Genocide Studies and Prevention: An International Journal

http://scholarcommons.usf.edu/gsp/

Volume 9.2 - 2015

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Editors’ Introduction

This special issue of GSP emanates from the 2014 conference of the International Association of Genocide Scholars, which focused on Indigenous and colonial genocides. We received so many fascinating, relevant and important submissions for the special issue that we have decided to make two special issues; the second will be published in early 2016. Our guest editors for both issues, Tricia Logan and David MacDonald, have put in many hours of work, and the quality of this issue owes much to their hard work and dedication. Both Tricia and David are Canadians who have a vast array of experience in dealing with issues of acknowledgement and reconciliation with regards to colonial atrocities in Canada. Their expertise and sharp eye for detail have led to two special issues that address pertinent and crucial debates in genocide scholarship.

We have endeavoured to cover indigenous genocides beyond North America, although due to the location of the conference, there is more of a focus on North American genocides. However, all of the discussions are relevant to indigenous genocides around the globe, demonstrating similarities between experiences and the specific peculiarities of indigenous colonial genocides. The controversy over the use of the word genocide with regards to colonial atrocities continues today, as we see clearly with the recent release of the Canadian Truth and Reconciliation Commission’s initial report, which Tricia and David discuss in their introduction. The refusal of governments to acknowledge colonial genocide of indigenous peoples creates a barrier to reconciliation and contributes to a culture of denial. Hence why IAGS and GSP thought it so important to hold a conference and publish a special issue on the topic; to contribute to the discussion and ensure that scholarship in genocide studies does not focus on the most prominent and well-known genocides.

This special issue has five articles, dealing with indigenous genocides in Papua New Guinea, Canada, the United States and Australia. The articles are complemented with two conference summaries, including one of the IAGS 2014 conference, and Tony Barta’s keynote speech from the IAGS conference. We thought this was an appropriate way for those who attended to remember the conferences, and for those who did not to feel included. Two book reviews analyse two recent publications on indigenous genocides.

The issue also includes three film reviews which do not fit within the indigenous genocides theme, but are complementary to one another. Annie Pohlman delivers a historical analysis of Joshua Oppenheimer’s ground-breaking film, The Act of Killing. Nicole Rafter then provides a criminological perspective of Oppenheimer’s follow-up film, The Look of Silence. Both films deal with the aftermath of the 1960s violence in Indonesia. They are shocking in their depiction of perpetrators of mass atrocities, and the lack of concern for the atrocities they committed.

A subject that surfaces in the conversation on indigenous genocides is that of genocide not just being about physical destruction, but also cultural destruction. This engages the issue of the definition of genocide. The legal definition is often restricted, but it is hoped that scholarship such as the pieces in this special issue will motivate and assist law makers and judiciary at domestic and international level to acknowledge that cultural destruction is genocide.

Finally, the issue concludes with James P. Finkel’s annual report on the U.S. government’s inter-agency Atrocity Prevention Board. Finkel, who recently ended his 35-year career as a member of the senior civil service, is a close advisor to the Director of National Intelligence and the Director of the Central Intelligence Agency. The report is intended to provide recommendations for several practical steps that the Board can take to enhance its performance and its public visibility, and to help provide a critical assessment of the state of atrocity prevention within the U.S. government and U.S. foreign policy for an audience of scholars and practitioners. The report looks ahead to GSP’s next issue, 9.3, which focuses on new directions in the field of genocide and atrocity prevention.

Melanie O’Brien
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Indigenous peoples, sometimes known collectively as the fourth world, have often undergone profound hardship during centuries of western colonialism, and have displayed resilience and renaissance in the face of difficult odds. Currently, forty percent of the world’s countries contain Indigenous nations, who collectively comprise 370 million people or 5% of the world’s population, divided among over 70 states. Many Indigenous peoples are united by their marginalization on their traditional lands by dominant colonizing states and societies. Many also struggle to overcome unequal conditions in terms of access to safe drinking water, adequate housing, food, clothing, medical care, and education. Continued colonization is also manifest in a high level of settler racism against indigenous peoples, exemplified by sedimented structural inequalities which have been normalized. Indigenous peoples, due to the ongoing legacies of colonialism, are often blamed for problems which have their origins in settler government policies and institutionalized racism. While Canada is consistently rated as one of the top countries in the UN Human Development Index, Aboriginal peoples rank alongside citizens of Panama, Belarus, and Malaysia in terms of their social and economic prospects, and these gaps are not narrowing. James Anaya, United Nations Special Rapporteur on the rights of indigenous peoples, concluded in October 2013: “Canada faces a crisis when it comes to the situation of indigenous peoples of the country.”

Invoking genocide (the “crime of crimes”) has particular salience in changing how historical relationships between Indigenous peoples and settlers are interpreted. In Canada, accusations of genocide may work to undermine the country’s traditional view of being “a nation of peacemakers,” while similarly questioning what Paulette Regan has called the “myth of innocence” over how and why an Aboriginal presence has been virtually erased from mainstream history and society. Genocide claims have also been seen as an affront to American exceptionalist narratives of being both a chosen and benign nation, with Australian conservatives similarly threatened by such discussions. Genocide claims often take years if not decades to develop. State governments have a vested interest in preventing debate over these issues from taking place. Similarly, access to information, either written or oral is often difficult to obtain when the state feels its hegemony and sovereignty are under threat. This is especially so in cases where indigenous peoples who never ceded control of their lands have been subjected to genocidal colonizing processes.

Recognition and study of genocides against Indigenous peoples is growing. Indigenous nations have been pointing at these realities of colonial atrocities and genocide for centuries. To nation-states that owe much of their creation to colonial appropriation of Indigenous lands, the examination of colonial genocide hits a nerve at the centre of the histories of their national origins. Voices that empires sought to silence are being amplified and are creating new narratives inside old, accepted histories. Additionally, Indigenous nations have demonstrated agency and resistance against ongoing series of colonial schemes, systems and assaults. Indigenous peoples are partially defined by struggle, by their desire to “reclaim and regenerate one’s relational place-based existence by challenging the ongoing destructive forces of colonization.” They might also be seen as constituting an “emerging international indigenous rights regime,” embodying “politics of resistance and counter-resistance.” Central to the struggles many Indigenous peoples face is genocide. Studies of genocide and Indigenous peoples involve these complex interactions between colonialism and the colonized. The inherent connections between genocide and colonialism are continually pushed and redefined in order for us to study and to understand how Indigenous peoples, lives and lands have been drastically changed, over time.

Old historical tropes such as “vanishing” are no longer relevant. The romantic ideal of “vanishing” or “melting away” suggests that the “disappearance” of indigenous peoples, while sad, was really no one’s fault. One might abstractly blame historical inevitability and a Darwinian belief in evolution and “progress.” These days have largely passed. Narratives of these genocides also directly question the intent and legitimacy of colonial settlement. Were systems like Indian residential schools, forced removals, land appropriation and legislation suppressing on identity and rights of Indigenous peoples created to “save” a “dying race” in order to proceed with a plan of a benevolent empire? Or, were colonial systems created to assimilate, Christianize and
“civilize” the “savage” conducted in the primary interest of the nation-state to remove Indigenous peoples from the land or resource base marked for settlement and resource extraction? Were aspects of colonial expansion, racism and domination each playing simultaneously while acts and events diminished the physical and political presence of Indigenous nations? The narrative of uplift and systems “for their own good” is steadily dissolving under the evidence of colonial-colonized relations.

We present this collection of research, “Time, Movement and Space: Genocide Studies and Indigenous Peoples” in two special issues of the Journal of Genocide Studies and Prevention to contribute to the growing dialogue and turn discussion to an increasingly decolonized vision of genocide studies. These two issues include and also transcend the discussion of definitional debates. The range of topics included in the special issues help to demonstrate how seemingly diverse cases of genocide compliment a unified narrative of how colonialism/colonization disintegrated Indigenous life, worldwide.

In July 2014 the International Association of Genocide Scholars (IAGS) held its annual international conference in Winnipeg, Manitoba, Canada. These two special issues of the Journal of Genocide Studies and Prevention were intended to contribute to the conference theme of “Time, Movement and Space: Genocide Studies and Indigenous Peoples.” In this issue, lead organizer of the IAGS conference Andrew Woolford has contributed his impressions and summary of the conference. Woolford explains how the IAGS drew focus to Indigenous and colonial genocide research and why the Winnipeg conference was so well timed for both genocide scholars, for Canada and for Winnipeg. In his remarks he also records some reflections on the conference and notes a few debates and moments of tension that arose. His reflections re-emphasized the importance of the timing of the conference and the location where the conference was held, in the centre of North America.

We have also included the keynote address presented at the 2014 IAGS conference in delivered by historian Tony Barta. In his address, Barta bridged the diverse group of scholars that attended the Winnipeg conference. It was clear that the conference gave a rare opportunity for genocide scholars and Indigenous scholars to explore intersections and contribute to emerging trends in genocide research. Dr. Barta includes several poignant reflections on his work during the 1980s on colonial genocide in Australia and the terrain of genocide studies at that time. The child of Holocaust survivors, Barta was forging new ground in genocide studies at a time when it was virtually unheard of to do so. At the very least, it was an unpopular question to raise and his reflections served as a valued reminder to scholars on the changing terrain of genocide studies.

In November 2014 the symposium entitled “Killing California Indians: Genocide in the Gold Rush Era” was held in Riverside, California, USA. Robert Przeklasa attended the symposium and has contributed a summary of the event, entitled “And then the Elders and Scholars Cried”. It is important to note in Przeklasa’s commentary on the symposium the prevalence of emotion and the contribution of the local community, to the gathering. Przeklasa describes these forged and fostered relationships between the scholarly discussion and the broader connections to Indigenous communities in California. As Przeklasa points out, this symposium took place following a series of conferences on similar topics. As a result, a number of scholars are noted as sharing personal thoughts or reflections alongside their prepared papers. These reflections on the California symposium are a reminder of the contemporary nature of trauma in Indigenous communities. Przeklasa describes the tone of the event as “spiritual heaviness” and how it serves to demonstrate the close or inseparable relationship between the Indigenous community and discussion of these topics related to Indigenous genocides.

As guest editors, we hope that this collection re-emphasizes the important link between centuries of colonial legacies and the contemporary tensions between non-Indigenous and Indigenous communities. Indigenous communities are leading movements fighting the centuries of genocidal legacies to which they have been subjected by states and empires. As genocide studies expands and changes it not only broadens our understanding of colonialism, but it expands what we know about genocide. An old adage still exists in academic study that Indigenous knowledge and the transfer of Indigenous peoples’ epistemologies must be made to fit to Western academic standards or to be “separated out.” It should be noted that decolonization involves among many things, a
nation-to-nation partnership on re-examinations of ontology or epistemology. Creating space for Indigenous peoples’ narratives and pedagogy means continued adaptations to Western academic convention/style. These may not be drastic changes but decolonization means creating new rules and bending old rules to find space where Indigenous peoples can present their understandings of these ancient relationships given the best ways to translate the knowledge. Scholarship on the legal frameworks and histories of genocide including the work of Raphael Lemkin originate from a primarily European-Western tradition. As the contributors to this issue have each discussed in their articles, there are ways to re-frame and re-examine the primarily Euro-Western understanding of genocide in order to support study of colonial or Indigenous peoples’ genocides.

In his article, “Colonialism and Cold Genocides: The Case of West Papua”, Kjell Anderson examines the case of the disappearance of Indigenous Papuans as both an “autonomous political and ethnic identity” in West Papua. Along with the other contributors, he is investigating these often-debated boundaries of definitions and genocide studies. In his article, Anderson uses the case of West Papua to present his analytical framework of these types of genocides, which he describes as “hot or cold” genocides. He posits the “genocide question” to the case and events of West Papua using the UNGC and the fundamental understandings of the crime of genocide. Indigenous peoples were rarely seen as humans or as agents in these cases and rather than facing genocidal intent, as Anderson describes, colonizers were facing what they believed to be inevitability, instead.

Jerimiah Garsha has contributed a detailed history of the 1850 Bloody Island Massacre of Bone-po-ti, in Lake County, California, USA. The contextualized events that Garsha describes are not only presented as a series of events but as a portion of a broader narrative in American-Indigenous relations. Garsha follows a constructed hierarchy of historical narrative through examination of memory and memorialization of the Bloody Island site in California. With use of media portrayals of the “Bloody Island” massacre, Garsha provides an additional player to this already troubled and traumatic relationship; the public via the media. Narrative of these massacres in California and the issue of a public memory are cleverly interwoven with a broader survey of American history. These are the contextualizations that are so essential to broadening study and understanding of colonial genocides, overall. Through the words of the “dual massacre markers”, the two separate historical plaques from 1942 and 2005 commemorating the Bloody Island site and the struggling narrative in California public history Garsha demonstrates how public interpretation continues to shape our relations between Indigenous and non-Indigenous histories.

Examining and extending this growing interest in the rhetoric of genocide, Jeff Benvenuto enters into this discussion with his contribution “The Semantic Field of Genocide”. It is the “close conceptual pairing” of cultural genocide, ethnocide and genocide and how these terms have political use and influence that Benvenuto uses with particular focus on Indigenous rights movements. In his article, Benvenuto illuminates a large and longer discourse around the rhetoric of genocide and cultural genocide and its efficacy in international Indigenous human rights movements. Pointing to the Indigenous global politics movements of the 1970s and highlighting the precursor events leading to the 2007 United Nations Declaration on the Rights of Indigenous Peoples, Benvenuto examines the “imposition of structural and discursive boundaries in the development of Indigenous rights”. Benvenuto encourages genocide scholars to embrace the discourse of Indigenous rights. In doing so, scholars can approach and re-approach decolonization of genocide studies and the integration of Indigenous peoples’ narratives. As he reminds us in his timely contribution, there is an ongoing focus or concern in genocide studies regarding the balances between activism and scholarship. These are the balances and relationships that require renewed, decolonized study.

International Indigenous political movements and especially the “doctrinal and procedural obstacles” to the UNGC, forced child transfers (FTC) and international law are the focus of Ruth Amir’s article “Killing them Softly: Forcible Transfers of Indigenous Children”. Amir traces the origins of the integration of forced child transfers into international law and in particular the cases of Canada, the United States and Australia and the removal of Indigenous children. Points of tension between assimilation, genocide and forced child transfers are examined by Amir and she provides an analysis of forced child transfer and the reception that the international community has given the laws and law-making on forced child transfer. Regardless of the specific case or how one defines genocide the forced removal of children en masse from their parents remains with clear
intent and as Amir reminds us, “intentions can be construed from action, inaction and words”. Indigenous communities have faced these actions and inactions for several decades as generations of parents have had their children forcibly taken from their homes. As we consider this collection of research we can see the broader intent and malice that extends far beyond the “benevolence” of state and church.

Natalia Ilyniak has included the voices and language of Anishnaabe residential school Survivors to describe what colonial genocide looks like in terms of culture and destruction of language in her article “To rob the world of a people: Language Removal as an instance of Colonial Genocide in the Fort Alexander Indian Residential School”. Inside the broad and often complex discussion of colonial genocide, Ilyniak presents this “micro-instance” of language removal and cultural destruction which helps to unravel the complex interactions of colonialism. This article provides both details and a decolonized perspective on how these assaults on culture are inseparable from the assaults on the body, mind and religion. Each contributor has discussed on some level this definitional inseparability between cultural genocide and genocide and along the same lines, Ilyniak continues with this discussion sharing the distinct voices of the Anishnaabe in Canada.

We will also feature two book reviews by Ami Fagin and Mark Meuwese. American history and popular culture appears to be well versed in the history of the United States and their interactions with Native Americans. A different kind of debate arises through the U.S. compared with other countries over the applicability of the term genocide as it applies to Native American history. The two book reviews are on topics of American-Indigenous relations. Ami Fagin has contributed a review of Alex Alvarez’s Native America and the Question of Genocide. Fagin enters this American “stand off” on the applicability of the term genocide. Alongside a critical summary of the book, she describes Alvarez’s work and how it deserves to fit into these discussions and this discourse on genocide.

Mark Meuwese has reviewed Gary Clayton Anderson’s Ethnic Cleansing and the Indian: The Crime That Should Haunt America for this issue. As Meuwese outlines in his review, Anderson has taken a different route through Native American history than other scholars, like Alvarez. Anderson is clear to present this version of Native American history as ethnic cleansing and provides an argument against the use of the term “genocide” as it applies to the United States. In his review, Meuwese offers several details on US-Indigenous history to consider alongside Anderson’s historical narrative. Meuwese proposes that these details can counter the argument of Anderson’s volume on the applicability of the term genocide. Both Fagin’s and Meuwese’s reviews reflect the current state of genocide studies and Indigenous-genocide studies.

As we bring the first of our two special issues to press, we are aware that Canada is changing. Following the June 2015 release of Canada’s Truth and Reconciliation Commission executive summary and recommendations, public and media attention has been drawn to the use of the terms “cultural genocide” and “genocide”. The end of the TRC’s six-year mandate will hopefully generate discussion, debate, and action on the legacies of genocide in the Indian Residential Schools, and also in the wider process of colonizing Turtle Island. The Commissioners concluded in a public closing event that the federal government had committed “cultural genocide” against Aboriginal peoples through the operation of the schools system. Earlier, Justice Murray Sinclair, the chief commissioner had been clear that genocide as defined under the UN Convention had been committed. The summary report (the final report is due at the end of 2015) made 94 recommendations in order achieve reconciliation and achieve self-determination for Aboriginal peoples. At the time of writing, it is by no means clear which federal political party will form the next government in the October federal elections. Political willingness to implement the recommendations and to move forward in partnership and respect with Aboriginal peoples will depend on which party can form the government and how much political capital and political will they have to make changes.

Canada’s IRS system was established in the mid-1880s. The federal government worked closely with mainline Canadian churches, who were together responsible for running most schools until the 1950s. From 1920 until the 1950s, attendance for children aged five to sixteen was compulsory. At least 150,000 children passed through the schools, the last of which closed only in 1996. There are approximately 75,000 Survivors alive today, and many face a myriad of social, economic, and
other problems as a result of their experiences. Problems of intergenerational trauma remain serious, since Survivors learned few parenting skills, and were deracinated from their languages, territories, and cultures. Many Survivors demonstrated an amazing level of resilience and cultural continuity, and their positive legacies are an example to others.

Public discussion of abuse began in 1990 when then Assembly of Manitoba Chiefs leader Phil Fontaine openly declared his history of physical and sexual abuse and encouraged others to come forward. In 1991, the Royal Commission on Aboriginal Peoples, helped build public knowledge of the IRS system. RCAP’s Report in 1996 highlighted four main types of harms committed during the colonization process, the first of which concerned the physical and sexual abuse in Residential Schools (as well as their goals of assimilation and cultural destruction).

RCAP recommended the establishment of a public inquiry into the IRS system to listen to Survivors, collect evidence, and recommend forms of compensation, with the ultimate goal of issuing a formal apology, helping rebuild damaged lives and communities, while promoting public knowledge of the abuses in the system through education. Eventually the government and the churches were forced to comply, although this was in reaction to widespread litigation on the part of IRS Survivors. By early 2005, some 13,400 individual suits had been filed, with large class action suits as well, such as the “Baxter National Class Action,” where 90,000 Survivors sought $12 billion from the federal government.

In the wake of some church bankruptcies, the government stepped in and in 2006, the IRS Settlement Agreement was signed between legal representatives of IRS Survivors and government and church plaintiffs. The Agreement set out a variety of compensatory mechanisms, including Common Experience Payments (CEP) for all Survivors, an Independent Assessment Process (IAP) for more serious abuses, a commemoration fund, and funds to promote healing and health support. These covered only certain categories of Survivor however, and schools run by provincial governments were not part of the Agreement, nor were day schools, although demonstrable forms of abuse took place there as well. In 2008, the federal government formally apologized, regretting that “mistakes” had been made, although Prime Minister Harper failed to reflect on the wider colonial social and institutional context which made the IRS possible.

Under Schedule N of the Agreement, a Truth and Reconciliation Commission was established, which has had important ramifications for the discussion of genocide in Canada. With a budget of $60 million, the TRC began its mandate in 2009, and held a wide range of public meetings, gatherings, and events, including numerous regional and seven National Events, where statements from Survivors and their families are taken, either in public or private settings. Another aspect of its mandate is the creation of a national centre on truth and reconciliation to house documents related to the IRS system. Unlike the South African TRC, or the Australian Human Rights Commission (which found Australian states guilty of genocide against Aboriginal peoples in its 1997 Bringing Them Home Report), the Canadian TRC had no legal powers.

Schedule N, Article 2 (c) laid out that the Commission “shall not hold formal hearings, nor act as a public inquiry, nor conduct a formal legal process;”(d) states that the Commission “shall not possess subpoena powers, and do not have powers to compel attendance or participation in any of its activities or events.” For this reason primarily, the TRC has not been able to go beyond academic terms such as cultural genocide, and while Justice Sinclair has said repeatedly that the UNGC was violated, particularly the prohibition against the forced removal of children, the Commission has been officially silent on this matter. It has also not had the ability to accuse previous governments of crimes against humanity, which would also seem to be an easy accusation to prove.

At the time of writing the commission has completed a collection of 7,500 statements from Survivors, compiled a death total of 6,000 children who died in or soon after leaving residential school, while it has also increased public knowledge of the IRS system from 30 to 60 percent over the course of the TRC’s mandate. A core mandate of the TRC has been education, and its new National Research Centre for Truth and Reconciliation is tasked with documenting the history, the crimes, and the aftermath of the IRS system. The NCTR will house a massive oral history archive with nearly 7,000 audio and video interviews, and some 4 million digitized records.

Canadian settlers and Aboriginal peoples have tentatively begun a process of reconciliation, framed by the acknowledgement that at least cultural genocide was committed against Aboriginal
peoples in the course of colonization. There is also some acknowledgement that the legacies continue still and have had intergenerational impacts. The work of the TRC as well as genocide scholars has effectively unsettled Canada making us raise seminal questions about the foundation of the country, and what its future should look like.

Tricia Logan
David B. Macdonald

Endnotes
7 Paulette Regan, Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada (Vancouver: UBC Press, 2010), 106.
9 Corntassel and Bryce 2012, “Practicing Sustainable Self-Determination,” 152.
16 Thomas King, The Inconvenient Indian: A Curious Account of Native People in North America (Toronto: Anchor Canada), 170.


23 “Our Mandate.”


Colonialism and Cold Genocide: The Case of West Papua

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Abstract: Conventional understandings of genocide are rooted in the Holocaust model: intense mass killing directed at the immediate destruction of the group. Yet, such conceptions do not encompass cases of so-called slow-motion genocide, where the destruction of the group may occur over generations. The destruction of indigenous groups often follows such a pattern. This article examines the case of West Papua with a view to developing a new analytical model distinguishing high-intensity hot genocides, motivated by hate and the victims’ threatening nature, with low-intensity cold genocides, rooted in victims’ supposed inferiority.

Keywords: genocide, colonialism, West Papua, Indonesia

Introduction
The boundaries of genocide are persistently contested in both jurisprudence and socio-historical analysis. Our socio-analytical, juridical, and popular perceptions of the term genocide are shaped by its origins in the Holocaust. The Genocide Convention arises out of this context and the more closely mass atrocities resemble the Holocaust in form, extent, and motive the more likely they are to be labelled genocide.

Yet many cases of genocide are atypical in the sense that they do not conform closely to these Holocaust-based understandings of genocide. West Papua, the western half of the island of New Guinea, may be one such case. The continuing influence of the Holocaust over our perceptions of genocide contributes to a substantial blind spot in genocide—so-called slow motion genocides. Such genocides occur incrementally, over years, or even generations. Colonial or neo-colonial genocides targeting indigenous peoples often occur in such a manner. In these cases the physical destruction of the indigenous people may not be directly intended; rather, the perpetrators substantially undermine the foundations of existence for indigenous groups through systemic oppression or wilfully reckless policies. These policies are often rooted in dehumanising constructions of indigeneity whereby indigenous people are said to be primitive obstacles to the progress of civilization and the collective interests of the legitimate political community.

In West Papua indigenous peoples have had their identity, autonomy, and physical security substantially undermined through the neo-colonial policies of the Indonesian state. This systematic campaign appears to be genocidal in that it aims at the disappearance of the (West) Papuan group, as an autonomous political and ethnic identity; yet, it is difficult to classify as genocide due to the survival of most Papuan individuals. Moreover, any ostensibly genocidal policies in West Papua have indirect intent and gradual result. In this article I will explore the case of West Papua as a means towards addressing slow-motion genocides, or cold genocides, as I have labelled them in my analytical framework. It will situate colonial genocides within the broader phenomenon of genocide, before analysing the case of West Papua. It will also critically assess the implications of the West Papua case, and similar cases, for our understanding of genocide. The purpose of this paper is not to prove or disprove the occurrence of genocide in West Papua. Rather, it utilises the case of West Papua to illuminate the boundaries and morphologies of genocide with particular reference to indigenous peoples. It will argue that not all genocides are high-intensity episodes of mass killing, rather the destruction of the group can also be realized through cold genocides characterised by gradual destruction and limited killing.

Primitivism and Progress: Colonialism and Genocide
Genocide is a relatively recent concept, yet the phenomenon encapsulated in the term is an ancient and persistent dilemma. When Raphael Lemkin first crafted the concept of genocide in 1941, he was undoubtedly informed by contemporaneous atrocities in Nazi-occupied Europe, yet he saw genocide as a recurrent historical phenomenon. Moreover, his writings specifically linked genocide and the practice of colonialism. Even so, colonial genocides, and neo-colonial genocides
in particular, are far more contested in genocide scholarship than the canonical genocides of the twentieth century such as the Holocaust, Rwandan Genocide, and Armenian Genocide.

The colonial genocide debate often centres on the means and intention of the perpetrators; specifically, did the perpetrators act with the intent to destroy the group, and was the campaign focused on physical destruction? Much of this debate arises from a particular interpretative lens for the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which privileges high-intensity campaigns of killing over other more gradual genocidal approaches.

Delving into the question of intent also involves addressing broader questions of perpetrator motivation, which situate perpetrator behaviour dichotomously in either rational instrumentality or irrational racial hatred. Both of these schools of thought are, of course, overly reductionist. Genocide is never fully instrumental nor fully prejudicial. Rather, motive is better assessed on the basis of the weighing of these two paradigmatic characteristics: instrumentality (genocide arising from the purpose of gaining or maintaining power) and prejudice/orthodoxy (genocide arising from the perpetrators’ ideologically-based derogatory view of the victimised group). Within these characteristics we can further disaggregate prejudicial motives into hate (a desire to destroy the victim group on the basis of their perceived negative characteristics) and supremacy (an assumed supremacy over the victimised population, which allows, but does not require, their destruction).

Instrumental motives for genocide are centred on the use of genocide as a tool to gain or maintain power through the destruction of perceived threats, and also the consolidation and concentration of power among the in-group. Yet genocide, as the deliberate destruction of a racial, ethnic, national, or religious group, always entails a degree of prejudicial motivation. Indeed, the targets of such destruction appear to be chosen solely on the basis of ascribed identity; in genocide markers of identity are determinate of life and death. Prejudicial ideologies marginalize victim groups, transforming them into valueless objects or enemies, allowing them to be destroyed.

Colonialism is characterised by a regime of foreign domination, the expropriation of land and resources, and the imposition of foreign ideologies and belief systems. In such circumstances the destruction of indigenous peoples is often seen as incidental and inevitable. In a sense, then, the destruction of the victims is motivated less by hate and more by assumed supremacy. Supremacy can be distinguished from hate in that in supremacy crimes the victim is not seen as an existential threat. Once victims become a perceived existential threat, i.e. in cases where they resist the perpetrators’ imposition of authority, perpetrator motivation may transition from supremacy to hate. Hate crimes, unlike supremacy crimes, require the complete destruction of the offending group – assimilation is no longer a reasonable possibility. Such destruction is deemed essential to the survival of the perpetrator group. The victim group’s threat may be constructed in terms of their power or their pollution. In many cases victims may be so devalued that their destruction becomes immaterial, a functional means to an end.

In the colonial context, resistant groups, such as the Herero in German Southwest Africa, are no longer seen as so-called noble savages but rather a malevolent force. For example, in the official inquiry following the German genocide of the Herero and Nama indigenous peoples in 1904, the causes of the killing were determined to be “the arrogance of the natives and...their confidence in their superiority over the Germans.”5 When colonial genocides are motivated by hate they are more likely to be manifested as direct killing and easier to identify as genocide. In contrast, many colonial genocides targeting indigenous peoples are built on notions of supremacy and utilise the broad destructive means foreseen in Raphael Lemkin’s definition of genocide:

A coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups.

In contrast to Lemkin, I believe that the aim of colonial genocides is not always the annihilation of the group; rather, such annihilation could be an acceptable outcome, incidental to other policy
goals. This destruction of the group is rooted in ideologies of racial supremacy whereby civilization and culture exist in direct opposition to biology. In fact, the closer a group is perceived to be to living in a state of nature, the more it can be said to lack civilization. Bodies without civilization are animal bodies. Thus, indigenous peoples, traditionally living in close connection to the natural world, are dehumanised and placed outside of the human moral community.

Peoples conceptualized as primitive, such as the indigenous inhabitants of West Papua, are not fully-valued but rather exist only as obstacles to progress, a half-human component of a menacing topography. Progress in this worldview is seen as the conquest of the natural world through the maximal exploitation of resources. Colonialism seeks to exert total power over the environment of which indigenous peoples are a part. While some scholars have argued that the intention of colonial regimes was (and is) the exploitation of labour and natural resources rather than the destruction of the indigenous labour pool, this construction of colonialism ignores the desire of the colonial regimes to possess the land in its entirety, irrespective of the local population. Total possession is only possible if the indigenous inhabitants are a non-entity, either destroyed or invisible. Counter-currents of indigenous resistance may also romanticize indigenousness as a means to condemn foreign interlopers or even to justify discrimination against non-indigenous groups (for example, the case of Fiji and the treatment of Indo-Fijians).

The removal or destruction of indigenous peoples is often instrumental, yet still deeply rooted in prejudicial notions privileging in-groups and denigrating out-groups. In many cases where indigenous peoples are substantially destroyed through interaction with foreign groups, this destruction lacks the directed nature of genocides, such as the 1994 Rwandan Genocide.

Rather indigenous genocides bear the flavour of inevitability. The discourse goes that the extinction of indigenous groups is an inevitable result of historical progress—like the dodo bird, indigenous peoples suffer evolutionary unfitness: a failure to adapt and thrive in the modern world. For example, British theologian Frederic Farrar, a pallbearer at Darwin’s funeral, argued that indigenous peoples were “irreclaimable savages” predestined to “disappear from before the face of it [earth] as surely and as perceptibly as the snow retreats before the advancing line of sunbeams.” This inevitability also acts as a causal explanation for the disappearance of indigenous peoples. Inevitability removes agency and neutralises the accountability of perpetrators, a pattern of perpetrator self-justification familiar to genocide scholars. Yet the difficulty with establishing explicit intentionality in some cases of the destruction of indigenous peoples (for example through disease, forced displacement, or ethnocide) challenges mainstream interpretations of genocide. Perpetration may not be intentional in the manner envisaged in the Genocide Convention, but rather, foreseeable. Inevitability also occurs in non-colonial genocides, yet in those genocides it arises from the power of the perpetrators and the context created by the state rather than racial notions of inferiority.

Indigenous groups have long been subject to racist ideologies, which characterise them as inferior. Indeed, the assumption of all civilizing missions is that indigenous peoples are fundamentally primitive and that only by removing the very fact of their indigenousness can progress be achieved. Prejudicial theories also provide a ready explanation and justification for the monopolisation of economic and political power by colonial powers.

The key features of colonial genocides include: their foreign (extraterritorial) origin, their strongly instrumental character (where the primary objective is the seizure of territory and resources), and their frequent focus on the essential conditions of life of indigenous groups rather than direct physical extermination, although such exterminatory killing also takes place in certain cases. Indigenous groups are often characterised as being primitive and racially inferior rather than being insidious enemies in the manner of, for example, the Tutsis of Rwanda. While colonies have all but disappeared from the world, with notable exceptions such as French Polynesia, colonial ideologies in the form of engrained notions of racial superiority and justifiable dominion over so-called primitive groups persist in many countries worldwide such as Indonesian West Papua.

The Case of West Papua
Since contact with Europeans, West Papua has often been seen by outsiders as a primitive and marginal region. Under Dutch rule West Papua was a periphery of the periphery: it was marginal...
to the Dutch East Indies, which were themselves marginal in relation to the Netherlands core. This marginality has continued under Indonesian rule, whereby West Papua is a kind of resource-rich hinterland – an empty treasure trove for the state of Indonesia. The Papuans themselves are often depicted as stone age – a timeless people existing outside of the inexorable march of historical progress. This *apartness* of the Papuans is often either romanticised or demonised: West Papua is an anachronistic museum piece to be preserved or destroyed in the context of modernisation.

West Papua has been inhabited by Papuan peoples for at least forty-two thousand years. The Papuans are Melanesians, a cultural and ethnic grouping which includes most of the people living in the Southwest Pacific (in countries such as Papua New Guinea, Vanuatu, the Solomon Islands, New Caledonia, and Fiji). The island is large, rugged and isolated from major population centres; for much of their history Papuans lived in many small villages spread throughout this vast landscape (New Guinea is the second largest island in the world). This isolation contributed to the development of a tremendous ethno-linguistic diversity with 1,319 languages spoken in the Melanesian region (the majority of which are on the island of New Guinea). Prior to foreign domination West Papua was governed by numerous small states.

The island was named by Spanish explorers in 1546, who thought that the inhabitants resembled the Guineans of West Africa. The French and British also made incursions into West Papua but the Dutch were the first to set up a presence on the island. The Dutch governed indirectly by recognizing the sovereignty of its vassal state, the Sultanate of Tidore, over New Guinea in 1660. The island was seen as possessing too great a challenge with too meagre material rewards for the Dutch to directly colonize. Although the Dutch established administrative posts in West Papua in 1898 and 1902, Dutch intervention remained minimal. Nonetheless, local resentment towards colonial officials brought in from other parts of the Dutch East Indies grew, with some Papuans regarding them as *amberi* (foreigners who talk sweet but have evil intentions); in turn Indonesians looked upon Papuans as *bodoh* (ignorant). Royal Dutch Shell also began to develop West Papua’s oil reserves in 1907.

When Indonesia became independent in 1949, the Dutch retained West Papua as a separate territory, to be granted independence at a later date, on the grounds that the Papuans were a distinct people and territory, thus not really part of the Dutch East Indies at all. The Dutch also desired to retain West Papua as a Dutch foothold in Southeast Asia. Indonesia continued to claim the contrary, on the grounds that all of the former Dutch East Indies constituted a single territorial entity, to form the basis for the new state of Indonesia. This claim was rejected by some of Indonesia’s founding fathers, notably Mohammed Hatta, on the grounds that Papuans were racially distinct. Nonetheless, a propaganda campaign was initiated calling for the ‘reunification’ of West Papua with Indonesia.

Upon rejection of a proposed 1957 UN resolution recognising Indonesian sovereignty over West Papua, Indonesian President Sukarno seized Dutch enterprises in Indonesia and announced the expulsion of Dutch residents. Four years later Papuans prepared for independence by creating their flag, the morning star, and electing representatives to a New Guinea Council. Sukarno responded by calling on Indonesians to liberate the territory of West Papua from Dutch rule so that it could be reunited with the rest of Indonesia. After significant Indonesian military invasions in 1962 (defeated by the Dutch), and facing growing international pressure, the Netherlands agreed to a staged transition of West Papua to Indonesian rule on the condition of a plebiscite on the future of the territory. Constantin Stavropoulos, the United Nations’ legal counsel at that time, argued that there was a strong presumption’ in favour of the self-determination of the Papuans.

A plebiscite of sorts occurred in 1969. The referendum, dubbed the *Act of Free Choice* by Indonesia and the *Act Free of Choice* by the Papuan independence movement, gathered 1025 tribal leaders who ‘decided’ unanimously to join Indonesia. These tribal leaders were under severe intimidation, even being threatened at gunpoint. Moreover, it is questionable whether this selection of chiefs was truly representative of broader Papuan opinion.

Indonesian governance in West Papua has been characterised by this same indifference to the views and interests of the local populace. Moreover, under Indonesian rule indigenous Papuans have been subject to a range of systematic and widespread human rights abuses such as torture, extrajudicial killings, forced labour, forced displacement, rape, and forced disappearance.
Indonesian policies have also done significant environmental damage, undermining the cultural, political, and economic bases of Papuan society, and contributing to the prevalence of disease among indigenous peoples in West Papua due to inadequate provision of health and sanitation facilities. These policies may not have been intentionally directed at the destruction of the Papuans, yet they were undertaken with deliberate disregard for the welfare of the Papuans and knowledge of the destructive consequences for the Papuan group.

Under Indonesian rule West Papua has seen its significant oil, mineral, and timber wealth exploited by Indonesian and multi-national enterprises (such as Freeport McMoRan), with limited benefits (and employment opportunities) for the local population. Papuans have been historically under-represented in the oil and resource-extraction industries.

Another manifestation of Indonesian oppression in West Papua is the severe restrictions placed on personal liberty. These restrictions encompass arbitrary detention for months or even years at a time, restricted movement in many regions for security reasons, restrictions on the freedom of speech and assembly, and the requirement that people obtain a Surat Jalan (travel permit) before traveling to their home villages.

Indonesia has also implemented a transmigration program whereby Indonesians from densely populated provinces (such as Java, Madura, and Bali) are given incentives to settle in less densely populated provinces (such as Sumatra, Borneo, and West Papua). This program actually originated with the Dutch colonial regime, but it continued and accelerated under Indonesia. It is impossible to locate accurate official statistics on the number of transmigrants but the International Working Group for Indigenous Affairs estimates that these transmigrants now comprise about half of West Papua’s population of 2.7 million inhabitants. These transmigrants include both official transmigrants, who are part of government programs, and spontaneous transmigrants who arrive in West Papua through Indonesian government encouragement but not official programs.

The transmigration program is similar to the colonisation initiatives which existed in other settler societies such as Canada, Australia, and South Africa. Such policies consider the land to be terra nullius – empty or underutilized land – and aim at both the pacification of the local indigenous population and the economic exploitation of their lands. Many of the transmigrants are retired Indonesian soldiers moved into strategic areas such as mines and ports, as well as the Papua New Guinea border, where the Organisasi Papua Merdeka (Free Papua Movement or OPM) guerrillas are most active. Moreover, transmigrants are given many benefits not available to Papuans; this constitutes a form of structural discrimination which limits Papuan economic opportunities.

Moreover, in many cases, the settlement of transmigrants is preceded by the forced displacement of indigenous Papuans, who are only allowed to remain in a transmigrant area at a ratio of one Papuan family to nine non-Papuan families. By 1984 approximately 700,000 hectares of land had been confiscated, without compensation, from indigenous Papuans under the transmigration program. The arrival of significant numbers of outsiders has also coincided with greatly increased rates of disease, particularly HIV. In 2002 West Papua represented 40% of Indonesia’s total HIV and AIDS cases with only 1% of its total population.

Transmigration and settlement also serve the purpose of undermining the self-determination of the local population by rendering them a minority – a distinctive disadvantage in ethnically-polarised democratic systems. It appears that the transmigration process will continue for the foreseeable future, until the goal of moving millions of people is reached. This serves the purpose of helping to reduce over-population and encouraging development; however these policies have also created conflict as indigenous peoples are swamped by outside settlers (such conflict has occurred in all regions receiving transmigrants). The Indonesian government does not recognize indigenous groups as being distinct in any manner; rather it considers all Indonesians to be indigenous.

Transmigration is part and parcel of a larger project of cultural assimilation, including the mandatory use of Indonesian as the medium of instruction in schools. This use of Indonesian has contributed to the decline and extinction of several indigenous Papuan languages. Papuan beliefs, cultural practices, and lifestyles are deemed to be primitive and in need of benign custodianship. Progress, in this conception, is a move away from primitivism, which is itself a move away from traditional subsistence lifestyles and towards the cash economy. For example, the so-called Operasi Koteka (Operation Penis Gourd) in 1971-1972 sought to encourage tribes in certain New
Guinea highland areas to abandon the Koteka and to wear modern clothing. Such markers of modernisation are also a repudiation of the primitive past.

Modernisation also entails a move away from environmental sustainability (relatively ‘light’ land use such as traditional agriculture) to more intensive and less sustainable land uses such as mining. The environmental destruction in West Papua is a direct consequence of Indonesian development policies such as transmigration and the exploitation of natural resources. Although there have been material benefits to some indigenous Papuans (such as schools being built by mining companies), these economic activities have also displaced and alienated many indigenous peoples from their traditional lands. Between 1982 and 1990 an average of 163,000 hectares of forest was destroyed annually in West Papua. Furthermore, people living close to resource-rich areas are often displaced, and a great deal of fertile land has been distributed to transmigrants. Papuan resistance to these measures has been met with increasing militarisation and political oppression. The region is currently the most heavily militarised in Indonesia with an estimated 45,000 troops present.

The Free Papua Movement (OPM or Organisasi Papua Merdeka) was founded in 1963 to advocate for the autonomy of West Papua. Over time the OPM became increasingly militant, for example, in 1977 it cut the fuel and slurry pipelines to the Freeport (Grasberg) mine. This resulted in indiscriminate reprisal attacks from the Indonesian military that burned down entire villages in the vicinity of the mine. By the 1980s violence in West Papua had escalated into a low-intensity armed conflict, which continues to this day. As many as 100,000 people have been killed in subsequent years, mostly civilians killed by the Indonesian State. Although the OPM is well-established throughout West Papua it is lightly armed with most fighters not even having firearms.

Opposition to the Jakarta regime is seen by Indonesian nationalists as more than mere difference of opinion; rather it represents a rebellion against the rationalism of modernity. As such, indigenous resistance is a threat to the broader Indonesian nation-building project. The assertion of ethnically-derived difference in the face of the state-building projects of newly constituted states is a threat to the project as a whole. Such forms of pluralism are not acceptable in the process of state formation, which seeks to make the nation synonymous with the state. In fact, unity is enshrined as the second principle of the PANCASILA philosophy, found in the preamble of the Indonesian Constitution. This kind of state formation, the dream of a created monolithic nationalism arising out of diverse peoples and political units, is at the core of the dream of the nation-state. Such nation-states (like Spain and Turkey) are truly imagined communities.

The notion of threat is increased when one couples this ideological threat to nation-building with the presence of an affine community in a neighbouring state (most directly the Papuans in Papua New Guinea, but also the Melanesians in the Southwest Pacific, who have greater cultural affinities with the Papuans than the Indonesians do). Non-conforming Papuans (i.e. those opposed to Indonesian rule) may therefore be seen as a fifth column within Indonesia. The prior renaming of West Papua as Irian Jaya (victorious Irian) reinforced the notion that West Papua is part and parcel of the Indonesian national project, which is itself supposedly anti-colonial in nature.

The Special Autonomy Law of 2001 was promulgated with the intention (on the part of Indonesian moderates) of giving West Papua a degree of autonomy. However, this law seems to have made little difference on the ground. It has resulted in the Papuanisation of upper levels of the bureaucracy but Papuans have little real autonomy. The Special Autonomy Law also required the establishment of a truth and reconciliation commission for West Papua, which has still not been established.

The Indonesian military exerts a great influence over Indonesian politics and, according to an Indonesian government official quoted in a US diplomatic cable, it operates in West Papua as a “virtually autonomous government entity”. Military interests in West Papua, both as a power base and a source of revenue have increased since the loss of East Timor and Aceh; Jim Elmslie argues: “TNI [military] involvement in legal businesses, such as mining and logging, and illegal businesses, such as alcohol, prostitution, extortion, wildlife smuggling, etc., provide significant funds for the TNI as an organization and also for individual TNI members, especially senior officers.”
International pressure to resolve the West Papua situation has also increased in recent years. The violent suppression of the Papuan People’s Congress, coupled with a strike at the Grasberg Mine in 2011, led to a statement from US Secretary of State Hilary Clinton that Indonesia needed to “address the legitimate needs of the Papuan people.”

Genocide and West Papua
This brings us to the question as to whether the events in West Papua can accurately be characterised as genocide. The normative weight of the term genocide undoubtedly contributes to its overuse and abuse. Genocide, as the crime of crimes, is seen by many as a supreme validation of victimisation; this is true even when one considers that other international crimes, such as crimes against humanity, have grave consequences for the victims.

It is difficult to make the case that Indonesian oppression in West Papua amounts to a genocide similar to the Holocaust or Rwandan Genocide. There is no systematic pattern of mass killing; in fact, in gross terms, the indigenous Papuan population is actually increasing. One could also argue that the Papuans are fragmented – that identity is more localised and tribal than national and as such Papuans may not constitute a national group. Paradoxically, Indonesian oppression in West Papua may have itself been instrumental in the formation of a national Papuan identity.

The central elements which must be proven for any crime are the occurrence of the criminal act(s) and the intention of the perpetrator to commit these acts. In genocide there is the additional intent requirement of having the intention to destroy the group in whole or in part. Let us examine each of these elements as they relate to the case of West Papua.

In West Papua there has not been any large-scale campaign of killing, rather killings have mostly taken the form of the political repression of the independence movement (for example by targeting those who raise the Papuan Morningstar Flag). In 2001 the US State Department’s Country Report on Indonesia notes:

Security forces were responsible for numerous instances of, at times indiscriminate, shooting of civilians, torture, rape, beatings and other abuse, and arbitrary detention in . . . Papua . . . Security forces in Papua assaulted, tortured, and killed persons during search operations for members of militant groups. The security forces inconsistently enforced a no-tolerance policy against flying the Papuan flag, tearing down and destroying flags and flag poles, and killing eight persons, and beating others who tried to raise or protect the flag.

More recently, dozens of protesters were arrested on the anniversary of West Papua’s annexation. Indonesian soldiers have also assassinated independence leaders on several occasions, such as Yustinus Murib, Danny Kogoya and Theys Hiyo Eluay, although the state of Indonesia has denied that it officially sanctioned these killings. Such killings could arguably constitute the crime against humanity of persecution, but do not necessarily constitute genocide as such. It is likely that many incidents of violence occurring in remote areas simply go unreported for fear of reprisals. The Indonesian government has also severely restricted access into the region for foreign journalists and human rights organisations.

There is a stronger argument to be made for Article 2 (c) of the convention – causing serious bodily or mental harm. In his thesis Budi Hernawan argues that the widespread use of torture functions as a mode of governance in West Papua. Effectively, the use of torture is a tool of subjugation – illustrating in graphic form to all who see the scars of the torture victims (or who hear of acts of torture) that Papuan bodies are not sacrosanct. Rather, bodies themselves belong to the state. Moreover, the vulnerability of Papuan bodies also shows that Papuans may not be considered to be full members of the political community. Indeed, the bodily and psychological persecution of indigenous Papuans may constitute a self-evident statement as to the moral wrongfulness of opposition to the Indonesian state and a self-admission of guilt.

The Indonesian counter-insurgency Operation Clean Sweep of 1981 was accompanied by the slogan Biar tikus lari kehutan, asal ayam piara dikandang (let the rats run into the jungle so that chickens can breed in the coop), i.e. remove Papuans from areas so that they can be taken over by transmigrants. This is effectively what occurred in the aftermath of the operation.
Clean Sweep resulted in the killing of at least 2,500 Papuans (the Indonesian government estimate), and as many as 13,000 (an estimate given by Dutch journalists). Many other such massacres have occurred through indiscriminate Indonesian attacks and collective punishment. For example, in June and July of 1985, 517 civilians were killed in several highland villages in retaliation for an earlier skirmish between the OPM and ABRI (Indonesian Army).

The collective punishment of the counter-insurgency operations, when coupled with the transmigration program and forced assimilation, could be said to constitute a sort of genocidal project, albeit occurring over the course of decades rather than months. Demographic projections indicate that Papuans, who represented 96.09% of the population of West Papua in 1971, will only constitute 28.99% of the population by 2020. While demographic decline is not, in and of itself, genocidal, Indonesian policies foreseeably contribute to the disappearance of the Papuans as a politically-constituted nation; such policies and aims are consistent with Lemkin’s definition of genocide but not the Genocide Convention.

We must also consider whether the Indonesian state, through its policies, is “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part” (Article 2(c) of the Genocide Convention). This provision was intended to cover cases of intentional indirect killing such as famine within concentration camps. However, the conditions of life of groups must differ depending on their particular cultural, socio-political, and environmental context. For certain groups (i.e. those groups practicing subsistence agriculture) land is more than monetised property – it is also an anchor for physical (food) security. Forced displacement, environmental destruction, or even the suppression of traditional knowledge (such as techniques of food cultivation) could dramatically decrease the physical security and sustainability of the group. Reports have indicated, for instance, that areas subject to intensive logging may be submerged due to soil erosion. The UN has also noted that current development plans in West Papua run the risk of decreasing the food security of tens of thousands of Papuans. In some cases the Indonesian government has directly destroyed the crops of Papuans. Such practices can certainly be harmful to the physical and mental well-being of the group.

We can also distinguish here between voluntary and forced assimilation. In voluntary assimilation members of the group may decide, for example, to voluntarily adopt different cultural practices, to participate in mining or other non-traditional resource exploitation, or to adopt a different cultural identity. In contrast, forced assimilation involves an intentional state policy directed towards the ethnocide of the group. In practice ethnocide (cultural genocide) is difficult to separate from physical genocide. Cultural genocide was excluded from the convention as a result of a political bartering process. Yet, where cultural genocide is linked inextricably to physical genocide, acts that may be characterised as cultural genocide should in fact be plainly considered genocide.

Beyond the presence of genocidal acts, the Genocide Convention requires genocidal intent (the intent to destroy the group in whole or in part). This is difficult to prove in many circumstances yet it can be inferred from the overall context. Intent may also arguably be inferred from the nature of the criminal act itself. For example:

In 1970, soldiers patrolling the jungle border area shot and killed a pregnant woman, cut the baby from the mother’s womb, and dissected it in front of 80 women and children of the village. At the same time, a group of soldiers raped and killed the pregnant woman’s sister. In 1998, in order to disrupt a pro-independence demonstration, the Indonesian navy used force on the participants. It is alleged that women were taken out to sea on Indonesian navy ships, where they were raped, sexually mutilated and thrown overboard. Women’s corpses reportedly washed up on the Biak coast. Some of them showed signs of sexual mutilation; breasts had been removed.

Such acts of violence are indicative of genocide intent (the intent to destroy the group) as they symbolically and literally target the means of physically sustaining the group, namely women’s procreative functions.

Prejudicial beliefs underlie many of these policies. For example, an Indonesian textbook discussed West Papua (Irian) in terms reminiscent of the terra nullius doctrine:
The countryside of Irian has not yet been cultivated because of the lack of people... Civilization is uneven... some are completely backward (in the interiors of Seram and Irian). It is clear that the level of civilization depends on the degree of intercourse with other, advanced ethnic groups or nations.\cite{65}

Such a sentiment may be genocidal in its implications. It is not direct or public incitement to genocide; it does not call for the extermination or destruction of the Pапuans, yet it does treat Pапuans in a way that makes it clear that they have no intrinsic value or presence as human beings. In practical fact the Pапuans have little in common culturally with the rest of Indonesia. Indonesia is a majority Muslim country while Pапuans are majority Christian. For example, the centrality of pigs in many Pапuan cultures and diets reinforces Indonesian perceptions of Pапuan primitivism.\cite{66}

This also eases the production and perpetuation of the ‘us-them’ dichotomies necessary for systematic persecution.

