idea of truth telling as an exercise of re-writing the past has a strong hold for many of the Northern Irish public, however. A truth commission therefore creates an opportunity for state institutions to "police the past" (Lawther & Hearty, 2021, p. 8). As such, an Irish TRC has so far been rejected. Interestingly, during the Second Reading of the *Legacy Bill*, Northern Ireland's Secretary Brandon Lewis MP, drew parallels between the proposed process and the

SA TRC (UK Government, 2022). Commentators argue that given the position of the public in Northern Ireland, its potential success relies on the independence of such a model from the British state (Duffy, 2010).

As with Northern Ireland, ongoing conversations and debates in relation to introducing truth commissions have occurred across each state. In her article, *Revisiting trauma is not the road to justice for Aboriginal people,* Davis emphasises the trauma that is visited upon victims to allow for a truth commission process and the unpromising commitment of states to offer practical change (M. Davis, 2021). Established on the 21 May 2021, The Yoo-rrook Justice Commission in Victoria marked the first truth commission in Australia. Centred on its truth telling purpose, the body seeks to investigate the historical and ongoing injustices committed against Aboriginal Victorians, producing a final report by 30 June 2024 (Yoorrook Justice Commission, n.d.). Time will tell if the Victorian example has been able to reply to some of the critiques of the SA TRC.

The mechanism of truth commissions illustrates the inherent paradox at play in most transitional justice processes. When the body that has committed violence is also the body that establishes the space to tell truth, where does trust form? Can truth materialise without trust? This concern is evidenced in an emerging theory and subsection of transitional justice: transitional *in*justice.

2.3.3 Truth

Under Volume 1 of the South African TRC's reports (1999), the Commission refer to the various manifestations of truth they employed to aid them in their goal of "affirming the dignity of human beings" (p. 114). These truths included: "factual or forensic truth; personal or narrative truth; social or 'dialogue' truth... and healing and restorative truth" (p. 110). Factual/forensic truth refers to the concept of verifiable truth, sourced from objective evidence and information. The SA TRC employed this concept of truth at the individual level to clarify what happened during specific incidents or to specific people. These truths may be used to help identify patterns of action at a broader level and can therefore be used to accurately

indicate the certainties and lies that circulate around an event (p. 111). The idea of certainty can equate to solace for some, and as such this form of truth can be healing in its capacity to give definitive answers. Evidence is not always available and as such, contested areas of truth remain.

Personal and narrative truth refers to the truths, or stories, shared from the subjective experience of "both victims and perpetrators" (p. 112). Sharing multiple and contrasting perspectives, which may diverge from the factual truths presented, highlights the complexity of most conflicts. A possibility for healing arises by virtue of the space for all voices to be heard. The Commission felt that the individual opportunity to share stories in court in their own languages provided a unique and important opportunity for healing. Likewise, perhaps because people felt that this was their opportunity to be heard, it provided an opportunity for certain facts to surface that may otherwise have stayed hidden. The SA TRC argue that these truths can help form narrative truths, which can be used to capture and preserve the national memories of these events (pp. 112-113).

Dialogue truth comes from commitment to the process of open dialogue and a desire to create a shared narrative of 'past' conflict. Judge Albie Sachs, Justice of the Constitutional Court of South Africa (1994-2009) and active participant in debates preceding the creation of the Commission, defines dialogue truth as "social truth", namely, "the truth of experience that is established through interaction, discussion and debate" (p. 113). The SA TRC sought to be a place where everyone from the conflict could be heard respectfully. If this could be achieved, it was suggested that open dialogue could follow.

The final form the Commission frames truth in is 'healing/restorative'. This form of truth "places facts and what they mean within the context of human relationships - both amongst citizens and between the state and its citizens" (p. 114). It is, potentially, this humanising aspect which the Commission frames as healing. This concept of truth pays homage to the SA TRC's view that their perception of truth is inseparable to the process of acquiring truth or to the process of achieving their aims. Since the launch of the SA TRC, the different definitions of

'truth' have been studied and critiqued across disciplines (Bakiner, 2015; Buckley-Zistel, 2013; Cherry, 2015; Girelli, 2017; Griveaud, 2022). Since the launch of the SA TRC, the different definitions of 'truth' have been studied and critiqued across disciplines (Bakiner, 2015; Buckley-Zistel, 2013; Cherry, 2015; Girelli, 2017; Griveaud, 2022). The ways in which the concepts emerge in legislation will be discussed within Chapter 5 pertaining to the *Legacy Bill* in Northern Ireland and Chapter 7 pertaining to Queensland, Australia's *Treaty Bill*.

2.3.4 Transitional Injustice

"Transitional *in*justice" (Loyle & Davenport, 2016, p. 127) describes the ability of the state to utilise mechanisms of transitional justice to advance harmful objectives. For example, engagements to truth commissions are described as manipulations of public perception. In effect, they become positive promotional activities, designed to detract attention away from negative human rights records and used to correct a state's "tarnished image" (Hayner, 1996, p. 22). In some cases, it is suggested that commissions are used to create a "veneer"—to feign democratic legitimacy (Snyder & Vinjamuri, 2003, p. 33). Such suggestions bring back the possibility that governments choose truth commissions as a compromise: a concession that enables them to meet the expectations of the international community and perhaps their electorate, without requiring a genuine commitment to uncovering the truths of local politics (Heathershaw & Lambach, 2008).

Within such schemes it becomes a tool used intentionally by the state to achieve the opposite of truth and reconciliation, namely, denial and forgetting (Loyle & Davenport, 2016). For example, the Canadian TRC has been described as having a "passive design", with the community model depicted as "toothless" (Nagy, 2014, p. 216). The Sámi experience of a truth commission in the Nordic state of Finland is said to appear progressive, whilst representing a continuation of colonialism itself (Kuokkanen, 2020). Discussing the work of Athabascan scholar Dian Million, Davis (2021) considers the state's co-option of trauma and healing as mechanisms to detach themselves from the sovereignty and political goals of First Nations.

In these examples, truth commissions become boycotts of a kind—and perhaps represent “deep colonialism in disguise” (Paradies, 2016, p. 105; Short, 2003). The emergence of ‘transitional *in*justice’ pays attention to the implicit irony of the mainstream mechanisms of transitional justice and begs for a deeper consideration of the assumptions that underpin reconciliation. They also provide grounds for a greater understanding of public resistance to reconciliation.

2.4 Resistance to Reconciliation

Thus far, this literature review has considered the complexity of reconciliation as a definition and considered the controversies that exist within some of its practices. Despite vital critiques emerging from corners of the reconciliation literature, there is relatively little literature published on whether reconciliation is the right practice for places touched by violence. This may be in part due to the under-explored assumptions that sit behind reconciliation. Or the presumption that reconciliation is inherently good (Hutchinson, 2001). The consequences that rest on these assumptions restate the significance of further research into the suitability of reconciliation as a framework and the contradictions that currently plague it.

2.4.1 ‘Post-conflict’ Societies and Spaces

The term 'post-conflict’ is used across reconciliation literature to refer to societies with legacies of violence or colonialism. Named as "the greatest oxymoron of all" (Lederach, 2005, p. 43), some scholars argue it is a misnomer since conflict cannot be ended entirely (Brewer & Hayes, 2011). In reality, peace studies scholars argue it is more likely that a legacy of violence creates a foundation for other types of violence (Darby, 2001) and, ironically, the rapid reoccurrence of conflict is studied as a known risk of ‘post-conflict’ spaces (Collier et al., 2008; Kreutz et al., 2013).

The label of ‘post-conflict’ therefore generates a powerful misconception: namely, that violence, abuse, and discrimination have stopped. The question of whether application of the term ‘post-conflict’ should cease is under-explored in the literature. Critical discussions within human geography, memory studies and conflict studies do offer alternative labels. Within

human geography ‘post-conflict society’ or ‘post-conflict space’ is defined as “places touched by violence” (Robinson & McClelland, 2020, p. 654) or “conflicted spaces” (A. Mitchell & Kelly, 2011, p. 321). In memory studies “spectral traces” (Jonker & Till, 2009, p. 303) are examined to identify the psychological experiences and material markings that remain after an episode of violence. In conflict studies conflict is said to leave “troubling remnants” (Jarman, 2002, p. 15), distinctive and significant traces of violence that can be researched in situ.

The language adopted within human geography, memory studies and conflict studies pushes exploration of reconciliation beyond ‘post-conflict’ space and into both the tangible and invisible remnants of violence: into the “submerged stories” (Jonker & Till, 2009, p. 306) of survivors and ancestors. Through the adoption of a broader definition of violence: one which centralises the experience of place over the past, researchers would be permitted the opportunity to examine how people relate to violence. It may be here that an overview of what people are enduring can become more complete.

2.4.2 Relationships of Resistance

Everyday understanding defines resistance as an opposition or a stand against a movement, largely coming from a place of not wanting to compromise (Raby, 2005). Despite the centrality of resistance in ‘post’-colonial studies, it has received limited theoretical examination and is described as an ambiguous concept which encompasses a variety of practices and experiences (Jefferess, 2008). Resistance towards reconciliation processes has been examined from the perspective of First Nations peoples and those populations who endured harm from state institutions and settler populations.

Suspicion and distrust are prominent themes in the body of literature that considers the perspective of First Nations peoples and that of the populations who suffer(ed) harm. Little (2012) argues that a negative light is cast over the concept, especially where actors use it as an ideological tool “to shore up their perspective” (p. 94) .This is particularly applicable where the processes of reconciliation are being led by the state. In Northern Ireland, suspicion is said to be fuelled by the continued “erosion of institutional legitimacy” experienced, with a

chronically suspended government (Duffy, 2010, p. 29). Perhaps what is called into question here is the reliability of a government's promise. Similarly, for Sámi in Finland, the government's backsliding on established rights fuels widespread mistrust toward state-led reconciliation, despite a desire for a truth commission (Kuokkanen, 2020). In Australia, suspicion from First Nations is described in reaction to any processes that might mean a concession of rights and entitlements (Behrendt, 2001; M. Davis, 2014).

These same populations have also been described in the literature as being resistant to externally funded reconciliation processes. This is in part due to the dependency and power imbalance that is generated when processes are granted external funding. External funding can problematise the attainment of self-sufficiency and impose external agendas which obstruct a sense of local ownership (Avi-Guy, 2015). Significant disruption can be caused when the funding is cut off.

Resistance can also perform a protective role. The process of revisiting past trauma can be invasive and triggering for many people. Demonstrating resistance towards processes of reconciliation may therefore come from an internal instinct to protect oneself or their community from trauma (Dawson, 2017). The desire to protect personal and community grieving practices may also prompt resistance. For example, when reconciliation processes called on the *Madres de Plaza de Mayo* in Argentina to mourn the loss of their children, they refused. To mourn their children in such a way went against their beliefs of the immortality of their sons and daughters who had vanished in the late 1970s (Bevernage, 2012).

Turning to consider resistance towards reconciliation within settler-state populations: resistance from settler populations has been called the “distance, alienation, and mistrust” that exists between Indigenous and settler peoples from either side (Walker, 2011, p. 225). Harris calls this tension a “*disquietude*” (2003, p. 71) that exists between the populations. This disquietude may persist due to feelings of anger, frustration, fear and suspicion and may be maintained due to the settler population's perception of authority over Indigenous knowledge (Macoun & Strakosch, 2013). The effects of guilt and claims of innocence feature strongly in

literature that considers the settler population position (Grey & James, 2016; Kuokkanen, 2020; Maddison, 2011; Nagy, 2014). These feelings can inspire a need to block out discussions of reconciliation and the reality is that many people within the settler population are able to do so: they can ignore these conversations without consequence.

In addition to Indigenous and settler resistance, a growing body of literature identifies the state as a critical participant in resistance towards reconciliation processes. States have been described as avoidant with the intention to omit histories of “violent memory” in order to safeguard their own interests (Barkan, 2016, p. 7). Governments are said to be in denial of responsibility and demonstrate reluctance towards real shifts in how they exercise power (Lightfoot, 2015; Nagy, 2014). Kuokkanen (2020, p. 308) refers to this as a state's resistance to structural transformation, which, given the prerogative of transformation within transitional justice, may well be anticipated.

Three primary relationships of resistance have thus been identified in the literature: from the perspective of First Nations peoples or the population who endured harm; from the settler populations; and from the state. The range of examples in current scholarship illustrate the layers of resistance that are possible. A new step for literature in this space would be to examine the meaning and interaction of these relationships of resistance. This might look like one of the methods used to measure reconciliation: Rafferty's adoption of Strupinskiene’s concepts of ‘thin’ reconciliation and ‘thick’ reconciliation describe an effort to reconcile, characterised either by grudging coexistence (thin) or by collaboration (thick) (Rafferty, 2020; Strupinskienė, 2017). An attempt to harness this potential is practiced below, with the ideas of macro and micro resistances.

2.4.3 Macro and Micro Currents of Resistance

In envisaging an overview, we may adopt the traditional ‘wave of resistance’ and look to identify the separate currents that flow into this wave. For example, forms of resistance from First Nations peoples or the population who endured harm and from the state could be

described as the macro levels of resistance: as two overarching currents that feed the wave. Their prominence in the literature largely accounts for this.

Forms of resistance can also be identified at the micro-level: that is, the individual level that is elsewhere referred to as “individual and interpersonal processes” (Hamber & Kelly, 2009, p. 287). Resistance at this micro- or individual level exists in many spaces and *across* spaces. For example, resistance can exist between different groups of survivors who come to compete for survivor resources, as analysed in the aftermath of the Rwandan genocide (Thomson, 2013). It may come from differing political attitudes that intertwine with religious affiliations and create tensions among survivors (C. Mitchell, 2006). It may be a resistance to the prosecution of military veterans, which features strongly in the Northern Irish case (Guelke, 2019). It can be generational, with younger generations wishing for the dialogue of reconciliation to move on and for funds to be redirected to other pressing needs, for example the struggling economy in Belfast.

The study of these relationships is yet to find its way into the literature, despite its popularity across media headlines and social media (Foil Arms and Hog, 2022). Our discussion of resistance is wide and might also take us to the failure to resist, classically evaluated from the perspective of Nazi soldiers in the German Reich (Leebaw, 2011). There are many ways in which resistance is embodied, and it is a critical step for reconciliation literature to capture the multiple mediums in which they are expressed.

2.5 Conclusion

As has been detailed, current literature within the field of reconciliation demonstrates a concept marked by many assumptions. The literature also illustrates a vast lack of consensus, particularly so regarding the conceptual framework of the term itself and additionally in respect of what society should do about it. An underwhelming lack of understanding also appears when it comes to studying forms of resistance to reconciliation.

Reflecting on the concepts of reconciliation and the variations of resistance to them permits a window into the complexity of this space. At the heart of reconciliation is a human

and a society's capacity to heal. Most people and many societies have different needs when it comes to healing and this does not seem to be recognised within the very many forms of reconciliation listed above. On a more baleful note, the concept of reconciliation seems to be, as Hay (1998) has said, ripe for abuse. A concept that is completely undefined is highly problematic when slotted into legislation.

We return then to the chance to unpack the assumptions that underpin two pieces of modern reconciliation legislation. First, this thesis will unpack its methodology.

3 Chapter Three: Methodology

3.1 Introduction

To reveal the assumptions which underpin reconciliation discourses in Northern Ireland and Queensland, Australia, this thesis will examine the *Northern Ireland Troubles (Legacy and Reconciliation) Bill 2022-2023* (*Legacy Bill)* discourse in Northern Ireland and the *Path to Treaty Act 2023 (Treaty Act)* discourse in Queensland. Section 3.5 of this Chapter will outline the rationale for these text selections, alongside this thesis' study process and data sources.

The foundational theory of this thesis derives from Foucauldian philosophy on the study of thought and from Professor Martin Nakata's Cultural Interface theory. As its primary method, this thesis adopts Professor Emerita Carol Bacchi's '*What is the Problem Represented to Be?*' (WPR) approach. Consisting of six interrelated questions, the Bacchian method is designed for policy discourse analysis. Bacchi confirms its extension to all forms of policy, including legislation (Bacchi, 2022, WPR: Clarifying key premises section). This method will be carried out for each of the two case studies: creating two independent analyses in Chapters Five and Seven. Section 3.2 of this Methodology Chapter begins by introducing discourse analysis, surmising the theory adopted from Foucault. Section 3.3 will outline Nakata's Cultural Interface theory, detailing why this position is pertinent to the analysis of reconciliation and Section 3.4 will detail Bacchi's six step method.

3.2 Discourse Analysis

Discourse as a label is both ubiquitous and ambiguous. It can refer to the usage of language (linguistics) and to the study of thought and knowledge through language in the Foucauldian sense. Under Foucault, the study of discourse is broadly "the production of knowledge through language" (Hall, 1992, p. 291) and more specifically, the analysis of a group of statements derivative from a single 'discursive formation' (referring to those discourses associated with the social sciences and professions for Foucault) (Foucault, 1980). Within this practice, discourses are understood as socially produced forms of knowledge which govern what may be thought, written, or spoken about of a particular social object or practice (Bacchi,

2009). Objects only acquire meaning and become institutionalised objects through the language attached to them and the social practices that accompany those ideas (Foucault, 1980). It is thus through the process of studying discourse, where the status of an object or practice may be questioned (Bacchi, 2009).

For Foucault, the study of thought centres on ‘epistemes’ and ‘discursive formations’ which work as the governing rules in the formation of knowledge (Foucault, 1969). As was discussed briefly in Section 1.4 *A Genealogy of Reconciliation? A Very Brief History*, by mapping the emergences of a concept we can reveal how a concept, such as reconciliation, has grown out of the production of different ideas across different timestamps in history. Foucault suggests the epistemes and discursive formations reveal how the knowledges have been “produced, institutionalised and valorised as (scientific) truth” or ‘truth claims’ (Nakata, 1997, p. 17). These truth claims are those taken for granted truths that underpin the way we understand phenomena in society: such as categories and specific subject positions.

The adoption of a discourse analysis would permit analysis of those truth claims that produce reconciliation as it is understood in Northern Ireland and Queensland, Australia today. This approach is utilised in relation to reconciliation and conflict-resolution elsewhere, for example, to problematise the assumptions behind the label of ‘post-conflict’ (Heathershaw & Lambach, 2008). Within this example, discourse analysis permits a critical consideration of the logics that govern the concepts of ‘power’ and ‘space’ within a ‘post-conflict’ setting. In the South Africa setting, discourse analysis is used to question the production of differing conceptions of human rights and whether this creates an inconsistent prioritisation of said rights (Du Toit, 2009).

3.3 The Cultural Interface

The production of knowledge and truth claims can be studied to reveal how particular objects have come to be in today’s society. Professor Martin Nakata’s concept of the Cultural Interface permits examination of an object across the complexities that sit at the intersection of Indigenous and Western knowledge systems. Nakata describes the positions at the Cultural

Interface as the contested knowledge space: an entanglement (Nakata, 2007b). Spotlighting the constraints and possibilities of this entanglement, the Cultural Interface recognises how First Nations people have been scripted into the matrix of Western knowledge: a body of governing knowledge which does not necessarily reflect how First Nations people think, see, or work.

This limitation informs all bodies of knowledge and as such, is a critical starting point. As Nakata states: “Your parameters for understanding anything new is always going to be domesticated in what is already known” (2020). By engaging the concept of the Cultural Interface alongside Bacchi’s WPR approach, this thesis is able to map and understand the concepts that are domesticated in reconciliation discourses. On truth claims, Nakata refers to Verran (2005): “One knowledge system cannot legitimately verify the "claims to truth" of the other via its own standards and justifications” (2007a, p. 191).

While reconciliation may generally be thought of as an Indigenous concept, it is, as a discipline dominated by the Western sciences and non-Indigenous voices. There are many cases of Indigenous people challenging reconciliation as not delivering on their aims and as such, opportunity to recognise that the discourse is not representative. The Cultural Interface acknowledges the longstanding agency of Indigenous peoples and Indigenous knowledge. In doing so, it asks researchers to reposition Indigenous everyday experience at the centre of our studies. The emphasis from Nakata (2007a) is placed on a researcher sourcing the Indigenous standpoint from “the everyday and not from some grand narrative” (p. 11). Thus, Nakata's (2007a) push to *reposition* Indigenous experiences is not equivalent to the concept of centring or prioritising Indigenous voices and knowledge without taking into account the problematics and tensions which come to shape what is understood as Indigenous ‘voice’ and Indigenous ‘knowledge’ in the first place. As McDowall (2024) states, “An Indigenous standpoint does not simply replace problematic Western knowledges with unproblematised Indigenous knowledge” (pp. 544–545). Rather, repositioning Indigenous everyday experience recognises the agency

of these knowledge holders, and that Indigenous people have always been developing their analysis of Western colonisation.

The Indigenous standpoint is something which has to be produced as a specific form of analysis, rather than simply lifted from Indigenous experience and prioritised in new writing. Nakata (2007a) clarifies: the Indigenous standpoint "does not pre-exist... [it] is itself both a discursive construction and an intellectual device to persuade others and elevate what might not have been a focus of attention by others" (p. 11). In this sense, repositioning Indigenous knowledge is the starting point, rather than the endpoint: "People's lived experience at the interface is the point of entry for investigation, not the case under investigation" (p. 12). The Interface thus recognises and moves beyond the refusal of the Islander position and encourages research that investigates and upholds the interests of Indigenous peoples as determined by Indigenous peoples (Nakata, 2007a). This is essential to the study of reconciliation.

3.4 A Bacchian Policy Analysis: the 'WPR' Method

In order to operationalise this discourse analysis within an interface approach, I decided to use a Bacchian analysis. Bacchi's '*What is the Problem Represented to Be?*' (WPR) approach posits that policies constitute the 'problems' they seek to address through their representation of that problem. This process of producing a problem is what Bacchi refers to as a problematisation, or a problem representation. It is the idea that "what one proposes to do about something reveals what one thinks is problematic ([and] needs to change)" (Bletsas, 2012, p. 21). Rather than measuring the effectiveness of policy, a WPR approach enables observation of the ways a policy constructs our understanding of 'the problem'. It therefore allows the researcher to discern how particular policies shape or limit our understanding of solutions to 'the problem', how the people involved think about themselves, and how these elements might be met by an alternative approach (Bacchi, 2009).

To uncover problematisations, Bacchi encourages an analysis of the relevant binaries, categories and key concepts that appear in the discourse across time, known as 'travelling

ideas' or a 'travelling problem representation' (Bacchi, 2009). A full Foucauldian genealogy would document all the emergences of a concept across time, investigating what understanding of the concept existed at each moment in history and asking how it has been produced.

For Bacchi, placing problematizations at the focal point of study descends from Foucauldian-inspired poststructuralist analysis and Freire's study of problematisation as a practice "that disrupts taken-for-granted truths" (Bacchi, 2009, p. 2). Foucault's philosophy focused on the disentanglement of 'complex strategic relations' which produce 'things' or 'problems' over time. By identifying the points of emergence for objects of thought, Foucault contended that we may explore the relations involved in their emergence and so observe how they have been constituted.

Bacchi's method comprises of six analytical steps. The application of each step allows the researcher to discern how a discourse produces specific representations of 'the problem'. In so doing, the researcher can observe the underlying mentalities that frame and construct 'the problem': their origins, representations, impacts, and those mentalities that silence particular parts of 'the problem'. The final step permits an inquiry into how this representation might be challenged.

The questions include:

1. A clarification exercise, asking: what is 'the problem' represented to be in a specific policy?
2. What presuppositions or assumptions underlie this representation of the 'problem'?
3. How has this representation of the 'problem' come about?
4. What is left unproblematic in this problem representation? Where are the silences? Can the 'problem' be thought about differently?
5. What effects are produced by this representation of the 'problem'?

6. How/where has this representation of the ‘problem’ been produced, disseminated and defended? How could it be questioned, disrupted and replaced?

Q1-3 of the Bacchian WPR method permits a deep analysis of the first research question at stake in this study. Namely, what are the assumptions that underpin reconciliation discourse in each place? Q4-6 of the Bacchian WPR call for an inquiry into what is being silenced by these narratives of reconciliation – and whether the dominant course of action should be questioned, disrupted and replaced. Bacchi perceives this process as a “crucial political intervention” (Bacchi, 2009, p. 4) to problematic policies.

The WPR approach thus seeks to move beyond description and towards an active engagement, providing the possibility to interrupt or even replace our understanding of what the pressing ‘problem’ has been identified as. This shift enables a critical social justice agenda which is pertinent to this study and one which marries harmoniously with Nakata's Cultural Interface theory.

As will be explored below, the task of text selection is an interpretive exercise (Bacchi, 2009), as such the act of selecting each piece of legislation suggests that they are the key informants of reconciliation discourse in each place. This is suggestive that other areas of discourse within each country's reconciliation dialogue are of lesser significance. They are not. There are many channels fuelling the construction of this concept in each place.

3.5 Study Process, Text Selection and Data Sources

This study undertakes Bacchi's six step inquiry to analyse the assumptions that underpinned each piece of legislation and its broader discourse. Through the application of each question, I aimed to identify the ‘govern-mentalities' and gauge an understanding of what specific ‘problems’ each policy sought to solve.

3.5.1 Text Selection: Choosing the Legacy Bill and the Treaty Act

- *The Northern Ireland Troubles (Legacy and Reconciliation) Bill 2022-2023 (Legacy Bill).*
- *The Path to Treaty Act 2023 (Treaty Act).*

When conducting the selection process for the practical texts that represent reconciliation discourse in each country, several critical questions surfaced – *who governs reconciliation? Who decides which issues should be prioritised? Who decides which people are excluded from the policy and by what measure?*

By virtue of my first discipline, I sought to locate reconciliation legislation as the key texts of this study. My initial training is in law: I studied an LLB in Law and Social Anthropology (2015) and an LLM in Human Rights (2017). Thereafter I worked as a legal researcher for three years before joining the Indigenous Education and Research Centre (IERC) for this Master of Philosophy (Indigenous). My choice of law reflects my desire to understand the governing systems of many societies and my interest to curb the grave impact poor justice systems can have. Given my training in legal analysis, I was very interested to apply my learnings within the MPhil intensives to legislation.

I was also interested to select current or on-going legislation. Each piece of legislation was selected due to its currency—namely, that both Bills were moving through their respective Parliaments at the time of writing. As a researcher I am ever curious of the background noise of policy work and wanted to be in situ to that noise. Indeed, as shall be expanded upon—the opportunity to hear the subtexts, to witness the silences, and raise questions permitted keener insights to language, from which this study has benefitted.

How did I find each Bill? The *Legacy Bill* found me. Whilst home in Scotland over the last decade, the tension within parliamentary debates, media coverage, and conversations with friends ensured the Bill's progress through Parliament remained within my orbit. Acute distress from the Northern Irish public dominated media coverage of this legislation and alerted

me to the illegality of the UK Conservative party promises. These promises—the most controversial of all being immunity to all offenders of the Troubles conflict (including state officials)—were introduced to Parliament in May 2022. The analysis conducted of this Bill is of the third version of the Bill, '*HL Bill 37 (as brought from the Commons)*' of 5 July 2022. This was the most current version at the stage of writing. In total, there were eight versions of the Bill, with the second being an exact replica of the first. To maintain consistency in analysis, this thesis does not pass comment on parliamentary debates that followed on after this version of the Bill. Nor does it pass comment on the final Act, which passed in December 2023. All versions of the Bill and the Act may be accessed *here*.

When it came to identifying an appropriate reconciliation policy in Queensland, I originally dismissed Queensland's 'Path to Treaty' on the basis that the focus of the Bill was treaty, rather than reconciliation. As will be unpacked further in Section 7.1.3, I came to see that the Bill—being a path to treaty—rather than setting out a clear step-by-step process for treaty, was about reconciling relations in the state of Queensland. Given my opportunity to work from the IERC in Townsville, I jumped at the chance to be able to study a Bill as it moved through its stages in parliament.

My analysis of each policy followed three stages. First, I deconstructed each section of the legislation, asking what each section problematised by virtue of what was proposed. From there I mapped the major themes that I saw emerging in the problematisations and language of the sections (see, for example, Appendix B: *The Legacy Bill* Visual Overview). Second, I collated the literature and explored what elements would be included as part of the wider reconciliation discourses of each piece of legislation. Finally, with my data in hand, I worked through Bacchi's six step inquiry. Discussion with my supervisors helped me to test my own assumptions about what the state could have intended and refine my analysis towards what the state actually legislated.

3.5.2 Data Sources

This study deliberately draws from a wide range of sources to enable an examination of reconciliation discourse in its fuller form. Rather than being an exhaustive content analysis, it investigates across spaces so as to observe how the discourse is informed or constructed. This permits a broader exploration of the assumptions that underpin reconciliation discourse and allows for the study of concept emergences.

Data drawn from the institutions of each State included:

- **The Executive:** government reports and inquires (including truth commission statements and reports), parliamentary debates, ministerial pronouncements, press releases and media statements;
- **The Legislature:** pieces of legislation, parliamentary bills, contextual legislation, and minutes of proceedings;
- **The Judiciary:** judgements from national courts and—in Northern Ireland's case—the European Court of Human Rights (ECtHR);
- **International Forms of Governance:** press releases, inquiries and reports from the United Nations (UN), the UN treaty bodies, and other relevant Commissions.

These sources were accessed via general search engines; university search engines (current access to James Cook University and The University of Edinburgh); official government websites; and judicial databases, including WestLaw for UK and Australian national caselaw and HUDOC for ECtHR caselaw.

In the case of Northern Ireland, the parliamentary debates on the *Legacy Bill* were used as the leading data source. In the case of Queensland, the ten public forum inquiries into the *Treaty Bill* became the primary data sources for analysis. Each of these data sources were extremely informative as to the ways in which the state had problematised reconciliation and

contained important reflections from the public which revealed how the state's 'problems' were being received and whether/how they might be disrupted.

This study also considered reconciliation discourse from members of the public, including (I) Aboriginal and Torres Strait Islanders and Northern Ireland's Irish population; and (II) the 'settler population' of each place. The specific data drawn from these groups included:

- **Members of the public:** prominent persons discourse via print and news media; speeches; personal social media; academic commentaries; inquiries, reports and census data.

Selection is of course an interpretive exercise (Bacchi, 2009). An important consequence of my data source selections is the implication that these sources are the key informants of reconciliation discourse. This suggests that other groups' discourse within the reconciliation dialogue are of lesser significance. There are of course further categories of interest, for example: settler immigrants that have arrived since the formal ending of colonisation in each place. In the interests of limiting the scope of data that is considered, this group and other potential sources were not included.

3.5.3 Observing the AIATSIS Code of Ethics

This thesis observes the four principles of the AIATSIS research ethics framework and the core responsibilities of researchers conducting Aboriginal and Torres Strait Islander research. This thesis upholds these responsibilities in relation to each case study: Northern Ireland and Queensland.

AIATSIS's four principles include:

1. Indigenous self-determination;
2. Indigenous leadership;
3. Impact and value;
4. Sustainability and accountability.

As per the responsibilities of researchers under Principle 1 of the AIATSIS Code of Ethics, which refers to Indigenous self-determination, this research wishes to highlight my responsibility to “recognise and reflect the diversity of Indigenous peoples, as well as their shared experiences and worldviews” (p. 13). Great care must be taken to ensure that “generalisation or extrapolation of findings” (p. 13) does not mask diversity.

With the Indigenous Education and Research Centre (IERC) (Townsville) as its home, this thesis has seen Indigenous involvement at all stages of research. I was grateful to attend intensives as part of my MPhil degree which were directed toward ensuring attendees gained exposure to the core theories active from Indigenous knowledge. My thesis benefited from an Indigenous advisor and Indigenous panel members. The IERC is built on and holds a strong commitment to self-determination which has offered significant opportunities to better understand how Indigenous priorities are centred within Western contexts.

Part of my efforts to ensure that this thesis observed Principle 1 through 4 included attending the Indigenous Research Support Network (IRSN) seminars at James Cook University in Townsville (in person) and the Center for Cross-Cultural Studies Research Speakers Series at the University of Alaska Fairbanks (remotely). I am a member of the private ‘Indigenous Scholars and Like-Minded Individuals Sharing Group’ formed by the University of Alaska. Each of these networks offer fantastic learning opportunities: making me better aware of areas where I lack knowledge, experience and exposure and inviting me to learn from Indigenous Studies scholars who are experts in their fields.

3.5.4 Passing of Legislation

Since the completion of the Northern Irish Chapters, the UK Government passed the *Northern Ireland Troubles (Legacy and Reconciliation) Act 2023* which came into effect on 18th September 2023. The analysis conducted by this thesis is of version 3/8 of the Bill, ('HL Bill 37 (as brought from the Commons)' of 5 July 2022). A review of the final Act shows that the core components of the Act did not materially change, despite assurances from the UK Government that they would. The amendments made prior to passing the final Act did not remedy the issue of granting immunities to offenders who committed criminal offences during the Troubles. For example, as per Section 19 of the Act, immunity from prosecution can be granted by the ICRIR.

As per Section 13(1), the final Legacy Act requires the Commissioner for Investigations to "comply with the obligations imposed by the *Human Rights Act 1998* when" carrying out reviews. Section 13(11) clarifies that the Commissioner will not be limited by the *Human Rights Act* when carrying out other functions, which brings the *Legacy Act* in violation of the *Human Rights Act 1998* itself and the *European Convention on Human Rights* (Doughty Street Chambers, 2023; Matrix Chambers, 2023; NIHRC, 2023; Irish Government, 2023). The Northern Ireland Human Rights Commission was granted leave to intervene under judicial review by the Northern Irish High Court on the 28th of February 2024 on the basis of perceived breaches of the following human rights:

Article 2 (right to life - including investigation into loss of life)

Article 3 (prohibition from torture or inhuman and degrading treatment)

Article 6 (Right to a fair and public hearing)

Article 8 (Right to privacy and family life)

Article 14 (Right to non-discrimination)

Article 1 of Protocol 1 (Right to peaceful enjoyment of property and possessions).

3.6 Notes on Terminology

Before the inception of this thesis' analytical chapters, a few notes on terminology will be made.

3.6.1 Settler Population

This project defines a settler population as people that arrive from elsewhere to live and remain in a new place. This project restricts the scope of this study to settler populations that arrived as part of British colonialisation. In Queensland, Australia the settler population thus refers to the settlers and their descendants from the British Empire from 1788, marking the beginning of 'white settlement'; and the settler population of Northern Ireland is restricted to those settlers' descendant from the British Protestant immigrants that arrived in Ireland during the Ulster plantation from 1609.

3.6.2 State Sovereignty

Following Foucault (1982), this thesis takes the position that the state is a discursive 'entity' which we give power by believing it exists. That is: the state doesn't exist in any material way; it exists purely because of our commitment to utilise its discursive form. What is it that keeps individuals so committed to its use? From the introduction of the concept of the modern state and the management of society through politics, Foucault argues that 'the state' has acquired the form of power which is 'salvation' orientated. It is, in this sense, the new church (or pastoral power as Foucault writes). The state's promise of salvation deviates from the church, however: "It was no longer a question of leading people to their salvation in the next world but rather ensuring it in this world" (Foucault, 1982, p. 784). This promise is how the state retains authority.

As Abrams (1988) suggests, as researchers writing on relations with the state, we are in a paradox where we should on the one hand recognise the: "cogency of the idea of the state as an ideological power and treat that as a compelling object of analysis", but understand that for just the same reasons that ask us to do so, we are also required "not to believe in the idea of the state, not to concede, even as an abstract formal-object, the existence of the state" (p.

79). This thesis thus duly recognises that the state is a core figure which operates in this analysis. However, given the 'pastoral power' which does continue to permeate from modern day discursive use of the state, this thesis does not enter into discussion on the concept of state sovereignty in either Northern Ireland or Queensland, Australia. Neither do I discuss the requirement of state sovereignty to treaty in relation to the *Treaty Act 2023* (Qld).

3.6.3 Power

The purpose of Foucault's (1982) analysis of power is to create histories of how "human beings are made subjects" (p. 777). In particular, Foucault was interested in how power may be harnessed to gain control and govern populations. Under Foucault's (1982) philosophy self-surveillance is a form of power where individuals absorb external authority and contribute to it by regulating their own behaviours. Such forms of power are encouraged through indirect and subtle mechanisms of control that work by encouraging individuals to continue to self-regulate their behaviour. This idea of 'government at a distance'[3] is connected to Foucault's focus on trying to link the subjectification of people to the emergence of the modern state in the 18th century. The capacity of this form of power to support significant shifts in the subjectification of people ties closely into Bacchi's interrelated problematisations and the need to look closely at how problems are produced by policy and encouraged to take hold by broader society.

3.6.4 Violence

It is important to establish from the outset that by applying a Bacchi WPR to reconciliation discourse in Northern Ireland and Queensland, Australia, the analytical task is not to assess whether reconciliation has happened or whether it has been achieved. The purpose of this thesis is to identify the underlying assumptions that are active in each reconciliation discourse and assess what they tell us about the problem of responding to violence, for example: finding peace 'after' violence. If reconciliation can be categorised as a

[3] See, for example, Da Silva, J. B. & Quattrone, P. (2017). Government at a Distance. In McKinlay & Pezet *Foucault and Managerial Governmentality: Rethinking the Management of Populations, Organizations and Individuals.* Routledge.

response to violence, these underlying assumptions reveal what the state and different factions of the public perceive to be the required steps to address violence.

3.6.5 Truth

Building upon the concepts of truth defined by the South African Truth and Reconciliation Commission (as detailed above at Section 2.3.3), this thesis notes an important binary view of truth. Drawing on the word choice of Lindenbaum (2003), the concept of 'truth' may be described as *privileged truth/accurate truth* across historical writing. It seems counterintuitive to create a label such as 'accurate truth', however, the direct opposite of *privileged truth* is underprivileged truth – which, although it could be used to nod towards the oppression that participates in colonial history, does not pay due attention to the multifaceted nature of truth. Where *privileged truth* takes into account those narratives that suit, *accurate truth* takes into account all narratives. *Underprivileged truths* are those truths that are poorly acknowledged or erased from history. Oral histories, through which Aboriginal and Torres Strait Islanders pass on much of their truths within community, are not given the same platform as written records across Australia. Again, this imbalance places the Aboriginal and Torres Strait Islander on the side the binary that is deprivileged.

3.7 Conclusion

This thesis' analysis is firmly based in policy discourse analysis of legislation, as guided by the six interrelated questions posed by Bacchi's '*What is the Problem Represented to Be?*' (WPR) approach. Nakata's Cultural Interface theory guides the focus of this analysis towards the production of knowledge and undertaking a full enquiry as to the production of those truth claims which shape critical areas of understanding in a particular society.

As indicated in Section 1.5, profiles of Northern Ireland and Queensland, Australia are provided ahead of their analytical chapters to situate the reader in some of the significant historical events of each jurisdiction's history. These profiles are not intended to encompass all significant events of each place's history which may have contributed to the present status of reconciliation discourse. As recommended within Chapter Eight's Discussion, full historical

genealogies of each place (and all places touched by colonial violence) would be an excellent focal point for further research in Indigenous Studies, Decolonisation Studies, Transitional Injustice, and many more fields.

The following Chapter Four proceeds to provide a snapshot profile of Northern Ireland, focusing on some of the key details and events that provide important contextual background to how reconciliation is being produced and understood in Northern Ireland today.

4 Chapter Four: A Short Introduction to Northern Ireland

4.1 A Celebration of Land and People

Described frequently as an "ancient landscape" (Wigboldus, 2022, p. 27), Ireland and Northern Ireland have deep associations with ancestry, Celtic mythology and storytelling (Ó Hogain, 1999). The isle sits in the north-eastern Atlantic Ocean with the Irish Sea stretching out on one side, distancing the island from the coastlines of Scotland, Wales and England. In Scots Gaelic the island is poetically referred to as *Eiriinn* after the goddess *Ériu,* who is described as the goddess of sovereignty, or goddess of the land (O'Rahilly, 1946). From William Drennan's poem *When Erin First Rose,* the land has come to be known as the Emerald Isle, given its green landscapes, fertile soil and pervasive natural beauty (Le Bot, 2018). Indeed, connection to land has been a marked feature of the various populations of people that have named it home.

In the summer, around 620,000 tourists flock to Ireland each month (Central Statistics Office, 2023) with ancestry being cited as a popular reason for visiting (Ancestry, 2016). The population claiming ancestry to the island is uniquely shaped by the country's broad definition for the Irish diaspora. Expanding the definition of their diaspora beyond citizenship—the Irish identity may be claimed by people with Irish ancestry and anyone who identifies as Irish. Thus, it has one of the largest estimated diaspora populations in the world, with near 80 million people claiming Irish ancestry living outside of Ireland (Irish Abroad Unit, 2017). This has developed, in part, due to the 1+ million Irish citizens that fled the isle during the Great Famine (1845-1850).

The island has become the homeland of various settlers across time, each of which have greatly influenced modern-day practices on the isle. The ancient Irish Celtic traditions of storytelling, mythology, folklore, poetry, oral traditions, and the practice of intricate metalwork and stone carvings, music, dance and sport remain deeply embedded in Irish culture (Becker, 2009). In present day, each of these influences continue to be practiced and celebrated as part of mainstream culture. *Gaeilge* (dating back to the 6th century B.C.E.), for example, is presently

the official language of the Republic of Ireland (Nic Giolla Mhichíl et al., 2018). English is the first language in Northern Ireland and as of October 2022, the *Identity and Language (Northern Ireland) Act 2022* now recognises Irish (*gaelic* or *gaeilge*) and Ulster Scots.

4.2 Waves of Invasion or Influence?

Over the centuries Ireland's shores have born witness to several 'arrivals' of settlers. The nature of these arrivals is dubious, receiving differing descriptions. The island itself is said to have formed 65-2.6 million years ago, during the Neogene period (UNESCO, n.d.). Archaeological excavations place Mesolithic hunter-gathers on the island in around 8,000 B.C.E. (Woodman & McCarthy, 2003). The famous Mount Sandel Mesolithic Site, located in County Derry, is considered to be one of the oldest settlements in Ireland, dating back to around 7,000 B.C.E (Woodman, 1981).

Coming from mainland Europe, Celtic society brought their language, belief systems and forms of social organisation to Ireland in around 700 B.C.E. (Becker, 2009). Some argue that there is no clear evidence of invasion and suggest that this section of history should be articulated as a fusion of cultures, one where Celtic society borrowed culture from or were heavily influenced by those already settled on the island (State, 2019). They argue that archaeological pieces uncovered in Ireland are of a distinctive local character, exemplifying continuity and evidencing a land devoid of foreign settlement (Becker, 2009; Raftery, 1994). Other authors have referred to it as an occupation, where people of a different constitution became dominated (Macalister, 1918) or colonialisation, one where a fairer race replaced a darker race (Lehane, 2005). While the nature of its arrival is debated, Celtic culture persisted in Ireland for thousands of years, surviving beyond the invasions and arrivals still to come ashore.

