The Slow Genocide of Indigenous Nations and Peoples

Hiding in Plain Sight

By Andrew B. Reid, JD[1]

ABSTRACT

British historian Patrick Wolfe opined that settler colonialism is not just an event in history but is structural and, by definition, eliminates to replace over time.[2] Colonial rule and domination often seek the extermination of occupied nations and peoples through forced assimilation and attrition. Despite the fact that colonialism is at its core ethnic cleansing, forced assimilation, and slow genocide, the protracted colonial elimination of original nations and peoples has been largely excluded from the "crime of crimes" by international institutions, the developing law of genocide, and genocide scholars. This article seeks to address that deficiency.

***Keywords**:* Settler colonialism, Structural genocide, Ethnic cleansing, Forced assimilation, Slow genocide, Nations International Criminal Tribunal (NICT), Genocide terminology, Decolonizing genocide, Genocide studies, International Law

Introduction

Genocide has been described as the "crime of all crimes",[3] as the worst of the evils of man. It is the murder of an entire society of people, the en masse extermination in whole or part of a national, ethnical, racial, or religious group.[4] It is so heinous that it differs in essence from other crimes not just in severity or degree but in kind. For Indigenous peoples, it is the supreme and tragic expression and often the end goal of colonial invasion, domination, occupation, settlement, and rule.

British historian Patrick Wolfe opined in his important work, "Settler Colonialism and the

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[2] Wolfe 2006.

[3] Rafter 2016.

[4] Convention on the Prevention and Punishment of the Crime of Genocide 1948.

Elimination of the Native", that settler colonial invasions are not just events in history but are structural and, by definition, they "destroy to replace".[5] As original or First Nations and peoples and the targets and victims of the Age of Empires and the spread of Christianity, colonial domination and occupation is an almost universally shared experience of Indigenous peoples.[6] The Indigenous survivors of colonialism have endured many generations of protracted, systemic, institutionalized forced assimilation and genocide by imperial powers and their successor colonial States.

Genocide scholars such as Wolfe, Dirk Moses, and others have noted the very close link between colonialism and genocide due to the inherent nature of settler colonialism to "eliminate to replace" and that of colonial rule to eliminate through forced assimilation. This does not mean that colonialism is always genocidal. Imperial powers, as with the British colonial rule over India, may be more interested in the exploitation of the resources and wealth of the colonized nation than in settling its land or destroying its culture and assimilating its people. Likewise, genocide is not always colonial, as with Cambodia's, or even when it involves only Indigenous peoples, as occurred in Rwanda. Yet, both settler colonialism and assimilation are driven by the colonial relationship and the colonizer's intentional eliminatory goal and are, therefore, genocidal. As Lemkin described it:

> Genocide has two phases: one, destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor. This imposition, in turn, may be made upon the oppressed population which is allowed to remain, or upon the territory alone, after removal of the populations and the colonization of the area by the oppressors' own nationals.[7]

Genocide and colonialism are also violations of the fundamental ("inalienable") rights of peoples and nations[8] to life (i.e., genocide, ethnocide, right to collective existence),[9] liberty (i.e., freedom from alien domination or rule),[10] security (i.e., freedom from territorial invasion, theft of lands and resources, alien rule),[11] dignity (i.e., denial of sovereignty and nationality, culturecide),[12] and (collective) equality.[13] Genocide and colonialism are also violations of jus cogens norms. Jus cogens norms refer to concepts of a "superior order of legal norms, which laws of man or nation may not contravene" and which are "necessary to protect the public morality recognized by them."[14]

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[5] Wolfe 2006, 388.

[6] Niezen 2003, 23; Anaya 2004, 3-4.

[7] Lemkin 1944, 79. See also, Docker 2008, 81-101.

[8] The existential "essential rights of man" referred to in the American Declaration as its purpose and goal. American Declaration, Whereas paras. 1-5.

[9] UDHR, art. 3; ICCPR, art. 6(1).

[10] Vienna Declaration, art. 2, paras. 1 and 2; UDHR, art. 3; UNGA Res. 1514, Preamble, para. 11 ("complete freedom"); ICCPR, Preamble paras. 3, art. 9(1).

[11] ICERD, art. 5(b); ICCPR, Preamble paras. 1 and 2 (the "inalienable rights of all members of the human family" "derive from the inherent dignity of the human person"), art. 9(1).

[12] UDHR, arts. 5 and 6; ICERD, Preamble paras. 1-2; ICCPR, arts. 7 and 10; ICESCR, Preamble paras. 1 and 2.

[13] UN Charter, Preamble, para. 1, art. 1(2); UNGA Res. 1514, preamble, paras. 1 and 11; UDHR, arts. 1, 2, and 7; ICERD, Preamble paras. 1-4, art. 5(a); ICCPR, arts. 3, 14(1), and 26; Kuna, para. 288.

[14] Domingues v. United States, 12 285 2002 paras. 49, 50 (recognized over the objections of the United States).