In 2007 Indonesian General Colonel Burhanuddin Siagian, military commander of the Jayapura region, threatened the brutal and indiscriminate use of force against Pапuan separatists when he told the Cenderawish Pos newspaper:

> What is absolutely certain is that anyone who tends towards separatism will be crushed by the TNI... In the interests of the Republic of Indonesia, we are not afraid of human rights. We are quite prepared to imprison anyone, or dismiss them from their posts, whatever is in the interest of Indonesia... If I meet anyone who has enjoyed the facilities that belong to the state, but who still betrays the nation, I will honestly destroy him.\cite{67}

Such pronouncements are indicative of the intention to destroy a group as such, one of the core tenets of the Genocide Convention. Yet the group in question could be arguably political (opponents of Jakarta), not ethnic. In practice, however, it is difficult to separate political identity from ethnic identity, particularly when ethnic groups or nationalities (such as the Pапuans) become politicised. Arguably the destruction of Pапuan nationalists (as a political group such a crime could constitute the crime against humanity of persecution) would result in the near-destruction or absolute subjugation of Pапuan ethnicities. Moreover, the destruction, through violent means, of political elites and the subsequent destruction of Pапuan’s right to political self-determination and cultural survival could set in motion the eventual physical disappearance of Pапuans.

William Schabas argues that genocidal intent may include a form of recklessness, provided that there is “virtual certainty” that an act or omission will result in the destruction of the group in whole or in part.\cite{68} Some scholars also argue that the Genocide Convention goes beyond direct and indirect intent (\textit{dolus directus} and \textit{dolus indirectus}) to also constitute recklessness (\textit{dolus eventualis}).\cite{69} Reckless intent supposes that the perpetrator could foresee the possible consequences of their acts but that they lack the direct intention to bring about those consequences. John Quigley interprets the Genocide Convention in such a way that genocide may occur in situations where the perpetrator acts without genocidal purpose but where genocide is a foreseeable result.\cite{70}

Many genocides targeting indigenous peoples fall somewhere in the grey region between \textit{dolus eventualis} and \textit{dolus directus}. The perpetrator may desire the destruction of the group, and even hope that their acts further that objective, yet they do not act directly to bring about the destruction of the group. In such genocides there is a kind of historical intentionality, rather than an immediate intentionality. This historical intentionality sees the destruction of the group as inevitable in the long term; it results in a set of policies which further this result in an incremental fashion. These policies may include, for example:

1. Destruction of cultural sustainability
2. Destruction of economic sustainability
3. Destruction of political sustainability

As genocide is primarily concerned with the protection of identity groups (nations, ethnicities, religions, and races), the destruction of a group’s essential life foundations (such as the ability...
of group members to practice their culture, pass on traditional knowledge, feed themselves, and govern themselves) is pursuant to an intent to destroy the group in whole or in part.

There is a fundamental normative flaw in the law’s construction of genocide: the assumption that cultural practices are not essential to physical survival. This assumption is grounded in a European, civilizing worldview which sees culture as being in direct opposition to corporeal needs and realities. In such conceptions culture is a matter of survival only in the sense that culture is connected to rationalism, thus the technological foundations of modern life. In many indigenous societies culture is intimately connected to traditional knowledge. Such knowledge is not just a matter of ritual and rite but also of survival in the physical world. As indigenous groups are separated from their connection to the physical world they are also separated from their primary means of security and survival. In other words, cultural genocide can also constitute a means of physical genocide. The alienation of indigenous groups, such as Papuans, from their culture may be a direct threat to their physical survival. The forced removal of indigenous peoples from their means of both food and cultural production is a direct threat to their physical survival. In West Papua the reduction of land available to indigenous Papuans, through the settlement of transmigrants and other forms of economic development, have resulted in a reduction in the lands necessary for indigenous Papuans to practice shifting cultivation – their traditional means of subsistence.

In many contexts direct killing may not be necessary to effectuate genocide. The Genocide Convention already recognizes this through its inclusion of such acts as the forcible transfer of children from one group to another group and the prevention of births. It is reasonable to consider that the scope of the convention can be interpreted so as to cover forms of cultural genocide, which are directed at the destruction of the group, or other policies which may lack direct intent but that will foreseeably lead to the destruction of the group. The intentionality of such acts can be inferred from the context and the perpetrating group’s view of the victim group. In situations where prejudicial ideologies and views are prevalent and the perpetrator acts, with knowledge, in complete disregard for the negative consequences of their acts on the victim group, then the perpetrator possesses an intent to destroy.

How can we distinguish the intent to destroy from mere oppression? In colonial and neocolonial contexts the perpetrator group harbours the intention not only to dominate the victim group but to possess their living space in its entirety, irrespective of their reduced prospects for continuity and survival. Such groups consider their presence in a territory to be more worthy by virtue of their advanced civilization or enlightened ideology. Under the ideology John Docker calls supersessionism groups may even consider themselves to be history’s true heirs, with the implication that other, less worthy groups are inevitably bound to die off. Groups holding such ideological constructions may inculcate a self-fulfilling prophecy whereby they undermine the fundamental survival basis of groups deemed to be inferior; when these groups fail it is taken as proof of the inevitability of their disappearance. Structural forms of violence, such as the Indian great famine of 1899-1890, are only possible through the complete disregard shown to the lives of colonial subjects. We should also recall as well that omissions may be genocidal.

There seems to be misperception among many scholars that the Genocide Convention contains a motive requirement. In particular they point to the phrase as such in article 2 of the convention (the intent to destroy the group as such). The Jelisic Appeals chamber judgement at the International Criminal Tribunal for the Former Yugoslavia (ICTY) discarded the notion, posited by the Trial Chamber in the same case, that hatred must be a motive in genocide. The Appeals Chamber found:

The personal motive of the perpetrator of the crime of genocide may be, for example, to obtain personal economic benefits, or political advantage or some form of power. The existence of a personal motive does not preclude the perpetrator from also having the specific intent to commit genocide.

Thus, instrumental genocides are also encompassed by the convention. The West Papua case, where crimes are often committed pursuant to economic goals, could be one such case.
Even if the Indonesian state could be shown to be acting with intentionality or careless disregard, towards the welfare of Papuans, do the acts of the state of Indonesia amount to genocide? The Indonesian government disputes any genocidal intent; rather, it argues that its actions in West Papua have been directed at the suppression of a violent terrorist movement and the achievement of economic development. While there have assuredly been widespread killings and other acts of violence these still seem too sporadic to constitute a deliberate policy of annihilation. The Genocide Convention, of course, goes beyond mere killing to include acts such as the forcible transfer of children. One could argue that the inclusion of such acts goes beyond biological destructiveness to encompass cultural destruction.

It might be the case that the Indonesians desire the destruction of the Papuans as a political and cultural community. Such destruction may not be directed towards the physical destruction of the members of the group, yet it undoubtedly targets the social relations and cultural knowledge necessary for the group’s survival in the long term. Like many indigenous peoples facing persecution in the name of progress, Papuan existence may be contingent on the absolute disappearance of separate Papuan political and cultural identity. In short, Indonesian policies may lack intentionality and urgency yet they do have genocidal implications in that they attack the sustainability of the group. How can genocide studies relate to such cases?

Reassessing Genocide: Hot and Cold Genocides

The lack of adequate engagement of policy-makers and theorists with colonial and neo-colonial slow-motion genocides is also a failure to engage with structural violence – violence in which a social structure prevents people from meeting their basic needs. There are several explanations for this analytical deficiency. Firstly, the concept of genocide largely arose from the historical context of the Holocaust. As such, there is a tendency among genocide scholars to ignore genocides which do not fit the Holocaust model of mass killing in pursuit of a racist ideology.

Secondly, structural violence is often more subtle than mass killing. It entails undermining the conditions of life for targeted groups gradually, over years or even decades. Such genocides pose significant problems in terms of proof of criminal intentionality; in the absence of explicit statements of genocidal intent, structural violence requires a thorough understanding of complex socio-economic structures and policies.

Finally, there is the possibility that genocide studies suffer from colonial biases. The great majority of genocide scholars are located in the Global North. Thus, in some sense, the privilege of many genocide scholars is built upon a foundation of past structural violence against indigenous and other subject peoples. We must ask whether genocide studies itself has the effect of merely reproducing, rather than challenging, existing power structures?

There is a need for a new analytical framework for genocide in order to account for cases, such as West Papua, where the disappearance of a national, ethnic, racial, or religious group is gradual and incidental, rather than rapid and intentional. Such cases are still genocidal in the sense that the perpetrating group knowingly performs acts that contribute to the eventual destruction of a group.

With this in mind it may be useful to conceptually distinguish between hot genocides and cold genocides. When we speak of temperature in this context we mean emotional passion and intensity of action. The concept of hot and cold war made a similar, but not identical, distinction between direct and indirect violence. The very notion of genocide contains a popular perception of racial hatred, and the desire to annihilate, notions which are undoubtedly intense. Yet, by maintaining such a narrow view of genocide we are blinding ourselves to alternative means for the destruction of groups.

We can distinguish between hot and cold genocides on the basis of the following factors: emotion, (perpetrator) perceptions of the victim, the intention of the perpetrator, the speed at which genocide occurs, the tools utilised, and the primacy of instrumental motivations.

Firstly, hot genocides are characterised by the passion/hatred of the perpetrator towards the victim group. This hatred is rooted in a sense of existential threat projected onto the victims. The victims are often seen as devious, sources of contamination, or evil. Hatred towards the victims is a source of inspiration and authorisation for genocidal killing. This hatred towards the victims is...
consistent with Sternberg and Sternbergs’ Story-Based Theory of Hate which defines hatred as having three characteristics: the negation of intimacy, commitment, and passion. In contrast, cold genocides may be passionless. They are not motivated by hate but by the perpetrators’ assumed supremacy over the victims. In the Holocaust, Jews were not merely seen as inferior but rather as “an aspect of the environment that had to be removed”; they were targeted not because of the supposedly disproportionate wealth that they possessed, but rather because they represented a mortal danger to the “Aryan race.”

Although in both cases the perpetrators are prejudiced towards the victims, in the case of cold genocides this prejudice may be manifested as pity, indifference, or annoyance rather than passion (anger/hate).

In cases where the victim group is seen as threatening, physical violence is more likely to be utilised. Perhaps this threat hypothesis can explain the relatively higher levels of violence utilised by the Indonesian state in East Timor (estimates place war-related deaths at up to a quarter of the population), in comparison to West Papua. In West Papua anti-regime activity has been relatively limited and sporadic.

Secondly, hot genocides rely heavily on killing and other direct acts of destruction such as harming the victim group or intentionally starving them in concentration camps. In contrast, cold genocides undermine the conditions of life of the victim group or destroy them through gradual policies such as the transfer of children from the victim group to the perpetrator’s groups. The destruction of the victims’ culture, alienation and forced displacement from traditional lands, demographic dilution, and environmental destruction may also gradually contribute to the disappearance of the group.

Thirdly, the perpetrators in hot genocides intend to destroy the victim group completely. By contrast in cold genocides the destruction of the victim group may be accomplished through its gradual disappearance. Disappearance can be affected through the extreme marginalisation or subjugation of the victim group, or its complete cultural assimilation. In one sense, this act of subjugation is more closely aligned to the crime against humanity of persecution than the crime of genocide, yet it is genocidal in that it still seeks (or foreshadows) the eventual disappearance of the victim group.

Fourthly, in hot genocides the destruction of the targeted group takes place in a manner of a few years (such as occurred in The Holocaust) or months (such as occurred in Armenia and Rwanda). The victim groups’ perceived threatening nature towards the perpetrators necessitates their urgent destruction. In contrast, in cold genocides the destruction of the victim group is seen as inevitable rather than imperative. Such destruction is more a matter of evolution, of social Darwinism, rather than deliberate acts. We can also draw a parallel here with low-intensity armed conflicts, which, although relatively limited in mortality, still indicate the presence of sustained conflict.

Finally, in hot genocides instrumental motives, such as the maintenance of power, are often secondary to racial motives. Contrarily, in cold genocides instrumentality, such as the seizure

<table>
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<tr>
<th>Characteristic</th>
<th>Hot Genocide</th>
<th>Cold Genocide</th>
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<tr>
<td>1. Emotion</td>
<td>Hate</td>
<td>Supremacy</td>
</tr>
<tr>
<td>2. Victim</td>
<td>Threatening</td>
<td>Contemptible</td>
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<tr>
<td>3. Intention (dolus specialis)</td>
<td>Annihilation (direct)</td>
<td>Disappearance through destruction or complete subjugation (indirect, eventual)</td>
</tr>
<tr>
<td>4. Speed</td>
<td>Fast (urgent, high-intensity)</td>
<td>Slow (inevitable, sustained, low-intensity)</td>
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<tr>
<td>5. Tools (actus reus)</td>
<td>Killing, assaults, concentration camps</td>
<td>Structural violence, biological genocide</td>
</tr>
<tr>
<td>6. Instrumentality</td>
<td>Background</td>
<td>Foreground</td>
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Table 1. Hot versus Cold Genocides.
of natural resources, is often a primary motivation. However, we must reiterate the complexity of motive, and, consequently, that in both hot and cold genocides instrumental and prejudicial motives are present. Moreover, the motives of individual perpetrators may be instrumental (i.e. the theft of a neighbour’s property) even while group motives remain prejudicial.

Genocide can shift from cold to hot in cases where victims resist, thus their perceived threat to perpetrators increases. This transition may be only temporary (isolated suppressive massacres) or it may result in a policy shift towards more intensive killing. Such a pattern characterised the mass killings occurring in Ntega and Marangara communes in northern Burundi in 1988 where a minor episode of Hutu violence was met by a massively disproportionate response from the Tutsi-dominated army. Colonial genocides are often cold, as the perpetrators view indigenous peoples as being primitive, non-entities rather than an existential threat to the survival of the perpetrator group. This certainly seems to be the case in West Papua where indigenous Papuans are viewed as mere obstacles to development.

The case of Tibet is an informative example of another (neo) colonial cold genocide. In Tibet under Chinese occupation there seems to have been no directly intentional policy of extermination, and yet Chinese policies in Tibet have recklessly and callously contributed to the deaths of well over a million Tibetans. From 1950 to 1959 Tibet experienced a grinding famine which killed more than a million people. Moreover, over 6000 monasteries and religious (Buddhist) buildings were destroyed during the Cultural Revolution in a campaign of cultural genocide, often accompanied by acts of brutality and violence. In the years after the Dalai Lama fled Tibet a further 73,200 Tibetans died in prison and forced labor camps and more than 150,000 Tibetans were executed. Furthermore Chinese policies have restricted births among ethnic Tibetans and brought millions of non-Tibetan migrants into Tibet. All of these processes have been driven by the paternalistic characterisation of Tibetans as feudal peoples (primitives) in need of upliftment, in the form of Han Chinese culture and Communist ideology.

In some sense the genocide of Tibetans in China has actually moved from a hot phase, characterised by direct killings and violence, to a cold one, characterised by policies seeking to forcibly assimilate Tibetans. Perhaps the Cultural Revolution already did enough damage to the basis of Tibetan culture (such as the 90% reduction in the numbers of Buddhist monks) that hot genocide is no longer necessary, rather the Tibetans will slowly disappear in the face of ongoing cultural pressures.

Critics of this typology might question why it is even necessary to gather cases which are questionable under the intentionality requirements of the Genocide Convention. Rather than seeking to exclude genuine victims of genocide, they are concerned that expanding notions of genocide only serves to water down the notion of genocide until it has no legal, explanatory, or normative power. However, one could also argue that the development of the notion of cold genocide provides an explanatory framework for other cases of genocide where genocidal destruction is still intentional, but indirect. Paradoxically, in cases of cold genocide individuals may not be physically exterminated, even while the group is gradually destroyed. This gradual and intended destruction of the group is certainly genocidal in nature, even if it might not conform to existing notions of genocidal intent in the Genocide Convention.

Conclusion
There are several fictions embedded in the legal definition of genocide. Foremost among these is the notion that the destruction of a group only occurs through acts such as killing and biological genocide. In fact, the cultural and political destruction of a group, when coupled with the violent suppression of cultural and political identity, is pursuant to the destruction of the group. This is particularly true when the group in question is an indigenous group, where identity is often centred on kinship and the relationship to the land. The denial of the right to self-determination is a denial of the right to exist. Moreover, the pervasive surveillance and harassment that characterise authoritarian states may dissolve the bonds of trust that sustain kinship and clan relations.

Even without expanding the definition of genocide under the convention, interpretations of genocide must be critically reconsidered so as to encompass cases of cold genocide. While many of the acts involved in low-intensity, cold genocides are already prohibited under an array of
human rights instruments, these instruments fail to capture the pernicious harm involved in the destruction of an ethnicity.

Indonesia’s national motto is unity in diversity yet there has been far too much emphasis on unity as a cultural, economic, and political hegemonic project and not enough recognition of ethnic diversity. This has resulted in numerous minor and major ethnic conflicts and secessionist movements including, for example, West Papua, Aceh, the Molucca Islands, East Timor, and indigenous-settler conflicts among the Dyaks in Borneo. It has also led to systematic atrocities targeting political opponents of the State (such as occurred in East Timor from 1975-1999, as well as throughout Indonesia in the anti-Communist killings of 1965-1966).

Indonesia’s oppression of Papuans may be rooted in supremacist perceptions towards peoples called primitive rather than hatred, but this oppression still represents a deliberate attack on the sustainability of the group. Effectively Papuans “do not regard themselves as Indonesians and are not regarded as such by other Indonesians.”

How then can such a group survive within a militarised, hegemonic state?

Endnotes
1 In this article the term West Papua constitutes Indonesian New Guinea (the western half of the island of New Guinea) and not just the Province of West Papua. The term Papuan in this context is an ethnic term relating to indigenous West Papuans and not immigrant populations.
3 This discussion of hate crimes versus supremacy crimes is based on personal communications with Ingejrd Veiden Brakstad in April 2014. We are collaborating on a forthcoming article elaborating on these ideas.
4 For example, the extermination and enslavement of the indigenous Banda Islanders by the Dutch in 1621 when they decided to challenge the Dutch East Indies Company’s monopoly of the spice trade. See: Mark Levene, The Rise of the West and the Coming of Genocide (New York: I.B. Taurus, 2005), 243.
5 Levene, 249.
6 Lemkin.
7 Levene ,11.
10 This notion of inevitability also colours discussions of indigenous genocides in post-settler societies such as Australia; see: Breen, 88.
12 Levene, 121.
16 Budiardjo and Liong, 13.
17 Yohanes Budi Hernawan, From the Theatre of Torture to the Theatre of Peace: The Politics of Torture and Reimagining Peacebuilding in Papua, Indonesia, Thesis submitted for the degree of Doctor of Philosophy, Australian National University, March 2013, p. 91.
19 Saltford, 179.
20 Andrew K. Coleman, Resolving Claims to Self-Determination: Is there a role for the International Court of Justice? (New York: Routledge, 2013), 64.


23 Brundige et al., 3.

24 Most foreign enterprises have historically been dominated by outsiders. Crocombe argues that only 13% of jobs at the Grasberg mine are held by indigenous West Papuans. See Crocombe, 52 and 397.

25 Brundige et al., 26.

26 John Wing with Peter King, “Genocide in West Papua? The Role of the Indonesian State Apparatus and a Current Needs Assessment of the West Papuan People,” (Sydney: Centre for Peace and Conflict Studies, University of Sydney, 2005), p. 11.


28 Budiardjo and Liong, 54.

29 Brundige et al., 33.

30 Brundige et al., 32.


33 Wing and King, 21.

34 John Braithwaite, Valerie Braithwaite, Michael Cookson, and Leah Dunn, *Anomie and Violence* (Canberra: Australian National University, 2010), 77.


36 Crocombe, 26.


38 Budiardjo and Liong, 41-42.


40 Jim Elmslie and Camellia Webb-Gagnon with Peter King, “Anatomy of an Occupation: The Indonesian Military in West Papua” (Sydney: West Papua Project at the Centre for Conflict Studies, University of Sydney, 2011).


42 The Pancasila philosophy includes the following central elements: 1. monotheism, 2. humanity, 3. unity, 4. democracy, and 5. social justice. See the Constitution of Indonesia, “Preamble”, 1945.


45 King, 5.

46 Richard Chauvel, “Policy failure and political impasse: Papua and Jakarta a decade after the ‘Papuan Spring’,” in *Comprehending West Papua ed. Peter King, Jim Elmslie and Camellia Webb-Gagnon* (Sydney: Centre for Peace and Conflict Studies, University of Sydney, November 2011), 120.

47 Elmslie, 7.

48 Chauvel, 120.

49 Elmslie, 9.

50 In 2003 Indonesia split what was then called ‘Papua’ province into the provinces of Papua and West Papua. A court later ruled that this split was contrary to the autonomy guarantees given to indigenous West
Papuans, but decided that, since the split had already occurred it should be maintained. This dividing of Papua was ostensibly for administrative and development purposes but it also had the effect of further undermining West Papuan national identity.


54 Hernawan, 68-69.

55 Budiardjo and Liong, 75.

56 Brundige et al., 29.

57 Robin Osborne, Indonesia’s Secret War, (Crow’s Nest, Australia: Allen and Unwin, 1985), 87-88.

58 Brundige et al., 32.


60 Budiardjo and Liong, 38-40.


62 Brundige, 68.

63 Prosecutor vs. Bagilishema, Case No. ICTR-95-1A-A, Trial Chamber Judgement, 7 June 2001, para. 63

64 Brundige et al., 63

65 Budiardjo and Liong, 69-70.


67 King, 9-10.


69 See, for example: Otto Triffterer, “Genocide, its particular intent to destroy in whole or in part the group as such,” Leiden Journal of International Law, 14 (2001): 399–408. http://dx.doi.org/10.1017/S0922156501000206

70 Quigley, 112-115.

71 Brundige et al., 27.


74 See Prosecutor v. Kambanda, Case No. ICTR-97-23-S, Trial Judgement, 4 Sept. 1998 (holding that failure by government leaders to take action to stop ongoing, known massacres, constituted genocide).

75 See, for example, the discussion found in John Quigley, The Genocide Convention: An International Law Analysis (Aldershot, UK: Ashgate, 2008), 120-123.


78 Brundige et al., p. 5.

79 See Donald Bloxham and Dirk Moses, Oxford Handbook of Genocide Studies, (New York: Oxford University Press, 2010). In her paper ‘Colonialism and Relocation: An Exploration of Genocide and the Relocation of Animist Aboriginal Groups in Canada,’ Natalia Ilyniak utilises the example of community relocations in Canada to discuss the importance of the maintenance of group social cohesion for its survival.

See also Andrew Kimbrell’s notion of ‘hot evil’ and ‘cold evil.’ Although my conceptualisation of hot genocide and cold genocide bears some similarity to Kimbrell’s theory, he is primarily concerned with emotional and physical distance (particularly in terms of technology and social structures) as a form of ‘cold evil.’ In contrast, my theory distinguishes hot from cold on the basis of intensity and passion. Andrew Kimbrell, “Cold Evil: Technology and Modern Ethics,” Twentieth Annual E.F. Schumacher Lecture, (Salisbury Connecticut: New Economics Institute, 2004), http://neweconomy.net/publications/lectures/kimbrell/andrew/cold-evil, accessed July 8, 2014.

The term “cold war” was first used in modern times by George Orwell in his essay “You and the Atomic Bomb” published October 19, 1945, in the British newspaper Tribune.


For analysis of this episode see: René Lemarchand, Burundi: Ethnocide as Discourse and Practice (New York: Cambridge University Press, 1994).


Levenson, 97.

Levenson, 97.

Levenson, 98.

Levenson, 100.

Elmslie and Webb-Gannon, 35.

King, 3.
"What Does Genocide Produce? The Semantic Field of Genocide, Cultural Genocide, and Ethnocide in Indigenous Rights Discourse"  

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Abstract: The semantic field of genocide, cultural genocide, and ethnocide overlaps between Indigenous rights discourse and genocide studies. Since the 1970s, such language has been used to express grievances that have stimulated the construction of Indigenous rights in international law. These particular words signify general concerns with the integrity of Indigenous peoples, thereby undergirding a larger framework of normative beliefs, ethical arguments, and legal claims, especially the right to self-determination. Going back to the post-World War II era, this article traces the normative and institutional processes through which this overlapping discourse has emerged. Culminating with the adoption of the 2007 United Nations Declaration on the Rights of Indigenous Peoples, this process of international lawmaking has critically challenged the conventional interpretation of genocide, especially as the latter has been categorically distinguished from cultural genocide or ethnocide.

Keywords: cultural genocide, ethnocide, human rights, non-governmental organizations

Introduction
What does the keyword genocide produce? What rhetorical purpose does it serve, especially in making ethical arguments for rights? This article analyzes the political and moral functions and meanings of genocide and its related terminology, especially as they have been used as part of the vocabulary of Indigenous rights discourse. In particular, this type of language articulates the common grievances of Indigenous peoples, who have survived centuries of pressure for extermination, assimilation, and other forms of group destruction, and who in response have also launched a global resurgence in recent decades. A transnational movement in the field of Indigenous rights has fostered significant developments in the international system, as new norms in the broader field of human rights have set the minimum standards for the survival, dignity, and well-being of Indigenous peoples worldwide. The rhetoric of genocide has been partly instrumental in this political process, going back to the origins of “Indigenous global politics” in the 1970s.1

This movement dates back to September 1977, when over 100 Indigenous delegations and 60 non-governmental organizations (NGOs), along with a few United Nations (UN) functionaries and state government observers, met at the Palais des Nations in Geneva, Switzerland. They were attending the International NGO Conference on Discrimination against Indigenous Populations in the Americas (hereafter, simply the 1977 NGO Conference).2 This event was a significant turning point in the normative and institutional developments that eventually resulted in the adoption of the 1989 International Labour Organization (ILO) Convention No. 169 and the 2007 UN Declaration on the Rights of Indigenous Peoples (hereafter, simply the 2007 Declaration). The latter is now the cornerstone of the field of Indigenous rights, which took decades to transform into international law. This process of international legalization was initially mobilized by a transnational advocacy network that coalesced at the 1977 NGO Conference.3

The core of this advocacy network was strongly motivated by a collective sense of moral indignation against the enduring injustices of colonialism. Such a sentiment was evident in the “Declaration of Principles” adopted at the 1977 NGO Conference. Its preamble began by acknowledging the activity of the UN in promoting human rights and fundamental freedoms, while also “recognizing that conditions are imposed upon peoples that suppress, deny or destroy the culture, societies or nations in which they believe or of which they are members.”4 This explicit emphasis on the threats to Indigenous peoples provided a sense of urgency for the subsequent enumeration of rights oriented around the principle of self-determination. Even though the specific vocabulary of genocide, cultural genocide, and ethnocide were not actually used in the “Declaration of Principles,” these were widely discussed keywords at the 1977 NGO Conference, where their conventional meanings were fundamentally challenged as well.5
For example, one delegate admitted to not being well versed in international law, but she was nevertheless convinced that “in the limited dictionary of ordinary people everywhere in the world there is no other word to describe it but genocide.” In this way, the term functioned as a somewhat essentialized, short-hand expression used to emphatically draw attention to ongoing threats to the physical and cultural integrity of Indigenous peoples. Such a construal implied the moral equivalence between the attempted biological-physical and socio-cultural destruction of a group, respectively. In this way, the 1977 NGO Conference participants collapsed a categorical distinction in the international legal canon of genocide, foreshadowing the contemporary debate over the role of cultural genocide in recent cases.

Nevertheless, the conference participants acknowledged the definitional limitations of the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide (UNGC), which categorically distinguished the strictly legal meaning of genocide from the related notions of cultural genocide and ethnocide. Faced with this conceptual impasse, one of the conference’s organized sub-bodies, the Social and Cultural Commission, resolved that “ethnocide must be defined as both a cause and a part of genocide.” By collapsing this distinction, the 1977 NGO Conference attempted to open up a new way to approach peoples’ fundamental right to exist. Using this historical vignette as a point of departure, the following analysis argues that the semantic field of genocide, cultural genocide, and ethnocide has not only stimulated the production of Indigenous rights in international law, but that Indigenous rights discourse has also opened up new ways of understanding the inherent connections between these associated keywords.

**Between Indigenous Rights and Genocide Studies**

The close conceptual pairing in Indigenous rights discourse of genocide, on the one hand, and cultural genocide or ethnocide, on the other, foreshadowed the recent colonial turn in genocide studies. Since the early 2000s, a more Lemkinian approach has returned to the field in conjunction with emerging scholarship on settler colonialism. Such work has been directed towards what Patrick Wolfe calls the “logic of elimination,” referring to a certain structural tendency of settler colonial formations that sometimes converges with genocide but is otherwise distinct. This conceptualization enables Wolfe to “regard assimilation as itself a form of destruction” without having to make the case for genocide, per se, while also avoiding what he sees as the awkwardness of the term cultural genocide.

Other scholars, like Damien Short, go further in suggesting the possibility that forcible assimilation is a sufficient condition for genocide, while Dirk Moses represents a more moderate position, contending that cultural destruction must be accompanied by physical and biological attacks in order to qualify as genocide. Even within the colonial genocide studies literature, then, there is disagreement as to how forced assimilation and cultural destruction fit into the conceptual framework of the field. Nevertheless, this scholarship has pushed towards a conception of genocide as a form of group destruction rather than simply the mass murder of individuals. This way of thinking corresponds to many of the arguments and assumptions in Indigenous rights discourse.

Between indigenous rights discourse and genocide studies are a number of important connections that can be made with other relevant research programs. The 1977 NGO Conference especially fits into the alternative historiography of human rights exemplified by the works of Samuel Moyn and Jan Eckel. They critique the basic idea of human rights as a specifically post-World War II phenomenon and instead argue that the norms and institutions crafted during the 1940s were at first stillborn with the Great Power politics involved with the creation of the UN, as well as with the subsequent arrival of the Cold War and decolonization, only to suddenly flourish in the 1970s, just as the global Indigenous rights movement began to rise. Moyn even stresses that 1977, the same year as the NGO Conference, was more generally the “breakthrough year” in the history of human rights, given the inauguration of American President Jimmy Carter and the awarding of the Nobel Peace Prize to Amnesty International. While such historiography has yet to pay much attention to Indigenous peoples, anthropologists have observed and sometimes even participated as advocates in the process of transforming Indigenous rights into international law. Moreover, ethnographic methods have demonstrated the ways in which global discourses of human/indigenous rights are appropriated and translated through social practices from various localities around the world. Finally, the significance of Indigenous rights discourse can also be
explained across the even more general field of constructivism in international relations theory, considering an array of relevant concepts like transnational advocacy networks, non-state actors, global civil society, international norms, state compliance, and domestic change.17

A common pattern identified throughout this various scholarship concerns how normative beliefs and ethical arguments are used as political resources to critique status quo relations. In genocide studies, for example, Moses brings attention to the affective dimension of genocide as a keyword, especially as it has been used to express “the traumatic consciousness of group subjugation or destruction,” while other scholars demonstrate how charges of genocide are tied to political claims for self-determination.18 From Indigenous studies, meanwhile, Ronald Niezen refers to “the politics of indignation” to describe how targeted groups attempt to gain empathy and possibly influence public opinion by appropriating the images, narratives, and frames that signify their social suffering.19 He extends this idea to his ethnographic study of the Canadian Truth and Reconciliation Commission, where he argues that the expression of rights-based claims against perceived injustices have become a source of collective meaning and identity. This type of analysis, he says, is “as much concerned with the socially constructive power of rights as with the destructive power of wrongs.”20

Following such insights, this article is concerned with what the semantic field of genocide, cultural genocide, and ethnocide has to offer advocates of Indigenous rights. Whereas another scholar recently asked, “what do genocides kill?,”21 I instead wonder, “what does genocide produce?”22 By employing italicized text for these keywords, I am drawing attention to the rhetorical and political effects of this type of language in expressing certain normative beliefs and ethical arguments that are used to help make the case for Indigenous rights. This rhetorical approach is concerned with genocide and its related keywords as means of persuasion and is not meant to suggest that such claims are unduly exaggerated or bombastic. With this in mind, I will explain how the conventional meaning of genocide in international law been challenged by Indigenous rights discourse. At the same time, I will demonstrate how the semantic field surrounding this keyword has been used to help construct Indigenous rights discourse in the first place.

Genocide and Integration in Post-World War II International Law

In order to see the political and institutional changes in Indigenous rights discourse after the 1970s, prior historical context is necessary to first understand how colonial beliefs and practices regarding Indigenous peoples were perpetuated in the post-World War II era. There is already a rich body of scholarship on the creation of the UNGC, with particular attention on the diplomatic wrangling involved with the removal of cultural genocide from the final text.23 By juxtaposing the 1948 UNGC with the 1951 ILO Convention No. 107 (the Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries), the following critical analysis will examine some of the background assumptions, biases, and blindspots operating within the international institutions of the time.24 Both of these instruments failed to protect Indigenous peoples from forcible assimilation and group destruction. Rather, they both appear to have been created under the assumption that sovereign states were obliged to integrate these stigmatized populations into dominant national units.

Such a colonialist assumption was apparent with two of the most well-known arguments against the inclusion of cultural genocide in the UNGC. The first was that the practices of assimilation and integration typically connoted by cultural genocide or ethnocide did not meet the legal requirement of genocidal intent. According to this definitional standard, as determined by the expert panel behind the 1947 Secretariat draft, “certain acts which may result in the total or partial destruction of a group of human beings are in principle excluded from the notion of genocide, namely … the policy of compulsory assimilation of a national element.”25 Even Raphael Lemkin agreed that “cultural genocide was much more than just a policy of forced assimilation by moderate coercion.”26 Elsewhere he suggested that, “when exposed to strong outside influences,” the continued existence of certain groups depended on “cultural diffusion,” even if “it may lead to the eventual disintegration of a weak culture.”27 The misconception that Indigenous peoples were somehow anemic and destined to vanish thus informed the argument that forced assimilation was not genocidal due to its general lack of specific intent.
The second argument against the inclusion of *cultural genocide* from the final text of the UNGC was more of a departure from Lemkin’s thought, however. As discussed elsewhere, Lemkin understood the “genos” of *genocide* in group-oriented terms that harkened back to Johann Gottfried Herder and the intellectual legacy of romanticism in Central Eastern Europe. This type of intellectual orientation towards group rights was more prevalent during the previous interwar period, when it was misappropriated by fascist and other right-wing organic nationalists. Of course, the minority rights regime of the League of Nations ended in catastrophic failure, and with the postwar creation of the UN, there was a major normative shift towards the universal human rights of individuals. In this context, Lemkin’s thinking about group rights was outdated, and his conception of *genocide* that included cultural destruction was flatly rejected by certain member states. In General Assembly deliberations over the final text of the UNGC, for example, the United States delegate suggested that the notion of group rights underpinning the idea of *cultural genocide* was moot so long as individual rights were assured.

With such conceptual blinders in place, the topic of Indigenous peoples was hardly discussed while drafting the UNGC. The few times it was mentioned, it was typically framed in terms of a social evolutionary paradigm that still retained intellectual force after World War II, despite the ostensible delegitimization of scientific racism. For example, the Brazilian delegate suggested that, “given the historical evolution of civilizations, a State might be justified in its endeavor to achieve by legal means a certain degree of homogeneity and culture within its boundaries.” Under this pretext, Indigenous peoples were deemed to be legitimate targets for socioeconomic and cultural integration into dominant national units. This attitude was further evident with the Venezuelan representative, who had otherwise supported the inclusion of *cultural genocide*, at least in a limited form. But the transfer of children, he said in reference to what would become Article II (e) of the final draft, “might be made from a group with a low standard of civilization and living in conditions both unhealthy and primitive, to a highly civilized group as members of which the children would suffer no physical harm and would indeed enjoy an existence which was materially better.” He was thus concerned that this provision would fundamentally undermine the presumed legitimacy of state integrationist policies.

In the historical context of the postwar transformation of the international system, this type of colonial belief and practice of integration was apparent throughout the world. Even as European empires were being dismantled, the colonization of Indigenous peoples continued unabated. The official process of decolonization was strictly limited to “non-self-governing territories” that were geographically separated from imperial metropoles, and the so-called “salt-water thesis” of decolonization effectively legitimized the “internal colonialism” experienced by Indigenous peoples and their territories. In this context, as developmentalism and other theories of modernization began to globally disseminate by the 1950s, integration became an important keyword in the social engineering of modern economies, states, and nations. In his analysis of the ILO regime and Indigenous peoples, Luis Rodríguez-Piñero has demonstrated how central this integrative approach was to ILO Convention No. 107.

The International Labour Organization was first established in 1919 as a principle organ of the League of Nations, the latter of which was dedicated to, among other things, what it called “a sacred trust of civilization.” In the vein of reforming colonial policies, the ILO began studying the conditions of “Indigenous workers” in certain parts of the world during the interwar period. By the 1940s, the ILO began responding to a growing normative shift across the Americas known as *indigenismo*. According to a recent study of this diverse political, economic, and cultural movement, *indigenismo* “celebrated indigenous people and their traditions, on the one hand, but usually also called for their modernization, assimilation, and ‘improvement,’ on the other.” This intellectual current effectively reframed the so-called “Indian problem” into a public policy issue concerned with addressing the poor socioeconomic status of Indigenous populations, and it was from this perspective that the ILO formulated the first international standards dedicated to Indigenous peoples.

ILO Convention No. 107 was thus conceived under the basic assumptions that “tribal or semi-tribal populations” were at a “less advanced stage” of development, and that “Governments shall have the primary responsibility for developing coordinated and systematic action for the protection
of the populations concerned and their progressive integration into the life of their respective countries. Pursuant to this ostensibly benevolent pretense, the protocol mostly enumerated a number of duties for states, although a few rights were granted to Indigenous peoples, such as the right to maintain customary laws and institutions. On the surface, then, ILO Convention No. 107 provided at least some measure of protection for the physical and cultural existence of Indigenous peoples, although such recognition was only temporary, insofar as it was expected to ease the process of integration. In the end, ILO Convention No. 107 was only ratified by a mere 27 countries, the majority of which were from the Americas, although it nevertheless epitomized a more global trend at the time concerning the integration of Indigenous peoples as part of the larger ideological framework of modernization.

A Normative Shift After the 1970s

As elaborated below, ILO Convention No. 107 was replaced in 1989 by ILO Convention No. 169. In the three-decade-long period between these two instruments, there was a major normative shift away from an emphasis on state integrationist policies in favor of a rights-based sensibility constructed around the principle of self-determination. This transformation was underway during the 1970s and 1980s, when developments in the human rights agenda at the UN led to a partial overlap between Indigenous rights discourse and genocide studies and prevention. In particular, there was dialogue between two Special Rapporteurs assigned by the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities (hereafter, simply the Sub-Commission). During its 24th session in August 1971, the Sub-Commission assigned Nicodème Ruhashyankiko to prepare a report on the prevention and punishment of genocide, which he completed in 1978 (this was followed by a second genocide report by Benjamin Whitaker in 1985). The same session of the Sub-Commission also authorized José Martínez Cobo, who released his monumental study on Indigenous peoples in piecemeal from 1981 to 1983. These experts were independently tasked with reviewing relevant scholarship, case law, official documentation, and government responses to requests for information in order to prepare reports for the UN Commission on Human Rights, of which the Sub-Commission was a subordinate body. Although they were undertaken as separate endeavors, these two sets of reports indicate an overlapping concern with situating the concepts of cultural genocide and ethnocide in relation to the prevention and punishment of genocide.

An examination of some of the footnotes in the two Sub-Commission reports on genocide – the first by Ruhashyankiko in the 1970s and the second by Whitaker during the 1980s – suggests that new meanings of cultural genocide and ethnocide were being produced at the time. For example, Ruhashyankiko cited the French ethnographer Robert Jaulin, who essentially recoin to idea of ethnocide to pose as an alternative to the UNGC. Following his fieldwork in Latin America during the 1960s, Jaulin used the concept of ethnocide to describe what he considered to be the predatory impulse of Western civilization in consuming and destroying the world’s cultural diversity. He implied that this type of group destruction was conceptually distinguishable from intentional physical annihilation, and in this vein, he tacitly maintained the conventional rendering of genocide as categorically distinct from ethnocide. Nevertheless, his usage of ethnocide was revolutionary, insofar as it implied a moral equivalence to genocide, per se. To be clear, Ruhashyankiko was not endorsing this particular point in his Sub-Commission report, but the fact that he cited Jaulin nevertheless indicates that alternative approaches were beginning to surface.

For entirely unrelated reasons, the publication of the Ruhashyankiko report was soon shrouded in controversy, and by 1982 the Sub-Commission authorized Benjamin Whitaker to prepare a revised and updated report on genocide, the footnotes of which also indicate changes in Indigenous rights discourse. For example, Whitaker referenced a 1976 edited volume by the international legal scholar Richard Arens, who was instrumental in bringing attention to the case of the Aché people in Paraguay. During the 1970s, the Aché had become a minor cause célèbre, especially among Western European and American anthropologists doing fieldwork in Latin America. Operating through newly created NGOs like the International Work Group on Indigenous Affairs (IWGIA), a network of scholars and advocates began using the term genocide to raise global awareness of the Aché. This language was often used self-evidently, as if it was without question a natural descriptor of the situation. Such loose rhetoric became the source of a heated
controversy among non-Indigenous activists. That this semantic debate even occurred, however, indicates that genocide was becoming conceptually unmoored from its legalistic constraints, and was instead being communicated on an affective level. This was evident in the epilogue of Arens’ volume, which was authored by Elie Wiesel, the famous Holocaust survivor who rescinded his belief in the uniqueness of the Shoah, at least in this case. While it is important not to overstate the significance of such footnotes in the respective genocide reports for the Sub-Commission, this evidence suggests that intellectual changes were underway.

This normative shift is further apparent with the brief dialogue between the two Sub-Commission reports on genocide, on the one hand, and the “Study of the Problem of Discrimination against Indigenous Populations” by Special Rapporteur Cobo, on the other. Most well-known for its influential attempt to define “Indigenous peoples,” the Cobo report was comprehensive in scope and was very important in informing ongoing deliberations elsewhere in the Sub-Commission regarding the development of Indigenous rights. In this regard, Cobo’s brief discussion of genocide, cultural genocide, and ethnocide was used in the context of discussing the particular right of Indigenous peoples to protect, maintain, and develop their own customs and institutions. Drawing from Ruhashyankiko’s review of the definitional debate surrounding the UNGC, Cobo concluded that “the question whether ethnocide is or is not a form of genocide is important, but however it is decided the fact remains that ethnocide consists of a series of serious violations of human rights which resemble genocide and which must be forestalled and punished.” In identifying a lacuna surrounding this concept in international law, the Cobo report in turn prompted the subsequent Whitaker to reconsider the possibilities of bringing cultural genocide or ethnocide back into the definitional fold of the international law against genocide. This dialogue between Cobo and the two Sub-Commission reports on genocide not only indicates the relevance of this particular semantic field in the construction of Indigenous rights, but also that Indigenous rights discourse was also instigating conceptual changes in the field of genocide studies and prevention.

This was further evident with the Declaration of San José produced by the 1981 UNESCO Conference on Ethnocide and Ethnodevelopment. Although this meeting had no official capacity to promulgate international law, it nevertheless provided a formal setting to propose working standards that would subsequently mature with the drafting of the 2007 Declaration. In this fashion, the 1981 Declaration of San José defined ethnocide as the denial of an ethnic group’s “right to enjoy, develop and transmit its own culture and its own language, whether collectively or individually,” adding that, for transgressing the right to culture, it should be considered “a violation of international law equivalent to genocide.” In order to prevent and repair this particular offense, the concept of ethnodevelopment was proposed in order to promote “the independent decision-making capacity of a culturally distinct society to direct its own development and exercise of self-determination, at whatever level.” As such, the conceptual structure of the 1981 Declaration of San José shows ethnocide was used in Indigenous rights discourse to signify the need for a new type of international legal prohibition specifically tailored to support a more positive and prescriptive set of rights associated with the principle of self-determination.

By the 1980s, these various developments marked a profound shift in Indigenous rights discourse from an emphasis on integration to self-determination. As noted, this shift was so profound that ILO Convention No. 107 was eventually replaced altogether in 1989 with a new protocol, ILO Convention No. 169, otherwise known as the Indigenous and Tribal Peoples Convention. Although the semantic field of genocide, cultural genocide, and ethnocide was not specifically covered in ILO Convention No. 169, its preamble tacitly alluded to the general spirit of these concepts, especially as it denounced “the assimilationist orientation of the earlier standards.” Instead, ILO Convention No. 169 recognized “the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live.” As explained below, the fact that the specific language of self-determination was carefully avoided here indicates that there were limits to the normative shift of Indigenous rights. Nevertheless, the preceding analysis suggests that the transnational advocacy network of Indigenous rights was largely able to set the terms of subsequent debates that eventually culminated with the adoption of the 2007 Declaration.
Contested Limits and Boundaries Since the 1980s

Despite evidencing a normative shift away from previous standards, ILO Convention No. 169 still imposed certain boundaries on Indigenous rights. Indeed, the keyword “peoples” as part of the very title of ILO Convention No. 169 was strongly contested by state governments that were suspicious of the term’s associations with self-determination and secessionist claims. They generally preferred to instead retain the specific language of “populations” from the title of ILO Convention No. 107, given its domesticating connotations. Ultimately, an unequal compromise was reached when the use of the term “peoples” was strictly limited in a way that “shall not be construed as having any implications as regards the rights which may attach to the term under international law.”

A similar safeguard was eventually built into the final text of the 2007 Declaration, which concluded by assuring that “Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.” Despite their many differences in form, content, and legal status, both ILO Convention No. 169 of 1989 and the 2007 Declaration similarly limit the meaning of Indigenous rights in the traditionally state-centric international system.

Yet unlike the creation of ILO Convention No. 169, in which Indigenous organizations and advocates were unable to directly participate, this transnational advocacy network enjoyed a more proactive role in the origins of the 2007 Declaration. This dates back to 1982, when the Sub-Commission established a Working Group on Indigenous Populations (hereafter referred to as the Sub-Commission Working Group), which was mandated to review pertinent developments in human rights with special attention to “the evolution of standards” concerning Indigenous peoples. Its exceptional participation policy did not require formal consultative status with the UN in order for Indigenous representatives to partake, and this enabled the Sub-Commission to grow in size and stature. By the end of the decade, its sessions were drawing over 1,000 participants, giving this body a high profile despite its relatively low level in the UN organization. These conditions enabled some participants to push the limits of the Sub-Commission Working Group’s mandate by “naming and shaming” certain states accused of political violence and genocidal practices. One close observer noted that the Sub-Commission Working Group turned into “a forum for airing grievances.” Under such circumstances, however, the long-standing Chairperson-Rapporteur of the Sub-Commission Working Group, Erica-Irene Daes, did her best to ensure that this forum did not devolve into a “chamber of complaints,” and that such charges would instead add a sense of urgency to their work in developing a first draft to what would eventually become the 2007 Declaration.

In finalizing this first draft (hereafter referred to as the 1994 draft), the Sub-Commission Working Group promoted new meanings for genocide, cultural genocide, and ethnocide. Given their unparalleled access to the Sub-Commission Working Group, Indigenous organizations and advocates were influential in setting the terms for the remainder of the drafting process, and the 1994 draft is considered by some observers to be the most progressive version of Indigenous rights. However, the form and content of the 1994 draft was altered as it subsequently moved up the UN system. In 1995, the Commission on Human Rights (CHR) created a new working group (hereafter referred to as the CHR Working Group) which, unlike its predecessor, was primarily comprised of member state delegations. Indigenous organizations and advocates struggled to retain the influence they had previously enjoyed, and in turn they protested their marginalization, walking out of the 1996 session and going on hunger strike in 2004. In this context, the CHR Working Group prepared what is referred to as the 2006 draft, in which revisions were made without the consent of Indigenous participants. A third and final round of revisions was then made by the General Assembly before it ultimately adopted the 2007 Declaration. A comparison of these three texts indicates that state-imposed limits to Indigenous rights discourse also restrained the extent to which new meanings of genocide, cultural genocide, and ethnocide were promoted.

To begin with, the Sub-Commission Working Group operated under the premise that existing human rights standards were insufficient, and that certain adaptations and innovations were needed in order to meet the needs and aspirations of Indigenous peoples. In some cases,
already existent standards were tweaked, as with Article 6 of the 1994 draft, which concerned genocide. As originally established by the UNGC, the conventional emphasis of genocide was on the individual right to life and physical integrity, but Article 6 of the 1994 draft deemphasized this individualist interpretation. Instead, it identified genocide. It is worth noting that, despite already being included in the international law of genocide, forcible child removal was singled out here for special attention, as this had become a global pattern of genocide against Indigenous peoples.

Whereas Article 6 of the 1994 draft was a modification of an already existent norm, Article 7 promoted the conceptual duo of cultural genocide and ethnocide as an entirely new standard in international law. Article 7 thus began by declaring that “Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide,” which it described as the deprivation of cultural values and ethnic identities, the dispossession of lands, territories, and resources, as well as “any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures.” There was some confusion, however, as to the precise relationship between the concepts of cultural genocide and ethnocide. This lack of clarity was raised by the Language Services of the United Nations, which reviewed the 1994 draft before it proceeded to the CHR. Following the reasoning of Chairperson-Rapporteur Daes, the Language Services report concluded “that ‘cultural genocide’ referred to the destruction of the physical aspects of a culture, while ‘ethnocide’ referred to the elimination of an entire ‘ethnos’ or people.” No further elaboration of this distinction appears in the records, and the question remains as to how “the physical aspects of a culture” is understood separately from its so-called “ethnos.” Taking advantage of this conceptual confusion, some member states, especially Canada, Chile, and the United States, were immediately critical of this particular provision in the 1994 draft.

Indeed, as the second phase of the drafting process began with the CHR Working Group in 1995, the influence of member states increased vis-à-vis Indigenous peoples. In this setting of unequal power relations, some of the colonial assumptions analyzed above with regards to the drafting of the UNGC resurfaced a half-century later in the context of Indigenous rights discourse. For example, some states were concerned with the 1994 draft’s absolute prohibition against Indigenous child removal. According to the records from the first session of the CHR Working Group:

> With regard to article 6, several Governments expressed the difficulties they had with the phrase “under any pretext” as contained in its first paragraph. They stated that there were circumstances under which it was in the child’s interest to be removed from their families and communities, whether the child was indigenous or non-indigenous. It was felt that in these circumstances indigenous people and communities should not receive preferential treatment over others since this could turn out to be harmful to the child.

Although the particular emphasis on the forcible removal of children originally established in Article 6 of the 1994 draft was ultimately retained in what became Article 7 of the 2006 draft (note that the numbering of the articles was altered in the process), it appears that member states were committed to limiting the meaning of this provision.

Accordingly, Article 7 of the 2006 draft reversed the syntax from what was originally Article 6 in the 1994 version. The new text established by the CHR Working Group emphasized that the prohibition of genocide was first and foremost a guarantee of the individual right to life and physical integrity. Only then did the revised text acknowledge that genocide also covered “the collective right to live … as distinct peoples.” Moreover, whereas this provision the 1994 draft was more rigorous in providing “full guarantees against genocide,” the 2006 draft merely stated that Indigenous peoples “shall not be subject to any act of genocide.” Equally subtle yet significant changes were also apparent in Article 8 of the 2006 draft (formerly Article 7 of the 1994 draft), the revised text of which began by declaring that “Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.” Removed was the earlier qualification that this was both a collective and individual right. More significantly, however, this second draft prepared by CHR Working Group deleted the specific language of cultural genocide...
and ethnocide, which were instead replaced by more generic descriptors. It thus seems that these terms were too controversial and imprecise, even though their general spirit was retained.