Under the fall of the Roman Empire, Christianity—in crisis—needed to expand. Recorded from 431 C.E., the arrival of Christianity to Ireland stimulated another significant shift in local practices. By the end of the 6th century, Ireland is said to have embraced their new faith centuries before others, becoming a model Christian culture (Gribben, 2021). State (2019)

writes that this conversion occurred without violence, and quickly placed the faith at the centre of Irish life. Today, academic accounts continue to ask whether religion is the dominant boundary-marker for the centuries of conflict, creating many of the conditions (and often used as the marker) for social segregation (C. Mitchell, 2006), or whether its role has been misconstrued (O'Leary, 2019).

While the island's shores did not escape the Vikings, it is said that Ireland escaped their widespread raiding and colonialisation. In 840, Norse Viking Turgéis invaded and conquered Ireland, but did not seek settlement. The Vikings adopted the island as a military base, forming few colonies and utilising the land in relative cooperation with the then seven Irish Kingdoms (P. K. Davis, 2016). Various studies posit the Vikings' admiration for the boatbuilding skills of the local Irish as the basis for this and claim that their relationship was one forged of trade (McErlean & Crothers, 2007). Intermarriage and cultural exchange led to a mixing of Norse and Gaelic cultural elements, forging a new hybrid culture (Kulovesi, 2017).

4.3 English Waves of Invasion and Colonisation

Having evaded the waves of violence from the Roman Empire, Christianity and the Vikings, Ireland was confronted with the impact of a series of Norman invasions across the British Isles over the 11th and 12th centuries. From the 5th century Anglo-Saxons, Germanic people who had arrived in the Isles after the defeat of the Romans, dominated the seven kingdoms of England. The Saxons were overthrown following the death of English King Edward III (1042-1066) who passed without an heir. Competing claims to the English throne dissolved the alliance between England and Normandy (a region of northern France). England was invaded first by King of Norway Harald III (1015–1066) who attempted to claim the English throne. Thereafter, William Duke of Normandy and the Anglo-Norman armies entered battle with the Vikings and the Anglo-Saxons for the throne (Jones & Mattingly, 1990). The Anglo-Norman Conquest of England (1066) is said to have been the introduction of Anglo-Norman influence into Ireland which would eventually lead to England securing control of certain areas on the island. Of great significance was the Anglo-Norman introduction of the feudal system

for land ownership and centralised authority (to Norman lords) to England made by William Duke of Normandy (Faith, 2019; Hudson, 1997). A century later in 1169, the Anglo-Norman invasion of Ireland brought these systems to the fore in Ireland. The 1169 invasion of Ireland is thus said to have "sowed the dragons' teeth of centuries of conflict" between the two neighbours (Montaño, 2011, p. 22).

In 1171, King of England Henry II claimed himself King of Ireland. From herein, Ireland lost autonomy to England over the following 7 centuries. It is thus said to have become the British Empire's "first colonial expansion" (Rahman et al., 2017, p. 15), and its "oldest colonial dilemma" (O'Neill, 1998, p. 459). Of perhaps the greatest consequence to the political landscape was the introduction of England's plantation policies, which began the dividing of a nation of one people into deep ethnonational lines (Bosi & De Fazio, 2017).

4.4 Two Parliaments: An Independent Ireland and Northern Ireland

The English policy of plantation in Ireland refers to the strategic settlement or 'planting' of loyal, English-speaking subjects on Irish land. Between 1550 and 1641, plantation schemes were introduced across ten Irish provinces in the north of the island. Margery (2018) writes that many of the schemes were designed so that the native Irish and new settlers would live "side-by-side" (p. 556). The purpose of the policy was for those planted persons to interact with and transfer their loyalty for the English crown to the native Irish. Over centuries the island became divided by a population who wished to be Irish and one who fought to be British.

One of the most significant uprisings against the UK Government came on Easter Monday, April 24th in 1916 in Dublin. A facet of the Irish Volunteers—The Irish Republican Brotherhood, which was the main nationalist organisation—took up arms and occupied the General Post Office, issuing several demands. The siege was ended by the British infantry on the 29th of April. The movement, known as the Easter Rising, saw a loss of lives of over 120 soldiers in the British infantry and 60 members of the Irish Volunteers. Sixteen members who led the rising were executed by the British state, which garnered large portions of the island's sympathy towards *Sinn Féin* (the political party campaigning for implementation of Home Rule

in Ireland) (Foy & Barton, 2011). Easter Rising paved the way for the Irish War of Independence (1919-1921) which saw the IRA pursue the Irish Republic's declaration of independence following repeated failure on the part of the UK Government to implement Home Rule in Ireland (McKenna, 2014).

In 1921, two parliaments were recognised on the isle: the *Dáil Éireann* continued in Dublin, representative of the 26 counties that became the Irish Free State – free from the British Empire. Up north, the six Ulster counties immersed in England's plantation policy, formed Northern Ireland, a constituent region or country of the United Kingdom (Government of Ireland Act 1920). The Northern Irish Parliament, named the Northern Ireland Assembly (or Stormont), was established in Belfast. In 1949, the south of Ireland became the Republic of Ireland under the *Republic of Ireland Act* 1948.

The six counties of Northern Ireland account for 14,130km² of the island, taking just over two hours to drive across. As recorded by the 2021 Census, its population includes 1,903,100 people making up just 28.3% of the island's population (Northern Ireland Statistics and Research Agency, 2021). Based on the British electorate model, the capacity of such a small population to have a say in British politics is limited. This is especially true when the daily functioning of Parliament begins to lapse. Given the instability of the Northern Irish Assembly, the British Parliament, Westminster, has been heavily involved in its operations since 1921.

4.5 The Troubles

'The Troubles' marks the thirty-year period (1968–1998) of conflict between Irish republicans, British loyalists and the British Army. While the Irish republics sought a reunited Ireland—and freedom from English rule—the British loyalists (primarily based in Northern Ireland) remained loyal to the English crown and fought for the north to be British. The British Army dispatched 250,000 soldiers to aid "civil power" in 1969, at the request of the Northern Irish Government. The era is described as a "generation of inconclusive urban warfare" (O'Neill, 1998, p. 464), with over 3,700 deaths recorded, including:

> 1,842 civilians, 1,114 members of the security forces, 395 members of Republican paramilitary organisations, 168 members of Loyalist paramilitary organisations, and 10 members of the Irish security forces. (Lawther & Hearty, 2021, p. 3)

Acts which would be classified as crimes against humanity are well documented components of the methods utilised by both the British forces and the Irish Republican Army (IRA), including murder, imprisonment, torture, and rape. Many sources report that the Royal Ulster Constabulary (RUC) (the Northern Irish police force of the time) had an "inclination, if not a policy" to shoot-to-kill (Lawther & Hearty, 2021, p. 5). The RUC was known for introducing extreme force during peaceful protests (Bosi & De Fazio, 2017). Given that the RUC were supported by the British Army, the IRA perceived the RUC as loyal to the British Government (Ellison, 2000). This positioned two heavily armed groups against each other. All of these acts amount to breaches of Article 7 of the *Rome Statute of the International Criminal Court* under international law and are punishable in Northern Ireland under the *International Criminal Court Act 2001*. None of these acts have been processed in court.

In 1972, Bloody Sunday saw British soldiers shoot dead 14 unarmed civilians as they marched in protest of imprisonment without trial (Leahy, 2024). The public response to the massacre was strong. In a step to curb further violence, then UK Conservative Prime Minister Edward Heath responded by imposing direct rule (Birrell, 2013). The political intervention stimulated various reactions, including further aggression from the IRA who saw the move as evidence of the UK Government's intention to exercise more power.

The Good Friday Agreement (1998) is said to mark the formal end of the Troubles, after much loss. It was the product of an eighteen-month negotiation process between ten political parties in the region (O'Neill, 1998, p. 463). As part of the *Path to Peace Agreement*[4]*, the Good*

[4] The Path to Peace Agreement is refers to the complex process and series of negotiations, agreements, and legislation that culminated in the Good Friday Agreement 1998.

Friday Agreement was designed to allow for power-sharing and the promise of reconciliation. *The Path to Peace Agreement* also made unique provision for a referendum: should the majority of the Northern Irish electorate wish to change from British to Irish rule, it would be permitted.

4.6 The Third Parliament: Westminster

The Northern Irish Assembly functions on the basis of power-sharing between its major political parties: each of the 90 elected representatives of the Assembly must identify themselves as unionist, nationalist or other (Northern Irish Executive, 2015b). Like the Scottish Parliament, the leading parties decide and may legislate on *devolved* matters, which extend only to:

> health and social services, education, employment and skills, agriculture, social security, pensions and child support, housing, economic development, local government, environmental issues, including planning, transport, culture and sport, the Northern Ireland Civil Service, equal opportunities, justice and policing. (Northern Ireland Assembly, 2024)

Where the Assembly wishes to legislate beyond these policies, such as within broadcasting, firearms or intellectual property, they must gain the consent of the UK Secretary of State (Northern Ireland Assembly, 2024).

As noted, the Assembly has suffered long periods of instability. The collapse of the Northern Irish Assembly usually follows the resignation of the First Minister, meaning that the government is without Northern Irish leadership. In such an event, the other executive ministers may continue working and maintain the daily functioning of government. In this instance, it is known as a collapse of government. On the other hand, where the parliament fails to reach a power-sharing agreement, senior Northern Ireland civil servants become responsible for the daily running of government. Crucially, they have limited powers when it comes to developing new policies, new primary legislation, or making meaningful political

decisions. As such, the Assembly becomes *non-functioning* and the period is known as a suspension of government (Haughey, 2024).

After power-sharing broke down between the leading parties in January 2017, the Northern Irish Assembly was dissolved and has been in suspension for most of the last 7 years (with restoration once in January 2020, and dissolution again in February 2022). The impact to a region of firstly, having devolved government; and secondly, having non-functioning government over seven years, is dire. With challenges coming from the public regarding the welfare of the population, particularly for children in poverty, calls for politicians to correct the lag in leadership and representation keep coming (A. Gordon, 2023; Sherlock, 2023).

4.7 Tension

To attempt a summary of the violence that is so readily affiliated with the North of Ireland is to attempt to condense many years (and counting) of a deep-rooted conflict. There is no doubt that the introduction of the plantation policies has sparked centuries of fighting in the north and compounded present-day political tensions. The conflict that has grasped Northern Ireland has long been compared to cases with similar ethnonational division, such as Cyprus, Lebanon, Palestine and South Africa (Bosi & De Fazio, 2017), all being summarised as long and “intractable conflicts” (Guelke, 2019, p. 392).

In the context of Northern Ireland ethnonational conflict is often analysed as religious division (Ruane, 2021); or as political association or allegiance (Mitchell, 2006). Rather than being the cause of conflict, some authors argue that religion operates primarily as “a marker of national identity” (Berkley Center for Religion, Peace, and World Affairs, 2013, p. 4). Other authors centralise the role of nationality or ethnicity as the cause of the conflict (Barth, 1998; Morag, 2008; O’Neill, 1998; Ruane & Todd, 1996).

Todd (n.d.) argues that researchers must pay attention to the nuance of all of these roles in the creation and continuation of the conflict. In draft comments, Todd (n.d.) refers to Benedict Anderson’s (2006) *Imagined Communities: Reflections on the Origin and Spread of*

Nationalism and highlights the “distinctive symbolic logic” that can be identified when researchers pay attention to the “relevance of content to boundaries” (p. 3). Indeed, the conflict is symbolised via the perceived division of Catholic and Protestant communities. As the peacelines of Belfast physically show, the city today remains deeply segregated by religious affiliation (Belfast Mobility Project, 2018; Mitchell & Kelly, 2011). Likewise, the conflict may be symbolised through sport allegiances or language choice. Such analyses can be very illuminating, especially in reference to Irish sport where Gaelic football is seen to symbolise ethnonational identities (Zenker, 2013) or language which is deeply fought over in Northern Ireland (MacKenzie et al., 2022; Nic Giolla Mhichíl et al., 2018).

As such, this thesis seeks to stay close to the idea that the historical separation of peoples—a complicated erasure and creation of national identities—is what sparked many of the most violent years of the island's history and two types of national identity (Morag, 2008; O’Neill, 1998).

5 Chapter Five: What is the 'Problem' Represented to be? Analysing the UK's *Northern Ireland Troubles (Legacy and Reconciliation) Bill 2022-2023*

5.1 Introduction

On 17 May 2022 the Conservative led UK Government introduced the *Legacy Bill* to the UK House of Commons for its First Reading. At this stage, the Bill proposed to "address the legacy of the Troubles and promote reconciliation" (*Legacy Bill* (UK) Long Title) by establishing the following:

- an Independent Commission for Reconciliation and Information Recovery (ICRIR);
- limiting criminal investigations, legal proceedings, inquests and police complaints;
- extending the prisoner release scheme in the *Northern Ireland (Sentences) Act 1998*;
- providing for experiences to be recorded and preserved and for events to be studied and memorialised.

The sponsoring departments of the *Legacy Bill* are former Secretary of State for Northern Ireland (2020-2022), Brandon Lewis (Conservative MP), and the current Parliamentary Under-Secretary of State for the Northern Ireland Office, Lord Caine (Conservative Life Peer of the House of Lords). The Conservative party introduced the Bill with the intention of upholding their party manifesto promises, which highlighted the party's respect for the institutions of the British state and a desire to protect them:

> We will also never forget the immense contribution of the police and Armed Forces in standing firm against terrorists in the past and the debt we owe them for peace today. We will continue to seek better ways of dealing with legacy issues that provide better outcomes for victims and survivors and do more to give veterans the protections they deserve (UK Conservative Party, 2019).

The *Legacy Bill* is the most recent example of the UK Government's legislative shift away from the criminalisation of Troubles-related offenders, with information-recovery and

memorialisation posited as the key strategies by which to address the island's intense period of conflict and promote reconciliation.

The *Legacy Bill* has spurred stark opposition from the people of Northern Ireland, with all its victims' groups, churches, and Northern Ireland's major political parties aligned against it. As the most recent attempt to pass legislation which might realise the promises made in the *Good Friday Agreement 1998*, it is a central 'practical text' through which to analyse reconciliation discourse in Northern Ireland.

This Chapter will analyse the *Legacy Bill* discourse via Q1-6 of Bacchi's '*What is the Problem Represented to Be?*' (WPR) approach. As stated within Chapter Three: Methodology, this thesis does not make an exhaustive analysis of the legislation's discourse. Rather, it takes the opportunity to make selection across the discourse of key materials that allow for a well-rounded view of what the major production of subject positions and problematisations are. How each are produced and tolerated (and even sometimes celebrated) in society often reveals the inner workings of governance—and how that form of governance might be disrupted, if deemed necessary.

5.2 What is the 'Problem' Represented to Be?

As per Bacchi's WPR approach, a problematisation refers to the production of a 'problem' in policy. Bacchi's Q1 asks the researcher to read 'problems' from policy. As Bletsas and Beasley (2012) claim, the focus here is on considering what a policy proposes to do and questioning what is produced as problematic by way of that instruction. This thesis submits that the *Legacy Bill* discourse produces the reconciliatory needs of Northern Ireland as (1) a 'problem' of recovering information and truth and (2) a 'problem' of memorialising that information.

5.2.1 *Reconciliation as an Information-Recovery Problem*

The *Legacy Bill* produces reconciliation as an 'information-recovery problem' on the premise that access to information is the essential prerequisite for personal and societal healing. Each sponsoring department of the Bill describes information-recovery as the priority concern for victims, survivors and their families. In their opening statements, both Brandon Lewis MP and Lord Caine share this sentiment:

> ...this legislation marks a definitive shift in focus by having information recovery for families at its core (Brandon Lewis MP) (*Hansard House of Commons*, 2022, col. 177).

> ...the purpose of what the Government are putting forward here is to try to bring forward information and get people to the truths in a much more timely way... that is the genuine intention: to try to get more information out there while it is still available (Lord Caine) (*Hansard House of Lords*, 2023b, col. 1464).

In the second statement, Lord Caine places a time stamp on information recovery, tied to the impending loss of those who still hold memories of the Troubles. In this way, information-recovery becomes a time-sensitive and urgent process: a finite resource for accessing the truth.

Set up under Part II of the Bill, *The Independent Commission for Reconciliation and Information Recovery* (ICRIR) would assume a role akin to the South African Truth Commission. Its functions include carrying out reviews of deaths and harmful conduct related to the Troubles, to produce 'final reports' for each of these cases and determine whether the persons involved should be granted immunity (excluding Troubles-related sexual offences). Their final function is to produce a 'historical record' of each death caused by Troubles conduct.

It is highly likely that the UK Government assumes that this process of information-recovery—or truth-recovery, as Lord Caine states—will provide clarity or certainty to those who have endured loss during the Troubles. This may raise the opportunity for peace of mind,

closure or healing. This group of assumptions situates the UK Government's 'information-recovery problem' of reconciliation within the truth-telling components of transitional justice—the sustainability of which has come under critique in recent years (Clark, 2011; Lawther, 2017; Merwe et al., 2009). As Section 2.3.2 has discussed, truth-telling is one mechanism that may provide an alternative route towards peace and justice (Freeman, 2006). It is designed to do so in a way that accounts for 'trauma' (as an ongoing effect) and permits broader societal healing (Corntassel et al., 2009; Fisher, 2013; Mucci, 2014; Schwan, 1998). Such adjustments can allow for a movement away from the criminal justice system, without giving up the intention to secure justice.

Alongside seeking information-recovery for families of the victims, this process will provide information-recovery to all affected parties. It is of interest, however, that the UK Government isolates and emphasises the need of information-recovery *for British veterans* as a specific aim of the Bill. Here the intention is to deliver truth to provide certainty *against prosecution* is justified as providing veterans the protection they deserve. As Brandon Lewis MP recites in his announcement of the *Legacy Bill*:

> With this Bill, our veterans will have the certainty they deserve and we will fulfil our manifesto pledge to end the cycle of investigations that has plagued too many of them for too long (Brandon Lewis MP) (*Hansard House of Commons*, 2022, col. 177).

Here, Lewis refers to the introduction of immunity that Part II of the *Legacy Bill* would provide for British veterans who served, a controversial inclusion given the UK's long history of criminal prosecution. Remarkable, in fact, given the UK is one of the only jurisdictions in the world to pursue criminal offences committed by its own citizens on foreign soil (Criminal Law Act, 1977). The construction and impact of the UK veteran category on reconciliation will be discussed below under Section 5.3.2.1 in more detail.

5.2.2 ***Reconciliation as a Memorialisation Problem***

The *Legacy Bill* also produces reconciliation as a 'problem of memorialisation'. Rather than an exercise of truth-recovery, the UK Government place importance on the exercise of preserving truth. Part IV of the Bill outlines the initiatives for ‘Memorialising the Troubles’. These are collectively referred to as the '*Troubles-related work programme*' which includes the functions imposed by Sections 43 (Oral History), 44 (Memorialisation Strategy) and 46 (Academic Research) of the Bill. Together, these provisions produce a strategy of remembrance which will be researched and questioned against what will be “most relevant” to the Northern Irish public in achieving reconciliation. As the components of the *Troubles-related work programme* reveal, access to truth and engagement with the past are produced as key features of reconciliation.

The detailed content of Part 4 of the Bill (summarised under Appendix A) may be used to identify the specific 'problems' *The Legacy Bill* produces in relation to addressing legacy issues and promoting reconciliation as a memorialisation problem. These are (1) preservation of and access to truth; (2) balanced representation within that which is memorialised; and (3) public access and involvement.

5.2.3 ***Shifting from Criminalisation***

As the remainder (and bulk) of the *Legacy Bill*'s provisions indicate, this problematisation of information-recovery and memorialisation marks a significant shift in the UK Government’s previous problematisation of reconciliation as a criminal justice system/security problem: a shift which has been occurring over many years and many versions of legislation. From August 1969 until July 2007, the UK Government deployed over 300,000 troops into Northern Ireland as part of *Operation Banner*. This policy amounted to the longest, continuous deployment in the British Army’s history (Moran, 2016). At the time, the UK Government’s policy of deployment problematised the civil unrest in Northern Ireland as a criminal justice/security issue—one where the infusion of security forces from the UK would produce stability and peace.

While the *Good Friday Agreement 1998* remains the hallmark legislation that brought ceasefire and ‘ended’ the official period of the Troubles, it did not end British military presence in Northern Ireland. *Operation Banner* and the official presence of British troops in Northern Ireland ‘ended’ in 2007. The peacekeeping efforts of the region have continued, however, with regular patrolling of neighbourhoods and Belfast communities divided by ‘peace lines’—that is iron, brick or steel walls, up to 8 meters high (Belfast Mobility Project, 2018), alongside curfews.

5.3 What Presuppositions or Assumptions Underlie these Representations of the ‘Problem’?

Returning then to the core problematisations of the *Legacy Bill*: achieving reconciliation as a 'problem' of information-recovery and memorialisation. Parliamentary debates and associated materials provide insight into the government rationalities or ‘govern-mentalities' that underpin the *Legacy Bill*—that is, the deep-seated cultural values that have become the Bill's governing forms of knowledge. It is this body of knowledge that makes the problematisations outlined above possible.

Under Q2 of Bacchi’s analysis, the assumptions underpinning a problem representation may be revealed through discourse analysis of binaries, categories and key concepts known as ‘travelling ideas’ or a 'travelling problem representation' (Bacchi, 2009). While there are many examples within the Northern Ireland reconciliation case study, only those considered central to the construction of reconciliation as an information-recovery and memorialisation 'problem' will be considered here.

5.3.1 *Key Binaries*

As Bacchi (2009) explains, a binary assumes an exclusionary *"A/not-A relationship"* (p. 9) with an implied hierarchy where one side of the binary is privileged. This privileged side is likely to be in control of the production of knowledge (Nakata, 2020). Of course, binaries may not always appear as each other's direct opposites. The question of whether the binaries identified in Northern Irish discourse are 'binary opposites or unique neighbours' is posed by Hickman (2002) who analyses the emergence of the *British/Irish* binary. This question of 'neighbours' duly recognises that not all binaries equate to simple opposition—rather, some are made up of several relations which have differing degrees of opposition. The task therefore is one of "unlocking and unsettling the different constituent parts" (Smith, 2012, p. 29) of each set of relations.

Uncovering these sets of relations is well suited to the Northern Irish reconciliation discourse, whose oppositional forces are not always as straightforward as they seem. Several explicit binaries underpin the discourse of the *Legacy Bill* and its debates: *victim/perpetrator, veteran/civilian, legal/illegal, law and order/terrorism, peace/violence, moral/immoral,* and *loyal/disloyal.* This analysis suggests that each of these identified binary pairs feed into and critically interact with one overarching implied binary: *innocent/guilty*. Two binary pairs in particular help to illustrate the undercurrent of tension that *innocent/guilty* imposes within the Northern Irish discourse: *state/citizen* (which includes *veteran/civilians* as agents of the state) and *civilised*/*primitive* (which includes *British/Irish,* as will be examined below).

5.3.1.1 The *State/Citizen* Binary

The *state/citizen* binary is a central division within the *Legacy Bill* discourse. Particularly so given the tenuous relations that the Northern Irish population have with the Northern Irish Assembly: over the last seven years, their government has failed to meet normative standards of governance. Northern Ireland has thus effectively been governed by the British Government, which in its most recent years, introduced Brexit. In the case of Northern Ireland it appears that a significant loss of faith in governance has occurred. Examples of this loss of faith from the

public include news headlines such as: *NI politics saw seismic shift in 2022 - yet nothing changed* (Kearney, 2023); *Political dysfunction in Northern Ireland is the new normal* (The Economist, 2023)*;* and *'Do as I say, not as I do' – Why we no longer have faith in politicians and what we can do about it* (O'Lynn, 2023). O'Lynn (2023) writes:

> Faith has been fractured because society has been violated. The public can no longer subscribe to outdated notions of hierarchical power and control given that those at the top of these structures have so profoundly abused their privilege… At a time when we need more cohesion, ethical leadership and inclusive governance our religious and political leaders continue to fall short.

A strong level of alienation has occurred between the Northern Irish public and those who represent them at the state level. Bindenagel Šehović (2018) asks what happens when this *state/citizen* relationship, which ought to be defined by reciprocity, no longer holds? Where there is a significant loss of faith in government, does the polity of Northern Ireland continue to view themselves as in a relationship with the state at all?

The prominence of the *veteran/civilian* or *soldier/civilian* binary in warfare around the world is well established. The binary emerges in the US as a product of their war culture (K. N. Harris, 2014). This binary, however, is challenged within the Northern Irish discourse. Uniquely, the binary is both simultaneously constructed and blurred. Several claims made during the *Legacy Bill's* parliamentary debate position civilians and veterans in the same category. For example, Viscount Brookeborough claims:

> ...veterans are not just people like me and not just their families: they are our societies. If you take rural areas like where I come from, a village or a locality, those societies have become veterans of the Troubles. If you do not live there, you do not know how completely the lives of everybody who wanted peace were changed (*Hansard House of Lords*, 2023c, col. 116).

Discussing Wyatt (2002), Dandeker et al. (2006) argue that this notion of inextricability between the service of civilians and veterans is situated in the UK's long history of warfare. The actions of British civilians and veterans during WWII are described as a "total mobilization of the population" (Dandeker et al., 2006, p. 163; Wyatt, 2002) which resulted in a shared suffering and loss—one which, if only attributed to the category of veterans, would not sit well in public opinion. Perhaps, the UK's commitment to honouring service and sacrifice is so strong, that anyone who adopts such a role during wartime falls into the category of veteran.

This blurring of the *civilian/veteran* binary is an important signal. It draws parallels with another critical binary and tension that underlines public and parliamentary debate on the *Legacy Bill*. This inextricability – the overlap of 'oppositional' categories – bleeds into the *innocent/guilty* binary. If who is innocent cannot be separated from who is guilty when it comes to prosecuting and sentencing Troubles-related offences, *what becomes of the state/citizen binary? Who are the victims of the Troubles? Who is accountable? Who has the capacity to reconcile? Who applies justice if the state doesn't?* This blurring of binaries plays out in the UK Government's struggles to separate the 10% of British officials who committed war crimes and hold them accountable. It seems that to name them guilty, would be to name everyone who has served guilty (Sanders, 2021).

5.3.1.2 The *British/Irish* Binary

In addition to the key binaries that underpin the *Legacy Bill*, there are several population binaries that exist in Northern Ireland. This type of binary categorisation draws parallels to the population binary of *Indigenous/non-Indigenous* in Australia and Aotearoa/New Zealand where Rowse argues the national censuses created the binary over time and it now operates to categorise the populations into two (Bacchi, 2012; Rowse, 2009, p. 36). The following population-type binaries may be observed in Northern Irish discourse: *Irish/British, Protestant/Catholic, Gaelic/English, Rangers/Celtic.* Each of these population-binaries tend to identify and categorise the Northern Irish population into the two major political binaries:

loyalism/republican or *nationalism/unionism* which are represented by the leading political parties: *DUP*/*Sinn Féin*.

One of the primary relations that creates and sustains the *British/Irish* binary is the influence of British nationalism, which has long positioned the British as the privileged, ruling class. The impact of the *British/Irish* binary is exclusionary in the sense that it makes claims of multi-belonging or multi-ethnicity difficult for people of Irish descent (Hickman, 2002). This is so despite the system of citizenship which permits individuals born in Northern Ireland to *choose:* they may identify as Irish, British, or both (UK Parliament, 2023). In Northern Ireland, the lived reality and significance of this binary are the lines of division, which are both physical—in the form of peace barriers between communities and segregated schooling—and mental, with a reduced sense of belonging in either communities' space.

The exclusionary impact of these population binaries, particularly *British/Irish* and *Protestant/Catholic* has been referred to as a process of 'othering' or "binaries of Otherness" (Smith, 2022; Hickman, 2000, p. 51). Perhaps because the *Protestant/Catholic* binary is reflected in visible division via segregated housing, schooling, and so forth, it is often reported as the divisive fuel that perpetuates conflict in the region. This maintains the perception that the conflict is internal, amongst the Irish—rather than finding its home in the tension that exists in the *British/Irish* binary.

5.3.2 ***Key Categories***

The most common categories that surface within the broader Northern Irish reconciliation discourse, are categorisations of people around ethic and cultural lines, as above: *Irish, British, Protestant, Catholic, Gaelic, English, Rangers, Celtic* and so on. Within the *Legacy Bill* debate, two key categories of people are centred: *victims* and *veterans*, which of course, are not mutually exclusive, with the frequent surfacing of *terrorist*.

5.3.2.1 Veterans

The category of ‘veteran’ is specific to each country, contingent upon its history, politics, and a range of social and cultural factors (Queens University, 2023). Nonetheless, most definitions for veteran operate within a fixed criterion, evaluating someone against the nature, location and duration of their *service* (Dandeker et al., 2006). The UK Government's definition of military service is described as "the most inclusive of any country” (Burdett et al., 2013, p. 752) extending to all persons who have served and been paid for just one day.

From an etymological standpoint, the term veteran is borrowed from *veterānus - ‘vetus’* meaning ‘old, aged, ancient’ in Latin which, in the UK context, has associations today with *experience*. This experience, earned over time, tends to translate into respect owed. Alongside *service* and *experience*, the UK category of ‘veteran’ is defined by many other positive associations: *duty*, *heroism, honour, morality, professionalism, loyalty, courage, pride, dedication* and *sacrifice*—as evidenced in the discourse of the *Legacy Bill's* Parliamentary debates.

This persona of 'veteran' fosters an expectation both within and outside of the group that veterans will be protected from besmirch of any kind (K. Hearty, 2023a). This extends to protection from tarnished reputations and may even continue to the protection from prosecution itself. It is a common sentiment surfacing within the *Legacy Bill* debates: for example, Lord Dodds described the approach of the Bill as an affront to justice, claiming that to offer immunity to all is to place veterans in the same category as terrorists. The insinuation being, that such an act would impose the same threshold of immorality to veterans:

> The approach taken by this Bill is wrong... It would extinguish the flame of justice for countless families. It would draw a moral equivalence between terrorists intent on bloodshed and those who served our communities with dedication and professionalism (*Hansard House of Lords*, 2022a, col. 1403).

This approach to legacy, says Lord Dodds, is one-sided. He denounces it as "an industrial-scale propaganda effort to besmirch" those in uniform (*Hansard House of Lords*, 2022a, col. 1403). He argues that the proper pursuit of justice would be to *restore* a balance to the investigative activity of the Troubles. This, Lord Dodds, states, may be accomplished by ensuring that inquiries are made into the atrocities carried out by terrorist actors—in addition to those that have already been carried out in relation to crimes by the state, such as the Bloody Sunday Inquiry.

This notion of balance resurfaces time again during the *Legacy Bill* Parliamentary debate, particularly in relation to restoring or keeping a balance between those who committed violence in uniform and those who committed violence under a terrorist organisation. Specifically, it is repeated that the UK Government is responsible for 10% of the lives taken during the Troubles, as if, perhaps, to say, *only* 10%. A particular assumption may sit underneath these submissions: the scales of justice should be weighted according to who committed the bulk of the atrocities. On face value, it is a reasonable argument. What it fails to consider, however, is that if we are to talk about the scales of justice being weighted – then we must ask *who owes a duty of care? Who was in a greater position to exercise power?* This notion of balance echoes the need for an *"equilibrium solution"*. Where neither side of the debate want the other to benefit from absolution – in the name of information recovery and memorialisation, *where can balance be sought?*

5.3.3 ***Key Concepts***

The key concepts that underpin the *Legacy Bill* and its production of reconciliation as a 'problem' of information-recovery and memorialisation, are truth and remembrance.

5.3.3.1 Truth

There are many versions of the concept of truth (M. P. Lynch, 2011) and certainly more than one presents itself in the broader Northern Irish reconciliation discourse. One, however, is essential as a conceptual logic that underpins the *Legacy Bill:* truth *as* justice. This is the

notion that the provision of truth equates to the delivery of justice in and of itself. Here, truth is sought after as an essential—and perhaps final—step in societal processing and healing (The Truth and Reconciliation Commission of South Africa, 1999). The idea that this form of truth can lead to healing is dissimilar to the SA TRC concept of truth as restorative/healing, in that the latter attempts to achieve healing by recognising that there are many layers to such a process, whereas truth as justice tends to disregard those nuances and expects healing to come about via the prospect of finality. As stipulated by the commissioned Consultative Group on the Past (2009) "...only by honestly addressing the past can we truly deal with it and then leave it" (p. 14).

Parliamentary debate on the *Legacy Bill* reveals truth as the chosen currency of justice, a decision that could sit contently within the realms of transitional justice. Two significant possibilities arise from the version of truth *as* justice that is displayed, however. The first possibility is the erosion of criminal liability. Two practices may be considered in this context. The first practice has gained traction in various transitional societies seeking reconciliation—this is the exchange of truth for immunity from prosecution or the granting of amnesties. Here, a trade is made to secure testimony from individuals who would otherwise stay silent due to fear of prosecution.

This approach was widely criticised during Parliamentary debate on the *Legacy Bill* across the political spectrum. Lord Browne argued:

> ...the granting of immunity in exchange for information will be seen by many—nay, all—victims as an attempt to achieve present harmony at the price of their past and enduring distress... (*Hansard House of Lords*, 2022a, col. 1434).

The implication of such an exchange is this: if justice is converted into a truth-seeking mission, then criminal liability dissolves. The second practice has the same consequence. Park (2010) explains: where truth is positioned as justice, a state's obligation and investigative function toward heinous crimes may be separated into two—the pursuit of truth and criminal

liability. This produces the practice of investigating truth in isolation. The possibility to separate truth and criminal liability is strengthened by the growing international recognition of the *right* to truth (Méndez & Mariezcurrena, 2003). Even though the investigation of one does not preclude the other, states tend to investigate one exclusively. Where truth is positioned as justice, the state's investigative function is fulfilled by their truth seeking.

During the *Legacy Bill* debates Lord Sentamu (Crossbench) reflects on Archbishop Desmond Tutu's comments from the SA TRC and alludes to this possibility of truth as justice equating to truth without justice:

> Although it [the TRC] was built on justice, the methodology was very different. It provided the world with another tool in the struggle against impunity and the search for truth and justice. The regret that Archbishop Desmond Tutu had was that it did not have "justice" in its name. It had "truth and reconciliation"; the truth was found and reconciliation was attempted but, in the end, justice was not delivered" (*Hansard House of Lords*, 2022a, col. 1434).

It is worth asking: does truth in isolation generate justice? Within the field of transitional justice, Robins (2012) asks to what extent it is evidenced that truth-telling is cathartic. Upon reviewing the decade of transitional justice processes that occurred in Timor-Leste, which were devoid of judicial process, he argues that what can be observed is "the trope of truth as healing" (p. 84). Whether or not being informed of the truth of the Troubles, in isolation of judicial process, may be considered healing is for each individual to decide. At the time of the *Legacy Bill* debates the UK Parliament had access to many reports that indicated that the majority of all interested parties wished for the involvement of judicial process. Amnesty International UK reported that 68% of UK adults still sought conviction for those individuals who committed serious offences during the Troubles (Amnesty International, 2023). The UK Parliament was aware of the want for judicial justice. Despite this, the *Legacy Bill* adopts the trope of truth as healing and prioritises information-recovery over judicial process. In doing so, the *Legacy Bill* (intentionally or not) positions truth-telling as a primary objective for achieving justice. Such

action creates a noticeable silence around the worth of judicial process and the dubious choice to eliminate it.

The second possibility seems to further erode prospects of delivering other forms of justice. As noted, investigating truth is vehemently supported by most participants throughout Parliamentary debate on the *Legacy Bill*. It is with some sense of irony then, that the word truth does not appear anywhere in the *Legacy Bill*. Under the *Legacy Bill* ‘truth’ is effectively exchanged for ‘information’. The de-emphasis on direct use of the term is not new, however, with its absence noted in the *Stormont House Agreement 2014*. Perhaps, this de-emphasis on truth ties in with the government's tactical transition from truth-recovery towards information-recovery.

5.3.3.2 Remembrance

The concept of remembrance forms the foundation for the *Legacy Bill's* focus on memorialisation and the 'sub-problems' identified in Section 5.2.2: the problems of (1) preservation of and access to truth; (2) balanced representation within that which is memorialised; and (3) public access and involvement.

Perhaps it is the human condition that demands a need to remember those that are lost. Yet, when it comes to mass violence, there is also a demand to reject the events that occurred and frequently a desire to forget them. These needs come into contrast with one another. It is within this space that the notion of commemoration appears to be an important substitute for celebration of loved ones lost during conflict—commemoration is as near to neutral as we might reach in a 'post'-conflict society that might otherwise wish to celebrate loudly those they have lost and the causes they fought for.

Sinn Féin MP John Finucane recently received a backlash for providing an opening speech at a South Armagh Volunteers commemoration (labelled as an 'IRA commemoration' by the BBC). In response, he stated:

> There is nothing to celebrate in conflict, or in our difficult and painful past, but to commemorate those we have loved and lost is a right which everyone... is entitled to, and we do so with dignity and with pride (Graham, 2023).

Commemoration is also a marked feature of British war memorialisation, cemented following WWI and WWII, and strongly associated to veterans in the *lest we forget* campaign. The Conservative party demonstrate a strong commitment to honouring both world war veterans and current serving British soldiers:

> ...this Government will always salute their service and their sacrifice, and we will always remember the debt of gratitude we owe them (Lord Caine) (*Hansard House of Lords*, 2022b, col. 1390).

The notion of *debt* reveals an interesting rhetoric. It floats back to the phrases, *pay tribute* and *lest we forget*. An unpaid debt conjures up feelings of guilt, immorality and even criminality. Guilt seems to operate in two primary ways here: first, remembrance offers life to the dead—it is a means through which to keep their memories alive. In this respect, there is a redemptive promise in memory (Baum, 2000). It is a way through which the living may alleviate their guilt. This practice, of course, also operates as a coping mechanism for the families of the victims: a way to allow their lost ones to stay with them and live on through memory.

The second operation of guilt from the living, is a concern with how the dead perceive them. This may motivate the living to find ways to offer solace for the dead. In both cases, however motivated, remembrance may become a mechanism to liberate the living (Mutlu, 2022). The redemptive promise of memory, as captured by Baum (2000), may extend to the events themselves—if we pay remembrance to the dead, then perhaps the past can be redeemed and a peaceful future forged. This is the promise of reconciliation that remembrance offers.

5.3.4 *Summary*

The *Legacy Bill's* focus on information-recovery and memorialisation as the current 'problem' of reconciliation for the victims of the Troubles is heavily influenced by the UK Government's perception of their veterans. This is true particularly surrounding what the government believes the UK veterans are owed, with the two primary debts appearing to be remembrance and protection.

Remembrance clearly follows on from the UK's long tradition of military remembrance and a desire to honour service. The need to protect also arises out of a debt owed for duty. Trending international examples of truth commissions justify a shift towards information-recovery, but it is important here to be critical as to whether truth-recovery will amount to justice as designed within a transitional justice framework.

A silence also emerges here–the Irish people. So much of the Parliamentary debate and the UK news media headlines discuss the veteran. What of the Irish and Northern Irish victims and families who seek reconciliation or resolution here? The next section will consider this and how these other core ideas emerged and became so ingrained so as to produce these problematisations. This will be Bacchi's 'Q3', which allows for an exploration of how these key assumptions and practices have been constructed over time.

5.4 How has this Representation of the ‘Problem’ Come About?

Within Bacchi's methodology, Q3 asks for a form of Foucauldian genealogy, whereby the researcher seeks to uncover the emergence of ideas that have led to the dominance of the identified problem representation(s). It is important to distinguish between a Foucauldian genealogy and a Bacchi genealogy as outlined under Q3. As Bacchi states “This will be a history (genealogy), looking at these key points as singular events, rather than as part of an evolution towards an inevitable end-point. Here, we highlight themes, as the archival work required for a genealogy is not possible” (p. 61). Omissions are necessary to achieve a Bacchi genealogy that focuses on the formation of specific understandings at certain points in time and anlayse the occurrence of key themes that might permit the development of particular

ideas within a specific society. The aim, thus, is not to trace the evolution of an idea across time–as in a full Foucauldian genealogy–but to do the groundwork of identifying the occurrence of those core themes or ideas that permit the development of a particular problematisation.

In the present case, we seek to understand the practices and processes that occurred at different timepoints across the British Isle's history and analyse how they permitted the emergence of Northern Irish reconciliation as a problem of information-recovery and memorialisation. Bacchi's Q3 is completed by highlighting the key themes and asking how we can de-familiarise the 'taken-for-granted beliefs' attached to them and critique them in a way as to reveal the mechanics behind present-day conflicts (Bacchi, 2009, pp. 61–64). The emergence of the *civilised/primitive* and *state/citizen* binaries are especially important: what was it in society that afforded the Irish the position of primitive? What changes occurred along the way? Any starting point for this work is artificial: thus, this thesis begins in the 12th century, with a view to examining the theme of resentment born between the Irish and English and within the Irish population itself.

5.4.1 *Gaelic Ireland 1100's*

English theorists from the 12th century immersed themselves within the defects of Gaelic Ireland. Their writings positioned the native Irish as a barbarous, primitive, and beastly peoples (Cambrensis, 1118; Ohlmeyer, 1998). Cambrensis' discourse was particularly influential in establishing this narrative as English public opinion of Ireland. His views were regurgitated by settler theorists in the 16th century, from the likes of Spenser, Smith and Davies and in the 17th century with Moryson and Rich. Across these writings, the dissentient notions of the native Irish changed very little (Margey, 2018).

The idea of a savage peoples is oft imposed to permit the belief that the people in question require reform (Nakata, 2007a). Ireland was no exception to this imposition. Firstly, the English use of savage positioned the native Irish as lacking capacity to manage themselves and their land. Here, the binary of *civilised/primitive* emerges, which shapes the continuing interactions with the Irish. Secondly, savage was used to denote the natives as cruel peoples

(Rich, 1610). The positioning of primitive makes room for a narrative where reform is a gift to a people who would otherwise be without a particular version of 'civilisation'. The positioning of a people as cruel creates, arguably, an even more sinister space for this reform to occur, for it permits punishment as a method of that reform. It is difficult to say whether this subject positioning of the Irish was deliberately constructed. With hindsight, it appears to be a strategy. Was Cambrensis employed to produce a particular vision of the people of Ireland?

5.4.2 *Emergence of the Modern State 1580's*

At the end of the 16th century, the earliest notions of a modern state in Ireland emerged. Queen Elizabeth remained resident in England during the 1580's and as such her authority struggled to reach past the jurisdiction of Dublin in Ireland. The commanding English Lords fought with perceived Irish civil disobedience. The English understanding of *civilised/primitive* was further engrained via this rhetoric of the disobedient, disorderly Irish. Now, with popular support from the English public who perceive their neighbours in need of order, the state use the *civilised/primitive* binary as a platform to introduce policy.