The rights of Indigenous peoples to life[15] and self-determination (which incorporates other rights such as to sovereignty, nationality, territory, lands and natural resources, dignity, etc.) have been recognized as *jus cogens*[16] norms. A "systemic practice of human rights violations" such as that which occurs, as here, under institutionalized colonialism and racism may be said to violate international *jus cogens* norms.[17]

Settler colonialism and *protracted* forced assimilation have been largely excluded from the crime of crimes by both international institutions and genocide scholars. This is understandable given that the Law of Nations pertaining to the crime of genocide, crimes against humanity, and collective human rights were debated and promulgated under the global political dominance of the same imperial and colonial powers that had committed, continued, and greatly benefitted over the past half millennium from such atrocities.[18]

II. GENOCIDE: WHAT'S IN A NAME?

The term "genocide" was first coined during the Second World War by lawyer Raphäel Lemkin to describe an international crime in response to the mass race and ethnic exterminations of Jews, Romani, and others by the Nazis.[19] The term consists of the Greek prefix *genos*, meaning race or tribe, and the Latin suffix *cide*, meaning killing.[20] During the War, Lemkin heard a radio address by British Prime Minister Winston Churchill in which he described mass killings in the horrors of the war as "in the presence of a crime without a name."[21] Lemkin was inspired to coin the term not only by the Holocaust of World War II but after learning about how the Ottoman Empire's mass elimination of the Armenian peoples during World War I went unpunished. Lemkin remarked that, while the killing of one person was recognized as a crime, the crime of genocide is concealed by its own immensity.

Genocide has also been concealed, if not legitimized, by the "sovereign" status of the perpetrator, that it was committed not by an individual but by a State as an unavoidable and almost expected consequence of war,[22] empire, or modernity (the expansion of "civilization").[23] Not only does genocide involve the physical erasure of peoples, but often the perpetrator will also engage in efforts to deny and erase the memory of its own genocidal conduct.[24] The discussion here concerns another hidden form of genocide, "slow genocide"—no less atrocious or complete—that is concealed by the rate and nature of the extermination[25] and obfuscated by time. It is often

[15] *Ibid*. para 85.

[16] Chagos Archipelago (Separate Opinion of Judge Robinson, Separate Opinion of Judge Cancado Trindade (paras. 118-174), Separate Opinion of Judge Sebutinde (paras. 11, 13, 25, 47)); Mornah 2022, para. 298; Espiell 1978; Naldi 1999. See also, Gaeta 2007, 642.

[17] Gomez-Paquiyauri Brothers v. Peru, para. 76.

[18] Schabas 2000, 51-101; Moses 2007, vii; Jones 2006, 14. Also, Lauren 2003, 124, 154-165, 168-169, 173-174, 184-185, 192-193 ("Although the language of the preamble spoke of 'We the Peoples,' the fact of the matter was that the governments and not peoples conducted the negotiations" over the language of the UN Charter.).

[19] Lemkin 1944, 79. Lemkin had fled Poland to the United States after losing much of his family, including his parents, in the Holocaust. United States Holocaust Memorial Museum 2023. Martin 1984 (biography).

[20] Lemkin 1944, 79.

[21] Power 2003, 29.

[22] Jones 2006, 48-54.

[23] Moses 2010; Hinton 2002, 1-40.

[24] *See* Logan 2014; Jones 2006, 345-361; Tatz 2003, 122-170; Lorey 2002; Cohen 2001.

[25] Totten 2011, 13; Watson 2015, 112.

systemic, hidden within the laws and institutions of the perpetrator. Until slow genocide as a settled matter of law is recognized as a form of genocide, it will remain essentially a crime of crimes in search of an adequate remedy.

After the War, Lemkin lobbied and eventually convinced diplomats at the United Nations to adopt the "Convention on the Prevention and Punishment of the Crime of Genocide"[26] which, to a very great extent, incorporated his definition of the crime.[27] Article 2 of the Convention defines the term "genocide" as a matter of law as meaning "…any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

Article 3 extends the coverage of the Convention to the following acts:

(a) Genocide;

(b) Conspiracy to commit genocide;

(c) Direct and public incitement to commit genocide;

(d) Attempt to commit genocide;

(e) Complicity in genocide.

Article 4 further extends the prohibitions in the Convention to "rulers, public officials or private individuals."

The language and wording of the Convention have generated much discussion, analysis, and interpretation—and significant confusion—among genocide scholars and tribunals.[28] Perhaps the greatest confusion has arisen out of the distinction between the mass killing of individuals and the killing or destruction of certain specific "groups". A "group",[29] particularly in this context, is a collective of individuals that share

[26] Genocide Convention 1948.