When the 2006 draft was delivered to the Third Committee of the General Assembly (GA) for final approval, important textual changes were made in order to reaffirm the sovereign authority of state governments over Indigenous peoples. Almost immediately, a bloc of African states protested that the proposed right to self-determination would lead to secessionist movements. With the support of the CANZUS countries (Canada, Australia, New Zealand, and the United States), the African bloc moved to defer the final vote until the inviolability of state sovereignty was explicitly guaranteed in order to limit the extent of Indigenous rights. Following this, the provision against forced assimilation and cultural destruction was slightly amended and diminished in this third and final round of revisions. Article 8(2)(d) of the 2006 draft retained the original language from the 1994 version, which prohibited “any form of forced assimilation by other cultures or ways of life imposed on them by legislative, administrative or other measures.” However, the final text of the 2007 Declaration deleted reference to “legislative, administrative or other measures,” thereby effectively taking the onus of off the state as a primary agent of such transgressions. This was just one of several last-minute revisions that ultimately reaffirmed the sovereign authority of states and restrained the claims for Indigenous rights.

Conclusion
The preceding analysis demonstrates the imposition of structural and discursive boundaries in the development of Indigenous rights. Despite the fact that the transnational advocacy network of Indigenous rights may have provided the initial inspiration for ILO Convention No. 169 and the 2007 Declaration, it is also true that state governments retained the final authority in formalizing these processes of international lawmaking. With these instruments’ subsequent and ongoing processes of domestic compliance, moreover, the acquiescence of state governments is ultimately necessary in order to ensure their implementation and enforcement. Indeed, the very act of defining state obligations in regards to the international legalization of Indigenous rights has effectively reinforced the superior sovereign status of nation states over the autonomy of Indigenous peoples. This reflects the underlying structuring of the international system, which despite promises since the post-World War II era to shift the focus of international law from states to people, nevertheless remains fundamentally state-centric.

In addition to these structural limitations, there have also been discursive constraints in the process of translating Indigenous peoples’ claims into the idioms of international law. Despite the ostensibly progressive appeal of human rights discourse, this broad field is still troubled by its association with Eurocentric and colonial tendencies to marginalize the many alternative ways of being, thinking, and doing represented by the world’s Indigenous peoples. Irene Watson argues that, “instead of protecting Aboriginal peoples, ‘human rights’ bring to order our regulation and containment. That is because the keepers of power determine the questions of humanity and that which constitutes the rights of humans, and they are ultimately positioned to enable or disable humanity.” It is thus reasonable to be critical of the international legal and political discourses associated with universal human rights, as well as to appreciate how Indigenous claims are premised upon their own unique sources of power and legitimacy.

Yet despite the possibility that rights discourse in global affairs is reproducing colonial relations of power, it is also apparent that important changes in international law have been advanced nevertheless. For example, James Anaya demonstrates how Indigenous rights discourse has contributed to a newer and more flexible set of meanings for self-determination, which is no longer strictly defined by the achievement of independent statehood, but rather by the recognition of and respect for Indigenous peoples as self-governing entities entitled to fully participate in the decisions affecting their lives. This general principle undergirds an assorted array of more specific norms, including the right to cultural integrity, which has also fruitfully developed in the field of human rights as a result of Indigenous rights discourse. Articles 7 and 8 of the 2007 Declaration are thus an extension of this broader development behind the cultural integrity norm, and it is in this context that the semantic field of genocide, cultural genocide, and ethnocide is significant. It is not the case that such rhetoric has simply been used as “strategic weapons” in political movements.
for secession. Rather, these keywords signify a general concern with protecting the continued existence of Indigenous peoples as a crucial element in a larger framework of rights.

As a result of the normative and institutional developments behind the construction of Indigenous rights, new meanings for the semantic field of genocide, cultural genocide, and ethnocide have been produced. The conventional interpretation established by the UNGC, whereby genocide was categorically distinguished from cultural genocide and ethnocide, has been critically challenged. More assertive versions of Indigenous rights discourse, as with the 1977 NGO Conference, for example, underscore the intrinsic connections across this semantic field, suggesting that “ethnocide must be defined as both a cause and a part of genocide,” and that there should be a legal equivalence between the two. The more moderate version established by the 2007 Declaration merely juxtaposes genocide alongside the apparently synonymous concepts of cultural genocide and ethnocide. Although the latter pair represents a new international legal norm with a relatively “softer” status, at least compared with the international customary law against genocide, the juxtaposition of these two provisions in the 2007 Declaration suggests at least a moral equivalence between the physical and cultural destruction of a group.

In conclusion, the field of genocide studies should embrace the ongoing dialogue with Indigenous rights discourse and its associated field of Indigenous studies. This intellectual exchange dates back to the 1970s, and it continues with the contemporary flourishing of the colonial genocide studies literature. The recent emergence of a nascent approach referred to as “decolonizing genocide studies,” which attempts to destabilize some of the foundational assumptions and biases of the field in order to open space for Indigenous ways of knowing, has furthered this dialogue. Not only does this new approach promise epistemological insights into the nature of genocide as a broad category of group destruction, but it also poses important methodological and ethical challenges regarding the legal and political implications of genocide studies. Indeed, as the semantic field of genocide, cultural genocide, and ethnocide continues to be deployed by the transnational advocacy network for Indigenous rights, genocide scholars must revisit our field’s perennial concern with the balance between scholarship and activism.

Endnotes
3 See Judith Goldstein, Miles Kahler, Robert O. Keohane and Anne-Marie Slaughter, “Introduction: Legalization and World Politics,” International Organization 54, 3 (2000): 385-399, http://dx.doi.org/10.1162/0020818005512626; and Margaret E. Keck and Kathryn Sikkink, Activists Beyond Borders: Advocacy Networks in International Politics (Ithaca: Cornell University Press, 1998), 2. The concept of a transnational advocacy network refers to how individuals and groups from different counties promote shared values and a common discourse in order to facilitate the flow of information, thereby creating new issues and categories as means of political persuasion and power.


26 Ibid, 235.


31 Brazilian delegate, in ibid, 1507.

32 Venezuelan delegate, in ibid, 1504.


36 Covenant of the League of Nations, Article 22.


38 International Labour Organization Convention No. 107, Article 1(1); and Article 2(1).

39 Ibid, Article 7(1).


46 Ibid, 9-10, citing Richard Arens, ed., *Genocide in Paraguay* (Philadelphia: Temple University Press, 1976). The Aché are indigenous to the heavily forested region of eastern Paraguay, where they avoided colonial contact for centuries, before the military dictatorship of Paraguay slated the area for development in the 1950s. According to contemporaneous accounts, the Aché were especially subjected to forcible removals and massacres.

48 Elie Wiesel, “Now We Know,” (translated by Raymond Federman), in *Genocide in Paraguay*, 165-166.


51 The Whitaker report, 17.


54 ILO Convention No. 169, preamble paragraph 5.


56 United Nations Declaration on the Rights of Indigenous Peoples, Article 46, Section 1.


66 Ibid, Article 7.


71 Cf. 1994 Draft Declaration, Article 6; and 2006 Draft Declaration, Article 7(2).

72 2006 Draft Declaration, Article 8(1).


80 Grodsky, “When Two Ambiguities Collide,” 2.
81 It is worth briefly noting how the Indigenous right to cultural integrity interlinks with other Indigenous rights, including treaty rights. While treaty rights are central to many Indigenous rights discourses in North America, in other parts of the world where the history of treaty relations is non-existent, these types of rights do not offer much promise. In comparison, the right to cultural integrity is more universally shared across the situations of Indigenous peoples worldwide. See Corntassel and Primeau, “Indigenous ‘Sovereignty’ and International Law,” 358-60.


Killing Them Softly: Forcible Transfers of Indigenous Children

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Abstract: The forcible transfer of indigenous children in North America and Australia are part of a global phenomenon that consisted of the kidnapping, trafficking, removal, and identity changes of children of particular groups.

Article II(e) of the United Nation Convention on the Prevention and Punishment of Genocide (UNGC) prohibits the forcible transfer of children of a group to another group (FTC). The FTC echoes domestic and international legal norms and policies for the protection of children since early twentieth century. Its particular applicability to specific victims within a protected group – children – conveys a unique ethical position compared to the other acts enumerated acts in Article II, and the UNGC as a whole. This uniqueness may justify the much needed conceptual leap from the legalistic western-biased notion of genocide towards a more inclusive recognition of the political, social, and economical aspects of genocide.

Keywords: forcible transfers of children, genocide, Article II(e) of the UNGC, patient-specific deontological reasoning, Aboriginal residential schools

Introduction

Article II (e) of The United Nations Convention of the Prevention and Punishment of Genocide (UNGC) prohibits the forcible transfer of children (FTC) from one group to another.¹ The FTC has received scant attention by genocide scholars and is generally considered a legal anachronism.² William Schabas wrote that the FTC is enigmatic since the drafters excluded cultural genocide from the UNGC, and that it was passed “almost as an afterthought.”³

This article focuses on the forcible transfers of Indigenous children in North America and Australia to residential schools. These transfers are part of a wider, global phenomenon of the kidnapping, trafficking, removal, and identity changes of children of particular groups. Forcible transfers of children had begun in the eighteenth century but peaked in the twentieth century.⁴ Yet, despite its global scope, this practice has remained largely understudied as a phenomenon.⁵

In recent years, scholars have asserted that the UNGC can be applied to cases of forcible transfer of Indigenous children to residential schools.⁶ Survivors have also related to their experiences in terms of genocide.⁷ Yet, residential schools litigation has faced substantial legal obstacles in both domestic and international law regardless of whether they seek to apply the UNGC or tort law.⁸

The first section analyzes the origins of the FTC, its ethical uniqueness as a victim-centered deontological and consequentialist ethic, and its legislative history. The second discusses the difficulties of applying the FTC with respect to the type of protected groups and the onus of the proof of special intent. Section three discusses the modernist notions of childhood that target children in general and Aboriginal children in particular. The fourth section analyzes the forcible transfers of Indigenous children in the United States, Canada, and Australia to residential schools. The three cases share the primarily British colonialism as a framework. Each country sub-section offers a brief history of the case, the onset of the schools in the nineteen century, major legislation, and policy-makers reports. It also offers a brief overview of some case law and its limitations. The paper concludes with the discussion of the cases and the implications towards a much needed opening up of the UNGC for addressing the harms caused by the forcible transfers.

The FTC: Origins, Ethical Uniqueness, and Legislative History

Origins

The FTC echoes domestic and international legal norms and policies for the protection of children since early twentieth century. By the first half of the twentieth century these norms had achieved legal validation in state and international law that warranted the FTC’s inclusion in the UNGC.⁹

The FTC trails the League of Nations’ humanitarian field-work and customary law provisions. The goal of the League’s Commission on Women and Children in the Near East was to rescue and rehabilitate Armenian children. Its special committee had adopted conventions prohibiting the traffic in women and children in 1921, and slavery in 1926. The 1924 Geneva Declaration of the Rights of the Child adopted by the League’s Assembly states in Article 1 that “[t]he child must be given the means requisite for its normal development, both materially and spiritually”. However, it failed to define the age under which a person is considered a child. The Declaration’s subsequent articles concerned physical and material provisions, priority in relief, protection against exploitation and the collectivist notion of the child as future contributor to society. Post-WWII humanitarian efforts targeted the psychological rehabilitation of displaced children in general and the mitigation of psychological suffering and dislocation in particular. Hence, the separation of children from their parents was recognized as the cause of trauma. The FTC echoes the Nuremberg Military Tribunal ruling that established the kidnapping of Eastern European Children as particularly severe and unacceptable for the international community, and considered these practices as genocide. The opening statement of prosecutor McHaney referred to Lemkin’s Axis Rule. Prosecutor Shiller’s closing statement described the Nazi practices of cultural genocide. Forcible transfers of children were also tried in Poland’s Supreme National Tribunal and Britain’s Military Court.

Ethical Uniqueness
The FTC’s applicability to specific victims within a protected group – children – seems to convey a distinctive ethical position vis-à-vis the Article II clauses a-d, and the UNGC as a whole. Moral theories are generally classified as either deontological or consequentialist, and UNGC like the common sense morality of western culture is substantially deontological. Most deontological theories hold that some choices are morally wrong and cannot be justified by their effects. Hence an act or a choice is right if it obeys a moral norm, and an action’s motive can determine whether or not that action is right or wrong. Consequentialism, in turn, presupposes the Good, namely the states of affairs that are intrinsically valuable. It posits that right actions or institutions are those that maximize the intrinsically good states of affairs and minimize the bad ones. The most common consequentialist view is classic utilitarianism, where consequentialism is often taken as a general principle of practical rationality and the Good is often defined in utilitarian terms. In A Theory of Justice John Rawls argues that “[u]tilitarianism does not take seriously the distinction between persons,” and does not weigh directly justice and fairness considerations. However, other scholars argue that consequentialism does indeed take an explicit account of justice. Deontological theories are further divided into at least three types, namely, victim-centered, agent-centered, and combined theories. Victim-centered deontological theories are premised on the rights of persons. Kamm’s victim-centered approach considers “what the victim lost was what he would have had independently of the agent”. In contradistinction, agent-centered theories focus on permissions and obligations of each individual. These provide the individual with agent-relative reasons for action. Some agent-centered theories focus on the role of intention or other mental states in constituting the morally important kind of agency, such as the specific intent, and those that emphasize agents’ actions. Others emphasize both intentions and actions equally in constituting the morally relevant agency of persons.

While the FTC suggests a victim-centered deontological ethic, it also deviates from deontological ethics by being rights-based rather than duty-based. Rights-based ethics suggests that all humans have that some rights, both positive and negative, that are natural or conventional, constant and undeniable. Whereas natural rights are moral, conventional rights are created by humans and reflect society’s values. Rights-based ethics stands in contradistinction to the deontological duty-based and intention-based agent-centered ethic of the UNGC in general and Articles II (a-d) in particular.

Lemkin’s fingerprints are evident in the victim-specificity of the FTC. His compassion for children is evident in his writings. His 1944 article Orphans of Living Parents deals with children of divorced couples and compares various conceptions of the family. His comparative study on
the proper treatment of young offenders in corrective facilities highlights the potential effect of the educators on the inmates’ future.\textsuperscript{33}

The losses of the forcibly transferred children and their rights provide the moral constraint against the agents’ attempted act for achieving a cause considered good, or using the children for their own benefit. This is reflected in Prosecutor Neely’s words in the \textit{United States v. Greifelt}, at Nuremberg:

\begin{quote}
[It] is no defense for a kidnapper to say he treated his victim well… these innocent children were abducted for the very purpose of being indoctrinated with Nazi ideology and brought up as “good” Germans. This serves to aggravate, not mitigate, the crime.\textsuperscript{34}
\end{quote}

Neely’s victim-based approach is closely linked to the consequences of the transfer. Forcible transfers of children have dire, long term consequences. Thus, in \textit{Totally Unofficial} Lemkin uses consequentialist argumentation to illustrate the long-term horrendous effect of forcible transfers: “Greece… a nation of seven million, would have a population of sixteen million if not for the Greek children who were taken away for four hundred years.”\textsuperscript{35}

The FTC’s ethical uniqueness is therefore twofold. First, it is rights-based victim-specific whereas the remaining clauses of Article II of the UNGC are universal. Second, and more importantly, the FTC incorporates consequential reasoning into its deontological framework.

\textit{Legislative History}

The FTC’s legislative history clearly conveys the FTC’s ethical uniqueness. The Secretariat draft Convention dated March 28, 1947, prepared by the Social and Economic Council included the FTC in Article 3(a) that enumerated acts intended to destroy the specific characteristic of a group.\textsuperscript{36} The comments section of UN Document E/447 states:

\begin{quote}
The separation of children from their parents results in forcing upon the former at an impressionable and receptive age a culture and mentality different from their parents’. This process tends to bring about the disappearance of the group as a cultural unit in a relatively short time.\textsuperscript{37}
\end{quote}

These words clearly convey a victim-centered ethic coupled with consequentialism. The Draft recognizes childhood as a receptive age, and children as more susceptible to influence than adults. The Ad-Hoc Committee’s boisterous deliberations resulted in a draft convention that was submitted to the General Assembly’s Sixth Committee (Legal).\textsuperscript{38} This draft however, omitted the FTC.

The FTC was retrieved at the 81st meeting of the Sixth Committee by the Greek Delegate, Jean Spiropoulos.\textsuperscript{39} Most of the discussion that took place at the 82\textsuperscript{nd} meeting concerned the effect of forcible transfers of children on the continuity of groups.\textsuperscript{40} The delegates’ arguments for the inclusion of the FTC were twofold. First, the victim-specific characteristics of children, namely, dependence, futurity, and malleability rendered them valuable for the perpetrators. Second, the drafters highlighted the devastating consequences of this practice and its long-term hindering of the existence of a group. These justifications are also found in Lemkin’s \textit{Totally Unofficial}.\textsuperscript{41} John Maktos, the U.S. delegate argued that forcible transfers of children of particular groups were a form of physical or biological genocide.\textsuperscript{42} Similarly, Vallindas, the Greek delegate, denied that Article II(e) disassociated forcible transfers of children from the controversial cultural genocide. Vallindas highlighted the consequences of FTC, namely the destruction of a group, that is, physical genocide.\textsuperscript{43}

Donnedieu de Vabres suggested that the forcible transfer of children was an act far more barbarous than those enumerated under cultural genocide.\textsuperscript{44} His words justify the constitution of this victim-specific provision intended to protect children from the devastating consequences of forcible transfers. In de Vabres’ words: “The forced transfer of children had not only cultural, but also physical and biological effects since it imposed on young persons’ conditions of life likely to cause them serious harm or even death.”\textsuperscript{45} The Uruguayan delegate also endorsed the FTC’s victim-specificity. He argued that forcible transfers of children were “intended to destroy a new
generation through abducting infants, forcing them to change their religion and educating them to become enemies of their own people."\(^{46}\)

The strongest verbalization of the victim-centered ethic was the delegates’ response to the proposal put forward by the Syrian delegate, Salah El Line Tarazi. Tarazi proposed to include among the acts constituting genocide the forcible removal of members of a group from their homes, based on the events of WWII.\(^{47}\) Opposition to this provision focused mainly on the allegedly unduly widening of the scope of the convention. The Soviet delegate Platoon Morozov was opposed to both the Greek and Syrian amendments. He argued that both “went far beyond the limits of the provisions already accepted under article II".\(^{48}\) He further argued that from the historical point of view none of the forcible transfers of children and young people constituted genocide.\(^{49}\) This argument suggests that Morozov equated genocide with killing. Thus he argued that no group was destroyed through the transfer of children.\(^{50}\) The Belgian delegate, Kaeckenbeeck challenged this victim-specific stance given the delegates’ rejection of the Syrian proposal.\(^{51}\)

Other dissenting voices were concerned the alleged ambiguity of the clause. The Polish delegate, Manfred Lachs, distinguished between illegitimate transfers such as those carried out by the Germans during WWII, and legitimate transfers of children evacuated from the “theater of war” for their protection.\(^{52}\)

The UNGC and Beyond
An ongoing research agenda is concerned with the opening up of the concept of genocide mainly with regard to two major issues: the type of groups protected by the UNGC and the proof of specific intent.\(^{53}\) Restricting the protection granted under the UNGC to national, ethnical, racial or religious groups precludes the application of the FTC to otherwise strikingly similar cases of forcible transfers of children. The onus of specific intent is highly restraining because forcible transfers of children are often justified as stemming from benevolent motives, such as protection and civilization.

Beth van Schaak argues that the prohibition of genocide represents a paradigmatic peremptory norm (jus cogens), from which no derogation is permitted.\(^{54}\) She asserts that the prohibition of genocide is expressed in a variety of sources.\(^{55}\) Some of these are UN General Assembly Resolution 96(1) that “genocide is a crime under international law, which the civilized world condemns."\(^{56}\) Hence, the prohibition of genocide predates the UNGC. Furthermore, upon its review of the reservations to the UNGC made by the signatories, the International Court of Justice stated in 1951 that the prohibition of genocide is binding on states even in the absence of contractual obligation.\(^{57}\)

The UN Secretary General’s report to the Security Council on the establishment of the ICTY in 1993 lists the UNGC as comprising “part of conventional international humanitarian law which has beyond doubt become part of international customary law.”\(^{58}\) Paragraph 45 of that report states: “The [Genocide] Convention is today considered part of international customary law as evidenced by the International Court of Justice in its Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of Genocide, 1951.”\(^{59}\)

Judicial interpretations of international conventions aim at achieving a uniformity of the legal rules across tribunals, cases, and countries that are that are party to the conventions. There are at least three theories of interpretation, namely, originalism, progressivism and literalism.\(^{60}\) Both the ICTY and ICTR have adopted an originalist approach in adjudicating genocide by referring to the intentions of the drafters documented in the Travaux Préparatoires whenever they found the UNGC lacking detail. Addressing the evidentiary aspects of genocide based on the cases’ specific circumstances, the tribunals have complemented the UNGC’s underlying deontological ethic with consequential reasoning.\(^{61}\) While this originalist approach seems somewhat permissive, the two above mentioned issues are still wanting.

The FTC’s victim-specificity allows for an inclusive view of protected groups with regards to children. The ICTR stated in Akayesu: “[I]t was necessary… to respect the intent of the drafters… which, according to the travaux preparatoires, was clearly to protect any stable and permanent group.”\(^{62}\) The Trial Chamber referred to the common criterion shared by the four groups protected by the UNGC, namely, that group membership would not seem readily challengeable by the members, who belong to it involuntarily, by birth, in a continuous and often irremediable manner.\(^{63}\) While the
**Akayesu** Trial Chamber seems to have been somewhat inclined to expanding the boundaries of the UNGC with regard to the protected groups, subsequent case law has not followed this direction. A generally and internationally accepted precise definition of the types of protected groups, each group should be assessed in the light of a particular political, social, and cultural context. Both chambers held that membership in a group is subjective and based on the perpetrators’ view of the victim as belonging to a group intended for destruction.

Some of the perpetrators tried at the ICTR were charged with committing FTC. While the chambers did not acknowledge the cultural effects of the forcible transfers, the **Akayesu** Chamber was of “the opinion that, as in the case of measures intended to prevent births, the objective is not only to sanction a direct act of forcible physical transfer, but also to sanction acts of threats or trauma which would lead to the forcible transfer of children from one group to another.”

As mentioned earlier, the UNGC as a whole is essentially deontological as specific intent is a constitutive element of the crime. Specific intent requires that the perpetrator clearly seeks to produce the act charged. In the context of genocide it is “the intent to destroy, in whole or in part, a national, ethnical, racial or religious group.” It “implies a condition of mind or purpose directed toward a particular objective … that element must be alleged and proved.”

Intentions can be construed from action, inaction, and words. Indeed, in **Akayesu**, the ICTR agreed with the defense that intent might be difficult to establish. Yet it ruled that Akayesu’s “actions, including circumstantial evidence, however may provide sufficient evidence of intent,” and that “intent can be inferred either from words or deeds and may be demonstrated by a pattern of purposeful action.” In **Kayishema and Ruzindana** the Trial Chamber held that “the mens rea must be formed prior to the commission of the genocidal acts.” It further stated that “the individual acts themselves, however, do not require premeditation; the only consideration is that the act should be done in furtherance of the genocidal intent.” Similarly, in **Semanza**, the Tribunal ruled: “A perpetrator’s mens rea may be inferred from his actions.” The ICTY also asserted, in the ruling of issuing indictments in the matters of **Karadžić** and **Mladić** that “[t]he intent which is peculiar to the crime of genocide need not be clearly expressed... [It] may be inferred from a certain number of facts such as the general political doctrine which gave rise to the acts.”

Tony Barta pursues a conception of genocide that embraces the relations of destruction. Barta argues that “the destruction of many peoples, genocidal outcomes, have been the result of complex and only obscurely discerned causes.” Hence, the definition of genocide should properly discard the special intent as its essential element. For Barta, actions imply relationships and bring about consequences, which people do not always foresee and expect. While Barta admits that genocide strictly cannot be a crime of unintended consequences, he actually introduces consequentialism into the notion of genocide. The ethical uniqueness of the FTC justifies such notion.

### The Forcible Transfer of Children as a System of Domination

The victim-specific FTC is grounded in a dominant modernist discourse of children and childhood that developed in Europe from the eighteenth to the nineteenth century, and throughout most of the twentieth century. It is closely linked to the development of the modern nation state from the seventeenth to the nineteenth century. This discourse constructed childhood on a par with dependence. As the modern state defined itself through mutual military and economic competition and through colonization of remote parts of the world, the care of children, their upbringing and education became a major area of concern.

Modernist conceptions of childhood and adulthood were constructed as dichotomous. Childhood was essentialized and framed as an age of futurity and dependency. Children were constructed as incomplete people with needs, and therefore assumed a passive role of a disciple, shaped and molded through punishments and reinforcements. Childhood was viewed as a journey towards adulthood, and children were valued for their potential contribution.

Dependence was not only an objective matter of size and physical strength. It was, to a great extent, socially distributed. The state’s disciplinary power, surveillance mechanisms, and “the gaze” were developed in the modern era and employed as mechanisms of control. In Bentham’s notion of the Panopticon the state of constant visibility guarantees the smooth operating of power.

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©2015 Genocide Studies and Prevention 9, no. 2 [http://dx.doi.org/10.5038/1911-9933.9.2.1289](http://dx.doi.org/10.5038/1911-9933.9.2.1289)
Total institutions such as residential schools require this constant visibility enforcing obedience and conformity and for providing the children’s alleged needs for protection.

Modern education of Indigenous children—consolidated under the labels of protection, civilization, and assimilation—was a part of the state’s system of domination over Indigenous peoples. Foucault distinguishes between systems of domination and other forms of power relations. Whereas other forms of power relations allow some room for freedom, systems of domination exist when a certain class or group exercises power over others, controlling every aspect of life and leaving no room for freedom. Although these systems of domination represented themselves in the rhetoric of assimilation and integration, the education provided by these institutions was intended not only to destroy Indigenous cultures, but also to obtain a supply of menial work at a minimal public cost. These systems of education sought to reproduce the submission of Indigenous people to the state that acted as an agent of exploitation and repression.

**Forcible Transfers of Indigenous Children: Canada, United States and Australia**

The programs for the removal of Indigenous children to Christian missions or schools developed during the nineteenth century in Canada, the U.S., and Australia were indeed part of the system of domination of the settlers that sought the extinction of Indigenous cultures and people as such. The children were forcibly removed from their families and communities and were violently forced to relinquish their group culture and adopt European culture.

Almost every aspect and moment of the children’s lives were structured and controlled to ensure the destruction of the children’s Indigenous of identities. All the same, the children’s bodies and mental states were severely neglected and deprived. Students did not receive the same education as the general population. School curricula focused primarily on practical skills and preparation for menial vocations for boys and domestic services for girls. With forced labor, little time spent in class, and the long time devoted to intense work, most students had only reached grade five by the time they were 18. When the students had left these schools many were detached and traumatized. Many were discouraged from pursuing further education. The children received little or no medical care; many had contracted and died from severe diseases such as tuberculosis, trachoma, and other conditions that thrive in dense living conditions. Many children routinely suffered physical and sexual abuse. These programs continued into the 1990s in Canada.

**Canada**

The Royal Proclamation of 1763 had defined the relationship between Indigenous and non-Indigenous people in North America. It was the result of the British military policy that recognized First Nations as its allies in its war against France in 1755-1830. Issued in the name of the King, the proclamation had set the rules that were to govern British dealings with Indigenous people—especially with regard to the Aboriginal title of land.

A new set of policies based on a worldwide view of Britain’s imperial and civilizing role was developed in 1837 by the British House of Commons Select Committee on Aborigines. The schooling of First Nations children became one of the objects of these new policies. Residential schools became central in the activity of the Missions. It was believed that the removal of children from their parents’ influence would make them effective emissaries of Christian civilization.

The Bagot Commission of 1842 recommended that the Indian Department should support the boarding schools operated by all religious denominations. While initially First Nations cooperated with and supported the residential schools, they never consented to their assimilationist policies.

The British North America Act of 1867 granted the federal Parliament legislative authority over Indigenous peoples, and land reserved for them. This Act shaped educational systems, social policies and economic development plans designed to extinguish Indigenous rights and assimilate Indigenous people.

In 1876, the first consolidated Indian Act reflected Canada’s preoccupation with land management, First Nations membership and local government, and Canada’s ultimate goal that consisted in the assimilation of its Indigenous population. The Indian Act was subject to numerous amendments since its legislation. Nevertheless it remains the principal tool for the exercise of power over Status Indians, and governs many aspects of their lives.
Between 1867 and the 1990s, the government of Canada, in collaboration with Christian church denominations, operated a system of residential schools. In 1887 Lawrence Vankoughnet, Deputy Superintendent-General of the Department of Indian Affairs wrote to Prime Minister John MacDonald: “Give me the children and you may have the parents … [I]n working out that most difficult problem—the intellectual emancipation of the Indian, and its natural sequel, his elevation to a status equal to that of his white brother. This can only be done through education.” About 150,000 Indigenous children were removed from their families and communities, sometimes forcibly by the mounted police, and placed in 130 residential schools between 1884 and 1996.

The official objectives of this policy were to destroy Indigenous languages and cultures. The children were forbidden to speak their languages and were taught to reject their heritage, their families and, by extension, themselves. Parental visits were discouraged because they allegedly “demoralized the pupils” and high fences were to be erected as to prevent any contact of pupils and “obnoxious visitors.” Many children suffered physical and mental deprivation, neglect, and physical and sexual abuse. Mortality rates due to malnutrition, abuse, and infectious disease such as tuberculosis soared in some schools to 35-60 percent.

The safety of women and children became a major concern in Canada during the 1980s. Since 1990 there has been an increased focus by Indigenous people, governments and churches on the impact of residential schools and the survivors. In 1989 and 1990, prosecutions against former residential school staff began in British Columbia and the Yukon. Additional police investigations were followed by more claims. In 1990, Chief Phil Fontaine, then leader of the Association of Manitoba Chiefs, called for the churches involved to acknowledge the physical, emotional and sexual abuse endured in the schools. A year later, the Royal Commission on Aboriginal Peoples (RCAP) was established to investigate the social, economic and political conditions of the Aboriginal Peoples of Canada. The Report was published in 1996, yet Gathering Strength - Canada’s Aboriginal Action Plan that was to address the RCAP’s recommendation was not implemented. The report by the Law Commission of Canada established in 1997 issued recommendation for addressing the harm caused by the physical and sexual abuse of children in institutions funded, sponsored or operated by the government.

In January 1998 Jane Stewart, Minister of Indian and Northern Affairs, issued a statement of reconciliation. Yet these measures could not contain the flood of legal cases filed against the Government of Canada and four Christian denominations, namely, the Anglican Church of Canada, Presbyterian, United Church of Canada, and Roman Catholic Church. Many of the litigants may have suffered from a unique form of post-traumatic stress disorder, known as “residential school syndrome.”

By March 2004, all parties were dissatisfied with the measures. The Assembly of First Nations argued that the measures were insufficient, biased and too slow. In May 2005 the government signed the Political Agreement that undertook to negotiate a settlement package. This package was to include reparations for all former students of Indian residential schools, a Truth and Reconciliation Commission (TRC), community-based healing and commemoration. Because litigation proved problematic in addressing residential schools harms, an Alternative Dispute Resolution (ADR) process was to address the serious abuse suffered. In May 2006, the government, the Churches, and the Assembly of First Nations and other Aboriginal organizations reached agreement on a settlement to address the legacy of the Indian Residential School system (IRSS). The agreement included reparations, a truth commission, and commemoration. In June 2008, Prime Minister Stephen Harper offered an official statement of apology.

The United States
As in the Canadian case, the European-American Settlers’ drive to civilize the Indians coincided with their ambition to acquire land. Subsequent to the War of 1812, Native Americans had lost their relevance as military allies, and were conceived of as an impediment to European expansion and control. The administration of Indian reservations was therefore entrusted to Christian denominations.

The Civilization Fund Act passed by the U.S. Congress on March 3, 1819 supported activities of benevolent societies in providing education for Native Americans. A Federal fund of $10,000 was
allocated to schools designed to educate Native Americans “in the ways of the white man.” This legislation led to the establishment of boarding schools towards the end of the 19th century.

In 1865 the government began to make contracts with several missionary societies for the maintenance of Indian schools for teaching agricultural and mechanical arts. This was the continuation of the plan for providing Federal aid to First Nations’ education that was initiated 1818. Congress had allocated funds for the building of schools in the reservations to be operated by churches and missions.

The boarding school system became formalized as part of President Ulysses S. Grant’s Peace Policy of 1869 to 1870. The goal of Grant’s Peace Policy was to turn over the administration of Indian reservations to Christian denominations. The first treaty agreement providing for any form of education was made December 2, 1794, with the Oneida, Tuscarora, and Stockbridge Indians, who had supported the United States during the Revolution. By the end of 1868, the Great Peace Commission possessed nine treaties that defined the various reservations that the tribes would inhabit. According to these treaties First Nations children would be educated “in the way of the white men,” and English would be the language of instruction in order to facilitate the transition to “civilization.” Congress funded the building of the schools, and entrusted the operation to churches and missionary societies.

In her 1888 special report to Congress, ethnologist Alice C. Fletcher outlined the American concern over the education of Native American children and youth since 1775. Her chapter on education commences with the Mohegan’s request from the Albany commissioners of the Indians, “to have teachers and instructors among them.” The Commissioners promised to report this request to Congress.

Thomas J. Morgan, Commissioner of Indian Affairs from 1889-1893, reported the principles of the U.S. policy towards Indigenous peoples. First, “[t]he reservation system belongs to a ‘vanishing state of things’ and must soon cease to exist.” Native Americans, he said, “cannot escape [white civilization], and must either conform to it or be crushed by it.”

By the late 1870s policymakers realized that reservations’ day schools were ineffective. Assimilation became increasingly aggressive. In 1891, Congress authorized the Commissioner of Indian Affairs to enforce the mandatory school attendance. Reservation boarding schools were built in order to isolate the children from their families and community. Soon after which off reservation schools were built to completely isolate the children.

The first off-reservation school, Carlisle, was founded in 1879 by Richard Pratt who thought that geographically distant off-reservation boarding schools would reinforce the separation of children from their parent until adulthood. In his words: “Transfer the savage-born infant to the surroundings of civilization, and he will grow to possess a civilized language and habit.” The “outing system,” namely, the placement of Native American children in white families was apparently successful. Morgan’s 1889 Annual Report suggests that “[t]his system has in it the ‘promise and the potency’ of their complete emancipation.”

An 1894 article by Senator James H. Kyle from South Dakota, who chaired the U.S. Senate Committee on Education and Labor, reviews the “Indian problem.” Kyle’s article condemns the “heartless, grasping, conflicting policies.” He argues that the purpose of the U.S. policy should be “to convert our Indian wards into intelligent American citizens.” He further blames government officers, agencies, and employees for their “trickery and fraud” that disrupt the process of “civilization.” Kyle writes that while many politicians shared these views, policy remained unchanged. While Kyle is allegedly sympathetic to Native Americans, he nevertheless believed in “the inevitable law of the subjection of the inferior to the superior race.”

Like Kyle, Carl Schurz, a former Commissioner of Indian Affairs, and Secretary of the Interior, wrote that Native Americans face two stern alternatives, “extermination or civilization.” In his words, “a stubborn maintenance of the system of large Indian reservations must eventually result in the destruction of the red men, however faithfully the Government may endeavor to protect their rights. It is only a question of time.”

The rationale for choosing aggressive assimilation over physical genocide was often economic. According to Schurz “it costs little less than a million of dollars to kill an Indian in war. It costs about one hundred and fifty dollars a year to educate one at Hampton or Carlisle.”
The findings of the 1928 *Problem of Indian Administration* (Meriam Report) unfold the poor conditions of Native Americans.\(^{148}\) The Report was commissioned by the Institute for Government Research, which later became the Brookings Institution. Its purpose was to gather information about the condition of Native Americans across the U.S. The Report was submitted to the Secretary of the Interior, Hubert Work, on February 21, 1928. The report criticized the Department of Interior’s implementation of the General Allotment Act of 1877, and overall conditions on reservations and in Indian boarding schools.\(^{149}\)

The Report found that the policy of removal as far as possible of Native American children should be revoked. It suggests that the modern point of view in education and social work highlights the value of upbringing children in their home environment.\(^{150}\) It recommended the decentralization of school curricula, providing a better diet, less over-crowding, less heavy productive work, more thorough physical examinations, and better correlation of remediable defects.\(^{151}\) The Report critically stated that “[f]rom the educational standpoint the young child does not belong in a boarding school.”\(^{152}\) Francis Paul Prucha writes that the report strongly influenced policies in land allotment, health care and education and that the data it provided became an essential basis for reform.\(^{153}\)

The 1930s witnessed a shift in educational philosophy. States assumed more control over First Nations education as more children enrolled in public schools. The Indian Commissioner from 1929-1934, Charles J. Rhoads, directed all boarding schools to phase out their first through third grade programs, to improve the quality of instruction achieve a better balance between vocational and academic education.\(^{154}\)

Since the Meriam report there have been several other reports that unfolded the terrible conditions at the schools, the physical and sexual abuse, exploitation, the virtually non-existent or poor medical treatment, the high rates of deaths, and the effects of the forced separation of the children from their families. The *Johnson O’Malley Act* of 1934 was to subsidize the education of Native American children who did not live in reservation and were to be integrated into the public school system.\(^{155}\) Since then Congress enacted various laws dealing with the education of First Nations children.\(^{156}\)

In 1969, a Senate Sub-committee on Indian Education issued a report entitled *A National Tragedy—A National Challenge*. The Report unfolded the terrible condition of the schools.\(^{157}\) It was followed by legislation such as the *Indian Education Assistance Act* of 1975, that allowed states to build schools on Indian land, and The *Tribally Controlled Schools Act* of 1988 allowed tribes to operate federally funded educational programs.\(^{158}\)

Whereas critical reports of First Nations education were published over the years on the boarding schools system, changes were very slow and gradual. These reports, at least since the Meriam Report of 1928, render the good intentions argument in particular and temporal defense in general, highly dubious.\(^{159}\) These reports convey the rival views on First Nations education, and of the conditions and the consequences of these schools. The reality described in these reports and the failure to act in due course may strongly refute the good intentions argument in defense of the forcible transfer.

U.S. courts created the plenary power doctrine that gave the Federal government full and complete power over Indigenous people, immigrants, and colonized territories.\(^{160}\) This doctrine has been invoked several times in First Nations litigation “to justify the government’s violation of both the constitution and international law.”\(^{161}\) This doctrine would be used to argue that policies concerning the boarding schools were within the discretionary authority of the executive, over which the judiciary has no power.

U.S. Indian boarding schools litigation was mostly grounded in tort law, namely, that Government had breached the *bad men clause*.\(^{162}\) The *bad men clause* that was part of the peace-keeping treaties was in fact a commitment to protect Indians from white, or other *bad men* wanting to commit any wrong to the Indians or their property, and punish the perpetrators.\(^{163}\) In 2004, Zephier and other six claimants submitted a class action suit in damages allegedly caused by sexual, physical, and mental abuse suffered between 1921-1924 at Indian schools managed by various church organizations and overseen by the Department of Indian Affairs.\(^{164}\) The plaintiffs argued the U.S. breached the *bad men clause* and its fiduciary duty as per the Sioux Treaty signed.
Under the treaty, the Sioux agreed to move into a designated reservation, refrain from certain practices and to compel their children to attend boarding schools. The U.S. argued for and was granted a motion to dismiss alleging that the plaintiffs had failed to exhaust the available administrative remedies. Unlike Canada or Australia, the U.S. has not conducted a systematic comprehensive inquiry as the boarding schools and their impact, neither offered an official apology.

Australia

Tony Barta argues that Australian society is “founded on genocide.” Aboriginal children have been forcibly separated from their families and communities since the very first days of the European occupation of Australia. As in the previous cases, the Australian practice of removing Aboriginal children from their family groups had an economic incentive. Aboriginal children were to play a role in filling the considerable labor void in various parts of Australia. The forcible removal of Aboriginal children also emanated from the British ontology regarding the threat posed by so-called problem populations. Forcible transfers became a common practice across colonial Australia by the late nineteenth century.

The earliest child removal legislation in Australia was at state level, starting with the Victorian Aboriginal Protection Act 1869 (APA). Section 2(v) authorized the Aborigines Protection Board to enact regulations for “the care, custody and education of the children of Aborigines.” One of the regulations made under the APA allowed for any Aboriginal child neglected by its parents or left unprotected, to be removed to a mission, an industrial or reform school, or a station. Another bylaw allowed the removal to an orphanage or any of the Board’s branches of any orphaned half-caste child, not otherwise required by the manager of a station.

Using the Victoria Neglected and Criminal Children’s Amendment Act of 1864, concerns about conditions in “industrial schools” led to an increase in children being boarded out to foster homes from the early 1870s. Foster parents were paid a weekly allowance by the state to cover a child’s board. Neglected Aboriginal and non-Aboriginal children could be detained until the age of sixteen. Detained children could be boarded-out or apprenticed. The Regulations made under this Act in 1880 enabled reserve managers to order the removal of Indigenous children from their families.

The Queensland Aboriginal Protection and Restriction of the Sale of Opium Act 1897 that controlled every aspect of Aboriginal life authorized the government the right to exercise guardianship over all Aboriginal children in the colony of Queensland. Section 4 of the New South Wales Aboriginal Amending Act 1915 stated that “[t]he Board may assume full control and custody” of any Aboriginal child for its best interest. These Queensland, Victorian and New South Wales statutes had formed the blueprint of legislation in the other states. By 1950 other Australian states adopted legislation that gave guardianship powers by Aboriginal Protectors over aborigines up to the age of 16 or 21.

The 1913 South Australia Progress Report of the Royal Commission on Aborigines notes that “there are no reliable statistics” on the number of aborigines impacted by the laws. The Report also recommends separating the so-called full bloods from half-caste natives. The latter were conceived of as better candidates for assimilation. Some officials suggested that “[t]hey should be taken away directly they are born.” Governments and missionaries also targeted Indigenous children for removal from their families. Police or other officers of the state were authorized to locate infants and children of mixed marriages and remove them to state run institutions. The alleged motive was to “inculcate European values and work habits in children, who would then be employed in service to the colonial settlers.” By the mid-1960s the process of removal of Aboriginal children to missions had slowed down. The last residential school was closed in either 1983 or 1984.

Following demands of the Secretariat of the National Aboriginal and Islander Child Care and Aboriginal organizations demanded a national inquiry into the removal of Aboriginal children. On August 2, 1995, the Commonwealth of Australia’s Attorney-General, Michael Lavarch commissioned the Australian Human Rights and Equal Opportunity Commission to conduct a national inquiry into the separation of Aboriginal children from their families.

The 1997 Bringing them Home report turns to the FTC in its inquiry over the separation of Torres Strait Islander children. It maintains that the predominant aim of the forcible transfers of
Indigenous children was their assimilation into the dominant non-Indigenous society so that their unique cultural values and ethnic identities would disappear.\(^{184}\) It therefore concludes that the “[r]emoval of children with this objective in mind is genocidal because it aims to destroy the ‘cultural unit’ which the [Genocide] Convention is concerned to preserve.”\(^{185}\) This ground-breaking report incorporates many of the arguments and interpretations as to the prohibition of genocide as a \textit{jus cogens} norm predating the UNGC. Hence, it considers the policy of forcible removal of Aboriginal children “genocidal” in breach of binding international law at least since the UN General Assembly approved resolution 96(1) of December 11, 1946.\(^{186}\) One of the recommendations of the Report was to establish a “National Compensation Fund,” due to the procedural, evidential and financial difficulties involved in litigation.\(^{187}\)

Two months after the \textit{Bringing them Home} Report was submitted to the Australian Federal Parliament, in 1997 the High Court of Australia ruled in the matter of \textit{Kruger v the Commonwealth}.\(^{188}\) Kruger and a number of other Aboriginal claimants argued that the removal of Aboriginal children from their families and their detention authorized by the \textit{Northern Territory Aboriginals Ordinance} of 1918 constituted cultural genocide. Cultural genocide, however, is not within the scope of the UNGC. The Government responded that the Ordinance was enacted in order to advance the welfare and interests of Aboriginals and half-caste Australians.\(^{189}\) The Court ruled that the Ordinance did not authorize the removal “with intent to destroy, in whole or in part the claimants’ racial group.”\(^{190}\) The Court concluded that the Ordinance was a beneficial law and that it did not authorize act of genocide as defined in the UNGC.\(^{191}\) The \textit{Kruger} decision in fact accepted the Government’s temporal defense, namely, that “the constitutional validity of the \textit{Aboriginals Ordinance} must be considered by reference to standards and perceptions prevailing at the time of its enactment or operation and not by reference to contemporary standards and perceptions.”\(^{192}\)

In 2008, former Prime Minister Kevin Rudd apologized to Aboriginal and Torres Strait Islander peoples for the laws and policies that “inflicted profound grief, suffering and loss.”\(^{193}\) Rudd’s apology acknowledged the abuses and policies of forced removal of Aboriginal and Torres Strait Islander children.

**Conclusion**

The forcible transfer cases in the U.S. and Australia outlined in the preceding sections, reveal a variety of legal and political technologies used by settler states for enhancing “the quality of the population and the strength of the nation.”\(^{194}\) The vital role of the law emerges as the disillusioning module of this all-encompassing system of domination of Indigenous Peoples. Moreover, the law has been used to curb Indigenous claims ranging from various kinds of torts, breach of duty, and contractual obligation to cultural genocide.

Both scholars and survivors have attempted to apply the FTC to the residential and boarding school of Indigenous children. Yet, attempts to apply the UNGC to the Aboriginal residential schools have been legally ineffective due to doctrinal and procedural obstacles in both domestic and international law. The major doctrinal obstacles of FTC case law concern the need to establish specific intent in genocide claims.

The Canadian and Australian residential school litigation typically attempts to gain recognition of the residential schools as cultural genocide. Yet, because cultural genocide is not one of the acts enumerated by the UNGC, such claims have no legal merit. Moreover, the U.S. was not a signatory of the UNGC until November 25, 1988, and while Canada and Australia ratified it in 1952 and 1949 respectively, forcible transfers of Indigenous children to residential schools started about a century earlier.

While it be would be possible to use van Schaak’s argument that the prohibition of genocide is a \textit{jus cogens} norm and that during the relevant period, international customary law and norms prohibited the removal of children from their family based on their belonging to a particular group, the onus of specific intent still remains very difficult to prove.

Hence, in \textit{Kruger}, Australia countered the Kruger’s claims with temporal defense where the state typically argues that the policy of removal of Indigenous children was shaped by the prevailing during the establishment and operation of the schools and not by reference to contemporary standards.\(^{195}\) Indeed, assimilation was a dominant political and cultural doctrine at the time.
Yet, evidence suggests that social science disciplines had already acknowledged the special links between children and their parents. Some officials involved in these forcible transfers believed that this practice was particularly cruel. By the early twentieth century the international community was well aware of the devastating effects of this practice.

All the same, Lemkin, like his contemporaries held complex, often contradictory views on colonialism and assimilation. He writes that “for better or for worse, Western culture has been and still is the master diffuser of the world.” Lemkin distinguished assimilation by moderate coercion from cultural genocide. Regardless, he strongly opposed forcible transfers of children which he saw as kidnapping.

The piling evidence in official inquiry reports, TRC outcomes, and case law point to the pervasive, intergenerational devastating effects. In view of the FTC’s ethical uniqueness, forcible transfers of children make a strong case for the widening the scope of UNGC. In particular, such changes should be evaluated based on ICC and ICTR and ICTY case law and the introduction of some consequentialist ethic into the UNGC. A pure deontological ethic that judges an act only by its intentions irrespective of the consequences renders such provisions almost inapplicable.

Residential school survivors in Canada have sought remedy through the use of tort law to argue for the loss of culture, breach of some contractual obligation. Canadian Indian residential schools case law suggests that the Government of Canada denies legal recognition of the loss of culture. Citing statutes of limitations, Canadian justice system allowed only “historical sexual assault,” negligence, and breach of fiduciary duty as legally recognized harms.

The plenary power doctrine gave the U.S. Federal government full and complete power over Indigenous people, immigrants, and colonized territories. Thus First Nations claims entered the domain of political questions over which the judiciary has no power. The statute of limitations and other procedural barriers were applied to Indigenous litigation. Canada and Australia have granted recognition to the harms caused by residential schools but chose to settle the dispute outside the court. The Canadian ADR and Australian National Compensation Fund are indeed steps in the right direction, yet, they also convey the disillusionment with the law and the legal systems’ historically molded by the contours of white settlers’ hegemony.

Endnotes
3 Schabas, Genocide in International Law: The Crimes of Crimes, 175.


A tort is a civil wrong, other than a breach of contract, resulting in injury or harm in which the injured party seeks remedy. A tort allows the courts to award remedies such as a mandatory injunction, a prohibitory injunction or damages. Jules Coleman, “Theories of Tort Law,” in Stanford Encyclopedia of Philosophy, ed. Edward N. Zalta (Stanford: The Metaphysics Research Lab Center for the Study of Language and Information, Stanford University, 2003), http://plato.stanford.edu/entries/tort-theories/ (accessed June 9, 2009).


* The League of Nations, Geneva Declaration of the Rights of the Child, 43 See Article 5 in particular.


29 Ibid., 28-29.

30 George W. Harris, Agent-Centered Morality: An Aristotelian Alternative to Kantian Internalism (Berkeley: University of California Press, 1999), 2-6.


37 Ibid., 235


39 Sixth Committee of the UN General Assembly, UN Doc A/C.6/SR.81, Eighty-First Meeting Dated October 22, 1948, 1478-1479

40 Sixth Committee of the UN General Assembly, UN Doc A/C.6/SR.82, Eighty-Second Meeting Dated October 23, 1948, 1492-1499.


42 Sixth Committee of the UN General Assembly, UN Doc A/C.6/SR.82, 1496.

43 Ibid., 1496.

44 Ibid., 1492-1493.

45 Sixth Committee of the UN General Assembly, UN Doc A/C.6/SR.82, 1492.

46 Sixth Committee of the UN General Assembly, UN Doc A/C.6/SR.82, 1494.


48 Ibid., 1493.

49 Ibid., 1493.
50 Ibid., 1497.
51 Ibid., 1495.
52 Ibid., 1495.


55 Ibid., 2286


58 Report of the Secretary General pursuant to paragraph 2 of Security Council Resolution 808 (1993), UN Doc. S/25704, 2 May 1993, para. 35

59 Ibid., para. 45.

60 Greg Craven, “Heresy Or Orthodoxy: Were the Founders Progressivists?” *Federal Law Review* 31, 1 (2003): 87-129. There are at least three general approaches to constitutional interpretation, namely, originalism, progressivism and literalism. Originalism is a theory of constitutional interpretation. It posits that the fundamental task of the Courts is usually regarded as being to interpret the constitution by referring to the intentions of those who framed it. Progressivism posits that rather than searching for the historical intention of the Founders the court should construe the Constitution so as to bring it into accord with modern needs and exigencies. Literalism is the strict adherence to the letter of the law. ‘Originalist interpretation’ in the context of this article refers to the interpretation of the prohibition on genocide as the drafters of the UNGC intended it.