Impeding Irish disobedience became a central objective of the English governing forces in Ireland (and would continue for centuries) (Hutchinson, 2014). The inception of the modern state is thus inextricably linked to the idea and need to reform the Irish polity. Despite clear evidence that the Irish traded exceptionally well globally and had knew how to govern themselves, the *civilised/primitive* binary had taken root. This need to create obedience extended to extreme measures such as refusing to call parliament from 1587-1613 (Morgan, 1999; Brady, 2009). The English Government's struggle to assert absolute authority, in combination with the English opinion of the Irish, led to various theorists calling for the development of schemes through which to control the Irish polity. This led to the emergence of the Irish plantation policies.

5.4.3 ***Plantation Policies 1550-1641***

The purpose of the first plantations was to civilise the native Irish (Ó Siochrú & Ciardha, 2021). At its core, the policy sought to reform the barbarous and beastly nature that had been assigned to the locals (Cambrensis, 1118; Moryson, 1617) and incite loyalty to the crown. By planting English speaking men, women and their families into the north of Ireland, the crown's strategy relied on the merging of the populations and the spread of loyalty to the nation. The crown hoped that this would prevent an Irish rebellion and permanently secure the subjugation of Ireland. Here the *civilised/primitive* binary manifests as a new binary, within national identities: *British/Irish.* The treatment of the Irish on their own land continued as second-class citizens within the Isles for centuries to come, firmly rooted in the *civilised/primitive* binary that formed it.

The plantation policies mark a significant step in world history: creating what some call the template for English colonial expansion (Ó Siochrú & Ciardha, 2021), or "a laboratory for empire" (Margey, 2018, p. 555). At the bare minimum, the policies devastated local populations by taking their land, forbidding their culture, their language, and their rights (Edwards, 2015). The policies lay the English blueprint for the categorisation of native populations as 'other' and lessor and used this created reality to convert them, denying them their liberty and lives on their own country as an accepted part of this process.

This process alone planted the seeds for resentment: particularly so from the native-Irish population towards the English. The policy design had created a situation where non-natives merged and established roots with the native-Irish, with each population feeling a sense of belonging to the land and an entitlement to it. As such, competing definitions of Irish identity grew (Morag, 2008; O'Neill, 1998) and with it, the possibility for a national population to be divided by ethnicity. As has been set out above, the dynamic of the *British/Irish* binary is shaped harshly by the deep discrimination administered by the crown. The combination of the categorisation of the Irish as lessor and barbaric encouraged a profound hatred to develop from the British to the Irish. This hate enabled the unfathomable actions against the Irish that

would follow and embedded the complex population divisions which are said to have sown the seeds for centuries of conflict in Ireland (Montaño, 2011).

5.4.4 *The Great Famine 1845-1852*

If the plantation policies sowed the seeds of resentment, the infliction of famine by English policy onto the native-Irish fuelled the local population's bitterness. In 1845 potato blight swept across Ireland and the British Isles. English policy forced the native-Irish to continue exporting all of their healthy crops to England. The policy instilled the notion that Ireland's land and its crops were for the benefit of the English, even where the Irish population faced certain death. The policy was described as an explicit choice to commit mass starvation (Houston, 2022), with the next six years seeing over 1 million people die and another million+ forcibly emigrate from Ireland (Ó Murchadha, 2011). Ireland's pre-famine population of 8 million people has still not recovered in 2024. By the inception of the 20th century, the Irish had thus been subjected to extreme trauma under English policy. As such, the Irish cause for resentment toward the English was firmly engrained. Where the crown introduces policy that commits one group of the population to starvation, there is no doubt as to the difference in value placed on those persons. The entrenchment of the *civilised/primitive* binary permitted the crown to view the Irish identity as lesser than within the *British/Irish* binary—to a remarkably dire degree and—to the loss of millions of native Irish people.

5.4.5 *State Responsibility and Human Rights 1914-1948*

The threat of a full-scale Irish rebellion was palpable at the beginning of the 20th century, so much so, that the expectation of Irish disloyalty to the UK is described as a significant factor—the Irish Factor—in Germany's decision to begin WWI (Aan de Wiel, 2011). When it came to raising their army and enlisting the Irish, the British Empire relied on their capacity to invoke loyalty to the English monarch, much alike their mechanism of persuasion during the plantation policies (Fitzpatrick, 2018). The end of WWI and the creation of the League of Nations in 1920 marked the beginning of a relative period of 'global' stability–or rather, it suggested a desire for peaceful international order (Cohrs, 2009). The League was

created primarily to promote collective security, settle international disputes and deter aggressor states. It did so by promoting a step away from the monarchical empire structure and onto independent nation states. The League thus solidified the new global order of countries. With this new world order came state responsibility: the League generated the expectation that states must hold themselves and each other responsible for crimes against other nations.

WWII and the advent of the Holocaust (1941-1945) became the catalyst for another significant shift in state responsibility. The Nuremberg Trial of Major War Criminals (1945-1946) promoted the idea that states must be held criminally responsible for crimes, not only against each other, but against their citizens. This marked a departure from the *Treaty of Versailles* and an expansion of the original ambition of the League. This extension of state responsibility to the citizen created the foundation for the emergence of a rights-based discourse where the individual became centralised. This led to the establishment of the United Nations in 1945 and the release of the *Universal Declaration of Human Rights* (1948). Today, international human rights law has expanded to nine core human rights treaties, with 193 Member States. In signing each treaty, member states promise to ratify and uphold the rights contained for all individuals in their jurisdiction. Here we see the emergence of a new type of binary that will eventually come to shape how the Irish are positioned in the legacy bill: the *state/citizen.*

5.4.6 ***Civil Rights Movements and Political Instability in Ireland 1950's-1970's***

Shortly after the international practice of human rights first emerged, civil rights movements broke out across the globe during the 1950's. In the US, black Americans living in the South protested against racial segregation and from 1948 until 1959, South Africans participated in militant forms of protest against the state's apartheid policy. Each civil rights movement garnered support from around the world, with peoples of other nations protesting discrimination and petitioning for equality and respect for human rights. Television played a major role in increasing the spread of these messages globally (Waller & McCallum, 2018).

This marked yet another shift in who took ownership for ensuring an individual's rights were observed. The consciousness of the global people was altered in two ways. Firstly, the public gained a keen awareness of the state's failures to meet demands for justice. Secondly, citizens knew that it was their right to have their human rights respected. Citizens were thus validated in taking justice into their own hands.

As these fights were waged, 1968 was named as the year of global revolt in Northern Ireland (Prince, 2006). The year marks the beginning of the most cited period of turbulence in its history–The Troubles. The civil war that ensued would last until 1998, coming to a closure of kinds with the *Good Friday Agreement*. As discussed in Section 5.2.3, *Operation Banner* saw the British Army dispatched to the North to aid “civil power” in 1969, at the request of the Northern Irish Government.

5.4.7 *International Demand for Responsibility 1995*

Following the end of apartheid, the South African Truth and Reconciliation Commission (SA TRC) was established in 1995. Its creation marked the emergence of reconciliation discourse as an alternative route to justice. The spread of this idea at the international level indicated an unmistakable departure from the individualistic Nuremberg style of trials of Nazi Germany, where individual leaders were allocated collective responsibility for war crimes. Despite some shortcomings, the SA TRC model gained traction, as did its mode of justice: transitional justice.

Enmeshed within the growing body of international human rights, civil rights movements embraced transitional justice. States came under increasing pressure to demonstrate a commitment to meeting these demands. At this time, a wave of official apologies emerged. In 1997, then UK Prime Minister Tony Blair released an apology for the Potato Famine across Ireland. This was followed by the Bloody Sunday Apology from then UK Prime Minister David Cameron in 2010. In the same period formal apologies were issued by their respective leaders in Australia (2008) and Canada (2008), with the most recent apologies issued by Taiwan (2016) and Belgium (2020). Over these decades, transitional justice

emerges as the new form of desired justice and apologies echo demands for government action.

5.4.8 *Policing the Past*

From the close of The Troubles, state-led reconciliation processes in Northern Ireland and Ireland focused on truth recovery as the primary means through which to achieve justice for the victims. The Northern Irish Police, however, have been put in charge of most truth-recovery processes. This pattern of police-led truth recovery has been described by some as a ‘policing of the past’: namely, a filtering of the past in favour of the organisational memory of state officials (Lawther & Hearty, 2021). By retaining the Northern Irish Police force as the overseeing authority of the conflict, the UK and Northern Irish Governments have firewalled the police force from critique and liability. This idea of policing the past represents a strong desire from the Northern Irish and UK Governments to protect institutional memory. The positioning of police as the investigator prevents independent investigation which in turn is likely to influence who comes forward with evidence or information. This, too, creates an absence of competing memories which prevents the recording of alternative narratives of the conflict and leads to continual investigation (Chung, 2020).

5.4.9 *Summary*

From the 12th century construction of the Irish people as beastly and savage, a crucial idea is permitted: that the Irish population needed to be civilised and controlled. Such an idea creates a justification, one which the crown used to impose new conditions onto the Irish. Born from this need to civilise and control the Irish people, the Irish plantation policies emerged. The treatment and extensive loss of land endured by the Irish crownunder the plantation policies set in motion a resentment between both the Irish and English, but also between the Irish and those 'planted' English, Scots and Welsh subjects who marked the beginning of a new Irish ethnicity. This resentment was compounded by the extreme loss of Irish life during the Great Famine.

With new ideas of state responsibility and human rights emerging, The Troubles began at the end of a global civil rights movement. No longer would citizens abide by state governance that jeopardised their lives and livelihoods. At the cessation of the official period of The Troubles (1998), the Irish people were able to demand justice for the lives that had been lost and for the centuries upon centuries in which they were abused, neglected and sorely mistreated by England.

Over the course of the Isle's history, the Irish have been positioned into an overlap of binaries: *civilised/primitive* to *British/Irish* to *state/citizen.* All of the pairings occur in unison and fall under the overarching *parent/child* binary which produces the Irish person as someone who needs order and oversight. This, in turn, produces the state as morally righteous for providing these services. These binaries create a dynamic where the *Legacy Bill* is perceived as an appropriate function of the UK Government and its response to its moral obligations to care for 'its' people. The *civilised/primitive* binary also creates the foundational premise for the *British/Irish* binary, where the native Irish population were positioned as a lessor people and denied the same level of agency which the UK Government afforded British citizens.

To date, the UK Government has responded to calls for justice. Albeit the mechanisms that have been utilised in Northern Ireland have been under the control of the Northern Irish Police, one of the principal bodies accused of war crimes during the Troubles. *Is this a policing of the past to avoid accepting responsibility? Has this continued? Has the Legacy Bill been designed to close this chapter, rather than read it?* The *Legacy Bill's* promise of information-recovery as reconciliation draws parallels with the SA TRC, yet, it comes with costs. One being criminal liability: a consequence that is not required by transitional justice.

5.5 What is Left Unproblematic in this Problem Representation? Can the 'Problem' be Thought About Differently?

Bacchi's Q4 asks us to consider *what is left out in this construction of reconciliation*? The pursuit for truth and remembrance has dominated the dialogue of Parliamentary debate. Such domination leaves little room for the expression of other ideas. While these gaps certainty

form silences in the *Legacy Bill* itself, these 'other ideas' are not absent. We see their emergence in academic commentary, public discourse and even in the *Legacy Bill's* Parliamentary debate. This section will consider the key 'silences' that occur across the UK Government's Northern Irish reconciliation discourse and ask a critical question: can and should this representation of the 'problem' be thought about in a different way?

5.5.1 *Ethos of Justice*

As has been discussed: the pursuit of truth and remembrance as forms of justice does not necessitate the erasure of criminal liability and trials. In fact, it is often argued that the mechanisms of transitional justice work best when used in unison with the aim of justice in places touched by violence (Booth, 2001). Despite this, the UK Government's history of legislation regarding The Troubles evidences a progressive removal of criminal justice elements, with its *Sentencing Acts* being the most obvious examples.

The UK Government variously justifies these steps due to the unlikelihood of successful prosecutions and a desire to save the families of victims from false hope (Lundy, 2009). Given, perhaps, that many families cannot give up these hopes, the debate around the removal of criminal liability remains at the fore of the Northern Irish reconciliation discourse. The idea or call for criminal justice is therefore not a silence within the Northern Irish reconciliation discourse. What is being dismissed by the UK Government's reconciliation narrative, however, is the UK's own tradition of criminal justice. In committing itself to a reconciliation forged without criminal investigation, the UK Government ignores its own history and preference for retributive justice.

It is not custom for the UK Government to support limits on serious criminal offences. Quite the opposite, the UK is the exception amongst its European neighbours as it does not have a general statute of limitations (Jackson & Johnstone, 2022). Successive Conservative and Labour governments have also reaffirmed their commitment to refusing a statute of limitations. Why then, is the government breaking from its own ethos? It is a serious step, as breaking from these customs also amounts to a breach of the UK's international human rights

obligation to criminally investigate the deaths of its war crimes. The biggest question to be asked here is, can other forms of justice be considered and included? The option of reparations has circulated the Northern Irish reconciliation discourse but remains largely absent from discussion in the *Legacy Bill*.

5.5.2 ***Reparations***

Internationally, the outlook of reparations for The Troubles has been clear: Mr Fabián Salvioli, *UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence* reported that the *Legacy Bill* "flagrantly contravenes" the UK's human rights obligations and substantially hampers access to remedies for victims, including reparations (OHCHR, 2022). His predecessor, Mr Pablo de Greiff, had already reported that reparations was the "area of least achievement" in Northern Ireland's peace process (OHCHR, 2016). Why, then, have reparations been left to the side in the *Legacy Bill* debates?

More than any other transitional justice mechanism, reparations prompt mixed responses from both the state and those who have been harmed. Calls for reparations have occurred across Northern Ireland's recovery from The Troubles, with each request heavily contested from multiple angles. In January 2009, the *Consultative Group on the Past* recommended a 'recognition payment' of £12,000 to every family who had lost a member in the Troubles. Many sectors of Northern Irish society were repelled by the suggestion, leading to the government dropping the proposal.

It may be that the binary of *victim/perpetrator* and *innocent/guilty* underlies the debate of reparations in Northern Ireland. Each feed into a hierarchy of suffering and a hierarchy of victimhood (Borer, 2003; Moffett, 2020). This hierarchy destabilises focus on the victim's remedies and permits the state's efforts to engage in the maintenance (or reconstruction) of specific systems that serve the state (Ewald, 2002). Referring to it as a "contest over victimhood" (p. 5), Dr Luke Moffett, Senior Law Lecturer and Director of the Human Rights Centre at Queen's University Belfast, explains:

> ...who is recognised as a victim and deserving of reparations goes to the heart of the nature of violence, who was responsible and who suffered, beyond the simple binary of innocent victims and guilty perpetrators (2020, p. 1).

As discussed in Section 5.3, this overlap between 'oppositional' categories muddies the waters. The notion of ‘guilty victims’ creates a paradox which seems to paralyse the process of allocating reparations in Northern Ireland (Moffett, 2016). For the family members of victims, this notion of financial compensation for the loss of their loved ones can be confronting. Some perceive it as dishonouring the memory of those who died and view the payment as blood money. This may be particularly triggering in situations where criminal liability has not been allocated. Alan McBride lost his wife and father-in-law in the Shankill bombing. He states: "There is something about money that changes the dynamic of how we view situations like this" (McBride, 2009, p. 26).

While the sentiment expressed by individuals such as McBride is sound, what of individuals who may wish to accept or may need a reparation's payment? Given the establishment of the *Remembrance Commission* (2003) in the Republic of Ireland, which paid €3.9 million in acknowledgement payments to just over 300 individuals and over €2 million in support services to victims, why is it a concept so heavily rejected North of the border? It is here that the notion of "paying off" arises. For the victims of The Troubles are yet to receive justice in any form, as promised under the *Good Friday Agreement 1998*. Perhaps, when money is offered as the only form of justice, it pales as a mechanism for healing.

5.5.3 ***Consent***

The loudest silence of the *Legacy Bill* is the consent of the people. The politics of the Troubles and Northern Ireland have circulated around the concept and principle of consent since the inception of Northern Ireland in 1920 (MacGinty et al., 2001), with the principle strictly underlined in the *Good Friday Agreement 1998* ((UK) Constitutional Issues, p. 2). Today, it marks a non-negotiable, constitutional factor that must be present and granted from the Northern Irish people prior to any major political change. Despite this, the UK Government's

proposals for reconciliation in the *Legacy Bill* are proceeding alongside unified rejection of the Bill across *all* Northern Irish victims groups and political parties.

So, what is the principle of consent and what weight does it carry? The Government of Ireland Act 1920 required that there be consent from the Northern Irish Assembly, Stormont, before Northern Ireland ceased to be part of the UK. This principle of consent was transferred to the people of Northern Ireland in the *Northern Ireland Constitution Act 1973*. This shift stimulated an important change–namely, a commitment from the UK and Irish Governments to refrain from imposing political change against the will of the people (MacGinty et al., 2001). This principle of consent is often described as the core underlying commitment of the *Good Friday Agreement 1998,* which introduced cross-community consent (Schmidt, 2019).

The reach of consent advances well beyond these legal frameworks. By all means, it appears that the principle of consent forms a significant part of Northern Irish identity and character. This notion of the Northern Irish people knowing, with serious conviction, what is owed to them creates an uncompromising and intrepid people, who will not give their approval unless they are in agreement: "They, more than most, knew the true value of the principle that the power to rule was...derived simply and solely from the consent of the governed" (Spring, 1994, p. 7). As demonstrated in Section 5.4, the prominence of the *civilised/primitive* binary in shaping the subject position of 'Irish' helps to explain why consent may not have been deemed necessary: if the relationship was one of reciprocity between a state serving its citizens, where would consent be required? The absolute omission of consent in relation to the Legacy Bill indicates that the state may still be operating from this position.

The UK Government's decision to proceed in response to the rejection from the Northern Irish people is a direct violation of the *Good Friday Agreement 1998*. It is more than just a breach of law, however. This notion of consent has bled into the character and mindsets of the Northern Irish people. The UK Government's unwillingness to attain the public's consent, is therefore an affront to the people of Northern Ireland. This form of insult leaks into the core of the polity: political choices lacking the public's consent equate to a deliberate exclusion of

the people's voice. Such an approach also falls back on the centuries-old depreciation of the Irish people by the governing forces of England.

5.5.4 *Political Autonomy and Budget*

Conflict concerning consent and global calls for a voice to parliament make the absence of political autonomy in Northern Ireland all the more apparent. In the 24 years since the Northern Irish Assembly gained devolved power (1998-2022), Stormont has been without a functioning government for just over 40% of its lifespan (Pivotal, 2022). Its evident instability prompts reasonable questions of how sustainable the Northern Ireland Assembly is (Haughey, 2019). In June 2023, UK Prime Minister Rishi Sunak stated: "that the people of Northern Ireland are not getting the local government that they need and deserve" (G. Gordon, 2023). Restoration of the Northern Irish Assembly is noted as an issue by some ministers during discussion of the *Legacy Bill*, but it is not addressed within the Bill itself, nor do the sponsoring UK Government departments shine light on the issue. The question of whether the *Legacy Bill* should be postponed until the Assembly is in session is raised, but not answered during parliamentary debate. That political autonomy is so problematic within Northern Ireland links back to the binary of *civilised/primitive* and *British/Irish,* whereby the Irish cannot be trusted to govern themselves and are continuously expected to defer to the British Government. These binaries are so entrenched that the imbalance within the '*state/citizen'* relationship is not questioned as extensively as may be expected.

What effects these problematisations and their silences create will now be considered as part of Bacchi's Q5, below.

5.6 What Effects are Produced by this Representation of the Problem?

Within Bacchi's Q5, the researcher is asked to analyse three kinds of effects of the problematisation: *discursive*, *subjectification* and *lived*. At the time of writing, the *Legacy Bill* remains a Bill and it is to be seen as to whether it will pass through the House of Commons after being returned by the House of Lords with revisions (August 2023). Thus, the exploration

of these effects is tentative and reflective of the reconciliation trajectory that the UK Government has designed for Northern Ireland in the past.

5.6.1 *Discursive Effects*

5.6.1.1 Risk of a Return to Violence

Many warn that leaving legacy issues unaddressed poses a significant threat towards a return to violence in Northern Ireland (Buus Marcussen, 2022). In March 2023, the terrorism threat level was raised from substantial to severe, following a targeted shooting of a police officer. Taken in isolation, the change in threat level appears to reflect extreme risk. However, the current national threat level remains substantial for England, Scotland and Wales, with the MI5 perhaps being prudent in their assessment (MI5: The UK Security Service, 2023). In real terms, Northern Ireland has seen substantially less violence than many of its European neighbours and considerably less so than its borders fifty years ago (Haughey, 2024).

Despite the significant change in statistics, local and international editorials lean heavily on the rhetoric of a return to violence in their titles. Some recent headings include: 'The Guardian View on Northern Ireland: Violence in a Political Vacuum' (‘The Guardian View’, 2023), 'Northern Ireland’s Troubled Peace' (Sennott, 2023), 'Fathers shot, daughters killed in bombings: Ghosts of the blood-soaked haunt Northern Ireland’ (King, 2023).

Following the announcement of Brexit in 2021, the return of rioting in Belfast spurred on further titles: 'Irish PM warns against 'spiral' in Northern Ireland violence' (‘Irish PM Warns’, 2021), 'Belfast Riots: Fears of Return to Sectarian Violence as Brexit Stokes Divisions' (Ridgwell, 2021), 'The Ghosts of Northern Ireland’s Troubles Are Back. What’s Going On?' (Gladstone & Robins, 2021). When the rioting ceased, editorial headings continued a preference for the possibility of violence: 'Northern Ireland terror threat downgraded but Brexit tensions and threats of renewed violence remain' (Pankhurst, 2022).

Professors Brennan and Dolan warn that this type of discourse romanticises the Troubles and the glamourisation of violence. They argue that it conjures a one-sided view of

the conflict, particularly from the youth. They state that "this in itself and alone is a very real legacy risk from the Troubles" (McGreevy, 2019, para. 8). The capacity of this rhetoric to change how people perceive their realities must not be underestimated. Following the BBC release of '*A Contested Centenary*', the BBC commissioned a survey. When asked the question *'Could violence return to Northern Ireland?',* 76% of the Northern Irish public answered that they agreed violence could return, 11% disagreed and 13% responded that they were unsure. The percentages were even higher in the Republic, with 87% agreeing compared to 4% disagreeing and 9% unsure (O'Connor, 2021).

What do people do when they believe violence is imminent? How can a reconciliation process proceed or navigate towards peace when surrounded by violence? As Brennan and Dolan state, how a conflict is discussed—particularly one that the UK Government claims has ended—creates risk. It would be pertinent on the UK Government to produce regular statements that dismiss such claims and provide national risk assessments that are true to the risk of violence.

5.6.2 ***Subjectification Effects***

5.6.2.1 Veterans and the Invisibilised Victims

As discussed in Section 5.3.2 (*categories*), the UK categorisation of veteran is defined by their s*ervice* and *sacrifice.* The persona fosters an expectation that veterans will be treated with the utmost respect. In the twilight of the Troubles, this has come to look like protection from besmirch of any kind and may even extend to protection from prosecution itself, as the *Legacy Bill* currently awards. By virtue of this system of categorisation, the UK Government denies the multiplicities of identity to these actors in war (Foucault, 1982). Veteran is constructed, perhaps, upon a version of veteran who is considered chronically innocent and, therefore, immune under the criminal law.

Various cases may shed light on how this subjectification has played out in the real world. Hearty (2023b) examines the case of John Pat Cunningham and Dennis Hutchings. In

2015, proceedings commenced against former British soldier Hutchings for the fatal shooting of 27-year-old Cunningham, who was shot three times in the back near his home in rural County Tyrone in 1974. Mr Cunningham was a vulnerable adult, with child-like sensibilities. Upon encountering two soldiers on his walk home from a neighbouring farm, his place of work, Cunningham started to run away. He had a fear of soldiers and men in uniform.

Hearty reviews media coverage, social media commentary and parliamentary debate covering the Hutchings trial. From these sources, Hearty (2023b) details a "cumulative failure to establish a victim identity" (p. 9) and a "remarkable invisibilisation" (p. 11) of Mr Cunningham as a victim. Rather than recognising Cunningham as the individual whose life was taken, at the hands of a trained professional who was in Northern Ireland to protect him, he became absent from the media.

Hearty (2023b) writes that then UK Prime Minister Boris Johnson's failure to even acknowledge Cunningham during his visit to Armagh in 2021 "typifies how Hutchings has been ‘misrecognised’ as the victim in the whole affair" (p. 12). These ideas have been referred to elsewhere as a "newsmaking victimology" (Elias, 1994, p. 20) and occur when the offender does not conform to the ideal perpetrator. Academics in Northern Ireland argue that the UK media have persistently invisibilised the victims of state violence from this conflict (K. Hearty, 2023b; Rolston, 1992, 1995, 2003, 2013, 2022).

5.6.2.2 The Victims of the Troubles

The preoccupation with *who is a victim* derives from an entanglement of tensions, including the veteran-victim debate that consumes much of the media. As Lord Weir identifies during Parliamentary debate, two myths may be perpetrated in Northern Ireland: that is, that everyone in Northern Ireland is a perpetrator, *and* a victim (*Hansard House of Lords*, 2023c, col. 124-125). A supposed culture of 'universal victimhood' has taken root in Northern Ireland and is used by both loyalist and republican parties to justify violence (Moffett, 2020). The positioning of people as victims is essential to what Hearty and Hearty (2023) describe as "rich

memory activism" (p. 1). Here, remembrance is premised on the construction of victimhood and commemorative claims that create a usable past.

The *Legacy Bill* was criticised during Parliamentary debate for not utilising the opportunity to clarify a definition for victims of The Troubles (Lord Browne) (*Hansard House of Lords*, 2022b, col. 1455). Yet, the discourse of the Bill and its debates creates a very clear message. At once, it is said that everyone in Northern Ireland is a victim (Lord Weir) (*Hansard House of Lords*, 2023c, col. 125) and yet, no-one meets the legal definition for *victim* (Lawther & Hearty, 2021). Thus, the Bill produces a position of victim that is at both accessible and out of reach: a paradox in which everyone is recognised, yet no-one can successfully make a claim.

This thesis suggests that the impact of this paradox is that people find themselves fluctuating between two states of being. In the first instance, where a person is able to inhabit the identity of the victim, they may find themselves mourning, in grief, seeking solace and perhaps locating that solace. In the second instance, the identity of victim is out of reach, and it is likely that they will spend their time advocating for their right to inhabit it or come to resent their exclusion. In either position, there is an element of stagnation. A stagnation where most individuals do not gain any form of peace. As David describes, there are dangers in mandating memory: "in their constant pursuit of justice, victim groups are crucified between two opposing poles" (2020, p. 14). It is here that David argues the use of moral remembrance acts to strengthen the nation and ethnicity categories.

During Parliamentary debate, Viscount Brookeborough (2022), who runs a veteran's charity in Northern Ireland, highlights the expansiveness of the experience of trauma from the Troubles: “It is not just the victim but an ever-increasing cascade of traumatised people. It is vast” (*Hansard House of Lords*, 2022a, col. 1413). There are those individuals who were lost through suicide, physical and psychological injury, miscarriage and stillbirths who have been referred to as the "secondary victims" of the Troubles by South East Fermanagh Foundation (Fowler, 2023). The loss, as Viscount Brookeborough describes, is great and it might be

suggested here that by failing to identify who the victims of The Troubles are, that loss grows. The state has, to an extent, failed to mark the 'end' and so we see much of the population of Northern Ireland still standing in The Troubles. As Davis (2022) writes, “part of the problem is that such processes require a victim to remain a victim” (p. 1).

5.6.3 ***Lived Effects***

5.6.3.1 Truth as Justice

Within the young life of transitional justice, truth commissions have become a popular and common expectation of reconciliation. processes. The concepts of truth defined by the SA TRC (as detailed at Section 2.3.3) have been incorporated into the literature but are not always directly adopted by truth commissions, as has been the case in the Legacy Bill. Despite this ‘truth *as* justice’ has emerged as a dominant narrative from the popularity of this mechanism and suggests: firstly, that individual healing for victims will occur following truth telling and secondly, that healing and reconciliation at the national level will follow on from the broader truths that emerge during the individual level (Robins, 2012).

As Wolfson (2014) writes, the process of national reconciliation is frequently expressed as one of “recovering from a violent past” (p. 47) over the pursuit of justice. Ideas that truth will set victims free feed into this narrative of moving on and the notion that individuals and nations can let go and move forward following the revelation of truths. Here, the idea of recovery and healing seems to cancel out other forms of potential justice. In this situation, it is quite possible that members of the public begin to lose faith in their government, with a potential lived effect from this discourse being the continued resentment between the reconciling parties. As was seen in Queensland’s *Treaty Bill*, truth puts the onus of work on the aggrieved.

The use of the term reconciliation creates the idea that transitional justice is being enforced and that truth is being delivered. This is also suggestive of individual and national healing. Yet, in the Northern Irish example, the word reconciliation is mentioned once in the *Legacy Bill* and without much explanation. The Bill does not provide a pathway towards

reconciliation and certainly fails to consider the recommended framework of transitional justice. For certain individuals, uncovering the truth of a situation may be everything. For other individuals, the notion of truth as healing can appear hollow. This may occur for individuals who are seeking additional processes of justice and wish to see, for example, reparations or sanctions applied to those parties responsible for violence (including the state).

5.6.3.2 Project Funding and Economic Deprivation in Northern Ireland

The impact of prolonged violence often leaves people in circumstances where they need to recover most aspects of their lives—this may be the recovery of family members, health, safety, shelter, food, identity documents, education and livelihoods—if possible. By positioning reconciliation as the pursuit of information-recovery or 'truth *as* justice', and memorialisation, the *Legacy Bill* reflects a very narrow view of what has been lost during The Troubles and what those who have been harmed may still be trying to recover. It fails to acknowledge the economic deprivation that persists across Northern Ireland, and it misses a critical opportunity to address one of the persistent issues of reconciliation projects across the island: the problematic nature of peacebuilding investments.

To date, there have been approximately 23,800 peace and reconciliation projects across the island (The European Commission & Special EU Programmes Body [SEUPB], 2021). The largest external investment derives from the European Union (EU), with five EU PEACE PLUS (1995-2027) programs alone investing €2.7 billion into the peace process (Kołodziejski, 2023). Since its establishment in 1986, the International Fund for Ireland (IFI) has invested a further €914m into around 6,000 projects. Contributors to the IFI include the US, the EU, Canada, Australia and New Zealand, with the US being the principal donator (International Fund For Ireland [IFI], 2024). What these numbers may not reveal, is what Northern Ireland's economy will look like when the final peace-process funding is pulled.

In Northern Ireland, the start and stop nature of funding for reconciliation from the EU, the UN and many international charities has had damaging effects to Northern Irish

communities. In her Doctoral thesis, Campbell (n.d) writes about the impact on Peace and Reconciliation Organisations (PROs) after the peace agreements have been implemented and funders begin to withdraw. She argues that a prominent issue is unhealthy competition developing amongst PRO's. This doesn't just occur at the PRO level either—that competition feeds down into each person who is competing to be seen. One of David's major claims in her book *The Past Can't Heal Us: The Dangers of Mandating Memory in the Name of Human Rights* (2020) is just that: "it is precisely here, in the day-to-day politics of victimhood, that new social inequalities are produced" (p. 15). The efficacy of economic investment as a means of supporting peacebuilding lacks essential understanding (Knox et al., 2023; MacGinty et al., 2001). Further research may be needed to show the link between poor models of peace funding and a region's poor productivity performance.

5.6.3.3 The Youth of Northern Ireland

With the *Good Friday Agreement 1998* now 26 years old, the emerging youth in Northern Ireland have been dubbed the *agreement babies* (McEvoy-Levy, 2001, 2007). Further newspaper headlines reflect the present crisis of young Northern Irish residents: 'Youth leaving Northern Ireland due to sectarian divide' (McClements, 2021); 'Northern Ireland Youth Exodus' (Walsh, 2021); 'Young people still leaving NI in droves despite what Biden claims' (Bain, 2023). Some youth reject the term 'agreement babies'.

The *brain drain* phenomenon began in Northern Ireland during the Troubles and refers to the permanent loss of high achieving students to universities and jobs outside of Northern Ireland (Cairns & Smyth, 2011; Mills, 2018). Frustrated with the ongoing talks of reconciliation, they wish to be dissociated from the focus on this part of Northern Ireland's past and argue that it is long time that key aspects of the nation's growth be addressed instead. Repeated examples illustrate how the Northern Irish youth are weary of reconciliation discussion and are calling for energy and funding to be redirected towards the future of their country (Byrne, 2023, p. 165). Reflecting on the tensions in Northern Ireland, student Jacob Hussein tells that there is relief in choosing to live elsewhere (Mills, 2018).

5.7 How and/or Where is this Representation of the 'Problem' Produced, Disseminated and Defended? How could it be Questioned, Disrupted and Replaced?

Through an examination of Bacchi's Q2-5, we have embarked upon a process of uncovering how the *Legacy Bill's* problematisations have been produced and disseminated. Under Bacchi's Q6, the researcher is asked to consider past and current challenges to these representations of the problem. How is reconciliation as an 'information-recovery problem' and a 'memorialisation problem' questioned, disrupted and replaced by actors and discourses of resistance in Northern Ireland?

Before moving into this discussion, this author notes the difficulty of pinpointing local political, religious, community or cultural leaders in Northern Ireland who speak publicly against dominant (English) binaries or harmful hierarchies. There must be many that do, however, from my personal experience in Northern Ireland and how the conflict has been discussed in my presence in Scotland and England – it isn't. It isn't common to discuss the conflict in any detail publicly and certainly eyebrows were raised when I have asked questions with my aunty (from Londonderry/Derry) at home or speaking with strangers in Belfast. This is, of course, in part a likely consequence of my being an outsider. But it is also a sentiment that is understood as associated with British people and their lack of engagement with the peace process, despite the impact the Troubles wrought in their communities (Dawson et al., 2017).

Despite the limited availability of public texts, there are strong voices of resistance across Northern Ireland, apparent in the arts and academia. As such, this section will consider the role of murals in Belfast and Londonderry/Derry and pop culture. It is important for the reader to understand that though Northern Ireland is officially a post-war era, it still includes consistent violent practices, for example, the use of 'punishment attacks' from paramilitary groups in their communities (Rickard & Bakke, 2021). As Rickard and Bakke (2021) discuss, the occurrence of 'punishment attacks', akin to the kneecapping carried out during the Troubles, is part of the "sticky legacy" that emerges after wartime via the "informal institutions" (paramilitary groups) (p. 604) that remain intact and continue to carry out such attacks as a

means to maintain or gain social control. The presence of this violence is not often given a full spotlight in English media: see for example, O'Toole's (2013) 'Why can't Great Britain look Northern Ireland in the eye?' which asks why the sectarian Belfast protests of late 2012 were not given full coverage in English media; and 'The Guardian view on Northern Ireland: violence in a political vacuum' (Editorial, 2023) from which readers may observe the media hush that occurred when Northern Ireland's security threat was raised to severe again last year in 2023. Rather, I would suggest that the platforms of academia and pop culture are used as dissemination platforms (1) due to their capacity to widely communicate resistance; (2) the possibility that their voices will spread despite sparse news coverage outside of Northern Ireland; and (3) the possibility to do so from a slightly safer vantage point.

5.7.1 Voices of Resistance in Academia

A frequent voice which challenges the privileged side of the *Irish/British* binary is Bill Rolston, Director of the Transitional Justice Institute of Ulster University (2010-2014) and Emeritus Professor of Sociology at Ulster University. In an LSE blog titled *Democratic disruption. Ireland's colonial hangover*, Rolston (2019) writes of Northern Ireland: "Laws and policies kept the Catholics, ultimately the descendants of the original displaced indigenous, down." And regarding Ireland as the Free State, Rolston writes "Throughout much of the 18th and 19th centuries, English laws blocked the development of any indigenous industry which might challenge English economic dominance". Throughout much of his work, Rolston raises the continued and damaging role of English policy in maintaining the *Irish/British* binary (for example: Mcveigh & Rolston, 2021; Ní Aoláin & Rolston, 2018; Rolston, 2020). As discussed in the following section, it is Rolston's photobooks which have documented the many murals that pinpoint Belfast and Londonderry/Derry as poignant landmarks of Northern Ireland's political landscape.

5.7.2 Murals and Truth as Justice

As has been discussed, reconciliation as an information-recovery problem has taken on the life of a 'truth *as* justice' problem. The most controversial aspect of this problematisation

is that it could come at the cost of all other forms of justice for victims and families. Truth in isolation may very well be the solace that some are seeking. But does this remain the case for a victim or family member when they have to give up the nation's right to prosecute the people that caused them harm? This version of truth *as* justice that the *Legacy Bill* creates loses the currency of transitional justice and arguably, no longer falls within the definition of transitional justice at all.

The public rejection of the *Legacy Bill* was strong from all fronts in Northern Ireland. One of the ways in which political ideas are publicly challenged in Northern Ireland is through the creation and preservation of murals. Rather than graffiti, these remain permanent fixtures to the political landscape and are stark reminders of what each community perceives to be true. During two visits to Belfast, a very kind museum attendant at the Ulster Museum pored over the Rolston (1992, 1995, 2003, 2013, 2022) photo books with me. Rolston has documented over 2,000 murals across five books so far. Studies conducted thus far of the role of murals in Northern Ireland also include Jarman (1992), Sluka (1992) and Goalwin (2013). The earlier publications from Rolston and Jarman tend to discuss the role of murals in Northern Ireland's political culture, whereas more recent publications, such as Goalwin (2013) extend such study to whether murals actively construct and express community identities and "ideological messages" of those involved in the conflict (p. 190).

The murals are arguably a poignant platform of expression regarding the Northern Irish demand for justice. The sense of preservation, or even warning (Lang & Mell, 2020), that seems to be tied to the murals designates them as significant points of study for the many disciplines analysing the conflict. I found it very curious that none of the murals had been graffitied over–most areas of my region in Scotland would have been–but I didn't see a single mural compromised. When I asked the museum attendant why, he told me if I were to be caught defacing a mural, that community would find the means to have me shot. In this way, the murals are community markers and boundary lines, acting as potential warnings to those who do not agree with the ideology expressed in the mural.

Given the content of the murals, it also appears that they are a primary way in which the Northern Irish people can reject ideals and decisions that have been passed down to them. As such, the murals of Belfast and Londonderry/Derry are an intriguing platform from which to analyse how these key problematisations are disrupted (Bush, 2013; Crowley, 2011). For example, as shown in Figure 1 below, the artist demonstrates their frustration toward government policy, rejecting the idea that UK Government are cooperatively participating in truth telling by claiming that they are hiding the truth.

Figure 1

Mural on Divis Street, captured 2014

Note. From *Drawing Support 5: Murals, Memory and Identity in the North of Ireland* (Rolston, 2022, p. 49) © Beyond the Pale Books.

Truth plays a central theme in many of the murals. The first mural selected for analysis depicts a woman holding up a sign, asking for truth regarding the Ballymurphy Massacre (otherwise known as Bloody Sunday). Within the image are Christian crosses, marking what appears to be a graveyard. Within one cross is the word 'justice' which implies justice is dead. The woman on the right is a politician, insinuating that the UK Government is keeping the true secret from the public. Interestingly, the message that is portrayed here is that there is no

justice without truth. If we look to another, one mural from Lendrick Street reads "*Peace cannot be kept by force: It can only be achieved by understanding*" (See Figure 2 below).

Figure 2

Mural on Lendrick Street, captured 2013

Note. From *Drawing Support 5: Murals, Memory and Identity in the North of Ireland* (Rolston, 2022, p. 18) © Beyond the Pale Books.

This demand from the public for understanding is part of the same call for truth. So if one of the major demands of the victims of the Troubles is truth, why have they rejected the Legacy Bill? The Bill that has problematised reconciliation as a pursuit of information and truth recovery? We come back to the notion of 'policing the past'. In a recent example. Emmett McConomy's brother, Stephen, was shot by a British soldier at age 11 shared the following statement at a public protest against the *Legacy Bill*: "They wish to re-write what happened here and want to block any means of truth being told" (Hargan, 2022, para. 13). Emmett's thinking reflects the essence of what Lawther and Hearty (2021) have described as a policing of the past, which is that the state are using the illusion of truth to keep state liability at bay.

5.7.3 Memorialisation and Pop Culture Challenges

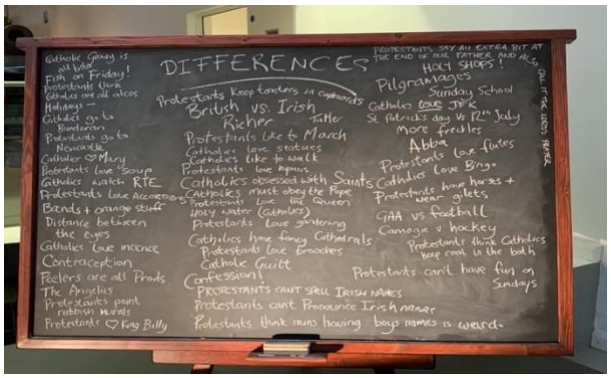
5.7.3.1 Differences in Derry Girls

A large number of funding initiatives in Northern Ireland are directed towards the arts. Making the Future (MTF) is one example, developed and delivered by the Nerve Centre, National Museums Northern Ireland, Public Record Office of Northern Ireland and the Linen Hall Library and receiving funding from the EU PEACE IV Programme. MTF's mission statement is to: "...use significant objects, collections and archives as a stimulus to pose challenging questions about the past, ‘take the temperature’ of where we are at currently as a society, and create a manifesto for our future" (Making the Future, 2023, para. 3). In 2022, MTF launched their 'Culture Lab: Don't Believe the Stereotypes' exhibition where they debuted an item from Lisa McGee's iconic TV series *Derry Girls.* The comedy series follows a group of five teenagers as they grow up in Northern Ireland during the Troubles. With the final season released in 2021, the Culture Lab selected an item from a well-loved scene which has now been installed in Belfast's Ulster Museum.

In the scene, a mixed group of Catholic and Protestant teenagers are asked to write down their similarities and their differences on two blackboards. The 'differences' blackboard, pictured below, was quickly filled:

Figure 3

The Derry Girls Chalkboard on display at the Ulster Museum, 2023



Note. Author’s own photograph.

The similarities board remained empty. However, if you look closely, you might agree that 'Abba' is not a serious difference after all (or maybe it is). As a form of pop culture, *Derry Girls* has swept up fans across the world—and depicted five very normal, dysfunctional teenagers—disrupting our vision of a Northern Ireland only inhabited by violence and grief. The series uses the Northern Irish stereotypes that much of the world associates with violence (such as religion in Northern Ireland and security stops) as a source of humour and spends time emphasising moments where peace is sought at the national and local level.