[27] The only major difference between the Convention and Lemkin's definition appears to be the omission of an express inclusion of the destruction of a group's "culture" – culturecide – in the Convention's definition. The omission followed a rather heated debate at the UN. See Schabas 2000, 53, 57, 63; Krieken 2010, 128-132; Short 2016, 25; Moses 2008, 12-13. Even so, as shown in this examination of the nature of the other terms that were included, the destruction of culture remains a common theme of the Convention inherent throughout the conceptual definitions of the included terms of national, ethnical, racial, and religious groups. Lemkin's invention of the term "genocide" grew out of his initial proposal that "barbarity" be used for the crime of mass killing and "vandalism" for cultural destruction. Lemkin 1933. See discussion, Schabas 2000, 25-26; Shaw 2007, 18. In settling on "genos," Lemkin in essence combined the two terms such that the destruction of "culture" is included in its meaning which obviates the need to separately list it as a method of genocide in the Convention. This is further implied in Lemkin's choices of "nation," an organic concept housing a peoples' culture, rather than State, "ethnic," which is largely defined by a distinctive culture, and "religion," which in turn is often part of a peoples' culture. Lemkin was quite emphatic that it was the loss to the world of a peoples' culture that was the essential crime he always had in mind. Short 2016, 3, 19-20 (citing to Moses 2008).

[28] *See discussion, e.g.*, Shaw 2007, 20-36; Moses 2007, 149-180; Jones 2006, 14-18; Schabas 2000, 51-81; Horowitz 1976; also, Hinton 2014, 325-26; Rensink 2011.

[29] Goldhagen 2009; Shaw 2007, 8, 106.

in and thereby create a distinctive, common, identity greater than the assemblage or any of the individual members of the group.[30] "Genos" after all refers to a race or a tribe, a societal entity, rather than to individual humans or even a group of human beings. In contrast to the killing of individual people as homicide, or even mass homicide, genocide is a sociological crime,[31] the destruction of "peoples." Even though dependent collectively upon its individual members for its creation and existence, a "group" is a separate entity and the center of the Convention's remedial attention. Lemkin and the drafters intentionally emphasized this distinction and then clearly expressed the focus of the Convention by including in its language the simple modifier "as such" to the term "group" in Article 2. "As such" is not a throw-away phrase. It expressly directs the Convention's attention and coverage to the destruction of certain groups rather than individuals.[32]

While individual members of the group can be killed or eliminated, the group itself survives so long as other members survive and continue the group's existence and identity. The survival of members of a group has been not infrequently raised as an argument against genocide.[33] While this properly focuses on the survival of the group rather than individual, the argument ignores qualifying language in Article 2 of the Convention that includes within the definition of genocide the destruction of a group "in whole or in part". Under Convention Article 2(a), the absolute and complete extermination of group members would certainly qualify as genocide, but does not function as a requirement. The Convention's definition of genocide is focused on prohibiting certain eliminatory intent and conduct rather than the end result.

Additional discussion has been generated over the Convention's Article 2 limitation of its coverage to specific groups, a "national, ethnical, racial, or religious group," and its omission of others. Significantly, it does not refer to the destruction of political groups such as "States", political organizations, economic and social classes, or gender categories. An examination of the nature of the groups listed in the Convention demonstrates Lemkin's and the Convention's intended scope and purpose as well as its application to the experiences of Indigenous peoples.[34]

A. KILLING A NATION

> [N]ations are essential elements of the world community. The world represents only so much culture and intellectual vigor as are created by its component national groups. Essentially the idea of a nation signifies constructive cooperation and original contributions, based upon genuine traditions, genuine culture, and a well-developed national psychology. The

[30] Online Etymology Dictionary, "group," refers to "any assemblage, a number of individuals *related in some way*" (emphasis provided). Wolfe 2006," 398.

[31] Shaw 2007, 9-11.

[32] Schabas 2000, 73; Ratner 2001, 38.

[33] Shaw 2007, 106-08.

[34] Shaw 2007, 27, 63-78; Schabas 2000, 113-114, 134-150.

> destruction of a nation, therefore, results in the loss of its future contributions to the world.
>
> Raphael Lemkin[35]

A "national group" refers to the collection of individuals that compose a "nation." A nation has been defined as a "cultural territory made up of communities who see themselves as one people on the basis of common ancestry, history, society, institutions, ideology, and language."[36] It is the social entity that provides a group identity to its members. Thus, there are familial and cultural elements associated with the term that directly correspond to the Greek prefix of the word genocide, *genos*, meaning race or tribe. The word "tribe" similarly originates from the Greek, *phylē*, meaning "race or tribe of men, body of men united by ties of blood and descent, a clan."[37]

Contrast this with the concept of a "State" under international law, which, while a social construct, is a purely political creation defined as an entity that has "(a) a permanent population; (b) a defined territory; (c) a government; and (d) the capacity to enter into relations with other states."[38] Whereas a "State" is an artificial entity, a "nation" is an organic one. It is a difference with great significance. As a political organization, States can be used as instruments of imperial and colonial rule over pre-existing nations and peoples. While membership in the United Nations under Articles 3 and 4 of its Charter[39] is restricted to "States", the organization, as its name suggests and as stated in Articles 1 and 55, is focused on the development of "friendly relations among *nations* based on the respect for the principle of equal rights and self-determination of *peoples*". (emphasis supplied) By restricting the control over the political process and *power* of the international congress to States alone, the imperial and colonial relationship and rule over and exploitation of nations and peoples and their resources is maintained.