63 Akayesu, para. 511. See also Musema, para. 161.

64 I thank an anonymous referee for this point.


66 Musema, para. 160-163; Rutaganda, para. 57-58

67 Akayesu, para. 509; see also Musema, para. 159; Rutaganda, para. 54.


70 Akayesu, September 2, 1998, paras. 523-534.

71 Kayishema and Obed Ruzindana, para. 91.

72 Ibid., 91.


75 Barta, *Relations of Genocide: Land and Lives in the Colonization of Australia*, 238
76 Ibid., 238
77 Ibid., 238
78 Jean Jacques Rousseau (1712–1778), Étienne Bonnot de Condillac (1715–1780), and Gottfried von Herder (1744–1803) explored philosophical aspects of childhood. Dietrich Tiedemann’s (1748–1803) study is the first known empirical work on child development. It was first published in 1787 in German. The book was published in English in 1890. Dietrich Tiedemann and Bernard Perez, *Tiedemann’s Record of Infant-Life*, 13 (Syracuse, N.Y.: C.W. Bardeen, 1890), 46.
81 Ibid., 24-30
88 Ibid.
95 Ibid.
97 As of the mid-1980s the Federal Government of Canada no longer had control over residential schools. However, the last residential school closed in Regina Saskatchewan in 1996.
100 Armitage, *Comparing the Policy of Aboriginal Assimilation: Australia, Canada, and New Zealand*, 74-75.

105 Bartlett, 581-582.


107 The first missionary-operated school in Canada was established near Quebec City between 1620 and 1629, more than 200 years before the first Indian residential school was opened in Brantford, Ontario in 1831. The Brantford school would remain one of the longest lasting Indian Residential Schools was closed in 1969.

108 Quoted in ibid, 58.

109 John Milloy, *Indian Act Colonialism: A Century of Dishonour, 1869-1969* (National Centre for First Nations Governance, 2008). See Chapter 4 in particular, 51-76. The 2007 Indian Residential Schools Settlement Agreement included 130 schools. Seven schools were added through Article 12 by Canada and the two schools which were added by the courts, bringing the total number of recognized schools to 139. See the Aboriginal Affairs and Northern Development website, available at https://www.aadnc-aandc.gc.ca/eng/1100100015606/1100100015611 (accessed on April 29, 2015) Dominion of Canada, The Department of Indian Affairs, Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1884 (Ottawa: MacLean, Roger & Co., 1885).

110 Ibid., 77.


115 Ibid., 1, 377-378.


120 Llewelyn, “Dealing with the Legacy of Native Residential School Abuse in Canada: Litigation, ADR and Restorative Justice,” 253-300.

121 Available online at http://www.residentialschoolsettlement.ca/english_index.html (accessed May 1, 2015).


125 Fritz, “The Making of Grant’s ‘Peace Policy,’” 415


128 Ibid., 162


130 Fritz, “The Making of Grant’s ‘Peace Policy,’” 411-432

131 United States. Fletcher and United States Office of Education. *Indian Education and Civilization*, 161-197

132 Ibid., 161


134 Ibid., 176


138 Cited in Ibid., 52.

139 Morgan, *Annual Report of the Commissioner of Indian Affairs, October I, 1889*, 178


142 Ibid., 435

143 Ibid., 435

144 Ibid., 435


146 Ibid., 6.

147 Ibid., 17.


149 The General Allotment Act was adopted by Congress in 1887. The act was “to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes to stimulate assimilation of Indians into mainstream American society.” [http://digital.library.okstate.edu/kappler/vol1/html_files/ses0033.html](http://digital.library.okstate.edu/kappler/vol1/html_files/ses0033.html) (accessed on April 22, 2015)

150 Ibid., 32.

151 Ibid., 33.

152 Ibid., 34.


159 In order to exonerate the state as an historical actor based on temporal defense, one ought to assess the political, social climate and moral norms. Were they monolithic or was there a rival doctrine? See Eric L. Muller, “Fixing a Hole: How the Criminal Law can Bolster Reparations Theory,” Boston College Law Review 47, no. 4 (2006): 661-662.
162 This was made possible under the Tucker Act. 28 U.S.C. § 1491. The Tucker act gives the Federal Court of Claims jurisdiction over any claim stemming from an expressed or implied contract. See Curcio, 79-80.
163 Ibid., 45. See Begay v. United States, 224 Ct. Cl. 712 (1980). The Court allowed Navajo children harmed by a teacher to file a claim under the “bad men” provision.
165 Treaty between the United States of America and Different Tribes of Sioux Indians, U.S.–Sioux, art. 1, Apr. 29, 1868, 15 Stat. 635
169 Ibid., 502.
171 Ibid.
172 Aboriginal reserves and stations were portions of land assigned by the New South Wales Department of Lands, from the 1860s until about 1914 for the use of Aboriginal people. An Aboriginal station was a managed reserve. A resident teacher-manager appointed by the Aboriginal Protection Board. The stations usually contained a school and a clinic, and served as a depot for the allocation of blankets, rations and supplies to Aboriginal people.
176 In Tasmania, however, general welfare legislation was used for the removal of Aboriginal children.
177 Ibid., v.
178 Ibid., xvii.
179 South Australia, Progress Report of the Royal Commission on the Aborigines, 121, 125.

183 Ibid.


185 Ibid., 237.

186 Ibid., 239.

187 Ibid., 305.

188 Kruger v the Commonwealth [1997] 146 ALR 126 (July 31, 1997).

189 The same position was reiterated in Cabillo v the Commonwealth (2000) FCA 1084, (August 11, 2000), para. 1560.


191 Kruger v the Commonwealth, para. 66.

192 Kruger v the Commonwealth, para. 29 (e) of the Commonwealth’s Amended Defense. On temporal defense see Eric L. Muller, “Fixing a Hole: How the Criminal Law can Bolster Reparations Theory,” 661-662. While Gray J in Trevorrow v South Australia has also accepted that the primary purpose of the legislation in question was to support and protect Aboriginal children, he held that it was foreseeable that the removal and long-term separation of the plaintiff from his family would give rise to a risk of harm. See Trevorrow v South Australia [No 5] (2007) 98 SASR 136, 358-359.


195 Kruger v the Commonwealth, para. 29 (e).


199 Ibid.
http://dx.doi.org/10.5038/1911-9933.9.2.1292
Clear Lake, where the two plaques coexist, yet each posits very different accounts of history. The preservation and evolution of each of these plaques, however, contributes to our understanding of why a detailed examination of localized genocide memorial sites is critical to regional and global history. The inclusion of different historical accounts underscores the evolving interplay and reshaping of genocide preservation, memorialization, and narrative construction. These historic landmarks remember and silence events, where the 2005 Pomo-sponsored plaque subverts the 1942 Anglo-American placed marker. Yet, the 1942 plaque, while extremely problematic in its foundation and depiction of the massacre, has not been removed, but rather preserved and, as this article shows, reshaped in its reclamation. A new historical narrative emerges from the implied dialogue between two different massacre markers. In leaving the 1942 plaque physically intact, the two memorials create a polyphonic version of the past, honoring and commemorating slaughtered Native peoples in a mosaic of memorial practices. A microhistory of this site and these plaques therefore creates a highly localized account of reconciliation and remembrance with global memorialization implications.

The Bloody Island Massacre

Bo-no-po-ti was a traditional Pomo gathering site. Also known as Badon-napo-ti (Island Village), hundreds of indigenous Pomo people in the Clear Lake region converged on the island every spring for the annual fish spawn. In the first years of the nineteenth century, it was estimated that the Northern California Pomo population was between 10,000 and 18,000, with 3,000 Pomo residing within the Clear Lake basin itself. Russian settlement at Fort Ross in 1812 brought about the first of many exploitative Euro-American encounters and in 1817 the San Rafael Mission was established with the aim of making Christian converts out of the nearby Pomo people. The mission was aided by Luis Arguello, later the first provisional governor of California, who, with a contingent of Spanish soldiers, led many expeditions into Pomo territorial lands in order to bring the Pomo further into the mission system of subjugation. When California became part of the Mexican Republic in 1822, large tracts of Pomo land were designated for settlement. The encroachment of settlers also unleashed epidemics of disease, including a massive malaria outbreak in 1832, the spread of measles from Fort Ross in 1847, and a smallpox epidemic brought about by the surge of prospectors during the gold rush of 1848. By 1850, the local aboriginal population of the Northern Pomo, having either fled due to American and European settlement or succumbed to disease, was estimated as fewer than 400.

This small number of remaining Pomo in Lake County continued to clash with settlers while having their basic rights further eroded. Following the defeat of Mexico in the Mexican-American War (1846-1848), California was annexed by the expanding United States. Prior to 1846, indigenous Californians were considered Mexican citizens. The 1848 Treaty of Guadalupe Hidalgo, which ceded California to the United States, included clauses under Article VIII and IX that allowed Mexican inhabitants in California to either maintain their “title and rights” as Mexican citizens or “elect to become citizens of the United States.” The rights of indigenous Californians are not explicated addressed in this treaty, however under Article XI the treaty noted that “the sacredness of this [treaty’s] obligation shall never be lost…when providing for the removal of the Indians from any portion of the said territories, or for its being settled by citizens of the United States.” Furthermore, references to “savage tribes” in Articles IV and XII underscore that citizenship protection would not be extended to the indigenous Californians. The California Constitutional Convention of 1849 deferred discussion of rights for indigenous people to the State Legislature, scheduled to meet after Congress approved the statehood of California. In 1850, the first State Legislature met and immediately denied indigenous Californians voting rights, and further legislated “that no Indian could serve as a witness for or against any white,” thus excluding indigenous Americans from the recourses of the judicial system. It has been argued, moreover, that the April 1850 Act for the Government and Protection of Indians was a thinly disguised authorization for white citizens to hold non-citizen Indians as slaves, implicitly sanctioning the kidnapping of thousands of indigenous children.

The Bloody Island massacre was the tragic result of Pomo mistreatment at the hands of white settlers. In 1847, two American settlers, Charles Stone and Andrew Kelsey purchased a large cattle
ranch from Mexican Captain Salvador Vallejo, and with it his Pomo vaqueros (cowboys). As the first white settlers in Clear Lake, today the site of the cattle ranch is a town called Kelseyville, named after Andrew Kelsey. Stone and Kelsey were notoriously brutal and violent men. The Pomo were worked as slave laborers on the ranch, paid with rations of only four cups of wheat per day. Furthermore, the Pomo were forbidden to hunt or fish on any of Kelsey and Stone’s land, and thus unable to supplement their meager food supply. When gold fever struck in 1848, Kelsey and Stone conscripted fifty of their laborers to work in the Sacramento gold fields. Beyond the brutal conditions of gold mining and the general mistreatment by Stone and Kelsey, it is reported that Andrew Kelsey abandoned the mining endeavor and sold the Pomo workers’ food and supplies to a nearby mining outpost. Bereft of supplies, 48 of the 50 Pomo laborers starved to death on their return march to Clear Lake.

Impoverished and malnourished, the indigenous workers on Kelsey and Stone’s cattle ranch were routinely beaten and tortured. Even among other violent settlers, Kelsey and Stone were known for their viciousness toward aboriginals. According to journalist Gaye LeBaron, “even California’s earliest historian, H. H. Bancroft, who had a propensity to glorify the American pioneers, has written that Kelsey and Stone were ‘rough men, often in trouble with the authorities, and were men who scorned to use conciliatory methods with [to deal with, in the words of Andrew Kelsey] ‘Injuns and such varmint’.” Bancroft goes on to write that “Kelsey and Stone were both killed, as well they deserved to be.” Yet, while Kelsey and Stone may have been disliked by their contemporaries, their murder at the hands of indigenous actors was nevertheless viewed as a great threat to settler society. It was the retaliation to the deaths of Kelsey and Stone that triggered the Bloody Island massacre.

According to official reports filed just after the Bloody Island massacre, the antecedents stem from Kelsey and Stone’s mistreatment of their Pomo workers. Sometime in January 1850, it was alleged that a young Pomo worker “threatened the wife [of Andrew Kelsey], for which he received 100 lashes.” Indigenous Pomo oral traditions maintains the boy was actually sent by his ailing aunt to request additional wheat. Irrespective of the charge, the excessive punishment was a common practice, not only on Stone and Kelsey’s ranch but also throughout Lake County. Reports of Pomo workers dying from injuries sustained during lashes are enshrined in Pomo oral history. According to William Raganaal Benson, a Pomo elder and Tribal historian born twelve years after the massacre, it was common to see:

such a whipping and [the] tying [of] their hands together with rope. The rope [was] then thrown over a limb of a tree and then drawn up until the Indians[’] toes barely touched the ground and [they] let them hang there for hours...Such punishment occurred two or three times a week and many [an] old man and woman [weakened from starvation] died from fear.

In the official Indian Affairs’ report, an hour after this particular Pomo youth had received 100 lashes, Andrew Kelsey’s brother, Benjamin, returned to the scene and shot the boy in the head, which caused the Pomo to flee the ranch, only to return later with weapons in order to avenge his death. Absent from the official reports is the fact that Kelsey and Stone had also taken local Pomo Chief Augustine’s wife as a sex slave. While Stone and Kelsey were away, Augustine’s wife sabotaged their stored weapons’ cartridges. When her people came to liberate her and retaliate against their mistreatment, Stone and Kelsey’s tampered guns misfired and they were left defenseless. Andrew Kelsey was shot with multiple arrows; Charles Stone fled out a window, but was quickly chased down and murdered on the riverbank.

The decision to murder Kelsey and Stone was sparked by a combination of mistreatments, including by the death of the workers forced to mine for gold and wander back after Kelsey sold their rations, the whipping and murder of a Pomo boy, the abduction of Chief Augustine’s wife, and a culmination of years of beatings and starvation. After the uprising, the death of Kelsey and Stone ushered in a retaliatory massacre, led not by civilians and local militias, but rather at the hands of the United States Government.

Following the murders of Kelsey and Stone, the Pomo workers fled the cattle ranch. It is alleged that Chief Augustine sought refuge on Bo-no-po-ti, but there is little evidence to collaborate.
this claim. Andrew Kelsey’s brother, along with neighboring whites, formed a vigilante posse and waged a random campaign of violence against all Clear Lake Pomo. Even the official report admits that Benjamin Kelsey:

collected a strong force and on pretense of going to the lake and punishing the murderer but instead of which they commenced an indiscriminate slaughter of the Indians who reside on farms working for Americans and in one night slew twenty. They were prevented by the citizens from utterly annihilating them, and most of them arrested by order of the Government, but no further proceedings instituted.²⁴

It was well known at the time that Benjamin Kelsey and his gang traveled into Sonoma, Calistoga, and Napa, and murdered “innocent Indians…[who] had no hand” in the murder of Kelsey.²⁵ The posse was arrested and brought to San Francisco, however, “they were set free on habeas corpus and never brought to trial.”²⁶ Official reports submitted by a U.S. Calvary officer claim that while detaining Kelsey and his party, the U.S. Army “captured 12 Indians of the Isla tribe, who live upon the lake.”²⁷ The officer, upholding the paternalistic trope of the state, notes that these captives “would undoubtedly have been put to death by Kelsey’s party, had not the presence of an officer restrained them.”²⁸ It is from these prisoners that the Calvary allegedly learned about “two chiefs of the tribe, which lived upon Kelsey’s farm, [who] were on an island in the lake.”²⁹

In fact, the Pomo at Bo-no-po-ti never worked on Stone and Kelsey’s ranch, and had nothing to do with their murders. The Calvary report detailed the invasion plan on Bo-no-po-ti, outlining an assault of “two parties of 30 men each” while “a party 50 strong” flanked the only retreat.³⁰ It also advised a sneak attack under the cover of darkness, in order to “surprise [the Pomo] in their Rancherias and cut them to pieces.”³¹ The overwhelming force was based on the Calvary officer’s supposed belief that 400-600 Pomo armed warriors were stationed on the island.³² In actuality, the island was mostly populated with women and children.

When the battle-hardened 1st Dragoons division of the U.S. Calvary assaulted the island, five months later, they encountered zero resistance. The government soldiers, in overwhelming numbers and with the use of heavy artillery rowed across the lake in appropriated fishing boats, decimated the trapped Pomo Indians. In his report describing the attack, Captain Nathaniel Lyon stated, “the island soon became a perfect slaughtering pen.”³³ After gunning down fleeing women and children, Captain Lyon ordered his soldiers to follow the Pomo into the thick reeds surrounding the marshy waters and “pursue and destroy as far as possible.”³⁴ He reported a confirmed sixty Pomo Indians killed, but had little doubt that the body count was upwards of one hundred.³⁵ He stated that there were 400 Pomo on the island and that the U.S. Calvary sustained no injuries and received ineffectual return fire.³⁶

Historian Benjamin Madley has called for a careful reading of one-sided causality rates when official narratives of resistance are employed, cautioning that this often masks the true genocidal aims of government forces.³⁷ The subsequent narrative of a battle, or tropes of self-defense require a notion that the government forces faced insurmountable opposing forces, or were responding to fierce aggression with equivalent and appropriate force. While the reconnaissance reports mentioned above stated that the U.S. Calvary anticipated encountering fierce resistance from the supposed 400 warriors, it is interesting that Lyon’s own official report maintains a transparent narrative of slaughter and the absence of return fire. From the inception of the massacre, the military saw no need to create a counter-narrative to justify the atrocity, suggesting their expectation that Clear Lake settlers would condone the bloodshed. At least initially, however, this was not the case.

Media Portrayal of the Massacre
Following the massacre, Old Island became known as Bloody Island in the public lexicon. Just days after the massacre, the Alta California newspaper reported the event with the headline, “[a] horrible slaughter of Indians.”³⁸ The article reminded the reader, “the tribe that incurred this terrible punishment…has maintained, in general, undisturbed peaceful relations with the white settlers” of the area.³⁹ While it noted that the military action was a reprisal for the murder of Kelsey, the article refuted its justification when it claimed:
Last summer…a stubborn family Indian offered an indignity to the wife of Kelsey…was sentenced to receive one hundred lashes…[but] after the punishment…Kelsey laid him dead, shooting him in the presence of several gentlemen who remonstrated him on the barbarity of the deed…Kelsey was afterwards murdered…Since then repeated acts of violence have been visited upon the natives.

The newspaper report underscores that there was little public affinity for the Kelseys and their ilk. Furthermore, the article argued that any justified retribution for Kelsey’s murder had already been dealt, thus the Pomo slaughter was simply an act of genocide guised under legal punishment. In this regard the newspaper specifically charged the U.S. Calvary, under the command of Lt. Davidson and Captain Lyon, with trying to intentionally “exterminate…the Clear Lake Indians.” The newspaper quoted an unnamed informant, who reported “indiscriminate destructive fire upon men, women, and children”. The informant said, “they fell as grass before the sweep of the scythe.” The article concluded once more with the charge of genocide, claiming that the attack on Bloody Island “was [an] order of extermination fearfully obeyed.”

Fascinatingly, the *Alta California* newspaper drastically reversed their account just four days later. In the subsequent article, the newspaper revealed that the unnamed informant was Captain J. H. Frisbie, “a gentleman well known and universally respected.” The article now stated that General Persifor F. Smith pronounced Captain Frisbie’s “account to be false…and in the very strongest possible language…also questioned the motives for its publication.” By way of retraction, the *Alta California* printed the only other account “of the Clear Lake affair,” though the newspaper hinted at dissent when it pointed out “from what source the information of our new contemporary was derived we are of course ignorant. It will accord much satisfaction to believe it true.”

The reprinted account challenged the veracity of the *Alta California* article, calling the Clear Lake incident a “rumored massacre…greatly exaggerated…and wholly misrepresented.” In the new version:

A party of Indians…after committing many murders and other outrages…took refuge in one of the numerous islands of the Lake…Captain Lyon was ordered to proceed to Clear Lake, and to punish and dislodge the Indians from their stronghold…The men advanced in boats, (which they had transported with great labor across the mountains,) and were received with a shower of arrows. In combat many of the soldiers were seriously wounded, and a number of Indians killed. The statement that women and children were massacred is wholly unfounded…This is the true history of the horrible slaughter of the Clear Lake Indians.

Boyd Cothran’s laudable recent work on memory, violence, and notions of innocence surrounding the Modoc War (1872-1873) tracks narrative shifts in newspaper reporting. Cothran noted that standard notions of American innocence were employed against a backdrop of Indian savagery in order to portray white victims of violence as “fundamentally innocent.” In the case of Kelsey and Stone, however, innocence was an impossible trope as their brutality was so well established. The new narration, therefore, relied on the notion of depicting the Pomo as imposing warriors and veterans of murderous campaigns of vaguely defined other outrages. This transformed the massacre site into a battlefield, where the brave Dragoons, who painstakingly carried their boats over the mountain passes, are bathed in arrows. Many American soldiers are injured, thus showing the prowess and power of their enemy, yet none are miraculously killed, thus underscoring divine intervention and the strength of these soldiers. The new narrative views the Calvary men as heroically defending themselves and settler society in a preemptive attack. The story is sold by marginalizing the actions of true slaughtered innocents yet paradoxically recasting them as powerful warriors. Thus the soldiers become defenders engaged in a struggle against an overwhelming force and champions of American innocence. It is also important to see frontier newspaper reporting as influencing, and influenced by, public opinion and state control. The countering reports in the *Alta California* offer up two versions of a historical event that echoed forward for over one hundred and fifty years.
The Native Sons of the Golden West and the 1942 Memorial

The Upper Lake basin today has been drained to the point that Bloody Island now stands as a hilltop. Landmark 427, erected in 2005, makes no mention of where the island was once located. One must travel a quarter mile down a street called Reclamation Road to see the massacre site close-up. There stands a faded and contentious plaque, installed by the Native Sons of the Golden West in 1942.

Like the two newspaper reports about the Bloody Island violence, the dual massacre markers put forth two very different narratives of the past. The 1942 plaque calls the site the “scene of a battle between U.S. Soldiers under the command of Captain Lyons (sic) and Indians under Chief Augustine.” The 2005 inscription posits that it was not a battle, but rather the location where “a regiment of the 1st Dragoons of the U.S. Cavalry, Commanded by Capt. Nathaniel Lyon and Lt. J.W. Davidson, massacred nearly the entire native population of the island.” The full text of the plaque goes on to state:

Most were women and children. This act was in reprisal for the killing of Andrew Kelsey and Charles Stone who had long enslaved, brutalized, and starved indigenous people in the area. The Island, now a hill surrounded by reclaimed land, remains a sacred testament to this sacrifice of innocents.

There is a great deal to criticize regarding the 1942 plaque. Firstly, it places the massacre date on 15 April 1850, one month earlier than even the official reports note. Secondly, Captain Lyon is mistakenly referred to as Captain Lyons. Most ominously, the plaque uses the common trope that the event was a battle, much like the second report reprinted in the *Alta California* newspaper, likening the event to a balanced fight between “Cowboys and Indians.”

The Bloody Island plaque was erected on 20 May 1942, 92 years and 5 days after the Bloody Island massacre. Behind the plaque’s construction, as mentioned above, was a group known as the Native Sons of the Golden West. The Native Sons were an Anglo-American organization responsible for many of the placards and historical landmarks scattered throughout California. The group still exists today, though it is a much more whitewashed charitable organization compared to their membership when they installed this particular plaque.

The Native Sons of the Golden West sought to preserve a specific narrative of history, with a strong emphasis on the positive role white settlers played in creating California history. The organization’s name can be unpacked to see the use of “Native” as both an approbation of
indigeneity and an ownership over California; suggesting they, not the indigenous people, are the true autochthonous “sons of the soil” in California. This patrilineal notion is reinforced by the signifier Sons which suggests a legacy and birthright, coopted and repurposed by the Native Sons organization, a group that would only accept membership from white men born in California. In this reading, Golden West posits the notion that California history did not begin until the mid-nineteenth century’s gold rush. It is fitting that the birth of the Native Sons of the Golden West began in 1890 with the purchase and restoration, for historical preservation, of Sutter’s Fort. The Fort reports to be the earliest non-indigenous central Californian community, and thus the birthplace of the western settler movement, and by extension the Native Sons. It was at Sutter’s Mill, also owned by the Fort founder John Sutter, where Anglo-Americans first discovered gold deposits in California, resulting in the ensuing rapid migration of settlers during the gold rush.

With an obsession of pioneer history, in 1907 the Native Sons began publishing The Grizzly Bear, a monthly magazine for members. Each issue featured statements and updates from the various Native Sons chapters, known as parlors, advertisements and announcements, obituaries of any pioneer settlers “who came to California prior to 1870”, letters from parlor members and readers, and history writings compiled by the Native Sons of the Golden West Grand Historian. In the May 1942 issue, Grand Historian Dr. Peter T. Conmy, a librarian at Oakland Public Library, wrote for The Grizzly Bear the Native Sons of the Golden West’s version of the Pomo massacre.

The article was written to coincide with the 18 May “Grand Parlor of the Order of the Native Sons of the Golden West,” the annual main Native Sons meeting which was being held in Lake County for “the first time in the organization’s sixty-four year history.” After a brief history on how Clear Lake had the largest population of indigenous people in California, due to an “abundance of fresh water and the attendant vegetation [which] made the locality attractive to the primitive people,” Conmy anecdotally added a line about how in 1836 “some Indians...wandered down to the Sonoma Valley, committing acts of depredation.” To his credit, Conmy wrote with shades of veracity and sympathy toward the Pomo people. He framed Stone and Kelsey as “cruel to the Indians,” who ordered “the Indians with a high hand” and shot at them “for the fun of seeing them jump.” Although Conmy noted that Stone and Kelsey were “the first American residents” of Lake County and that they may have been “upright...with their relations with their fellow-citizens,” he was clear about the mistreatment the Pomo suffered under Stone and Kelsey, who “were beaten at the slightest provocation” and he included the fact that Chief Augustine’s wife was “taken over as a concubine.” Nevertheless, Conmy’s description of the events that led up to Stone and Kelsey’s deaths added mitigating factors, such as his version that after Kelsey sold all the supplies on his failed gold mining expedition, it was a “hostile tribe of Indians” who attacked and killed many of the Pomo conscripts, while briefly admitting that “others died of starvation.”

Curiously, in Conmy’s version of events, it was not the routine years of mistreatment the Pomo endured on Stone and Kelsey’s ranch, since as “unbearable as [that] situation became, the Indians continued to forebear.” The Native Sons consistently maintained the paradoxical approach of glorifying American Indian lifestyles and stoicism, while relegating and subverting the indigenous Californians as primitive people and not the true natives of the West. According to their narrative, it was the supposed inter-Indian attack on the returning forced miners that “caused the wrath of the Red Men to rise high and it was determined that the cruelties of Andy Kelsey and Stone should be no longer endured.” Conmy’s account accurately described the murders of Stone and Kelsey, but his depiction of the antecedences slightly shifted the direct blame away from the years of abuse, starvation, and torture.

From November 1939 through November 1943, The Grizzly Bear used the word massacre only four times in four years. Conmy’s May 1942 article is one of them. It is not the Pomo, however, who were victims of a massacre. Conmy’s piece employed the traditional settler rhetoric of a battle between soldiers and Indians, keeping the entire description of the Bloody Island slaughter to a brief sentence where “about a hundred Indians were killed and, thoroughly subdued” by “Lieutenant Lyons (sic)”, who forced “a treaty of peace [to be] made.” There is no mention of the women and children murdered by the U.S. Calvary, nor does the article mention that the soldiers received no return fire. Where the word massacre is employed, it is in reference to Kelsey and Stone, whose deaths were “regarded as a massacre” to white settlers, which “gave rise to the sentiment among
the settlers that the region of the lakes was a truly dangerous one, and for that reason settlement was slow.” For the Native Sons, the historic tragedy of Bloody Island is that it slowed down the migration of white pioneers.

The other three utterances of term massacre were also not employed regarding the murder of indigenous Americans. In the June 1941 issue, Dr. Peter T. Conmy once again used it, this time to describe the 1871 “Chinese massacre” by a mob of anti-Chinese “enraged citizens looking for a Chinese criminal in…Nigger Alley, and unable to find him, seized and lynched some eighteen innocent Chinese.” The next two occurrences are used to frame the ideological underpinnings of the Native Sons during this era. In one instance the “Pearl Harbor massacre” is alluded to in order to remind readers that the Japanese, and by extension American born children of Japanese descent, were “as a people, as public enemies, cunning, clever...unworthy of any confidence or trust.”

The author underscored the central tenant of Native Sons thought, that Anglo-Californians are the native-born inheritors of the American past. Interestingly, in his attempt to other the Japanese, author J.E. Gardner moved beyond the notion of rooted birthrights. He wrote that Japanese-Americans, were born in the United States by an “accident of birth” and racialized his assertion that Japanese-Americans, “in [their] very blood [hold] so fanatical a devotion to [their] god-emperor that [they] will literally stop at nothing to accomplish [their] ends” and that “we do not want in our community any persons of that breed, no matter where born.” To Native Sons gripped in wartime fever, the California-born Americans of Japanese parents were a threat to the entrenched racial hierarchy and color line the Native Sons of the Golden West sought to glorify.

In a Grizzly Bear article titled “Let Us Not Be Bequeath A Canker We Should Have Removed—The Japs”, Dr. W.R. Livingston exemplified the prevailing post-Pearl Harbor American vitriol, and the Native Sons’ political position. “If Japan emerges victorious”, he wrote, “it could well mean, before the lapse of a century, a Mogol (sic) would be found again ravaging Europe” which would lead to “the extermination of the White race. A Mongol ravage is not a pretty picture. Genghis Khan massacred whole populations in city after city of Persia, and even sent back detachments to slay any refugees”. The article, published in March 1942 and filled with racist calls for Japanese interment under misguided historical propaganda, included a note from the author sent to the Native Sons that expressed the “hope that the portion [of his article] relating to Japs in defense areas may be obsolete by the publication date.” Indeed, it nearly was.

The date of Bloody Island plaque’s installation is incredibly telling. The plaque was erected 20 May 1942; exactly three months and one day after President Franklin D. Roosevelt issued his infamous Executive Order 9066, the authorization to intern over 100,000 Japanese-Americans. By the time the Native Sons had commemorated the plaque in May, the entire western seaboard had been declared a military evacuation zone for all Japanese and Japanese-Americans. The timing of this particular plaque, dedicated to a historical event nearly a century removed, is highly suspect and cannot be separated from the main political and ideological motivations of the Native Sons, which had far less to do with historical preservation and much more to do with present tension.

While the Native Sons of the Golden West may have glorified the notion of the Wild West and invested money and time in erecting historical markers of California’s pioneer days, at its core the group was dedicatedly anti-Japanese. The most prominent member of the group was Earl Warren, future chief justice of the Supreme Court. When the Bloody Island plaque was commissioned, however, Warren was the Attorney General of California. In this role, Warren was the leading voice behind the forced removal of Japanese-born and Japanese-descendant Americans.

Following the 7 December 1941 attack at Pearl Harbor, American military and civil leaders feared subsequent attacks along virtually undefended West Coast. Five days later President Roosevelt issued executive order 8972, creating militarized patrols along and within national borders and empowered the Secretary of War “to take appropriate measures...deemed to be necessary and desirable” for national defense. Under this, it became Attorney General Warren’s task to organize California’s civilian defense program. It was feared, irrationally, that Japanese Americans could form a supposed fifth column and wage a campaign of sabotage and support, should Japan successfully invade the United States. In January 1942, one month after Pearl Harbor and just five months before the creation of the Bloody Island plaque, Warren warned “the Japanese situation as it exists in this State today may well be the Achilles heel of the entire defense effort.”

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According to historian Edward White, Warren was “the most visible and effective California public official advocating internment.” Warren was also the most reputable and prominent member of the Native Sons of the Golden West. It was Warren who personally dedicated the 20 May 1942 unveiling of the Bloody Island plaque, attending the ceremony as both California’s Attorney General and also a representative of the Native Sons’ Fruitvale Parlor 252. Seven years later, as Governor, Earl Warren established the California Historical Landmarks Advisory Committee, creating a state program to organize and manage what was hitherto a privatized affair. Under his membership as a Native Son, Warren was able to witness the power plaques like the 1942 Bloody Island marker created in controlling narratives of the past for present, and often political purposes. It is very likely that the Native Son’s particular branding of history and nativism played a prominent role in Warren’s outlook and decision to create the Landmarks Committee.

Beyond the decision to intern American citizens, the Native Sons of the Golden West were also involved in a legal battle to strip away the basic voting rights of Japanese-Americans. After the installation of the Bloody Island marker, the Native Sons capitalized on the anti-Japanese sentiment with a legal challenge to overturn the 1898 Supreme Court decision in *United States v. Wong Kim Ark*, which affirmed that any native-born American, irrespective of race or ethnicity, was an American citizen. It is fitting that the Native Sons of the Golden West erected a memorial to the Bloody Island “battle” during this legal battle, since the massacre occurred the same year as the passage of the 1850 *Act for the Government and Protection of Indians*, which denied the Pomo citizenship rights.

While the 1942 Bloody Island marker is seemingly apolitical, the impetus behind its construction cannot be separated from the actions of the Native Sons of the Golden West. The fact that while the plaque commemoration was under way, Native Son and former California Attorney General Ulysses S. Webb was arguing in court that “This is a white man’s country…by the whites, of the whites, and for the whites” while Native Son and current California Attorney General Earl Warren was assisting with the forced internment of Japanese and Japanese-American citizens, makes the motivational intent behind the plaque construction highly suspect.

In preserving a false version of the Pomo Indian massacre, the Native Sons’ plaque asserts Anglo-dominance over Californian history. The Pomo on Bloody Island are falsely raised up to fierce warriors who challenged the United States. The text seems to suggest that the stronger the enemy, the more victorious the winner. The sign also stands in as a message to the Japanese-Americans, arguing that the white pioneers and prospectors who conquered the indigenous warriors and settled the West were the true inheritors of California, and the writers of its History. Finally, the text of the 1942 plaque seeks to confirm the erroneous fact that Chief Augustine was on *Bo-no-po-ti*, and that the battle was a justified response connected to the murders of Kelsey and Stone. In this regard, the 1942 plaque can be read as a metaphorical embodiment of a scripted version of history first put forth by the revisionist 1 June 1850 *Alta California* article.

**Reclamation**

In 2002, the 1942 marker was desecrated. An unknown person poured red paint over the face of the plaque and around the rock on which it stands. Today the dried red paint remains, the desecration preserved in order to resemble spilled blood covering the monument. Beginning in 1999, activists, Pomo descendants, Clear Lake residents, and the general public hold an annual sunrise “forgiveness ceremony in honor, remembrance and forgiveness, on behalf of the Pomo Indian People that perished and those that survived the Bloody Island Massacre.” The vigil takes place at the 1942 marker, where candles are burned and tobacco offerings are made to the Pomo ancestors whose bodies were cremated and buried, only later to be used in the construction of dams around the Upper Lake basin. Notably, the ceremonial event does not take place on the anniversary of the massacre, but rather nearest the date of 20 May, the anniversary of when the 1942 marker was installed. The inclusion of local residents, irrespective of their national origins, speaks to the aim of reconciliation. According to Clayton Duncan, the great-grandson of one of the Bloody Island survivors, “the ceremony is also to say we’re sorry to our ancestors whose bones and ashes were shown such disrespect.” The site sits on Reclamation Road, a fitting homage to a contentious plaque, now reclaimed.
Clayton Duncan’s great-grandmother was Lucy Moore, one of the very few children to survive the Bloody Island massacre. In 2000 Duncan established the Lucy Moore Foundation, created with the stated mission “to educate the public about the massacre...locate, preserve and memorialize the site of mass graves...and buy the Bloody Island” massacre site in order to “create a Lucy Moore Foundation Museum and Cultural Center.” The Foundation is also involved in ongoing campaigns to rename “Kelseyville”, stripping away Andrew Kelsey’s legacy and rewriting the memoryscape of Clear Lake. In 2005, largely due to Duncan’s efforts, the State Department of Parks and Recreation, working in partnership with the Lucy Moore Foundation, erected the new memorial plaque, designated California Registered Historical Landmark No. 427, located directly on Highway 20.

The ongoing campaign by Duncan and other Pomo activists as well as the larger community to create a cultural center, in addition to the continuing annual healing ceremonies, show that landscape around the Bloody Island massacre site is an active ground of memory, still evolving and shifting. This process of recreation and reclamation moves slowly. Similarly, while efforts to rename Kelseyville have stalled due to the lack of the requisite total number of signatures required to bring the proposal to legislation, it should be noted that Clear Lake County is sparsely populated. The movement, like the 2005 plaque, is highly localized in an area of little population density and remains an exciting site for scholarly investigation precisely because of its transformations that are currently playing out.

The 2005 plaque tells a much more accurate history of the massacre. The narrative is expanded to include not only the perpetrators of the massacre, Captain Lyon and Lt. Davidson, but also the backstory of Andrew Kelsey and Charles Stone, who “had long enslaved, brutalized, and starved indigenous people.” Interestingly, the 2005 plaque does not replace the 1942 one, but rather stands in for a polyphonic narrative of reclamation. The text of the 2005 plaque states that “the island...[is] surrounded by reclaimed land.” By moving one quarter of a mile away from the actual site, the 2005 marker is intentionally designed to be the viewer’s first glimpse of the Bloody Island memorialization. In this way it posits itself as the dominant narrative, subordinating the 1942 plaque as the alternate, and incorrect, version of the past. For many tourists, the 2005 plaque is the only site they will see. The road signs only point to the new marker, and while the plaque does state that “one-fourth mile west is the island...now called Bloody Island,” the directions are vague, despite the fact that hilltop is clearly visible from Highway 20. The palimpsestesque rewriting of the Pomo massacre narrative allows both markers to be preserved, with a carefully guided tour through the selected versions of history.
Conclusion

Northern California, like so many colonial lands, has a deep legacy of genocide and struggles with preserving a fractured version of this history. While California was the site of numerous genocides and atrocities against the indigenous peoples, the Bloody Island massacre site is one of few memorial structures recognized by the State of California government. Plaque locations shape memorial structures by working to both remember versions of a blood-stained past while silencing the imposed meta-narratives that came before them. When studying the process of memorialization surrounding colonial massacres, a connection to the landscape is paramount. On their own, plaques and the artistic stones in which they are set are meaningless. The narratives they construct and the audiences they attempt to guide are drawn together by a deeper connection to the grounds that these memorial structures mark. The annual Bloody Island commemorations in Clear Lake take place at the 1942 marker for important reasons. I have outlined the performative aspect of reclamation the ceremonies discussed above hold, showing how community events and the vandalism of red paint has transformed and subverted the 1942 plaque away from its founders’ intentions. For the Pomo activists and actors, however, that location marks a closer connection to their ancestors murdered by the U.S. Calvary. While the newer 2005 plaque reshapes the history of the massacre for the passing motorist, only by traveling down Reclamation Road and to the now hilltop that was once Bo-no-po-ti, and onto reservation land, can one connect to the events that transformed old island into Bloody Island. Seemingly ironically, this transformative experience comes from visiting a plaque installed by an organization dedicated to settler, Anglo-American history, arguably erected with anti-Japanese intentions.

Different generations come to terms in differing ways with historical violence in California’s landscape. The reframing of a site of bloodshed from a battle to a massacre involves multiple parties creating epistemological tension with the past. The Bloody Island massacre site marks a place where scholars can map the ways individuals, organizations, and communities in the American west have both created and rejected nationalist narratives as well as the establishment of a pluralistic vision of history, selectively framed. The physical site of Bloody Island is simultaneously a memorial to the murdered, enslaved, and dispossessed first people of California, while also becoming a monument to sovereignty and anti-colonial resistance.\(^{81}\) The Bloody Island massacre site is uniquely remembered due to its dual plaques. Like all memorial sites, certain narratives are privileged while others are marginalized: the massacre landscape itself becomes a text of negotiation, contestation, and confirmation. By leaving the 1942 plaque intact, however, the site adds a level of perceived transparency, a place where memory and narrative have been renegotiated, while still offering a window into the attempts to justify imperial expansion and co-opt native identity.\(^{82}\)

All past events are challenged, reinterpreted, and reused for present purposes. The connections between the two Bloody Island plaques, like the connections between Anglo-Americans and Indigenous peoples, remind us of our role and responsibility to be viewers, caretakers, and creators of a shared and global historical narrative. In this regard, a thorough understanding of the localized history of the Bloody Island massacre imparts a powerful lesson for genocide scholars, activists, and the general public, enriching the discourse of violence and reconciliation in world history. Just as more scholarly attention should be devoted to the Bloody Island duality of narratives and markers, so too should a broader effort exist to create methodological and theoretical conversations between memorialization of massacres. Localized genocidal events like Bloody Island bring Clear Lake into the broader frontier wars, massacres, and narrative construction of California. Similarly, the regional history of California fits into our understanding of American expansion, which itself shares transnational connections and global memorial practices. In this way, Reclamation Road is more than a street in Clear Lake County; it is a conduit into our colonial past and to constantly evolving construction of History in the making.

Endnotes


This new version of history is later commemorated, as nostalgia for an invented past creates a binding and unifying experience for those “remembering”. Albert Grunlingh writes that commemoration “is not concerned with the ‘accuracy’ of historical renditions…Commemorations by their very nature give their own shape and form to public understanding of the past”. Albert Grunlingh, “Remembering Conflict: The Centenary Commemoration of the South African War of 1899-1902 as a Case Study” in Historical Memory in Africa: Dealing with the Past, Reaching for the Future in an Intercultural Context, eds. Mamadou Dia wara, et al (New York: Berghahn Books, 2010), 117-118

Synthesising the theories of Baudrillard, Deleuze, and Guattari, Adrian Parr argues that trauma is given transcendent meaning by collective culture as individual memory of the past cannot “be contained…or recaptured in the context of the present”, and thus memorialisation and remembrance are collective responses to the singularity of personalised memory. Adrian Parr, Deleuze and Memorial Culture: Desire, Singular Memory and the Politics of Trauma (Edinburgh: Edinburgh University Press, 2008), 2, 185. James Young coined the theory of “unfinished memory”, arguing that monuments and memorials are reshaped by ever-evolving local ideas, ideas, and experiences. See James Young, Texture of Memory: Holocaust Memorials and Meaning (New Haven: Yale University Press, 1993), Chapter 3.


S.A. Barrett, The Ethno-Geography of the Pomo and Neighboring Indians (Berkeley: The University Press, 1908), 41-42.


It could be argued that as Mexican citizens, indigenous Californians would enjoy the same rights as all Mexican citizens residing in the new United States territory. In the language of the treaty, however, indigenous people are referenced as “savage tribes” occupying areas in the new territory. The implication of treaty on future indigenous rights is made quite clear by Article XI that indigenous people would not be legally classified as citizens, and “savage tribes would hereafter be under the exclusive control of the Government of the United States.” Library of Congress, “A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates, 1774-1875”, Treaty of Peace, Friendship, Limits, and Settlement Between the United States of America and the United Mexican States Concluded at Guadalupe Hidalgo, 2 February 1848, 929-932. http://memory.loc.gov/cgi-bin/ampage?collId=lsl&fileName=009/lsl009.db&recNum=985 (accessed on 9 April 2015).


Act for the Government and Protection of Indians, Chapter 133, Cal. Stats., enacted 22 April 1850.

Heizer, Collected Documents on the Bloody Island Massacre, 5.


Quoted in LeBaron, “Indian Massacre of Another Kind”.

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18 “Letter from Peter Campbell to the U.S. Commissioner of Indian Affairs”, Sonoma, 1 June 1851, in Heizer, *Collected Documents on the Bloody Island Massacre*, 17.


20 Benson, “The Wampum Gatherer’s Narrative”.


49 Cothran, *Remembering the Modoc*, 49.

50 Where the stronger an enemy is perceived to be, the greater the subsequent victory appears. I would like to thank Lyndall Ryan for drawing my attention to the widespread employment of the battle narrative surrounding colonial genocide.
The Native Sons of the Golden West Facebook page gives one the impression that the group’s ethnic mix of current members is still predominantly white, while their website tends to give a more grandiose account of diversity. Both online platforms do mention the organization’s darker history in their Anglo to Japanese relations, but it should be noted that their main websites overemphasizes the fact that “From its beginnings, the Native Sons have been more progressive in receiving into its membership people who typically were shut out of other organizations. For example, the Native Sons never denied membership to applicants on religious grounds”. Its dominant Anglo-American membership base and viewpoint is acknowledged, but quickly explained away by the fact that the “heavily dominated…tone of Anglo-Saxon Americanism(s)...included some exclusionary membership policies” which was “normative for many of its counterpart organizations in times gone by”. See ‘About Us’. Native Sons of the Golden West. http://www.nsgwca.com/about-us/ (accessed 2 November 2014).

For an analysis of indigeneity phrases, see Peter Geschiere and Stephen Jackson, “Autochthony and the Crisis of Citizenship: Democratization, Decentralization, and the Politics of Belonging”, in African Studies Review, 49, 2 (2006), 1-7. I would also like to thank Margaret Jacobs for drawing my attention to the loaded phrase of “native” when an early draft of this article was presented at the University of Manitoba’s Colonial Genocide and Indigenous North America workshop on 21 September 2012.


Conmy, “Lake County”, 8. A printing error in this publication causes many instances of the letter “n” being rendered as an “o”. For the ease of the reader, I have corrected these mistakes in all citations hereafter.

Conmy, “Lake County”, 8.

Conmy, “Lake County”, 8.

Conmy, “Lake County”, 8.

Conmy, “Lake County”, 8.

Conmy, “Lake County”, 8.

Conmy, “Lake County”, 8.

The term “slaughter”, similarly, only appears nine times, and five of those pertain to animals and meatpacking (e.g. “slaughterhouses”). Of the remaining four, one is a reference to Roman Emperor Nero, one is from a prayer by Pope Pius XIII, and the final two are about the “slaughter of truth” by governments fighting in a world war that is “resulting in the slaughter of millions of humankind”. “Newsgraphs” The Grizzly Bear, May 1943, Supplement 6.

Note the misspelling of Lyon’s name as “Lyons”, possibly the origin of the misspelling on the plaque. Conmy, “Lake County”, 8.

Conmy, “Lake County”, 8.


W.R. Livingston, “Let Us Not Bequeath A Canker We Should Have Removed—The Japs”, The Grizzly Bear, March, 1942, 3. A similar printing error exists in this article, where certain letters are incorrectly used in place of the lowercase letter “n”. Once more I have corrected these mistakes in all citations hereafter.


White, Earl Warren, 71.

As a high ranking member of the Native Sons, it is impossible to determine the extent Warren was shaped by the organization or shaped the organization himself.


AIM activist Russell Means most famously championed this symbolic act. In 1991 he was arrested and acquitted on First Amendment grounds for pouring red liquid on a Denver statue of Christopher Columbus. Similarly, he took part in the early Red Power movement, where, in 1970, red paint was poured over Plymouth Rock before activist occupied the Mayflower II.


Details of this movement can be found at: http://www.thepetitionsite.com/1/kelseyville-ca-the-town-named-after-a-notoriously-brutal-white-man-who-abused-and-murdered-the-pomo/. This particular online petition had until 9 March 2012 to get 10,000 signatures. It received 301 signatures.

Ari Kelman’s A Misplaced Massacre is a perfect example of recent scholarship surrounding the making of memory in the Colorado Territory. My article has called for this kind of approach to expand further west, making a case for California in spite of the dearth of official memorials.

On a theoretical level, by framing colonial and post-colonial memorials and monuments in this way, my argument lines up with historical and anthropological examinations of colonial archives, where memory and identity are interwoven in the ways colonial societies and metropoles seek to maintain narratives that showcase the way these societies see themselves, and want to be seen. As texts, these materials can be read both with the grain in order to unpack content, but also against the grain to flesh out context and authorial intentions. See Ann Laura Stoler, “Colonial Archives and the Arts of Governance”, Archival Science 2 (2002): 90; Joan M. Schwartz and Terry Cook, “Archives, Records, and Power: The Making of Modern Memory”, Archival Science 2 (2002): 1.
“To rob the world of a people”: Language Removal as an Instance of Colonial Genocide in the Fort Alexander Indian Residential School

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Abstract: This paper demonstrates, through Sagkeeng First Nation narratives, how the Fort Alexander Indian Residential School (FAIRS) is a micro-instance of genocide in the context of language. An understanding is offered from the perspective of a settler colonial academic, in consideration of decolonizing principles. Using relational theory, namely Actor-Network Theory, this paper discusses how FAIRS's practices were designed and operated to disrupt relations between children and their community by removing Anishinaabe language, and the ways children and their families negotiated and undermined these practices. Data was collected through critical narrative analysis and sociohistoric inquiry to identify and unpack the practice of language removal in F A I R S, as identified in Survivors' testimonies, interviews, stories, and memoir.

Keywords: colonialist, genocide, Fort Alexander Indian Residential School, Canada

Introduction

Increasingly, we are hearing the word genocide being applied to Indigenous experiences with residential schools and colonialism in Canada. In May 2015, the Truth and Reconciliation Commission of Canada (TRC) officially titled the Residential School System as cultural genocide. Phil Fontaine, a residential school Survivor and former National Chief of the Assembly of First Nations, has repeatedly called on the Federal Government to acknowledge that the Residential School System was an act of genocide. In 2013, the Canadian Museum of Human Rights rejected the use of the term “settler colonial genocide,” sparking debate in the media on the importance of the term. Colonial genocide has become a prominent topic within the academic field of genocide studies. Indigenous leaders, such as Justice Murray Sinclair of the TRC and Judy da Silva, Anishinaabe Elder and activist from Grassy Narrows First Nation, have also adopted the term. These discussions and debates are already happening. It is necessary for settlers to take responsibility for their role in the colonial process and participate and be accountable within these conversations.

Residential schools were established as part of Canada's assimilative policy to eliminate Aboriginal Peoples, including their government, rights, and Treaties. Initially, many communities were hopeful about the schools, presuming they would provide an opportunity for children to participate in European settler education and, in turn, settler employment. Indigenous parents could not have known this system, while operating under the guise of education, would attempt to replace Indigeneity with capitalist, religious, racialized and so-called civilized ideologies. These institutions carried out assimilation in a violent manner, severing relationships between children, their families, and cultural identities in brutal ways. Today, the removal of Indigenous language, culture, land, spirituality, ceremony, and familial ties through the residential school system, as well as broader policies aimed at eliminating Aboriginal Peoples, has been framed as genocide by many Indigenous communities.

This article offers an understanding of one micro-level instance of genocide in Canada from the perspective of a settler colonial academic. Specifically, my analysis draws upon local narratives to unpack the micro-level relational processes of colonial encroachment through language suppression in the Fort Alexander Indian Residential School (FAIRS) in Sagkeeng First Nation, Manitoba, 1940-1970. Relational theory allows one to explore how FAIRS was designed and operated to disrupt relational processes integral to creating and sustaining this Anishinaabe community. Despite these aims, Sagkeeng First Nation’s culture was not lost. Learning from local narratives allows the voices of resiliency and fortitude to be heard and acknowledged by settler communities. Stressing agency and resistance avoids essentialist idea about who people are. Importantly, the fact that resistance continues to be needed demonstrates that oppressive colonial practices continue to be perpetrated against Indigenous peoples in Canada.
This paper begins with a brief historical overview of colonial encroachment in Canada and Sagkeeng First Nation. This section also offers a look at some existing colonial genocide literature, focusing on several drawbacks of earlier approaches that rely on the United Nations Convention of the Prevention and Punishment of Genocide, and discussing how a relational approach to genocide can address these issues. The following section explains how Relational Theory and Actor Network Theory are used to trace the relational network within FAIRS. This section also outlines methodology, involving critical narrative analysis of local Anishinaabe sources and sociohistoric inquiry of broader colonial process that influence behaviour within FAIRS. The article touches on how practices in translation and reflexivity can be used to look at issues of power and privilege throughout the research process.