Having visited the board at the Ulster Museum, two thoughts struck me. One, that it was in a museum, a museum otherwise full of very serious artefacts from the Troubles and older conflicts; and two, that it was the first exhibit to which I was directed to. The museum attendant—who fell prey to my many questions after—very excitedly rushed me over to the blackboard when I first walked in. The inclusion of the *Derry Girls* school blackboard, in a museum of otherwise serious artefacts, interrupts the narrative of memorialisation in a dramatic way. It uses humour and confidence to interrupt a narrative which is chronologically depicting and remembering violence and introduces the suggestion that there was also life in there. That the good and the normal should be remembered challenges the way in which the state displays the Northern Irish people during the parliamentary debates, which is that everyone in Northern Ireland is at once a perpetrator and a victim. There is not a lot of room for expression, when, as a people, you are primarily positioned as a perpetrator and a victim. Lord Weir of Ballyholme shares this sentiment. He states:

> When we look at the Troubles, two myths are sometimes perpetrated. They are quite lazy assumptions. The first is that everybody in Northern Ireland is a perpetrator… The second myth is that everyone is Northern Ireland is also a victim.
>
> The vast majority of people, from whatever side of the community, got on with their lives, tried to make progress in a democratic way and gave the lie to the

> idea that there was no alternative to violence. (*Hansard House of Lords*, 2023c, col. 125).

Derry Girls is an important disruption of these myths and a reminder of the many layers of subject positions that have been placed on the Irish since their early interactions with the English.

5.8 Chapter Summary

In Northern Ireland, the core assumptions that underpin *The Northern Ireland Troubles (Legacy and Reconciliation) Bill (HL Bill 37*) (the '*Legacy Bill'*)'s discourse may be summarised as follows:

- Achieving reconciliation is a 'problem' of information/truth recovery: primarily, a 'problem' of securing the truth whilst it is still available (due to the aging of the Troubles generation);
- Achieving reconciliation is a 'problem' of memorialisation: namely, a 'problem' of how to present and preserve information/truth.

From those early interactions with the English, the Irish have moved from *civilised/primitive* to *British/Irish* to *state/citizen*. These positions fail to reflect the reality of the everyday Irish lived experience. As Nakata writes on the experience of First Nations learners in Australia:

> "students are discursively constituted as subjects vis-a-vis that "matrix of abstracted discourses that constructs a consciousness of ourselves which is outside of the local, outside of how life is experienced" (following D. Smith 1987, 1990, 1999)" (2007b).

Yet, the *civilised/primitive* became the foundation upon which the UK Government would form each relation with the Irish, including the *Legacy Bill* today. The *Legacy Bill* has produced and prioritised the recovery and preservation of truth and the practice of remembrance as reconciliation. The focus on information-recovery and memorialisation as

reconciliation could be fruitful, if pursued under the tenents of transitional justice. However, the *Legacy Bill's* underpinning assumptions create 'truth *as* justice' and ‘remembrance *as* justice’ which transpire to denying the victims of the Troubles any other form of justice, despite repeated requests from victims’ groups. This is an extreme departure from the UK Government’s preference to impose criminal penalties. As such, it may be submitted that the overall ambition of this version of reconciliation is to draw a clear line under the Troubles and move Northern Irish society away from their pursuit of other forms of justice. This type of reconciliation is often expressed by the sponsoring government as a desire to move Northern Ireland on from their traumatic past.

In addition, the discourse from the sponsoring parties of the UK Government positions the victims of the Troubles as the British veterans, privileging this category within the *innocent/guilty* binary. The Bill does not define ‘victims’, and so negligently fails to strategize for those victims who fall beyond the British veteran category, of which, the majority of the Troubles victims do. As such, solutions for those victim groups have been de-centred and essentially, shut down by the UK Government.

Writing on the case of civil war in Turkey, Mutlu (2022) emphasises that the main task that a society faces following mass atrocities is the reconstruction of a just environment. This must be done on both the social and political level and is an enormous task. Indeed, it is the task that the Governments of Northern Ireland, the UK and Ireland set themselves in the *Good Friday Agreement 1998*, wherein they promised to deliver “...the achievement of a peaceful and just society" (*Good Friday Agreement* (UK) Reconciliation and Victims of Violence, p. 18). As the Agreement states, this "would be the true memorial to the victims of violence” (*Ibid*).

It is clear that the Northern Irish public are fighting for their justice, in the same way they fight for minority struggles all over the world. Though there are still major divisions in opinion, the public have repeatedly stood up to the platform of constructing a 'just environment' and building reconciliation (as the thousands of local reconciliation projects attest to). The response of the UK Government to the unified rejection of the *Legacy Bill* provides some

indication as to whether they are yet willing to construct a just environment. It compounds their baleful history of subjecting the Irish to the *civilised/primitive* binary, which morphed over centuries to cruelly position a people into a form of governance they do not need and one which does not serve them.

6 Chapter Six: A Short Introduction to Queensland, Australia

6.1 65,000 years+

The land named Australia (from 1824) has been under the ownership and custodianship of Aboriginal and Torres Strait Islander clans since time immemorial (Pascoe & Shukuroglou, 2020). As the oldest continuous cultures in the world, Aboriginal and Torres Strait Islander people across Australia are recognised for their deep ties to community and care for country; their ancient practices of storytelling, knowledge systems and land management systems; their intricate and rich artwork; and not least, their resilience. The deep respect endowed to the Traditional Owners derives in part from their dexterity in caring for a continent so expansive, in addition to advancing sustainable practices that have worked in harmony with the land and weather for millennia.

The scale of the continent is astonishing. To attempt some perspective for those geographically furthest from the continent: Ireland (84,421 km²) is almost the same size as Tasmania (68,401 km²). Mainland Australia is over 500 times larger than Ireland. Surrounded by three major oceans and isolated from other land mass over 10-55 million years ago, its environment has given way to highly distinctive ecosystems, with many species only found in Australia (Geoscience Australia, 2014). The landscapes range from vast deserts, riverways and grasslands, scrub and mountains to tropical rainforests, reef and coastal areas. The land is also host to several harsh weather systems, with extreme heat and cyclone seasons. Through ongoing archaeological work, it is understood that the first arrivals to the continent came in small groups and arrived at different times. The differences between these groups are still visible in the diversity of Aboriginal people across Australia today (Langton, 2019). Extensive routes were established by different Aboriginal and Torres Strait Islander groups across the continent for trade. Today—alike several Indigenous cultures around the world, such as the Sámi in Norway (Nyseth & Pedersen, 2014)—the majority of Aboriginal and Torres Strait Islander populations live in cities that have grown up on their land. In an increasingly urban environment they continue to practice their traditional customs (Langton, 2019).

6.2 'Two Centuries' of English Colonisation

It was April 1770 when James Cook and his men first sighted land of the south shore of Australia, now called Gippsland, Victoria. This marked the first of three voyages into the Pacific from England. Cook's commentary of the land, as they sailed up towards Cape York, was primarily of an uninhabited land. Despite having seen the local peoples ashore, he took it upon himself to raise the English flag and claim the land on behalf of King George III of England once he made landfall in Gamay/Botany Bay. The British Empire employed the legal doctrine of *terra nullius* to do so, which refers to "land over which no previous sovereignty has been exercised" (Rule of Law Education Centre, 2022, p. 1). The British Empire used this legal doctrine to assert their sovereignty over the land of Australia in 1788, which the Empire claimed could not be owned as—though they recognised there were inhabitants of the land—they deemed them to be "too primitive to be actual owners and sovereigns" (Council for Aboriginal Reconciliation, n.d.).

Eighteen years on from Cook's landing, the First Fleet followed. On board were British officials, marines and prisoners. They landed in Port Jackson, New South Wales and began colonisation in January 1788 (Frost, 2019). In less than a year, it is believed that 50-90% of the Aboriginal peoples in the area died from an outbreak of a disease similar to smallpox. As Watson (2007) writes "the Aboriginal state of emergency arrived with Cook and the First Fleet" (p. 3). Due to the location of this settlement, smallpox immediately impacted the Aboriginal Nations in southern Australia. Its reach was devastating however, and still significantly impacted the populations in Queensland (Evans, 2007).

From Port Jackson, the crown culture spread as colonial-settlers dispersed across the land. Eager to expand, the settlers came into conflict with local Aboriginal people and spread additional diseases with grave impact. The first convict settlement in Queensland was at Redcliffe. Following attacks from local Aboriginal people, the settlement relocated to the banks of the *Meanjin*/Brisbane River in 1825. From 1830 many massacres were recorded across Queensland and from 1838 until 1968 reserves—some to become missions and settlements—

were introduced “to control the movements of Aboriginal peoples” (Anti-Discrimination Commission Queensland, 2017, p. 59). From the perspective of the settler-state, the aim of the reserves was to remove Aboriginal people from lands wanted by settlers and minimise injury from conflict in the process. It was also believed by the settler state that Aboriginal communities were dying societies. By this logic, the state claimed that their exclusion policies were ‘humane’ environments for the populations to move to before perishing (Evans, 1993).

On his third and final voyage in 1779, Cook and his men attempted to kidnap King Kalani‘ōpu‘u of Hawai‘i – leading to Cook's death. Two centuries later, on the 26 January 1938 at Australia Hall in Sydney, around 100 Aboriginal people and four non-Indigenous people gathered at a conference and observed the first Day of Mourning in protest of the day the First Fleet arrived. Today thousands gather to protest the nationwide annual holiday of Australia Day, re-naming it Invasion Day or Survival Day (Pascoe, 2012).

At the outset, reserves were advocated for by some Aboriginal people in south-eastern Australia. Particularly those who wanted to see areas of land set aside: a place where First Nations communities could continue developing their own practices (Goodall, 1990). With the introduction of Protection Acts across Australia, this began to change. In Queensland, the *Aboriginal Protection and Restriction of the Sale of Opium Act 1897* introduced a governing framework for the reserves. This enabled the government to control almost every aspect of the lives of the Aboriginal people on these sites. The state was grasping at absolute control with its policies, positioning the *state/Indigenous person* within a *parent/child* binary (Nakata, 1997).

By 1901, most of the Aboriginal population of Queensland had been forcibly removed onto reserves (Anti-Discrimination Commission Queensland, 2017). Under the Act people endured restricted movement, no wages, and no control over their livelihoods. The Act introduced ‘Protectors of Aboriginals’ who were installed to govern every aspect of their lives. The massacres that occurred across Queensland were aided by the Colonial Secretary for Queensland and Aboriginal men fighting under The Native Mounted Police from 1859 (Anti-Discrimination Commission Queensland, 2017). The trauma inflicted upon the Aboriginal

people had persevered beyond a century. Despite the depravity of the treatment, the policies simply did not work. The Aboriginal population did not die out. Rather, their populations were growing and mixing with parts of the settler community. The settler-state was becoming increasingly unsettled. Social problems grew around what became known as the 'Aboriginal problem'. At the outset of the 20th century, the 'Aboriginal problem' referred to the growing population of Aboriginal people with European heritage. The settler population were afraid of "mixed-descent children" (Ellinghaus, 2003, p. 183) and the threat of a 'wild race of half-castes'" (Zogbaum, 2003, p. 127). These fears initiated another series of sinister policies.

Australia's assimilation era contains many timestamps. The Commonwealth-State Native Welfare Conference took place in 1937. It was here that Chief Protectors from across Australia gathered and agreed upon a policy of biological and cultural absorption. All Aboriginal and Torres Strait Islander people who were of mixed descent were to be 'assimilated' into the non-Indigenous population. At this time, it was still believed that "'full blood' Aboriginal people would die out" (Anti-Discrimination Commission Queensland, 2017, p. 17). The logic of the policy was that it would be possible, generation by generation, to remove blackness from the skin and remove culture from the person and community. From 1869 until 1969 government policies of assimilation encouraged the separation of Aboriginal children from their kin, land, and culture. Children were forcibly removed, put up for adoption or fostering in white homes or institutionalised. These generations of children became known as the Stolen Generations. In Queensland it is estimated that 2,302 children were segregated from their families (Australian Human Rights Commission, 1997, Part 2 Chapter 5).

As Henriss-Andersen (2002) writes, the policies across these eras were contradictory. One element remained consistent across the acts however: "This was the construction of Aboriginality, which was defined according to its otherness from the colonisers" (2002, p. 287). The settler position was clear. Within the binary positions of *coloniser/other* and *settler/Indigenous*, the state justified its actions. These actions, however, did not go unchallenged.

6.3 Indigenous Responses to Colonisation

As is evident in the notes of conflict above, the local Aboriginal and Torres Strait Islander populations did not simply walk away from their land. They fought to protect their kin, land and culture. They adjusted quickly and fought the crown in its own language and through its own legal system: from individuals petitioning the crown on behalf of groups to major protests, such as the Maritime Strike launched by Torres Strait Islander workers who were forced to work in notoriously dangerous conditions as pearl divers. Formal marches and protests persisted across the century, with Charles Perkins leading many rallies during the 1960s as the Australian student movement joined the cause. The students ensured this movement went out into regional Australia, for example with the Freedom Ride (Curthoys, 2002), where incidents of racism were reported as higher. The tent embassy protest is still ongoing today (Muldoon & Schaap, 2012; Schaap, 2008).

Aboriginal and Torres Strait Islanders petitioned the state for treaty from the beginning of England's colonisation. In 1983, the Senate Standing Committee Report dismissed the notion of treaty and instead surmised that "societal 'attitudes' lay at the heart of the 'Aboriginal problem'" (Short, 2012, p. 294). One of the most recent concepts of treaty that has emerged in Australia is from Western Australian: the *Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Act (2016)*. The agreement is a native title agreement but has been referred to as treaty by virtue of the various treaty characteristics it has been structured by (Treaty in WA Factsheet V3 (antar.org.au)).

As Davis (2006) writes, the nation-state of Australia has not engaged in the official exercise whereby Aboriginal and Torres Strait Islander people are recognised and accommodated by the state (p. 127). This is so, despite repeated calls for engagement from Aboriginal and Torres Strait Islanders. Many Aboriginal and Torres Strait Islander communities continue to fight for their land rights in the Australian judicial system. The prominent cases of *Mabo I* and *Mabo II* (discussed below) occurred in the second half of the 20th century when

such land activism picked up pace. Today, lawyers such as Taylah Gray (proud Wiradjuri woman) continue to make the legal case of *terra nullius* and treaty clear (TedXSydney, 2023).

6.4 Australia's Reconciliation Decade(s)

It wasn't until 1901 that Australia's first federal political party, the Labor Party, was established. Labor's primary opponent, the Liberal Party established federally in 1944. Each party has demonstrated different approaches to reconciliation and land rights from their beginnings. Generally, narratives around the Labor Party consider it to be more positive and progressive when considering Indigenous policy. Labor have taken steps to try and progress land rights, for example, by instating Native Title, and have taken steps to try to popularise treaty in 1988, which resulted in steps for reconciliation (Burridge, 2009). The Liberal Party is seen by many to have adopted an approach that positioned Indigenous-specific rights as divisive. It is also thought that the Liberal Party has sought to curtail reconciliation, instead suggesting 'practical reconciliation' and focusing on land rights (Watson, 2009).

It is important to note here that if research focuses on studying which political divide has developed a record of 'pro-Indigenous' movements, there is a risk of categorising these political parties and their policies as innately un-problematic. This may or may not work in the interest of Indigenous peoples. It does, however, certainly go against Bacchi's WPR methodology. As such, this section discusses developments across Australia without an emphasis on the political party leadership.

The decade following 1991 has been earmarked by academics and numerous bodies (national and state level) as Australia's "reconciliation decade" (Elder, 2017, p. 2). The years immediately preceding were characterised by renewed activism in many areas and the powerful Indigenous-activism response to Aboriginal deaths in police custody. Various initiatives were created in answer, with the *Royal Commission into Aboriginal Deaths in Custody* (RCIADIC) (1987-1991) brought in to examine 99 Aboriginal deaths that occurred under state care between 1980-1989.

The final recommendation made by RCIADIC endorses the process of reconciliation, claiming it: “must be achieved if community division, discord and injustice to Aboriginal people are to be avoided” (Aboriginal and Torres Strait Islander Commission, 1994, recommendation 339). To achieve reconciliation, the Commission underlined the “urgency and necessity” of these changes and asked political leaders to secure bi-partisan support from the electorate. The desire to embrace this process—including acceptance of guilt by the state and non-Indigenous people—was not universal. On the *Report of the Royal Commission into Aboriginal Deaths in Custody*, then Prime Minister Keating sheds light on the non-Indigenous Australian relationship with guilt:

> For all this, I do not believe that the Report should fill us with guilt. Down the years, there has been no shortage of guilt, but it has not produced the responses we need. Guilt is not a very constructive emotion. (Australia’s Audio and Visual Heritage Online (ASO), 1992, p. 3)

In September of the same year, the Australian Parliament launched the *Council for Aboriginal Reconciliation Act 1991 (Cth)* (CAR). Under CAR, the Commonwealth governments made a pledge of “an ongoing national commitment” to reconciliation (Council for Aboriginal Reconciliation Act, 1991). The preamble of the Act states that the need for reconciliation arose from English colonial dispossession. The vision of the legislation is as follows, to create: “A united Australia which respects this land of ours; values the Aboriginal and Torres Strait Islander heritage; and provides justice and equity for all” (Council for Aboriginal Reconciliation Act, 1991). Academics continue to debate, however, whether the Act produced specific measures to achieve reconciliation (Elder, 2017; Short, 2012).

In addition to CAR, land rights were granted via the *Aboriginal Land Act 1991 (Qld)* and the *Torres Strait Islander Act 1991 (Qld)*. The legislative changes in the early 90’s provided the platform for a series of weighty legal action. The case of *Mabo v State of Queensland (No 2)* made a ground-breaking ruling. *Mabo* declared *terra nullius* void, meaning that Cook’s claim to Australia (based on Australia being unoccupied land) was voided. The High Court, however,

replaced *terra nullius* with the concept of native title. Native Title was introduced to Australia via the *Native Title Act 1993 (Cth)*. The Act created a set of standards to which persons wishing to claim land must meet. This has proved exceptionally difficult for many mob[5] across the country and has been critiqued for keeping Aboriginal and Torres Strait Islanders off of their land.

By the end of the decade, *The Bringing Them Home Report* (1997) was published by the Human Rights and Equal Opportunity Commission on the Stolen Generations (Australian Human Rights Commission, 2022). The report became, to some, a central source for non-Indigenous people in their understanding and "production of a reconciliation story" (Elder, 2017, p. 5). To others it produced various platforms from which to advocate for healing, such as through the Healing Foundation (Paradies, 2016).

In May 1999, an official apology was made by the state of Queensland to Aboriginal and Torres Strait Islander people:

> …on behalf of all Queenslanders for the past policies under which indigenous children were forcibly separated from their families and expressed deep sorrow and regret at the hurt and distress that this caused… (Australian Parliament, 1999).

This was followed at the federal level by a formal apology to the Stolen Generations by then prime minister Kevin Rudd in 2008 (Australian Parliament, 2008). A change in pace followed this reconciliation decade, with some arguing that the legislative introductions amounted to a vague aspiration to achieve a "document of reconciliation" (Short, 2012, p. 295). By the turn of the millennium the focus on reconciliation was said to be lost (Elder, 2017). It's

[5] As per Deadly Story, "'Mob' is a colloquial term identifying a group of Aboriginal people associated with a particular place or country. It is used to connect and identify who an Aboriginal person is and where they are from. Mob can represent your family group, clan group or wider Aboriginal community group" (n.d).

argued depreciation has been attributed to the limited analysis made of attitudes towards reconciliation (Maddison et al., 2016).

Some commentators argue that the reconciliation demonstrated thus far in Australia, is treated as an end goal, centred around terms such as ‘Closing the Gap’, with the viewpoint of eliminating disadvantage (McIntosh, 2014; Paradies, 2016). There are, of course, many versions of reconciliation that may be strived for. Steps of consequence are being taken. On 26 May 2017, the *Uluru Statement from the Heart* was broadcast by news stations across Australia. Written by First Nations people, the Statement calls for three critical changes: for a Voice to be written into the Constitution, and for the establishment of a Makarrata Commission to supervise agreement-making (treaty) and truth-telling.

In 2023, discussion of treaty peaked in Queensland. This process began in July 2019, when the Queensland state government established the Interim Truth and Treaty Body. The core team includes Mr Mick Gooda (a Ghungalu Yiman man from the Dawson Valley in Central Queensland) as co-Chair, Mr Aaron Fa’Aoso (a descendant of the Saibai region in the Torres Strait), Dr Bianca Beetson (a Kabi Kabi and Wiradjuri woman), Ms Natalie Siegel-Brown, Seleena Blackley (a Kalkutungu and Moa Island woman), Cheryl Buchanan (a Guwamu woman from southwest Queensland), Ms Sallyanne Atkinson AO, Emeritus Professor The Hon Michael Lavarch AO, Ms Marg O’Donnell AO and Mr Ray Rosendale CSM (a Kuku Yalanji man of the Western Sunset People) (Interim Truth and Treaty Body [ITTB], 2023a).

Given what we have reviewed so far, it is worth suggesting: it is not the pursuit of reconciliation that is flawed, but the attempts are loaded. They are weighed down by our histories of inequalities and the extensive power of one side. The possibility of reconciliation depends very much on the privileged side of the binary being willing to make practical change. It is with these thoughts in mind that this thesis now turns to consider the underlying assumptions that sit within the *Path to Treaty Act 2023 (Qld)* discourse: Queensland’s first piece of legislation to discuss treaty.

7 Chapter Seven: What is the 'Problem' Represented to be? Analysing Queensland, Australia's '*Path to Treaty Act 2023*'

7.1 Introduction

On 22 February 2023, the then Queensland Premier Annastacia Palaszczuk of the Labor Party presented the *Path to Treaty Bill* to the Queensland Parliament for its First Reading. At a joint assembly the sponsoring departments of the Bill, the Queensland Labor Government and the Liberal National Party of Queensland (LNP), committed to bipartisan support. The legislation transitioned quickly from Bill to Act in less than three months. Following ten public forums across the state, the *Path to Treaty Act 2023 (Qld)* (the *Treaty Act*) was passed by the Queensland Government on 10 May 2023 during a special session in Cairns.

The *Treaty Act* is referred to as a significant milestone in Queensland's "Truth and Treaty journey" (The Interim Truth and Treaty Body [ITTB], 2023, para. 1) by the ITTB itself, the group whom co-designed the Bill in partnership with the Queensland Government. The state cites the core intention of this work as an opportunity "to reframe the relationship between the Queensland Government and Aboriginal Peoples and Torres Strait Islander Peoples" (Queensland Government, 2023a). Leader of the LNP opposition party, David Crisafulli MP, said the process was a "genuine opportunity" which "Queensland should embrace wholeheartedly" (Queensland Parliament, 2023h, p. 1262).

The purpose of the legislation is best reflected in the Queensland Parliament's *Report No. 30 Path to Treaty Bill 2023*, which states that the Bill aims to provide "foundational legislation" (Queensland Parliament, 2023b, p. vii) to assist the state in forging a path towards treaty. The legislation sets out to prepare Queensland for treaty by introducing the following:

- The Truth-telling and Healing Inquiry (the Inquiry);
- The First Nations Treaty Institute (the Institute);

- Removing of discriminatory provisions from the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (JLOM Act);
- Requiring the appointment of Aboriginal or Torres Strait Islander persons as majority members to the Inquiry and Institute panels.

The primary functions and responsibilities of the Inquiry and the Institute are summarised across the following two sub-sections (for further detail of the legal provisions that give life to these bodies please see Appendix C from page 216).

7.1.1 *The Truth-telling and Healing Inquiry (Part 3, Section 64-93)*

The role of the Inquiry is three-fold. First, the panel will conduct inquiries and document the impacts and effects of colonialisation on Aboriginal and Torres Strait Islander people. Focus will be placed on the individual, familial, cultural, and societal impacts, and the continuing effects of colonisation. The primary mechanisms via which the Inquiry will seek to achieve this include truth telling sessions, truth telling hearings, and inviting persons to give documents and other materials (*Path to Treaty Act* (Qld) s. 66(a)). Second, the Inquiry has the responsibility to conduct research into how these impacts and effects have specifically affected Aboriginal people and their laws and traditions, Torres Strait Islander people and their laws and *Ailan Kastom*[6], and the public's understanding of Queensland's history (*Path to Treaty Act* (Qld) s. 66(b)). Finally, the Inquiry takes on an advisory function and is required to provide recommendations to the appointed Minister for Treaty, Leeanne Enoch MP (*Path to Treaty Act* (Qld) s. 66(c)).

[6] *Ailan Kastom* (Island Custom) refers to the body of knowledge–including, but not limited to their "traditions, laws, protocols, and practices" and Aboriginal Law/Lore–that guide Torres Strait Islander and Aboriginal peoples' relationships to one another and their connection to country (Torres Strait Regional Authority, n.d).

7.1.2 *The First Nations Treaty Institute (Part 2, Section 9-63)*

The work of the Institute is to prepare the state and Aboriginal and Torres Strait Islander people “to enter into and participate in treaty negotiations” (*Path to Treaty Act* (Qld) s. 13(1)). The Institute will do so via the creation of a treaty-making framework which will help all parties become treaty ready. Some confusion does surface in relation to the role of the Institute. The ITTB emphasises the Institute’s role in supporting the recording of truth, and write that alongside supporting treaty readiness: "the Institute will manage a sustained process of local truth telling and healing for all Queenslanders” (Interim Truth and Treaty Body [ITTB], 2023b). The provisions of Part 2 of the Act do not, however, provide for the Institute to manage these procedures.

In several areas, Part 2 of the Act fails to be explicit in its commitment to recognising the right to self-determination and human rights. While Section 13 doesn’t negate the possibility for treaty negotiations between different Aboriginal and Torres Strait Islander communities, it doesn’t emphasise or explicitly refer to this as a possibility. This was a persistent question posed by the public to the Community Support and Services Committee (the Committee) of the Queensland Parliament during the ten public forums on the Bill (March-April of 2023). The Bill (and thereafter the Act) also fail to be explicit in their commitment to be bound by the *Human Rights Act 2019*. The Queensland Human Rights Commission’s (QHRC) submission on the Bill recommended that the *Human Rights Act* be included in Section 12, which details the Acts to which the *Treaty Act* is bound by (Queensland Human Rights Commission, 2023). The drafters had ample opportunity to clarify both issues in the final Act but did not do so.

7.1.3 *Is the Treaty Act an Act of Reconciliation?*

Though the *Treaty Act* is designed to prepare Queensland for the process of treaty-making, the Queensland Government clearly situates the legislation within the state's reconciliation process. In signing their *Statement of Commitment* the government claims: “we have reached a historic milestone on the journey to reconciliation” (Queensland Government, 2023a, para. 1). The three-year truth telling inquiry—a traditional mechanism of transitional

justice and reconciliation—is the immediate operation of the *Treaty Act*. This focus on truth is reflective of the broader position in Australia, where truth is seen as the essential foundation to treaty (Australian Parliament, 2022). Under the government's *Reconciliation Action Plan July 2023-June 2025*, Minister for Treaty Leeanne Enoch MP refers to the *Treaty Act* as a "collective pledge to move together on a journey of truth-telling, healing and reconciliation" (Queensland Government, 2023b, p. 5). Within this Plan, (former) Premier Palaszczuk affirms that Labor's aim is to advance reconciliation through action, including via a path to treaty for Queensland.

Australian news media also portray the *Treaty Act* as a component of reconciliation. *ABC News* describes the proposed legislation as "the groundwork for continued reconciliation" and "a process of reconciliation" itself (Riga, 2023, para. 4-5), to be carried out between Aboriginal and Torres Strait Islander peoples, non-Indigenous Queenslanders, and the Queensland Government. Given this wide embrace towards reconciliation, it is interesting to observe that the *Treaty Act* makes no reference to reconciliation whatsoever. How then, did the government and news media discourses shift so quickly from a focus of treaty to reconciliation? This question encourages the consideration of how reconciliation is being problematised in Queensland. Before engaging in this analysis, a review of the primary data sources for this Chapter will be made.

7.1.4 A Review of Key Data Sources

When referring to ‘the *Treaty Act* discourse’ this thesis refers to the ten public forum inquiries undertaken on the *Path to Treaty Act Bill*, the ministerial and government statements taken directly from the Queensland Parliament and Government’s official websites and reports, and news media. Following the Act itself, the ten public forum inquiries into the *Treaty Bill* became the primary data sources for analysis. The public forums occurred over the course of March and April 2023. Their analysis provides an opportunity to listen and read statements from representatives of the state and members of the public, including reflections from Aboriginal and Torres Strait Islanders and non-Indigenous Australians. The forums were run by the Community Support and Services Committee (*‘the Committee’*) of the Queensland

Parliament with Corrine McMillan Labor MP acting as Chair over all sessions. Ms McMillan therefore is cited frequently as a voice of the state.

7.2 What is the 'Problem' Represented to be?

Upon a broader examination of the *Treaty Act* discourse this thesis submits that the *Treaty Act* produces the reconciliatory needs of Queensland as (1) a 'problem' of accessing the truth of Queensland's colonial history; a sub-'problem' of redemption for non-Indigenous people and (2) a 'problem' of securing unity between non-Indigenous communities and Aboriginal and Torres Strait Islander communities.

7.2.1 *A 'Problem' of Accessing the Truth of Queensland's Colonial History*

Over the course of the ten public forums, Chair McMillan and other state representatives primarily position the *Treaty Act* as an exercise in educating or re-educating 'Queenslanders':

> First and foremost, it is about educating our Queensland community around what has happened for over 240 years and acknowledging the 60,000 years that our First Nations people owned and occupied this land... (*Chair Corrine McMillan MP at Weipa Public Forum*) (Queensland Parliament, 2023d, p. 7).

The state's discourse plays with an assumption: that for treaty to proceed, Queensland's population needs to be educated and given a full and truthful account of the state's colonial history. This framing suggests that the *Treaty Act* is in part conceptualising 'truth' as a forensic issue (The Truth and Reconciliation Commission of South Africa, 1999) and, as such, that real truths exist and that the core issue revolves around how society (that is, 'Queenslanders') access this truth. This need is premised within the context that most 'Queenslanders' have not received an education in these aspects:

> Queenslanders on the whole, somewhat through no fault of their own, are quite ignorant about what happened because most Queenslanders have never been

> taught (*Chair Corrine McMillan MP at Palm Island Public Forum*) (Queensland Parliament, 2023e, p. 1).
>
> Not many, in fact very few non-Indigenous Queenslanders understand this. ...In many cases the curriculum has never told the whole story... (*Chair Corrine McMillan MP at Longreach Public Forum*) (Queensland Parliament, 2023f, p. 1).

The problematisation produced by the *Treaty Act* discourse is that reconciliation is failing in Queensland due to a lack of access to truth regarding Queensland's colonial history.

The state makes several assumptions in relation to the *who* aspects of this work, which characterises the problematisation as a problem of non-Indigenous 'Queenslanders' not having access to the true history of their state. The suggestion is as follows: if non-Indigenous 'Queenslanders' knew the truth of the past, then they would be on board with reconciliation. As Short (2012), points out: this problematisation is not new. In 1988 the Australian Federal Government backstepped from their commitment to treaty, on account of the idea that non-Indigenous Australians needed to be educated before treaty could happen, or, perhaps, before non-Indigenous people would be ready to treat. Short explains that this has directed the Australian reconciliation lens towards the educational needs of non-Indigenous Australians, over the needs of those who have been harmed. As such, this problematisation is not just one of *access to education.* It entails follow on questions. If the 'problem' is a lack of truth regarding Queensland's colonial history, what assumptions does the state make about: *Who needs to be educated? Who should the educators be? Who has the agency to learn? And, on whom is the onus to learn being placed?* The remainder of Section 8.2.1 will consider these questions.

7.2.1.1 Who Needs to be Educated?

Throughout the *Treaty Act* discourse, who 'Queenslanders', 'they', 'our' and 'us' represent is often confused by the government and some members of the public. In each of the ten public forums, Chair McMillan applies the issue of historical ignorance to all

Queenslanders. Yet, they simultaneously apply the need for access to truth specifically to non-Indigenous Queenslanders:

> I acknowledge as a person the tremendous courage and hurt and the tremendous trauma that an event or a session like this can cause, but these stories need to be told. We want Queensland to be a better place in the next 240 years than it has been in the last. We cannot do this without knowing truth, so I encourage each and every one of you to continue speaking the truth with non-Indigenous people. Non-Indigenous people need to hear the truth... (*Chair Corrine McMillan MP at Cairns Public Forum*) (Queensland Parliament, 2023c, p. 25).

In these statements, access to truth and education becomes a precursory need of non-Indigenous people to reconciliation. It can also be observed in Chair McMillan's statement above how this non-Indigenous need is prioritised by the state against the potential harm it may cause to Aboriginal and Torres Strait Islander people.

Within this imbalance of needs, the *Treaty Act* discourse ear-marks non-Indigenous people as the primary learners in the path to treaty process. This positioning is often framed as a need to 'take the non-Indigenous Queensland community with us':

> ...the important part is taking our non-Indigenous Queensland community with us so that our First Nations communities do not continue to experience exclusion, oppression and racism (*Chair Corrine McMillan MP at Longreach Public Forum*) (Queensland Parliament, 2023f, p. 9).

This positioning makes three further assumptions: (1) that the non-Indigenous community are ignorant *en masse*, (2) that information is currently not available, and (3) that non-Indigenous people do not have the capacity or agency to seek out knowledge of Queensland's colonial history. In this view, non-Indigenous people should be bestowed education, rather than given the responsibility to seek it out.

7.2.1.2 Who is the Educator?

If the non-Indigenous person is prioritised as the learner, who then, is expected to provide the education? Across the panel of state representatives attending the public forums, all indicate readily that Aboriginal and Torres Strait Islanders should participate in truth telling. For Ms Cynthia Lui MP, State Member for Cook and “proud Iamalaig woman from the Kulkalgau Clan of Iama (Yam Island) and the Kulkalgal Tribe of the Torres Strait” (Lui, n.d.), this space for Aboriginal and Torres Strait Islander peoples to participate in truth telling exists in addition to the notion of 'bringing everyone along'. For example:

> First Nations people, for a long time, have always wanted to tell our truth and this is the time that we all get to tell our truth… It will be a journey of not only educating the wider community but also creating awareness and bringing everyone along with us (*Ms Cynthia Lui MP at Longreach Public Forum*) (Queensland Parliament, 2023f, p. 10).

The sentiment from Chair McMillan, on the other hand, continues to prioritise the non-Indigenous experience of truth telling. McMillan positions Aboriginal people and Torres Strait Islander people as truth tellers and repeatedly contextualises their truth telling as essential education to non-Indigenous Queenslanders:

> ...every single one of us was educated in Queensland, including me. Every single one of us shared a story that was one-sided, and we need to rectify that and we need to correct it. However, we cannot do that without our First Nations peoples being truthful with our non-Indigenous people. So every opportunity you have to have that conversation with a non-Indigenous people, we must share that story (*Chair Corrine McMillan MP at Cairns Public Forum*) (Queensland Parliament, 2023c, p. 25).

While awareness of the onus to educate being placed on Aboriginal and Torres Strait Islander peoples is not illustrated directly by representatives of the state, it is by members of the public. For instance, member of the community Mr Peter Lenoy (of the Jittabal Tribe and KuKu Djunkan Tribe descendant) suggests that the onus ought to lie with the Committee:

> ...There is only one side of that story that has been told and the other side also must be told with the same enthusiasm... I think the onus is on this committee to rewrite that and correct the history in our schools so that everyone has an understanding of how this country came to be (*Mr Peter Lenoy at Cairns Public Forum*) (Queensland Parliament, 2023c, p. 17).

Alongside other implications, positioning Aboriginal peoples and Torres Strait Islander peoples as the educators places the onus of difficult and traumatising work on them. It does so, too, without giving a clear answer as to what the tangible results for their communities will be. Calls for such information and answers were raised by members of the public during the forums:

> Where do you think the tangible results for people will come from out of the inquiry? Is it a hope that it will change education and improve health services? I understand this is about history, but there have to be positives moving forward... (*Ms Kate Birse at Longreach Public Forum*) (Queensland Parliament, 2023f, p. 12).

In response to Ms Birse, the state did not record a reply beyond thanking her for her comment. Similarly:

> Like Ernie and Aunty Flo have said, I want to understand more what treaty will actually mean... what tangible difference, I guess, will it make to the people on the ground and how will it actually empower communities to get better outcomes... (*Ms Jaime Gane at Weipa Public Forum*) (Queensland Parliament, 2023d, p. 7).

In response to Ms Gane, Chair McMillan answers:

> First and foremost, it is about educating our Queensland community around what has happened for over 240 years and acknowledging the 60,000 years... Your question really is about how things will be different and what will be different, so the first thing is that we have to take our Queensland community with us. There is a small population who get it and who understand why and how our First Nations peoples are where they are today, but the large majority of Queenslanders, through, in many ways, no fault of their own, are not aware. So first and foremost it is about the opportunity for our non-Indigenous community to hear and understand and listen and also to share some of what they experienced (*Chair Corrine McMillan MP at Weipa Public Forum*) (Queensland Parliament, 2023d, p. 7).

Chair McMillan's response swerves Ms Gane's question, which asks what the benefit to community will be and again prioritises this process as an opportunity for non-Indigenous people in Queensland. This deflection from the state demonstrates a severely poor understanding and lack of acknowledgement in relation to intergenerational trauma, which, ironically is emboldened by the *Treaty Act* having been specifically prioritised in the Act's preamble.

In addition to, or perhaps by virtue of the state's poor perception of how the *Treaty Act* may position and negatively impact Aboriginal and Torres Strait Islanders, the state positions the non-Indigenous person at the centre of the truth telling process. For example:

> ...there will be many non-Indigenous people who will experience and understand and want to share the hurt that they saw and that they felt on behalf of our First Nations communities. So that is the first thing. In order for life to be different for the next 240 years for our First Nations peoples, we have to share

> that story (*Chair Corrine McMillan MP at Weipa Public Forum*) (Queensland Parliament, 2023d, p. 7).

The state's narrative of the non-Indigenous person being prioritised as the learner and the truth teller is at complete odds with the specified aim of the legislation. Non-Indigenous peoples, by admission of the Queensland Parliament and the *Treaty Act*, are not a party to treaty negotiation in Queensland. Why is it, then, that non-Indigenous people are at the centre of the *Treaty Act* discourse?

The narrative from the state is reflective of Short's (2012) claim that the reconciliatory lens in Australia has de-prioritised those who have been harmed, in preference for the education needs of non-Indigenous Australians. By centring the non-Indigenous person in the process for treaty, the state may (either un-wittingly or willingly) secure a path of divergence from treaty. This might look like a process where each step towards treaty, remains a step wherein treaty negotiations do not actually begin.

7.2.1.3 Who has the Agency to Learn?

In producing this problematisation of reconciliation *as* an issue of non-Indigenous people not having access to the truth of Queensland's colonial history, the state creates a narrative which diminishes the capacity and agency of non-Indigenous people to learn or pursue their own education. As has been illustrated above, this narrative shifts the onus of teaching onto Aboriginal and Torres Strait Islanders peoples.

In doing so, this approach de-centres Indigenous peoples. *Where does their learning come in? The learnings of their own ancestry? Particularly, for example, for those of the Stolen Generation, who were forcibly removed or displaced?* Learning what happened to members of their clan is for many people an essential aspect of grieving and enabling a spirit to rest. Truth telling could be an essential learning process for many Indigenous people that would also affect outcomes of native title applications. These are areas of knowledge that are largely

unexplored within the *Treaty Act* discourse. As such, these issues will be further unpacked in Section 7.5 which investigates Bacchi's Q4, the silences that are evident across the discourse.

7.2.2 *A Sub-'problem' of Redemption for Non-Indigenous People*

Within this 'problem' of accessing the truth of Queensland's colonial history, various narratives are offered by the state to justify why non-Indigenous people must have access to these truths. The experience by non-Indigenous people of guilt and shame associated with colonialism is positioned as a primary feature that prevents reconciliation in Queensland:

> ...it may also set non-Indigenous peoples free of a whole range of things: guilt, lack of understanding, ignorance, shame, embarrassment, prejudice... Along with the learnings and how difficult it will be, there is tremendous opportunity there to broaden the perspectives of non-Indigenous people (*Chair Corrine McMillan MP at Longreach Public Forum*) (Queensland Parliament, 2023f, p. 10).

This narrative prioritises the opportunity to remedy non-Indigenous shame and it does so before the needs of Aboriginal and Torres Strait Islanders. As a reoccurring justification by the state, it becomes an important sub-'problem' produced by the *Treaty Act*:

> I am sure the coming years of the Truth-telling and Healing Inquiry will be very difficult for both First Nations Queenslanders and non-Indigenous Queenslanders. It will not be easy, and we recognise that as a government... We are also hopeful that it will set many non-Indigenous Queenslanders free from their shame and their guilt (*Chair Corrine McMillan MP at Rockhampton Public Forum*) (Queensland Parliament, 2023g, p. 2).

The need for modern societies to acknowledge the role of guilt and shame in their colonial histories and meaningfully address it is undisputed. Guilt and shame play key roles in dividing societies and inspiring hate between groups of people. During the Rockhampton public forum, Darumbal Elder Aunty Nyoka talks about the trauma guilt and hate can inflict on children

and advocates the importance of raising our young persons in such a way that liberates them from growing up with this trauma:

> ...we do not want or need our younger people growing up as another generation of traumatised people like our stolen generations were... That is important, because we do not want our Indigenous kids growing up with that hate and we do not want our white kids feeling that guilt *(Darumbal Elder Aunty Nyoka Hatfield at Rockhampton Public Forum)* (Queensland Parliament, 2023g, p. 4).

In her cultural workshops Aunty Nyoka teaches young people that "no-one alive today is responsible for what happened in the past" (Queensland Parliament, 2023g, p. 4). Private member of the public, Mr Richard Sporne, raises a word of caution in response:

> I agree. No-one alive today is responsible for what happened in the past, but people are responsible now to change that. People alive today are benefiting from what happened in the past. This step towards treaty—it depends what that treaty looks like, but it could go a long way to rectifying that (*Mr Richard Sporne at Rockhampton Public Forum)* (Queensland Parliament, 2023g, p. 5).

As with the questions around who bears the onus of responsibility to educate (above), we might ask, *who bears the onus of freeing someone else from guilt? Is it appropriate for such a process to be built into the path to treaty?* Another private member of the public, Mr Percy Neal, suggests that this process of releasing ourselves from guilt is not for Aboriginal and Torres Strait Islanders. He states:

> There is all this talk about reconciliation and everybody being happy, but it really does not make any difference to us. We do not need to reconcile; maybe you guys have to do that *(Mr Percy Neal at Cairns Public Forum)* (Queensland Parliament, 2023c, p. 23).

Interestingly, in a ministerial statement, then-Premier Palaszczuk claims that the path to treaty process is not about guilt. Yet her word choice is revealing of the sentiment of redemption. She states:

> What we do here today is what our forebears should have done back then... This is not about guilt; this is about revealing the truth of our State that has been denied and buried for far too long... I urge all Queenslanders to find in themselves the courage to finish this unfinished business, the compassion to walk in other people's shoes (Queensland Parliament, 2023a, p. 113).