Chapters XI and XII of the UN Charter establish a process for the decolonization and self-determination of "peoples" who "have not yet attained a full measure of self-government". UN instruments on human rights and decolonization also refer to the rights of "peoples" rather than nations or tribes.[40] The term "peoples" has been understood to mean "an ethnic group or cultural

[35] Lemkin 1944, Section III, 79-95. Lemkin surely studied the writing of the prominent early 20th Century fellow German philosopher Edith Stein who opined on the nature of nations as the bearer of the culture of the people that make up the nation. "Culture may be described as the creative activity of the human spirit in which all essential functions of human life have found their expression (economy, law / legislation and government, morals, science, technology, art, religion). The nation is a community which can create such a 'cosmos.' Neither the individual nor a smaller community are able to create it alone." Stein 2004, 147.

[36] Nietschmann 1994, 225-242, 261. The International Court of Justice following up from Lemkin's definition opted for a broad approach in the case of Bosnia and Herzegovina v. Serbia and Montenegro (Judgement of February 26, 2007, para. 296).

[37] Online Etymology Dictionary, "tribe."

[38] The World Conference of Human Rights in Vienna, Vienna Declaration and Program of Action, (June 25, 1993), Vienna Declaration, art. 2, paras. 1 and 2 Montevideo Convention (note that while recognizing treaty making only between States, the Convention affirms the right of self-determination of peoples). Also, Restatement, 1987. *See generally*, Crawford 2007.

[39] UN Charter 1945.

[40] *See* Lauren 2003, 188 ("The very first sentence of the Charter, for example, announced the departure immediately. Rather than traditional language about the plenipotentiaries of nation-states, yet entirely consistent with their recent experience and their visions of a 'people's peace,' the signatories declared: WE THE PEOPLES OF THE UNITED NATIONS…"); ICCPR; ICESCR; UN Res. 1514.

community" possessed of a collective identity from which they are possessed of a right of self-determination[41]–the "s" added to the concept of a people.[42]

The International Labor Organization's Convention 169 also refers to the rights of "Indigenous and Tribal Peoples".[43] The word "tribe" in the Convention 169 refers to peoples "whose social, cultural, and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions."[44] The concept of a "tribe" of people contained in the meaning of genos in genocide reappears in Convention 169. While a "tribe" of peoples may not necessarily have sufficiently organized as a "nation" possessing an international persona,[45] tribes have been recognized as qualifying as nations under law. US Supreme Court Chief Justice John Marshall remarked on this early on in Worcester v. Georgia: "Indian nations had always been considered as distinct, independent political communities, retaining their natural rights, as the undisputed possessors of the soil … The very term nation so generally applied to them, means 'a people distinct from others.'"[46]

The late Indigenous scholar Rudolph Rÿser emphasized a fundamental and almost universally overlooked distinction between "nations" and "States".[47] Within the context of nations, particularly Indigenous nations, the common reference to "nation-states" is historically inaccurate and misleading. "States" in fact are purely political rather than national constructs often composed of more than one "nation" or peoples. There are actually few true "nation-states",—States composed entirely of one nation. The two terms are widely and improperly conflated.[48]

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[41] Lâm 1992, 605, note 5; Keal 2003, 53-54.

[42] Watson 2015, 95-96. This definition is quite different in substance from that suggested by John Rawls for a "liberal peoples" which revolves upon a democratic order and a reasonably just political process – as possessed of "a reasonably constituted constitutional democratic government, that serves their fundamental interests, a unity of common sympathies, and a moral nature." Rawls 1999, 17-19, 21 (the "liberal" part of the term). Rawls distinguishes his definition from that for a "State" which is "an autonomous agency pursuing its own bureaucratic ambitions" and "directed by the interests of large corporations of private economic and corporate power veiled from public knowledge and almost entirely free from accountability." *Ibid*., 24. In contrast, the definition of "peoples" employed in this commentary refers to the social evolution of the collective expression of identity and sovereignty by people - from individuals, to people, to tribes, to peoples, to nations, to States, and refers to when the collective right of self-determination arises. This somewhat follows the thinking of German philosopher Edith Stein. *See* Lawton, 2024. In further contrast to Rawls, the definition used here preserves Lemkin's "organic," "living," nature of peoples and nations expressed in the common identity and culture, and permanence, of the group, as against "States" which are artificial, inorganic and impermanent, political constructs. Shaw 2007, 99. James Scott in *Seeing Like a State* commented on this loss of the organic process in State creation as losing sight of the forest while managing the trees. Scott 2020, 11-22.

[43] ILO 1989, 169.

[44] *Ibid*., art. 1, sec. 1.

[45] Cayuga Indians, RIAA 179.

[46] Worcester v. Georgia 1832, 561 (emphasis supplied).

[47] Rÿser 2012; Rÿser 2020; Rÿser 1996, 7. Also, Fukurai 2023; Watson 2015, 96.

[48] *Ibid.*; Whitt 2019, 78 ("The members of a nation may live within the border of many different states. Moreover, while 'nation-state' originally embraced the idea of one nation living within the borders of one state, contemporary usage of the term allows that a nation-state may contain different nations within its borders.").