Following is an analysis of Anishinaabe language removal in FAIRS, unpacking relations between micro-level actors, mediated by teachings. This demonstrates the ways school authorities attempted to assimilate Anishinaabe children, and the children’s responses to these attempts, through language. The links between teachings, language, and culture are highlighted to demonstrate how nuns and priests forced European teaching approaches onto children while forbidding Anishinaabe ones. This was to sever children’s ties to their families, community, and cultural understanding. European teachings were used to shame children for speaking their language while instilling settler language and worldviews. Finally, specific relational moments through which nuns, priests, and other micro-level actors worked to remove Indigenous language are discussed. Inconsistencies in these attempts, as reported by the students and the different ways children negotiated relations with school staff, are considered. The article concludes that a relational perspective on genocide allows for a local understanding of FAIRS; when unpacked, the actions of FAIRS can be considered genocidal because they functioned to destroy communal relationality sustained through language. Also, the importance of highlighting Indigenous agency and resistance within the school is stressed.

Relational theory used in this article draws on Actor Network Theory - mainly a combination of Michel Callon\(^{11}\) and Bruno Latour\(^{12}\) - to stress the local-level agency of actors in the conflict. These prominent ANT theorists see society existing as ongoing processes of relationships.\(^{13}\) Identifying and analyzing networks of relations is useful for explaining social change, defining positions, and stabilizing actors, objects, and institutions in society so they can be explained.\(^{14}\) ANT offers a flexible, localized approach to understand group life. Data was collected through a critical narrative analysis and sociohistoric inquiry to address the central argument of this paper: to demonstrate through Sagkeeng First Nation narratives how the Fort Alexander Indian Residential School’s removal of Anishinaabe language is an instance of genocide at the micro level. To this end, the focus here is on language as presented in Anishinaabe Survivors’\(^{15}\) narratives through testimonies made at the Truth and Reconciliation Commission public event in Sagkeeng First Nation, Manitoba, on October 2\(^{nd}\) and 3\(^{rd}\), 2012. Fifteen testimonies were consulted and ten of these are cited here. The analysis also draws on four narratives published as interviews in Craig Charbonneau Fontaine’s edited book Speaking of Sagkeeng,\(^{16}\) through stories offered in Craig Charbonneau Fontaine’s book of his grandfather’s stories, Sagkeeng Legends Sagkeeng Aadizookaanag: John C. Courchene’s Stories;\(^{17}\) and through Theodore Fontaine’s memoir Broken Circle: The Dark Legacy of Indian Residential Schools.\(^{18}\) In total, fifteen Anishinaabe narratives from Sagkeeng First Nation – twelve men and three women – are drawn upon. Narratives specifically addressing issues surrounding language were focused on in this article.

This project is warranted by the need for settler communities to relate to specific community experiences with colonialism. In order to understand if these relations are being disrupted in a way that could destroy the group through genocide, it is important to delve into the complex relational dynamics that reproduce and maintain a group.\(^{19}\) Once settlers understand something about a group’s culturally-based relationality, we can discuss whether these relations are being threatened.

As I carried out my research, I remained reflexive about how colonial genocide can be studied by a settler colonial researcher working from within the academy. In particular, I considered Eurocentric assumptions within the Sociology and history of genocide, as well as my own European and colonial-based assumptions. My target audience is primarily the settler academic community. This discussion is important to have amongst both Indigenous and non-Indigenous
society to unsettle the founding white myth amongst settler communities of Canadian nation-building being a peaceful process.\textsuperscript{20} This work can compel a shift in thinking within settlers about nation-building of Canada by drawing on Anishinaabe conversations about their experiences and highlighting where resilient practices were instrumental. This approach complicates some of earlier approaches to genocide that tend to overlook victim’s agency in macro-level processes of colonialism.

**Literature Review and Historical Context**

Often, concepts of genocide are approached through a Eurocentric lens. Namely, drawing on the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (1948, hereafter UNGC) to discuss colonial genocide in Canada.\textsuperscript{21} According to the UNGC, the only groups that can be targeted by genocide are “national, ethnical, racial or religious groups.”\textsuperscript{22} This forces the complex dynamics of Indigenous group formation into European-derived “restrictive social categories.”\textsuperscript{23} These categories neglect of the unique positioning and experiences of Indigenous Peoples within settler colonialism. Rather than recognizing Indigenous groups as nations experiencing colonization, they are considered ethnic or racial groups suffering discrimination.\textsuperscript{24} These groupings have parallel characteristics to Benedict Anderson’s understanding of nations. They are Eurocentric imagined communities, existing to secure political and economic ends. People are defined by these categories and hold steadfast to their belonging, despite the “actual inequality and exploitation that may prevail in each [group].”\textsuperscript{25} They are imagined, according to Benedict Anderson, because they believe in their belonging, often without meeting the majority of others belonging to that group.\textsuperscript{26} The dimensions of Indigenous group boundary formation are fluid and complex, involving “a combination of self-definitions, externally imposed categories, historical precedent, and biological and cultural lines of descent.”\textsuperscript{27} Sidestepping these processes denies Indigenous communities their sovereignty to define their experiences with colonialism and genocide.\textsuperscript{28} As well, it traps Indigenous Peoples in ongoing debates about identity politics; the struggle becomes less about decolonization and more about recognition amongst other racial minorities.\textsuperscript{29}

Authors drawing on the UNGC tend to categorize various destructive colonial policies and practices under each condition in Article II of the UNGC. This article defines genocide as:

\begin{quote}
[A]ny of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such
\begin{itemize}
  \item[a)] Killing members of that group;
  \item[b)] Causing serious bodily or mental harm to members of that group;
  \item[c)] Deliberately inflicting on the group the conditions of life calculated to bring about its physical destruction in whole or in part;
  \item[d)] Imposing measures intended to prevent births within the group;
  \item[e)] Forcibly transferring children of the group to another group
\end{itemize}
\end{quote}

This approach impedes understanding of Indigenous experiences because it glosses over unique local experiences and creates a tendency for only physical elements of genocide to be considered. The effects of land dispossession, spiritual subjugation, and cultural and linguistic assimilation on relational interactions within Indigenous group life are overlooked. This definition does not leave room for Indigenous groups to define themselves according to their own worldviews, undermining self-determination.\textsuperscript{30} The current UNGC encourages a cut and paste approach of plugging examples of destructive colonial practices and policies into the categories of Article II.\textsuperscript{31} The logic is excessively selective and reductive.\textsuperscript{32} Indigenous methodologies and teachings involving ceremony and storytelling, which are central to moving forward Indigenous ways of knowing,\textsuperscript{33} are difficult to fit into a reductive framework. The 1947 draft of the Convention might be more applicable to residential school experiences because it contains cultural and linguistic elements of genocide, however still does not leave room for Indigenous worldviews that consider group life to include non-human actors such as territory, environment including plants and
animals, and spiritual practices. Customs and ceremonies are central for maintaining a cohesive and healthy community.

This cut and paste approach also overlooks the role residential schools played in broader colonial processes, eliminating “any sense of the historical trajectory of these developments, including their unintended consequences and elliptical dimensions.” It is important to recognize individual acts of genocide, such as the forcible transfer or children or causing deaths by disease and starvation. However, it is equally important to recognize how these acts fit into broader colonial processes of assimilation and destruction. Consideration of the obscured roles residential schools played in attempt to pacify communities to secure their land, resources, and labour for capitalist and colonial expansion is overlooked. The obscure roles the schools played in pacifying a population in order to access their land and resources are overlooked using this model. Totalizing categorization leads to an over-generalization of specific group experiences and denies local groups their right to self-determination.

This paper utilizes a relational approach to genocide. Recent sociological and historical approaches to genocide define it as the violent interruption or destruction of the relations that create and sustain a group; that is, the relations that allow the group to maintain a collective identity. Groups exist as ongoing culturally-specific processes of relations fundamental to building and preserving group life. These processes require protecting – an ongoing need since, as Woolford points out, “Group life is not simply about the lives of the group members. Group life is about the continuous creation of groups.” Group relations braid together macro-, meso-, and micro-levels of the social world, and cannot be understood as separate from broader historical processes that span across space and time. Societies exist as “tangled network[s] of relationships,” which includes processes of “interactions, interdependencies, balances of power, all in a constant state of flux.” These are essential for sustaining group life; the destruction of such processes can be detrimental to the collective’s continued existence.

A relational approach’s flexibility allows the inclusion of local Anishinaabe knowledges based on their unique experiences with group destruction through the residential school system. The relations can be followed as they are described in the narratives of community members. As a result, generalizations made about Indigenous People’s experiences with colonialism - a colonial practice which homogenizes diverse groups and cultures into one that is more easily controlled and dominated - can be challenged. This theory can be used to highlight both human and non-human actors, as identified in Anishinaabe narratives. This approach also recognizes that residential schools are instances of genocide amongst a broader colonial network that spans time and space, and links individuals, institutions and social structures. Unpacking the various ways that a residential school destroyed a particular group acknowledges that group’s unique suffering.

Language carries unique culture and tradition; removing it undermines a group’s ability to articulate and pass on culturally-specific worldviews and ways of life. Raphael Lemkin, who coined the term genocide, argued genocide is “a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups,” including language. Removing language was a genocidal practice meant to disrupt the relational processes that create and maintain communities. Language is also targeted by colonizers in residential schools to prevent cohesion and resistance to colonial encroachment.

Genocide is the second leading factor in language removal in Canada, according to the *Cambridge Handbook of Endangered Languages*. Many Indigenous cultures, languages, and peoples in Canada have been victimized by genocide by the suppression of language through the residential school system. In fact, according to UNESCO, Cree, Inuktitut, and Ojibway are the last lived languages, meaning they are passed on intergenerationally through the home. However, they are not far from becoming learned languages, which are no longer spoken at home, and have to be sought out and learned from classes or school.

Mi’kmaq, an Indigenous language spoken on the East Coast of Canada, is considered vulnerable - a legacy of residential schools. The language is primarily learned, no longer passed along in the home. Georgina Doucette of Eskasoni, a Mi’kmaq residential school survivor, explained how language removal alienated her from her family:
Coming back into my community … I felt as if I didn’t belong. Even my grandmother said of my brother and I when we went to stay with her, she told her friends, you know these children who come out of that school, they’re not right in the head. Those were words from my own grandmother. We no longer spoke the language, we no longer had that connection with family because we separated for so long. We didn’t belong in the White world, and we didn’t belong in our community.

In Quebec’s Mohawk communities, the language is also disappearing as a result of residential schools and colonialism. Parents can send their kids to Mohawk immersion schools; however, they usually chose to have their children educated in French or English. Mohawk is considered Definitely Endangered, according to UNESCO. The school denied children of learning Anishinaabe knowledge, beliefs, and teachings through oral history and story-telling.

Residential School History in Canada: A Brief Historical Background

Indigenous and non-Indigenous contact began in what is now known as Canada with missionaries in the eleventh century. The fur trade began informally in the sixteenth century. After the seventeenth century, Europeans began developing military partnerships. The Royal Proclamation, implemented in 1763 by the British Crown, regulated settlement so land would remain undisturbed for hunting space. Shifting to agricultural and resource development throughout the nineteenth century increased Canadian settlers’ dependence on natural resources for economic prosperity.

One solution to securing land was land surrender treaties, implemented in several parts of Canada by 1870. The Government initially tried to buy land in exchange for one-time cash payments, but as settlement grew, this became too costly. Instead, smaller payments were made in perpetuity. Governments “favour[ed] narrow, literal interpretations of the obligations outlined in the treaties.” First Nations communities described them as living documents, meant to secure First Nations’ traditional territories, self-government, and self-determination, rather than simply being a land purchase.

The reserve system, introduced in the late-nineteenth century, parcelled Indigenous communities onto small pockets of land, giving Indian Agents control over First Nations Peoples’ land and mobility. Much of the remaining land was expropriated by capitalist and industrial expansion and settlement. Now, the Federal Government, along with churches and corporations, needed to address the issue of First Nation Peoples’ lifestyles; traditional skills were useful within the fur trade, but not in capitalist industries and agriculture.

Mission schools were introduced in Eastern Canada in the 1840’s, as an “age-specific resocialization strategy.” Industrial schools and the residential school system were implemented in 1879, following Nicholas Flood Davin’s investigation of mission schools in the United States. Initially, communities, as part of the treaties, requested having schools built on their reserves to give their children European education and, presumably, European success. Instead, they became a gross violation of treaty agreements. As Judy da Silva explains, within these schools…

... people did not receive the values of the Anishinaabek. Instead, they inherited the feeling of loss and doom carried by our parents and grandparents due to the genocidal tactics they have had to live through. The genocidal tactics I mean are the direct attack on the strength of the Anishinaabek: our children. The major weapon the government used was the residential school system.

The government, along with Christian missionaries, used the schools to push capitalist ideals of productivity and consumerism, and religious conversion through education. Recruitment was low in the 1880’s and 1890’s, causing the government and churches to encourage enrolment through coercive practices and policies. The Indian Act (1876)—a devastating piece of Federal colonial legislation—defined and categorized who was and was not an Indian, and granted or denied rights. In the 1920’s and 1930’s, the Indian Act was amended, making it mandatory for all First Nations Children between ages of seven to sixteen to attend residential schools. In the 1930’s, almost 75 percent of Indigenous
Children in Canada between the ages of seven and fifteen attended, including First Nations, Metis, and Inuit. The government systematically removed First Nations children from their communities and placed them almost year-round in a setting allowing minimal to no contact with their previous lifestyles and families. Destruction happened on many levels – cultural, physical, emotional, and sexual. The degrees of abuse and application of assimilative policy varied between schools and communities, as did the number of children attending them. Communities report varying degrees of language and cultural removal. Some remember positive aspects of the schools, although almost everyone experienced an attack on their traditional identities through attempted assimilation.

Colonial History and the Residential School System: Sagkeeng First Nation
This article focuses on the Fort Alexander Indian Residential School in Sagkeeng First Nation, populated by an Anishinaabe community. Sagkeeng First Nation reserve was created in 1876. The territory lies 90 miles northeast of Winnipeg, Manitoba, on Treaty 1 territory. This Treaty was signed in 1871, at Fort Garry, by Chief KaKaKepenaise or William Mann I—the first Chief of the Fort Alexander Band. The treaty agreement was made “with crooks … [whereby land was] stolen, resources taken, environment destroyed, [without any] compensation.” Anishinaabe ancestors believed they were securing land for future generations. Instead, the government assumed a Eurocentric, static perspective on the Treaty, using it as means to secure Indigenous land. For example, Treaty 1 promised 160 acres to each family in Sagkeeng, which was never provided.

FAIRS was established as a part of the Treaty 1 Agreement. The school opened in 1905 and was run by the Oblates of Mary Immaculate and the Roman Catholic Church. The first Catholic Church opened in 1880. Theodore Fontaine, FAIRS Survivor and former Chief of Sagkeeng, says the Church did not have control over the community right away; families still raised and provided for their children. The church’s control tightened drastically over the next twenty years. Some Survivors recall their parents wanting an education for them, which was their reason for sending their children to school. This was also the reason for signing the Treaty and wanting a school implemented in the first place. The agreement was signed, giving the state control over the education of Indigenous Peoples upon Treaty 1 territory.

Students did not receive a useful European, capitalist-based education, or the opportunity to flourish with their land-based ways of life. Instead, children experienced an assault on their culture and community life through violent processes of assimilation. They were denied the right to speak their own language and confined inside the school and away from their families. Students were abused for demonstrating any connection to their Anishinaabe ways of knowing. Unlike some of the larger industrial residential schools located far away, FAIRS was located directly on the reserve. This made the school’s task of alienating children from their community more challenging. To sever communal ties, FAIRS had to operate on emotional, symbolic, and cultural levels, since the school did not have the benefit of physical distance for interrupting relationships for those whose families lived in Sagkeeng.

Parents could not have foreseen the residential school system would be the outcome of the Treaty 1 agreement. As in most other schools, Sagkeeng children experienced an assault on their culture and community life through violent processes of assimilation.

Theory and Methodology
Relational Theory and Actor Network Theory
This project utilizes Relational Theory and Actor Network Theory (ANT) to carry out a narrative analysis and sociohistoric inquiry to map out networks of relations within FAIRS. Recent sociological approaches to genocide adopt a relational approach, defining it as the violent interruption or destruction of the relations that create and sustain a group; that is, the relations allowing the group to maintain a collective identity. Societies exist as “tangled network[s] of relationships,” which includes processes of “interactions, interdependencies, balances of power, all in a constant state of flux.” These are essential for sustaining group life, and the destruction of such processes can be detrimental to the collective’s continued existence.

Survivors speak to the importance of language in creating and sustaining culture and group
A FAIRS Survivor and Elder describes language as being the greatest connection to her culture she ever lost. She explains with “knowledge comes with language... Knowledge of culture and stories... pass[es] along knowledge of past generations and ‘reconcile with the next generation’.”

Chris, another Survivor, explains that, in the face of losing many cultural ties, preserving his language was the only way he could conceive of staying connected with his history: “I didn’t want to forget my language. Through all of that, through all those hardships, I never wanted to forget my language. At least I could start somewhere if I had to start over. I always said to myself, I’ve got to start somewhere. I don’t know where, I don’t know how.”

Theodore Fontaine also speaks to the importance of language, stating Anishinaabe languages unique to Canada “are the main means by which culture, identity and spirituality are articulated, shared and passed on to successive generations.” Language, and the meanings it carries, is a source of strength and connectedness for cultural groups.

Drawing upon Actor-Network theory, a partial mapping of the network of relations within FAIRS is offered. ANT uses a networked approach to understand societies as ongoing processes of relationships. Identifying and analyzing networks of relations is useful for explaining social change, defining positions, and stabilizing actors, objects, and institutions in society so they can be explained. ANT stresses individual agency as the main factor for understanding social change. According to Buzelin, “... the motto is follow the actors—which means observe the network as it builds, consolidates and transforms itself through the production process.”

ANT’s focus on the local is useful for avoiding essentialist ideas about who people are or the idea that any one person or group is at all times oppressive or oppressed. Instead, the emphasis is on how individuals are situated within shifting positions of power and privilege depending on time and context. Agency and resistance are important points of focus in decolonizing research. Presenting Indigenous groups as passive victims is a subjugating process that subdues rather than empowers. ANT can be inclusive of local Indigenous knowledges regarding unique experiences with group destruction. This article concentrates on micro-interactions, grounding the research in local narratives, and then tracing networked relations outwards to also recognize the structural aspects of colonial practices within the school.

This article unpacks relations between micro-level actors, mediated by teachings, to demonstrate the ways that school authorities attempted to assimilate Anishinaabe children, and the children’s responses to these attempts, through language. The links between teachings, language, and culture are discussed to demonstrate how nuns and priests forced European teaching approaches onto children while forbidding Anishinaabe ones. This was to sever children’s ties to their families, community, and cultural understanding. Specific relational moments through which nuns, priests, and other micro-level actants worked to remove Indigenous language are highlighted. Also, inconsistencies in these attempts are highlighted, as reported by the students, focusing on different ways children responded to the school staff. Not all Survivors lost their language, but many did.

Several people identify language loss as the greatest source of disconnection to their culture. And those who did not lose their language speak to how lucky they feel they are.

Critical Narrative Analysis and Sociohistoric Inquiry
A combination of critical narrative analysis and sociohistorical inquiry is used to identify micro-level actors and the semiotic influences that mediate their interactions. Semiotic influences are concepts that mediate and influence actors. Teaching and learning from narratives stems from Anishinaabe practices of storytelling and oral history. Data is collected from various resources containing first-hand accounts from Anishinaabe Survivors of FAIRS. These include the Truth and Reconciliation Commission event in Sagkeeng, interviews with Anishinaabe Survivors from Sagkeeng compiled by Craig CHARBONNEAU Fontaine in the book Speaking of Sagkeeng, John C. Courchene’s stories published by Craig CHARBONNEAU Fontaine in Sagkeeng Legends, Theodore Fontaine’s memoir Broken Circle: The Dark Legacy of the Indian Residential School System, and public statements made by Phil Fontaine about his experiences at the FAIRS.

Critical narrative analysis is used to identify and organize themes, patterns, inconsistencies, and contradictions in the testimony and literature. Critical personal narratives “disrupt and disturb discourse by exposing complexities and contradictions that exist under official history.” Narrative
analysis is organized into the theme of language. Following, actors that interacted through FAIRS within the context of language are pinpointed, as well as the semiotic mediators that influenced their relations. The different ways children and other community actors questioned, negotiated, undermined, and resisted FAIRS are discussed.

Next, a shift towards a broader focus involves a sociohistoric inquiry into meso- and macro-structures. Sociohistorical data collection focuses on information directly linked to local group destruction expressed in Sagkeeng narratives. Historical documents, including the Davin report, Treaty 1, and secondary sources on residential schools are consulted. The sociohistoric data is used to connect social structures to the behaviour of actors in FAIRS to consider how national goals of settlement, governance, and nation-building influenced interpersonal relations within the school.

Power, Privilege, and Sociologists: Translation and Reflexivity
Michel Callon raises issues surrounding sociologists’ power and privilege when they conduct research. He uses the concept of translation to discuss how sociologists create information about a group toward which they are outsiders, defining it as “researchers [imposing] themselves and their definition of the situation on others.” This concept means translating understanding of a phenomenon into one’s own worldview. This process is especially problematic in situations where the researcher’s social position historically has power over the group being studied. Translating experiences into the researcher’s worldview is a form of controlling others because of the hegemony academics traditionally have over knowledge. Historically in Canada, academia was predominantly only accessible and relevant to European settler citizens. Formal Western research has been a colonial process. Linda Tuhiwai Smith explains Western researchers and intellectuals, as they settled and named territories, presumed “to know all that is possible to know” of Indigenous groups from brief encounters. Europeans created a system of knowledge which defined Indigenous peoples as an inferior race to justify the theft and exploitation of Indigenous peoples and their land. Canadian history has been written as fact by European settlers, giving authority to the perspective of the occupiers over the occupied.

Remaining reflexive of this can help begin to critically think about translation and how power imbalances can be acknowledged and addressed. Reflexivity can be seen as awareness of one’s standpoint in society and how it shapes the way they perceive social phenomenon. Being reflexive considers different worldviews to try to understand the position of others in society and how their position might make them view the same social phenomenon differently.

By identifying this work as a translation of the experiences within FAIRS, the presumption to speak for or represent Indigenous communities is avoided. From the author’s worldview, the experiences of colonizers and Sagkeeng community members within FAIRS were translated to be defined within the context of the sociology of genocide. This article is not a static definition or explanation of group phenomena. Translation is an ongoing process because groups exist through ongoing processes of negotiations. Reading and translating Anishinaabe narratives into academic writing is not a practice existing in a bubble, but rather within the colonial reality we live in. Issues of power and privilege come into play and need to be addressed throughout the research process. By remaining reflexive throughout the research process, acknowledging the practice of translation in this research, and utilizing particular theoretical and methodological frameworks, this research attempts to align with decolonizing epistemologies.

Analyzing the Removal of Anishinaabe Language in FAIRS
Understanding the Interconnectedness of Language and Culture
Removing language destroys an important bond with one’s culture. It makes it difficult to continue to relate to one’s community in culturally-specific ways and prevents people from understanding their universe through culturally-specific linguistic tools. Mary Lou Fox, an Ojibway Elder, explains: “The centre of our being is within the element of language, and it’s the dimension in which our existence is most fully accomplished.” Language as the way people understand the world and themselves in culturally-specific ways. Using the colonizer’s language immediately acknowledges the present reality of colonial dominance. Speaking one’s Indigenous language exercises power through articulation of an Indigenous present. Culture and language are inextricably linked; one
cannot exist without the other and the destruction of one leads to the destruction of the other. By teaching in English and prohibiting Anishinaabe language, colonizers within FAIRS denied children access to their culture.

Leanne Simpson, a storyteller and activist of Michi Saagiig Nishnaabeg ancestry, discusses Indigenous languages, saying they “carry rich meanings, theory and philosophies within their structures.” She describes how Indigenous languages “house… teachings and bring the practice of those teachings to life… The process of speaking Nishnaabemowin, then, inherently communicates certain values and philosophies that are important to Nishnaabeg being.” Storytelling is an empowering teaching method; removing it from the children’s lives also removes their ties to their families and history. Maria Campbell talks about growing up with lots of stories. She remembers, “Some were nonsensical, others were riddles. There are ahtyokaywina, the sacred stories, and others that were tahp acimowina, the family histories.” Priscilla Settee adds that, “In Indigenous communities, women are the first educators of children, and they maintain this influential role throughout the child’s life. Women believe education should reflect the needs of community, preserving culture and helping young people adapt to the challenges in their lives.”

In Anishinaabe communities, oral teachings in Anishinaabe language are traditional forms of education that reproduce culturally-based knowledge and worldviews. Understanding where one fits into the world is empowering; the residential school attempted to break down this empowerment. Vicki Wilson teaches her children about traditional ways of life to empower them. She says, “You have to make children proud of who they are. They do [traditional ceremonies and dances] now so they’re proud of themselves, so it doesn’t hurt them when somebody calls them names and stuff.” Simpson also explains you need language to pray, demonstrating all cultural practices tied together by language – spirituality, teachings, theory, philosophy, history, and cultural meaning. Taking that connection away isolates the individual, fractures the group’s cohesiveness, and destroys many cultural ties linked together through language.

Micro-Level Relations Surrounding Language within FAIRS

Language is an important field of contested power between Anishinaabe Peoples and colonizers, which manifested within FAIRS. Language loss is one of the greatest threats in terms of connection to culture and history. More broadly, the language Anishinaabe people speak in Canada is influenced by law, economy, religion, politics, racism, white supremacism, and Eurocentric ideologies. Within the residential schools, at the macro-level, curricula, assimilative techniques, Christianity, and the Eurocentric ideologies influenced the school staff who forced Anishinaabe Children to speak English or French. At the micro-level, struggles over language occurred between individuals within the school.

Considering European and Anishinaabe Teachings

There is no strict binary between Anishinaabe and settler teachings, although there are disparities between the two. Intergenerational experiences with residential school blurred perspectives, often creating a hybridity of worldviews. For instance, by the 1940’s, some families in Sagkeeng spoke English and incorporated European ways of life into their own, such as seeking employment at the local paper mill. Some Survivors say their parents believed British education was the only way to be successful in their colonial reality. Many felt, in order to survive, language, livelihoods, and lifestyles had to adapt. Some parents protected their children from abuse by not letting them speak their own language. Priests had a strong community presence in Sagkeeng, instilling Catholic guilt to compel European lifestyles in Anishinaabe homes.

Some historical Western ways of knowing and teaching within FAIRS clashed with Anishinaabe ones. Within this school, English language was used to instill Catholic morality and Eurocentric ideals. English teachings in the school were inconsistent with how many Anishinaabe children understood the world. White education was not very relevant for Anishinaabe Peoples; students in the school were still forced to participate in it. When Indigenous education began in Canada, the government and church officials’ mission was to educate the young to live in the so-called civilized world. Survivors speak to how confusing and inappropriate English teachings were.
Fontaine explains his “education in English was long and tedious” because it did not resonate with his worldviews.\textsuperscript{130} Teaching styles vary based on cultural values, history, experiences, and understandings. Within FAIRS, the English language did not contain the same cultural relational understandings and values Anishinaabemowin does. For example, many European scientific traditions value universal truths, whereas “Indigenous epistemologies are narratively anchored in natural communities ... characterised by complex kinship systems of relationships among people, animals, the earth, the cosmos, etc. from which knowing originates.”\textsuperscript{131} In many Indigenous communities, oral teachings are the traditional way to pass knowledge between generations. Children are taught culturally—specific morals and values through stories. Jo-Ann Archibald\textsuperscript{132} points out “the word ‘teachings’ is commonly used among Indigenous Peoples to describe Indigenous knowledge that is passed on through oral tradition.”\textsuperscript{133} She defines teachings as “the cultural values, beliefs, lessons and understandings that are passed from generation to generation.”\textsuperscript{134} Marcel Courchene from the Sagkeeng community says residential school teaching methods were inconsistent with Anishinaabe teachings. He explains teachings in the residential school were very direct and directive; the teachers would tell you what you needed to know rather than allowing you to figure it out for yourself. Oral teachings are, in contrast, indirect and often occur through storytelling.\textsuperscript{135} He explains the value he received from the latter:

Some stories they would mix it up so you would come out with the answer—you. They don’t tell you, it’s in there, it’s in the story. That’s how they taught you things. You had to figure them out, like life. You had to figure out every step. What step you were going to make. That’s what they did but that’s gone.\textsuperscript{136}

The direct style of Western teachings did not provide such critical thinking skills.

Indigenous teachings of non-industrialized Indigenous groups often contain a holistic worldview,\textsuperscript{137} whereas European teachings often express a worldview that is more rigid, binary,\textsuperscript{138} and boundaried.\textsuperscript{139} Within FAIRS, harsh Catholic and Eurocentric lessons were instilled. Survivors spoke of communal values of holism,\textsuperscript{140} peace, harmony, respect, and sharing.\textsuperscript{141} Anishinaabe Elders teach “respect for others, respect for self, respect for our mother, the earth” as central to Anishinaabe belief systems.\textsuperscript{142} These values were not encouraged by the staff in FAIRS.

English teachings within the school tended to promote individualism, exclusion, rigidity,\textsuperscript{143} competitiveness, “self-reliance and industry,”\textsuperscript{144} as well as “neatness, industry, thrift, and self-maintenance”.\textsuperscript{145} These characteristics “[undermine] what is at the heart of the concept of wakohtowin, the betterment of all our relations.”\textsuperscript{146} These teachings undermine notions of cohesiveness and instead value an individualistic and parcelled view of humans and society. The school instilled “a deep sense of ... one’s unworthiness, causing hate, despair, skepticism and cynicism.”\textsuperscript{147} Fontaine explains the individualism and competitiveness of the Western teachings he received in the school taught students to be “deceitful and untrusting,” as well as imposed loneliness and sadness upon the children.\textsuperscript{148} Oral storytelling, on the other hand, strengthens intergenerational communal bonds and cultural values of sharing. Cheryl, a Survivor Elder, implores, “[Children] have to learn by the stories. The Elders have to speak to the young people in Ojibwə so they will learn how to speak their language.”\textsuperscript{149}

**Specific Moments and Encounters through which Destructive Colonizing Relations were Acted Out through Language**

Tracing relational encounters mediated by teachings within the school shows how the colonial actors worked to sever ties between children, their families, and their community. Relations between micro-level actors, mediated by teachings, are unpacked to demonstrate the ways that school authorities attempted to assimilate Anishinaabe children, and the children’s responses to these attempts, through language. The actors considered in this chapter include children, their families, peers, nuns, priests, and children’s names. Other technologies such as the school’s registration form, application form, and ledger also forced children and their families to relate to each other and school officials in English, but are not discussed in this article.

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The colonial staff (mainly nuns and priests) imposed the English language on Anishinaabe children via shaming and abuse, preventing them from speaking their own language. Children responded in various ways. Some found the teachings meaningless to them and their worldviews, while others describe feeling shame and fear about speaking Anishinaabe. Some children communicated to their friends and siblings in secret and maintained their language within their own minds. The following sections discuss the role of nuns and priests in language removal and the effects this had on relations between children, their families, their community, their friends and family members who also attended the school, and concluding with a look at the significance of FAIRS removing children’s Anishinaabe names and replacing them with English ones.

The Nuns’ and Priests’ Roles in Removing Anishinaabe Language from Sagkeeng Children

Nuns and priests interacted with the children on a daily basis within FAIRS. When children entered the schools, they often only spoke Anishinaabe. Nuns were at the forefront of forcing them to speak English. Cheryl remembers wanting to speak her own language but “was told to speak English.” Nuns abused children physically, by such methods as whipping with a strap, and emotionally, through public shaming and humiliation, conditioning them to be too afraid to speak their own language. Theodore Fontaine once accidently spoke Ojibway and was locked in a dark closet under the stairs. This traumatic experience prevented him from sleeping without a light for years. Shirley also recalls being abused for speaking her language and how deeply it affected her: “But being hit for your language is a big thing, because that’s who you are. That’s part of you”.

Nuns washed children’s mouths with soap (as noted by Brian), strapped them, hit them with rulers, locked children in closets and removed the light bulbs, made them write lines, and instigated hostility between children by showing favouritism to those who tattled on their peers for speaking Anishinaabe. These teaching tactics prevented children from speaking Anishinaabe.

There were some nuns who the children did not consider to be wicked; some tried to be supportive towards the children. Fontaine remembers receiving praise from a nun for a note he wrote to his mother in a Mother’s Day card. He described this as a “rare moment of praise” he still remembers today. But, Fontaine reminds his reader that not all nuns were “kind and loving.” Tina also notes there was a mix of personality types: “I remember those nuns, there was some kind ones and then there was some mean ones.” Even the kind nuns, however, insisted on teachings and speaking in English.

Priests administered violent teachings as well. Students were sent to the principal’s office – normally a priest – when the nuns felt they had especially misbehaved. Some Survivors recall a certain priest who actually spoke Anishinaabe and became a friend to some of the students. Edward Charles Bruyere remembers the priest speaking Anishinaabe “really helped [them] out” and the students were “really amazed at him because he was able to speak [their] language.” Charles Courchene remembers when this particular priest started working there, “things began to change, we used to go out more. He used to take us out to other places, St. Boniface, to play hockey. He also used to take us to small towns down south…. That was a big thing for us.” But, Courchene notes, while the priest did not abuse the children himself, he still knew about the abuse by other priests and did nothing to stop them. This priest was an exception and Theodore Fontaine recalls most priests scaring children, which had negative long-lasting results.

Teaching through fear did not make the children into students who respected priests, nuns, the Catholic religion, and European cultures. Theodore Fontaine remembers a priest strapping him and making him write lines while students waited, missed playtime, and almost missed dinner: “The incident didn’t teach me respect, but it did make me angry at and distrustful of the priest.” The priests’ intimidating tactics caused children to feel shame about their Anishinaabe language into adulthood as a result.

The Effects of Removing Language on the Relations between Sagkeeng children and their Families

Language is an important part of family cohesiveness. Parents and grandparents taught children about their family, history, and culture through their language. These relations bonded families together. Kevin describes:
I was born March 12, 1945, in Pine Falls and I grew [sic] across the river – across the river from the residential school and from 1 to 6 years of my life is very important to me because this is a time when my grandparents were alive, my mum and dad were together, and I grew up in an environment where we spoke the language Anishinaabe-mowin.¹⁶⁶

Dan, an intergenerational Survivor, speaks to his mother’s memory of having a strong community and language before residential school: “She remembers growing up, before being taken to residential school, how strong the community was together. She told me how everybody had a role. And that the language was strong, the love in the community and amongst the people was strong.”¹⁶⁷ Theodore Fontaine only spoke Anishinaabe at home when he was a young boy.¹⁶⁸ Chief Albert Fontaine remembers community bonding activities, such as Treaty Days, where merchants came to trade with the community and everyone would camp in tents for a few days. These days involved celebration and dance, and importantly, opportunities for children to learn communal morals and values from the Elders. Chief Albert Fontaine explains:

There, the elders would speak to and instruct the young people. They used to tell you what’s right and what’s wrong. They used to try, direct and influence you on how you should live... not to hurt or harm each other, to treat your fellow humans. That is how they used to preach while the treaty days were in progress... some times for a whole week (Fontaine 2006: 31).¹⁶⁹

Theodore Fontaine also remembers Treaty Days and the important knowledge he gained from the stories told:

Usually older folks—grandparents, mothers, fathers, friends and other relatives—sat outside the tents, smoking, drinking tea and visiting. Many times they’d call for us young ones to come and sit with them beside the fire, and they’d tell us family stories about ghosts, devils and such mischief-makers in the Ojibway culture as Weendigo and Weeskayjak.... We’d listen enraptured and awestruck as the elders imparted their wisdom.²⁰

Stories like this are an important way to pass along culturally-specific values and beliefs.

While some Survivors remember the bonding experience of speaking Anishinaabe at home, others have less fond memories of life before residential school. As a result of intergenerational effects of the residential school, not everyone experienced a harmonious home-life filled with traditional teachings. Many parents had lost their language as a result of the residential school and were disconnected from their teachings and history. They were raised within an abusive environment that taught them their language and ways of life were worthless at best and evil at worst. Parents would pass this way of thinking to their children. John recalls his childhood: “Why is that? Why do we have to go through that [abuse at school and home]? Is it because of our skin colour? Of our language? When we talk about love, my mom and dad didn’t show me love cause my mom was raised by the nuns and my dad was raised by United Church minister.”²¹ The intergenerational effects of language removal through the school was devastating on many families.

The Effects of Language Removal and Preventing Communication on the Relations between Students within the Residential School

Students tried to communicate with each other within the school. Being caught speaking their language often meant getting strapped. To maintain ties with their siblings and friends within the school, students would sneak looks and waves at each other, often not daring to speak.²² Boys and girls were kept separated and shamed when caught communicating with each other. Grant, a Survivor, testified in the Truth and Reconciliation Commission:

Being one of the youngest and smallest of the boys, we were seated near the entrance. In the centre of the cafeteria, our backs to the youngest girls, sometimes we would get a strap if we boys were caught talking to the girls behind us. And I got my share of straps right in front of all to see.²³
Edward Charles Buyere also recalls:

Nuns would strap children for talking to their siblings. If a boy was caught talking to his sister, the nun would make him go into the girl’s playroom or sleep in the girl’s dorm room. Made him wear a dress. ‘that’s how much you want to be with the girls’ they said. It wasn’t that at all, all I wanted to do was talk to my sisters and see how they were doing and getting along. I used to tell them that I was getting hit and I didn’t know what for.¹⁷₄

Bullying was meant to shame children for wanting to communicate with a sibling.

Despite the efforts of the nuns, students still stole looks and glances between each other, found hiding spots to meet, catch up, gossip, and maintain connections with each other. Students found ways to resist the school’s attempts to sever ties between the children, finding “hiding places where food could be stored, conversations could go unheard, plans could be made, love could blossom, or tears be shed.”¹⁷⁵ When visiting Sagkeeng today, it is clear students found ways to maintain their language despite the priests’ and nuns’ efforts to eradicate it. The Anishinaabe language and cultural is strong amongst numerous Survivors of FAIRS.¹⁷⁶

**The Disruption of Familial Ties through the Replacement of Anishinaabe Names with English Ones**

Anishinaabe names were an important connection between children to their families. After a child is born, one of the most important ceremonies that take place is the naming ceremony. Elders give children their spirit names, which are “considered both sacred and significant.”¹⁷⁷ Some names carry spiritual power “transmitted through dreams or visions.”¹⁷⁸ According to the Ojibway in Berens River, naming a baby is crucial for “ensuring him or her a lifetime of health, wellness, success, and longevity.”¹⁷⁹ Nehiyawak (Cree) also believe spirit names are a form of protection for the child. If children grew ill, some groups would ask Elders to give the child a second name for more protection. The residential school removed the protective quality of children’s names by replacing them with European ones. This also severed the bond created between namers and namees (Elders and infants).

Children’s Anishinaabe names were replaced with European English ones upon entering the school, as a way to remove their identities.¹⁸⁰ In some cases, children never received their Anishinaabe name before entering the school because their families lost the practice through FAIRS intervention in previous generations. Kevin remembers being baptised upon entering the school: “[I] was baptised and given a Christian name. I was 40 years old when I came to my traditional name—how I identify myself.”¹⁸¹ Anishinaabe names were also an important tie to land and their removal disrupted their understanding of their place in their community. Chief Lawrence Morrisseau explains how:

> All Indian people had their Indian name and all were related to some kind of animal... or something like that where the land that they came out of. I could never understand that because this is the reason we got taken into residential school and we were not allowed to learn about Indian culture and it was taken away from us... see. That doesn’t coincide with the Christian religion.

Kevin recalls the day they finally received their traditional name and how useful this was in connecting with their spirituality and healing from residential school:

> When I started into the traditional thing I got my name and was told, ‘Come spring, go out to an open field, take your tobacco, when the Thunderbeings come.’ Because I was called Rain Thunderbird... This was a realization for me that I was now praying for the first time in my life. I understood what prayer was. It was not a recital, it came from the heart and this would aid me in my journey.”¹⁸²

Several Survivors reported leaving the school very disconnected from each other and isolated from the world. Sam reflects on a conversation he had with several other Survivors, many years after leaving the school:
We all asked ourselves one question: Who are we? What are we? When we came out of the residential school we were all quiet. We were all probably thinking. At the end we all agreed that we all came out of there as a mechanical robot. A mechanical robot ... Something is missing ... The emotions, the feelings. And those were all things that was taken from us, from me, and from the ones I am talking about. What is love? We all have to relearn.¹³³

Brian discusses relearning his culture while in Stony Mountain Correctional Facility:

My Anishinaabe name is ... Sun and Bear from a Distance. My clan name is ... The Thunderbird. I got that name when I was working in Stony Mountain. A very special dear friend ... invited me to his place so I could get my colours and my Indian name. An Elder from down south gave me that name – the Thunderbird Clan.¹³⁴

Replacing Anishinaabe names with English ones was a devastating practice meant to erase children's cultural ties.

Conclusion
The residential school broke down a child’s connection to his or her culture by removing their ability to communicate with their families and community. Nuns and priests used fear and shame to prevent children from speaking their language. Many aspects of Eurocentric education, namely using English language and direct teachings styles clashed with the oral story-telling approaches. Replacing Anishinaabe names with English ones was also used to remove children’s identity. Despite these efforts, children found ways to communicate to each other, maintain their language, and sustain relationships throughout and beyond their school experience. Language embodies a group’s worldviews. Language enables a group to define themselves from their own ways of knowing – a great source of power through self-determination. Removing language from Anishinaabe Children was meant to make them submissive. Language was a means of “spiritual subjugation”¹³⁵—an important factor in alienating the child from the family.

From this project, the ways FAIRS worked to disrupt communal ties in Sagkeeng has been explored. One of the most devastating practices was forcibly removing the Anishinaabe language from children. Language connects individuals to their history and worldviews. Taking Anishinaabe language away isolated children and, throughout generations, fractured families. The school imposed English-language teachings while simultaneously removing Anishinaabe ones. The school denied children the opportunity to learn Anishinaabe knowledge, beliefs, and teachings through oral history and story-telling. Yet children still found ways to communicate and connect. Anishinaabe language survived through the moments children seized to sneak conversations with their relatives and friends. Language was also preserved in the minds of Survivors who found solace by reverting to memories of their home life.

To root my analysis in voices of Sagkeeng community members, the focus was at the micro level. ANT's focus on the local is useful for avoiding essentialist ideas about “who people are” or the idea that any one person or group is at all times oppressive or oppressed. Instead, the emphasis is on how individuals are situated within shifting positions of power and privilege depending on time and context.¹³⁶ Agency and resistance are important points of focus. As Leanne Simpson points out:

To me, this colonial shame felt like not only a tremendous burden to carry, but also felt displaced. We are not shameful people. We have done nothing wrong. I began to realize that shame can only take hold when we are disconnected from the stories of resistance within our own families and communities. I placed that shame as an insidious and infectious part of the cognitive imperialism that was aimed at convincing us that we were a weak and defeated people, and that there was no point in resisting or resurging.¹³⁷

Leanne Simpson demonstrates the importance of always talking about resistance when discussing colonialism. Presenting Indigenous groups as passive victims is a subjugating process that subdues rather than empowers.

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The actions of the residential school could be considered genocidal because they functioned to destroy communal relationality sustained through language. Reading Sagkeeng narratives from a relational genocide framework demonstrated how FAIRS disrupted the culturally-based relational ties within Sagkeeng First Nation in ways that were meant to undermine the groups’ ability to maintain and reproduce itself in Anishinaabe-relevant ways. The school violently interrupted children’s links to their community by removing their language and severing relationships to their families and community. Children were alienated from each other, their families, and the broader community, fracturing and atomizing a generation of Anishinaabe Children. FAIRS worked to interrupt the community’s collective identity and ways of life.

This article demonstrates how unique primary archival data on personal experiences within residential schools can be drawn upon to offer new insights on colonial processes. Local Survivors’ stories complicate and disrupt problematic national rhetoric about settlement and nation building in Canada. For example, narratives from Sagkeeng taught colonial processes of nation building were not peaceful. The notion that residential schools were a good intention gone awry is still used to excuse ongoing suffering of Indigenous groups and perpetuates the myth that Survivors should just ‘get over it’. Moving the perspectives of the marginalized to the forefront is an important practice in decolonizing methodologies, and mainstream knowledge more generally.

It is important to continue having critical conversations about colonialism and genocide with settlers in day-to-day, personal and professional encounters to ensure discussion around decolonization continues to happen. This project created opportunities for discussion amongst family, friends, peers, and colleagues. Many exchanges and debates blossomed from this research. These critical conversations are important for unpacking deeply entrenched colonial thinking amongst settlers. Changing attitudes and discourse within the field of sociology and in our broader communities can happen through these interpersonal dialogues.

Acknowledgements
I thank the community members of Sagkeeng First Nation; I am very grateful for their kindness, welcoming, and conversation. I’d like to acknowledge Professor Andrew Woolford who advised my research. Thank you to the University of Manitoba who funded my work, and especially thank you to the journal Genocide Studies and Prevention for hosting my research.

Endnotes


9 This temporal period is of interest because by the 1940’s, the Federal Government was fully aware of the mistreatment in the schools and had apparently taken the appropriate steps to end human rights abuses. However, Survivors report suffering spiritual, emotional, sexual and physical abuse.

10 I use the term Anishinaabe to talk about the Indigenous community in Sagkeeng. Anderson explains that “Michif, Nehiyawak, and Anishinaabek are known as Metis, Cree, and Ojibway or Saulteaux in English” (Anderson 2011: 180, fn 5). I use Anishinaabek or Anishinaabe when speaking of the people of Sagkeeng because it seems to be an acceptable term for both those who identify as Saulteaux and Ojibway. There is a distinction between Ojibwa and Saulteaux; however, I am not clear on how to differentiate between the two and often the way people self-identify seems to be contextual.


15 There are many misgivings with the term “Survivors”. It can connote that Indigenous Peoples merely existed through the residential school experience, rather than thrived and flourished in strong and resilient ways. I stress children and families’ agency and resistance by maintaining relationships and language despite the school’s efforts to remove them.

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17 Craig Charbonneau Fontaine, Sagkeeng Legends Sagkeeng Aadizookaanag: John C. Courchene’s Stories.


20 Paulette Regan, Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada (British Columbia: UBC Press, 2010).


28 Smith, “Indigeneity, Settler Colonialism, White Supremacy.”


34 Tasha Hubbard, “’The Buffaloes are Gone’ or ‘Return: Buffalo'? – The Relationship of the Buffalo to Indigenous Creative Expression,” *The Canadian Journal of Native Studies* XXXIX (1 & 2), 65-58.


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46 Peter Austin and Julia Sallabank Eds., The Cambridge Handbook of Endangered Languages (England: Cambridge University Press, 2011). http://dx.doi.org/10.1017/CBO9780511975981
48 Arnett and Mady, Minority Populations in Canadian Second Language Education.
51 Arnett and Mady, Minority Populations in Canadian Second Language Education.
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54 Woolford, “Ontological Destruction: Genocide and Aboriginal Peoples in Canada.”
55 Satzewich and Liodakis, Race and Ethnicity in Canada: A Critical Introduction.
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59 Saskatchewan Indian, Gov’t Manipulating James Bay Issue 4, 2 (February 1975).
60 Satzewich and Liodakis, Race and Ethnicity in Canada: A Critical Introduction.
61 Anderson, Life Stages and Native Women: Memory, Teachings, and Story Medicine, 28.
63 Satzewich and Liodakis, Race and Ethnicity in Canada: A Critical Introduction.
66 Leanne Simpson, Dancing on our Turtle’s Back: Stories of Nishnaabeg Re-Creation, Resurgence and a New Emergence, (Winnipeg: Arbeiter Ring Publisher, 2011).
67 da Silva, Strength of Women: Ahkamlyimowak, 89.
70 Woolford, “Ontological Destruction: Genocide and Aboriginal Peoples in Canada.”
71 Satzewich and Liodakis, Race and Ethnicity in Canada: A Critical Introduction.
73 Miller, Shingwak’s Vision: A History of Native Residential Schools.
75 Woolford, “Ontological Destruction: Genocide and Aboriginal Peoples in Canada.”
76 Woolford and Thomas, “Genocide of Canadian First Nations.”
77 Fontaine, Broken Circle: The Dark Legacy of Indian Residential Schools.
78 Craig Charbonneau Fontaine (Ed.), Speaking of Sagkeeng.
80 Gray, Director’s Book to Script: Debwewin – Truth, 3.
81 Gray, Director’s Book to Script: Debwewin – Truth.
82 Fontaine, Broken Circle: The Dark Legacy of Indian Residential Schools.
83 Fontaine, Broken Circle: The Dark Legacy of Indian Residential Schools.
84 Fontaine, Broken Circle: The Dark Legacy of Indian Residential Schools.
85 Fontaine, Broken Circle: The Dark Legacy of Indian Residential Schools.
86 Gray, Director’s Book to Script: Debwewin – Truth.
88 Fontaine, Broken Circle: The Dark Legacy of Indian Residential Schools.
89 Fontaine, Broken Circle: The Dark Legacy of Indian Residential Schools.
90 Gray, Director’s Book to Script: Debwewin – Truth.
94 Cheryl, Testimony made at the Truth and Reconciliation Commission public event in Sagkeeng First Nation, Manitoba, on October 2nd and 3rd, 2013.
95 Cheryl, Testimony made at the Truth and Reconciliation Commission public event in Sagkeeng First Nation, Manitoba, on October 2nd and 3rd, 2013.
96 Chris, John, and Cheryl: Testimony made at the Truth and Reconciliation Commission public event in Sagkeeng First Nation, Manitoba, on October 2nd and 3rd, 2013.
97 Fontaine, Broken Circle: The Dark Legacy of Indian Residential Schools, 112.
99 Bourdieu and Wacquant, An Invitation to Reflexive Sociology.
102 Fontaine, Broken Circle: The Dark Legacy of Indian Residential Schools; Chris, John, and Cheryl: Testimony made at the Truth and Reconciliation Commission public event in Sagkeeng First Nation, Manitoba, on October 2nd and 3rd, 2013.
103 Cheryl, Testimony made at the Truth and Reconciliation Commission public event in Sagkeeng First Nation, Manitoba, on October 2nd and 3rd, 2013.
“To Rob the World of a People”

105 Norman K. Denzin, Yvonne S. Lincoln & Linda Tuhiwai Smith (Eds.), *Handbook of Critical and Indigenous Methodologies* (Sage Publication, Inc.: California, 2008), 12-13. [http://dx.doi.org/10.4135/9781483385686](http://dx.doi.org/10.4135/9781483385686)


117 Leanne Simpson, *Dancing on our Turtle’s Back: Stories of Nishnaabeg Re-Creation, Resurgence and a New Emergence*, (Winnipeg: Arbeiter Ring Publisher, 2011), 49.

118 Simpson, *Dancing on our Turtle’s Back: Stories of Nishnaabeg Re-Creation, Resurgence and a New Emergence*, 49.

119 Campbell is a Métis author, playwright, broadcaster, filmmaker, and Elder from Saskatchewan.


122 Vicki Wilson is an Elder originally from White Bear First Nation who is part of the Saskatchewan Urban Native Teacher Education Program and the First Nations University of Canada.


124 Simpson, *Dancing on our Turtle’s Back: Stories of Nishnaabeg Re-Creation, Resurgence and a New Emergence*.

125 Important to note, while this case study considers Anishinaabe experiences in FAIRS, other cultures and languages also experienced genocidal practices within the school, including Cree and Oji-Cree.

126 Fontaine, *Broken Circle: The Dark Legacy of Indian Residential Schools*, 112.

127 Fontaine, *Broken Circle: The Dark Legacy of Indian Residential Schools*.

128 Fontaine, *Broken Circle: The Dark Legacy of Indian Residential Schools*, 112.


130 Fontaine, *Broken Circle: The Dark Legacy of Indian Residential Schools*, 108.

132 Jo-Ann Archibald is a Sto:lo Professor at the University of British Columbia, working as Associate Dean for Indigenous Education in the Educational Studies Department.