With redemption as a focus point for reconciliation in Queensland, the Premier produces a specific version of reconciliation: one where the process of reconciliation will end or be finished. This suggests that colonial conflict is something that may be rectified and redeemed.

7.2.3 *A 'Problem' of Unity and Shared Identity*

The second core problematisation produced by the *Treaty Act* discourse is reflected in the repeated claim that for reconciliatory aims to be achieved there must be unity. This idea is expressed as a need for 'a shared understanding', 'a shared history', 'a united Queensland' and 'moving forward together'. The pursuit of a world with less division is an expected endeavour for any society with conflict. What might be deduced from the *Treaty Act's* discourse, however, is a trending towards understanding unity as a shared or single identity. The merging of these aims can be seen across the discourse, including in the following statements from Chair McMillan and Member for Cook Ms Cynthia Lui:

> When we talk about strengthening and reframing the relationship with government, it is also about bringing non-Indigenous and Indigenous Queenslanders to write a new narrative for our future so it becomes all of Queensland, not just Indigenous/non-Indigenous (*Ms Cynthia Lui MP at Palm Island Public Forum*) (Queensland Parliament, 2023e, p. 3).

> When we capture that truth, it becomes a shared history. It becomes a history for all peoples regardless of our colour (*Chair Corrine McMillan MP at Rockhampton Public Forum*) (Queensland Parliament, 2023g, p. 1).

Member of the community Mr Peter Lenoy (of the Jittabal Tribe and KuKu Djunkan Tribe descendant) also shared this sentiment:

> This is an opportunity for Path to Treaty to change things in this country for the better so that we all become one Australian group, not a divided group *(Mr Peter Lenoy at Cairns Public Forum)* (Queensland Parliament, 2023c, p. 17).

This need for one shared identity pulls up familiar references to the category of 'Queenslander' and 'Australian' as a singular identity: a group of people devoid of difference. It is curious why this need for a collective—or 'one group'--arises. *Is the creation of a national identity simply part and piece of the promise of reconciliation? What does a national identity look like for settler-colonial states?* The emergence of this theme of 'unity' and how it is produced in Australia's reconciliation discourse will be explored in Bacchi's Q3 below.

7.2.4 ***Summary***

What is clear within the *Treaty Act's* core problematisations is that the non-Indigenous population of Queensland is being centralised in the state's path to treaty. First, where reconciliation is produced as a 'problem' of access to the truth of Queensland's history, the Indigenous person is positioned in the discourse as the educator and the non-Indigenous person as the learner. The case for non-Indigenous redemption emerges as a sub-'problem' to this, where the non-Indigenous Queenslander's need to be freed from guilt is centralised and created as an essential prerequisite to treaty.

These problematisations shine light on why the final core problematisation may exist. A single, shared identity erases difference. It offers a reassurance that the types of divisions that may be seen as the cause of conflict will not, or cannot, resurface. It is a narrative born from the form of reconciliation that seeks to finish colonial histories, as former Premier

Palaszczuk alludes to within her statements. While the desire for unity is not negative, 'unity *as* a single identity' works in the same way as the first two problematisations. By prioritising the needs of non-Indigenous people in a path to treaty, it displaces the needs of Aboriginal and Torres Strait Islanders and derails the possibility of treaty. Moreover, it does so while appearing, on the surface, to be forging a path towards negotiation.

What are the key ideas that contribute to this particular production of reconciliation in Queensland today? Bacchi's Q2 invites the opportunity to analyse the key concepts, categories and binaries that underpin the *Treaty Act* discourse and assess how these provide the theoretical foundation for its core problematisations. We now turn to consider these in Section 7.3.

7.3 What Presuppositions or Assumptions Underlie these Representations of the 'Problem'?

The theoretical foundation of the *Treaty Act's* core problematisations would be described by Bacchi as it's 'travelling ideas' (Bacchi, 2009). Bacchi's Q2 prompts an analysis of these traveling ideas through a discourse analysis of the major concepts, categories, and binaries that have become the governing body of knowledge for the *Treaty Act*. This Q2 analysis will consider the key concept of treaty, the key category of 'Queenslander' and the core binaries of *learner/educator* and *freed/burdened.*

7.3.1 ***Key Concepts***

7.3.1.1 Treaty

The *Treaty Act*, by design, is intended to prepare the Queensland Government and Aboriginal and Torres Strait Islanders for negotiating treaty. According to Hobbs and Williams (2020), treaties are political agreements that must satisfy three conditions: firstly, the Indigenous peoples involved must be recognised as a "distinct polity" on the basis of them

being self-governing communities who 'own'[7] and occupied the land upon which the state now exists. Within this, the treaty must recognise that the Indigenous parties retain their inherent right to sovereignty. Secondly, negotiations must be fair where all parties are given equal opportunity. Finally, the process should bind both parties in mutual obligation, with each accepting responsibilities. Following this understanding, to treat is for sovereign parties to reach an agreement through fair and equal negotiation.

Specialising in constitutional and human rights law, Hobbs and Williams (2020) focus on the political and legal application of treaty. Treaty is, however, also created discursively and influenced by the various arenas that recognise and use it. For example, language of treaty filters down from the United Nations (UN) and the international human rights treaty system. The UN supports the notion of 'treaty *as* relationship-building'. For example, in 2010, the UN Committee on the Elimination of Racial Discrimination (CERD) recommended in its Concluding Observations to Australia that the state should "...consider the negotiation of a treaty agreement to build a constructive and sustained relationship with Indigenous Peoples" (Committee on the Elimination of Racial Discrimination, 2010, p. 4). This version of treaty does not preclude political agreements, but it can fail to prioritise them.

The prioritisation of relationship-building appears to be the position adopted under Queensland's *Treaty Act*, with much of the state's discourse describing the process of treaty as relationship building between Aboriginal and Torres Strait Islander peoples, the state, *and* non-Indigenous peoples. One of the most notable ways that this occurs is the change in the web of relations of the Act. With absolute clarity, the *Treaty Act* refers to the state of Queensland and Aboriginal Peoples and Torres Strait Islander Peoples as the parties of the Act and to treaty (*Path to Treaty Act* (Qld) s. 5). Very quickly, however, a third party to negotiations is introduced by the state during the public forums and in ministerial statements:

[7] Hobbs and Williams (2020) write "owned" (p. 182).

> Path to Treaty is a negotiation process between the Queensland government and Queensland's First Nations peoples and non-Indigenous Queenslanders (*Chair Corrine McMillan MP at Cairns Public Forum*) (Queensland Parliament, 2023c, p. 1).

It is unclear whether non-Indigenous Queenslanders are being inserted as parties to treaty, or simply invited to involve themselves in some way. The Act is, however, clear that the processes of the Act will be for the benefit of non-Indigenous Queenslanders too. The 10th principle of the Act's preamble states:

> The truth-telling and path to treaty processes will provide measurable economic, social, cultural and environmental benefits for Aboriginal peoples, Torres Strait Islander peoples, the Queensland community generally and the State (*Path to Treaty Act* (Qld) preamble).

The commentary from the state (deriving from the public forums, ministerial statements and news media) tends to showcase relationship-building as the primary positive outcome of these truth telling and treaty processes. As noted, the adoption of such priorities does not need to dismiss the focus of this legislation on the recognition and negotiation of responsibilities. Yet, within the *Treaty Act's* discourse, silences evolve in the spaces where recognition of Aboriginal and Torres Strait Islanders as a "distinct polity" could be given. Quiet surrounds the concepts of self-governance and sovereignty. There is a nod towards land being owned before, but no discussion of whether mutual obligations and perhaps ownership might be possible under this path to treaty. If the state seeks to treat, recognition of self-determination and sovereignty is a threshold requirement.

Where treaty is concerned, *who* is invited to treat is a crucial aspect. Particularly as those party to treaty are empowered to negotiate assets and accept obligations in relation to land. What is quickly confusing in the *Treaty Act* discourse is the transition from two parties to three. This may be due to the wider misperception that the Act makes in relation to treaty and

reconciliation. If the Act has essentially adopted the character of reconciliation instead of treaty, then inviting non-Indigenous Queenslanders to be party is appropriate. Legally, however, the impact is concerning. *Why design a path to treaty that doesn't look to treat? Who benefits from this version of legislation?* Section 7.3 turns to consider the key category of 'Queenslander', exploring the consequence of using undefined categories.

7.3.2 *Key Categories*

7.3.2.1 The 'Queenslander'

The category of 'Queenslander' is prevalent throughout the *Treaty Act* discourse, with occasional reference made to the national identity of 'Australian'. Part of the population may default to Queenslander as their primary identity. But doing so is usually circumstantial and different rationales will be used to explain its adoption.

In part, literature that discusses the 'Queenslander' identity does so from the innate exclusion of Aboriginal and Torres Strait Islander people. Such literature presumes this exclusion, without discussion. For example, in Akers et al.'s (2014) paper 'Remember who we are': an analysis of brand Queensland' the authors write: "A second cluster of interpretations depicts Queensland and Queenslanders in a negative fashion. Some focus on the harsh environment and the treatment of Indigenous Australians and Pacific Islanders" (p. 496). Here, Aboriginal and Torres Strait Islander individuals are categorised outside of the 'Queenslander' group. This may be, as Akers et al.'s (2014) discussion suggests, due to the immigrant characterization of 'Queenslander'. They cite: "The industrious and agrarian minded characteristics of immigrants became one cornerstone for Queensland identity" (p. 499).

O'Chin's (2024) discussion on 'Inclusion and Exclusion'–a chapter from their book *An Epistemology of Belongingness Dreaming A First Nation's Ontology of Hop*e–focuses on the legislative frameworks which prescribed inclusion and exclusion 'post' colonisation. O'Chin's focus point alludes to this same perception of 'Queenslander' being an exclusionary identity

which arrived with colonisation and does not extend itself to Aboriginal and Torres Strait Islander identities.

Even though everyone in Queensland may identify with the label of Queenslander at some point, it is ambiguous and elusive in its use by the state. This is compounded by the fact that the term itself is not defined by representatives of the state during the public forums. While there are substantial references to Queenslander by state representatives during the forums, there are few occasions where members of the public actually refer to themselves or others as Queenslanders. Why then, has it been actively adopted in relation to the *Treaty Act*?

In her book *Being Australian: Narratives of national identity,* Catriona Elder (2007) points to ethnicity as a core feature shaping the Australian national identity. Quoting Perera (2006), Elder suggests that the construction of the state and its citizens orients around notions of whiteness. By virtue of this construction, anyone who does not fall inside this category becomes an outsider. This is the process through which Aboriginal people and Torres Strait Islander people have become classified as outsiders on their own land.

According to Elder (2007), to live on land which has such outsiders further shapes the white Australian identity: presenting the opportunity for Anglo-Australians to view themselves as threatened and as victims. This may tie into the national identity being underpinned by feelings of anxiety. These undercurrents, in turn, divert attention away from who is at risk in Australian society. In Elder's words, the white Australian identity "neutralises and reverses the story of who is actually in danger in Australia" (p. 1921). This produces an identity sculpted by fear, simultaneously generating the need to be freed from this position.

The construction of the citizen around ethnicity has other consequences: one example, is that it deprioritises culture as a leading formula of identity. Traditional Owner of the Bwgcolman group of Palm Island, Mr Robert Friday provides an example of someone who rejects the possibility of using 'Australian' as an identity label. He argues that it does not encompass his culture:

> I do not class myself as Australian; I class myself as a Kuku Yalanji. That is my culture... (*Traditional Owner Mr Robert Friday at Palm Island Public Forum*) (Queensland Parliament, 2023e, p. 7).

Perhaps the cover of 'Queenslander' permits light relief to those non-Indigenous people who may experience anxiety, fear and/or guilt in relation to their Australian national identity. Queenslander is suggestive of the possibility that everyone can be the same: that *non-Indigenous/Indigenous* does not need to be a difference. Where there is no difference, there is no cause for conflict.

If there is truth to this argument, then use of Queenslander as a shared identity might be prioritising the non-Indigenous need to be free of their anxieties over the needs of Aboriginal and Torres Strait Islanders to be given a true opportunity to treat. Rather than creating unity, this hardens the lines of existing binaries: *non-Indigenous/Indigenous* are positioned as *freed/burdened,* where focus remains on freeing non-Indigenous people with the burden for doing so placed on Aboriginal and Torres Strait Islander people. Section 7.3.3 will now turn to consider the interaction of these binaries more closely.

7.3.3 Key Binaries

In the *Uluru Statement from the Heart* truth telling has been depicted as the essential foundation to an articulation of Indigenous history (The Referendum Council, 2017). Truth has also come to be viewed as the primary prerequisite for treaty (Australian Parliament, 2022). Two versions of truth surface in the *Treaty Act* discourse: 'Truth *as* education' and 'truth *as* healing'. These understandings of truth are underpinned by the dominant identity binaries that divide the Queensland population: *non-Indigenous/Indigenous* and *freed/burdened*.

Elder (2007) points to the commonly used phrase 'white Australia' which often appears as the binary opposite to Indigenous Australia. The binaries of *non-Indigenous/Indigenous, Queenslander/Indigenous, white/black* or *white/not-white* operate here. This section will

consider the reliance of the *Treaty Act* discourse on these binaries and how they connect to the *learner/educator* and *freed/burdened* binaries identified in Bacchi's Q2.

7.3.3.1 Truth as Education

The exercise of truth in 'post'-colonial contexts often rests on the binary pair of *self/other,* where Fanon's concept of the other may also be represented as *colonialist/colonised* (Al-Saidi, 2014). In such cases, 'truth *as* education' becomes caught within the matrix of two worlds merging. Perhaps, it may be perceived as one world of knowledge dominating another. This is where the rhetoric of the *redemptive future/shameful past* binary operates. It is acknowledged by the state that its past is deeply shameful–especially so because of the lack of insight that non-Indigenous Queenslanders have accessed. Truth as education is lifted as a promise to redeem Queenslanders. Where lack of knowledge is the issue, education becomes the cure. The chance to cure Queenslanders of this guilt feeds the binary position of *non-Indigenous/Indigenous* as *freed/burdened*, where the burden of truth telling is placed on Aboriginal and Torres Strait Islanders.

7.3.3.2 Truth as Healing

The *Treaty Act* discourse positions truth and truth telling as the central vehicle of healing and the primary justification for establishing the Truth-telling and Healing Inquiry. This reflects the concept of restorative truth, as one of the four truths that emerged from the SA TRC (The Truth and Reconciliation Commission of South Africa, 1999). In a rather generalised manner, the state suggests that everyone will heal from the truth. The state appears to position 'truth *as* healing' by asserting that the revelation of truth can produce acknowledgement and redemption. In their book *Dilemmas of Reconciliation,* Govier and Prager (2003) ask why the notion of acknowledgement has become a clear precursor to healing and reconciliation. Examining the final reports from the *South African Truth and Reconciliation Commission* and the *Canadian Royal Commission on Aboriginal Peoples*, they identify the acknowledgment of wrongs from the past as central and significant themes to each report. As Govier and Prager

(2003) suggest “acknowledgement is knowledge” and it flows into what they term “a kind of spelling out” (p. 71) whereby what is known is made known. To acknowledge something is the precursor to accepting it. Who acknowledges what, therefore, becomes critical to who heals.

Acknowledgement is just one part of what healing might require, however, and the concept can overpower other healing needs. As such, various areas of transitional justice that require change in political structural, financial compensation, admission of guilt, or investment directly into community often remain undiscussed. This was clear within the Northern Irish example (see Section 0).

Whether truth precipitates healing or not is another of the big questions that the *Treaty Act* does not directly answer. Rather than assume truth *as* healing, the state might consider more carefully: *who will carry the onus or burden of the work of the Truth-telling and Healing Inquiry? What is the relationship between the truth-teller/truth-recipient?* In the instance of Queensland, the onus of work in truth telling is clearly shifted towards the aggrieved. As we see in statements from the government, they position non-Indigenous Queenslanders as the recipients of the truth:

> ...we believe as a government that unless we tell the truth we cannot take Queenslanders with us on the journey (*Chair Corrine McMillan MP at Palm Island Public Forum*) (Queensland Parliament, 2023e, p. 1).

> ...there is an old saying that the truth will liberate you. I think the truth will liberate non-Indigenous people more than liberate us because it is then okay to talk about stuff... (*Mr Mick Gooda at Weipa Public Forum*) (Queensland Parliament, 2023d, pp. 7–8).

Although none of these statements are direct as to whom the burden of telling truth falls to, it is clear that it will be the non-Indigenous person who is freed by the process and perhaps latterly welcomed to tell their truth. As above, Mr Mick Gooda–a Ghungalu Yiman man from the Dawson Valley in Central Queensland and Co-Chair of the Interim Truth and Treaty

Body–corroborates the idea that the benefit of truth telling in Queensland is for non-Indigenous people.

Mr Gooda suggests that truth telling should free non-Indigenous Queenslanders to share their stories by alleviating their burden of guilt. This in turn positions Aboriginal and Torres Strait Islander people as the deliverers of truth. These statements contribute towards the positioning of *non-Indigenous/Indigenous* as the *truth-recipient/truth-teller* with the effect of each positioning resulting in one half of the binary being freed whilst the other continues to carry the burden of work.

7.3.4 *Summary*

The governing bodies of knowledge that underpin the *Treaty Act* include the concept of treaty as a relationship-building exercise; the category of Queenslander as unity; and the binary pairings of *non-Indigenous/Indigenous* – *learner/educator* – *freed/burdened*. The present-day *freed/burdened* relationship between *non-Indigenous/Indigenous* in Queensland is reflective of the longstanding inequalities that the conditions of colonialism planted in Australia. Bacchi's Q3 leads this research into a Foucauldian genealogy of these ideas, providing the opportunity to observe the key emergences of these concepts over time and uncover what in each society allowed such an idea to develop.

7.4 How has this Representation of the 'Problem' Come About?

It is often noted across the literature that Australia is the only former British colony to remain without a treaty with its First Nations peoples. In fact, during the Weipa public forum for the *Treaty Bill* Chair McMillian refers to Premier Palaszczuk's discovery in the British Library of "directions from the British Colonial Office to make treaties" (Queensland Parliament, 2023d, p. 4) and the choice of the colonial governments not to heed them. There is an element of shock in her sentiment: the idea that surely, had the concept of treaty been known to the forebears, they would have followed it. This produces the forebears of Australia as exceptionally cruel in their choice not to engage in treaty. It is produced as an immoral position and as such, suggests a higher sense of morality to those (to-be) states that did engage in

treaty and perhaps onto Queensland, for now pursuing it. It is worth, then, considering what this concept of treaty looked like when it was first brought to other First Nations around the world.

7.4.1 Treaties with the British Crown

Following its policy of plantation (1550-1641) (see Chapter Five), England continued its expansion of what would become the British Empire. In 1707 the *Treaty of Union* established the Kingdom of Great Britain–a union between England (who had already gained control of Wales and Ireland) and the Kingdom of Scotland. The British Empire grew, fuelled by the Atlantic slave trade (1555-1834), resulting in 57 colonised territories in its most extensive form. From 1701, representatives of the 'British' crown began signing treaties with First Nations across parts of North America that are now known as Canada. By creating treaties with First Nations across the world, the crown recognised the capacity of Indigenous people to treat and acknowledged the relationship between First Nations and states as *sovereign/sovereign*.

It is suggested that the sovereignty of the British Empire was practiced via "an underlying jurisdictionalism by which British authority over non-Christians was based upon treaty, protocol and suchlike relations with those people" (McHugh, 2004, p. 117). A prominent factor of each of these treaties/relations was the 'doctrine of pre-emption': the exclusive right of the British crown to acquire land (McHugh, 2004, p. 38).[8] It was around the 19th century that the doctrine of pre-emption was formalised and put into widescale practice by the British crown via its British colonial administrations. The doctrine was defined slowly across the British crown's treaties with First Nations, for example, in the *Land Claims Ordinance 1841 (*Aotearoa/New Zealand) pre-emption is expressed by vesting "all lands within the Colony, which have been validly sold by the Aboriginal Natives…" in the British crown "as part of the demesne[9] lands of the crown" (The *Land Claims Ordinance 1841 (*Aotearoa/New Zealand),

[8] For further examples of definitions see Hickford (2004) footnote 15 at p. 4.

[9] The legal term demesne refers to "legal possession of land as one's own" (Oxford English Dictionary).

Section 2).[10] Through the adoption of pre-emption, the British crown disregarded evidence that Indigenous people had their own basis for sovereignty and tenure of the land and created land transactions with First Nations in which only the crown could enter with First Nations and once sold, land would remain with the crown. The crown thus created a sense of control over these land transactions and a means to prevent other private individuals or monarchies from acquiring land. Thereafter, the effectiveness of these policies was in part due to the actions of the settler societies who—in taking occupancy in the colonies—made good 'the acts of possession' of the British crown (Attwood, 2009).

The present Canadian Government recognises the creation and signing of 70 treaties by the crown and the First Nations of the land during 1701 until 1923. The Canadian Government describes these collections of treaties, including the *Treaties of Peace and Neutrality* (1701-1760), *Peace and Friendship Treaties* (1725-1779) and the *Upper Canada Land Surrenders and the Williams Treaties* (1764-1862/1923), as "the basis of the relationship between the crown and 364 First Nations" (Government of Canada: Indigenous and Northern Affairs, 2008, Historic Treaties section).

Te Tiriti o Waitangi /Treaty of Waitangi came over a century later, becoming what many recognise as the founding document of Aotearoa/New Zealand. The treaty was signed in 1840 by approximately 500 Māori chieftains and representatives of the British crown (Te Puni Kokiri/Ministry of Maori Development, 2001). It was preceded by the *He Whakaputanga /Declaration of Independence* (1835) which positioned (*mana*) authority and sovereign power as residing fully with Māori (Manatū Taonga/Ministry for Culture and Heritage, 2021).

Te Tiriti o Waitangi /Treaty of Waitangi was drafted in English and signed in Māori, making the latter the authoritative treaty. Discrepancies between the two texts remain significant, in part because the English version of the treaty was the version to which all non-Māori speakers referred to (Fletcher, 2014). Arguably, the difference of most consequence

[10] See Hickford (2004) final sentence of footnote 16 at p. 4.

was that in the English text Māori chieftains ceded sovereignty to Queen Victoria. In the Māori version, the chieftains maintained governance – not *mana* (authority and control). Among many, Historian John Pocock argues that the *Declaration of Independence* and *Te Tiriti o Waitangi/Treaty of Waitangi* was prepared and signed under deceptive circumstances, he writes:

> British actions of 1840 pursued a double and deceptive strategy: on the one hand attributing enough sovereignty to make them capable of entering into a treaty, on the other denying them...the sovereignty of a fully formed state, so that the treaty could be subsequently denied the binding force of law (Pocock, 2001, p. 76).

Pryor (2007) refers to this type of deception as 'fracturing the skeleton of the law'. It is not the role of law to create a loophole. If anything, that is the greatest corruption to the rule of law.

This notion of the double bind of treaty also appears in the US where more than 800 treaties were negotiated between 1722 until around 1869 (The National Archives and Records Administration (NARA), 2022). Though the early 'treaties of friendship' were forged with Native American custom (Champagne, 2008), the relationship of good faith was tenuous. The government's recognition of Native Americans as distinct polities lasted just over a century. In 1871 the House of Representatives voted to cease recognition of Native American nations as independent nations. This step produced the impossibility of treaty between First Nations and the US.

Of the 'old treaties', 374 of 800 were ratified in the Senate. The present US Government writes: "These historic documents mark the beginning of a tribe's transition from Sovereign Nation, with its own independent government and land base, to a 'domestic, dependent, Nation' (Supreme Court, 1831)" (US National Archives, 2014, Education Updates section).

The present-day narrative from the US Government silences an important aspect of this transition, namely, that the sovereignty of the Native Americans was not ceded. The government simply stopped recognising it, breaching its own laws in the process. Doing so brought the government at odds with the treaties it had ratified. The imperative to be bound by the 'old treaties' was eventually quashed by the US Supreme Court in the case of *Lone Wolf v Hitchcock* (1903) where the Supreme Court ruled that treaties could be put aside by Acts of Congress.

The territories now known as the states of Alaska and Hawai'i were not engaged in the same treaty process as the rest of the US. Alaska was purchased by the US Government from Russia in 1867 via the *Treaty of Cession*. The land and the Native Alaskans were largely neglected by the government until the discovery of oil in 1971. Land disputes were settled in favour of 44 million acres of land allocated to Alaskan Natives and a payment of $962 million. This was awarded, however, in exchange for forfeit of their claim to Aboriginal land (US Commission on Civil Rights, 2002).

What can be observed of the US Government's actions is a bind: the government, on the one hand, recognises the Native Alaskans as distinct polities, yet, in parallel asks each group to sign over their claims to their land. In this instance the government offers a supposed appeasement (recognition of the Native Alaskan sovereignty) in conjunction with removing their claims to land, which is the necessary element which secures a polity's right to self-governance. The actions of the US Government may be described as appeasement bound by land appropriation. This bears various similarities to the role of treaty in Aotearoa/New Zealand, where outright deception was used by the government to take Māori land.

The chain of events that occurred in Hawai'i offers food for thought when considering what it means for Australia to be without treaty. By the time the US began to exchange commerce with Hawai'i, the House of Representatives had already voted to cease recognition of Native American Nations. As part of his early efforts to modernise, King Kamehameha III (1814-1854) of Hawai'i introduced reform that permitted foreigners to own land. In 1875 he

signed the *Reciprocity Treaty* with the US, the renewal of which (1887) 'compelled' the King to cede most of his power and accept a new form of government (Goodyear-Kaʻōpua et al., 2014). Queen Lili'uokalani (1838-1917) sought to restore power to the native Hawaiʻians but was forced to step down in 1893 by the US minister for Hawaiʻi. Acting without orders from his government, the minister declared Hawaiʻi a US protectorate and a new government was established on behalf of the US In light of the absence of treaty, 1893 is marked as the starting point of prolonged US occupation of Hawaiʻi (Coffman, 2016; Goodyear-Kaʻōpua, 2014; Goodyear-Kaʻōpua et al., 2014; Keanu Sai, 2004).

Various voices argue that Australia has experienced a similar story to Hawaiʻi, echoing the notion of Australia as a prolonged occupation (Allard-Tremblay & Coburn, 2023; Simpson, 1993). As noted above, discussion of treaty in the public forums focused on advocacy for treaty and relays a sense of shock that treaty was not engaged with by the first Australian Government. This element of shock positions the decision of the state to enter treaty as a moral duty and one which Australia has failed. This discourse of morality clings to discussions of treaty across Australia, where a state's choice to begin treaty affords it a greater moral status than its counterparts.

One of the effects of treaty as a discourse of morality is that it moves discussion away from recognition of the *sovereign/sovereign* relationship. This may occur due to the state's fixation on saving its moral status. Where this becomes a state's motivation, the relationship can shift towards the binary of *freed/burdened*, particularly where treaty is used as a vehicle to shed guilt. As is evident in the overview of Canada, Aotearoa/New Zealand, the US, Alaska, and Hawaiʻi, most states sought to discharge their duties to treat. Denouncing, undermining or altering the *sovereign/sovereign* relationship became the most effective way to do that. Within this struggle to curtail the *sovereign/sovereign* relationship, crown culture was introduced to First Nations via policies of assimilation.

Another silence present in this problematistation is the Queensland Government's positioning of itself as an appropriate party to treaty (in contrast to the Commonwealth

Government, local councils, or other agencies). Treaties can be negotiated between sovereign entities (Brennan et al., 2004). However, to question the Queensland Government's position as a sovereign body capable of treaty-ing would also draw in focus the sovereignty of the other party to such a treaty: who can treatise on behalf of Indigenous people? Are public forums a sufficient process for garnering views? Does nominating a select few Indigenous people to lead the process represent a sovereign body who can treaty? Do Indigenous MPs have a special position? The act of questioning who has sovereignty to participate as a party to treaty is complex and multifaceted.

7.4.2 Assimilation

Following treaty, various mechanisms were introduced by the crown governments to assimilate First Nations people around the world into the crown's culture. In each of these new colonies, different versions of schooling systems and boarding schools were established, premised on separating children from their parents and cultures influence. Historian Brenda Child cautions us to read the rhetoric of the assimilation era closely. The 'schooling' programs captured in the examples above are about separation. It is not just the segregation of children from their families, from their languages, or cultures. As Child suggests, the silence of this system is also about the separation of Indigenous people from their land (Waxman, 2022).

Significantly, these practices lead to the dispossession of First Nations from more and more land. As in the case of Aotearoa/New Zealand, the introduction of schools for Māori children from 1867 to 1969 required the Māori to donate the land upon which the school would be built, contribute to the funding, and the teachers' salaries (Manatū Taonga/Ministry for Culture and Heritage & Calman, 2012). In the instance of Hawai'i' schooling systems, Gershon (2020) discusses the perspectives of education historian Michelle M. Morgan, who claims that most native teachers committed themselves towards the process of 'Americanization', based on a desire to help children step away from their Indigenous or foreign identity.

As these concepts of treaty and schooling were employed to remove First Nations from their land and their families, the relationship of the *state/Indigenous* shifted from

sovereign/sovereign to a *parent/child* binary where Indigenous people were becoming increasingly reliant on the state's permission to access their land and families (Nakata, 2007b). With Indigenous people forcibly contingent on the *parent/child* binary, the state gains more control.

However, in the same way that the crown effectively fractured the skeleton of the law with its initial concept of treaty, its policies of assimilation worked to fracture the identities of First Nations people. This may have produced an unexpected threat to the state's sovereignty. Where people feel oppressed and have nothing left to lose, they become more likely to revolt. The potential of rebellion might explain the state's shift towards assimilative policies that looked towards adopting a shared sense of identity. A need not just for assimilation, but for inclusion.

7.4.3 *The Nation State for Unity and Shared Identity*

From the perspective of the Australian Government the concept of inclusion and unity surfaces in the promotion of a national identity: specifically, the inclusion of Aboriginal and Torres Strait Islanders as Australians. Various strategies were utilised to achieve this, for example, in 1967, the successful referendum to include Indigenous Australians in the census and allow the federal government to make laws on their behalf changed the political status of Indigenous peoples in the Australian Constitution (Walters, 2020).

Rather than equating to actual inclusion, it is suggested by some authors that such a shift in policy reflected "indifferent inclusion" (McGregor, 2011, p. 1). Alongside potentially quashing the threat of resistance, the Australian Government's shift towards a shared sense of identity may have been a continuation of the assimilation policy. The absorption of Aboriginal and Torres Strait Islander identity into 'one national identity' suggests that co-existence–and the celebration of difference–is not desirable. The need for a shared identity is a prevalent, almost defensive, feature in the *Treaty Act*. The positioning of difference as division plays an important role in the state's disruption of the emergence of Indigenous goals. The state had fashioned a continuous catch 22 scenario, where, to become part of the nation state of Australia, Aboriginal and Torres Strait Islander were expected to align their identities with

impossible standards of traditional culture, as perceived by the state (Povinelli, 2002). The existence of the *Nation/Aborigine* was concerning to the nation as it fought to establish its own sovereignty. The expulsion of the *sovereign/sovereign* required Indigenous people to leave the 'Aborigine' behind.

Following the formation of the Council for Aboriginal Reconciliation (CAR) in 1991, Labor Prime Minister Paul Keating gave his Redfern speech in 1992. He states: "...to recognise that they are part of us, that we cannot give Indigenous Australians up without giving up many of our own deeply held values, much of our identity..." (Australia's Audio and Visual Heritage Online (ASO), 1992, p. 1). What might be observed here is a shift towards an appreciation of difference and a call for the Indigenous Australian identity to be recognised separately: as a national identity in its own right. By virtue of this statement, Keating also recognises Indigeneity as part of the nation's identity (Keating, 1992). However, in doing so, he risks returning towards the sentiment of immersion, that is, the slow absorption of the Aboriginal and Torres Strait Islander identity into the national.

Keating's word choice also reveals a dependency of the nation state upon the Indigenous identity. The Indigenous Australian does not need the name 'Australian' to be sovereign. Yet, the non-Indigenous Australian has established much of their identity and capacity to be in control around the *Indigenous/non-Indigenous* binary (Wolfe, 2013). Indeed, some authors argue 'including' Aboriginality within the Australian national identity "was a form of inclusion that functioned to exclude Aboriginal people themselves" (Warren, 2012, p. 7). As CAR states: "A united Australia" is essential for the non-Indigenous Australian to survive (Reconciliation Australia, 2021, Our Vision is for a United Australia section). Within his tenure, Keating also emphasised the need for non-Indigenous people to accept their role in reconciliation. He believed this was necessary before healing could occur. This position creates non-Indigenous acceptance as a precursor to practical change, which in turn diverts the concept of treaty. We see this in today's *Treaty Act* and its production of reconciliation as education for non-Indigenous people and unity.

From 1996-2007 the Liberal-National Coalition Government disrupted the trajectory towards an appreciation of difference. Prime Minister John Howard viewed Indigenous specific rights as divisive. The government focused on implementing assimilation-style reconciliation policy: policy driven predominantly by a need to generate Indigenous people's participation in society and remedy their disadvantage. The rhetoric of integration became prominent, relying heavily on the ideal of one national identity: Liberal representative Bill Taylor argued for Australia to "...live as one proud undivided nation under one national flag" (Pratt, 2003, p. 41). They shifted the language from citizens' rights to citizens' responsibilities, and towards a management of relationships rather than relationship-building.

At the Australian Reconciliation Convention (1997), Howard emphasised that reconciliation premised on national guilt wouldn't work (Short, 2008). He impressed the binary view of *national pride/national guilt*, as if it is not possible for people to hold both emotions at once. The extremity of this binary view reflects the stark shift in government agendas. Howard changed the narrative very successfully: by focusing on the mechanics of the past and not the future, he effectively fixed the binaries of *national pride/national guilt, united/divided,* and created a very specific Indigenous subject: one where the Aboriginal and Torres Strait Islander person was viewed as divisive, ungrateful and dependent.

From this time, the populist narrative associated with Pauline Hanson grossly misrepresents Indigenous people as privileged in comparison to other Australians. This again fuels division within the populations. The *Mabo* judgement of June 1992 and the *Native Title Act 1993* (Cth) was critiqued on this basis by the Liberal Party President: "[Native title legislation] would divide Australians rather than unite them. It is not the blueprint for reconciliation which our community needs, nor is it the blueprint which Aboriginal people deserve" (Pratt, 2003, p. 69). Most recently, this concept of separate identity *equalling* division surfaced during The Voice referendum in 2023 where former Prime Minister Tony Abbott encouraged Australia to "vote 'no' to a Voice to Parliament that divides us" (Abbott, 2023).

7.4.4 *Emergence of Reconciliation*

When it came to acts of reconciliation in the 1990s—particularly ones of positive consequence for Aboriginal and Torres Strait Islanders—the Labor government struggled to garner support. Forming the majority federal government from 1983 until 1996, the Labor government created a mandate for reconciliation. Their concept of reconciliation at this stage contributed to a national narrative of atonement for the past, with clear strategies for attitudinal change, Indigenous specific rights, nation-building, and addressing Indigenous disadvantage. This version of reconciliation recognises another subject position shift for Aboriginal and Torres Strait Islanders. Now, rather than having to give up their Aboriginality to become part of the nation, it is possible for them to take a position of 'culturally different' to the mainstream. This is necessary, if non-Indigenous people seek to position themselves as the *atoner/injured*.

Reconciliation activities that focused on community were introduced across the country, with marches and grassroots events at the heart of the movement. Sorry books were given to non-Indigenous Australians who wrote their personal apologies for the atrocities that took place. Australia's National Reconciliation Week began from 1993. The notions of reconciliation emerging at this time embraced ideas of community engagement and offered a different response to perceived injustice. The transition of the country towards an atonement of kinds was also emerging elsewhere around the world. Of great significance, was the creation of the South African TRC (1994), which generated calls for reconciliation and truth telling processes around the world. The introduction of the SA TRC gave way to a certain kind of permission: an encouragement that reconciliation was being sanctioned and supported elsewhere.

From 2000 a series of events contributed to this public validation of reconciliation. The 'Walking Together' narrative of reconciliation emerged with the Harbour Bridge Walk for Reconciliation in Sydney (May, 2000) following the Howard Government's refusal to apologise to the Stolen Generation of Australia. On the Olympic stage in October, Midnight Oil performed *Beds Are Burning*, whilst wearing tracksuits with the word *sorry* printed across them. Aboriginal

sprinter Cathy Freeman was chosen to light the Olympic flame at the games and following her win, she ran around the track with the Australian flag and made a second lap carrying the Aboriginal flag. Freeman's action was contested, but the act also represented a sentiment of hope and the idea that Australian identity and Aboriginal identity can coexist and the possibility that difference could be embraced.

These movements of 2000 focused on sorry, rather than self-determination or sovereignty. In this light, reconciliation really returns to the idea of an apology. It is worth questioning – *who's emotion is being prioritised in this form of reconciliation? What is the sorry for?* Coming into the 21st century, a flurry of official apologies were made. In Australia's case, then Prime Minister Kevin Rudd delivered a national apology to the Indigenous people of Australia in 2008. Rudd's apology may have come in response to the demands set forth by Indigenous Australians. Others argue that its emergence was due to another force – the "new international morality" had kicked in (Augoustinos & LeCouteur, 2004, p. 236; Barkan, 2000).

7.4.5 Maintaining a Human Rights Record

In an international community now getting to grips with the obligations they had signed up to under the UN, the imperative upon nations to demonstrate their commitment to human rights became high. From the introduction of the SA TRC (1994), the global public witnessed a dramatic shift in states seeking to manage the narrative of their relationships with their Indigenous population. In addition to controlling their external image, the state had to maintain its internal image: the deterioration of either being considered a threat to state sovereignty.

Quite beyond the intention of the Universal Declaration of Human Rights (UDHR), the nation states of the international community appear to sit within the dichotomy of the *realisation* vs. *performance* of human rights. Maintaining human rights standards are used as tokenistic bargaining chips by governments and their potential voters, their relationships with the international community, and potential investment opportunities. The discourse of 'committed' or 'genuine' acts of reconciliation appears here. For example, in 1988 the Australian Heads of

Churches Council issued a statement encouraging society to heed the need for “committed acts of reconciliation” (Gardiner-Garden, 1999, p. 16).

What are the key motivating factors for reconciliation in Australia? Does it come from what Paradies (2016) refers to as “settler unsettledness” (p. 106)? The desire of settler-Australians to absolve anguish over colonialism? To atone so they free themselves from guilt? Can this motivation return towards policies that assimilate (Veracini, 2011)? Very recently, the Australian Human Rights Commission (AHRC) stated that the Australian project of reconciliation is dependent upon “a new and committed relationship" and that this relationship building may “lead to substantive structural change as a means to incorporate Indigenous peoples in the democratic life of a nation” (Australian Human Rights Commission, 2019, pp. 3–4).

This desire to incorporate a people into a nation is telling. Even as Australia enters 2024, the representative binary for *non-Indigenous/Indigenous* may still be *freed/burdened.* With what has been uncovered so far, the binary certainly appears to be the governing logic of 2023’s *Treaty Act*. Whilst this analysis raises these questions, it is not necessarily its position to answer them. Indigenous political science scholars are much better placed to do so. Thus, this thesis notes the emergence of this conversation of *divided/united* and how each population participates in the ‘democratic life of a nation’ with acknowledgment that a full discussion needs a more space.

7.4.6 ***Summary***

The version of reconciliation that has been produced as the dominant framework between *non-Indigenous/Indigenous* relations in Australia today seems to have grown out of a struggle of how to approach difference. Under each political party, the Australian federal government has struggled to reconcile itself with its own separation from Aboriginal and Torres Strait Islanders. The thread of deception, and themes of assimilation, inclusion, unity, and incorporation feature heavily across the discourse of centuries of treaty in Canada, Aotearoa/New Zealand, the US and Australia. It is suggestive of wishes for a blended single

identity, rather than a capacity to honour all identities within shared spaces—or the drive to invest in creating such shared spaces (of which there are few).

At the inception of colonialism, the relationship was characterised as the *self/other* which, in part, granted white settlers permission to colonise. This relationship of *colonialist/colonised* evolved over centuries. Over the course of the timeline detailed in this section, the state of Queensland and Australia more broadly move firmly away from the position of *sovereign/sovereign.* As the state increasingly discharges its duties under treaty, this relationship changes. It morphs between the *parent/child* binary to the *learner/educator* binary that is easily recognisable within the *Treaty Act* today. These changes occur as part of the non-Indigenous experience of a *redemptive future/shameful past.* Due to the continued prioritisation of non-Indigenous people in this process, the current binary of *freed/burdened* represents the positions that the *Treaty Act* has created for *non-Indigenous/Indigenous* people in Queensland.

Where to from here? Thankfully Bacchi's Q4 poses just that question: can the 'problem' be thought about differently? In Q4 an exploration of the silences that the *Treaty Act* produces will be made. By approaching reconciliation through education and unity, the Queensland Government have left other possibilities under-explored. This, in turn, opens space to consider how Queensland's problematisation of reconciliation can be thought of differently.

7.5 What is Left Unproblematic in this Problem Representation? Can the 'Problem' Be Thought About Differently?

The obvious silences within the *Treaty Act* discourse are the needs of Aboriginal and Torres Strait Islanders. It is very difficult to locate direct dialogue that investigates what Indigenous Australians might need during the path to treaty process. Calls for 'genuine negotiation' and 'genuine treaty' highlight the public's recognition that the concept of treaty produced by the *Treaty Act* does not pay due attention to the legal and political needs or desires of treaty. Nor do the discussions of reconciliation pay due attention to the reconciliatory or transitional justice outcomes that the people have been calling for.

These silences are a result of the *Treaty Act's* centralisation of the non-Indigenous person. Queensland's path to treaty centralises the non-Indigenous Queenslander through the prioritisation of three core needs: the non-Indigenous need for truth (education); the non-Indigenous need for redemption; and the nation's need for unity and shared identity. In relation to treaty, these needs are produced as the essential prerequisites to making Queensland treaty ready. The government does not offer clear explanations as to why or how achieving each of these needs would produce peace or healing for Aboriginal and Torres Strait Islanders—both being core promises of reconciliation. They are, again, positioned as precursors to reconciliation. Before treaty or reconciliation, the non-Indigenous Queensland must be freed.

The core concepts that fall to the side lines of this discussion are Aboriginal and Torres Strait Islander self-determination and sovereignty and the responsibilities of the settler community and government. The following sections consider each, with a focus on rethinking the *Treaty Act* if it had engaged with these key elements: generating positive practical outcomes for Aboriginal and Torres Strait Islander people (and as such, the state of Queensland).

7.5.1 *Self-determination and Sovereignty*

One of the controversies in Australia's national referendum on the Voice (2023) was that the proposal did not directly address First Nations sovereignty or their present relationship with the state (Appleby et al., 2023). As per the *sovereign/sovereign* relationship between *Aboriginal and Torres Strait Islanders/State of Queensland*, the state has an obligation to observe and prioritise the Indigenous people's sovereignty and right to self-determination. Some voters during the Voice referendum became concerned that Australia was opting into or 'offering' superficial representation of self-determination. This claim gained traction across the political spectrum. Despite information being available, some Australian voters cited lack of clarity as their reason for voting no (Wellauer et al., 2023).