As no nation deliberately cedes its territory, resources, or identity, "a nation is the world's most enduring, persistent, and resistant organisation of people and territory." [49] States, on the other hand, depend on the political environment of the time and come and go. A State is an artificial political entity tied to territory, not peoples, which usually is comprised of more than one nation.[50] Only 193 "States" are recognized by the ironically entitled United "Nations"[51] The UN Charter, while declaring the rights of *nations*, excludes them from membership.[52] In comparison, it has been estimated that there are some 6,000 to 9,000 nations that make up what has been labeled the "Fourth World".[53]

Many of the "newer" States are continuations or direct successors of imperial and colonial empires created in so-called "national" liberation and decolonization movements following the Second World War. Their territorial boundaries generally followed that of the previous colonial power and paid little attention to the nations and peoples under imperial and colonial occupation and rule. They often divided existing pre-colonial peoples and nations, with their territories, between colonial States.[54] From the perspective of those nations and peoples, their imperial or colonial ruler was merely replaced by a more local one. They remained, and still remain, under colonial occupation and domination.

Upon "liberation," successor colonial States succeeded to the territorial claims of their imperial and colonial predecessors. The United States succeeded the English, French, Spanish, and Dutch empires that encompassed over 600 surviving First Nations occupying the territory now claimed by the United States in North America.[55] Evidence of the independent existence and colonial relationship of these First Nations is found in the over 400 treaties signed by the United States with First Nations,[56] the US's formal recognition of these colonized nations,[57] the creation of a body of law ("federal Indian law")[58] and the establishment of institutions[59] to impose, maintain, and continue colonial domination to the present day. The primary colonial institution in the United States is and has been the Bureau of Indian Affairs which, by its own description, "involves 150 years of federal policies designed to [forcibly] terminate, relocate, and assimilate American Indians and Tribal Nations."[60] Similar histories and tranfers of colonial domination over Indigenous first peoples and nations to successor colonial States are seen in Canada (more than 600 recognized First Nations subject to colonization under Canada's "Indian Act" and

[49] Nietschmann 1994, 226; Griggs 1999.

[50] Nietschmann 1994, *ibid.*

[51] United Nations, "Member States."

[52] UN Charter 1945, chap. II.

[53] Rÿser 1996, 7.

[54] Maddison 2014, 153-176; Expert Mechanism on the Rights of Indigenous Peoples, 2019; Krauzman 2022; Bolt 2016.

[55] USAGOV.

[56] National Museum of the American Indian.

[57] USAGOV.

[58] *See generally*, USDOI, "Federal Law"; Executive Board of Authors and Editors, 2012.

[59] Bureau of Indian Affairs.

[60] USDOI, "Bureau of Indian Affairs." The BIA's assertion at its webpage that it no longer pursues such destructive policies is both false and misleading. While perhaps not quite as overt and harsh, it continues to implement and enforce US occupation, rule, and domination over Native nations and peoples embodied in federal Indian law, including the current law imposing what are known as the doctrines of discovery (imperial theft), trust (colonial domination), and plenary authority (absolute power).

Constitution),[61] Australia (over 400 aboriginal nations governed by various colonial laws),[62] India (over 700 recognized aboriginal peoples)[63], Brazil (some 279 distinct Indigenous peoples),[64] China (55 recognized "minority" nationalities),[65] Democratic Republic of Congo (the Mbuti, Baka and Batwa peoples),[66] Mexico (68 Indigenous peoples),[67] Russia (over 180 Indigenous peoples, 40 recognized by the colonial State),[68] and throughout the Fourth World.

Within this context, how does one go about "killing," or "physically" destroying, a nation?[69] Convention Article 2(c) provides that genocide includes "deliberately inflicting on the [national] group conditions of life calculated to bring about its physical destruction in whole or in part." A nation is in a sense a living biological entity,[70] physically defined by its members (its peoples), its territory, and its governance (its "domain" and government officials and institutions) such that the elimination of any one of these results, by definition, in the destruction in whole or part of the nation itself. Lemkin elaborated at some length that the destruction of nations was accomplished through "a synchronized attack on different aspects of life of the captive peoples" including in the political, social, cultural, educational, economic, religious, moral, and biological fields, along with the physical existence of its members.[71]

1. Convention Article 2(a): Killing a National (Or Ethnical, Racial, or Religious) Group By Killing Its Members

"Kill and scalp all Indians, little and big ...nits make lice"

> Colonel Reverend John Chivington, Methodist Minister and US Army commander, instructing his troops to slaughter Cheyenne and Arapaho babies and children at the Sand Creek Massacre[72]

Article 2(a) of the Convention declares the intentional killing of members of a group to be genocidal conduct. Clearly the targeting and killing of a significant number of the members of not only a national group, but also the other listed groups, ethnical, racial, and religious, results in the physical destruction of the group in whole or part as, without its members, it by definition cannot remain a group. In the slow genocide of Indigenous peoples, hundreds, if not thousands, of massacres by the invading imperial militaries, militias, and settler colonialists have been well documented over a period of hundreds of years in the Americas,

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[61] IWGIA Canada.