135 Marcel Coursone Fontaine, *Speaking of Sagkeeng*, 28. Marcel is a Survivor from Sagkeeng. Afterwards, he worked at the local Abitibi mill, but was always laid off when off-season white farmers needed work.

136 Craig Charbonneau Fontaine (Ed.), *Speaking of Sagkeeng*, 28. Craig briefly attended the residential school, but was pulled out by a relative to work at the Abitibi mill. Craig collected interviews with Survivors from Sagkeeng in this resource, as well as publishing his grandfather’s stories in *Sagkeeng Legends*.


140 Sam, Testimony made at the Truth and Reconciliation Commission public event in Sagkeeng First Nation, Manitoba, on October 2nd and 3rd, 2013.

141 Fontaine, *Broken Circle: The Dark Legacy of Indian Residential Schools*.

142 Gray, *Director’s Book to Script: Debewin – Truth*.

143 de Leeuw, “Intimate colonialisms: the material and experienced places of British Columbia’s residential schools.”


146 Settee, *Strength of Women: Ahkamlyimowak*, IV.

147 Fontaine, *Broken Circle: The Dark Legacy of Indian Residential Schools*, 121.

148 Fontaine, *Broken Circle: The Dark Legacy of Indian Residential Schools*, 118.

149 Cheryl, Testimony made at the Truth and Reconciliation Commission public event in Sagkeeng First Nation, Manitoba, on October 2nd and 3rd, 2013.

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151 Shirley, Testimony made at the Truth and Reconciliation Commission public event in Sagkeeng First Nation, Manitoba, on October 2nd and 3rd, 2013.

152 Brian, Testimony made at the Truth and Reconciliation Commission public event in Sagkeeng First Nation, Manitoba, on October 2nd and 3rd, 2013.

153 Charles Courchene, *Speaking of Sagkeeng*. Charles Courchene is a Survivor and Intergenerational Survivor of FAIRS.

154 Fontaine, *Broken Circle: The Dark Legacy of Indian Residential Schools*.

155 Fontaine, *Broken Circle: The Dark Legacy of Indian Residential Schools*.

156 Bruyere, *Speaking of Sagkeeng*.


158 Fontaine, *Broken Circle: The Dark Legacy of Indian Residential Schools*, 37.

159 Fontaine, *Broken Circle: The Dark Legacy of Indian Residential Schools*, 37.
160 Tina, Testimony made at the Truth and Reconciliation Commission public event in Sagkeeng First Nation, Manitoba, on October 2nd and 3rd, 2013.

161 Craig Charbonneau Fontaine (Ed.), Speaking of Sagkeeng.

162 Craig Charbonneau Fontaine (Ed.), Speaking of Sagkeeng, 14.

163 Craig Charbonneau Fontaine (Ed.), Speaking of Sagkeeng, 14.

164 Fontaine, Broken Circle: The Dark Legacy of Indian Residential Schools, 11.

165 Cheryl, Testimony made at the Truth and Reconciliation Commission public event in Sagkeeng First Nation, Manitoba, on October 2nd and 3rd, 2013.

166 Kevin, Testimony made at the Truth and Reconciliation Commission public event in Sagkeeng First Nation, Manitoba, on October 2nd and 3rd, 2013.

167 Dan, Testimony made at the Truth and Reconciliation Commission public event in Sagkeeng First Nation, Manitoba, on October 2nd and 3rd, 2013.

168 Fontaine, Broken Circle: The Dark Legacy of Indian Residential Schools.

169 Fontaine, Broken Circle: The Dark Legacy of Indian Residential Schools; Chief Albert Fontaine attended FAIRS for eight years and served as Chief of Sagkeeng for two years.

170 Fontaine, Broken Circle: The Dark Legacy of Indian Residential Schools, 31.

171 John, Testimony made at the Truth and Reconciliation Commission public event in Sagkeeng First Nation, Manitoba, on October 2nd and 3rd, 2013.

172 Kevin: Testimony made at the Truth and Reconciliation Commission public event in Sagkeeng First Nation, Manitoba, on October 2nd and 3rd, 2013.

173 Grant, Testimony made at the Truth and Reconciliation Commission public event in Sagkeeng First Nation, Manitoba, on October 2nd and 3rd, 2013.

174 Bruyere, Speaking of Sagkeeng.


177 Anderson, Life Stages and Native Women: Memory, Teachings, and Story Medicine, 52.

178 Anderson, Life Stages and Native Women: Memory, Teachings, and Story Medicine, 53.

179 Anderson, Life Stages and Native Women: Memory, Teachings, and Story Medicine, 53.

180 Adams, Prison of Grass: Canada from a Native Point of View 2nd ed.

181 Kevin, Testimony made at the Truth and Reconciliation Commission public event in Sagkeeng First Nation, Manitoba, on October 2nd and 3rd, 2013.

182 Kevin, Testimony made at the Truth and Reconciliation Commission public event in Sagkeeng First Nation, Manitoba, on October 2nd and 3rd, 2013.

183 Sam, Testimony made at the Truth and Reconciliation Commission public event in Sagkeeng First Nation, Manitoba, on October 2nd and 3rd, 2013.

184 Brian, Testimony made at the Truth and Reconciliation Commission public event in Sagkeeng First Nation, Manitoba, on October 2nd and 3rd, 2013.


187 Simpson, Dancing on our Turtle’s Back: Stories of Nishnaabeg Re-Creation, Resurgence and a New Emergence, 14.
Unsettling Genocide Studies at the Eleventh Conference of the International Association of Genocide Scholars, July 16-19, 2014, Winnipeg-Canada

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Abstract: What is the purpose of a genocide conference and in what ways might such a conference unsettle us and contribute to a broader decolonizing project, in genocide studies and beyond? This summary of the Eleventh Conference of the International Association of Genocide Scholars at the University of Manitoba in Winnipeg, Manitoba, Canada examines some of the disruptions and connections that arose and contributed to the vitality of our meetings.

Keywords: genocide studies, conference, settler-colonialism, Canada, Indigenous peoples

When Winnipeg was selected as host for the Eleventh Conference of the International Association of Genocide Scholars, it was an opportunity to showcase the intellectual vibrancy of the city and region to our visiting delegates. In Canada, Winnipeg is the butt of too many jokes. Depending on the season, it is portrayed as a land of unbearable cold (“Colder than Mars,” read one recent headline), floods, and mosquitoes. Depending on the season, it is derided as Winterpeg or Waterpeg. To this extent, Winnipeg may seem the less-exotic conference option when bookended by meetings in Siena and Yerevan. But Winnipeg is also at the geographic centre of North America. It sits at the forks of the Red and Assiniboine Rivers, at the crossroads of the Anishinaabe, Métis, Cree, Dakota and Oji-Cree Nations. It is a historic meeting place of Indigenous peoples, and a most fitting site for our conference theme: Time, Movement, and Space: Genocide Studies and Indigenous Peoples. It is a space long marked by movements and interactions among peoples, including the destructive momentum of settler colonialism. Winnipeg is also a refugee center, meaning it attracts many newcomers who are fleeing oppression and human rights violations elsewhere. It is home to substantial Sudanese, Rwandan, Cambodian, Bangladeshi, Somalian, Sierra Leonian, Burmese, and other communities of individuals who have been forced to flee their homelands. As well, it has a large historic population of survivors of the Holocaust and other groups subjected to Nazi genocide.

But it is the settler colonial present that perhaps stands out most in the Winnipeg zeitgeist. This in large can be credited to Winnipeg’s active Indigenous community. Theirs are the strongest voices opposed to a seemingly ever-ascendant settler colonialism. One goal of the conference organizers was to create opportunities for Indigenous scholars, leaders, and community members to contribute to and direct our discussions. This began prior to the conference by making sure that the conference was well-advertized on websites, listservs and through Facebook groups frequented by local Indigenous peoples. We were also fortunate that a reporter featured our conference in a local newspaper prior to our opening. Mary Agnes Welch framed her Winnipeg Free Press article around the question of genocide in Canada, and featured comments from several of our presenters, including Charlene Bearhead, Trina Cooper-Bolam, and David MacDonald. The article provoked debate on both the comments page and in the editorial section of the paper. Local independent historian Michael Melanson wrote a letter to express his concern that Canadian genocide scholars were distorting the meaning of genocide by straying from the definition contained within General Assembly Resolution 260, the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG, December 9 1948). My published response noted the multiple understandings of genocide possessed by IAGS members, and that we, as an association, do not uniformly agree on the definition of genocide. However, I also challenged his devotion to the UNGC without acknowledging the political and cultural context in which it was formed. As a scholar trained in critical criminology and critical socio-legal studies, I am often troubled by our tendency to obediently accept the force of law without questioning its often arbitrary and contingent foundations. In the decolonizing context of the Eleventh IAGS Conference, the settler colonial foundations of genocide law, as well as the Euro-settler epistemological and ontological assumptions that are entangled
with much of our thinking about genocide were subject to pointed criticism by many of the
Indigenous and non-Indigenous scholars who were present. Melanson, although not a participant
in our conference, inadvertently exemplified one of the barriers to greater Indigenous participation
in associations like ours: the violence that comes with an unwillingness to acknowledge different
ways of seeing and knowing the world.

Such epistemological and ontological tensions would erupt into moments of contention during
our conference sessions, but we also received encouragement to govern our discussions in a spirit
of respect and right relations. On the first day of the conference, we travelled from Winnipeg to the
Sagkeeng First Nation. Sagkeeng, formerly known as the Fort Alexander reserve, is an Anishinaabe
community located on the east side of Lake Winnipeg, along the Winnipeg River. The community
has a population of approximately 3300, many of whom either survived or are second and third
generation Survivors of the Fort Alexander Residential School. This school was run from 1904
until 1970 by the Oblates of Mary Immaculate, an order of the Roman Catholic Church, and was
located within the Sagkeeng community. Thus, unlike other residential schools, where children
were removed far from their homes to be subjected to forced assimilation, most children from
Sagkeeng were boarded within their community. But this proximity provided little comfort. The
Fort Alexander students, who were also exposed to the cultural violence of forced assimilation,
as well as high levels of physical and sexual victimization, often learned to resent their family
members, who they could see beyond the gates and barbed wire going about their lives while the
children were left to suffer therein.²

We had a rough start to this excursion. The buses sped by the designated meeting spot, and then
one of the buses broke down. We therefore had to cut out a visit to some unmarked graves that hold
the bodies of children who perished while at the residential school. After a brief moment of chaos,
we managed to find rides for all of our scholars to Turtle Lodge, where a ceremony to welcome us
to Sagkeeng territory waited. Anxiety levels were high (at least for the hapless organizer!), but all
negative feelings were erased when we entered Turtle Lodge. The drums, the smell of the smudge,³
and the welcome song brought us into the Lodge’s sacred space, where we were reminded of the
resilience and persistence of Indigenous cultures, despite settler colonial efforts to destroy them.
Elder David Courchene introduced IAGS delegates to Anishinaabe traditions and reminded us of
the importance of our work and our shared responsibility to walk the right path, caring for each
other and our shared planet.⁴

That night, IAGS scholars continued their education in Indigenous knowledges and approaches
to justice. Felix Cardenas, the Viceminister of Decolonization for the Plurinational State of Bolivia
spoke to us about his government’s efforts to revolutionize their society in an anti-patriarchal and
decolonizing fashion. His talk elicited a lengthy standing ovation. In the days subsequent to his
keynote address, the Viceminister met with several local Indigenous leaders, making IAGS the site
for information sharing on the topic of decolonization in the Western Hemisphere.

Also at the opening keynote, Ned Blackhawk, Western Shoshone Professor of History and
American Studies at Yale University, challenged both the erasure of colonial violence in North
American historiography and the prevalent presuppositions of the genocide studies approach to
Indigenous experiences of destruction, reinforcing the need for genocide studies to take seriously
the work emerging from the growing field of Indigenous studies.

In the next day’s keynote address, Ho-Chunk professor of American Studies Amy Lonetree
(University of California, Santa Cruz) discussed decolonizing practices within museums and how
Indigenous peoples are increasingly pushing these institutions to “speak to hard truths in an effort
to heal from unresolved historical grief.” She noted how some museums, such as the Ziibiwing
Centre in Michigan, do this well and in a manner that privileges Anishinaabe prophecies and oral
tradition. This museum also does not shy away from naming genocide in relation to Anishinaabe
experiences of settler colonialism, something that cannot be said with respect to Winnipeg’s
recently opened Canadian Museum for Human Rights or the United States National Museum of
the American Indian.

On the conference’s third day, Australian historian Tony Barta (La Trobe University) asked us
to consider how we might “liberate genocide” so that the term no longer simply shuts down the
conversation or becomes narrowed by reductionist legal interpretations. He presented conference

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goers with a powerful call to continue to advance genocide studies beyond narrow legalism and to bring forward approaches that do more to illuminate the past and present, including the settler colonial present.

Finally the conference featured several special panels at which we heard from representatives from the Canadian Museum for Human Rights and Commissioners Marie Wilson and Chief Wilton Littlechild of the Truth and Reconciliation Commission of Canada, as well as from residential school Survivor Theodore Fontaine, who noted of his experience at Fort Alexander Indian Residential School, “The biggest damage of Indian Residential Schools was the reluctance to admit you were an Indian.”

It would be an impossible task to discuss all of the interesting papers presented at the conference in this short space. In my (albeit very biased) estimation these were some of the strongest papers ever assembled at an IAGS conference. The emerging scholars who are entering the field with such critical energy and insight particularly impressed me. Likewise, the Indigenous scholars who joined us for the conference, and hopefully will remain members of IAGS, brought the North American settler colonial context to the forefront. Many of these scholars raised important questions about practices of commemoration and truth-seeking as are currently taking place in Canada. Museum exhibits and repatriations, land dispossession, residential schools, and colonial archives were other topics under intense scrutiny. The discussion of these matters often became heated. It was not that we so much disagreed about the facts of the case, at least in the sessions I observed, although occasionally debates over the historical record arose. Instead, what animated these discussions was the interrogation of our very categories of meaning. The Eurocentric hegemony of terms such as reconciliation, and even genocide, was challenged, as session attendees were asked time and again to extend beyond their epistemological starting points and to consider other ways of understanding these terms we at times take for granted.

It was not only the topic of settler colonial genocide that generated heat at the conference, however. By all accounts the two presentations on the question of crimes against humanity committed by Israel were some of the most contested of the conference. In one particular case, the entire panel was locked in a lengthy debate; indeed, I had to later go in and disperse the crowd so subsequent sessions would not be delayed. In the aftermath of this panel, and others presented at the conference, I was asked about how certain papers that some found offensive were accepted to the conference. The simple answer is by a peer review process that involved evaluation of the proposed presentation by area experts, and this process did result in many rejections and several requirements that authors revise and resubmit their papers to meet accepted scholarly standards. But the evaluation committee was also bound by the principle of academic freedom not to try to shape the content of the submissions, since the human right to free speech is also at stake here. However, my own view on this matter, which extends beyond but was not included in the procedural criteria that directed the work of the evaluation committee, is that we as genocide scholars cannot, and should not, expect our conferences to be free of moments of discomfort, passion, anger, or emotion. The issues we discuss are both personal and political. They are situated in our daily lives, embedded in our various existences. Our commitments can make us powerful advocates, but can also blind to other points of view.

Indeed, for me, some of the most powerful moments of the conference came when I felt most uncomfortable, such as when powerful Indigenous scholars like Tamara Starblanket, Audra Simpson, Ned Blackhawk, Jeremy Patzer, and others highlighted land dispossession as a fundamental component of North American genocide, or when Kristin Burnett and Travis Hay questioned the dominating and sometimes dismissive role of settler colonial scholars in the study of Indigenous genocide. In these instances, I had no recourse but to confront and question myself as a settler colonial genocide scholar, but also my connection to this place I feel to be home, and yet is only my home only as a result of acts of extreme violence and erasure.

The study of genocide should not be easy. Nor should our conferences be comfortable affairs. They must be unsettling, since the nature of our work is unsettling. In the Canadian context, such unsettling means confronting the privilege and power bestowed upon many of us as a result of settler colonial relations. As an example, we were fortunate to have in attendance at our conference Chief Erwin Redsky from the Shoal Lake First Nation. Shoal Lake is also the source for Winnipeg’s
water. We conference goers enjoyed many glasses of some of the purest tap water available in North America while going about our affairs. But for this to be possible, the Shoal Lake First Nation had to be displaced from their original village site to a man-made island where, in the most unfortunate of ironies, they have to boil water in order to have clean drinking water. At the same time, we met and discussed group destruction at a University that in an earlier era trained many teachers that worked in a residential schooling system that sought to destroy Indigenous cultures. Recognizing these everyday moments of destruction unsettles us by forcing us to see our own location within a genocidal set of relations. As genocide scholars, we do not inhabit a space outside of the destruction we study; it is every-present in our day-to-day lives, and we are thankful to the Indigenous Survivors, scholars, and leaders who reminded us of this fact during the four days of our conference.

While I know of at least a few genocide scholars question IAGS hosting its conferences around specific genocides or commemorative events and thereby contributing to a “hierarchy of genocides”, I could not imagine hosting an apolitical conference in Winnipeg. To host the conference in Canada and not involve Indigenous Survivors, leaders, and scholars – or not to confront Canada’s history – would itself be a political act. The silence would speak volumes. So we met, and we made each other feel uncomfortable at times, and we were aghast or enlightened, enraged or inspired, but hopefully never indifferent or bored.

Perhaps we even began the process of decolonizing genocide studies. Although the process of decolonization is a long one, that may take seven generations, we as an association received a glimpse of what it might mean to decolonize ourselves. It is not merely a matter of having settler scholars like myself trying to translate insights from Indigenous epistemologies into the genocide studies canon. It is more the need to create spaces where Indigenous scholars can come to the forefront and feel there is room for other ways of seeing, knowing, studying, and being amidst genocide scholarship.

In the end, a good genocide conference takes an emotional toll. Although at times I fear that I am becoming desensitized to violence through my study of genocide, there are always moments at IAGS conferences where I find myself emotionally connected to those who have suffered the toll of genocide. In Winnipeg, the affective power of our research hit me most when my friend Theodore Fontaine, who later shared with us the physical, sexual, cultural and spiritual violence he suffered at the Fort Alexander Indian Residential School, read a short story written by another friend, Rwandan genocide survivor Rafiki Ubaldo. This was part of our twenty-year commemoration of the genocide in Rwanda. We invited Rafiki to read his prize-winning short story for this event, but unfortunately he was unable to join us in Winnipeg. In his wisdom, he suggested that we ask a residential school Survivor to read the story. Theodore did a remarkable job and the effect was profound. As he read, “Listen to me. You will say nothing. What you saw is now between you, your father and me. I don’t care what you think. I am telling you, you will say nothing,” continents connected and divergent experiences of attempted group destruction overlapped as the shared experience of feeling silenced came forward. Decolonizing IAGS, as we sought to do in Winnipeg, and should continue to do in all our venues, means that Indigenous peoples – scholars, Elders, Survivors, leaders, women, and young people – will not experience our conferences and journals as silencing spaces.

It was a privilege to be part of team that organized this conference, which has left me with so many moments that still resonate with my life and research. My thanks to Adam Muller, Natalia Ilyniak, Donna Lee Frieze, Daniel Feierstein, Rafiki Ubaldo, Borislava Monojlovic, Tricia Logan, Helen Fallding, Karen Busby, Mark Meuwese, Kimberley Ducey, Regine King, Douglas Irvin-Erickson, and Steven Cooke, as well as all of our sponsors, participants, keynotes, special guests, and student assistants for their assistance in making this event possible.

Acknowledgments
My thanks to Tricia Logan, Adam Muller, Donna Lee Frieze, Jeff Benvenuto, Daniel Feierstein. Melanie O’Brien, and David MacDonald for their comments on a previous version of this paper. My thanks to the Social Sciences and Humanities Research Council, the University of Manitoba, and Tourism Winnipeg for the funding they provided to make our conference possible.
Endnotes


4 A smudge is a bundle of medicines or, as settlers might term them, herbs. In our case, the herb was sage, which was lit from the sacred fire to help purify body, mind and spirit.


6 See Shoal Lake’s website for further information: http://www.sl40.ca/about.htm

7 See the University of Manitoba apology made before the Truth and Reconciliation Commission of Canada: https://umanitoba.ca/about/media/StatementOfApology.pdf


Liberating Genocide: An Activist Concept and Historical Understanding

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Abstract: From the outset, historians of genocide have seen themselves as activists. Among historians of colonial societies that is what distinguishes them most in relation to indigenous peoples. An ethnographic sensibility should be visible in any such study, and the more so when a question of genocide is raised. After all, if we do not have a sense of difference between peoples we fail the test of genocide at the first hurdle. And if we do not have an ethnographic sensibility towards our own cultures (including academic cultures) we will fail to make the most of our role in affecting deeply ingrained kinds of historical consciousness. Examples from Australia make this painfully plain. Is there any chance of opening a bridge between the completely different worlds of those who profited from genocide and those who suffered for it? How can that cause be advanced inside and outside the academy? We are thriving as a sub-discipline, but where to from here? Liberating genocide into a wider discourse may be the way to connect the adventure of ethnographic history, the conceptual illumination of episodes, to the vast field of global relations the understanding of colonialism requires.

Keywords: genocide, history, colonialism, Australia, consciousness, Lemkin

My first attempt at liberating genocide was a disaster. It was at the Hakoah Jewish Sports Club in Sydney, with a very large audience of elderly people. The year was 1985, and I thought it was time, but it was certainly not the place. I had written a paper, After Auschwitz: Consciousness of Genocide in Australia for a conference On Being a German-Jewish Refugee in Australia. Martin Broszat, speaking about Nazi Germany, was politely received. My remarks on Australia did not go down so well. Konrad Kwiet, behind me, said: “Mention your mother, mention your mother.” My parents were both in the front row. It didn’t help. When I said the place where we now were was not acquired without killing, old people advanced down the aisles displaying the Auschwitz numbers on their arms. I was pulled from the lectern by a young Zionist who is now a very important lawyer.

Liberating genocide from the Holocaust remains problematic and even today I have to stake out that my purpose then, and ever since, has not been to diminish the tragedy of the Holocaust as genocide by even a hair’s breadth. I celebrate every advance in our understanding—most recently Claude Lanzmann’s reworking of his interviews with Benjamin Murmelstein in The Last of the Unjust. My concern about consciousness of genocide in Australia, however, has not diminished. Here progress has been so painful—no, let me put that the other way round: so painless for Australians—that my sense of failure is much magnified over my initial indignity. What especially troubles me is that this lack of impact has persisted through the most extraordinary flourishing of genocide scholarship. My Australian colleagues with international reputations are legion; the global movement of scholarly awareness that simply wasn’t here thirty years ago is in large part a tribute to them.

Let me make clear how I do not want to liberate genocide. I do not want to liberate it from Raphael Lemkin or his original definitions about violence done to human groups identified by ethnicity or nation. The horrors of Rwanda and Sudan and Iraq demand his clear vision and purpose. I remain uneasy (as representatives of oppressive regimes were in 1946) about its extension to political groups, or to mass murder within the same ethnicity. It is too late to take back the Cambodian genocide perpetrated by some Cambodians against others and indeed the counter-argument has been made: should not genocide be extended to all attempts at annihilating difference? Yes, we should look again at the Atlantic slave trade, where African lives and African peoples counted for nothing. No, not all mass deaths are genocides and not all genocides involve a dramatic episode of mass death. My long quest to liberate genocide has had a consistent purpose: to free Lemkin’s concept from the accretions wilfully or ignorantly imposed on it, and to demonstrate—first of all in...
Both Lemkin’s original criteria and those he installed in the Genocide Convention should have created no problems of definition in writing about Australia’s past. Indeed, Australians have readily accepted that a genocide took place in Tasmania. That’s it, though, and was a long time ago. To quarantine an unfortunate past there, ignoring the larger genocidal process in the nation’s founding, is not just a populist or uneducated project. My profession, with a small number of exceptions, the usual suspects, has seized the temper of the times to declare itself liberated from genocide as well. The most recent evidence is in the two volumes of a new Cambridge History of Australia, written by some seventy Australian historians. Some of them, notably Ann Curthoys and Anna Haebich, have themselves been key contributors to genocide awareness in Australia. The senior editor made his reputation as a doyen of the academic Left. There is not one mention of genocide. There are two chapters, one in each volume, on Settler-Indigenous relations. Genocide does not appear.

It is not just my personal failure; what of all the powerful work by Dirk Moses, Ann Curthoys, John Docker, Norbert Finzsch, Colin Tatz and Patrick Wolfe? Where has it gone? What of the earlier interventions by Bernard Smith, Charles Rowley and Raymond Evans? It is half a lifetime since I got into trouble in Sydney, since Colin Tatz asked if my remarks might not be too surreal for general consumption. Most of my profession has remained not only deaf to our interventions but tone deaf to the international discourse in journals, conferences and memorial institutions.

What is the role of scholarship, with its non-indigenous origins and weighting, in this historical moment? In trying to tease out whether the thirty-year effort to import the concept of genocide into Australian history has kept pace with the changes in which indigenous people live their lives, I have had to ask whether this import can free itself from the colonialism that brought genocide to indigenous peoples around the globe. Might we proceed from Decolonizing Museums and Decolonizing Methodologies to decolonizing genocide? That does not strike me as appropriate or even possible—Lemkin, starting from Nazi Rule in Poland, linked genocide to colonialism from the outset—but decolonization movements were more positively called liberation movements and there are definite advances in liberating genocide from the Eurocentric constraints of its origins—even to the point of liberation from genocide as well.

To keep genocide effective as a concept we have to engage with four realities of Lemkin’s word:

- its birth in activism;
- the tensions between its legal and historical deployment;
- its capacity to block rather than enhance understanding;
- the burden of historical accretions that weigh against it in both activism and interpretation.

My continuing ambition to make genocide a concept that does not close off engagement, especially in societies based on colonialism, is brought up against these realities at every outing. Outside the academic realm of Genocide Studies the word brings down a boom gate, end of story. Genocide? Come on. This was not like Nazi Germany. Historians of genocide, I argue, have no choice but to meet these challenges. We must:

- separate genocide from the Holocaust, where some activists still try to keep it;
- work around the word where it acts as a block;
- keep insisting that historical understanding has very different requirements from prosecuting genocide as a crime;
- further promote the need to read intention in actions, not only in words;
- make historical work its own kind of activism, creating changes of consciousness about the past for the present—and the future.

Clearly, this takes me into the realm of what has been called critical genocide studies. In a recent issue of Genocide Studies and Prevention some important questions were addressed and some further questions asked to be addressed. For me the big one is the role of history as a discipline and
its relation to other fields recognized as having special contributions to make in genocide studies, most importantly sociology and anthropology. Ethnographic history embraces theory and in my own case became part of a larger intellectual project that influenced my encounter with Bavaria and Nazism, and then with European settlement and settled Aboriginal peoples. The dialectics between closely examined case studies and larger conceptions of historical process were to be explicated rather than assumed, and the widest range of insights might potentially be deployed. This is of prime importance in the understanding of societies where internal pressures allied with interests and ideologies to produce genocidal outcomes. In the case of Nazi Germany we have become used to locating perpetrators and their psychology in the economics, politics, social structures and cultures of their time. In colonizing societies there remains much work to be done. My purpose here is to advance the activism of genocide scholars in colonial studies and to examine how liberation from all the accretions around genocide might advance historical understanding of what took place.

From the outset, historians of genocide have seen themselves as activists. Among historians of colonial societies that is perhaps what distinguishes them most, notably and quite fundamentally in relation to indigenous peoples. An ethnographic sensibility should be visible in any such study—it isn’t always—and the more so when a question of genocide is raised. After all, if we do not have a sense of difference between peoples we fail the test of genocide at the first hurdle. And if we do not have an ethnographic sensibility towards our own cultures (including academic cultures) we will fail to make the most of our role in affecting deeply ingrained kinds of historical consciousness. Is there any chance of opening a bridge between the completely different worlds of those who profited from genocide and those who suffered for it? How can that cause be advanced inside and outside the academy? We are thriving as a sub-discipline, but where to from here? How can we reach the minds of colleagues in wider academic circles? Can we better engage with those within our disciplines who reject genocide and at the same time open up perspectives on genocide across disciplines? Might my now venerable conception of relations of genocide help construct the kind of bridge that academics outside our specialty can venture on to as we connect more adventurously with their disciplines? Could it expand the connecting adventure of ethnographic history, the conceptual illumination of episodes, into the vast field of global relations colonialism requires?

In my own discipline I continue to hope that there are kinds of history that can be intriguing, inclusive and publicly effective. How can we reach beyond the academy? Can historians help make genocide history?

Ethnographic History and Genocide
An intellectual journey replete with failure has not diminished my hope that genocide can be liberated from popular misconceptions into a more effective role in historical understanding. I have a rather firm idea of how we need to do this, by extending our reach into all the humanities and especially into the kind of enterprise celebrated in the brief but influential school of ethnographic history that surrounded me in my own department. The La Trobe ethnographic historians—Greg Dening, Rhys Isaac and Inga Clendinnen are the most eminent—were inspired by the conceptually informed interpretations Clifford Geertz had demonstrated in anthropology. In fields that were notably colonial—Mexico, Virginia, remote Pacific Islands—they showed how reading episodes and actions could create extraordinarily insightful history. Liberating genocide from a specialty into the largest and most detailed historical discourse means persisting with the idea that in studying particular actions and situations we can illuminate large historical processes and that (dialectically rather than conversely) large conceptions of historical process can illuminate episodes and actions. My hope is for a discourse where the processes of genocide are brought into focus—even if the word is avoided—in a way that makes the appropriate naming of the destruction not only difficult to avoid but clearly useful to historical understanding.

All of us know a too similar story of destruction in too many places. We know we have to keep refining our interpretations from the general to the particular: different encounters, different treaties, different apologies, different peoples. And from the particular we can refine our broader theses. Here’s a story that should encourage us—and warn us:
“I would have to make the necessary adjustments in my techniques of escape. I was already in the province of Polesie. The peasants here, who are called Poleshuks, speak the White-Ruthenian language. They are poor and suspicious. Often their numbers are decimated by disease, the most common of which is a sickness called koltun. The hair becomes matted with blood and sticks to itself like a wig. The peasants heal it with an extract of plants.”

These strange humans are not in Paraguay or Papua. This is Poland; Raphael Lemkin reporting on his own country and its cauldron of different peoples. The encouragement is Lemkin’s curiosity about uniqueness and otherness. The warning is in making otherness a curiosity. The main message turns out to be an almost universal one.

“These peasants looked at the unexpected visitors from Warsaw with curiosity and hostility. It was impossible to rely on them long for shelter and food. I decided to stop at the small towns, whose inhabitants, part Polish and part Jewish, appeared to be more tolerant of us. The Christians there could not define their ethnic origins or nationality. They referred to themselves very simply: ‘We are from here.’”

Other ethnographers, among strangers far from the Europe they thought they knew, noted the tendency of Native Americans, Maori and other Pacific Islanders to refer to themselves simply as the human beings. This would not have surprised Lemkin, whose life work, we tend to forget, was to construct a common humanity out of all the diverse and often hostile groups who saw their own humanity as more immediate and important than anyone else’s. In his own case, he knew, that intimate sense of a whole humanity came from the Jewish provincial culture that would be extinguished by the Nazis. His determination “to outlaw the destruction of human groups” was re-ignited by the situation of his own family, furtively visited for the last time. He won from his mother her blessing to leave and continue his work—with, of course, a wife and family of his own. He would fail her there, but before long he was in Sweden and within five months mastered enough Swedish to lecture at the university. He “rejoiced in being able to add the understanding of a new culture to my intellectual treasury.” And he remembered the words of Victor Hugo: “As many languages as you know, as many times you are a human being.”

Understanding how human beings were devalued, how humanity’s richness was trashed, has not depended on Lemkin’s concept. Greg Dening studied the cultural destruction of indigenous society in the islands we now call the Marquesas. To the people who lived there the islands were simply the land; they themselves were self-evidently Enata, the men, the human beings. They had customs that horrified the various Europeans that arrived on their beaches. Most notably, they were exuberant cannibals. The Europeans, from Britain, from America, more permanently from France, would not give up on teaching them civilization. They imported the standard colonialist version: an almost incomprehensible Christianity, an alien state authority, firearms (the boasting spear) work, school, alcohol. Everything about the indigenous world was turned upside down. Time was no longer the sun, the moon, and the seasons. It was a new tyrant: the clock. Space was no longer the island with its mountains and valleys and the plentiful seas between. It had brought another tyrant: an unknown power from an unknown place an unimaginable distance away. The intricacies of peace, between peoples and valleys, no longer mattered and the traditions of war, savage and bloodthirsty, were at once stimulated by the new vices of gunpowder and alcohol then finally suppressed by a much greater violence that killed by distant force, by degradation of belief and authority, by disease and drink. Within a century the old culture was destroyed and a terrible number of people as well.

His story of this encounter Dening calls Islands and Beaches: Discourse on a Silent Land. It is an elegy of a kind, and a discourse of many sophisticated concepts. After each chapter in the story there is a reflection: for instance, after Violent Death comes On Civilizing. He refers to Elias, and the deep doubts of Herman Melville.

The one word you will not find is genocide. The word has kept me intellectually apart from my La Trobe friends for all our years together. Perhaps everyone here has heard the same, very frustrating explanation: I just don’t think it’s appropriate. Greg did not explain at all, but his work showed me where the deep difference lies. To an ethnographic historian the challenge begins with the action: what are these people up to? To create understanding of this at first strange behaviour we employ, as Geertz enjoined us to do, the widest range of “made-in-the-academy concepts.”
I have come to think the resistance to genocide as one of those concepts is because it generally appears to get things back to front. The suspicion is that we start with the word, not the action. Once something is labelled (our critics tend to say) as genocide, enquiry does not seem to be opened up, it is closed off.\textsuperscript{13}

The resistance to Lemkin’s word as a bridge to understanding is not without reason. The fact is: \textit{genocide has never been a made-in-the academy concept}. It was produced in one of the most extraordinary feats of individual activism, a much more lonely journey than that of Wilberforce in his campaign against slavery. However, it shares with slavery the problem of being a descriptive noun before it is a hermeneutic one. So we have a very big concept, designed for a very big crime. Business people like to quote the maxim that for every complex problem there is an answer that is clear, simple and wrong. That worries historians, too. Ned Blackhawk is now at Yale, a centre of Genocide Studies. His \textit{Violence Over the Land} has imagination, ethnography, at times extermination—but not genocide. He prefers “genocidal” as an adjective, in the hope it can keep the bridge open. John Demos has just published another brilliant book that works out from one short-lived experiment, \textit{The Heathen School} in Connecticut, to the widest reaches of American commerce in the 18th century, to China and Hawaii, and all the way to the Trail of Tears. Two of the leaders, John Ridge and Elias Boudinot, were educated at that school. They helped establish Cherokee institutions and exactly the kind of prosperous farming economy Jefferson said was essential for their survival. It did not save the Cherokees from the neighbours who wanted their land and cared little for their lives. Demos, too, is a Yale man, but unconnected with genocide studies. He has read the important histories of the Cherokee removal. He goes as far as ethnic cleansing, no further.\textsuperscript{14}

Distinctions and word meanings (without even beginning on translations) are the very stuff of interpretation. About the time I encountered Geertz I was also much influenced, especially in my adoption of \textit{relations}, by what remains one of the best books on Marx’s deployment of concepts. Bertell Ollman in \textit{Alienation} foregrounds a line from Pareto. Marx’s words, he said, are like bats: one can see in them both birds and mice. I would like the non-legalistic use of some of Lemkin’s own concepts—intent, interests—to have some of that elusive quality.\textsuperscript{15} However that may be, it won’t work with genocide itself. We really do need to know what it means, and if there are different understandings we need to know where they come from, what they define, and in which contexts they are useful. The most contentious field is settler colonialism.

**Redesigning the World: Colonialism and Genocide**

To re-examine the vast complex of interests, intentions and consequences in colonial genocides is the purpose of a book I am presently working on. It is called \textit{The Destruction of Peoples}. The subtitle, provisionally, is \textit{Colonialism and Genocide in Britain, the United States and Nazi Germany}. My aim is to find episodes in these already large cases that will support a larger interpretation about the colonizing impulse, its claims to be civilizing, its genocidal devastation in practice. It is turning out to be less ethnographic than I intended. Like most of us in the field, I find it hard to go past statements of intention and the kind of clear policies Lemkin started from. Such clarity about intentions has been vital in the legally enforceable progress of genocide definition; it only ever tells part of the story in the tangled actualities of historical encounters. I have always appealed for the reading of actions as intentions and have seen that as the special strength of ethnographic history. The actions must be read in the light of larger relations construed with the help of theory. Interpreting actions and elucidating their context is the activism of historians.

My first plan for the book was to go backwards from the Nazis. Barbaric civilization was not invented by them; they claimed a very distinguished heritage. Hitler told his dinner guests, “I don’t see why a German who eats a piece of bread should torment himself with the idea that the soil which produces this bread has been won by the sword. When we eat wheat from Canada, we don’t think about the despoiled Indians.”\textsuperscript{16} The challenge is not only to follow through the ideology—that has been done quite thoroughly—but the dynamics of colonialism, the relations of genocide, as the bearers of European progress conquered the world. Jürgen Zimmerer has reiterated how completely the grand plans to colonize the Slavic, savage East was meant to serve Nazi ideological claims. They spoke emphatically of redesigning the whole of Poland, Belarus and Ukraine. Polish land divisions would not do for German settlement, “a total colonizing act is
necessary.” It was for this enterprise that Lemkin coined the word genocide: *Axis Rule* is about the ruthlessness of German colonization as it was already being practiced around him in before he fled. And as Lemkin learned very early on his flight, not just one people was being redesigned out of existence but many different peoples.

Far from Europe, the total colonizing act was promoted as civilizing. Unlike *Axis rule*, it was almost always believed to be of benefit to the conquered—as long as they fitted the grand design. Killing the indigenous peoples encountered by the colonizing adventurers was quickly recognized as a problem. Civilizing them was not a problem: it was the solution. Now we see what few could then see: civilizing was also the problem, indeed the larger problem. With ruthless theft of land came killing, social disruption and displacement. For the survivors there was further coercive civilizing—the cultural destruction of peoples. To understand that genocidal process we have to understand the culture of the civilizers and destroyers and the perspectives of those subject to their rule. Las Casas railed against the destroyers but he himself belonged to the civilizers. The difficulties of seeing destruction in civilization did not begin with the conquistadors and did not abate with the colonizing conquests that followed them.

Lemkin went back to ancient times, as Kiernan did more recently. I am most concerned with the great British (and North American) experiment of the nineteenth century. The colonizers who claimed so much of the globe, not quite in a fit of absence of mind, preferred, in that British way, not to examine their motives or purposes too closely. But there was one group, evangelical Christians, who eventually insisted on taking moral stock. Out of the antislavery movement in the late 1700s, and just after the loss of the American colonies, came concern about the peoples they called native in the remaining colonies. The House of Commons Select Committee Report of 1837 is the key document publicizing British genocides a century before Lemkin invented his word. The men—all men of course, on this committee—wanted their government to acknowledge what was happening on every frontier of Britain’s empire and to do something about it. In taking on the slave traders they had confronted England’s most powerful commercial interest and won. Surely they could stop the depletion of those peoples who even as savages were all God’s creatures and part of humanity. Some were already extinct, everywhere their decline was dramatic. In Australia, the Committee was told, the Aborigines round Sydney seemed mysteriously to “decay.” “Wherever Europeans meet with them they appear to wear out...they appear actually to vanish from the face of the earth.” In Canada, the Cree, once so powerful “have now degenerated into a few families’ from perhaps 10,000 to at most 300. There was an expectation of ‘the remnant being extirpated in a short time if [note this] no measures are taken to improve their morals and to cultivate habits of civilization.” A habit they did not need was their introduction to “spirituous liquors.” Committee chair Thomas Buxton knew all about this peril; he helped run the largest brewery in Britain. But on this occasion the chief remedy was highlighted: Christianity was always the start.

There may have been no hypocrisy in the Committee’s anguish, but no confidence either. Intellectually and psychologically the parliamentarians appear to have suppressed awareness of a fatal bind: *that civilization, the only remedy for genocide, would itself have genocidal consequences*. It took many damaged generations in Australia and Canada before the disaster could be acknowledged, that it was a kind of killing, to kill the Indian in the child. When Stephen Harper, a later evangelical Christian, said sorry, did he understand this maxim any better than his forebears? And have we as historians yet done enough to create understanding of what it meant? A key difficulty in changing awareness is the correspondence between the ideas current in colonial democracies now and those evident at the time of colonization. Most of the concepts we need to apply—ignorance, ideology, interests, identity—have interconnections that underlie intent. Perhaps because we share so many assumptions built into these words we find it hard to credit intent to destroy. Our own interests, our own identities do not have genocidal implications; could it have been true then?

Here, I want to persuade you, ethnographic history comes into its own. The answer to Günther Lewy’s question, “Can there be genocide without the intent to commit genocide?” must continue to be the “thick description” of incidents, interests and policies with genocidal consequences, even if, or especially if, no genocidal intent was announced. The “dark vanishings” of peoples subject to colonialism are not to be dismissed as “fatal impact” or “the price of progress.” They are disasters that historians must explain.
Often enough, we also have explicit pointers of ideology and interests very close to intent. An influential writer with a very large audience visited Australia in the 1870s. He did not omit the dwindling population of Aborigines. “Their doom is to be exterminated; and the sooner that their doom be accomplished—so that there be no cruelty—the better will it be for civilization.” His foxhunting and London club friends called him Tony Trollope, and he had already consigned the Indians of Canada and the United States to the same fate. “The latter people has been, or soon will be, exterminated—polished off the face of creation, as the Americans say—which fate must, I should say in the long run, attend all non-working people. As the soil of the world is required for increasing population, the non-working people must go. And so the Indians have gone.” The Indians would not work in the new economy: their fate was to be “exterminated.” Trollope’s characters and his confident travel propaganda affirmed his own identity and imposed a victim identity on others. His generally benign ideology—here is just one of many places where I follow Marx—helped disguise interests. The interests of Trollope’s ever increasing settler population were the interests of a whole civilization. Interests leave a trail we as historians can follow to groups and individuals who might share responsibility for deaths far from home.

Civilizing, needless to say, does not appear in the Genocide Convention and it remains a document of mixed blessings for indigenous peoples. It does nominate child removal as genocidal, but does not highlight the purpose or the consequences. Andrew Woolford has made a strong case for not applying the Convention as a universal grid in what happened to indigenous peoples, where assimilation might be as important as extermination. To comprehend their experience and understandings is a completely different challenge from proving intent to cause mass death. The cultural damage Woolford calls ontological genocide was very much what Lemkin had in mind. We now have to liberate his word to encompass the catastrophes of colonialism the imperial powers were not ready to address in 1945. The challenge is to change a public consciousness through many private changes in awareness, so as to liberate genocides that happened in Australia, in Canada, in the US, from suppressed shame into acknowledged history.

Relations of Genocide Revisited

Indigenous experience; civilizing and plainly genocidal intentions; economic interests and ideology; developments in technology communications and commerce on a global scale: what is the best way of connecting all these elements to create understanding? There is no one answer. In 1987 when I began talking about land and lives in Australia as relations of genocide I could see one path towards an answer. I continue to defend the more dynamic relations in preference to structures’that Adam Jones, Patrick Wolfe and others have kept very much in play. I don’t have an answer to how the pursuit of private interests creates the huge alienated power of capitalism, nor did Locke, Ricardo or Adam Smith. Marx spent a lifetime on it. It is most of a lifetime ago that I had to answer exam questions on the Whig grandees and how their patronage controlled British parliaments and governments. I couldn’t ever answer those questions. But I do have an answer to how they matter in what I’m calling the liberation of genocide. If you spend only five minutes at the Wikipedia entry for John Locke, meeting his patron the Earl of Shaftesbury, hearing him in discussion with John Dryden and Isaac Newton, and accompanying the future queen from Holland to England, you get a sense of what spread of history might be relevant here. I don’t need to tell you about Locke’s direct influence on the founding fathers of the United States.

The original title of my book was to be Jefferson’s Genocide (I’m now saving that for later) and the argument for changing it was that it would simply be too distracting or even cause some people not to go near it. Yet the southern and westward expansion of the United States is perhaps the most promising field for trying to trace the relations of genocide beyond the frontier rhetoric of Indian removal and extermination. The patriot heroes George Washington, Thomas Jefferson and Patrick Henry were also heroes of land speculation and Native American displacement. They pushed out the frontier to create an ever-larger proving ground of Locke’s ideology.

We do need to go back to John Locke. And, on the vast proving ground, to Frederick Jackson Turner. Like Marx he is severely out of fashion, not because of specific debates about the frontier but because of the ambition of his enterprise.
The United States lies like a huge page in the history of society. Line by line as we read this continental page from West to East we find the record of social evolution. It begins with the Indian and the hunter; it goes on to tell of the disintegration of savagery by the entrance of the trader, the pathfinder of civilization; we read the annals of the pastoral stage in ranch life; the exploitation of the soil by the raising of unrotated crops of corn and wheat in sparsely settled farming communities; the intensive culture of the denser farm settlement; and finally the manufacturing organization with city and factory system. This page is familiar to the student of census statistics, but how little of it has been used by our historians.

We might say the same about historians of genocide. It is daunting to integrate the destructive pressures of these huge economic and societal developments with the creative energies of America. Turner’s bold project, to interpret the meaning for his society of its uniquely rapid roll out of modern technological civilization from sea to shining sea, did not neglect its impact on the indigenous peoples in its path. The new farming frontier meant that the forests were felled, the game driven away—or slaughtered—and the people, too. In the century since Turner there has been a great deal of powerful writing on the experience of individual peoples and the ideology of expansionist progress. There are many searching explorations of the meeting of old and new, some on Richard White’s middle ground. But you will not find a great deal about genocide in White, or Limerick, or Worster. You will find more, with more affecting immediacy, in Jeff Ostler on the Sioux, or the classic writing of Dee Brown or in Burns’ and Ives’ TV series, *The West*.27

When I was recently trying to make sense of how just one encounter in the middle of the continent, the coming of the cattle industry to Indian Territory, later Oklahoma, I found the TV series grounded me more intimately and with more historical scope than most of the writing. It is an involving introduction to Native American perspectives, with Sitting Bull, Scott Momaday and others. Like the historians who have not shied away from big movements of people and capital, animals, machines and ideas, it lays out the scale and complexity of the continental conquest. What I’m looking for is a convergence between close-up studies, ethnographic interpretation, genocide theory, and the large canvases of Walter Nugent, James Belich and John Weaver.28

There are some special features of these books that appeal to me. They are not comparative histories, and they are not the old fashioned histories of empire my generation could not stomach when we were students. They each have a different balance between narrative and interpretation. There’s a lot to learn from Nugent and a great deal to inspire further enquiry in Weaver. He ranges from ecology and economy to the political order and sociology of the colonizing powers and the cultural understandings that made possible, as he says, “the messy convergence of private impertinence and the coercive might of the state.” As the history of the great colonial corporations is re-assessed we will find the convergence of private and state interests was not just messy for indigenous peoples but lethal as well. For the colonialist state that coloured so much of the map pink, Great Britain, he quotes Richard Grassby’s formula, that “the assimilation of all potential rivals by the landed gentry created a united propertied interest which embraced business, agriculture and the professions.”29 Washington and Jefferson could not imagine a new nation apart from that gentry ideal. Jefferson set out to assimilate the Indians into it as well.

These historians are less blunt than Chris Powell: they do not say “Genocide in the modern era has its roots in the very constitution of society, in the civilising process which has generated both the sovereign state and the sovereign individual subject.”30 But they keep pushing us to connect all those histories of Jeffersonian philanthropy with historical relations of genocide. Sociology has been in genocide scholarship since the beginning, yet the sociology of genocidal societies (with the exception of Germany) remains the least connected to the scholarly discourse of genocide studies. The connecting historians are few, and not all of us need to theorize the contradictions and dialectics but there are inspiring examples of how they can be teased out. Ronald Takaki is exceptional. He combines a long, wide view with deep explorations of society, psychology and his own genocide consciousness.31 It is for us to pursue the project of understanding genocide in its largest context, over time (modern history), movement (transfers of population with their complete societies), and space (global). I do not think we can ever understand what happened in so many terrible encounters in thousands of incidents without entering into the process that used to be called progress. We have to engage with the challenge so as to liberate genocide into the most ambitious historiography.
History Work and Genocide Awareness in Australia

By and large, Australian historians have not tried to interrogate the categories of conventional historiography. Aboriginal peoples were sometimes excluded, sometimes included but very rarely followed into a deeper enquiry of European settlement. There were no Aborigines before there was an Australia. The most totally colonizing act, justifying the supplanting of indigenous peoples, was the imposition of an imported system of meaning. Every place of significance, often deep religious significance, was casually (but legally) renamed, and usually appropriated by a newly-arrived vandal who had trampled it with strange animals or fenced it off. Can a name be an instrument of genocide? Quite fundamentally. Can a fence be an instrument of genocide? Of course, if it helps destroy something that gives a people the meaning of their existence. “Capital on four hooves” to a pastoralist is an alien tank armed with destructive tracks to an Aboriginal custodian of a waterhole. Thirty years ago Ross Gibson made a powerful film called Camera Natura. In it he shows two representations of country, one a central Australian dot painting, the other a settler survey showing the right angles of properties and straight boundary lines. “Whoever can read one map,” we are told, “cannot read the other.” To this day, though most Australians would proudly recognize a Central Australian dot motif on a Qantas jumbo, almost none would be able to even guess which Central Australian people developed that art—and we’re talking about a living people with their own language and identity. Then there are all the peoples of whom not one member is left alive, and those whose last speaker of language is soon to die. These are the ‘Blackfulla’ terms in English: ‘language’, ‘country’, ‘law’. If no one speaks language, how can knowledge of country be continued, who will know the law? As in the case of the two maps (whoever can read one cannot read the other) we need to stimulate a sensibility that can appreciate how an indigenous sense of time, place and movement is so fundamentally at odds with a settler one.

The great Australian anthropologist W. E. H. Stanner, who fought the first battles to change popular consciousness of Aboriginal cultures, coined the term ‘everywhen’ to indicate the different temporal and spatial significance of what was too easily translated as ‘the dreaming’. The poetic term went with an ethnographer’s explanation: it was ‘a kind of narrative of things that once happened; a kind of charter of things that still happened; and a kind of logos or principle of order transcending everything significant for Aboriginal man.’ How could non-Indigenous Australians ever access that world? Stanner kept trying: ‘the worst imperialisms are those of preconceptions’, he wrote, and he knew how destructive preconceptions could be. After all, he grew up in a time when Aborigines were generally considered ‘a dying race’ and verses such as this were standard fare:

Her shield unsullied by a single crime,
   Her wealth of gold and still more golden fleece,
   Forth stands Australia in her birth sublime,
   The only nation from the womb of Peace.

The many radically different points of view, the indigenous ones, can be only partially construed by even the most sensitive ethnography, even though colonizers expected conquered peoples to make sense of European perspectives as a matter of course. Stanner said that asking Aborigines to adapt on our terms was asking them to ‘unbe’. To have a place in the market economy they would have to leave a culture whose values, unlike ours, ‘were determined once for all in the past.’ But the adaptation that seemed impossible without a virtually genocidal assimilation now seems taken for granted. In Australia there is a renewed optimism that Aboriginal communities and individuals are finding ways beyond survival into initiative, enterprise and prosperity. What Stanner and others hoped to preserve as their culture is of course giving way to a new culture, still destructive for many but with the audacity of hope.