While the discourse on the *Treaty Act* did refer to self-determination frequently, it did not provide a clear answer as to how it would be recognised in practice and failed to do so

when questioned. Self-determination and sovereignty therefore become a silence of the *Treaty Act* discourse. Furthermore, during the *Treaty Act* discourse, state representatives indicate that the burden of establishing what self-determination and sovereignty look like belongs to the Indigenous person. This is a classic example which maintains the *freed/burdened* dynamic, with the burden to define being placed on the aggrieved.

One of the most problematic aspects of the path to treaty process is its possible inclusion of non-Indigenous Australians as a party to treaty. The process of treaty recognises the sovereign nature of the *Nation State/First Nation*: their authority and capacity to self-govern. They are *sovereign/sovereign.* It is ironic, then, that non-Indigenous peoples feature, not only as a party, but as the dominant interest, when they are in fact not a legal party to treaty. The non-Indigenous populations interests are represented by the state, and as such do not form an additional party to treaty.

That these ideas have been permitted and promoted by the state of Queensland leads to the dissolution of the concept of treaty, alongside respect for Indigenous self-determination and sovereignty. Rather than recognising sovereignty in full, the path to treaty process demonstrates steps which 'permit' sovereignty without 'authorising' full control to self-govern. This silence threatens Aboriginal and Torres Strait Islander capacity to treat, as it further removes them from the spheres of decision-making they are innately entitled to.

The practical impact of the *Treaty Act* to Indigeneity is also concerning. By moving Queensland towards one shared identity, it jeopardises Queensland's Indigenous people as a 'distinct polity'. Being recognised as a distinct polity is one of the criteria which entitles Indigenous people to treat with the state (Hobbs & Williams, 2020). It could also threaten fulfilment of Indigeneity under the Universal Declaration of Indigenous Rights (UNDRIP), which further slows access to international human rights standards in Australia. Such an occurrence was analysed by anthropologist Shannon Speed (2008) in Chiapas, Mexico.

A different approach and an essential rethinking of the 'problem' would be to de-centralise the non-Indigenous person and recognise that Aboriginal and Torres Strait Islanders are entitled to determine when they are treaty ready. Such an approach may be the best way to bring recognition, co-operation, collaboration and healing between all communities. This is what the promise of treaty seeks to offer: an agreement, reached through fair and equal negotiation, with mutual and binding obligations, between sovereigns.

The adoption of such an approach might also be a part-solution to one of the most commonly cited concerns during the public forums on the *Treaty Bill.* The state continuously referred to the need to "bring non-Indigenous Queenslanders with us". This approach presumes that non-Indigenous Queenslanders are against treaty. If we were to refocus and ask the state to present the process for treaty and what it would look like, then perhaps non-Indigenous Queenslanders would follow based on clarity. Such an approach would make an essential departure from the national and state narrative of silencing Indigenous self-determination and sovereignty. Perhaps such an approach would also work to address some of the anxiety that sits with non-Indigenous Australians when they are asked to participate in what they view as Indigenous issues. Clarity tends to reassure anxiety and is freeing. Perhaps the binary of *freed/burdened* could still include freeing for the non-Indigenous population.

7.5.2 The Responsibilities of the Settler Community and Government

True to the binary belief of *non-Indigenous/Indigenous* to *freed/burdened*, the *Treaty Act* discourse fails, remarkably, to consider the responsibilities that non-Indigenous Queenslanders and the state government could take on to assist reconciliation. It is a silence which barely scratches the surface of the *Treaty Act* discourse at all. Significant questions aren't involved in the discussion, such as, *who is responsible for remedying non-Indigenous guilt?* Where responsibility falls into silence, the consequence is a society-wide loss of opportunity to consider different remedies. As with Northern Ireland, the state of Queensland has not seriously considered or consulted on other options of transitional justice, even when they are raised by members of the public.

One of the most basic responsibilities that sat with the state government during the public consultation of the *Treaty Bill* was to ensure that the public knew about it. This is essential to providing the public an opportunity to pass commentary on the proposed legislation. During the public forums on the *Treaty Bill* the Committee travelled around Queensland to meet with interested parties. Problematically, it had not arranged to visit many major communities:

> I heard by accident that you were holding this hearing today. I come from Yarrabah, one of the biggest Aboriginal communities in the country. About 98% of the people do not know what you are talking about... *(Mr Percy Neal at Cairns Public Forum)* (Queensland Parliament, 2023c, p. 23).

After the circulation of complaints, the Committee did arrange to travel further. However, it notified communities five days in advance. This is simply not enough time to allow for communities to be informed of the event, arrange travel or organise access to the content they will be asked to speak on.

Discussing her thoughts on the suspension of the *Human Rights Act 2019* from the Bill, Ms Sandi Taylor highlights: "Our people never got a chance to really fully put in a submission or to have their voice heard" *(Ms Sandi Taylor at Cairns Public Forum)* (Queensland Parliament, 2023c, p. 18). This rhetoric is present at each public forum for the *Treaty Act*. In particular, it was noted that the Queensland Government had not adequately informed communities of what was being proposed or what they would be asked to contribute. As such, they had a difficult time trying to pass commentary on it. *When the opportunity to speak is so fleeting, what form does a voice take? What can be communicated? What is listened to and what responses are likely to transpire? How can a state take responsibility if it is not prepared to listen to the people?*

Perhaps a fear of the state is that if it recognises the Aboriginal and Torres Strait Islanders people's sovereignty in full, then the state will lose sovereignty itself. It will lose

control of the land and the resources. Perhaps it is a preventative approach. The reality is that the Aboriginal and Torres Strait Islander peoples are inherently sovereign, regardless of what the state do with the land or its resources. Where fear of retaining sovereignty is the state's motivator, assimilative-type policies loom as the solution.

One of the aspirations behind assimilation is eradication. Unifying a population into one identity eradicates their distinctive existence and therefore the needs of Aboriginal and Torres Strait Islander people. It eradicates the guilt that circulates the settler community and government, and as such, their present-day responsibilities (Wolfe, 2006). As discussed within Q3, the language of the *Treaty Act* discourse reveals that there is a fine line between state efforts that strive to create unity, and efforts that strive towards an assimilative-type of shared identity.

State efforts that look to address non-Indigenous guilt tread into similar territory. The Queensland Government present truth as a mechanism to offer redemption to their non-Indigenous population. When used in this way truth tends to promise redemption but fails to provide a clear blueprint for how a society can move forward. The assimilation sentiment that emerges here no longer looks for an eradication of history, but for redemption built around finality. It is this element of finality that leads to a complete erasure of responsibility: a closing door to the possibility of criminal accountability, of the return of land, of the payment of reparations. In this way, the responsibilities of the settler community and government become a dead silence of the *Treaty Act*.

7.5.3 ***Summary***

The Queensland Government has worked hard to produce a narrative of reconciliation which is premised on mutual commitment to rebuilding the relationship between the state, Aboriginal and Torres Strait Islanders and non-Indigenous Queenslanders. In a vacuum, this appears to be a progressive and sensitive approach. However, a great deal of the discourse around the *Treaty Act* focused on the redemption of non-Indigenous people: the education and

sense of unity that they needed. It was difficult, therefore, to access what Aboriginal and Torres Strait Islanders sought from the process.

What if the need for truth (education) was talked about in terms of Indigenous Australians being able to learn more about where their families were moved to? What their lineage is, perhaps, assisting individuals' path to native title? What if the discussion of redemption was multi-layered, looking at the issue of hate, guilt, and responsibility as in Aunty Nyoka's work with children and wider communities (Queensland Parliament, 2023g, p. 4). What if, instead of seeking a shared identity, Queensland separated the hundreds of very unique and distinct identities across its state and celebrated them? There are very many possibilities available. Unfortunately, so few seem to be incorporated by the *Treaty Act.* With what appears to have been a poorly planned public consultation process, there is much that has gone unsaid.

7.6 What Effects are Produced by this Representation of the Problem?

7.6.1 *Discursive Effects*

7.6.1.1 Progress

'Progress' reflects the advancement towards an improved condition. For many people, to progress signals the achievement of something and to be progressive is to participate in a state of being that is continuously improving. However, critiquing a neoliberal approach to progress, Connell (2007) argues that the Global North is built on the continued improvement of society ('improvements' focus on free markets, deregulation, and privatization), at the expense of First Nations: the centre (Empire) was built with resources from the periphery (the colonies). With this in mind, how is the term progress applied and what is the impact of its use within the state of Queensland's discussion on a path to treaty? The state's references to progress appear most frequently in relation to the impact of colonialism on Aboriginal and Torres Strait Islander people's progress. An example is given by Chair McMillan:

> ...as a government we believe that over 235 years of colonisation has had a terrible impact on our First Nations people. That impact has resulted in transgenerational poverty and transgenerational trauma that has severely impacted the progress of First Nation peoples... (*Chair Corrine McMillan MP at Longreach Public Forum*) (Queensland Parliament, 2023f, p. 1).

The state's reference to progress in this quote is ambiguous and so, suggestive of a few narratives. One potential narrative is the position that Aboriginal and Torres Strait Islander people need to make more progress as a people, which contextually might also suggest that First Nations peoples in Australia are underdeveloped. Such a narrative contradicts the government's praise for First Nations in Queensland, which tend to appear within the introductory speeches of each public forum, such as:

> We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander people... (*Chair Corrine McMillan MP at Weipa Public Forum*) (Queensland Parliament, 2023d, p. 1)

The praise rests on the longevity of Aboriginal and Torres Strait Islander culture: that their ways of life have survived over centuries. The suggestion that progress isn't occurring within First Nations communities in Australia is, thus, at odds with the government's recognition of their capacity to live sustainably for 65,000+ years.

If governments and settler societies are to move away from colonial practices, the rhetoric of stunted progress regarding First Nations peoples around the world needs to be dismissed. A change in word choice could revise the narrative here. For example: rather than impacting the *progress* of Aboriginal and Torres Strait Islanders, colonisation severely interrupted and threatened the *way of life* for the First Nations peoples. This moves the emphasis from progress as an indicator of success, towards supporting First Nations agency and ways of life as the marker of success in relation to colonialism.

7.6.2 *Subjectification Effects*

7.6.2.1 Aboriginal and Torres Strait Islanders as Superficial Political Subjects

As Australia's first peoples, the right to self-determination reflects Indigenous peoples' right to freely determine their political status and freely pursue their own economy, social lives and culture. Despite this, Aboriginal and Torres Strait Islander peoples are positioned by the state of Queensland as objects and victims of history, rather than political subjects who are a sovereign, self-governing people. Interestingly, the state discourse routinely refers to the treaty processes of Aotearoa/New Zealand, Canada and the US There is a suggestion here that these governments got it right: that simply by engaging in treaty, they positioned their First Nations peoples as serious treaty holders and political subjects. As we have seen in Q3's historical detail of these treaty processes, this was not the case. Why is it, then, that the Queensland Government keeps returning to these earlier notions of treaty as a starting point? As the aspirational meter? Why wouldn't the Queensland Government set that meter at self-determination?

At the Cairns public forum, the Committee asks members of the public for alternative approaches to treaty and remedies to the impact of colonialism. Mr Phil Rist replies:

> The answers to a lot of this have always been with us as traditional owners... We have got our own governance. That is where it has to come from, I think (*Mr Phil Rist at Cairns Public Forum*) (Queensland Parliament, 2023c, p. 5).

There is an awareness from the Indigenous public that the Queensland Government is choosing *not* to honour self-determination—or at least, it is opting to de-prioritise it. This is significant, especially where community members raise self-determination as a solution directly and are ignored. The principal subject position created and enforced by the *Treaty Act*, is of Aboriginal and Torres Strait Islanders as superficial political subjects. The enforcement of this position moves First Nations peoples further away from their right of self-determination,

and so, further away from self-governance which is respected by the state. Ironically, or strategically, this also moves them further away from their capacity to treat.

7.6.3 *Lived Effects*

7.6.3.1 Political Tokenism and the Displacement of Aboriginal and Torres Strait Islander People's Interests

The perception of political tokenism has gained traction in various First Nations communities around the world when it comes to having their rights realised by the settler state versus superficial actions which do not implement their rights. See, for example, Coulthard on Canadian 'colonial politics of recognition'; Dokis (2010) on Dene communities confronted with oil pipelines in Alberta; and Gleghorn (2013) on Columbia. Those individuals that engage in 'political tokenism' are depicted as politicians in the throes of political opportunity—"political opportunists" and on "political brinkmanship" (Fa'Aoso, 2023). In Queensland political tokenism describes politicians who use treaty and reconciliation as a form of political currency. An example might include Palaszczuk's suggestion to display the *Treaty Act* at the next Olympics. When Palaszczuk introduced the *Treaty Act* into Queensland's Parliament, she paid due attention to the utility of a shared sense of identity and pride—born from treaty—that could be displayed during the 2032 Olympics:

> The Treaty of Waitangi has given the people of New Zealand a shared sense of identity and pride that we should have too, and one we are keen to showcase in 2032 (Palaszczuk, 2023, p. 1).

Palaszczuk's statement suggests, firstly, that treaty in Aotearoa/New Zealand was the catalyst for shared identity, and secondly, that shared identity is a positive outcome for all members of society. The statement discounts the deceitful circumstances in which *Te Tiriti o Waitangi/Treaty of Waitangi* was created in 1840. It may be that showcasing "a shared sense of identity and pride" holds reconciliatory symbolic value for some First Nations in Australia. Indeed, since the creation of *Te Tiriti o Waitangi*/Treaty of Waitangi, Aotearoa/New Zealand

has introduced the Waitangi Tribunal (1975) as part of its efforts to revive the original commitments made under Te Tiriti o Waitangi and in the interests of the Māori. Some would also argue that international attention to Indigenous issues can stimulated change in domestic policy (Waller & McCallum, 2018). There is, however, a tokenistic quality in Palaczuk's statement: the chance for Queensland to gain status if they are able to display at the Olympics how far the state has come in its reconciliation. As the recent curtailing of Maori treaty rights has shown (Guenzler, 2024), retaining the power for decision making within parliamentary processes does not reflect the transferal of power. As Coulthard (2014) argues, being 'recognised' by the state is to be brought into the colonial state's framework, rather than centring Indigenous issues.

The tokenistic quality of support for the *Treaty Act* from the Queensland Government has been revealed further still when the path to treaty process lost its bipartisan support in October 2023. Days after The Voice referendum returned a no vote, the Liberal party withdrew its support from the Act. LNP Leader David Crisafulli stated that he would repeal the legislation if he got into office in 2024. Premier Palaszczuk has not paused the process but has stated "effective reconciliation and a path to treaty would require bipartisan support" (L. Lynch et al., 2023, para. 12).

With the centralisation of non-Indigenous interests in the path to treaty process, comes the displacement of Aboriginal and Torres Strait Islander peoples' interests. This displacement plays out in the performative actions vs. the pursuit of tangible results by the Queensland Government and its treaty process. Palaszczuk's suggestion to *showcase* Treaty reflects the performative aspects of reconciliation, where a key outcome is displaying state unity. Here, the difference between pursuing tangible results vs. preforming reconciliation, results in reconciliatory acts being carried out in a tokenistic manner and tangible results being promised but left unfulfilled.

To some individuals, the public forums carried out for the *Treaty Act* are considered to be performative. Especially so, considering how poorly planned they were. As the Chair

indicates, the inquiries were carried out from March-May, ahead of the consideration of the Bill and purposefully planned for Cairns:

> We plan to debate the bill in Cairns. We are taking the whole of the parliament to Cairns in May. We believe it is pertinent to be in a community with a very large population of First Nations people to debate the bill (*Chair Corrine McMillan MP at Longreach Public Forum*) (Queensland Parliament, 2023f, p. 2).

There are positives to the Queensland Parliament convening in Cairns to be with First Nations people. However, the gesture remains just that: if the debate is hollow—if individuals have not had the opportunity to pass informed commentary.

7.7 How and where is this Representation of the 'Problem' Produced, Disseminated and Defended? How Could it be Questioned, Disrupted and Replaced?

Indigenous voices from the public forums on the *Treaty Bill* suggest that one of the core interferences in this process to treaty and reconciliation, was the lack of preparation by the government. Mr Rist states:

> At the end of the day, a lot of this comes back to those resources being made available for mob to do their business and conduct their business. I do not know whether that is part of this or not or whether you have thought of that… (*Mr Phil Rist at Cairns Public Forum*) (Queensland Parliament, 2023c, p. 5).

With preparation, greater numbers of people in community (particularly in rural community) would have had the opportunity to become aware of and attend the public forums. The lack of preparation by the state, as Mr Rist makes the attendees aware, is also in the lack of resources handed out. Whether the Bill itself was distributed prior to attendees' arrival at the public forums is unclear.

Mr Wotton extends this question of preparedness to the MPs themselves in terms of understanding treaty:

> Yes, the state has taken the initiative now, but for the ministers around the table, what do they understand about treaty for their own educational purposes? (*Mr Lex Wotton at Palm Island Public Forum*) (Queensland Parliament, 2023e, p. 2).

Perhaps, had there been an internal initiative within the Queensland Government to ensure that all MPs received an introductory education to treaty in Queensland, the narrative of the State of Queensland may have been different. It is however clear that the State of Queensland is the dominant voice within the *Treaty Act* discourse, with the needs of non-Indigenous Queenslanders centralised in the legislation.

We see this play out via narratives on treaty as an acrimonious and vengeful device. LNP leader Mr David Crisafulli tells the public that treaty in Queensland has been: “one of the most divisive debates in my life” (L. Lynch & McKenna, 2023, para. 6). Reminiscent of former Prime Minister John Howard’s position on division, Crisafulli argues: "to continue down the path to treaty would cause further division at a time when Queensland needs unity" (Messenger & Gillespie, 2023, para. 9). He continued to say: “When Queenslanders speak, leaders should listen” (L. Lynch et al., 2023, para. 15).

The return of a no vote to the Voice referendum (2023) has already undermined the *Treaty Act*. Loss of bipartisan support is significant to the life of the legislation. Crisafulli withdrew support very quickly, following the 69% no vote from Queensland (Messenger & Gillespie, 2023). Rather than a narrative of unity which paves the path for shared identity, the state of Queensland has an opportunity to provide equal access, which paves the path for

equal opportunity. To be included equally, is to be recognised in your full capacity as a person, and all of the roles that your personhood carries.

7.8 Chapter Summary

In Queensland, Australia, the core assumptions that underpin the *Treaty Act* discourse may be summarised as follows:

- Achieving reconciliation is a 'problem' of accessing the truth of Queensland's colonial history;
- Achieving reconciliation is a 'sub-problem' of redemption for non-Indigenous Queenslanders;
- Achieving reconciliation is a problem of achieving unity between non-Indigenous communities and Aboriginal and Torres Strait Islander communities.

The *Treaty Act* discourse produces access to the truth of Queensland's history as an issue of education. This problematisation dominates much of the Queensland Government's dialogue. The impact of this is the reinforcement of the non-Indigenous Queenslander as the learner and the Aboriginal and Torres Strait Islander person as the educator. This de-centres the First Nations person as a learner and places the onus of decolonising work on them. Similarly, the *Treaty Act* discourse produces reconciliation a 'problem' of redemption: here the non-Indigenous Australian's need to redeem themselves is centralised and created as an essential prerequisite to treaty.

This position shines light on why the final problematisation is possible. The discourse of the *Treaty Act* produces the 'problem' of separate identities in Australia and Queensland and encourages the need to form a shared identity. Like the sentiment behind the *Legacy Bill* in Northern Ireland, this indicates a form of reconciliation that seeks to finish and close a colonial history. A single identity offers a type of reassurance that these divisions will not (and cannot) resurface. The major (attempted) denial that occurs here is of Indigenous identity.

8 Chapter Eight: Discussion

This thesis set out to examine the underlying assumptions of reconciliation discourses in two places: Northern Ireland and Queensland, Australia. The discourses of the *Legacy Bill* and the *Treaty Act* (including their parliamentary debates, inquiries, ministerial statements, and news media) reveal reconciliation is being thought about in various ways in Northern Ireland and Queensland. As Chapter Five presents, reconciliation is produced in the Northern Irish context as a 'problem' of accessing information and truth and a 'problem' of memorialisation. Chapter Seven illustrates how reconciliation in Queensland is produced as a 'problem' of accessing the truth of the state's colonial history and a 'problem' of securing unity between non-Indigenous communities and Aboriginal and Torres Strait Islander communities.

The core binary pairings that contribute to the production of reconciliation as a problem of accessing information and truth and a 'problem' of memorialisation in Northern Ireland are *civilised/primitive* - *British/Irish* – *state/citizen*. The core binary pairings that contribute to the production of reconciliation as a problem of accessing the truth of the state's colonial history and a 'problem' of securing unity in Queensland today are the *parent/child* - *learner/educator.* This change has been made possible due to acceptance of a *redemptive future/shameful past* narrative of history in Queensland. Due to the centralisation of non-Indigenous people in the current treaty process, the binary of *freed/burdened* comes to represent *non-Indigenous/Indigenous* people. The problematisations of both the *Legacy Bill* and the *Treaty Act* reveal clearly that the populations who are centred in policy are the populations who have historically not been targeted by colonial policy. The true danger of this 'form' of reconciliation, is that it looks like reconciliation but is, instead, displacing those who were targeted by colonial policy: the Irish and the Aboriginal and Torres Strait Islanders.

By reading these two independent case studies together, two claims become apparent. First, each of these problem representations demonstrate how reconciliation can de-centre the interests of those who experience harm under the conditions of colonialism. Second, the dominant problem representation in each case produces reconciliation as an issue of access

to truth. Both cases demonstrate a rapid shift from the initial suggestion to exercise reconciliation—via multiple transitional justice mechanisms—toward a fixation of 'reconciliation *as* truth' or 'truth *as* justice'.

This Discussion Chapter utilises the opportunity to identify the trends occurring across the case studies and evaluate the wider conclusions that may be drawn of reconciliation as a response to colonial violence. Section 8.1 begins by discussing the impact of reconciliation as truth. Section 8.2 will consider the findings in light of recent calls for 'real' or 'genuine' reconciliation. Section 8.3 will look at examples of resistance from the respective Irish and Aboriginal and Torres Strait populations of each place and consider possibilities for what a reckoning with reconciliation might look like in the next decades, with Section 8.4 detailing the possibilities for further research. Section 8.5 will detail the limitations of this work, while Section 8.6 will draw conclusionary statements for this thesis and make final remarks.

8.1 Reconciliation *as* Truth

As stated within the introductions to each piece of legislation, the *Legacy Bill* and the *Treaty Act* were announced to aid reconciliation (UK Government, 2022) and "promote reconciliation" (*Path to Treaty Act* (Qld), preamble). In Bacchi's Q1, the problematisations reveal that both Northern Ireland and Queensland primarily seek recourse to reconciliation through truth. Specifically, they have articulated reconciliation as 'problems' of access to 'information and truth-recovery' and 'the truth of the state's colonial history', with each pathway viewed as a healing mechanism. This heightened reliance on truth may derive from those early conceptualisations of 'truth' from the work of the SA TRC: factual/forensic; personal/narrative; social/'dialogue' and healing/restorative truth (The Truth and Reconciliation Commission of South Africa, 1999). Whether the forms of truth experienced in Northern Ireland and Queensland can meet the standard of restorative detailed by the SA Commission is for individuals to decide. What can be understood from these Bacchi studies is that healing leads to the emergence of 'truth *as* justice' as a dominant narrative in both reconciliation discourses.

At the heart of this version of ‘truth *as* justice’ is the idea that truth will heal and ‘close the case’ for reconciliation. This theme of finality was expressed by representatives of each state and links to the ideas of truth setting individual victims free, with the possibility of moving on and letting go. We reflect back to Robins' (2012) notion of healing at the individual level, which may expand into the national level. By adopting ‘truth *as* justice’, each state signs on to the idea that the provision of more and more truth will change outcomes.

That truth is justice or creates the pathway for justice is not a given in either place. As Davis (2021) describes: Australia’s belief that truth precipitates justice or treaty, is naïve. These truth claims have grown up around the subjectivities afforded to the Irish and Aboriginal and Torres Strait Islanders. As we have seen, over time these subjectivities have stripped away the agency of the populations whilst affording the state a position of governance and control to which it is not entitled. Within the *parent/child* binary, these subjectivities have worked to position the Irish and Aboriginal and Torres Strait Islanders as dependent on the state.

Significantly, what these claims about truth telling fail to consider is the subject positions that both those in Northern Ireland and First Nations in Queensland are given in the process of negotiating reconciliation. As we see in the Northern Irish example, the founding position of *civilised/primitive* shapes how we come to view the *British/Irish*. When the state discharges its duties to its citizens by creating a reconciliation bill it is seen as morally righteous and proceeds without recognising the agency of the Irish, highlighted particularly by the *Legacy Bill’s* lack of consent. The Northern Irish example is reflective of the status of Aboriginal and Torres Strait Islander people in Australia, Queensland, where Indigenous people have also historically been positioned by the state within the *parent/child* binary.

8.2 'Real' Reconciliation

Given the potential for reconciliation to feel hollow within each of these discourses, what comes next? Voices across the world have been calling for ‘genuine negotiation’, ‘genuine treaty’, ‘genuine conciliation’ (Pascoe & Shukuroglou, 2020, p. 5), and 'real reconciliation’ (Osamba, 2006). This, as Davis reflects, is not the difference between ‘practical’

reconciliation and ‘symbolic’ reconciliation. Davis argues that practical and symbolic remain “two sides of the same coin” (p. 128) of reconciliation: they are both useful and it is important to ensure that symbolic reconciliation is not underestimated or undervalued (M. Davis, 2006). Tokenistic and performative acts, however, should be distinguished.

Referring back to Palaszczuk’s ministerial statement for the *Treaty Act*, where she spoke of the utility of a shared sense of identity and pride—born from treaty—that could be displayed during the 2032 Olympics. In this example, it is not clear whether Palaszczuk’s joy for treaty is for treaty or for the display of it at the Olympics: the chance to show to the world and the rest of Australia that Queensland is ahead. The potential for the *Treaty Act* to be considered tokenistic dulls the promise of the Act and the drafting process that was undertaken to produce it.

In the Northern Irish example, extensive research has been completed into the versions of justice that may be viable to address the Troubles: for example, amnesties, immunities, sentence reductions (Mallinder et al., 2016), and reparations (Moffett, 2020). Yet, despite calls for reparations to be awarded and stark public rejection of immunities (across all parties), the UK Government provided reconciliation as truth. It doesn’t fit into Davis’ definition of symbolic or practical reconciliation. The *Legacy Bill* fits, perhaps, into tokenistic reconciliation, if not a more active attempt to protect the British institutions from those bodies who have called out the *Legacy Bill’s* violations of international human rights standards.

8.3 Reckoning with Reconciliation

What, then, are the implications for how the concept of reconciliation might be used? Is there a way to remedy the deceptive effect of engaging with the term? A way to control and prevent its capacity to cover up failures and perhaps to prioritise practical and symbolic reconciliation? The reality is that each of these questions presumes that reconciliation as the term is the problem. As noted in the literature review, various authors call for a reconceptualization of reconciliation (Rettberg & Ugarriza, 2016). They believe that by clarifying and refining the content of reconciliation, it may reach its promised goals.

Following Foucault (1982) and Nakata (2007a), an examination of these Bacchi problematisation's reveals that the ‘problem’ derives from the meaning society places on a term, rather than the term itself. The need for reconciliation in Northern Ireland and Queensland, Australia has grown from those very early subject positions that British policy and settler societies place on the Irish and Aboriginal and Torres Strait Islanders. Through positioning each population as primitive, beastly, and disobedient, each state authorised itself to act and ‘provide’ order. This ‘provision’ of order started the centuries of shifting the subject position of each population so that the state could retain order and control of the land and the people.

Bacchi’s WPR method shows us how the problem is in the solution. The answer is not to seek another definition for reconciliation. Whatever name is applied to this concept—it does not matter. The turning point will come when the policy makers (and the corresponding academic literature) start to centre the people who have been aggrieved, making note of the complex web of discourses in which Indigenous and other harmed peoples have found themselves entangled and now also partake in. As societies try to reconcile, the first task is to consider how those who have been aggrieved are positioned when it comes to the negotiation of policies and the responses that claim to respond to their needs. The history of their subject positions is essential to consider in this process.

The Northern Irish *Legacy Bill* provides a grim example and, in line with the developing literature on transitional *in*justice, shows that the state remains self-centred within their responses to mass violence. The UK Government promoted and passed legislation without consent and has forced 'reconciliation' forward—in effect, to finish this chapter of their ‘past’. It is quite possible that the same thing will happen in Queensland, if the path to Treaty manages to continue without bipartisan support. Reliance upon the state at this time is therefore dispiriting. The state is not the only body to look for within a journey to justice, peace or reconciliation, however.

The people who have been harmed are best placed to guide solutions. With studies of this kind at hand, we are made aware of the matrix that we as people, victims, leaders, witnesses, settlers, and so on, are being positioned in. As Nakata's Cultural Interface theory teaches us, awareness of the matrix of discourses (see Section 3.3) that condition how people think and act is the first step toward choosing an alternative path. In visualising the matrix, such as this analysis of the discourses that condition how we come to think about reconciliation in Queensland and Northern Ireland, opportunities to step outside of the matrix emerges, where we watched a video clip from the film *The Matrix* (Wachowski & Wachowski, 1999) where Neo, the protagonist, is made aware that the world he lives in (what he believes to be real) is constructed for others' benefit. It is this awareness and the choice to 'unplug' from the Matrix that allows him to step in and out of it, manouvering through it, and having a level of control. This metaphor gave me the opportunity to recognise that the analysis presented within this thesis reveals the matrix: which in turn tells me that we can also step outside of it, manipulate it, and shape it to meet our own ends. This might look like leaving state-led reconciliation behind and focusing on local led opportunities for Indigenous people to forge ahead with self-determination. It may also look like Indigenous people using processes such as reconciliation to advance their own agendas.

How are the aggrieved active in these spaces? How do they assert their agency? Regarding Queensland's path to treaty, various members of the public actively used the forums on the *Treaty Bill* to bring their concerns before the Queensland Parliament. These concerns encompassed the need to address historical legislative changes from the Queensland government and extended to concern for how the government had organised the opportunities to participate in the forums themselves. For example, during the Cairns consultation Mr Roderick Burke raised the need to ensure Traditional Owners are engaged in the path to treaty process and that this must encompass addressing the present issues surrounding Native Title claims and the implications such claims have had in Queensland. He tells the forum: "...my identity as an Aboriginal man has been taken away... through native title processes" (p.

2). During the Woorabinda public forum, Ms Michele Leisha highlights her overwhelm that the attendees were not given enough notice to properly attend the meeting (one week notice). She voices her regret that the forum did not follow local customs: “I would have done a smoking ceremony to keep you safe, for you not to bring anything on country and so you leave country with a good spirit. Those things still happen here in our community. We have protocols like all the other communities, and I think they should be followed” (p. 3).

As was seen at each public forum throughout Queensland, members of many different communities made sure to utilise the opportunity to have their voice heard and recorded before the government. More broadly, resistance to the colonial narrative has been ongoing. In Queensland statements such as “Sovereignty Never Ceded” and “Always Was, Always Will Be, Aboriginal Land” are visible and audible reassertions of Aboriginal and Torres Strait Islander sovereignty (The Australian Museum, 2021). Jefferess (2008) suggests that participation and continuation of cultural practices is a form of resistance itself, such as Ms Leisha’s statement to the government that their communities' protocols should be followed.

Alike Aboriginal and Torres Strait Islanders in Queensland, those living across the island of Ireland resisted Anglican persecution over centuries by following their own traditions and maintaining their clan systems (Jenkins, 2021). The concept of resistance in Northern Ireland is sometimes treated as synonymous to violence, given the recent history of The Troubles and the present use of warfare tactics. ‘The resistance’ actually refers to ‘The Troubles’ itself, with various of the paramilitary groups including the term ‘resistance’ within their names (Finn, 2018). It is suggested by various authors that current resistance to the colonial narrative in Northern Ireland is working to quell division and segregation, creating shared spaces and unity through the arts (Flannery, 2009; Keenan, 2022) and sport (Lepp, 2018).

From the voices of the aggrieved comes the reminder to refocus our work—whether that be in reconciliation efforts or research of such processes—on the detail of people’s day-to-day experiences. As Lane (2019) writes on Belfast: the people who have been harmed by history may find that “their voices may be quiescent or absent from generalised accounts” (p. 62) of

their city. As in Nakata's (2007a) explanation of an Indigenous standpoint theory: "It is to find a way to explore the actualities of the everyday and discover how to express them conceptually from within that experience, rather than depend on or deploy predetermined concepts and categories for explaining experience" (p. 215). It is from these details that parts of our solutions will arise.

8.4 Limitations

This thesis contains various limitations which will be outlined here, before a consideration of areas for future research. One of the principal limitations of this study are the restrictions placed on Bacchi's Q3 'mini'-genealogy exercise. A detailed historical analysis of Ireland and Queensland, Australia, capable of producing a more extensive Foucauldian genealogy, would greatly improve the analysis conducted in Chapters Five and Seven. Given the extensive archival research required of a Foucauldian genealogy, which would consider historical detail alongside many other social factors, this thesis simply did not have the space to conduct such a far-reaching exercise. It is likely that this would have remained true even if this thesis had focused on one jurisdiction. Had such genealogies been completed prior to this thesis, the analysis conducted here would acquire a layer of integrity based on the undeniability of the movement of key themes across time. As such, it would be extremely beneficial for such genealogies to become the topic of future research.

Since the completion of the Northern Irish Chapters, the UK Government has processed more versions of the *Legacy Bill* and passed the final Act (December, 2023). As such, the analysis within Chapter Seven must be reviewed and updated prior to any potential publications. Having followed the amendments made in the House of Lords, however, I do anticipate that the core components of the Act have remained the same. A further limitation is that both Acts are very new pieces of legislation. At the time of writing (March 2024) the *Legacy Bill* is barely four months old. Likewise, the *Treaty Act* is still within the first stage of consultations for the set-up of the Truth-telling and Healing Inquiry. Already the *Treaty Act* has lost bipartisan support, with the LNP pulling out three days after the Voice 2023 referendum

recorded a no vote. It is not clear whether the Labor Government will repeal the Act, or whether a Liberal National Government will form in 2024 and do the same. It is now an instance of waiting to see how each piece of legislation plays out in the real world.

Additionally, the discourse considered for each piece of legislation may be considered to be a narrow set of documents. Indeed, the public discourse extends well beyond the scope of this thesis. My analysis focused heavily on the text of the legislation themselves, the parliamentary debates (for the *Legacy Bill*) and public forums (for the *Treaty Act*). As such, there is still a lot of content available for analysis with more incoming.

8.5 Areas for Future Research

As noted above, an important area for future research would be the completion of full Foucauldian genealogies for the constructions of reconciliation arising in Ireland and Queensland, Australia. The utility of conducting such research also extends to academics conducting research on any jurisdiction undergoing a reconciliation or transitional justice process. Such genealogies are the essential foreground for research which will consider conflict and conflict resolution. This would impact several academic fields, including but not limited to, Indigenous Studies, Conflict Resolution, Decolonisation Studies, Genocide Studies, Peacebuilding, History, International Relations, and Anthropology. As such, the contribution of detailed and accurate archival work, capable of producing true Foucauldian genealogies, would be a remarkably useful area for future research.

8.6 Final Remarks

The doubt that sits behind the word reconciliation is there for a reason. Not necessarily because the idea of reconciliation is inherently flawed (though some may argue well that it is), but because it is generally representative of ‘hidden’ histories of subject positions that have cruelly attempted to subjugate and at times genocide a population. This is true in Northern Ireland and in Queensland, Australia, where the English, then British, crown positioned both populations as primitive, beastly and savage as a means to take control of their land. In these cases, it is not just the people who are aggrieved. The land, as the object of the crown’s desire,

is also injured. The land, at least practically, is still within the hands of the crown. Despite these centuries of attempts, however, the people are not. The people have held on to their perspectives of who they are, how the land should be governed and treated—and remain entitled to manage their land.

References

Abbott, T. (2023, March 27). Vote ‘no’ to a Voice to Parliament that divides us. *Tony Abbott*. https://tonyabbott.com.au/2023/03/vote-no-to-a-voice-to-parliament-that-divides-us/

Aboriginal and Torres Strait Islander Commission. (1994). *Towards social justice? An issues paper: Commencing the process of consultation* (339). https://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol5/5.html

Abrams, P. (1988). Notes on the Difficulty of Studying the State (1977). *Journal of Historical Sociology,* 1(1), 58-89.

AIATSIS. (2020). *AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research.* https://aiatsis.gov.au/sites/default/files/2020-10/aiatsis-code-ethics.pdf

Aiken, N. T. (2010). Learning to live together: Transitional justice and intergroup reconciliation in Northern Ireland. *The International Journal of Transitional Justice*, *4*(2), 166–188. https://doi.org/10.1093/ijtj/ijq002

Akers, H., Foley, M. & Ford, P. (2014). 'Remember who we are': An analysis of brand Queensland. Queensland History Journal, 22(6), 495-506. doi.org/10.3316/informit.518136848382633

Allard-Tremblay, Y., & Coburn, E. (2023). The flying heads of settler colonialism; or the ideological erasures of Indigenous peoples in political theorizing. *Political Studies*, *71*(2), 359–378. https://doi.org/10.1177/00323217211018127

Al-Saidi, A. A. H. (2014). Post-colonialism literature the concept of self and the other in Coetzee’s Waiting for the Barbarians: An analytical approach. *Journal of Language Teaching and Research*, *5*(1), 95-105. https://doi.org/10.4304/jltr.5.1.95-105

Ancestry. (2016, October 4). Ancestry tourism: Traveling to your family’s past. *Ancestry*. https://blogs.ancestry.com/cm/ancestry-tourism-traveling-to-your-familys-past/

Anderson, B. (2006). I*magined Communities: Reflections on the Origin and Spread of Nationalism.* Verso Books.

Anti-Discrimination Commission Queensland. (2017). *Aboriginal people in Queensland: A brief human rights history*. https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0013/10606/Aboriginal-timeline-FINAL-updated-25-July-2018.pdf

Appleby, G. J., Levy, R., & Whalan, H. (2023). Voice versus rights: The First Nations Voice and the Australian constitutional legitimacy crisis. *University of New South Wales Law Journal*, *46*(3), 1-25. https://doi.org/10.2139/ssrn.4339744

Attwood, B. (2009). *Possession: Batman's treaty and the matter of history.* The Miegunyah Press.

Augoustinos, M., & LeCouteur, A. (2004). On whether to apologize to Indigenous Australians: The denial of white guilt. In B. Doosje & N. R. Branscombe (Eds.), *Collective guilt: International perspectives* (pp. 236–261). Cambridge University Press.

Australian Catholic Bishops Conference. (2021, November 8). *Reconciliation*. Catholic Australia. https://www.catholic.au/s/article/What-is-Reconciliation-Confession-Penance

Australian Human Rights Commission. (1997). *Bringing them home: Report of the national inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*. https://humanrights.gov.au/our-work/projects/bringing-them-home-report-1997

Australian Human Rights Commission. (2019). *Study on recognition, reparations and reconciliation* [Australian Human Rights Commission submission to the expert mechanism on the Rights of Indigenous Peoples]. https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/EMRIP/StudyRRR/Australia_NHRI1.pdf

Australian Human Rights Commission. (2022). *Reconciliation | Bringing Them Home*. https://bth.humanrights.gov.au/healing/reconciliation

Australian Parliament. (2022). *Voice, treaty, truth? The role of truth-telling in Australian, state and territory governments' reconciliation processes: A chronology from 2015*

(Research Paper Series, 2022-23). https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/pubs/rp/rp2223/Chronologies/VoiceTreatyTruth

Australian Parliament. (2008). *Apology to Australia's Indigenous Peoples*. https://www.aph.gov.au/Visit_Parliament/Art/Icons/Apology_to_Australias_Indigenous_Peoples

Australian Parliament. (1999). *Speech by Hon. Peter Beattie. Stolen Generation*. https://documents.parliament.qld.gov.au/speeches/spk1999/Peter%20Beattie%20spk%20Brisbane%20Central%2019990526-5.PDF

Australia's Audio and Visual Heritage Online (ASO). (1992, December 10). *Redfern speech (year for the world's Indigenous people) – delivered in Redfern Park by Prime Minister Paul Keating*. Australian Screen: An NFSA Website. https://aso.gov.au/titles/spoken-word/keating-speech-redfern-address/extras/

Avi-Guy, O. (2015, September). From the outside-in: The impact of international actors on political reconciliation in Northern Ireland and Bosnia and Hercegovina. *Paper Presentation*. APSA Annual Conference 2015, Canberra.

Bacchi, C. (2009). *Analysing policy: What's the problem represented to be?* Pearson Education.

Bacchi, C. (2012). Introducing the 'what's the problem represented to be?' approach. In A. Bletsas & C. Beasley (Eds.), *Engaging with Carol Bacchi: Strategic interventions and exchanges* (pp. 21–24). University of Adelaide Press.

Bacchi, C. (2022, December 30). Research Hub. *Carol Bacchi*. https://carolbacchi.com/?s=legislation

Bain, M. (2023, April 15). Young people still leaving Northern Ireland in droves despite what Biden claims, says researcher. *The Belfast Telegraph*. https://www.belfasttelegraph.co.uk/news/education/young-people-still-leaving-ni-in-droves-despite-what-biden-claims-says-researcher/1541922615.html

Baldry, H. McKeon, A. & McDougall, S. (2020). Queensland's frontier killing times - facing up to genocide. *QUT Law Review*, 15(1), 92-113.

Barkan, E. (2000). *The guilt of nations: Restitution and negotiating historical injustices*. W. W. Norton & Company.

Barkan, E. (2016). Memories of violence: Micro and macro history and the challenges to peacebuilding in Colombia and Northern Ireland. *Irish Political Studies*, *31*(1), 6–28. https://doi.org/10.1080/07907184.2015.1126922

Barta, T. (2001). Relations of Genocide: Land and Lives in the Colonisation of Australia. Geelong Historical Records Centre.

Barta, T. (2008). Sorry, and not sorry, in Australia: how the apology to the stolen generations buried a history of genocide. *Journal of Genocide Research,* 10(2), 201-214.

Barth, K. (2004). *The Doctrine of Reconciliation.* Bloomsbury Publishing.

Bartrop, P. R. (2001). The Holocaust, the Aborigines, and the bureaucracy of destruction: An Australian dimension of genocide. *Journal of Genocide Research*, 3(1), 75-87.

Bartrop, P. R. (2018) Modern genocide: analyzing the controversies and issues. ABC-CLIO.

Becker, K. (2009). Who were the Irish Celts. *Calliope*, *19*(6).