[62] Aboriginal Heritage Office; Parliament of Australia.

[63] IWGIA India.

[64] Povos Indígenas.

[65] IWGIA China.

[66] IWGIA Democratic Republic of the Congo.

[67] IWGIA Mexico.

[68] IWGIA Russia.

[69] *See discussion*, Shaw 2007, 28-33. In this discussion, "nation" and "peoples" are construed interchangeably to the extent that "peoples" are distinguished in character from "people" by the possession of the collective right to self-determination, the right to form a "nation", that a nation is a manifestation of peoples. *See*, discussion at note 42, *supra*.

[70] Short 2016, 19; Lemkin 1944, 79 (referred to the "life" of national groups).

[71] Lemkin 1944, xi-xii.

[72] Brown 1970, 90.

Australia, Africa, Asia, and elsewhere.[73] It has been estimated that 50 to 100 million Indigenous peoples (over 95%) in the Americas alone perished in what is called the "Great Dying" following the colonial invasions from Europe.[74] So many Indigenous people perished in the Great Dying that it led to the abandonment of enough cleared land in the Americas to cause global climate change known as "The Little Ice Age."[75]

Disease has often been blamed for the bulk of these deaths.[76] To this, historian David Stannard says that by "focusing almost entirely on disease … contemporary authors increasingly have created the impression that the eradication of those tens of millions of people was inadvertent—a sad, but both inevitable and 'unintended consequence' of human migration and progress," and asserts that their destruction "was neither inadvertent nor inevitable," but the result of microbial pestilence and purposeful genocide working in tandem.[77] After the initial mass deaths from exposures to previously unknown diseases from Europe, the colonizers became well aware of the eliminatory power, the bioweapon, settlers carried with them. The colonial powers aggressively encouraged and abetted settlement of Indigenous lands while intentionally turning a blind eye to the theft of Indigenous territory and the mass deaths they facilitated.[78] The term "pioneers," used for the early settlers, is derived from the word, "pionnier," a military term meaning the "foot soldiers" who prepared the way for the advancing army.[79] The pioneers were an early weapon of mass destruction, the disease-carrying shock troops of an advancing, incremental, genocide. The colonial power's intentional looking the other way while widely promoting settlement of Indigenous lands and the spread of deadly diseases may be violations of Sections 3 (b) and (c) of the Genocide Convention for conspiracy and complicity. Intent may be expressed as a knowing omission.

There are other ways to kill members of a group than bullets and disease. In the centuries of colonial domination following the Great Dying, the mass killing and attrition of national, ethnical, racial, and religious groups continued systemically through slavery, starvation, poverty, and illness.[80] Dominican priest Bartolomé de las Casas who accompanied Columbus on his second voyage to the "New World" personally witnessed and documented the deaths by enslavement of millions of Indigenous peoples by the Spanish in the Caribbean and Central America.[81] Additionally, from 1525 to the second-half of the

[73] *See, e.g.*, List of Indian Massacres (partial); Casas 1552 (Central America); Brown 1970 (United States); Thornton 1987 (United States); Cowles 2003 (Biblica Canaan); Jones 2023; Kévorkian 2011 (Armenia); Khalidi 2020 (Palestine); Kiernan 2007; Lindqvist 2014 (East Africa); Madley 2016; Moses 2008; Power 2003 (oddly while themed with the topic of America and genocide, Power omits discussion of America's domestic genocidal past or present); Short 2016 (ecocide as genocide); Stannard 1992; Stone 2010; Totten 2011 (Indigenous peoples).

[74] Thornton 1987, 22-25, 47-51, 90, 133; Koch 2019, 20-22.

[75] Koch 2019, 14, 27, 30.

[76] Thornton 1987.

[77] Stannard 1992, xii.

[78] *See, e.g.*, Watson 2015, 110-111 ("biological warfare"); Drinnon 1980; Limerick 1987; Shaw 2007, 67. Also, e.g., General Allotment Act 1887; Dann v. United States 2002; United States v. Sioux Nation of Indians 1980; Hughes 1986 (Australia).

[79] Kelly 2017. See also, Khalidi 2020, 241.

[80] Short 2016, 28.

[81] Casas, 1552.

19th century, it is estimated that between thirty and forty million Indigenous Africans perished in the diaspora and slave trade.[82]

Murder by starvation also has a long history as a weapon of genocide.[83] As historian Daniel Goldhagen observed: "Regimes willfully withholding food from people has been one of the recurring features of our time's eliminationist and annihilationist assaults, often employed as an adjunct to other eliminationist measures. ...Mass elimination is always preventable and always results from conscious political choice."[84] In February and March 2024, the International Court of Justice ordered the State of Israel to take provisional measures to prevent genocide under the Convention in its siege of Gaza including "widespread starvation.[85] In November of 2024, the International Criminal Court issued arrest warrants for Israeli President Benjamin Netanyahu and former Minister of Defense Yoav Gallant for crimes against humanity, including the use of starvation as a weapon of war in the genocide of Gaza.[86] Russia is also well known to have employed starvation in the murders of millions of Ukrainian people in the Holodomor of 1932-33.[87] Notoriously, when the Great Dying reached the Great Plains of North America, it was accelerated under a government and military program of starvation genocide by the extermination in just a few decades of the primary food source of the Indigenous peoples that lived there, some 10-50 million buffalo.[88] Prominent military commander Colonel Richard Dodge famously declared at the time: "Every buffalo dead is an Indian gone."[89]