Importantly for us, it involves a changed orientation towards the past. There is little appetite for discussions of genocide among the intellectuals and leaders of Indigenous Australia. If pressed, some might say they have entered a post-genocidal history. Free adaptation to changing historical circumstances, even coercive colonial circumstances, was never part of Lemkin’s definition of genocide. In part, some point out, that was because he needed the support of colonial powers,
in part because (like Hannah Arendt) he shared the idea of civilization they proclaimed. He also believed—as some indigenous peoples did from first contact—that the benefits of European civilization were just that: clear benefits. For me, rather late in the day, this has meant returning to my own neglected national history.

I am an Australian citizen born in New Zealand. Growing up in Dunedin—hence my mainly Scottish identity—we lived in the suburb of Maori Hill. It didn’t strike me as the least bit odd that my classmates at Maori Hill School included only one Maori family. The Paratas, like the Bartas, might have been that little bit different but not really. We all trotted along to the forbidding rows of portraits in the Otago Early Settlers Museum, whole walls of bearded city fathers, and the model of a local Maori pa in the big Museum. It had long gone, like the giant Moa in the diorama nearby. Only in recent months have I gone back to New Zealand history with the question: why was I never told about the genocide?

Very few Maori—you can check this on the web—would want to tell me about a genocide. Yes, all agree numbers at least halved in the century after European arrival, from over 100,000 to 47,000, partly because of disease, partly because the enthusiastically acquired muskets hugely increased the casualties of Maori warfare. Then the disruptions of dispossession, warfare against the British Empire, and yet more dispossession. At the end of the 19th century there was much talk about ‘the passing of the Maori’. But at the very same time Maori numbers were increasing again and the determination to save the cultural structure of Maori identity was strengthening. It could be said there was no genocide in New Zealand because the Maori fought the settlers to a standstill, but even there it involved very creative adaptation to new technology and new principles of law and language. With the advantage of one language, Maori quickly embraced both Christianity and literacy. Mission and government schools taught in Maori until the Maori insisted on English. Now all government departments are named in both languages.

We are a long way from there in Australia. It is a struggle to have any Indigenous children taught in their first language. There were perhaps 750 Aboriginal languages in Australia. Most have gone. All are threatened. First on the missions, then by removing children for assimilation, there was an officially sanctioned policy of destruction. Perhaps 25,000 children—up to one in three—were forcibly removed between 1910 and 1970. Few families were not affected. It was not only a policy of cultural assimilation, it became quite generally acknowledged among its proponents as a biological campaign, indeed a final solution. Australia would become homogenous, and white, by ‘breeding out the colour’. The focus was on removing “half-caste” children, or those with an even greater fraction of “white blood”, especially girls. “Full-blood blacks” would die out anyway: the “solution” to the problem of a growing mixed-race population was to steal the children, keep them from contact with their Aboriginal families, and marry them to Europeans. A 1937 Canberra conference was assured that in 50 years time everyone would be able “to forget that there were ever any aborigines in Australia.”

Aboriginal people disappeared from view for the best part of a century. As the peoples actually disappeared in the South East, consciousness of what had taken place went with them. And, as in Canada, it is without doubt Aboriginal activism and images of a much larger population in the north, that brought successive bouts of media and mainstream attention. On each landmark occasion, the 1967 referendum on including Aborigines in Commonwealth responsibilities (still popularly misrepresented as ‘when Aborigines got the vote’), the Land Rights movement of the 1970s and 80s, the Deaths in Custody Royal Commission of 1987-91, and the Stolen Children report of 1997, it was Indigenous insistence that broke through TV trivia, wall-to-wall sport, the clamour of kids, paying the mortgage, and politics as usual. An exception was the 2007 ‘Intervention’ in the Northern Territory. In response to reports of endemic child abuse the army was sent in and welfare was controlled against the protests of Aboriginal communities. While a few voices spoke of continuing genocide, the Australian majority had an attitude dominated by images of, one might say, auto-genocide: the continuing alcohol abuse, drunken violence, and youth suicide.

The images and realities of Aboriginal destruction and self-destruction are being confronted with a new tone among Aboriginal leaders. Alcoholism and drug abuse as survival mechanisms evoke less sympathy. There are practical issues to be tackled in the health and judicial systems. The world’s most incarcerated people have chronic illnesses and an intractable gap in life expectancy.
But the absence of genocide from the discourse is as marked among Indigenous commentary as it is in conventional history. Genocide is being liberated from Black consciousness because there are more important matters to get on with. That Indigenous agency has trumped victim history decisively among Aboriginal intellectuals may have interesting consequences for genocide studies. Indigenous peoples can decolonize from our concept but we are stuck with it. 39

For us, the heirs of colonialism, the history remains a matter too important to let go. The way forward, I’m coming to think, is not to keep insisting on the recognition of genocide but on the recognition of our connection to the historical realities whether they are so named or not. The connection between past and present was a key one in the relations of genocide I hoped Australians would come to recognize.

In 1984, Don Watson published Caledonia Australis: Scottish Highlanders on the Frontier of Australia.40 The Scots were his own forebears and the frontier was the district where grew up, to the east of Melbourne. The book centres on Angus McMillan, and in the many ethnographic illustrations I recognized some of my own heritage as well. Looking so like my uncles in Dunedin, the new laird of Gippsland, benign and influential in his later years, had a murkier past. As an immigrant landholder he organized the Highland Brigade that perpetrated the biggest massacre in Australian history. His friends and neighbours murdered more than a hundred peaceful Aborigines camped by a waterhole. They turned it red with blood.

In colonial Australia the settlers called it ‘dispersing’ the Blacks. Watson plainly called it genocide and in this case traced its origins to the prior dispersal of the Scots Aborigines (as Marx called them) in the Highland clearances. That event, with its own history of inexorable interests and ruthless atrocities had global origins and global effects—in Canada, the United States and New Zealand as well as in Australia. Caledonia Australis has been republished twice but has never had the influence I hoped it would have. Several books later Watson has written The Bush: Travels in the Heart of Australia, where he again begins with his family memories then moves through landscape and nature and history towards a national ‘we’, a collective that has had responsibility for the country since European settlement displaced the Aboriginal peoples who cared for it. There are some direct and confronting references to the destruction of lives and land but its effectiveness is in an even more ambitious kind of ethnography, one that includes the reader in its large reflective enterprise. It has been a popular and prize-winning success. Through a poetic array of stories and observations the book illuminates a culture of taming the land in a rush of appropriation, where the hard life of establishing new animals for a new population made the deaths of the earlier possessors seem close to inevitable. The facts related and alluded to do not have to be named as genocide for the reality to make undeniable historical sense. Watson, known as a commentator on plain language, chose not to deploy the word. Yet none of the reviews (overwhelmingly positive and easily located on the web) have any doubt about the story told. 41

For a time, Watson had another career. He wrote speeches for the Labor Prime Minister Paul Keating. One of them, in 1992, will live as the most direct facing of Australia’s dark past in the two centuries of British occupation.62 The immediate audience was a Sydney gathering of mainly Aboriginal people in Redfern Park. They were not prepared for the words that would resound far beyond their community. The larger audience, the national one, was even less prepared. They were used to references to ‘our’ country and our history. They were quite unaccustomed to the ‘we’ the Prime Minister would repeatedly ask them to belong to. He would ask them to directly face, and own, Australia’s genocidal past. And he did it—this, to me, is critically important—not by citing texts of evil intent but by going back to the actions.

The starting point might be to recognise that the problem starts with us non-Aboriginal Australians.
It begins, I think, with that act of recognition.
Recognition that it was we who did the dispossessing.
We took the traditional lands and smashed the traditional way of life.
We brought the diseases. The alcohol.
We committed the murders.
We took the children from their mothers.
We practised discrimination and exclusion.
It was our ignorance and our prejudice.
And our failure to imagine these things being done to us.\(^{43}\)

The emphasis on imagination in the Redfern speech was inspired. It recognized the kind of heightened realities we all live in and which make it close to impossible to recognize the realities others live within. We can see this incapacity as a common factor in everyday life, and in every genocide. ‘We failed to ask,’ said Keating, ‘how would I feel if this were done to me?... It might help us if we non-Aboriginal Australians imagined ourselves dispossessed of land we had lived on for fifty thousand years – and then imagined ourselves told that it had never been ours. Imagine if ours was the oldest culture in the world and we were told that it was worthless. Imagine if we had resisted this settlement, suffered and died in the defence of our land, and then were told in history books that we had given up without a fight.’

Kevin Rudd’s 2008 apology to the stolen generations, like Harper’s apology the same year, would earn more credit as a healing acknowledgement of cruel policies. It was less direct about assimilation— unlike Canada’s reference to ‘kill the Indian in the child’— and carefully did not confront Australians with the full reality of their past. It was resoundingly silent on the genocide that founded the nation.

The word genocide was not in Keating’s Redfern speech, either. The tactical, perhaps strategic, wisdom of by-passing Lemkin’s term was borne out when it was thrown in the faces of Australians by the 1997 Bringing them Home report on the Stolen Generations. That the Australian report cited child removal as genocide within the meaning of the Convention caused outrage and thousands of split words in the phoney ‘history wars’ between those accused of promoting a ‘black armband’ view of the past and commentators who were much more evidently wearing a ‘white blindfold’. \(^{44}\)

As academics, we are familiar with the silos within which (rather than between which) discourse takes place; in the public sphere debates in the media (old as well as new) almost always reinforce the echo chambers of prejudice. The campaign caused ‘genocide’ to be locked up afresh as a pariah word, not to be used of Australia. For most Australians, it is not to be liberated to this day. For those of us concerned to see its apt usage in general discourse the question might become: is it more important to liberate the word or the consciousness? The Redfern speech is a beacon.

Indigenous voices might also help us find our own. Stanner recorded the attempt of an old Aboriginal man to imagine the mental world of the destructive newcomers.

White man got no dreaming
Him go ‘nother way.
White man, him go different.
Him got road belong himself.\(^{45}\)

There was similar Native American incomprehension when the buffalo were being slaughtered. ‘Has the white man become a child, that he should recklessly kill and not eat?’\(^{46}\) I do not think it is too extreme to relate destruction of our own species to our inability to connect with every other species. That connection was something Europeans, even Charles Darwin, found most surreal about the indigenous peoples they encountered and called savages. The genocide they rained on them was fed by a certain view of nature, blotting out all earlier human experience of living in the natural world. Perhaps now we will listen to the voices they tried to silence. The white man’s road now threatens not just the invaded peoples but all peoples. The accelerating ecological disaster has been linked to genocide by Mark Levene, Jürgen Zimmerer, Damien Short and others.\(^{47}\)

The context of modern genocide was always the whole globe, now finally in plain sight as a planet, the lonely planet we all have to share. It is an historic opportunity genocide scholars should seize: we are the experts, sadly, in mass destruction. What do we say about responsibility for the causes and effects of climate change? About poverty, overpopulation, over-consumption, monoculture agribusiness, heedless ‘development’? About persecutions, wars, sexual violence, and the reasons for desperate migrations? There are known effects and unknown ones. With whatever means we choose we must keep trying to reach those who know nothing about the work we are
doing here. What we are doing is too important to let go—and too important to keep to ourselves. We have had thirty years of creating Genocide Studies. Even as we celebrate—and we should—we must liberate genocide from historical distortions, from restriction to a reductive legal concept, and from containment in an academic specialty. Our objective now, overcoming differences of starting point and vocabulary, must be to engage more widely with all who care about the destruction of peoples and the cultural losses to humanity. Genocide, sadly, belongs to everybody and in the next thirty years we, you, have to write the kind of histories that make sure everybody knows why that matters.

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Acknowledgments

This article originated as a keynote address at the 2014 Conference of the International Association of Genocide Scholars at the University of Manitoba. I am indebted to the organizers and the participants, and to continuing discussion with colleagues.

Endnotes

1 ‘After the Holocaust: Consciousness of Genocide in Australia’, *The Australian Journal of Politics and History*, 31, 1 (1985): 154-161; special issue ed. Konrad Kwiet and John A. Moses. Later I was told that Charlie Perkins, Australia’s first Aborigial university graduate and first Indigenous head of a government department, had spoken to the Hakoah audience the week before me. He knew how to deal with people and didn’t offend anybody, though twenty years earlier he had been more confrontational when he led Australia’s first Freedom Ride.


8 John Docker, who also believes there is a danger of Genocide Studies becoming ‘just another enclosed discipline’, put it to me this way: Genocide Studies ‘can only engage with its true subject, humanity, by engaging in constant conversations with the whole of the humanities.’

9 We owe these insights to the recent publication of Lemkin’s autobiography edited by Donna-Lee Frieze. Raphael Lemkin, Totally Unofficial (New Haven: Yale University Press, 2013) 46-59.


12 Clifford Geertz, ‘Thick Description: Toward an Interpretive Theory of Culture’, The Interpretation of Cultures (New York: Basic Books, 1973) 28-29, retells a tale that bears more retelling. ‘There is an Indian story—at least I heard it as an Indian story—about an Englishman who, having been told that the world rested on a platform which rested on the back of an elephant which rested in turn on the back of a turtle, asked (perhaps he was an ethnographer; it is the way they behave) what did the turtle rest on? Another turtle. And that turtle? “Ah, Sahib, after that it is turtles all the way down.”’ In Winnipeg it could not but remind me, in the repeated references by Native Americans to ‘Turtle Island’, of the distance between those who can still see themselves as dancing on the turtle’s back and those who begin with the much newer continental nation of ‘Canada’.

13 I am far from alone in noticing this problem: ‘Although the word genocide was introduced less than seventy years ago, it has gathered enormous rhetorical power that often overshadows its critical utility.’ Woolford et al, Colonial Genocide in Indigenous North America, Introduction, 2.


15 Bertell Ollman, Alienation: Marx’s Conception of Man in Capitalist Society (Cambridge: Cambridge University Press, 1971). See also Helmut Fleischer, Marxism and History (New York: Harper, 1973) for an interpretation that would make an integration with ethnographic history (and concepts such as genocide) productive.


17 In Moses, ed., Genocide and Settler Society, 54-55.


19 Ben Kiernan, Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur (New Haven and London: Yale University Press, 2007). Kiernan has taken care in the vast scope of his project to include ‘extermination’—which may or may not count in a legalistic definition—and to emphasize, even in more legalistic interpretations, the reading of actions to reveal genocidal intent. Introduction, esp. 9-20.

20 The withering 1837 Report of the House of Commons Select Committee on Aboriginal Tribes (British Settlements) is available online in facsimile at https://archive.org/details/reportparliament00britgoog.

21 ‘The mighty influence with which Providence has invested us, we have made the means of spreading devastation and ruin.’ Preface, vii.


Of the many individual testimonies, one of the most insightful is Theodore Fontaine, *Broken Circle: The Dark Legacy of Indian Residential Schools. A Memoir* (Calgary: Heritage House, 2010).


29 Weaver, pp. 5-11. On the limits of societal knowledge in a world only coming to grips with modern science and communications, Richard Grassby observes: ‘Even a man of incomparable intellectual gifts, like Locke, was necessarily limited in his knowledge of the world; Locke probably knew less about his own society than the statistician Gregory King.’ He is equally sceptical about pamphlets, theatre and diaries as sources for social realities. Richard Grassby, *Kinship and Capitalism: Marriage, Family, and Business in the English-Speaking World*, 1580-1740 (New York: Cambridge, 2001) pp. 25-7.


33 Wikipedia numbers 27 language families and up to 750 distinct dialects when the Europeans came. Of those that survive seven retain between 1,000 and 3,000 speakers. Only in a few remote places are indigenous languages being learned by children. Walsh, Michael ‘Overview of Indigenous languages of Australia’ in Suzanne Romaine (ed), *Language in Australia*. (Cambridge: Cambridge University Press, 1992).

35 James Cook was blunt about Maori conflict. ‘I might have extirpated the whole race,’ he wrote in his journal, ‘for the people of each hamlet or village, by turns, applied to me to destroy the other.’ Captain Cook’s Voyages of Discovery (London: Everyman, 1948), 242, quoted in V.G. Kiernan, The Lords of Human Kind (Harmondsworth: Penguin, 1972) 273.


37 ‘Nationally we can conclude with confidence that between one in three and one in ten Indigenous children were forcibly removed from their families and communities in the period from approximately 1910 until 1970. In certain regions and in certain periods the figure was undoubtedly much greater than one in ten. In that time not one family has escaped the effects of forcible removal (confirmed by representatives of the Queensland and WA Governments in evidence to the Inquiry). Most families have been affected, in one or more generations, by the forcible removal of one or more children.’ Bringing them Home. National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (Canberra: Commonwealth Printer, 1996).


40 Don Watson, Caledonia Australia: Scottish Highlanders on the Frontier of Australia (Sydney: Collins, 1984), pp.165-70. The first settlers of Winnipeg were brought from Scotland for the same reason in 1812. There is a bronze group along the riverbank and the story is told on the St Andrew’s Society website. After some ‘bloodshed and open conflict’ 200 settlers and 100 ‘soldier farmers’ were established by 1821. The statues were unveiled in 2008. See also Ann Curthoys, ‘Scottish Settlers and Indigenous People in Colonial Australia’, in For Auld Lang Syne: Images of Scottish Australia from First Fleet to Federation, ed. Alison Inglis and Patricia Tryon Macdonald (Ballarat: Art Gallery of Ballarat, 2014), 83–100.


43 Prime Minister Paul Keating, launching the 1993 International Year of Indigenous Peoples, at Redfern, Sydney, on 10 December 1992. [http://www.youtube.com/watch?v=mKhmTLN3Ddo](http://www.youtube.com/watch?v=mKhmTLN3Ddo)

44 See Wikipedia, ‘History wars’. The sensitivity about the word genocide is visible in the widely read Aboriginal Australians by Richard Broome (Sydney: Allen & Unwin, 1982). After the settlement of Melbourne in 1835, he writes, Indigenous numbers dropped from more than 10,000 to less than 2,000 in eighteen years— a decline over 80 percent. The ‘fully revised’ fourth edition published in 2010 repeats the figures. There is a more extensive discussion of the causes, primarily disease, poor diet, disruption and despair. None of these factors, not even the killings or the tragically low birth rate, are considered as genocide, and there is no indication in the notes or bibliography of the extensive writing on Australian genocide since the first edition.


Stanner is very careful about genocide, the more so because his original field work was in the 1930s. But he makes clear in influential essays (notably ‘Durugam: a Nangiomeri’ in this collection, esp. 30-35) that the loss of whole tribal groups with distinctive languages and cultures, with hundreds of individuals lost to disease, drink and other causes, was a disaster in the encounter with a colonial world, even as Aborigines adapted to it.
‘I have heard that you want to settle us on a reservation near the mountains. I don’t want to settle. I want to roam over the prairies. There I feel free and happy, but when we settle down we grow pale and die… These soldiers cut down my timber; they kill my buffalo; and when I see that, my heart feels like bursting… Has the white man become a child that he should recklessly kill and not eat? When the red men slay game, they do so that they may live and not starve.’ Satanta, Chief of the Kiowas, 1874. Dee Brown, Bury My Heart at Wounded Knee (1970) Illustrated edition. (New York: Sterling, 2009), 2. As I was contemplating this, my 11 year-old grand-daughter Chloe was writing her own essay on human destruction of animal habitat. ‘How would you feel if someone cut down your home?’


Abstract: This retrospective looks-back on and provides a summation of Killing California Indians: Genocide in the Gold Rush Era, a symposium organized and executed by the California Center for Native Nations and the University of California, Riverside. It provides a synopsis of each of the papers presented as well as the presentations of the Native Community Panel, all of which all dealt with the nineteenth century genocide. Highlights of audience discussion as well as a description of cleansings and blessings offered by local spiritual leaders and the Native flute tributes that opened and closed the event are included, as well.

Keywords: California, Native American, United States, settler colonialism, conference, symposium

Following a few words of welcome, Clifford E. Trafzer (Wyandot ancestry), Distinguished Professor of History and Costo Chair in Native American Affairs, called for a moment of silence for all of the lives lost to horror during the nineteenth century in California. The silence was broken by a gentle Native flute tribute from Henry Vásquez (Huachichil), member of the Native American Community Council of San Bernardino and Riverside Counties. Vásquez’s beautiful song of remembrance provided a stirring opening to the events of the day. The symposium, Killing California Indians: Genocide in the Gold Rush Era, had begun.

Native California community members and leaders, scholars, students, and the general public gathered on a warm November day in Riverside, California, for a symposium on a topic that is, at least at the time of this writing, still very controversial: the genocide of California Indians during the Gold Rush. Organized and executed by research fellows at the California Center for Native Nations (CCNN) and the Costo Chair, the event was an important opportunity for engagement between both Native and non-Native scholars and the broader public. Audience members quickly underscored the importance of the event and topic as the room quickly filled, forcing people to peer through the doorway and strain their ears as they spilled out into the hall.

After the formal introduction of the morning panel, the first to speak was Emeritus Professor Jack Norton (Hupa/Cherokee) of Humboldt State University. Norton is the dean of the field, having published Genocide in Northwestern California: When Our Worlds Cried, the first academic tract on the subject, through the Indian Historian Press in 1979. His presentation, To Destroy in Whole or in Part: Remembering the Past to Affirm Our Future, began the symposium with a uniquely experiential view of the genocidal actions committed during and after the Gold Rush era from a Native northwestern California perspective. He wove together personal, historical and cultural narratives that bore witness to the heinous crimes that were committed against California Indian Nations as a way to destroy, in whole or in part, them and their time honored religious beliefs, traditional customs, and ways of being.

Professor Norton’s personal history brought great insight and emotion to the morning panel. An enrolled member of the Yurok Tribe, he traced his family name to his great-grandfather, Amonzo Norton. Amonzo came to California in the early 1850s and married a full blood Hupa woman from the Quimby family of the village of Tswenaldin. Though Amonzo “had no business in California, in Hupa, in Tswenaldin…” he was there, and, as a result, his great grandson, Jack Norton, Jr., was there to tell the story.

Norton adeptly painted a larger picture of the horrific episodes of the genocide, one that went even beyond the brutal murders. Explaining that many genocidal episodes in the northwest California took place during religious ceremonies, he mourned the burning of sacred ceremonial objects and regalia, some of which was looted and can be seen today in museum collections on the East Coast. At times, the Hupa elder’s voice cracked noticeably, causing him to pause in silence to wipe a tear from his eye, as he spoke of babies burned alive along with the regalia during
a massacre at the village of Yontoket in 1853. In this way, he proved the impossible, showing that such horrific episodes were even worse than people, Native and non-Natives, scholars and students, had imagined.

Academic works often fail to show the raw emotion that wells forth during discussions of the history of California Indians. At times, several of the scholars broke down and cried due to the nature of their topics. The next presenter, Professor Brendan Lindsay of Sacramento State University, could not stop the tears when he spoke about the horror experienced by Native children stolen from their parents and taken into settlers’ homes for forced labor and sexual gratification. Lindsay, who published the award winning book, *Murder State: California’s Native American Genocide, 1846-1873*, in 2012 with the University of Nebraska Press, centered his talk on Section (e) of the United Nations’ definition of genocide: “Forcibly transferring children of the group to another group.” He explained how the first law the state of California ever passed, the 1850 *Act for the Government and Protection of Indians*, effectively legalized child slavery through the indenture of Native orphans into non-Native homes.

Lindsay detailed the broader implications of the legislation, since the demand it created for orphans thus created an incentive to murder Indian parents. His research brought to light an amendment to the law ten years later that expanded the indenture to adult Indians and, though the practice legally ended just three years later in 1863, Indian children continued to be taken into non-Indian homes for decades. Thus, Lindsay showed that scholarly periodization of the Gold Rush Genocide may indeed need to be reevaluated. Though the work presented was the preliminary stages of his next project, it proved that there is still much to be done on the scholarship of genocide in California.

Sociologist James Fenelon (Dakota/Lakota) of California State University, San Bernardino, rounded out the morning panel. He reminded the audience of the many talks on Native survivance at the California Indian Conference he cohosted the month prior. The conference was another event in which the pain of the California Indian experience was evident. However, while elders, community members, and scholars all shared stories of community destruction, they also shared their survival and renaissance, as well. Fenelon’s presentation added further breadth to the symposium discussions by examining the genocide through a world systems lens. Through this, he showed the connections between the Gold Rush Genocide and the rest of Native America from first contact and around the United States. He also examined the processes of recognition of and healing from genocides throughout the world to provide possible avenues for the future.

As the speakers shared their research and personal experience with the attentive crowd, more and more people came to the door, eager to hear their presentations. People crowded shoulder-to-shoulder in the chairs, and students gave up their seats for elders when each scholar finished. More and more people sat on the floor, leaned against walls, and peered through the door from the hallway when there simply was no more room. Coordinators from the CCNN busily worked with university staff and found a larger room for the afternoon session. In the midst of this, a well-respected Cahuilla/Serrano religious leader noted the spiritual heaviness that came with the subject matter, pointing out boxes of tissues being passed around among the audience and speakers. He humbly requested to perform a cleansing of the room before the audience discussion to which the coordinators eagerly assented.

With a few brief words from the community leadership, the audience turned to the four cardinal directions in unison with the blessing as *pivat* (tobacco) smoke, fanned by eagle feathers, cleansed the room of the negativity. Though the religious leader thanked the coordinators for allowing him to perform the ritual, it was they who were truly grateful for his help. The episode showed the flexible, organic, and, indeed, Native nature of the event. More importantly, however, it spoke to the close bonds that have formed between the university and the local Native community through the California Center for Native Nations.

Audience members began the discussion period by asking for clarification on several points from each of the scholars. However, the most interesting moments of the discussion came from two Native community members. After thanking the panelists, a Haudenosaunee gentleman who recently moved to California from New York spoke fervently about the need to organize amongst the various tribes and with the non-Native community as well. The symposium was
indeed a great example of such organization, itself. Another audience member, a Cupeño man, spoke passionately about learning and sharing Native ways and spirituality when he lived in the northwest of California. Emotion grew as he shared deeply of the pain his people felt because of their continued separation from their homeland, the village of Kupa in San Diego County, from which the United States government forcefully removed them in 1903.

During the lunch break, elders, scholars, and community leaders were invited to share in a meal provided by Zacatecas Café, a local restaurant owned by a family of mixed Maidu and Mexican heritage with strong ties to the University of California, Riverside. Though seemingly trivial, the meal provided an excellent opportunity for networking among academics and community members. The night before, the participants and members of the local Native community had also gathered at Zacatecas for a welcome meal. The amount of discussion, sharing, learning, and reminiscing highlighted the importance of such gatherings for community members and scholars. The university prides itself on these strong working relationships that it has fostered with the surrounding communities. Old friendships were rekindled and new ones forged while intellectual discourse furthered everyone’s knowledge and understanding of the Native experience during the Gold Rush.

In a larger room down the hall, noted historian George Phillips, emeritus professor at the University of Colorado, began the afternoon panel and filled the role of contraire among the scholars. He began by strongly agreeing with the argument first set out by Jack Norton that, according to the 1948 United Nations definition, what happened in California during the Gold Rush period indeed constituted genocide. Philips then began listing various events from throughout world history from the English invasion of Ireland to the Zulus under Shaka, the Khans of Mongolia to Pol Pot in Cambodia. Could labelling what happened in nineteenth century California as genocide actually do a disservice to the people and what they went through by enabling scholars to merely categorize it alongside innumerable other acts of global genocide and forget about it, he wondered. Perhaps there was a better approach for academics to take.

Phillips then painted a scene of a Nazi concentration camp commandant and his family sitting down to a nice Christmas dinner with a backdrop of snow falling outside the window and a large chimney ominously belching black smoke into the background. He used the image as an example of an understatement, a technique he has employed throughout his career as a historian, and one he believes should be employed in the case of the Gold Rush Genocide. This juxtaposition of the dinner and death, he argued, clearly showed the true evil of the situation. Making monsters out of criminals who commit genocide, he pointed out, masks the true horror that is humans brutally killing other humans.

Like Brendan Lindsay, Benjamin Madley of the University of California, Los Angeles, is a rising star in the field. His first book, An American Genocide: The California Indian Catastrophe will soon be published by the Yale University Press. He presented on his work exploring the Modoc War of 1872-73, which, he argued is a grave misnomer. One of Madley’s greatest contributions was his analysis of the continued application of the labels battle or war to events that, when examined historically, amounted to little more than genocidal campaigns by death squads. He pointed out that resistance to genocide, such as that put up by the famed Modoc leader Kintpuash, or Captain Jack, is not uncommon, as one finds examples of such resistance in more famous instances such as the Auschwitz-Birkenau, Sobibór, Treblinka, and Warsaw Ghetto Uprisings. Nevertheless, the war and battle labels in schools and scholarship today, continue to obscure the truth of incidents such as the seven murderous campaigns specifically launched by the United States Army and local militias to eradicate the Modocs as a people.

Michelle Lorimer of California State University, San Bernardino, brought more focus to the issues of representation in modern representation with a focus on textbooks. She has contracted with Great Oak Press, a new venture of the Pechanga Band of Luiseño Indians, to publish her forthcoming book, Reconstructing the Past: Historical Interpretations and Native Experiences at Contemporary California Missions, which critiques the romanticized history around the Spanish California missions that continues to minimize Native voices. Examining many of the textbooks used in California public schools, Lorimer showed how Californians are still reared with the false image of sourdough miners and the victorious Gold Rush. Combined with a whitewashing of
the Spanish mission system, these texts, she argued, go against statements published by the State Board of Education that stress the deep importance of students recognizing the sanctity of life. Lorimer showed that, at best, some of these texts offer a tarnished version of history which may recognize negative issues such as unfair treaties, dispossession of land, and the reservation system, but still ignore the sheer violence and genocide committed against California Indians. These evince a large gap between current scholarship that recognizes the genocide and the history taught to California’s students which has led to a gross public ignorance of state history.

James Ramos (Serrano), a San Bernardino County supervisor and former tribal chair of the San Manuel Band of Mission Indians, aptly followed Lorimer’s presentation and chaired the Native Community Panel. He began the session with a brief description of the thirty-two day campaign against the Serrano by local militia forces in 1866. His own great-grandfather, Santos Manuel, bravely used his spiritual and leadership abilities to lead his band of Yuhaviatam down from the mountains to the valley below. Ramos explained the importance of the symposium for making the truth known to the public – not for blame, but in order to understand where we, as a society, must go in the future.

Supervisor Ramos knows full well the importance of education. In 2011, California Governor Jerry Brown appointed him to the State Board of Education. In addition to representing all Californians, Ramos worked toward acknowledgement of the genocide in state education standards and addressed educational issues facing Native Californians throughout the state. Unfortunately, his election to the Board of Supervisors of San Bernardino County meant his departure from the Board of Education. The situation is promising, however, as Governor Brown appointed Niki Sandoval of the Santa Ynez Band of Chumash Mission Indians to replace him. Ramos assured the audience and panelists that he will continue to work with her to amend the state’s primary and secondary education curriculum.

The first panelist was former long-time Executive Secretary of the California Native Heritage Commission, Larry Myers (Pomo). He brought his many decades of experience to the fore. For years, Myers fought for the protection of sacred and cultural sites and the repatriation of human remains and tribal patrimony throughout the state. He has seen slow but steady progress on these issues and noted that the symposium and the large audience in attendance was a testament to the fact that the genocide of Native Californians has come out of the shadows and is becoming something society can talk about.

Two graduate students offered their perspectives as a non-California Native women living in California. Daisy Ocampo (Caxcan/Zoque) spoke of her work chronicling her peoples’ fight for their sacred lands in Mexico. She drew parallels to the experience of California Indians in the nineteenth century as they, too, lost access to their sacred sites and lands and saw them destroyed by industrial economic greed. Meranda Roberts (Northern Paiute) added a unique dimension to the symposium by explaining that miners did not confine their lust for mineral wealth within artificial boundaries. Rather, when the Forty-niners advanced eastward over the Sierra Nevada, they soon ignited the Nevada Silver Rush, bringing terror to and destroying the lives of the Paiute people who lived on both sides of the state line. 2 Roberts drew a line of causation from these events to famed religious leader Jack Wilson, better known as Wovoka, founder of the Ghost Dance, and thence to the tragedy of the Wounded Knee Massacre among the Lakota.

Gregg Castro (t’row t’raahl Salinan/rumsien Ohlone) eloquently spoke about the pain of the past but underscored the need to move forward and do things in a proper way. He warned the community to resist the urge to blame and hate. Castro linked many modern problems that continue to tear Native communities apart to an on-going genocide, one in which Native people, at times, unknowingly perpetuate. The desire to operate in a non-Indian world using non-Native ways only leads to further destruction and loss, he said.

Steven Newcomb (Lenape/Shawnee) of Kumeyaay Community College, too, reminded the audience of the non-Native influences and structures that supported the colonization of the Americas and led to events like the Gold Rush Genocide. Newcomb shared quotations from United States court cases to show the active role the original Doctrine of Discovery played in the invasion of California and thus the genocide that followed. He also brought copies of various court decisions, laws, and other government documents to prove the complicity of the state government in many of the genocidal acts of the nineteenth century.

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Sean Milanovich (Cahuilla) was the final participant to speak on the panel. He spoke of his own people’s experience with non-Native newcomers following the invasion of their lands by the United States. A respected elder Alvino Siva passed down to him a story about a day when all of the men were away from the village. Pedro Chino, a *pavuul*, the highest kind of shaman, sensed trouble and told the people to hide behind the large boulders near the entrance of Chino Canyon. Non-Indians had come to kill the people, but Chino refused to allow them to get near. They began to shoot at him, but the pavuul was very powerful and was able to deflect every shot fired at him, thus giving his people time to run escape up the canyon.

Though Milanovich has learned much from Cahuilla community elders, his own relations were more reluctant. Whenever he asked his grandmother, LaVerne Miguel, about Cahuilla culture and history, she always said she did not know anything. At one point, he told her that it just could not be, she had to know something, to which she responded that it was just too painful to share with him. Tears flowed as he described the hurt caused by her response and all of the lost culture and language that resulted from the pain his grandmother shared with many other Cahuillas. “I don’t want to hurt anymore,” he lamented, “and I don’t want my children to grow up with it either.” His was a powerful example of intergenerational trauma that continues to afflict many Native families throughout the state.

The true emotion of the event, though difficult to capture in words, is important for anyone seeking to understand the genocide and its impacts. Thankfully, representatives from the Sycuan Band of the Kumeyaay Nation and the Native-owned Digidat Solutions filmed the proceedings in order to preserve as much of the symposium as possible. Both entities are, as of this writing, busy working with the California Center for Native Nations editing their footage to produce a DVD that will be stored in community, tribal, and university libraries for the future.

A detailed discussion of what Californians, Native and non-Native, need to do next followed the individual presentations of the Native Community Panel. Audience members interacted with the panelists on points ranging from corporatism and resource development to intertribal organization and sovereignty. Speaking on what needs to happen with the topic of the genocide, Gregg Castro compared it to a splinter in one’s finger. “You first need to do the painful work of digging it out so that you can heal. And it’s important to ensure that you get all of the pieces out so that it can heal properly, no matter how badly it hurts to keep digging around in there.” The tears shed throughout the day were evidence that the process was still underway.

The symposium was a great success on many levels, and many people inquired as to when the next would be held. Though the symposium was not intended to be the beginning of a series of annual events and there are currently no formal plans to do so, it has already helped to advance the field as two research associates with the CCNN have begun work on an edited volume based on the proceedings. There is much work to be done, and the relationships between scholars and the Native community forged both at the symposium and in the years preceding promise to yield rich fruit. Fittingly, the day ended as it had begun, with a flute tribute from Henry Vásquez. Only this time, it was a song of hope for the future.

**Endnotes**

1 Though this symposium was not affiliated with the International Association for Genocide Studies, its subject matter pertains to the aims and goals of the Association, and its proceedings will be of interest to the readers of *Genocide Studies and Prevention*.

2 Forty-niner is the historic term for the miners of the California Gold Rush, most of whom came to the region in 1849.
Book Review: Native America and the Question of Genocide

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Native America and the Question of Genocide
Alex Alvarez
222 pp. US$44.00 hbk. US$43.99 eBook.

Reviewed by Amy Fagin

This review and analysis of the complexities and scale of atrocities perpetrated upon Native America from the 16th through the 20th centuries frames a treatise around the current and debatable question of genocide. In the book’s concluding paragraph, it is scholar and historian Paul Bartrop who is given the last word on to the warrant of portraying the accuracy of the complex atrocities perpetrated against the native populations of America. This and future generations are the bearers of this responsibility, and to whom this effort matters most.

The work is organized as a chronological and geographical overture of the Native populations of the Americas extrapolating on the ambiguity that the definition of genocide represents in the context the various crimes associated with mass annihilation: massacres; exterminations; crimes against humanity and genocide as well as war, disease, expropriation and forced assimilation over the past several centuries on said population.

Alvarez’s work is a plain-speaking introductory assessment of the perennial debates surrounding the term genocide and its application, legalistically and conceptually, to a selection of relevant Native American experiences during and after colonial invasion and expansion. He weaves together the origins and modern life of Native Americans as they emerge from pre-history to populate the Western Hemisphere and struggle to maintain their threshold from the onslaught of European colonization.

His overture begins with the arrival of the first peoples to the Western Hemisphere from what is believed to be Siberia, some 12,000 to 35,000 years ago; the various tribal groups inhabiting the lands from Beringia to Tierra del Fuego and their first encounters with Norse and Viking voyagers. The chapter shifts abruptly into a survey of the perceptions and mythical ideals of the Noble Savage (20) whereby Alvarez conjectures that this myth contributes in equal measure to the ideologies that ignited conflict and eradication of Native Americans as do negative stereotypes.

Chapter 2 shifts the readers’ attention to an introduction of the theoretical principals underlying the term genocide in order to establish and “apply the concept of genocide to the experience of the indigenous peoples of the Americas” (25). The historical formulation of the name; Article II of the United Nations (U.N.) Genocide Convention; and a relevant breakdown of the component parts of the definition are called into play to provide a platform for interpretation and application to the post-contact Native experience. Here Alvarez speculates on the shortcomings and politically designed limitations of the U.N. definition and its pertinence in appraising the history of Native Americans as genocide. How the contested debates around the definition of the term apply to a “potential larger pattern of intentional violence aimed at extermination of the tribes involved” (39) are evaluated in this chapter.

In chapter 3 the interactions between Natives and Europeans are couched in a sociological construct of destructive beliefs condensed into an overview of the role of policies and practices which ideologically fueled the intolerance and violence of the first explorers. The economic underpinnings of European culture and violence are outlined as the thrust of the conflict between Europeans and Natives whereby lust for land, gold and furs of the first traders and settlers described the mentality which led to colonial genocidal processes. Reference to the inherent exterminatory nature of settler colonialism lends currency to the contemporary debates of an overarching social pattern of settler...
colonialism and the inevitability of genocide as a byproduct of this social-phenomena world-wide. Alvarez cautions the reader to understand that “goals and practices often changed and evolved over time as needs and circumstances changed and evolved” and furthermore that individual populations did not uniformly conform to the “destructive beliefs of structural violence” (60).

The onslaught of and vulnerability to disease suffered by Native populations is fleshed out in chapter 4. Its catastrophic impact on the lives of Native populations throughout the hemisphere and centuries is outlined as a major contributor influencing the course of events hedging the victory of colonial–settler conquest. Cases where “disease as a tool of warfare” (85), and consequent genocidal intent, are considered by population and disease type. Alvarez concludes that in understanding genocide and disease there are only isolated cases which link the conceptual framework of “genocide through disease” (87) as a major pattern of intent causing the wholesale destruction of so many Native peoples.

The Sand Creek Massacre of 1864 in Colorado opens the next chapter deliberating the causes and consequences of wars and massacres as theoretical construct of genocide and Native populations of North America. Succinct and carefully composed historical overviews of the Sand Creek Massacre, the Washita River assault, Wounded Knee, the California Gold Rush and the Pequot War are examined within the social and political context of these eras and how each incident or period of history fits the criteria of genocide.

The tragedies of the destroyed and displaced Native populations described in chapter 6, “Exiles in Their Own Land” (119), are woven into a bleak tapestry of the fates of the Navajo and the Cherokee Nations’ “horrible tribulations” (129) of forced removals and relocations experienced by some 40 plus tribes in the 19th century. Government policy, military and civilian campaigns of ethnocide are the weft and warp of a textile of tragedy whereby the author aptly conveys the measure of wrenching trauma experienced during this century by its Native populations. The question as to “whether or not these policies constituted genocide…depends on how one uses the term” (140).

In chapter 7 “Education for Assimilation,” Alvarez turns chronologically toward the end of the 19th century and into the 20th century with an appraisal of the reservation and boarding school systems established in 1882 with the Carlisle Indian Industrial School. These institutions are taken to task as a gulag (142) system of legally and militarily forced incarcerations facilitating ultimate conquest. The tactics of cultural genocide are clearly laid out in the paradoxical intentions of the dominant culture to forcibly assimilate the remaining Native groups. Alvarez posits an unambiguous argument that cultural genocide would be a prosecutable crime as it pertains to the intended eradication of Native Americans, were it to have been included in the 1948 UN Genocide Convention.

In closing, Alvarez makes a concerted evaluation of the dichotomies inherent in the term genocide as a catchall phrase for its ability / relevance in comprising the lived experiences of the Native populations of the Western Hemisphere. He determines that, ultimately, the intellectual debates surrounding the question of genocide and Native America can only surmise the reality of the people’s suffering of this era, but that this effort is summarily relevant to understanding the thresholds of the conceptual terminology of genocide.

This timely volume presents current and relevant theories and their historical underpinnings as a re-construction of Native American history in light of the question of genocide. Alvarez’s approach to this treatise is fluid to the point of turbidity however, and the reader must carefully transition, independently, between theoretical and conceptual interpretations and those historical events that serve the theoretical master. The book would be an excellent tool for discussion in a group educational platform. Chapters can be utilized individually, and combined effectively with companion readings to supplement the book’s fragmented flow and readability. Combined with relevant readings, a comprehensive analytical understanding to the question of genocide and Native America can be developed with the construct of this discourse.
Since the early twenty-first century, historians have paid increasing attention to the violent impact of European and American colonial expansion on the Indigenous peoples of North America. Whereas formerly historians focused on the persistence and agency of indigenous peoples in North American history, an increasing number of historians such as Ned Blackhawk, Karl Jacoby, Jeff Ostler, and Ben Madley are trying to uncover “the true magnitude of the violent encounter with the indigenous inhabitants of North America.” To better comprehend and more precisely analyze the colonial violence inflicted on indigenous peoples of North America, many of these historians are using concepts developed by the recent interdisciplinary fields of settler-colonial studies and genocide studies.

An ambitious and controversial addition to this historiographic trend is Gary Clayton Anderson’s Ethnic Cleansing and the Indian. Anderson, a well-established historian of indigenous peoples in the American West, builds upon his earlier book The Conquest of Texas: Ethnic Cleansing in the Promised Land (University of Oklahoma Press, 2005) to argue that ethnic cleansing best characterizes the European and American treatment of Native Americans in the United States from the era of first European settlements in the seventeenth century until the allotment policy of the federal government in the late nineteenth century. At the heart of Anderson’s book is the question of what the impact of Anglo-American expansion was on the indigenous peoples of the United States (4). According to Anderson, there are two extreme views on this question. One is that the impact is simply ignored. The other extreme view is that the Anglo-American expansion was genocidal. Anderson has little sympathy for either view. While Anderson is correct in pointing out that American history textbooks too often still downplay the impact of settler-colonialism on Native Americans, he simplifies things by claiming that genocide did not occur in the United States because there was never a sustained and intentional state policy of mass killings of indigenous peoples. Anderson surprisingly uses this narrow definition of genocide as it is outlined in the Rome Statute of the International Criminal Court in order to justify the rejection of the concept in the United States context. In doing so, Anderson dismisses Raphael Lemkin’s original and broader concept of genocide from the 1940s as well as the recent approaches by genocide scholars which view genocide as a structural process that is not contingent on the state or on the intention to destroy.

In Anderson’s opinion, scholars who invoke genocide to describe the experiences of Native Americans “only devalue what actually happened to people in Central Europe, Cambodia, Rwanda, and even perhaps Darfur” (10). Moreover, Anderson suggests that it is illogical to use the concept of genocide in North America because many Native American groups survive to this day. Finally, genocide did not take place in the United States “primarily because moral restraints prevented it” (13). Although Anderson admits that massacres of Native American communities took place, most constituted war crimes committed by frontier settlers or soldiers who acted against central orders of the (federal) state. He also downplays the significance of the massacres in all of American history by concluding that they did not amount to more than 2,000 casualties.
Having forcefully and provocatively rejected genocide as a possible analytical tool, Anderson argues that ethnic cleansing is the proper label to describe the impact of Euro-American expansion on American Indians. Borrowing from the earlier mentioned Rome Statute as well as from historian Norman Naimark who has written on campaigns of ethnic cleansing in twentieth century Europe, Anderson defines ethnic cleansing as the forced deportation of populations.² According to Anderson, early modern European intellectuals such as Grotius, John Locke, and Emer de Vattel rationalized the dispossession of the indigenous peoples of North America by characterizing them as hunters and gatherers who did not make proper use of the land and natural resources of North America. Frontier settlers and the American government consistently used this ideology of dispossession to force indigenous peoples from their homelands. Because of moral constraints such as the desire to transform Native Americans into property-owning farmers, this process of ethnic cleansing never degenerated into mass killings. At the same time, Anderson morally condemns the ethnic cleansing campaigns by labeling them as crimes against humanity.

Following the complex and sometimes confusing introduction about the definitions of genocide and ethnic cleansing, Anderson proceeds with a detailed and chronological analysis in sixteen chapters of how the indigenous peoples of the United States were forcibly removed from their lands. Because of Anderson’s insistence that genocide did not take place he frequently feels compelled to remind readers that specific massacres or deportations should not be viewed as genocide but only as war crimes or crimes against humanity. This approach sometimes forces Anderson to render incomplete accounts of frontier wars that can clearly be constructed as genocide. For example, when discussing the Pequot War in southern New England from 1636 to 1638 in chapter two, Anderson leaves out how Puritan officials systematically hunted down surviving Pequot women and children in the aftermath of the infamous destruction of the main Pequot village of Mystic. Moreover, Anderson does not discuss how, at the end of the war, New England authorities distributed Pequot captives among indigenous allies and formally declared the Pequots no longer to exist as a nation or group. Although the policies of the New England colonies against the Pequots in many ways fit the United Nations definition of genocide, Anderson narrowly views the Pequot War as a conflict over land in which both sides committed murderous attacks.

Anderson takes a similarly debatable standpoint when discussing the French wars against the Natchez of Mississippi and the Fox or Mesquakie of Wisconsin in the early eighteenth century. Although Anderson admits that French officials employed the rhetoric of extermination against both groups and organized destructive military campaigns against the Natchez and the Fox nations which resulted in massive casualties and in the dispersal of hundreds of Natchez and Fox captives as slaves, he concludes somewhat arbitrarily that the two conflicts “hardly reached a level of genocide” (64). At the most, Anderson is willing to view the brutal French attacks on Natchez and Fox villages filled with women and children as crimes against humanity. However, since members of both groups survived in adequate numbers, neither the Natchez nor Fox people experienced genocide at the hands of the French.

Anderson’s focus on ethnic cleansing is on much more solid ground when he discusses the early nineteenth century federal policy of Indian Removal. While frontier settlers demanded the expulsion of Native Americans from desirable lands located between the Appalachians and the Mississippi River, federal officials supported it by framing deportation as a benevolent policy to protect indigenous people against violent and uncivilized frontiersmen. The Louisiana Purchase of 1803 made possible the relocation of all Native American groups across the Mississippi River. The federal government initially attempted a combination of bribery, threats, and the promotion of factionalism to convince indigenous communities to sell their homelands to the American government in return for a promise of federal support in a new territory in the West. Federal pressure greatly intensified during the presidencies of Andrew Jackson and his successor Martin van Buren from 1829 to 1841. Jackson rejected the idea that Native Americans had any rights to their lands and supported state governments to remove Indian groups from their territories. This latter policy was highly controversial since under the American constitution only the federal government was permitted to maintain relations with Native American tribes. Shortly after becoming president Jackson also authored the Indian Removal Act of 1830 which authorized the federal government to
negotiate relocation treaties with indigenous groups in the eastern United States. After tremendous pressure from federal agents and state officials, almost all Native American groups signed removal treaties. While most historical studies of Removal focus on the well-known Cherokees, Anderson also discusses the deportation of the Choctaws, Seminoles, and the Sac and Fox of southern Illinois. By the early 1840s, approximately 80,000 out of an estimated 100,000 American Indians had been forcibly relocated across the Mississippi River. Although Anderson convincingly describes Removal policy as ethnic cleansing, he does not consider whether the large numbers of deaths that indigenous groups suffered from diseases, starvation, and accidents while being deported to the West can be considered as having had a genocidal impact on Native American groups such as the Cherokees.

The second half of Anderson’s book covers the ordeals of Native Americans west of the Mississippi River during the second half of the nineteenth century. This portion of the book deals with well-known episodes in American history such as the gold rush in California, the Overland Trails to Oregon, the Minnesota-Dakota War of 1862, the ‘Indian Wars’ of the Great Plains, and the final resistance by Geronimo and his Apache followers in the Southwest. Not surprisingly, Anderson interprets the violent conflicts between the various Native American groups and the American government in the West exclusively from the perspective of ethnic cleansing. This approach has certain advantages as Anderson is able to tie together various federal policies and military campaigns that took place across a large territory and during half a century into one coherent narrative. Anderson is particularly convincing in describing, based on extensive research of American military and federal archives, how the indigenous peoples of the Great Plains fought an increasingly desperate struggle to preserve their extensive hunting territories from encroachment by American soldiers, surveyors, miners, railroad companies, and ranchers.

At the same time, Anderson’s refusal to consider that genocide may also have taken place forces him to downplay the rhetoric of exterminating the Indians as repeatedly voiced by senior military commanders such as Generals William Sherman and Philip Sheridan. Because Sherman and Sheridan were often overruled by federal officials who insisted on peaceful negotiations rather than war, Anderson concludes that Native Americans did not become victims of genocidal campaigns. However, the US army frequently attacked villages of peaceful Indians and also systematically destroyed the food supplies of indigenous communities. These military strategies can be constructed as genocidal since they targeted entire indigenous groups and did not make a distinction between combatants and non-combatants. Anderson also does not take into account that the destruction of the remaining buffalo herds by professional hunters on the Great Plains in the 1870s can be construed as having a destructive impact on Native American groups whose livelihood and cultural identity depended on the buffalo. Once forced onto reservations, the formerly nomadic groups were exposed to limited food rations and unsanitary conditions which resulted in high mortality rates and an overall decline of their health.