Behrendt, L. (2001). What path forward for reconciliation? The challenges of a new relationship with Indigenous people. *Public Law Review*, *12*(2), 79–83.

Belfast Mobility Project. (2018). *Belfast Mobility Project*. https://belfastmobilityproject.org/

Berkley Center for Religion, Peace, and World Affairs. (2013). *Religion and Conflict Case Study Series: Northern Ireland: Religion in War and Peace.* https://s3.amazonaws.com/berkley-center/130801BCNorthernIrelandReligionWarPeace.pdf

Bevernage, B. (2012). *History, memory, and state-sponsored violence: Time and justice*. Routledge.

Biggar, N. (2011). Melting the icepacks of enmity: Forgiveness and reconciliation in Northern Ireland. *Studies in Christian Ethics*, *24*(2), 199–209. https://doi.org/10.1177/0953946810397444

Bilali, R., & Mahmoud, R. (2017). Confronting history and reconciliation: A review of civil society's approaches to transforming conflict narratives. In C. Psaltis, S. Čehajić-Clancy, & M. Carretero (Eds.), *History education and conflict transformation: Social psychological theories, history teaching and reconciliation*. Palgrave Macmillan.

Bindenagel Šehović, A. (2018). *Reimagining state and human security beyond borders*. Springer International Publishing.

Birrell, D. (2013). *Direct rule and the governance of Northern Ireland*. Manchester University Press.

Bletsas, A. (2012). *Engaging with Carol Bacchi: Strategic interventions and exchanges*. University of Adelaide Press.

Bloomfield, K. (1998). *'We will remember them': Report of the Northern Ireland Victims Commissioner*. https://cain.ulster.ac.uk/issues/violence/victims.htm

Bloxham, D. (2013). *The Oxford Handbook of Genocide Studies.* Oxford University Press.

Bonner, M. & Matt, J. The three R's of seeking transitional justice: Reparation, responsibility, and reframing in Canada and Argentina. *International Indigenous Policy Journal, 2*(3), 1-29. http://dx.doi.org/10.18584/iipj.2011.2.3.3.

Booth, J. W. (2001). The unforgotten: Memories of justice. *The American Political Science Review*, *95*(4), 777–791. https://doi.org/10.1017/S0003055400400018

Boraine, A. (2001). *A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission*. OUP Southern Africa.

Borer, T. A. (2003). A taxonomy of victims and perpetrators: Human rights and reconciliation in South Africa. *Human Rights Quarterly*, *25*(4), 1088–1116. https://doi.org/10.1353/hrq.2003.0039

Borneman, J. (2002). Reconciliation after ethnic cleansing: Listening, retribution, affiliation. *Public Culture*, *14*(2), 281–304. https://doi.org/10.1215/08992363-14-2-281

Bosi, L., & De Fazio, G. (2017). *The Troubles in Northern Ireland and theories of social movements*. Amsterdam University Press.

Brennan, S., Gunn, B. & Williams, G. (2004). 'Sovereignty' and its Relevance to Treaty-Making Between Indigenous Peoples and Australian Governments. *Sydney Law Review, 26*(307), 308-352.

Brewer, J., & Hayes, B. C. (2011). Post-conflict societies and the social sciences: A review. *Contemporary Social Science*, *6*(1), 5–18. https://doi.org/10.1080/17450144.2010.534497

Brown, A. B., & Poremski, K. (2015). *Roads to reconciliation: Conflict and dialogue in the twenty-first century*. Routledge.

Burdett, H., Woodhead, C., Iversen, A. C., Wessely, S., Dandeker, C., & Fear, N. T. (2013). "Are you a veteran?" Understanding of the term "veteran" among UK ex-service personnel: A research note. *Armed Forces and Society*, *39*(4), 751–759. https://doi.org/10.1177/0095327X12452033

Burridge, N. (2009). Perspectives on Reconciliation & Indigenous Rights. Cosmopolitan civil societies: An interdisciplinary journal, 1(2), 111-128. https://doi.org/10.5130/ccs.v1i2.1046

Bush, K. (2013). The politics of post-conflict space: The mysterious case of missing graffiti in 'post-troubles' Northern Ireland. *Contemporary Politics*, *19*(2), 167–189. https://doi.org/10.1080/13569775.2013.785829

Buus Marcussen, S. (2022). *Brilliantly radical or radically violent? : A poststructural policy analysis of the Northern Irish Together: Building a united community peacebuilding strategy* [Bachelors dissertation, Malmo University]. https://urn.kb.se/resolve?urn=urn:nbn:se:mau:diva-52478

Byrne, S. (2023). *Civil society, peacebuilding, and economic assistance in Northern Ireland: Local knowledge, wisdom, and practices*. Routledge. https://doi.org/10.4324/9781003387190

Cairns, D., & Smyth, J. (2011). I wouldn't mind moving actually: Exploring student mobility in Northern Ireland. *International Migration*, *49*(2), 135–161. https://doi.org/10.1111/j.1468-2435.2009.00533.x

Campbell, K. (n.d.) *'After the dust settles': The experiences of local peace and reconciliation organisations in post-Agreement Northern Ireland. A case study of the Corrymeela community* [Doctoral thesis, St Andrews University].

Central Statistics Office. (2023, August 22). *Inbound tourism June 2023*. Central Statistics Office. https://www.cso.ie/en/releasesandpublications/ep/p-ibt/inboundtourismjune2023/keyfindings/

Champagne, D. (2008). From First Nations to self-government: A political legacy of Indigenous Nations in the United States. *American Behavioral Scientist*, *51*(12), 1672–1693. https://doi.org/10.1177/0002764208318925

Chandra-Shekeran, S. (1998). Challenging the fiction of the nation in the 'reconciliation' texts of Mabo and Bringing Them Home. *The Australian Feminist Law Journal*, *11*(1), 107–133.

Cherry, J. (2003). The state of truth: evidence and authority in the work of the TRC. (Paper presented at the ASSAF Symposium on "Science and Authority", Pretoria, 1 October). http://hdl.handle.net/20.500.11910/7997

Clamp, K. (2013). *Restorative justice in transition*. Routledge.

Clark, J. N. (2011). Transitional justice, truth and reconciliation: An under-explored relationship. *International Criminal Law Review*, *11*(2), 241–261. https://doi.org/10.1163/157181211X551390

Coffman, T. (2016). *Nation within: The history of the American occupation of Hawai'i*. Duke University Press.

Coleman, M. C. (2001). An outrage? The comparative study of American Indian and Irish responses to assimilationist schooling, 1820s-1920s. *Irish Journal of American Studies*, *10*, 141–149.

Collier, P., Hoeffler, A., & Söderbom, M. (2008). Post-conflict risks. *Journal of Peace Research*, *45*(4), 461–478. https://doi.org/10.1177/0022343308091356

Committee on the Elimination of Racial Discrimination. (2010). *Consideration of reports submitted by states parties under Article 9 of the Convention. Concluding*

Observations of the Committee on the Elimination of Racial Discrimination (CERD/C/AUS/CO/15-17; Seventy-Seventh Session). https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CERD/C/AUS/CO/15-17&Lang=en

Connell, R. (2007). *Southern Theory: The global dynamics of knowledge in social science.* Routledge.

Connolly, C. K. (2006). Living on the past: The role of the truth commissions in post-conflict societies and the case study of Northern Ireland. *Cornell International Law Journal*, *39*(2), 401–433.

Corntassel, J., Chaw-win-is, & T'lakwadzi. (2009). Indigenous storytelling, truth-telling, and community approaches to reconciliation. *English Studies in Canada*, *35*(1), 137–159. https://doi.org/10.1353/esc.0.0163

Coulthard, G. S. (2014). *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition.* University of Minnesota Press.

Criminal Law Act (1977). https://www.legislation.gov.uk/ukpga/1977/45/contents

Crowley, T. (2011). The art of memory: The murals of Northern Ireland and the management of history. *Field Day Review*, *7*, 22–49.

Curthoys, A. (2002). *Freedom ride: A freedom rider remembers*. Allen and Unwin.

Da Silva, J. B. & Quattrone, P. (2017). Government at a Distance. In McKinlay & Pezet *Foucault and Managerial Governmentality: Rethinking the Management of Populations, Organizations and Individuals.* Routledge.

Dahl, H. M., Stoltz, P., & Willig, R. (2004). Recognition, redistribution and representation in capitalist global society: An interview with Nancy Fraser. *Acta Sociologica*, *47*(4), 374–382. https://doi.org/10.1177/0001699304048671

Dandeker, C., Wessely, S., Iversen, A., & Ross, J. (2006). What's in a name? Defining and caring for "veterans": The United Kingdom in international perspective. *Armed Forces and Society*, *32*(2), 161–177. https://doi.org/10.1177/0095327X05279177

Darby, J. (2001). *The effects of violence on peace processes*. United States Institute of Peace.

David, L. (2020). *The past can't heal us: The dangers of mandating memory in the name of human rights*. Cambridge University Press.

Davis, M. (2021). The truth about truth-telling. *The Monthly.*

Davis, M. (2006). Treaty, yeah? The utility of a treaty to advancing reconciliation in Australia. *Alternative Law Journal*, *31*(3), 127. https://doi.org/10.1177/1037969X0603100304

Davis, M. (2014). Australia's reconciliation process in its international context: Recognition and the health & wellbeing of Australia's Aboriginal & Torres Strait Islander Peoples. *Australian Indigenous Law Review*, *18*(2), 56–66. https://doi.org/10.3316/ielapa.886877662926615

Davis, P. K. (2016). *Encyclopedia of invasions and conquests from ancient times to the present*. Grey House Publishing.

Dawson, G. (2017). The meaning of 'moving on': From trauma to the history and memory of emotions in 'post-conflict' Northern Ireland. *Irish University Review*, *47*(1), 82–102. https://doi.org/10.3366/iur.2017.0258

De Greiff, P. (2012). Theorising transitional justice. In M. S. Williams, R. Nagy, & J. Elster, *Transitional justice*. New York University Press.

Deadly Story. (2024) *What is the difference between mob, clan, tribe, language group?* https://www.deadlystory.com/page/tools/aboriginal-cultural-support-planning/cultural-planning---frequently-asked-questions/what-is-the-difference-between-mob-clan-tribe-language-group/

Dodds, G. G. (2012). Governmental apologies and political reconciliation: Promise and pitfalls. In B. Charbonneau & G. Parent (Eds.), *Peacebuilding, memory and reconciliation bridging top-down and bottom-up approaches* (pp. 140-155). Routledge.

Dokis, C. A. (2010). *People, Land, and Pipelines: Perspectives on Resource Decision-Making Processes in the Sahtu Region, Northwest Territories* [Doctoral thesis,

University of Alberta]. https://www.collectionscanada.gc.ca/obj/thesescanada/vol2/002/NR60502.PDF

Donnelly, J. S., & Bottigheimer, K. S. (2004). *Encyclopedia of Irish history and culture*. Macmillan Reference USA.

Doughty Street Chambers. (2023). *Northern Ireland Troubles law breaches human rights and the Windsor Framework | Doughty Street Chambers*. https://www.doughtystreet.co.uk/news/northern-ireland-troubles-law-breaches-human-rights-and-windsor-framework

Dudai, R. (2018). Transitional justice as social control: Political transitions, human rights norms and the reclassification of the past. *The British Journal of Sociology*, *69*(3), 691–711. https://doi.org/10.1111/1468-4446.12300

Duffy, A. (2010). A truth commission for Northern Ireland? *The International Journal of Transitional Justice*, *4*(1), 26–46. https://doi.org/10.1093/ijtj/ijp027

Dwyer, S. (2003). Reconciliation for realists. In C. A. L. Prager & T. Govier (Eds.), *Dilemmas of reconciliation: Cases and concepts* (pp. 91–110). Wilfrid Laurier University Press.

Edwards, D. (2015). Tudor Ireland: Anglicisation, mass killing and security. In C. Carmichael & R. C. Maguire *The Routledge History of Genocide*. Routledge.

Elder, C. (2007). *Being Australian: Narratives of national identity*. Allen and Unwin.

Elder, C. (2017). Unfinished business in (post)reconciliation Australia. *Australian Humanities Review*, *61*.

Elias, R. (1994). Has victimology outlived its usefulness? *The Journal of Human Justice, 6*(1), 4–25. http://doi.org/10.1007/BF02587779

Ellinghaus, K. (2003). Absorbing the 'Aboriginal problem': Controlling interracial marriage in Australia in the late 19th and early 20th centuries. *Aboriginal History Journal*, *27*, 183–207. https://doi.org/10.22459/AH.27.2011

Ellison, G. (2000). *The crowned harp policing Northern Ireland*. Pluto Press.

Elster, J. (2004). *Closing the books: Transitional justice in historical perspective*. Cambridge University Press.

Evans, R. (1993). *Race relations in colonial Queensland: A history of exclusion, exploitation and extermination* (3rd ed.). University of Queensland Press.

Evans, R. (2007). *A History of Queensland.* Cambridge University Press.

Evans, R. & Moses, D. (2004). *Genocide and Settler Society: Frontier Violence and Stolen Indigenous Children in Australian History.* Berghahn.

Fa'Aoso, A. (2023, October 29). In abandoning support for an Indigenous treaty, Queensland's LNP is playing with people's lives. *The Guardian*. https://www.theguardian.com/commentisfree/2023/oct/30/in-abandoning-support-for-an-indigenous-treaty-queenslands-lnp-is-playing-with-peoples-lives

Fayaz, A. (2022, December 10). The world's suicide capital: Colonialism's impact on Greenland's mental health crisis. *Brown Political Review*. https://brownpoliticalreview.org/2022/12/the-worlds-suicide-capital-colonialisms-impact-on-greenlands-mental-health-crisis/

Fields, R. M. (1975). Psychological Genocide: The Children of Northern Ireland. *History of Childhood Quarterly*, 3(2), 201.

Finn, D. (2018). The British radical left and Northern Ireland during the 'Troubles'. In Smith, E. & Worley, M. *Waiting for the revolution. The British far left from 1956*. Manchester University Press.

Finnane, M. & Richards, J. (2024). Speculating about genocide: The Queensland frontier 1859–1897. *Asia-Pacific Economic History Review*, 64(1), 34–51.

First Nations Australians. (2017). The Uluru Statement from the Heart. *Uluru Statement from the Heart*. https://ulurustatement.org/the-statement/view-the-statement/

Fisher, K. J. (2013). *Transitional justice for child soldiers: Accountability and social reconstruction in post-conflict contexts.* Palgrave Macmillan UK.

Fitzpatrick, D. (2018). Ireland and the Great War. In T. Bartlett (Ed.), *The Cambridge History of Ireland* (Vol. 4, pp. 223–257). Cambridge University Press.

Flannery, E. (2009). The art of resistance: Visual iconography and the northern "troubles". In Flannery, E. & Griffin, M. *Ireland in Focus.* (pp. 125-143).

Fletcher, N. (2014). *A praiseworthy device for amusing and pacifying savages? What the framers meant by the English text of the Treaty of Waitangi* [Doctoral thesis, The University of Auckland]. https://researchspace.auckland.ac.nz/handle/2292/24098

Foil Arms and Hog (Director). (2022). *The Brexit Song*. https://www.youtube.com/watch?v=308Zu4bT3Zw

Foucault, M. (1969). *The archaeology of knowledge*. Tavistock Publications.

Foucault, M. (1982). The subject and power. *Critical inquiry*, 8(4), 777–795. http://doi.org/10.1086/448181

Fowler, J. (2023, February 14). The Troubles: 'Secondary victims' of conflict remembered in book. *BBC News*. https://www.bbc.com/news/uk-northern-ireland-64641460

Foy, M. T. & Barton, B. (2011). *The Easter Rising.* The History Press.

Frayling, N. (2009). Towards the healing of history: An exploration of the relationship between pardon and peace. In J. R. Quinn (Ed.), *Reconciliation(s): Transitional justice in postconflict societies* (pp. 26–35). McGill-Queen's University Press.

Fredericks, B., Smith, D., & Mann, J. (2017). 'Reconciliation in every bite': Sharing Indigenous foods in the development of a university Reconciliation Action Plan (RAP). *Journal of Australian Indigenous Issues*, *20*(3), 2–14. https://doi.org/10.3316/informit.149436448117216

Freeman, M. (2006). *Truth commissions and procedural fairness*. Cambridge University Press.

Frost, A. (2019). *Botany Bay and the First Fleet: The real story*. Black Inc.

Gardiner-Garden, J. (1999). *From dispossession to reconciliation* (27). Parliament of Australia: Department of Parliamentary Services: Parliamentary Library.

https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22library/prspub/11D06%22

Geoscience Australia. (2014, October 31). *Australian landforms and their history*. Geoscience Australia. https://www.ga.gov.au/scientific-topics/national-location-information/landforms/australian-landforms-and-their-history

Gershon, L. (2020, February 3). *How public schools 'Americanized' Hawai'i*. JSTOR Daily. https://daily.jstor.org/how-public-schools-americanized-hawaii/

Ghattas, S. (2023). Black Power, Aboriginal Genocide, and the Politics of Identity. *Journal of Genocide Research,* 25(1), 1-23.

Gibson, J. L. (2006). The contributions of truth to reconciliation: Lessons from South Africa. *The Journal of Conflict Resolution*, *50*(3), 409–432. https://doi.org/10.1177/0022002706287115

Gibson, J. L. (2005). The truth about truth and reconciliation in South Africa. *International Political Science Review,* 26(4), 341-361. https://doi.org/10.1177/0192512105055804

Gladstone, R. & Robins, P. (2021, April 12). The ghosts of Northern Ireland's Troubles are back. What's going on? *The New York Times*. https://www.nytimes.com/2021/04/12/world/europe/Northern-Ireland-Brexit-Covid-Troubles.html

Gleghorn, C. (2013). Reconciliation *en minga*: Indigenous Video and Social Justice in Colombia. *Journal of Latin American Cultural Studies*, *22*(2), 169–194. https://doi.org/10.1080/13569325.2013.795130

Glosbe. (2023). *Kin in Scottish Gaelic | Gaelic Dictionary | Glosbe*. https://glosbe.com/en/gd/kin

Goalwin, G. (2013). The Art of War: Instability, Insecurity, and Ideological Imagery in Northern Ireland's Political Murals, 1979–1998. *International Journal of Politics, Culture, and Society,* 26(3), 189-215.

Goodall, H. (1990). Land in our own country: The Aboriginal land rights movement in south-eastern Australia, 1860 to 1914. *Aboriginal History*, 14(1), 1-24.

Goodyear-Kaʻōpua, N. (2014). Hawai'i: An occupied country. *Harvard International Review*, *35*(3), 58–62.

Goodyear-Kaʻōpua, N., Hussey, I., & Wright, E. K. (2014). *A nation Rising: Hawaiian movements for life, land, and sovereignty*. Duke University Press. https://doi.org/10.2307/j.ctv11cw7h9

Gordon, A. (2023, December 30). Free school meals: Teacher asks if any politicians go hungry at Christmas. *BBC News*. https://www.bbc.com/news/uk-northern-ireland-67788036

Gordon, G. (2023, June 14). Claire Hanna: MP highlights 'devastating impact' of attacks on women. *BBC News*. https://www.bbc.com/news/uk-northern-ireland-65904126

Government of Canada: Indigenous and Northern Affairs. (2008, November 3). *Treaties and agreements*. Government of Canada. https://www.rcaanc-cirnac.gc.ca/eng/1100100028574/1529354437231

Government of Ireland Act 1920.

Govier, T. (2009). A dialectic of acknowledgment. In J. R. Quinn, *Reconciliation(s): Transitional justice in postconflict societies* (pp. 36–50). McGill-Queen's University Press.

Govier, T., & Prager, C. A. L. (2003). *Dilemmas of reconciliation: Cases and concepts*. Wilfrid Laurier University Press.

Graham, S. (2023, November 6). John Finucane tells IRA commemoration event that remembrance is a right for every section of society. *The Irish Times*. https://www.irishtimes.com/politics/2023/06/11/remembrance-a-right-for-every-section-of-society-ira-volunteers-told/

Grey, S., & James, A. (2016). Truth, reconciliation, and "double settler denial": Gendering the Canada-South Africa analogy. *Human Rights Review*, *17*(3), 303–328. https://doi.org/10.1007/s12142-016-0412-8

Gribben, C. (2021). *The rise and fall of Christian Ireland*. Oxford University Press.

Guelke, A. (2019). Northern Ireland, Brexit, and the interpretation of self-determination. *Nationalism and Ethnic Politics*, *25*(4), 383–399. https://doi.org/10.1080/13537113.2019.1678307

Guenzler, J. (2024, September 20). NZ Right-Wing coalition rolls back Māori rights, sparking Treaty debate. *National Indigenous Times.* https://nit.com.au/20-09-2024/13835/nz-right-wing-coalition-rolls-back-maori-rights-sparking-treaty-debatek-maori-rights-sparking-treaty-debate.

Hansard. (2022, May 24). House of Commons debate (715) https://hansard.parliament.uk/commons/2022-05-24/debates/9A7C93DC-8187-47B9-8786-CA602DA2BB39/NorthernIrelandTroubles(LegacyAndReconciliation)Bill

Hansard. (2022a, November 23). House of Lords debate (825) https://hansard.parliament.uk/lords/2022-11-23/debates/AD8E5512-F4E8-4B71-8221-5E179EE1672D/NorthernIrelandTroubles(LegacyAndReconciliation)Bill

Hansard. (2022b, November 23). House of Lords debate (825) https://hansard.parliament.uk/Lords/2022-11-23/debates/2E60F968-9E20-4FA0-BA17-4D7690A668D3/NorthernIrelandTroubles(LegacyAndReconciliation)Bill

Hansard. (2023c, January 24). House of Lords debate (827) https://hansard.parliament.uk/lords/2023-01-24/debates/33F9F513-B514-4498-90E2-1A48806CF419/NorthernIrelandTroubles(LegacyAndReconciliation)Bill

Hamber, B., & Kelly, G. (2009). Beyond coexistence: Towards a working definition of reconciliation. In J. R. Quinn (Ed.), *Reconciliation(s): Transitional justice in postconflict societies* (pp. 286–310). McGill-Queen's University Press.

Hargan, G. (2022, May 24). Families of Troubles victims say UK Government's Legacy Bill is a bid to conceal the truth. *The Belfast Telegraph*. https://www.belfasttelegraph.co.uk/news/northern-ireland/families-of-troubles-victims-say-uk-governments-legacy-bill-is-a-bid-to-conceal-the-truth/41683845.html

Harris, K. N. (2014). *The nap sack project: A critical arts-based inquiry into the precarious bodies of war* [Masters thesis, Angelo State University]. http://hdl.handle.net/2346.1/30274

Harris, M. (2003). Mapping Australian postcolonial landscapes: From resistance to reconciliation? *Law, Text, Culture*, *7*, 71–97. https://doi.org/10.3316/ielapa.991633190327784

Hartley, L. K., McGarty, C., & Donaghue, N. (2013). Understanding disagreement within the majority about action to atone for past wrongs. *Journal of Applied Social Psychology*, *43*, E246–E261. https://doi.org/10.1111/jasp.12023

Haughey, S. (2019). Worth restoring? Taking stock of the Northern Ireland Assembly. *The Political Quarterly*, *90*(4), 705–712. https://doi.org/10.1111/1467-923X.12769

Haughey, S. (2024). *The Northern Ireland Assembly: Reputations and realities* (Vol. 1). Routledge.

Hay, M. (1998). *Ukubuyisana: Reconciliation in South Africa.* Cluster Publications.

Hayner, P. B. (1996). Commissioning the truth: Further research questions. *Third World Quarterly*, *17*(1), 19–30. https://doi.org/10.1080/01436599650035752

Hayner, P. B. (2010). *Unspeakable truths: Transitional justice and the challenge of truth commissions*. Routledge and CRC Press.

Hearty, K. (2023a). Closing the ranks: Bondedness, sense of self and moral injury during Legacy case prosecutions. *Irish Journal of Sociology*, *31*(2), 183–202. https://doi.org/10.1177/07916035221138515

Hearty, K. (2023b). When ideal victims don’t make ideal offenders: The (re)framing of Legacy case prosecutions against elderly perpetrators of state violence. *Crime Media Culture*, 1–17. https://doi.org/ps://doi.org/10.1177/17416590231155384

Hearty, K., & Hearty, M. (2023). Naming and framing victims: Identity, ‘usable’ victimhood, and the spectral turn in transitional justice. *International Review of Victimology*, 30(1), 70-88. https://doi.org/10.1177/02697580231181143

Heathershaw, J., & Lambach, D. (2008). Introduction: Post-conflict spaces and approaches to statebuilding. *Journal of Intervention and Statebuilding*, *2*(3), 269–289. https://doi.org/10.1080/17502970802436296

Henriss-Andersen, D. (2002). The ‘Stolen Generation’ in Queensland: A critical perspective. *Griffith Law Review*, *11*(2), 286–308. https://doi.org/10.3316/apaft.162588177023795

Hickford, M. (2004). 'Settling Some Very Important Principles of Colonial Law': Three 'Forgotten' Cases of the 1840s. *Victoria University of Wellington Law Review,* 35(1), 1-71.

Hickman, M. (2002). ‘Binary opposites’ or ‘unique neighbours’? The Irish in multi‐ethnic Britain. *The Political Quarterly*, *71*(1), 50–58. https://doi.org/10.1111/1467-923X.00279

Hobbs, H., & Williams, G. (2020). Treaty-making in the Australian Federation. *Melbourne University Law Review*, *43*(1), 178–232.

Hough, M. (2020). Taking responsibility for intergenerational harms: Indian residential schools reparations in Canada. *Northern Review (Whitehorse)*, *50*, 137–178. https://doi.org/10.22584/nr50.2020.006

Houston, G. T. (2022). *Hunger and famine in the long nineteenth century*. Taylor and Francis Group.

Hutchinson, B. (2001). *G.E. Moore’s ethical theory: Resistance and reconciliation*. University Press.

Ignatieff, M. (1996). Articles of faith. *Index on Censorship*, *25*(5), 110–122. https://doi.org/10.1177/030642209602500522

Interim Truth and Treaty Body [ITTB]. (2023a). *Milestones: Interim Truth and Treaty Body*. ITTB. https://www.truthandtreatyqld.org.au/about/milestones

Interim Truth and Treaty Body [ITTB]. (2023b). *About the Path to Treaty Bill 2023*. ITTB. https://www.truthandtreatyqld.org.au/about/news-media/about-path-treaty-bill-2023

International Fund For Ireland [IFI]. (2024). *Background*. IFI. https://www.internationalfundforireland.com/

Irish Abroad Unit. (2017). *Irish emigration patterns and citizens abroad*. Department of Foreign Affairs Ireland. https://www.dfa.ie/media/dfa/alldfawebsitemedia/newspress/publications/ministersbrief-june2017/1--Global-Irish-in-Numbers.pdf

Irish PM warns against 'spiral' in Northern Ireland violence. (2021, April 10). *Al Jazeera*. https://www.aljazeera.com/news/2021/4/10/irish-pm-warns-against-spiral-in-northern-ireland-violence

Isaacs, A. (2009). Truth and the challenge of reconciliation in Guatemala. In J. R. Quinn, *Reconciliation(s): Transitional justice in postconflict societies* (pp. 116–146). McGill-Queen's University Press

Jalata, A. (2013). The Impacts of English Colonial Terrorism and Genocide on Indigenous/Black Australians. *SAGE Open,* 1-12. DOI: 10.1177/2158244013499143

Jarman, N. (1992). Troubled Images. *Critique of Anthropology,* 12(2), 145-165.

Jarman, N. (2002). Troubling remnants: Dealing with the remains of conflict in Northern Ireland. In C. M. Beck, W. G. Johnson, & J. Schofield, *Matériel culture: The archaeology of twentieth-century conflict* (pp. 301–315). Routledge.

Jefferess, D. (2008). *Postcolonial resistance: Culture, liberation and transformation*. University of Toronto Press.

Jenkins, H. N. (2021). Ireland, first colony of the British Empire A Celtic story of Indigenous resistance, resilience, and cultural renewal. In H. N. Weaver, *The Routledge International Handbook of Indigenous Resilience* (pp. 21-34). Routledge.

Jones, W. R. (2009). England against the Celtic Fringe: A Study in Cultural Stereotypes. In J. Muldoon, *The North Atlantic Frontier of Medieval Europe*. Routledge.

Jonker, J., & Till, K. E. (2009). Mapping and excavating spectral traces in post-apartheid Cape Town. *Memory Studies*, *2*(3), 303–335. https://doi.org/10.1177/1750698008337561

Jue, V. I.-S., & Khanna, R. R. (2019). The best laid plans: Medication reconciliation optimization in theory and practice. *Journal of Hospital Medicine*, *14*(10), 642–643. https://doi.org/10.12788/jhm.3281

Junka-Aikio, L. (2023). Whose settler colonial state? Arctic railway, state transformation and settler self-Indigenization in Northern Finland. *Postcolonial Studies*, *26*(2), 279–301. https://doi.org/10.1080/13688790.2022.2096716

Keating, P. J. (1992, December 10). *Australian launch of the international year for the World's Indigenous People.* Australian Government. https://pmtranscripts.pmc.gov.au/sites/default/files/original/00008765.pdf

Keanu Sai, D. (2004). American occupation of the Hawaiian state: A century unchecked. *Hawaiian Journal of Law and Politics*, *1*, 46–81.

Kearney, V. (2023, January 1). NI politics saw seismic shift in 2022 - but no change. RTÉ. https://www.rte.ie/news/2023/0101/1344255-ni-politics/

Keenan, K. (2022). *Belfast Imaginary: Art and Urban Reinvention.* Rowman & Littlefield.

Kennedy, L. (2015). *Unhappy the land: The most oppressed people ever, the Irish?* Merrion.

Kennedy, L. (2022). Famine as genocide? Ukraine and Ireland. QUCEH Working Paper Series, No. 22-03, Queen's University Centre for Economic History (QUCEH), Belfast.

Kerr, R., & Redwood, H. (2021). Introduction: A genealogy of reconciliation? In R. Kerr, H. Redwood, & J. Gow (Eds.), *Reconciliation after war: Historical perspectives on transitional justice* (pp. 1–12). Taylor and Francis Group.

Kiernan, B. (2007). *Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur.* Yale University Press.

King, L. (2023, April 17). Fathers shot, daughters killed in bombings: Ghosts of the blood-soaked Troubles haunt Northern Ireland. *The Los Angeles Times*. https://www.latimes.com/world-nation/story/2023-04-16/ghosts-of-the-troubles-haunt-northern-ireland-years-after-good-friday-agreement

King, N. Rethinking and Recognizing Genocide: The British and the Case of the Great Irish Potato Famine. In D. R. Cooley & L. Steffen *Re-Imaging Death and Dying* (pp. 123-132). Brill.

Klose, F., & Geyer, D. (2013). *Human rights in the shadow of colonial violence the wars of independence in Kenya and Algeria*. University of Pennsylvania Press.

Knox, C., O'Connor, K., Ketola, M., & Carmichael, P. (2023) EU PEACE funding: The policy implementation deficit. *European Policy Analysis* 9(3). https://doi.org/10.1002/epa2.1177

Kołodziejski, M. (2023). *Northern Ireland PEACE PLUS programme*. https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf/en/FTU_3.1.8.pdf

Kreutz, J., Marsh, N., & Torre, M. (2013). Regaining state control: Arms and violence in post-conflict countries. In O. Greene & N. Marsh (Eds.), *Small arms, crime and conflict: Global governance and the threat of armed violence* (pp. 64–76). Routledge.

Kulovesi, E. (2017). *Hiberno-Scandinavian transculturation: Hybridization of Vikings and Gaelic culture in Ireland between 800 and 1000AD* [Masters thesis, University of Helsink]. https://helda.helsinki.fi/server/api/core/bitstreams/c7fce5e8-1163-456a-b8e6-cb8bb0160b27/content

Kuokkanen, R. (2020). Reconciliation as a threat or structural change? The truth and reconciliation process and settler colonial policy making in Finland. *Human Rights Review*, *21*(3), 293–312. https://doi.org/10.1007/s12142-020-00594-x

Lane, B. (2013). *Promotion of national unity and Reconciliation Act in South Africa*. South African History Online. https://www.sahistory.org.za/archive/promotion-national-unity-and-reconciliation-act-south-africa

Lane, K. (2019). Not-the-Troubles: Disinterring the Marginalised Stories of the Ordinary and the Everyday. Anthropological Forum, 29(1), 62-76. doi.org/10.1080/00664677.2019.1585753

Lang, L., & Mell, I. (2020). ‘I stick to this side of the park’: Parks as shared spaces in contemporary Belfast. *Environment and Planning E: Nature and Space*, *3*(2), 503-526. https://doi.org/10.1177/2514848620918829

Langton, M. (2019). *Welcome to Country: An introduction to our first peoples for young Australians*. Hardie Grant Publishing.

Lawther, C. (2017). Transitional justice and truth commissions. In C. Lawther, L. Moffett & D. Jacobs (Eds.), *Research handbook on transitional justice* (pp. 342–357). Edward Elgar Publishing.

Lawther, C., & Hearty, K. (2021). Through the looking glass: Memory, myth and policing the past. *Policing and Society*, 1–15. https://doi.org/10.1080/10439463.2021.1994569

Le Bot, J.-M. (2018). Review: Marion Dowd, the archaeology of caves in Ireland. *International Sociology*, *33*(5), 621–624. https://doi.org/10.1177/0268580918792145

Leahy, T. (2024). ‘Rigorous impartiality’? The UK government, amnesties, and Northern Ireland conflict legacy, 1998–2022. In L. McAtackney & M. Ó Catháin (Eds.), *The Routledge handbook of the Northern Ireland conflict and peace* (pp. 31–49). Routledge.

Lederach, J. P. (2005). *The moral imagination: The art and soul of building peace*. Oxford University Press.

Leebaw, B. (2011). *Judging state-sponsored violence, imagining political change*. Cambridge University Press.

Lehane, B. (2005). *Early Celtic Christianity*. Continuum.

Lepp, E. (2018). Division on Ice: Shared Space and Civility in Belfast. Journal of Peacebuilding & Development, 13(1), 32-45. 10.1080/15423166.2018.1427135.

Lightfoot, S. (2015). Settler-state apologies to Indigenous peoples: A normative framework and comparative assessment. *NAIS: Journal of the Native American and Indigenous Studies Association*, *2*(1), 15–39. https://doi.org/10.5749/natiindistudj.2.1.0015

Little, A. (2012). Disjunctured narratives: rethinking reconciliation and conflict transformation. International Political Science Review, 33(1), 82–98. https://doi.org/10.1177/0192512110389568

Little, A. (2020). The Politics of Makarrata: Understanding Indigenous–Settler Relations in Australia. *Political Theory, 48*(1), 30–56. https://doi.org/10.1177/0090591719849023

Loyle, C. E., & Davenport, C. (2016). Transitional injustice: Subverting justice in transition and postconflict societies. *Journal of Human Rights*, *15*(1), 126–149. https://doi.org/10.1080/14754835.2015.1052897

Lui, C. (n.d.). *Cynthia Lui MP: State member for Cook*. Cynthia Lui MP. https://www.cynthialui.com.au/

Lundy, P. (2009). Can the past be policed?: Lessons from the Historical Enquiries Team Northern Ireland. *Journal of Law and Social Challenges*, *11*, 109–156.

Lynch, L., Demetriadi, A., & Elks, S. (2023, October 19). Annastacia Palaszczuk set to pull the pin on treaty plans. *The Australian*. https://www.theaustralian.com.au/nation/politics/annastacia-palaszczuk-wont-commit-to-treaties-after-lnp-flips-support/news-story/fcf10d197b7e0a8dc3c55e473424b197

Lynch, M. P. (2011). *Truth as one and many*. OUP Oxford.

Macalister, R. A. S. (1918). Celtic Ireland. *The Irish Monthly*, *46*(545), 605–619.

MacGinty, R., Wilford, R., Dowds, L., & Robinson, G. (2001). Consenting adults: The principle of consent and Northern Ireland's constitutional future. *Government and Opposition*, *36*(4), 472–492.

MacKenzie, A., Engman, M., & McGurk, O. (2022). Overt and symbolic linguistic violence: Plantation ideology and language reclamation in Northern Ireland. *Teaching in Higher Education*, *27*(4), 489–501. https://doi.org/10.1080/13562517.2022.2028767

Macoun, A., & Strakosch, E. (2013). The ethical demands of settler colonial theory. *Settler Colonial Studies*, *3*(3–4), 426–443. https://doi.org/10.1080/2201473X.2013.810695

Maddison, S. (2011). *Beyond white guilt: The real challenge for black-white relations in Australia*. Allen and Unwin.

Maddison, S. (2017). Can we reconcile? Understanding the multi-level challenges of conflict transformation. *International Political Science Review*, *38*(2), 155–168. https://doi.org/10.1177/0192512115607953

Maddison, S., Clark, T., & de Costa, R. (2016). *The limits of settler colonial reconciliation: Non-Indigenous people and the responsibility to engage*. Springer Singapore Pte. Limited.

Maddison, S., & Nakata, S. (2020). *Questioning Indigenous-settler relations: Interdisciplinary perspectives*. Springer.

Mallinder, L., McEvoy, K., Moffett, L., & Anthony, G. (2016). *The historical use of amnesties, immunities, and sentence reductions in Northern Ireland* (2801555). https://papers.ssrn.com/abstract=2801555

Manatū Taonga/Ministry for Culture and Heritage. (2021, September 14). *He Whakaputanga: Declaration of Independence, 1835*. New Zealand History. https://nzhistory.govt.nz/media/interactive/the-declaration-of-independence

Manatū Taonga/Ministry for Culture and Heritage, & Calman, R. (2012, June 20). *Māori education: Mātauranga: The native schools system, 1867 to 1969*. Te Ara: The Encyclopedia of New Zealand. https://teara.govt.nz/en/maori-education-matauranga/page-3

Margey, A. (2018). Plantations, 1550–1641. In J. Ohlmeyer (Ed.), *The Cambridge history of Ireland* (Vol. 2, pp. 555–583). Cambridge University Press.

Mason, R. (2016). *Legacies of violence: Rendering the unspeakable past in modern Australia*. Berghahn Books.

McClements, F. (2021, December 6). Youth leaving Northern Ireland due to sectarian divide. *The Irish Times*. https://www.irishtimes.com/news/ireland/irish-news/youth-leaving-northern-ireland-due-to-sectarian-divide-1.4747354

McDowall, A. (2024). Preparing postgraduate research students to research Indigenous topics. Innovations in Education and Teaching International, 61(3), 541-554. 10.1080/14703297.2022.2157857

McErlean, T. C., & Crothers, N. (2007). *Harnessing the tides: The early medieval Tide Mills at Nendrum Monastery, Strangford Lough*. TSO Ireland.

McEvoy-Levy, S. (2001). *Youth as social and political agents: Issues in post-settlement peace building*. Joan B. Kroc Institute for International Peace Studies, University of Notre Dame.

McEvoy-Levy, S. (2007). Troublemakers or peacemakers? Youth and post-accord peace building. *University of Notre Dame Press*, *122*(2), 355–357. https://doi.org/10.1002/j.1538-165X.2007.tb01645.x

McGowan, M. G. (2017). The famine plot revisited: A reassessment of the Great Irish Famine as genocide. *Genocide Studies International*, *11*(1), 87–104. https://doi.org/10.3138/gsi.11.1.04

McGreevy, R. (2019, August 17). Northern Ireland could return to violence, study shows. *The Irish Times*. https://www.irishtimes.com/news/ireland/irish-news/northern-ireland-could-return-to-violence-study-shows-1.3989670

McGregor, R. (2011). *Indifferent Inclusion: Aboriginal People and the Australian Nation*. Aboriginal Studies Press.

McHugh, P. G. (2004). *A History of Aboriginal Status—the Legal Recognition of the Individual and the Group in the 'Apparent Twilight'*. Oxford University Press.

McIntosh, I. S. (2014). Reconciliation, you've got to be dreaming: Exploring methodologies for monitoring and achieving Aboriginal reconciliation in Australia by 2030. *Conflict Resolution Quarterly*, *32*(1), 55–81. https://doi.org/10.1002/crq.21101

McKenna, J. (2014). *Guerrilla Warfare in the Irish War of Independence, 1919-1921*. McFarland.

Mcveigh, R. (2008). “The balance of cruelty”: Ireland, Britain and the logic of genocide. *Journal of Genocide Research,* 10(4), 541-561. DOI: 10.1080/14623520802447792

Mcveigh, R. & Rolston, B. (2021). *Ireland, Colonialism and the Unfinished Revolution.* Beyond the Pale Publications.

Meierhenrich, J. (2008). Varieties of reconciliation. *Law and Social Inquiry*, *33*(1), 195–231. https://doi.org/10.1111/j.1747-4469.2008.00098.x

Meiring, P. (2002) Truth and reconciliation: The South African experience. *The Expository Times, 114*(3), 75-80. https://doi.org/10.1177/001452460211400302

Mellor, D., Bretherton, D., & Firth, L. (2007). Aboriginal and non-Aboriginal Australia: The dilemma of apologies, forgiveness, and reconciliation. *Peace and Conflict*, *13*(1), 11–36. https://doi.org/10.1080/10781910709336766

Méndez, J. E., & Mariezcurrena, J. (2003). Unspeakable truths. *Human Rights Quarterly*, *25*(1), 237–256. https://doi.org/10.1353/hrq.2003.0008

Merwe, H. V. der, Baxter, V., & Chapman, A. R. (2009). *Assessing the impact of transitional justice: Challenges for empirical research*. US Institute of Peace Press.

Messenger, A., & Gillespie, E. (2023, October 19). Indigenous Queenslanders in ‘double mourning’ as state’s pathway to treaty loses bipartisan support. *The Guardian*. https://www.theguardian.com/australia-news/2023/oct/19/indigenous-queenslanders-in-double-mourning-as-states-pathway-to-treaty-loses-bipartisan-support

MI5: The UK Security Service. (2023). *Terrorism threat levels*. Threats and advice. https://www.mi5.gov.uk/threats-and-advice/terrorism-threat-levels

Mills, T. (2018, October 10). Northern Ireland and the ‘brain drain’. *BBC News*. https://www.bbc.com/news/uk-northern-ireland-45804194

Mitchell, A., & Kelly, L. (2011). Peaceful spaces? ‘Walking’ through the new liminal spaces of peacebuilding and development in North Belfast. *Alternatives: Global, Local, Political*, *36*(4), 307–325. https://doi.org/10.1 177/030437541 1431761

Mitchell, C. (2006). *Religion, identity and politics in Northern Ireland: Boundaries of belonging and belief*. Routledge.

Moffett, L. (2016). Reparations for 'guilty victims': Navigating complex identities of victim–perpetrators in reparation mechanisms. *International Journal of Transitional Justice*, *10*(1), 146–167. https://doi.org/10.1093/ijtj/ijv030

Moffett, L. (2020). Struggling for reparations in Northern Ireland. In C. Ferstman, M. Goetz, & A. Stephens (Eds.), *Reparations for victims of genocide, war crimes and crimes against humanity: Systems in place and systems in the making* (2nd ed., pp. 678–709). Brill Nijhoff.