Large percentages of the members of nations and peoples have also died when they were forcibly removed from their homelands by colonial powers.[90] The military hired the notorious Indian killer, Kit Carson, to follow and murder stragglers of the Apache and Diné (Navajo) peoples during the "Long Walk" in their forced removal from their ancestral lands.[91] Additionally, thousands of Indigenous children who were shipped to boarding schools operated by the United States, Canada, and Australia perished and were buried at these schools, often in unmarked graves, never making it back home to their people.[92]

Mass murder, widespread disease, starvation, and forced or coerced removal by colonial powers all contributed to the impoverishment of the survivors both economically and in physical and psychological health. In an attrition genocide,

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[82] Mannix 1962.

[83] Shaw 2007, 67; Goldhagen 2009, 299-300; Thornton 1987, 118, 203, 243; Weisz 2022; Kulamadayil 2024 (ICJ); Smith 2024 (Ukraine); Olusoga 2010 (Namibia).

[84] Goldhagen 2009, 299-300 (emphasis by Goldhagen).

[85] South Africa v. Israel 2023, Order 2024.

[86] United Nations 2024.

[87] Smith 2024. Allegations have again been made that Russia used starvation as a weapon in its current war against Ukraine not only in Ukraine but as a global strategy. WFP 2023.

[88] Hubbard 2014, 292-305; Thornton 1987, 52-53, 124, 146; Echo-Hawk 2010, 113; Jawort 2018.

[89] Jawort 2018.

[90] Akers 2004 (Choctaw); Ehle 2011 (Cherokee); Wishart 1994 (Nebraska Tribes); Denetdale 2009 (Diné); Olusoga 2010 (Namibia); Derderian 2008 (Armenia); Williams 2015 (Crimean Tartars).

[91] Roberts 2001, 260-281.

[92] Newland 2024, 16, 41-43, Appendix I; Newland 2022, 85-86; Indep. Special Interlocutor 2023, 9-11 (showing thousands of graves, including mass graves, of Native children identified at Canadian residential schools).

sometimes over hundreds of years, Indigenous peoples and nations experienced further loss of life from past and continuing colonial domination expanding in space and time as ripples of death. Genocide did not stop at the Great Dying, the massacres, or the removals. These acts destroyed Indigenous economies through deliberate impoverishment and colonial exploitation[93] and destroyed the physical and mental health of Indigenous peoples, leading to still more premature deaths.[94] Denying Indigenous peoples traditional food sources also contributed to disease and shorter lifespans.[95] According to the UN, Indigenous peoples today have a life expectancy of up to 20 years less than that of non-Indigenous peoples.[96] State-facilitated ecocide of Indigenous environments have resulted in the further loss of life.[97] On the shortening of Indigenous lifespans, Professor Wolfe remarked: "What species of sophistry does it take to separate a quarter 'part' of the life of a group from the history of their elimination?"[98]

2. Convention Articles 2(b)-(e): Killing a National Group [Or Other Listed Group] By Other Means

As previously noted, a nation is physically defined by its members, territory, and its governance such that the elimination of any one of these results in the destruction of the nation itself. The listed groups can also be "killed" in whole or part through decimation by the sterilization of female members[99] (Convention Article 2(d)), and by the forced transfer of children of the group to another group (Convention Article 2(e)). Like the killing of members, the sterilization of women and the transfer of children effectively reduce the group's population and eliminate future generations of group members.[100] Many of these "assimilationist" policies are purported to be for the benefit of Indigenous peoples and nations while, in fact, are acts of "benevolent" genocide. Together and alongside other means, they "caus[e] serious bodily or mental harm to members of the [national (or ethical, religious, or racial)] group" (Convention Article 2(b)) that "deliberately inflict[s] on the group conditions of life calculated to bring about its physical destruction in whole or in part." (Convention Article 2(c)). As Lemkin clearly opined, these genocidal acts do not occur in isolation but are integrated in the effort to physically destroy a nation, an ethnicity, a religion, or a race.

Concerned about the "contamination" of Aryan blood, Germany sterilized mixed-race Indigenous children from Namibia in the late 1930s. Hitler had warned in *Mein Kamph* that the Nazis would "not allow ourselves to be turned into niggers as the French tried to do after 1918."[101]

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[93] *See, e.g.*, generally, Galeano 1997.

[94] UN IASG 2014; UN DESA; Thornton 1987, 50, 85, 118, 124, 127, 203, 243; Short 2016, 76-79; Fein 1997.

[95] LaDuke 1999, 191-210; Thornton 1987, 85; Chino 2009; Watson 2015, 134 (Indigenous people of Australia).