Some of the book’s strengths are unfortunately also its weaknesses. While the book gives a comprehensive survey of many of the conflicts between American Indian groups and Euro-Americans over a period of three centuries, some are not covered at all or only very briefly. For example, Kieft’s War in New Netherland, a brutal war in which Dutch colonial officials on at least two occasions organized genocidal massacres in which hundreds of Algonquian villagers were killed in the early 1640s, is not covered at all by Anderson. Similarly, the notorious massacre of 170 Piegan (Blackfeet) men, women, and children by a US army unit led by Colonel Eugene Barker in Montana in the fall of 1870 is only briefly discussed in one paragraph on page 264 and then only within the context of American army strategy. Anderson does not describe or speculate what impact this destructive attack may have had on the group-cohesion of the Piegan. This touches on another potential weakness with Anderson’s approach, which is that it is ultimately written from the perspective of Euro-American policy makers. Although Anderson does occasionally a fine job of including Native leaders and the role of factionalism within some of the indigenous groups such as the Lakotas, he does not reflect on what the impact of all the forced relocations and massacres had on the survivability of the indigenous communities. While it is true that the Indian wars of the nineteenth-century United States do not resemble the genocides of the twentieth century which are associated with mass-killings on an industrial scale,
using the Holocaust as the yardstick for the Indian wars of the American West sheds little light on the traumatic experiences of relatively small Native American groups such as the Yuki of northern California or the Modoc of Oregon who barely survived the onslaught of murderous attacks, relocations, starvation, and diseases brought on by American settlers and soldiers. Despite the author’s refusal to consider genocide as having been a factor in European and American expansion, Ethnic Cleansing and the Indian is a valuable and deeply researched addition to the recent historiography that forces us to more carefully analyze the impact of settler colonialism on the indigenous peoples of North America.

Endnotes
Joshua Oppenheimer’s *The Act of Killing* (TAOK) was released three years ago. This documentary about killers, their actions fifty years ago and the impunity they have enjoyed ever since has been almost universally acclaimed: it was nominated for an Academy Award in 2014 and has won more than 70 international awards including a BAFTA (2014) and a European Film Award (2013). Though certainly not without controversy, this acclaim garnered from audiences and critics around the world is well-deserved. It is a rare film indeed which can force such physical reactions in its audience. As with so many who have seen this film over the last few years, TAOK made me laugh, sickened me and made the hairs on the back of my neck stand on end, repeatedly. In so many ways, I applaud this film. My applause comes both from a personal perspective, in appreciation of the tremendous achievements of this documentary, and from that of an academic whose own research overlaps very closely with the content and issues raised in TAOK.

On a personal level, Oppenheimer’s film asks us as individuals to look more closely, and more carefully, at what perpetrators do, feel, and how they justify their actions to themselves. Having seen the film several times now, I am discomforted, but strangely not surprised or horrified, by how close I feel to the perpetrators of mass violence by the end of the film. They are at once repulsive and compelling, gregarious and horrifying. On a personal level, I cannot help but wonder if this is what the film is asking: are we all capable of such violence? This is probably not a question I ever want to answer.

My reactions to watching Oppenheimer’s TAOK also stem from my own work over the past decade and a half. As a researcher of the mass killings and mass political detentions of Communist sympathizers during the mid-1960s in Indonesia, I have interviewed more than 200 survivors of these mass atrocities, most of them women who were either witnesses to the killings or who survived the detention camps. An estimated 500,000 men, women and children were killed in 1965-1966, but a further one million people were rounded up and held in these detention camps for months or years where torture, starvation and forced labour were common.

The protagonists of Oppenheimer’s film are the killers themselves; the main character, Anwar Congo, and his assorted unsavoury henchmen are self-described *preman* (gangsters/criminals) who gained power through their cooperation with the Indonesian military in detaining, torturing and murdering members and sympathisers of the Indonesian Communist Party (PKI, Partai Komunis Indonesia). These old men act out their past acts of violence – garrotting their victims, beating their prisoners, attacking and burning down villages – with pleasure. The elation of being given the chance to re-enact scenes from the glory days of their youth is apparent in their voices and in their eyes: the close-up and personal focus of Oppenheimer’s film lens forcing us to stand and witness this elation at a very uncomfortable and intimate distance.

As a researcher of this period of mass atrocities in Indonesian history, I am truly impressed not only that Oppenheimer and his team were able to convince perpetrators of the mass killings to speak with him about their actions (and that they did so on film), but that he was able to convince so many perpetrators to participate. As the director has stated, Anwar Congo was the
While the military regime which rose to power during the massacres, General Suharto’s New Order (1966–1998), may have ended nearly twenty years ago, the stigmatization and harassment of survivors and the celebration of the killings have continued to affect how these events are retold and remembered (or forgotten, rather) in Indonesia. Carrying out research on 1965 is difficult, sensitive and sometimes dangerous work, particularly for the men and women survivors, and their families, who make the choice to speak about their experiences. As a researcher of 1965, therefore, I cannot but applaud the dedication and skill that have gone into making this masterful anti-documentary. And I hope that Oppenheimer and his team will make use of their other interview materials with perpetrators, so that we may learn more about the motivations and actions of those who took part in capturing, torturing and murdering so many of their fellow Indonesians.

TAOK has revitalized, certainly among international circles, attention to this dark part of Indonesian history which has gone mostly unnoticed on the world stage. Oppenheimer and his (mostly Indonesian) team deserve the long list of festival and critics’ awards that they have received over the past three years. The film itself has been taken up in many ways by different interest groups: by human rights groups to draw international attention to the killings; by some academic and activist circles to lobby the Indonesian government to acknowledge and redress the killings (e.g. Say Sorry for 65 campaign coordinated by TAPOL); and by others to draw attention to the role of some Western powers in supporting, and even directly financing, the massacres.

Inside Indonesia, the reactions have been varied; from hot debates in the nation’s top media outlets, to the occasional public statements by government officials (some supportive of looking into the past, others justifying the killings), to blatant disinterest. Although not officially banned in Indonesia, the film did not receive an official release and has therefore only been screened at underground and select public venues. In the media debates, there have been complaints that the film was made by foreigners (the film crew, including one of the co-directors, were mostly Indonesian nationals) and that, as such, it misinterprets or misrepresents this episode in Indonesian history. Personally, I would say that the history of The Act of Killing will be ongoing, at least for the next few years. I do not think that this film will fade away, either internationally or domestically in Indonesia. Once you see TAOK, it sticks too firmly in your mind. This, more than anything else the film may hope to achieve, will ensure that it will continue to be viewed, and passed on, in the years to come.

For me, the strength of this film lies both in the horrors which it portrays and in those horrors which it does not. The first time I saw TAOK, I was annoyed and indignant because I felt that there were so many people missing from the film: the victims, their families, and all of the dead. The second time I watched the film, however, I started to see how all three were ever-present.

In the scene where Anwar Congo and one of his followers take Oppenheimer to the shop rooftop where he acts out his method of garrotting his victims, he alludes to how many ghosts there must be there. Certainly Anwar’s steps are followed by the dead. While he may do what he can to ignore them during the day, at night he feels them in his dreams as he sweats and turns in his bed. Anwar’s neighbor, Suryono, tells the group of former killers during a break in filming how his step-father was taken away and butchered in the night, his body left out like that of an animal to rot. As we watch Suryono only minutes later as he plays out the part of a victim of torture, we cannot help but feel that his step-father, and so many others tortured and killed in the detention centres which stretched across the archipelago, are in the room with us. And, indeed, the dead are felt at so many points throughout the film: in my annoyance, I had simply missed them the first time I watched the film.

The omission of victims’ perspectives and that of their families was a deliberate choice by Oppenheimer and his team in making this documentary; as University of Sydney academic Vannessa Hearman has written, “The exclusion of victims from TAOK is therefore also a comment on the invisibility of victims in Indonesia.” The victims and the dead are not present in the film physically, but they are certainly a seething presence, dominating the film in so many ways.

The same is true of the portrayal of sexual violence in TAOK. As the focus of my research on mass violence of 1965-1966 has been on sexual violence against women and girls during this period, when I first watched the film, I was taken aback. Sexual violence was pervasive during the
killings and in the detention camps, so I wondered why wasn’t this made clear in the film? Once again, it was only in my second viewing that I realised that it was.

At several points in the film, we see the blatant and casual sexual harassment and objectification of young women: examples include the dancing girls who should dance “more hot” out of the surreal giant fish and the leader of the Pancasila Youth, Yaptto Surjosumarno, and his treatment of his golf caddy, a young woman who asks for his autograph, and his laughter at a joke about a girl who performs oral sex on numerous men because she “wants it.” When watching this film for the third time, and for the first time with a group of people at a screening of the film on a university campus in Australia, these moments produced laughter from the audience. In her analysis of the film, Dutch researcher Saskia E. Wieringa discusses themes of sexualized violence and the demonisation of Communist women, such as in the portrayal of the character Aminah—the supposedly mad Communist woman played by Anwar’s sidekick, the fat Herman Koto in drag. Again, in the scenes in which Herman plays Aminah, with great comic effect, the audience laughed and so did I. The misogynist treatment and depictions of women in these ways, however, are not coincidental nor are they merely meant to provide moments of light hilarity to break up the more “serious” and confronting portrayals of violence; they are fundamental to understanding the widespread nature of sexual violence.

For me, the very short, seemingly aside scenes which touch on the issue of sexual violence are those which also speak to the pervasive nature of this violence. The most obvious is the scene which shows Safit Pardede, a local paramilitary leader and former killer during 1965 who joins Anwar Congo and his team in creating their film. Safit sits off to the side, surrounded by other men who are taking a break from their re-enactment of the massacre of a village. The men laugh and catcall as Safit tells them about raping women during the killings in 1965. If they were pretty, he’d “rape them all.” He boasts that raping fourteen-year-old girls was the “best”, and how it would be heaven for him, but hell for them. The laughter, Safit’s description of “fucking everything” he could because they were “the law back then” reveals, in these short moments, both the widespread nature of sexual violence against women and girls during the mass violence of 1965 and the impunity with which this violence was perpetrated. Shortly after this scene, we see the re-enactment of the massacre of a village, in which the men, women and children who were hired to act as the victims re-create, in a fiery and blackened nightmare scene, the destruction of human life en masse. You see the victims being dragged into piles of human flesh or being taken out into the surrounding forest, and you see the women being grabbed, their clothes pulled and torn. After the killers yell, “Cut! Cut! Cut!,” the children are inconsolable and one woman is clearly overwhelmed and needs to be revived. Once again, these short scenes reveal much by leaving out the portrayal of sexual violence perpetrated in 1965.

Lastly, we must remember that TAOK is the first of two documentaries. The first forces us to confront the killers. The second in the series is The Look of Silence, released in 2014, and is about the survivors. Specifically, it tells the story of a family of survivors and their interactions with the men who killed their son. As in TAOK, this second documentary speaks strongly to the long and entrenched history impunity in Indonesia, showing the comfortable lives of killers and the mostly silent lives of survivors. Taken together, the two films force us to confront, in a personal and heart-breaking way, the reality of life for survivors and perpetrators who live side-by-side in the very places where horrific violence was carried out.

Oppenheimer’s two documentaries have achieved much, and it is my hope that they will continue to draw attention to the killings of 1965 and the fifty years of impunity which have followed. These films captivate and repulse, so that you cannot look away. The enduring trauma of survivors and communities, the lack of justice for so many dead, and the ongoing impunity for those who carried out this violence are held up as a mirror to the participants of these films and to us. The Act of Killing and The Look of Silence (also reviewed in this journal) are not stories of redemption, or reconciliation, or hope. Because the history of 1965 in Indonesia, so far, promises us none of these things.

Title of the Film: The Act of Killing; Director: Joshua Oppenheimer; Co-Directors: Christine Cynn, Anonymous; Producers: Signe Byrge Sørensen, Anonymous, Anne Köhncke, Werner Herzog,
Errol Morris, Joram ten Brink; With: Anwar Congo, Herman Koto, Syamsul Arifin, Adi Zulkadry; Cinematography: Anonymous, Carlos Arango De Montis, Lars Skree; Film Editors: Nils Pagh Andersen, Charlotte Munch Bengtsen, Ariadna Fatjó-Vilas, Janus Billeskov Jansen, Mariko Montpetit; Countries: Denmark/Norway/UK; Year of Release: 2012; Production Company: Final Cut for Real. Duration: 115 minutes.

Endnotes


2 Though generally acclaimed by critics and audiences, there have been condemnations of the film as well. See, for example, Nick Fraser, “The Act of Killing: Don’t Give an Oscar to this Snuff Movie,” The Guardian, 23 February 2014, online at http://www.theguardian.com/commentisfree/2014/feb/23/act-of-killing-dont-give-oscar-snuff-movie-indonesia (viewed 3 July 2015).


4 The TAPOL “Minta Maaf! Say Sorry for 65” campaign can be found at: http://tapol.org/saysorryfor65 (viewed on 8 June 2015).


7 The film was made available to download free of charge to those in Indonesia at the end of September 2013 via the website: www.theactofkilling.com.


Every genocide needs at least one excellent film to establish a record and keep its memory alive. For the Indonesian genocide of 1965-66, that film is Joshua Oppenheimer’s *The Act of Killing* (2012), a stunning documentary about genocidists who acted out their fantasies of being movie stars while killing, and then reenacted their grotesque fantasies fifty years later for Oppenheimer’s camera.

Now Oppenheimer has released a second movie about the Indonesian genocide, *The Look of Silence*, in which the point of view is that of a victim’s family. This film, while less of a milestone for documentary cinema, is just as compelling and necessary. The two films were conceived as companion pieces, one about perpetrators and the past, the other about victims and the present.1

Some context: The Indonesian killings of 1965-66 were never deemed a genocide by an international court and in fact do not fit the United Nations Convention for the Prevention and Punishment of the Crime of Genocide (UNGC) definition of genocide as an effort to destroy a national, ethnic, racial, or religious group, as such. In this case, the targeted group was political—the Indonesian Communist party, the largest Communist party in the world outside the Soviet Union and China. The Communists’ strength and ideology threatened both the country’s large Muslim population and the conservatives who ran the army. The genocide began when Major General Suharto came to power by hijacking an attempted coup by other army officers. Suharto consolidated his position as the country’s new leader by killing around 500,000 people.2 In addition, hundreds of thousands of political prisoners were incarcerated for years of being subjected to torture and rape, and the families of murdered Communists were ostracized for generations.

That these events do not precisely fit the UNGC’s definition suggests that the UN’s definition should be expanded to cover political groups as well. If by genocide we mean an effort to exterminate a group, then the type of group should not matter. Moreover, the processes by which groups are defined are always political; thus the UNGC’s definition is too narrow.

To return to the film: *The Look of Silence* is organized around the quest of Adi, a middle-aged optician, to discover the killers of his brother Ramli, who died in the genocide two years before Adi was born. Ramli’s case had become iconic on the Indonesian island of North Sumatra because there were witnesses who could tell parts of the story. Adi was encouraged to look deeper into the murders by studying footage of Oppenheimer’s *The Act of Killing*, shot between 2003 and 2005. Before that film was released, Oppenheimer returned to North Sumatra to film Adi’s story. “Rather than pick up where we left off in 2003,” Oppenheimer writes, “Adi wanted to meet the men involved with his brother’s murder. By introducing himself to them as the brother of their victim, he hoped they would be forced to acknowledge that they killed human beings” instead of gleefully denying responsibility, as they do in the earlier film.3

Adi hits upon an ingenious method of getting the killers to talk – he informs them it is time to test their eyes. He goes into their homes with a portable device for trying out new lenses—metal frames into which various lenses can be slipped. And then he starts asking questions. While checking the glasses prescription of a wealthy community leader, for example, Adi asks about his work during “the mass killing here,” later explaining that his eldest brother was killed “because
you commanded the killings.” (“It wasn’t really me,” the man responds; we had commanders
above us, “so you can’t say I’m responsible.”)

Adi’s stratagem gives the film its emblematic image, that of eyes peering out of the metal
device, a fantastical contraption with colored circles and tabs jutting out like little rays. This image,
which appears several times during the film, is the only one to reach the level of grotesquerie found
in The Act of Killing. The Indonesians who watch Adi (and the camera) through the optometrist’s
device are all perpetrators, thus contributing their own set of meanings to the title: They are those
who look without telling, or at least without telling much.

Denial is but one of the barriers Adi encounters during his search; another is threats to his
life. A powerful legislator warns him, “If you keep making an issue of the past, it will definitely
They’ll send thugs to rip you apart . . . Just leave it.” “I set out to do something unprecedented,”
Oppenheimer writes, make a film where victims confront perpetrators while the perpetrators still
hold power. The confrontations were dangerous. When we’d meet more powerful perpetrators, we
would bring only Adi and me and my Danish crew . . . Adi would come with no ID card. We would
empty all numbers from our telephones and bring a second car we could switch to minutes after
leaving, making it harder for the perpetrators to send police or thugs to follow us.”

None of those who appear in the film is named in the credits. The co-director is listed as
Anonymous, as are the many assistant directors, drivers, and others who helped make The Look of
Silence. The threats extended to all involved.

One of the film’s most important messages is how powerful Suharto’s anti-Communist
ideology remains, even though Suharto resigned under pressure in 1998 and the grip of the police
state is weakening. We see a school teacher feeding propaganda to young children, including
Adi’s son. We watch Adi interview one of the leaders of the Snake River massacre in which Ramli
perished; today he is now a prominent politician. We realize that genocides, far from ending with
the last bullet or final knife slash, persist for generations, causing harm in other ways.

Throughout, Oppenheimer intercuts footage taken earlier, during shooting for The Act of Killing
but not included in that film, with shots of Adi in the present. The former footage is differentiated
by being shown on a television screen; it mainly depicts two killers reenacting the death of Ramli
–and cackling over their deeds. (“Rip off his penis” one says during the reenactment; “I brought
a knife to make it more authentic.”) Then the two killers demonstrate the dismemberments,
executions, and decapitations of the massacre’s victims, telling how they threw the body parts into
river. Later they joke about polluting the river. One recalls that while they were busy with the “people’s struggle” –the massacre– the military waited on the road “to protect their image . . . but
everyone knows the army was behind it.”

These scenes projected on the television screen are intercut with images of Adi, watching them,
his handsome face immobile. Through the reenactment, he comes close to watching the actual
death of his brother. His look, deeply absorbed but undemonstrative, is also the look of silence.

Footage of Adi interviewing perpetrators, a third strand of imagery, is intercut with the other
two –the scenes projected on the television and images of Adi watching them. The perpetrator
interviews show him circling in on the truth about the deaths of his brother and others killed at
Snake River. One man being fitted for new glasses recalls that he and his friends drank the victims’
blood to avoid going crazy. Staying steady, Adi slips a new lens into the device and asks, “Is this
more clear?” “A bit blurry . . . Both salty and sweet, human blood.” From this same perpetrator Adi
learns that “If you cut off a woman’s breast, it looks like a coconut milk filter. Full of holes.”

In his Director’s Notes, Oppenheimer writes that

The Look of Silence is, I hope, a poem about a silence born of terror--a poem about the necessity
of breaking that silence, but also about the trauma that comes when silence is broken. Maybe
the film is a monument to silence, a reminder that although we want to move on, look away
and think of other things, nothing will make whole what has been broken. Nothing will
wake the dead. We must stop, acknowledge the lives destroyed, strain to listen to the silence
that follows.

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For the director, too, making this film must in some ways have been a look of silence, an act of wordlessly watching people come to terms with the politics of silence.

A fourth and final strand of footage depicts Adi’s family—his aged and senile father, who cannot remember Ramli; his mother, still grieving over Ramli’s loss although nearly half-a-century has passed; his wife, who worries about Adi’s safety; and his two children. These tender and caring scenes are subtle reminders that the victims of genocide include many others in addition to those who died.

This theme also enables the film to end on a note of hope. Throughout we have occasionally seen images of little dancing pods-butterfly chrysalides, wiggling. In one of the final scenes, Adi’s mother holds some of the pods in her hand, watching their delicate life struggle into being. “I can’t see you,” she says to them. “Are you there? Come out.”

If The Look of Silence is not as overwhelming as The Act of Killing, that is because its organization around a quest is more traditional, less outrage and freakish, than the latter’s depictions of unrepentant genocidists still posing as movie stars on a killing binge. Moreover, a film about the aftermath of victimization is almost by definition less shocking than one that shows killings themselves, albeit in reenactment.

The Look of Silence closely parallels another genocide film, Enemies of the People (Rob Lemkin, Thet Sambath, 2009), a 2009 documentary about the Cambodian genocide in which filmmaker Thet Sambath persuades former Khmer Rouge cadres to demonstrate how they killed. Thet Sambath, too, lost a brother to genocide, but his quest is broader: he wants to understand the genocide more generally. His film is in many ways more engaging, partly because he himself is more actively engaged in the quest and partly because his character is more fully developed than that of Adi. Moreover, he manages to bag the biggest game of all: Brother Number Two, Nuon Chea, the Khmer Rouge’s main ideologist. Thet Sambath befriends Nuon Chea while he is still living in the countryside, before he is put on trial, and he shoots extensive footage of their relationship.

But The Look of Silence—which has won numerous awards, including the Grand Jury prize at the 2014 Venice Film Festival—bears vivid witness to the devastation wrought by the Indonesian genocide. And it is extraordinary, as Oppenheimer points out, for a film to show a victim confronting perpetrators while they are still in power.

Title of the Film: The Look of Silence; Director: Joshua Oppenheimer; Co-Director: Anonymous; Producers: Signe Byrge Sørensen, Anonymous, Anne Köhncke, Werner Herzog, Errol Morris; With: Adi Rukun; Cinematography: Lars Skree; Film Editor: Nils Pagh Andersen; Countries: Denmark/Finland/Indonesia/Norway/UK; Year of Release: 2014; Production Company: Final Cut for Real. Duration: 103 minutes.

NOTE: The company Film Platform has exclusive educational rights for The Look of Silence and will be selling DVDs and licensing academic screenings from 1 September 2015. More information can be found at http://filmplatform.net.

Endnotes
1 http://thelookofsilence.com (Director’s Notes).
2 The film gives the number killed as 1 million, but that figure has now been revised downward to 500,000, while estimates of the number detained as political prisoners have been revised upward, to between 500,000 and 1 million or more prisoners held between 1965 and the early 1970s.
3 http://thelookofsilence.com (Director’s Notes).
4 http://thelookofsilence.com (Director’s Notes).
Moving Beyond The Crossroads: Strengthening the Atrocity Prevention Board

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My recent essay, *Atrocity Prevention At the Crossroads: Assessing the President’s Atrocity Prevention Board After Two Years*, generated considerable interest among former government colleagues, scholars, and non-governmental organizations (NGOs) that follow issues of atrocity prevention and response. As the waning months of the second Obama administration tick down and the growing field of 2016 Presidential contenders wrestles with how to approach atrocity questions during the campaign, some have asked whether Washington’s current approach to atrocity prevention and the functioning of the Board (APB) might be improved. Meanwhile, one of the main challenges for members of the Atrocity Prevention Board will be to become more visible and to demonstrate the utility and effectiveness of their deliberations and tools. The President will need to remind his key foreign policy advisors of the seriousness he attaches to these issues. The APB would benefit from a further public explanation of how the prevention of atrocities is clearly linked to other key US foreign policy goals, including counterterrorism, economic growth and development, reducing poverty, and building rule of law, among other dimensions.

The pages that follow attempt to lay out a number of simple, practical steps that the Board can take to enhance its performance and its visibility vis-à-vis the American public and the international community. Because the Board functions within a broader decision making context, however, more far-reaching change will be necessary for it to meet its full potential.

The President’s decision to announce the launch in August 2011 of Presidential Study 10 (PSD 10) aimed at finding more effective ways for the US government to prevent and, failing prevention, respond to atrocities beyond our borders at the US Holocaust Memorial Museum was deliberate. Indeed, the President went so far in that initial speech as to declare the prevention of genocides and mass atrocities a core national security interest and a core moral responsibility of the United States, placing these issues for the first time squarely at the center of an administration’s agenda. He returned to the Museum some eight months later in April of 2012 to declare that the study had been completed, that he had accepted all of its recommendations (PSD 10 included over 100 recommendations), and that he was instructing his National Security Council to establish an Atrocity Prevention Board whose job would be to further flesh out the study’s findings, put them into practice, and ensure that Washington’s efforts to prevent genocides and other forms of mass atrocity would hereafter have real bite. The Board was to consist of representatives from some nine Departments and Agencies at the Assistant Secretary level or above. In short, people who theoretically had a broad enough span of control that they could move personnel and other resources to potential trouble spots whenever and wherever they might be needed.

## Highlights from APB Announcement

The President announced the establishment of the APB in a speech at the US Holocaust Memorial Museum on April 23, 2012. According to the White House press release accompanying the speech, the APB was to:

- Include representatives from the Departments of State, Defense, Treasury, Justice, and Homeland Security, the Joint Staff, the U.S. Agency for International Development, the U.S. Mission to the United Nations, the Office of the Director of National Intelligence, the Central Intelligence Agency, and the Office of the Vice President who were:
  - At the Assistant Secretary level or higher
  - Appointed by name by their respective agency heads;
- Be chaired by the NSS Senior Director for Multilateral Affairs and Human Rights;
- Meet at least monthly and additionally as urgent situations arise;
- “Oversee the development and implementation of atrocity prevention and response policy;”
- Submit an annual report on its work to the President and have its work reviewed
  - At least twice a year by the Deputies
  - At least once a year by the Principals.
After six months of operations, the APB chair was to draft an Executive Order that would “set forth the structure, functions, priorities, and objectives of the Board, provide further direction for its work, and include further measures for strengthening atrocity prevention and response capabilities as identified in the course of the Board’s work.” As of this writing, this last prescription has yet to be fulfilled.11

The tone and content of the President’s speeches, along with the choice of the Museum for their venue, raised expectations among human rights groups both at home and abroad at least initially that a more muscular US atrocity prevention policy was in the offing. This optimism prevailed despite regular admonitions from the Atrocity Prevention Board’s first chairperson, then Senior Director for Multilateral and Human Rights Affairs, and current US UN Ambassador Samantha Power, that the P in APB shouldn’t be seen as a panacea to the world’s problems.3 At the same time, however, the announcement prompted nervousness from some quarters within Washington’s foreign policy establishment who were already wrestling with wars in Iraq and Afghanistan, dealing with the impact of financial sequestration, and being buffeted by the winds of Arab Spring and quickly deteriorating conditions in Syria. Their concern was that the President was opening the door to additional undertakings at a time when the system was already overloaded.

Among those who had followed atrocity issues for some time, a sense soon emerged that despite having rolled out the APB with considerable fanfare, the President and influential members of the White House staff were stepping away from the initiative. Some prominent participants in the President’s newly formed APB bristled privately over the White House’s reluctance to further discuss the Board or its work publicly, while the President himself seemed to avoid further references to the Board or its work. An Executive Order that was supposed to have followed the President’s announcement of the Board and the acceptance of PSD 10’s recommendations was quietly shelved without explanation. While members of the APB and the APB’s subordinate group, the sub-APB, occasionally were told by various senior White House officials in the months that followed that the President remained committed to their work and appreciated their efforts, the APB or its counsel rarely seemed to factor into communications or instructions emanating from the White House. The APB fared little better in other key foreign policy Departments and Agencies. For example, one regular participant in the State Department’s senior staff meetings noted that while Secretary Clinton had also given an important speech about atrocity prevention at the Holocaust Museum, they were unable to recall an instance in which the issue of taking further steps to strengthen atrocity prevention within the Department as a whole had been broached during those meetings.

Early members of the APB and sub-APB were themselves divided over how much attention to draw to their work in the increasingly toxic domestic political scene that prevailed while the Atrocity Prevention Board was beginning its efforts. Generally speaking, those with prior experience in the advocacy or NGO world were more open to members of the Board and the sub-APB expounding on their work and exchanging views with civil society. Those, on the other hand, who had earned their spurs strictly within the confines of the bureaucracy, were more reticent, fearing that outreach would both further raise expectations about outcomes and result in an enormous drain on their time. Perhaps more importantly, they also feared it would turn what they envisaged as a careful deliberative process into another source of incessant partisan wrangling that would make it more difficult for the Board to achieve its goals.

Board and sub-APB members were also of several minds about how to begin their work program. Although several of the APB’s initial members and those who supported the Board in one fashion or another had had a hand in fashioning Presidential Study 10, and had either gone into those discussions as veterans of the Genocide Prevention Task Force4 or were at least familiar with the Task Force’s recommendations, few anticipated the challenges they would face translating the ideas surfaced during the presidential study into practice within Washington’s huge federal bureaucracy. For example, what initially were viewed as relatively simple technical fixes to statutes and laws aimed at closing loopholes that might allow perpetrators of atrocities to enter the US and even obtain residency, led to years of complicated discussion primarily involving State and Justice Department, Homeland Security, and Pentagon lawyers.
Taking their seats at the APB table with at least two years of government experience—and many with much more—and having experienced the subtle bureaucratic fisticuffs between regional bureaus and their functional counterparts first-hand, most members of the APB initially favored a more cautious approach to the Board’s program in hopes that their regional colleagues might more easily be brought along. Thus, for both practical and bureaucratic reasons, the Board opted first to investigate the mechanisms and means it had available to it and to endeavor to fill any gaps with additional tools. The Board and sub-APB devoted considerable time during the Board’s initial months to its toolkit. Not everyone agreed that this was the best approach, however. Some Board members and members of the sub-APB argued that it was important for the Board to be seen pushing more aggressively into controversial cases right out of the gate in order for the Board to more firmly establish its *bona fides*.

Oddly enough, no one with whom I spoke during my research could recall a specific discussion during the PSD 10 deliberations about what exactly prevention was to entail. It may be that the participants considered the meaning implicit. Many had worked on atrocity issues either inside or outside government and felt they had a pretty good idea of what was involved. As one senior State Department official observed some months after the Board had begun operating, the Board hoped it would bring to Washington’s foreign policy deliberations a willingness and an ability to think about atrocity prevention and response across the entire spectrum of conflict: pre-conflict, conflict, and post-conflict.

The PSD 10 recommendations were reviewed and endorsed by both the Deputies’ and Principals’ Committees (with very minor changes) before being forwarded to the President. However, it is not clear how extensive a discussion individual Department and Agency representatives who participated in the PSD 10 discussions had with their senior leaders about the organizational and material implications that standing up a Board chaired by the NSC and tasked with preventing atrocities across the globe would entail. To some extent, this was perhaps less an issue for the first generation of Board members, many of whom like those shaping PSD 10 had either worked on atrocity questions previously, or had strong personal commitment to these issues. But atrocity prevention was a new undertaking even for some members of the initial Board and they, in particular, depended heavily on their subordinates for advice.

A poll of PSD 10 participants, members of the APB, and sub-APB attendees taken at the time the initial Board was standing up probably would have revealed considerable understanding of, and support for, the academic theory involving upstream or pre-conflict prevention. But many—especially those with long experience within the bureaucracy—probably would have conceded that prevention, if it was going to be pursued at all, would still most likely be limited to crisis and post-conflict situations. A policy approach geared toward atrocity prevention, especially upstream prevention, would presuppose a significant shift in bureaucratic culture and structure. At the Department of State, for example, Foreign Service Officers are still taught that their primary job is to *observe, analyze, and report, but not to interfere*. Yet prevention, at any point along the conflict continuum, calls for a much more hands on strategy that includes working with civil society within country, other like-minded states, NGOs, international organization and international financial institutions to articulate a broad range of possible approaches, programs, and policies tailored to fit the specific circumstances in order to avoid, or at least mitigate, the risk of atrocity.

Moreover, as retirements, reassignments, and resignations have prompted rapid turnover among members of the Board and the sub-APB, the consensus about when, how, and under what circumstances prevention should be pursued has become more frayed. This problem has not been limited to a single participating Department or Agency, but has been fairly widespread.

**Breaching the Stove Pipes**

Stove piping between the State Department’s regional and functional bureaus and within bureaus themselves makes it very difficult for even a Regional Assistant Secretary to obtain a complete understanding of all of Washington’s policies, programs, and approaches toward a particular country at any given moment. Finding ways to breach the stove pipes between and within the regional and functional bureaus, taking a more internally transparent and holistic approach, ought not only to produce more effective policy outputs, but ought to also save taxpayers money over the
long run. That may not immediately be clear as the State Department, AID, and others wrestle with how to fill the important programmatic gaps that a clearer picture of the sum total of effort toward some countries will inevitably reveal. Some additional personnel and money for further assessment and programming to fill these gaps will undoubtedly be necessary. These investments likely will still be far cheaper than ignoring a situation that risks evolving into a complex humanitarian crisis that may require the use of military force further down the road.

A cursory glance across the many warning and watch lists covering various issues prepared by the scholarly community and NGO world reveals at least one startling fact: the same twenty or thirty countries are frequently found at the top/worst position on many of these lists, albeit in different relative positions. Although the particularities of each of these countries’ internal situations will differ, many of the underlying structural issues contributing to their appearing on one or another of these topic lists will be at least similar. The length of these lists has traditionally caused considerable angst in some government quarters with both analysts and policymakers frequently insisting that available time and resources preclude so broad a focus. The debate has flared in its most recent iteration even among strong supporters of the APB, with those responsible for actually articulating and implementing prevention policies generally favoring a narrower, more focused approach while those that believe prevention requires a broader rethinking of Washington’s efforts – those that hope to infuse prevention into the State Department’s DNA – argue that a narrower focus is a prescription for maintaining the status quo.

Atrocity events also tend to take place in out of the way places where we and our key Allies have our smallest diplomatic presence and where that presence increasingly is focused almost exclusively on capitals. Washington desk officers for these countries tend to be more junior and less experienced, as are many of their official counterparts in the field. Changing the incentive structure, for example, by providing more authority, ensuring that desk officers for those countries considered at high risk of atrocities are more experienced and receive the additional training mandated in PSD 10, creating flexible, forward-looking country task forces to break through the stove pipes, would be an important step at the working level toward enhancing prevention. In some situations, it may be that a particular functional issue so predominates Washington’s interest, that it makes more sense to give the overall lead of a task force to a functional rather than a regional desk officer. That ought not be a problem under this new arrangement as long as that functional desk officer has considerable experience and as long as they clearly understand that they have been given responsibilities that extend beyond their home unit, and will be evaluated on the basis of that broader undertaking’s success or failure.

**Attempting To Bridge The Regional/Functional Gap**

At the more senior level, the APB will have to continue to work hard to strengthen ties with the various regional Interagency Policy Committees (IPCs) devoted to particular countries and issues. The impetus for establishing an Atrocity Prevention Board, both on the part of the Genocide Prevention Task Force and the first Obama Administration, arose from a view that human rights issues and atrocity prevention too often had received short shrift from the regional policy bureaus, offices, and committees that typically oversee our bilateral relations.

The original idea was that the NSC’s Office of Multilateral and Human Rights Affairs (often referred to within the White House simply as Multilat), whose Senior Director chairs the Atrocity Prevention Board, would serve as a transmission belt, carrying information, ideas, and recommendations back and forth between the APB and the Regional IPC’s. Multilat’s message, it was thought, would be reinforced at more senior levels by the fact that some APB members also regularly attended meetings of the Deputies’ Committee. But no one at the time anticipated the number of atrocity-related issues that the APB would face or the number of related regional IPC meetings that Multilat would be required to attend. Multilat, despite its best efforts, soon found itself hard pressed to keep up with the constant barrage of regional business, and by some accounts sometimes found itself isolated in the face of a regional juggernaut that tended to place greater importance on any number of other issues.
Meanwhile, despite all of the experience and expertise that individual members of the APB were able to bring to bear on atrocity problems, they normally were not experts on the nitty gritty of the countries being discussed at their monthly APB meetings. Efforts to have NSC regional directors brief the APB during those meetings were rarely satisfactory and left at least some APB attendees feeling that those parts of the meeting were more akin to a courtesy drive-by intended to convince them that they needn’t preoccupy themselves with country x, rather than a real attempt at collaboration. Attempts to bring Posts directly into the discussion via secure communications generally were more illuminating, but the overall impact of the discussion often turned on the quality of the electronic connection and the Chief of Mission’s view as to whether this newly created body would prove to be an ally or a problem during their future interactions with Washington.

Steve Pomper, the principal drafter of the PSD 10 report and Multilat’s current Senior Director, to his credit, recognized the challenge of managing relations between the APB and the various regional IPC’s early on. He has tried, whenever possible, to organize more joint APB/IPC meetings, with varying success. The sub-APB has likewise tried to reach out more aggressively to its regional counterparts. The truth is that, more often than not, neither the APB nor the regional IPC’s can operate at maximum effectiveness without one another’s input. Whoever wins the 2016 Presidential election will need to continue to work to improve this part of the system.

Under Secretary of State for Civilian Security, Democracy, and Human Rights Sarah Sewall has devoted considerable attention since coming to office in February 2014 to trying to get the State Department’s many voices singing off the same sheet of music on atrocity issues. Sewall has instructed the Bureau of Conflict Stabilization (CSO) to serve as something of a department secretariat for APB matters, gathering the Department’s views on subjects being deliberated by the APB and preparing Department representatives’ briefing books for the APB’s monthly meetings. CSO has brought on board some additional people to work on atrocity prevention issues, and after a year of work has recently begun to experiment with a new atrocity assessment instrument to be used in conjunction with the Department and AID’s broader conflict assessment tool. AID has capped a multi-year effort to consider how atrocity prevention meshes with its traditional mission by publishing a new Field Guide for Atrocity Prevention. The State Department has also asked USIP to develop a new training course for those involved with atrocity issues that will bring some of the latest thinking within academia about atrocity prevention to the table. Other groups outside government are putting the finishing touches on additional training materials as well. For example, the US Holocaust Memorial Museum’s Simon-Skjodt Center is in the final stages of preparing to release a new handbook on atrocity prevention. All of these initiatives will reinforce the goals and efforts of the APB. To have the desired impact, however, these new materials and course offerings will have to be broadly disseminated and socialized among Washington’s foreign policy corps. The latter, in particular, will require sustained attention and support from senior leadership, which to date, has been sorely lacking.

It may be that as the second Obama Administration winds down and the election season revs up, even more responsibility in these areas will fall to members of the sub-APB, who increasingly will find themselves called upon to use their personal ties throughout the bureaucracy, rather than rank and position, to lead from the middle in order to get things done. The origin of several of the APB’s initiatives can already be traced to people associated at one time or another with the sub-APB, initially made up of some of the people who have worked longest on these issues, who have been closer to day-to-day developments in many of the at risk countries than more senior members of the APB, and who often have had a better understanding of the various financial accounts and what they can and can not be used for. The sub-APB more recently has suffered from some of the same problems of turnover as its parent body. It will need to continue to work hard to bring its newcomers up to speed and with their support keep the initiatives coming and the momentum going. One way the sub-APB might be able to help maintain that momentum would be to work with the APB’s chairperson to firmly embed a series of benchmarks into the APB process.

Step By Step
The GPTF devoted considerable space to early warning and argued strongly that the Intelligence Community (IC) ought to produce for the White House and what has emerged as the APB, a full-
blown annual National Intelligence Estimate (NIE) outlining the global risk of atrocities. Some members of the GPTF appear to have felt strongly that an NIE—which would reflect the formal views of the entire Intelligence Community—would not only carry more weight with senior policymakers, but would ease the flow of collection resources to atrocity questions by illuminating the risks to senior Intelligence leaders through the NIE process. Following the publication of the Intelligence Community’s first-ever estimate on the Global Risk of Mass Atrocities—a document that drew positive reviews from across government—a senior State Department’s functional bureau official echoed the GPTF’s sentiments that having an NIE made it easier for them to urge their regional counterparts to take seriously the risk of atrocities in their countries of responsibility. The estimate seems unlikely to have had the type of strong impact on collectors that GPTF members hoped, however, as most long-term collection priorities generally are decided through a separate, formal process. NIEs normally are a substantial undertaking and very few are done on an annual basis, although an NIE on the global risk of atrocities every four years would not seem unreasonable. While some NIE’s have been completed fairly quickly under special circumstances, the average time—in order to allow for all of the required formal meetings and steps—is about nine months. The NIE’s utility in helping agencies to prioritize their efforts in real time is thus limited.

Clearly some sort of annual assessment from the IC needs to be central to the APB process. In fact, the IC has a number of assessment art forms available that are similar to an NIE. They normally are not coordinated as broadly, nor at as senior a level, and they lack the panache of an NIE. However, they undergo rigorous review and are simpler to produce annually. Indeed, as PSD 10 participants were completing the draft of their report in November 2011, members of the IC were already at work on a broad assessment of the global risk of atrocities that was being prepared in anticipation of an initial meeting of the APB. That all-source assessment was drawn from a combination of quantitative modeling, structured expert and post surveys, an intense review of published NGO reports, and a close read of other government reporting and analysis. While some might view the final product as failing to carry the weight of an NIE, in substantive terms there would seem no particular reason why this type of assessment could not substitute for a formal NIE during most years.

This ought especially to be the case if the IC continues its initial practice of providing the Board detailed monthly updates on each country that appeared in its annual assessment along with a context assessment of a country singled out each month by the Board for deeper study. The format of the IC’s monthly briefing packages was flexible enough that it allowed the Intelligence Community to bring to the Board’s attention situations that might not have factored into its annual assessment, but were subsequently showing worrisome signs.

One question the Board will need to decide, and the sub-APB could usefully tee up, is when during the year the Board would like to receive the IC’s annual atrocity risk assessment, which presumably ought to signal the start of the Board’s work program for the next twelve months. Three options immediately come to mind: the beginning of the fiscal year, the beginning of the calendar year, and late spring. Using the beginning of the fiscal year would put the APB on the same calendar as many other government undertakings. Early January would have the advantage of coming right after the holidays when senior policymakers traditionally find some down time to ponder the last six months and consider what might lie ahead. Early spring, on the other hand, is when some of the data sets the IC draws on are refreshed. It is also the time of year when Departments and Agencies are beginning to update their budgets and plans for the upcoming fiscal year, and refining their out-year plans. Many policymakers also try to set time aside to assess where issues stand and where they hope to direct things through the end of the fiscal year. Working backwards from whatever date is chosen, the IC would begin its part of the process by sending a structured atrocity prevention questionnaire to posts world-wide and the appropriate government analysts in order to begin generating one of several important inputs to its analysis.

Organize Annual Off-site
Under the best of circumstances, completion of the annual IC atrocity risk assessment would be followed soon after by an annual off-site bringing together, at a minimum, members of the APB and sub-APB, Regional Assistant Secretaries, and senior NSC regional directors. The centerpiece of
that meeting would be a presentation by the IC of that assessment followed by a broad discussion amongst the assembled policymakers of the report’s implications. The meeting would also provide attendees an opportunity to compare the IC’s atrocity risk list with other governmental and non-governmental lists focused on such issues as political instability/fragility, terrorism, corruption, human rights, proliferation, complex humanitarian emergencies, drugs, human trafficking, etc. The goal of the meeting would be not only to try to help narrow the gap between the functionalists and regionalists on a range of atrocity prevention related issues, but also to begin breaking down the stove pipes at a senior level and focusing on common structural drivers and potential policy responses.

The meeting would also offer an opportunity on an annual basis to revisit the question more holistically at a fairly senior level of what prevention is supposed to mean and what recent experience is telling us about what works and what doesn’t. It would likewise allow for a discussion of what type of atrocity prevention (or combination of prevention) – pre-conflict, conflict, or post-conflict – might be most appropriate for each country that the IC has highlighted. Finally, the meeting might also allow Departments and Agencies to bring to the table additional country information that had not previously been shared outside the stovepipes, or that might otherwise be overlooked. This includes materials like AID’s excellent Country Development Cooperation Strategies that tend to include a wide range of information relevant to atrocity prevention.

Alert Country Missions
CSO, as the State Department’s recently designated secretariat for atrocity prevention matters, would seem the logical candidate to plan and organize the off-site. CSO would also have responsibility for keeping the meeting’s minutes, from which a special reporting message would be prepared for those diplomatic missions in the top twenty or more countries that appear on the IC’s atrocity risk list. That message would formally alert the Chief of Mission that his country was on the IC’s list, explain the reasons behind its inclusion, and summarize the discussion about their country that had taken place. It would also instruct the Chief of Mission to designate a senior coordinator for atrocity prevention, who depending on the size and make up of the Mission might be the Deputy Chief of Mission, the Political Counselor, or the Senior AID Administrator. Copies of those messages would also be transmitted simultaneously through military and intelligence channels to appropriate Regional Combatant Commanders, Senior Defense Attaches, Chiefs of Station, and Treasury representatives and would put them on record that they are to provide appropriate support to the Mission’s prevention efforts.

Initiate Horizontal and Vertical Dialogue
The designation of an atrocity prevention coordinator at each relevant Mission should set in motion two related dialogues, one within the Mission country team that would consider the feedback from the annual Washington off-site, organize a preliminary Mission assessment by the country team, review the Mission’s existing programs that contribute to atrocity prevention, and begin the process of identifying key gaps. The second dialogue would be between the Mission country team, the APB, and the appropriate regional IPC.

Carry Out Conflict/Atrocity Assessment
As part of that latter discussion, the APB/IPC/Mission country team would jointly agree to organize and schedule a multi-agency, multidisciplinary conflict and atrocity assessment with CSO and AID as co-leads. Although AID and CSO have done pioneering work aimed at adopting conflict/atrocity assessments within the US government, their methods have still to gain broad acceptance. Good conflict/atrocity assessments cover a broad range of topics and are labor intensive. All too often Chiefs of Mission who are less familiar with the practice and wary of having Washington play in their sandbox—especially if the outcome could be a report that conveys bad news, or at least a storyline that deviates from the picture that the Mission heretofore has been conveying—have been reluctant to host these groups. Arguments frequently have ranged from hosting up to a dozen team members for a few weeks would overwhelm the Mission’s resources to concerns that their presence would quickly become known and would raise the hackles of the host government.
Past members of the APB have marveled at some of the obstacles that have been raised by Missions and home bureaus following proposals from the APB that they host a conflict/atrocity study team. From the APB’s perspective, it was offering an opportunity to bring additional resources to bear on what were often small, out of the way Missions that under sequestration likely found themselves even more resource strained than usual. The APB saw the studies as an initial step to try to get ahead of problems and to gain better understanding of conflict and potential atrocity at the local level. A given conflict/atrocity assessment rarely, if ever, provides the last word. Instead it renders a snapshot of where things stand at a given moment. The scholarly literature suggests that they can be most effective as part of an ongoing process. In those instances where Chiefs of Mission have been open to hosting these study teams, even on a one-time basis, the results according to most accounts, have been very positive. For Washington, when Missions have been on board, the challenge has been to find the appropriate personnel and funds to respond to the demand. One advantage of widening participation of the annual off-site as suggested above is that bringing the regional IPC’s into the discussion at that stage ought to help reassure at least some skeptical Chiefs of Mission, especially if the meeting achieves buy in and holds the promise of easing the future flow of resources to Missions. It should also serve to free up positions and money necessary to meet the anticipated demand for additional studies.

Seek Out Like-Minded Allies

Similar dialogues will also need to be initiated or strengthened where they already exist with like-minded partners in Mission states, in Washington, and in other capitals. Seeking the views of civil society, the NGO community, other bilateral missions, key international organizations like the UN, and international financial institutions, especially locally, will be key to better understanding individual situations within countries and orchestrating more effective initiatives while avoiding harm. Regular sharing of information and coordination of different programs locally have proved invaluable in a variety of situations. But US policy would also benefit from a more regular, structured discussion about the risk of atrocities with a variety of like-minded partners in Washington, with UN offices in New York, including the office of the Special Advisors on Genocide and R2P, DPKO, and the Peace Building Commission, among others, and appropriate offices within the EU, OSCE, OAS, ASEAN and the AU, including the latter’s subordinate regional organizations. Each of these elements has had their own experiences wrestling with prevention and both they and Washington could benefit from a regular exchange of views encompassing both theory and practice.

One means of helping to facilitate those interactions might be to reinstitute and expand the Annual Genocide Prevention Conference that Washington hosted for five consecutive years until funds dried up. Organized at the working level, these meetings brought together representatives from some fourteen governments, civil society, and leading members of the scholarly community for frank, unclassified, off-the-record discussions of methodologies for determining risk, evolving norms, links between prevention and development and a variety of other related topics. While most of the sessions were open to all participants, the meetings were also arranged to allow time for some restricted multilateral discussions of more sensitive issues.

On a more day-to-day basis, it will be up to the APB’s chairperson, working in conjunction primarily with the Department of State, to decide at the end of each monthly APB meeting which partners might be usefully engaged, whether Washington or a specific bilateral Mission is best suited to do it, ensure that it is included in the list of tasks assigned after each meeting, and then check systematically to ensure that the contacts actually take place.

Country Task Forces

As the country conflict/atrocity assessments are completed, the APB should task the Department of State to establish a series of intra-Departmental, inter-Agency, country-specific, multi-disciplinary atrocity prevention task forces to consider the assessments’ findings, take into account information that has been gleaned from other partners and any additional studies that might be commissioned and, in conjunction with the Mission Country Team, make specific policy recommendations to the APB and the appropriate regional IPC. (To maximize efficiency, the Task Forces would also share the information they have gathered and their recommendations with the Regional Commands’
contingency planning cells and other appropriate government planning bodies.) Assuming those recommendations are approved by the APB and regional IPC, and any higher approvals that might be necessary are obtained, it would then be left to the appropriate parts of the Washington foreign policy community and, especially, the Mission Country Team to see them implemented, with the task forces continuing to monitor progress on a regular basis and to undertake additional formal assessments at agreed intervals.

Looking Ahead
The path to preventing atrocities in the future is likely to lie less in big theoretical breakthroughs and more in the direction of better coordination and integration of policy approaches, both within our own government and with key like-minded partners. The remaining months of the second Obama Administration will, it is hoped, see the APB and its regional counterparts double-down on their efforts to narrow the chasm that continues to divide functionalists from regionalists, identify additional resources that can be made available as the economy improves, and identify a variety of common drivers and ways to possibly mitigate them.

By the end of the second Clinton Administration those who were associated with the Interagency Atrocity Prevention Working Group that Ambassador Dave Scheffer – Washington’s first Ambassador-at Large For War Crimes – had organized felt that their group and the approaches they were developing were on the verge of having a strong impact on policy. Regrettably, the Scheffer group and the infrastructure it was beginning to create were swept away by a combination of political vitriol and different philosophies about how government Departments and Agencies should be organized. It was eight long years before the first Obama Administration would seriously revisit the approach that Scheffer had pioneered and establish a much more sophisticated model with the APB, valuable time wasted in the minds of those who longed to enter the fray. Hopefully, whatever Administration eventually succeeds Obama II will seek to learn from and build on the Atrocity Prevention Board experience rather than simply cast it aside.

Endnotes
2 The author wishes to acknowledge the United States Holocaust Museum’s Simon-Skjodt Center’s support during the preparation of the original article cited above. The Center also hosted a roundtable in November 2014 focused on that article which surfaced some additional ideas that the author has further developed in the current draft. The conclusions reached in this essay—along with any possible mistakes—however, are strictly the author’s own. The views expressed in this article do not necessarily represent the views of the author’s former Federal employer, other Federal Departments or Agencies, the Simon-Skjodt Center, or the US Holocaust Memorial Museum.
3 The White House reiterated Power’s cautionary note in an updated “Fact Sheet” in May 2013, one of the few times since the roll out of the Atrocity Prevention Board that the Board has been mentioned officially. See https://www.whitehouse.gov/blog/2013/05/01/update-atrocity-prevention-strategy-implementation (accessed 3 August 2015).
6 Stove piping in this context refers to the common practice of developing approaches and policies within a very circumscribed circle or chain of command rather than seeking greater inclusion. Stove piping sometimes evolves in large bureaucracies as a practical approach to getting things done. Stove piping can also be used, however, to limit discussion and the influence of rival offices, Agencies, and Departments.
9 The States Department’s 2015 Quadrennial Diplomacy and Development Review refers to a separate Presidential Policy Directive on Global Development. This Directive presumably governs at least some of the activities of a small IPC on global political fragility or instability that has functioned separately from the APB. Given the likely overlap between countries that both groups follow, it would make enormous sense for members of the Fragility IPC to participate in the annual off-site as well. See http://www.state.gov/s/dmr/qddr/2015/index (accessed 25 June 2015), 19.