Montaño, J. P. (2011). *The roots of English colonialism in Ireland*. Cambridge University Press.

Morag, N. (2008). The Emerald Isle: Ireland and the clash of Irish and Ulster-British Nationalisms. *National Identities*, *10*(3), 263–280. https://doi.org/10.1080/14608940802249874

Moran, J. (2016). *From Northern Ireland to Afghanistan: British Military intelligence operations, ethics and human rights*. Routledge.

Moses, D. A. (2005). *Genocide and Settler Society: Frontier Violence and Stolen Indigenous Children in Australian History*. Berghahn Books.

Moses, D. A. (2008). Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History. Berghahn Books.

Moses, D. A. (2019). "White Genocide" and the Ethics of Public Analysis. *Journal of Genocide Research*, 21(2), 201-213.

Mucci, C. (2014). Trauma, healing and the reconstruction of truth. *The American Journal of Psychoanalysis*, *74*(1), 31–47. https://doi.org/10.1057/ajp.2013.37

Muldoon, P., & Schaap, A. (2012). Confounded by recognition: The apology, the High Court and the Aboriginal Embassy in Australia. In A. K. Hirsch, *Theorizing post-conflict reconciliation: Agonism, restitution and repair* (pp. 198–215). Routledge.

Mutlu, E. G. (2022). *Restorative role of public memorials and memorialization after the periods of violence and oppression: The case of Turkey* [Doctoral thesis, The Middle East Technical University]. https://open.metu.edu.tr/handle/11511/95247

Nagy, R. (2014). The Truth and Reconciliation Commission of Canada: Genesis and design. *Canadian Journal of Law and Society*, *29*(2), 199–217. https://doi.org/10.1017/cls.2014.8

Nakata, M. N. (1997). *The cultural interface: An exploration of the intersection of western knowledge systems and Torres Strait Islanders positions and experiences* [Doctoral thesis, James Cook University of North Queensland]. https://researchonline.jcu.edu.au/11908/

Nakata, M. N. (2007a). *Disciplining the Savages: Savaging the Disciplines*. Aboriginal Studies Press.

Nakata, M. N. (2007b). The cultural interface. *The Australian Journal of Indigenous Education*, *36*(Supplementary), 7–14. https://doi.org/10.1017/S1326011100004646

Nakata, M. N. (2020). 111103: Master of Philosophy (Indigenous): The Indigenous corpus and the problematics, JCULearn. https://learn.jcu.edu.au/

Ní Aoláin, F. & Rolston, B. (2018). Colonialism, Redress and Transitional Justice: Ireland and Beyond. *State Crime Journal,* 7, 329.

Nic Giolla Mhichíl, M., Lynn, T., & Rosati, P. (2018). Twitter and the Irish Language, #Gaeilge—Agents and activities: Exploring a data set with micro-implementers in social media. *Journal of Multilingual and Multicultural Development*, *39*(10), 868–881. https://doi.org/10.1080/01434632.2018.1450414

Northern Ireland Assembly. (2024). *What are the powers of the Northern Ireland Assembly*. Northern Ireland Assembly. http://www.niassembly.gov.uk/about-the-assembly/what-are-the-powers-of-the-northern-ireland-assembly/

Northern Ireland Statistics and Research Agency. (2021, March 21). *Information on Census 2021 in Northern Ireland*. Northern Ireland Statistics and Research Agency. https://www.nisra.gov.uk/statistics/census/2021-census

Northern Irish Executive. (2015a). *A fresh start: The Stormont Agreement and implementation plan*. https://www.northernireland.gov.uk/publications/fresh-start-stormont-agreement-and-implementation-plan

Northern Irish Executive. (2015b, November 13). *Overview of government in Northern Ireland*. NIDirect Government Services. https://www.nidirect.gov.uk/articles/overview-government-northern-ireland

Nyseth, T. & Pedersen, P. (2014). Urban Sámi identities in Scandinavia: Hybridities, ambivalences and cultural innovation. *Acta Borealia*, 31(2), 131-151. https://doi.org/10.1080/08003831.2014.967976

Ó Hogain, D. (1999). *The sacred Isle: Belief and religion in pre-Christian Ireland*. Boydell and Brewer INC.

Ó Murchadha, C. (2011). *The Great Famine: Ireland's agony, 1845-1852*. Continuum.

Ó Siochrú, M., & Ciardha, E. (2021). *The plantation of Ulster: Ideology and practice*. Manchester University Press.

O'Chin, H. (2024). Indigenous Queenslanders: Inclusion and Exclusion. In: An Epistemology of Belongingness. Palgrave Macmillan, Cham. doi.org/10.1007/978-3-031-32288-4_3

O'Connor, R. (2021, April 21). Majority of people on island of Ireland fear a return to violence in Northern Ireland is possible. *The Irish Post*. https://www.irishpost.com/news/majority-of-people-on-island-of-ireland-fear-a-return-to-violence-in-northern-ireland-is-possible-210125

O'Leary, B. (2019). *A treatise on Northern Ireland: Colonialism* (Vol. 1). Oxford University Press.

O'Lynn, P. (2023, June 16). 'Do as I say, not as I do' – Why we no longer have faith in politicians and what we can do about it. *The Irish News.* https://www.irishnews.com/opinion/columnists/2023/06/17/news/patricia_o_lynn_do_as_i_say_not_as_i_do_why_we_no_longer_have_faith_in_politicians_and_what_we_can_do_about_it-3355187/

O'Neill, M. (1998). Peace dropping slow: Answering the Irish Question? *Round Table*, *87*(348), 459–471. https://doi.org/10.1080/00358539808454441

O'Rahilly, T. F. (1946). On the origin of the names Érainn and Ériu. *Ériu*, *14*, 7–28.

OHCHR. (2014). *Transitional justice and economic, social and cultural rights*. United Nations. https://www.ohchr.org/sites/default/files/Documents/Publications/HR-PUB-13-05.pdf

OHCHR. (2022). *UK: Flawed Northern Ireland 'Troubles' Bill flagrantly contravenes rights obligations, say UN experts*. OHCHR. https://www.ohchr.org/en/press-releases/2022/12/uk-flawed-northern-ireland-troubles-bill-flagrantly-contravenes-rights

Osamba, J. (2006). Peace building and transformation from below: Indigenous approaches to conflict resolution and reconciliation among the pastoral societies in the borderlands of Eastern Africa. *African Journal on Conflict Resolution*, *2*(1), 22–28.

Ottendörfer, E. (2019). Assessing the role of hope in processes of transitional justice: Mobilizing and disciplining victims in Sierra Leone's Truth Commission and Reparations Programme. *Globalizations*, *16*(5), 649–663. https://doi.org/10.1080/14747731.2018.1558632

Oxford English Dictionary, s.v. "*demesne* (n.)," June 2024, https://doi.org/10.1093/OED/3257229651.

Palaszczuk, Hon. A. (2023). *Ministerial Statement: Path to Treaty*. Queensland Parliament. https://documents.parliament.qld.gov.au/speeches/spk2023/Annastacia_Palaszczuk-Inala-20230222-547828994957.pdf

Palmer, J., & Pocock, C. (2020). Aboriginal colonial history and the (un)happy object of reconciliation. *Cultural Studies*, *34*(1), 49–69. https://doi.org/10.1080/09502386.2019.1602153

Pankhurst, D. (2022, March 29). Northern Ireland terror threat downgraded but Brexit tensions and threats of renewed violence remain. *The Conversation*. http://theconversation.com/northern-ireland-terror-threat-downgraded-but-brexit-tensions-and-threats-of-renewed-violence-remain-175706

Paradies, Y. (2016). Attitudinal barriers to reconciliation in Australia. In S. Maddison (Ed.), *The limits of settler colonial reconciliation: Non-Indigenous people and the responsibility to engage* (pp. 103–118). Springer Singapore.

Park, G. (2010). Truth as justice: Legal and extralegal development of the right to truth. *Harvard International Review*, *31*(4), 24–27.

Parker, S. (2007). All aboard the truth bandwagon: an examination of our fascination with truth commissions. *Antípoda,* 4(4), 207–224.

Pascoe, B. (2012). *The little red yellow black book: An introduction to Indigenous Australia* (3rd ed.). Aboriginal Studies Press.

Pascoe, B., & Shukuroglou, V. (2020). *Loving Country*. Hardie Grant Publishing.

Perera, S. (2006). Race terror, Sydney, December 2005. *Borderlands E-Journal*, *5*(1).

Philpot, C., Balvin, N., Mellor, D., & Bretherton, D. (2013). Making meaning from collective apologies: Australia's apology to its Indigenous peoples. *Peace and Conflict*, *19*(1), 34–50. https://doi.org/10.1037/a0031267

Pocock, J. G. A. (2001). *Barbarism and religion: Narratives of civil government* (Vol. 2). Cambridge University Press.

Povinelli, E. A. (2002). *The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism*. Duke University Press.

Pratt, A. (2003). *Practising reconciliation? The politics of reconciliation in the Australian Parliament, 1991-2000*. Parliament of Australia: Department of Parliamentary Services: Parliamentary Library. https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22library/prspub/1534041%22

Prince, S. (2006). The global revolt of 1968 and Northern Ireland. *The Historical Journal*, *49*(3), 851–875. https://doi.org/10.1017/S0018246X06005541

Pryor, J. (2007). 'Fracturing the skeleton' of the law: The Mabo decision and the recons. In *Constitutions: Writing nations, reading difference* (p. 40). Birkbeck Law Press.

Queensland Government. (2023a). *Path to Treaty*. Queensland Government: Newsroom. https://www.qld.gov.au/about/newsroom/path-to-treaty

Queensland Government. (2023b). *Reconciliation Action Plan July 2023–June 2025*. https://www.dsdsatsip.qld.gov.au/resources/dsdsatsip/work/atsip/reform-tracks-treaty/rap/reconciliation-action-plan-2023-2025.pdf

Queensland Human Rights Commission. (2023, March 16). *Path to Treaty Bill 2023*. https://www.qhrc.qld.gov.au/search?query=BNE5413739&collection=qgov%7Esp-qhrc&profile=qhrc

Queensland Parliament. (2023a). *First session of the fifty-seventh parliament: Ministerial statements*. https://documents.parliament.qld.gov.au/events/han/2023/2023_02_22_WEEKLY.pdf

Queensland Parliament. (2023b). *Report no. 30, Path to Treaty Bill 2023* (57th Parliament Community Support and Services Committee). https://documents.parliament.qld.gov.au/tp/2023/5723T538-2F1D.pdf

Queensland Parliament. (2023c). *Public forum: Inquiry into the Path to Treaty Bill 2023: Transcript: Cairns*. Queensland Parliament. https://documents.parliament.qld.gov.au/com/CSSC-0A12/PTB2022-AE18/Public%20Forum,%2020%20March%202023%20(Cairns).pdf

Queensland Parliament. (2023d). *Public Forum: Inquiry into the Path to Treaty Bill 2023: Transcript: Weipa*. Queensland Parliament. https://documents.parliament.qld.gov.au/com/CSSC-0A12/PTB2022-AE18/Transcript%20-%2020%20March%202023%20-%20CSC%20-%20Public%20Forum%20-%20(Weipa)%20Inquiry%20into%20the%20Path%20....pdf

Queensland Parliament. (2023e). *Public Forum: Inquiry into the Path to Treaty Bill 2023: Transcript: Palm Island*. Queensland Parliament. https://documents.parliament.qld.gov.au/com/CSSC-0A12/PTB2022-AE18/Transcript%20-%2022%20March%202023%20-%20CSC%20-

%20Public%20Forum%20-%20(Palm%20Island)%20Inquiry%20into%20the%20Path%20....pdf

Queensland Parliament. (2023f). *Public Forum: Inquiry into the Path to Treaty Bill 2023: Transcript: Longreach*. Queensland Parliament. https://documents.parliament.qld.gov.au/com/CSSC-0A12/PTB2022-AE18/23%20March%202023%20-%20CSC%20-%20Public%20Forum%20-%20Longreach.pdf

Queensland Parliament. (2023g). *Public Forum: Inquiry into the Path to Treaty Bill 2023: Transcript: Rockhampton*. Queensland Parliament. https://documents.parliament.qld.gov.au/com/CSSC-0A12/PTB2022-AE18/Public%20Forum,%2024%20March%202023%20(Rockhampton).pdf

Queensland Parliament. (2023h). *Record of Proceedings: First Session of the Fifty-Seventh Parliament*. https://documents.parliament.qld.gov.au/events/han/2023/2023_05_09_WEEKLY.pdf

Quinn, J. R. (2009). *Reconciliation(s): Transitional justice in postconflict societies*. McGill-Queen's University Press.

Raby, R. (2005). What is resistance? *Journal of Youth Studies*, *8*(2), 151–171. https://doi.org/10.1080/13676260500149246

Rafferty, R. (2020). Conflict narratives, action frames, and engagement in reconciliation efforts among community activists in Northern Ireland. *Peace and Conflict*, *26*(1), 9–21. https://doi.org/10.1037/pac0000398

Raftery, B. (1994). *Pagan Celtic Ireland: The enigma of the Irish Iron Age*. Thames and H.

Rahman, A., Clarke, M. A., & Byrne, S. (2017). The art of breaking people down: The British colonial model in Ireland and Canada. *Peace Research*, *49*(2), 15–38.

Reconciliation after violent conflict: A handbook. (2003). International Institute for Democracy and Electoral Assistance. https://www.idea.int/sites/default/files/publications/reconciliation-after-violent-conflict-handbook.pdf

Reconciliation Australia. (2021, September 2). *Our vision is for a united Australia.* Reconciliation Australia. https://www.reconciliation.org.au/our-vision-is-for-a-united-australia/

Rettberg, A., & Ugarriza, J. E. (2016). Reconciliation: A comprehensive framework for empirical analysis. *Security Dialogue*, *47*(6), 517–540. https://doi.org/10.1177/0967010616671858

Reynolds, H. (2001). *An indelible stain?: the question of genocide in Australia's history.* Penguin.

Ridgwell, H. (2021, April 8). Belfast riots: Fears of return to sectarian violence as Brexit stokes divisions. *Voice of America*. https://www.voanews.com/a/europe_belfast-riots-fears-return-sectarian-violence-brexit-stokes-divisions/6204330.html

Riga, R. (2023, February 22). Path to Treaty has been introduced to Queensland parliament. This is what happens next. *ABC News*. https://www.abc.net.au/news/2023-02-22/qld-treaty-truth-telling-inquiry-queensland-parliament/102008708

Robins, S. (2012). Challenging the therapeutic ethic: A victim-centred evaluation of transitional justice process in Timor-Leste. *International Journal of Transitional Justice*, *6*(1), 83–105. https://doi.org/10.1093/ijtj/ijr034

Robinson, J. S., & McClelland, A. G. (2020). Troubling places: Walking the “troubling remnants” of post-conflict space. *Area*, *52*(3), 654–662. https://doi.org/10.1111/area.12616

Robinson, S. & Paten, J. (2008). The question of genocide and Indigenous child removal: the colonial Australian context. *Journal of Genocide Research,* 10(4), 501-518.

Rogers, T. J. & Bains, S. (2016). Genocide and frontier violence in Australia. *Journal of Genocide Research*, 18(1), 83-100.

Rolston, B. (1992). *Drawing Support 1: Murals in the North of Ireland.* Beyond the Pale Publications.

Rolston, B. (1995). Drawing Support 2: Murals of War and Peace. Beyond the Pale Publications.

Rolston, B. (2003). Drawing Support 3: Murals and Transitions in the North of Ireland. Beyond the Pale Publications.

Rolston, B. (2013). Drawing Support 4: Murals and Conflict Transformation in Northern Ireland. Beyond the Pale Publications.

Rolston, B. (2019). *Democratic disruption. Ireland's colonial hangover.* LSE Women, Peace and Security blog. https://blogs.lse.ac.uk/wps/2019/07/05/democratic-disruption-irelands-colonial-hangover/

Rolston, B. (2020). Ambushed by memory: Post-conflict popular memorialisation in Northern Ireland. *International Journal of Transitional Justice,* 14(2), 320–339.

Rolston, B. (2022). Drawing Support 5: Murals, Memory and Identity in the North of Ireland. Beyond the Pale Books.

Roper, S. D., & Barria, L. A. (2009). Why do states commission the truth? Political considerations in the establishment of African truth and reconciliation commissions. *Human Rights Review*, *10*(3), 373–391. https://doi.org/10.1007/s12142-009-0122-6

Rowse, T. (2009). Official statistics and the contemporary politics of Indigeneity. *Australian Journal of Political Science*, *44*(2), 193–211. https://doi.org/10.1080/10361140902862487

Ruane, J. (2021). Long conflict and how it ends: Protestants and Catholics in Europe and Ireland. *Irish Political Studies*, *36*(1), 109–131. https://doi.org/10.1080/07907184.2021.1877900

Ruane, J. & Todd, J. (1996). *The Dynamics of Conflict in Northern Ireland: Power, Conflict and Emancipation.* Cambridge University Press.

Rule of Law Education Centre. (2022). *Terra Nullius.* https://www.ruleoflaw.org.au/education/australian-colonies/terra-nullius/

Sanders, A. (2021). ‘Attempting to deal with the past’: Historical inquiries, legacy prosecutions, and Operation Banner. *Small Wars and Insurgencies*, *32*(4–5), 789–811. https://doi.org/10.1080/09592318.2021.1875306

Sarkin, J., & Daly, E. (2004). Too many questions, too few answers: Reconciliation in transitional societies. *Columbia Human Rights Law Review*, *35*, 661–728.

Schaap, A. (2008). *The politics of radical democracy.* Edinburgh University Press.

Schmidt, R. (2019). *Conditioned consent. Externally engineered post-conflict power-sharing agreements and the quest for elite cooperation. The Good Friday and Dayton Agreement in comparison* [Doctoral thesis, Central European University]. https://dsps.ceu.edu/sites/pds.ceu.hu/files/attachment/basicpage/478/rolandschmidt-thesisabstractweb.pdf

Schwan, G. (1998). The ‘healing’ value of truth-telling: Chances and social conditions in a secularized world. *Social Research*, *65*(4), 725–740.

Sennott, C. M. (2023, May 6). Northern Ireland’s troubled peace. *The Atlantic*. https://www.theatlantic.com/international/archive/2023/05/northern-ireland-unrest-paramilitary-ira-good-friday-agreement/673969/

Shaw, R. (2005). *Rethinking truth and reconciliation commissions: Lessons from Sierra Leone* (103). United States Institute of Peace. https://www.usip.org/publications/2005/02/rethinking-truth-and-reconciliation-commissions-lessons-sierra-leone

Sherlock, C. (2023, June 4). Campaigners ‘gravely concerned’ about Northern Ireland child poverty. *The Irish Times*. https://www.irishtimes.com/ireland/social-affairs/2023/06/04/campaigners-gravely-concerned-about-northern-ireland-child-poverty/

Short, D. (2003). Australian ‘Aboriginal’ reconciliation: The latest phase in the colonial project. *Citizenship Studies*, *7*(3), 291–312. https://doi.org/10.1080/1362102032000098887

Short, D. (2008). *Reconciliation and colonial power: Indigenous rights in Australia*. Ashgate.

Short, D. (2010). Australia: a continuing genocide? *Journal of Genocide Research,* 12(1-2), 45-68. DOI 10.1080/14623528.2010.508647

Short, D. (2012). When sorry isn't good enough: Official remembrance and reconciliation in Australia. *Memory Studies*, *5*(3), 293–304. https://doi.org/10.1177/1750698012443886

Simpson, G. (1993). Mabo, international law, terra nullius and the stories of settlement: An unresolved jurisprudence. *Melbourne University Law Review*, *19*(1), 195–210.

Sluka, J. A. (1992). Peace process images, symbols and murals in Northern Ireland. *Critique of Anthropology,* 16(4), 381-387.

Smith, L. T. (2012). *Decolonizing methodologies: Research and Indigenous peoples* (2nd ed.). Zed Books.

Snyder, J., & Vinjamuri, L. (2003). Trials and errors: Principle and pragmatism in strategies of international justice. *International Security*, *28*(3), 5–44. https://doi.org/10.1162/016228803773100066

Speed, S. (2008). At the crossroads of human rights and anthropology: Toward a critically engaged activist research. *American Anthropologist*, *108*, 66–76. https://doi.org/10.1525/aa.2006.108.1.66

Spring, D. (1994). Gaining the consent of the governed: A prerequisite to peace in Northern Ireland. *Fordham International Law Journal*, *18*(1), 6–14.

State, P. F. (2019). *A brief history of Ireland*. Facts On File.

Stricklin, D. (2000). *A genealogy of dissent: Southern baptist protest in the twentieth century*. University Press of Kentucky.

Strupinskienė, L. (2017). 'What is reconciliation and are we there yet?' Different types and levels of reconciliation: A case study of Bosnia and Herzegovina. *Journal of Human Rights*, *16*(4), 452–472. https://doi.org/10.1080/14754835.2016.1197771

Tatz, C. M. (1999). Genocide in Australia. *Journal of Genocide Research,* 1(3), 315-352.

Tatz, C. M. (2003). *With Intent to Destroy: Reflecting on Genocide.* Verso.

Te Puni Kokiri/Ministry of Maori Development. (2001). *He Tirohanga ö Kawa ki te Tiriti o Waitangi: A guide to the principles of the Treaty of Waitangi as expressed by the Courts and the Waitangi Tribunal*. Te Puni Kokiri/Ministry of Maori Development.

TEDXSydney (Director). (2023). *Native Title, dispossession and colonialism: A legal examination | Taylah Gray*. https://tedxsydney.com/talk/native-title-dispossession-colonialism-a-legal-examination-taylah-gray/

The Australian Museum. (2021). Always Was, Always Will Be, Aboriginal Land. https://australian.museum/learn/first-nations/always-will-be-aboriginal-land/?gad_source=1&gclid=Cj0KCQjwm5e5BhCWARIsANwm06gN62y78NQBZTJF-Lt7Seq_1IUhXH6fDeNY1KT4HmwMU39NF1Ga_L4aAqRoEALw_wcB.

The Economist. (2023, August 31). Political dysfunction in Northern Ireland is the new normal. *The Economist.* https://www.economist.com/britain/2023/08/31/political-dysfunction-in-northern-ireland-is-the-new-normal?utm_medium=cpc.adword.pd&utm_source=google&ppccampaignID=18151738051&ppcadID=&utm_campaign=a.22brand_pmax&utm_content=conversion.direct-response.anonymous&gad_source=1&gclid=CjwKCAjw1NK4BhAwEiwAVUHPUPqe-ymlRwdzGD35ybGMl8dtSn3eol51iWkj_9iBQ3tniswmzoWR7xoCwoMQAvD_BwE&gclsrc=aw.ds

The European Commission & the Special EU Programmes Body [SEUPB]. (2021). *The Peace Platform Home*. PEACE programmes learning platform. https://peaceplatform.seupb.eu/en/

The Guardian view on Northern Ireland: Violence in a political vacuum. (2023, March 30). *The Guardian*. https://www.theguardian.com/commentisfree/2023/mar/30/the-guardian-view-on-northern-ireland-violence-in-a-political-vacuum

The Interim Truth and Treaty Body [ITTB]. (2023, March). *LinkedIn: Truth and Treaty Queensland*. LinkedIn.

https://www.linkedin.com/posts/truth-and-treaty-queensland_truthandtreatyqueensland-treatyqld-activity-7034041376996540416-me0M/?trk=public_profile_like_view

The National Archives and Records Administration (NARA). (2022, June 22). *Viewing American Indian treaties*. National Archives. https://www.archives.gov/research/native-americans/treaties/viewing-treaties

The Northern Ireland Human Rights Commission. (2023). *Northern Ireland Human Rights Commission responds to Legacy Judgment*. https://nihrc.org/news/detail/northern-ireland-human-rights-commission-responds-to-legacy-judgment

The Truth and Reconciliation Commission of South Africa. (1999). *The Truth and Reconciliation Commission of South Africa report, volume I*. https://www.justice.gov.za/trc/report/finalreport/volume%201.pdf

The Truth and Reconciliation Commission of South Africa. (1999). *The Truth and Reconciliation Commission of South Africa report, volume V*. https://www.justice.gov.za/trc/report/finalreport/Volume5.pdf

Thomas, L. (2009). Forgiveness as righteousness. In J. R. Quinn (Ed.), *Reconciliation(s): Transitional justice in postconflict societies* (pp. 17–25). McGill-Queen's University Press.

Thomson, S. M. (2013). *Whispering truth to power: Everyday resistance to reconciliation in postgenocide Rwanda*. The University of Wisconsin Press.

Todd, J. (n.d.). Religion and the patterns of conflict in Northern Ireland. *Unpublished paper.* https://rps.macmillan.yale.edu/sites/default/files/files/todd.pdf

Torres Strait Regional Authority. (n.d). *Ailan Kastom.* https://torresstraitsoe.org.au/people/ailan-kastom/

Traverso, A., & Broderick, M. (2020). 'Forgiveness is something that can be seen from behind'. Visualizing a conversation with a perpetrator and a survivor of the 1994 Rwandan genocide in a reconciliation village. *Continuum: Journal of Media and Cultural Studies*, *34*(2), 299–310. https://doi.org/10.1080/10304312.2020.1737439

UK Conservative Party. (2019). *Conservative Party manifesto 2019*. UK Conservative Party. https://www.conservatives.com/our-plan/conservative-party-manifesto-2019

UK Government. (2022). *Text of the Second Reading Opening Speech for the Northern Ireland Troubles (Legacy and Reconciliation) Bill, delivered by NI Secretary, Brandon Lewis MP*. UK Government News. https://www.gov.uk/government/news/northern-ireland-troubles-legacy-and-reconciliation-bill-second-reading-opening-speech

UK Parliament. (2009). *The report of the Consultative Group on the Past in Northern Ireland.* https://publications.parliament.uk/pa/cm200910/cmselect/cmniaf/171/171.pdf

UN Security Council. (2004). *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General* (616). https://www.un.org/ruleoflaw/blog/document/the-rule-of-law-and-transitional-justice-in-conflict-and-post-conflict-societies-report-of-the-secretary-general/

UNESCO. (n.d.). *The Tertiary Period on Anglesey (65 – 2.6 Ma)*. GeoMôn UNESCO Global Geopark. https://www.geomon.co.uk/geology-of-anglesey/the-tertiary-period-on-anglesey/

United Nations. (2019, November 19). *Reconciliation must evolve to reflect growing complexity of today's conflicts, participants stress during day-long Security Council open debate*. United Nations: Meetings Coverage and Press Releases. https://press.un.org/en/2019/sc14024.doc.htm

US Commission on Civil Rights. (2002). *Racisms frontier: The untold story of discrimination and division in Alaska* [Advisory Committee Report]. https://www.usccr.gov/files/pubs/sac/ak0402/main.htm

US National Archives. (2014, November 18). The importance of treaties for teaching American Indian history. *Education Updates*. https://education.blogs.archives.gov/2014/11/18/treaties-for-teaching-american-indian-history/

Vaisman, N. (2022). Irreconciliation as practice: Resisting impunity and closure in Argentina. *The Journal of the Royal Anthropological Institute*, *28*, 103–117. https://doi.org/10.1111/1467-9655.13757

Veracini, L. (2011). Introducing: Settler colonial studies. *Settler Colonial Studies*, *1*(1), 1–12. https://doi.org/10.1080/2201473X.2011.10648799

Vora, J. A., & Vora, E. (2004). The effectiveness of South Africa's Truth and Reconciliation Commission: Perceptions of Xhosa, Afrikaner, and English South Africans. *Journal of Black Studies*, *34*(3), 301–322. https://doi.org/10.1177/0021934703258988

Walker, P. O. (2011). Creating a new story: Ritual, ceremony, and conflict transformation between Indigenous and settler peoples. In C. E. Cohen, R. Gutierrez Varea, & P. O. Walker (Eds.), *Acting together. Volume 1, Resistance and reconciliation in regions of violence: Performance and the creative transformation of conflict* (p. 225). New Village Press.

Waller, L., & McCallum, K. (2018). How television moved a nation: Media, change and Indigenous rights. *Media, Culture and Society*, *40*(7), 992–1007. https://doi.org/10.1177/0163443718754650

Walsh, T. (2021, December 7). Northern Ireland youth exodus. *The Irish Times*. https://www.irishtimes.com/opinion/letters/ni-youth-exodus-1.4748211

Walters, R. (2020). *The Australian Identity and Citizenship.* Springer.

Warren, M. (2012). *Exclusive Inclusion: Aboriginality, The 'Juggernaut' of Modernity and Australian National Identity.* [Bachelors dissertation, The University of Sydney]. https://core.ac.uk/download/pdf/41236672.pdf

Watson, I. (2007). The Aboriginal state of emergency arrived with Cook and the First Fleet. *The Australian Feminist Law Journal, 26*(1), 3-8 https://doi.org/10.1080/13200968.2007.10854373

Watson, V. (2009). From the 'Quiet Revolution' to 'Crisis' in Australian Indigenous Affairs. Cultural Studies Review, 15(1), 88-109

https://doi.org/10.5130/csr.v15i1.2055

Waxman, O. B. (2022, May). The history of Native American boarding schools is even more complicated than a new report reveals. *TIME*, *199*(19). https://time.com/6177069/american-indian-boarding-schools-history/

Wellauer, K., Williams, C., & Brennan, B. (2023, October 15). 'The Australian community couldn't comprehend what it was': Why the Voice failed. *ABC News*. https://www.abc.net.au/news/2023-10-16/why-the-voice-failed/102978962

Wigboldus, L. (2022). Legends and landscapes: The royal sites of Ireland. *Archaeology Ireland*, *36*(3), 24–28.

Williams, A. (2020). War crimes allegations and the UK: Towards a fairer investigative process. *Legal Studies*, *40*(2), 301–320. https://doi.org/10.1017/lst.2019.34

Wolfe, P. (2006). Settler colonialism and the elimination of the native. *Journal of Genocide Research*, *8*(4), 387–409. https://doi.org/10.1080/14623520601056240

Wolfe, P. (2013). Recuperating Binarism: a heretical introduction. *Settler colonial studies*, 3(3-4), 257-279. https://doi.org/10.1080/2201473X.2013.830587

Wolfson, E. (2014). *Beyond recovery: Healing and Canada's Truth and Reconciliation Commission* [Masters thesis, University of Saskatchewan]. http://hdl.handle.net/10388/ETD-2014-03-1483

Woodman, P. C. (1981, August). A mesolithic camp in Ireland. *Scientific American*, *245*(2), 120–133.

Woodman, P. C., & McCarthy, M. (2003). Contemplating some awful(ly interesting) vistas: Importing cattle and red deer into Prehistoric Ireland. In E. Nelis, E. M. Murphy, I. Armit, & D. Simpson (Eds.), *Neolithic settlement in Ireland and Western Britain* (pp. 31–39). Oxbow Books.

Wyatt, A. (2002). *Development of the veterans initiative by the Ministry of Defence, case study*. NA

Wyile, H. (2017). Towards a genealogy of reconciliation in Canada. *Journal of Canadian Studies*, *51*(3), 601–635. https://doi.org/10.3138/jcs.2017-0021.r1

Yoorrook Justice Commission. (n.d.). *About Yoorrook*. Yoorrook Justice Commission. Retrieved 11 September 2022, from https://yoorrookjusticecommission.org.au/about/

Yudin, V. (2013). *Microsoft dynamics GP 2013 implementation: Successfully implement Microsoft dynamics GP 2013 with easy-to-follow instructions and examples* (2nd ed.). Packt Publishing.

Yunkaporta, T. (2019). *Sand talk: How Indigenous thinking can save the world*. Text Publishing.

Zenker, O. (2013). 'It's part of what we are': Identifying identity. In *Irish/ness is all around us: Language revivalism and the culture of ethnic identity in Northern Ireland* (pp. 149–160). Berghahn Books.

Zogbaum, H. (2003). Herbert Basedow and the removal of Aboriginal children of mixed descent from their Families. *Australian Historical Studies*, *34*(121), 122–138. https://doi.org/10.1080/10314610308596240

Appendix A: An Overview of Part 4 of the *Northern Ireland Troubles (Legacy and Reconciliation) Bill 2022-2023*

Oral History (Section 43)

Section 43 provides for a study to be carried out on the current Troubles-related oral history records in Northern Ireland, with identification of any under-represented groups. Further records are to be created with a focus on such under-represented groups. An aim of this work is to "encourage and facilitate" public engagement by making the records "more publicly accessible", up-to-date, available without charge, and securing "events and services" that promote public engagement.

The Memorialisation Strategy (Section 44)

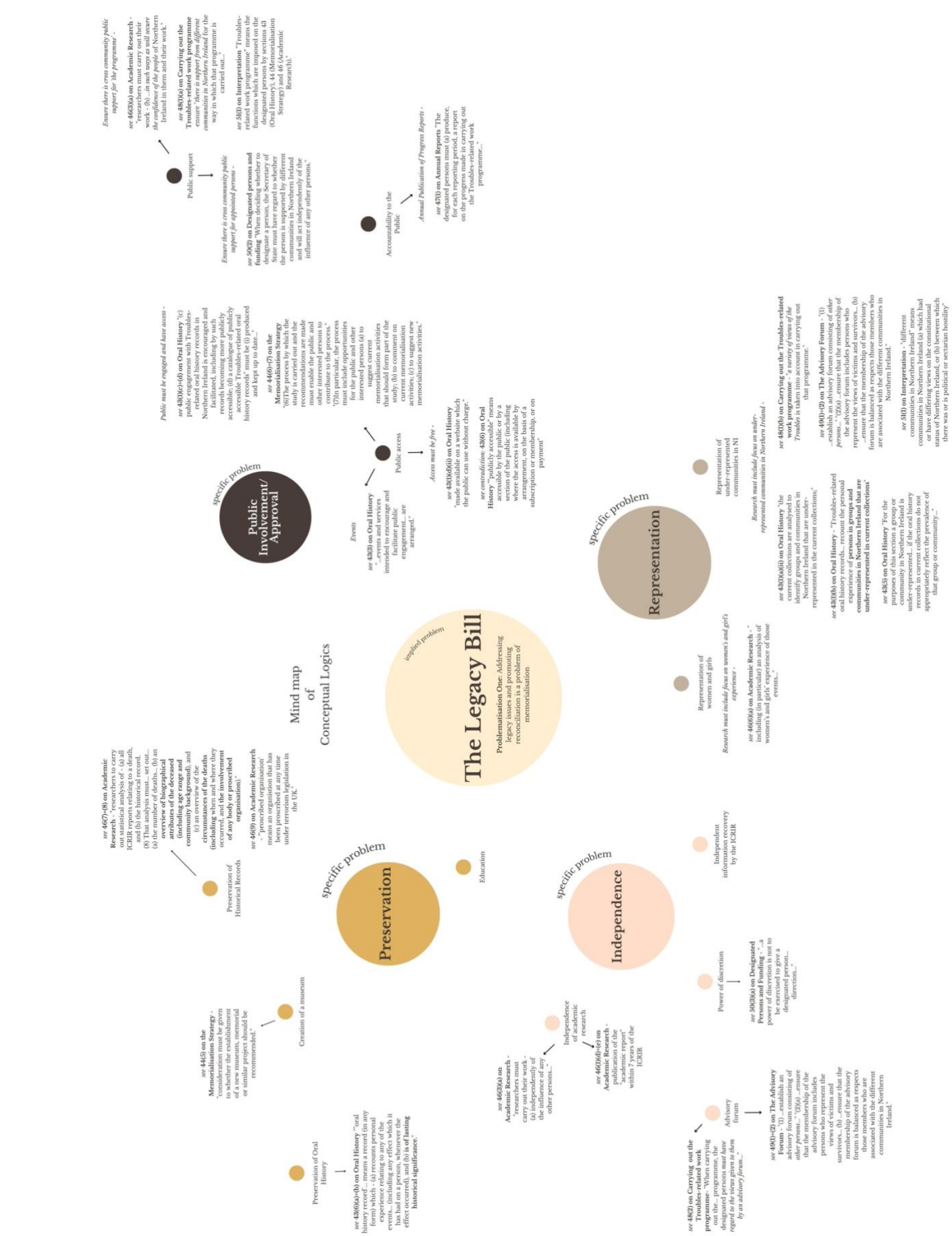
Section 44 provides for a study of "relevant memorialisation activities" which will result in a report to be considered by the UK Secretary of State. The Secretary of State must issue a response to each of the recommendations and must set out what actions will be taken or set out the reasons for why an activity will not go ahead (Section 45). A 'relevant memorialisation activity' is defined as "an activity that is carried out in Northern Ireland for the purpose of marking, commemorating, or providing information or education" about Troubles-related events and conduct. Additionally, Section 44(5) requires the consideration of a new museum, memorial or similar project as part of this research.

Academic Research (Section 46)

Section 46 provides for the production of an 'academic report' which will research the Troubles and flag criteria for identifying the type of events and conduct that should be considered as 'Troubles-related'; analyse patterns and themes which emerge from the 'relevant events' of the Troubles; produce a statistical analysis of the number of deaths divulged to the ICRIR and in the oral historical records process; a statistical overview of the 'biographical attributes' of those who died ("including by age range and community background"); and a statistical overview of the circumstances of those deaths ("including when and where they occurred, and the involvement of any body or proscribed organisation" where

‘proscribed organisation’ is an organisation committing conduct defined under UK terrorism legislation). The ‘academic report’ has a seven-year deadline from the date the ICRIR begins operation.

Appendix B: The Legacy Bill Visual Overview



Appendix C: An Overview of Parts 2 and 3 of the *Path to Treaty Act 2023*

The Truth-telling and Healing Inquiry (Part 3, Section 64)

In the completion of its truth-telling sessions, hearings and the collection of materials, the Inquiry must: observe natural justice; be unbound by the rules of evidence; conduct proceedings in a culturally appropriate manner, including having regard to Aboriginal law and Aboriginal tradition and Torres Strait Islander law and Ailan Kastom; and conduct proceedings:

> in a way that recognises the stress and psychological trauma that may be experienced by a person in giving oral testimony or making a submission to the session or hearing (Section 72(1)(a-d)).

As part of this process, the Inquiry is required to create guidelines which cover procedures for "recognising whether a person is experiencing stress or psychological trauma associated" with the proceedings; guidelines for supporting such persons; and guidelines for preventing, reducing or mitigating its occurrence and/or impact to such persons (Section 72(2)(a)).

Section 78 provides a sparse definition of a truth-telling session. As does Section 84 when it comes to defining what a truth-telling hearing under the Inquiry will be. Neither of the terms are expanded upon under the Dictionary in Schedule 1:

> ***truth-telling hearing*** means a truth-telling hearing held by the Inquiry under section 84(1)
>
> ***truth-telling session*** means a truth-telling session held by the Inquiry under section 78(1)

As may be apparent in their name, the truth-telling hearings bear closer similarities to legal-proceedings. This is also reflected in the difference in the number of Inquiry members that must be present: one member is sufficient for a session, whereas all five members of the Inquiry must be present for a hearing (Section 72).

Similarly, when we consider the immunities that are offered under Section 77 to Inquiry members, lawyers and persons we are reminded of the methods of court, for example, an Inquiry member has the same immunity awarded to a Supreme Court judge.

One of the key differences between the truth-telling sessions and hearings is whether the person who is invited to attend may be compelled to attend. Section 86 creates several offences, all which hold a maximum of 100 penalty units. This means that where “a person who has been given an attendance notice”, fails to, without reasonable excuse: (1) attend the truth telling hearing; (2) continue their attendance until excused; (3) answer a question they are required to answer by an Inquiry member; or (4) make an oral submission, then the penalties may apply. As of July 2022, this amounted to a fine of $143.75.

While Section 85(3) appears to provide that attendance notices may only be given to chief executive officers of a government entity, meaning that the Inquiry cannot send attendance notices to anyone else, and thus, that the penalties can only be applied to chief executive officers of a government entity – Section 86 on Offences does not make this clear. The Section may have benefitted from including the wording of ‘chief executive officers of a government entity’, rather than “a person who has been given an attendance notice”. Though applying such a penalty to a citizen will hopefully not come to pass, the implication of creating crimes in relation to truth-telling raises questions in relation to the *Treaty Act*’s compatibility with Queensland’s *Human Rights Act 2019*.

The First Nations Treaty Institute (Part 2, Sections 9-63)

Part 2 of the *Treaty Act* details the makeup and function of the First Nations Treaty Institute (the Institute). Section 10 declares that the Institute will be established as a body corporate, primarily responsible for the functions outlined in Section 13 of the *Treaty Act* and governed by the Treaty Institute Council (the Council) as per Sections 15-31. The Institute does not represent the state of Queensland (Section 11) and will not be a party to the negotiations for treaty or represent a party to the negotiations (Section 13(3)).

Section 13 specifies that the work of the Institute is to prepare the state and Aboriginal and Torres Strait Islander peoples “to enter into and participate in treaty negotiations”. The section outlines the primary functions and responsibilities of the Institute in full. These include:

A. Developing a “treaty-making framework” – to be done in consultation with the state – to assist the state and Aboriginal and Torres Strait Islanders in becoming treaty ready; establish the roles and responsibilities of each party to treaty; establish the processes to be used to conduct treaty negotiations; locate dispute resolutions strategies to facilitate the process; and "consider the legal effect of a treaty".
B. Consult with, support and empower Aboriginal and Torres Strait Islander peoples and “representative entities” to scope out, initiate and participate in treaty negotiations with the state.
C. Develop and implement strategies which will encourage the community of Queensland to support the treaty negotiations.
D. Support Aboriginal and Torres Strait Islander people to record “the impacts and effects of colonisation” and relay to their communities how they can participate in treaty negotiations.
E. Undertake and promote research which will inform and support the creation of the treaty-making framework.
F. Advise and make recommendations around the treaty-making framework to the Minister for Treaty.
G. Advise the Minister for Treaty in relation to the written report on the Inquiry’s findings (as per Section 88) and assist the Minister in implementing the recommendations made in the report.

The Council’s primary responsibilities are to ensure that the Institute carries out its functions and exercises its powers in “a proper, efficient and effective way” and in accordance with the principles outlined in the *Treaty Act*. It is also responsible for the development of strategies and policies for the Institute and will carry out its own, additional functions (Section 16(a-c)). These additional functions include: establishing advisory committees on financial

auditing (Section 32(a)) and human rights, including managing “ethical and culturally appropriate research and investigation” (Section 32(b)); the appointments of a CEO (Section 37) and secretary (Section 42) to the Institute; and the production of an inaugural report for the Minister (Section 48).

While Section 13 doesn’t negate the possibility for negotiations between different Aboriginal and Torres Strait Islander people's groups, it doesn’t emphasise or explicitly refer to it. This was a highly consistent question posed to the Community Support and Services Committee (the Committee) of the Queensland Parliament during their ten public forums for the Bill during March and April of 2023.