[96] UN IASG 2014.

[97] Short 2016; Kimerling 1991 (Huaorani of Ecuador); Koenning-Rutherford 2023 (Ogoni of Nigeria). Also, Kiobel v. Royal Dutch Petroleum Company 2013.

[98] Wolfe 2006, 399.

[99] Shaw 2007, 67-69 ("gendercide"); Smith 2007; Cultural Survival, 5-6 (Mexico).

[100] *See generally*, Jacobs 2009.

[101] Olusoga 2010, 243-251, 307 (the Nazis had "Genetic Courts" – Olusoga 2010, 285).

From 1996 until 2000, under the pretense of upholding women's rights and expanding access to family planning resources, almost 300,000 Indigenous women were sterilized by the Peruvian government.[102] An investigation in Mexico revealed the non-consensual sterilizations of 27 percent of Indigenous women seeking public health services.[103] Norway practiced forced sterilizations of Indigenous Romani after the passage of its Sterilization Act in 1934.[104] Forced or coerced sterilizations of Indigenous women were also widespread in Canada.[105] The practice even included Indigenous residential school children. The Sexual Sterilization Act of British Columbia allowed a school principal to permit the sterilization of any Indigenous person under his charge. As their legal guardian, the principal could thus have any child sterilized. Frequently, these sterilizations occurred to whole groups of children when they reached puberty in institutions like the Provincial training School in Red Deer, Alberta, and the Ponoka Mental Hospital.[106]

In the 1960s and 1970s, the United States Indian Health Service and collaborating physicians sustained a widespread practice of performing sterilization procedures on Indigenous women, often without their consent or by misleading women into believing that the sterilization procedure was reversible.[107] Sterilization procedures were performed on an estimated 25%–40% of women in some communities, which, if accurate, would be the sterilization of some 70,000 Indigenous women and girls during this period.[108] The sterilizations were subsidized by federal dollars.[109] From 1970 until 1980, partially due to sterilization practices, the birth rate fell from 3.7 to 1.8 births per Indigenous mother.[110] Marie Sanchez, Northern Cheyenne Chief Tribal Judge, equated the mass sterilization of Indigenous women to a modern form of genocide.[111]

While this overt sterilization program has been discontinued in the United States, the government continues a policy of population suppression by encouraging the use of long-acting hormonal contraceptives by Indigenous women and other women of color.[112] Past and continuing systemic genocidal practices have been documented to have decreased the fertility of Indigenous women further taxing the survival of Indigenous nations and peoples.[113] In the 1960s and 1970s, Denmark reportedly engaged in a program of "involuntary" contraception to limit population growth during which as many as half of the fertile Indigenous women in Greenland received coil implants.[114] Rape has

[102] Ñusta 2003.

[103] Survival International 2018, 5.

[104] Daly 2023, 24-25.

[105] Standing Senate Committee, 2022, 10-11.

[106] Annett 2001, 14.

[107] Smith 2007, 79-107 (reproductive abuse); Volscho 2010, 17; Ralstin-Lewis 2005, 71–72.

[108] Lawrence 2000, 410; Ralstin-Lewis 2005, 71. See Theobald 2019.

[109] Family Planning Services and Population Research Act; Theobald 2019.

[110] Lawrence 2000, 402.

[111] Theobald 2019.

[112] Smith 2007, 88-96.

[113] Thornton 1987, 54, 85.

[114] Isen 2024.

also been used as a tool to prevent future births in Indigenous communities by branding victims as social outcasts.[115] These acts clearly fall under Convention Article 2(d) as "imposing measures intended to prevent births within a group."

From the time of Columbus,[116] children have been a target of colonial domination. In what Margaret Jacobs calls "maternal colonialism", the removal of Indigenous children from their families and communities, has been a common practice.[117] Prior to the passage of the Indian Child Welfare Act in 1978, surveys indicated that some 25%–35% of all Indigenous children in the United States were separated from their families and placed in foster homes, adoptive homes, or institutions - a rate of up to nineteen times greater than that of non-Indigenous children.[118] The surveys found that 75%–93% of the placements were with non-Indigenous families;[119] the result of State "fail[ure] to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families."[120]

Canada engaged in a similar practice, referred to as the "Sixties Scoop", between 1951 and 1984 when an estimated 20,000 First Nations, Métis, and Inuit children were taken by child welfare authorities and placed for adoption in mostly non-Indigenous households.[121] As in the United States, this practice in Canada was supported by a series of government policies. For some, like Lil'Wat First Nation's member Loni Edmonds, the institutionalized taking of Indigenous children is not a thing of the past. In 2007, social services removed all six of Ms. Edmonds's children from her care.[122] She herself had been removed as a child from her own mother's care by Canadian authorities, as was her mother from that of her grandmother.[123] In 2013, six years after the children were taken from their mother, the Inter-American Commission on Human Rights ruled the allegations in her petition stated violations by Canada of the human rights of Ms. Edmonds and her children.[124] After over 17 years, Ms. Edmonds is still waiting for the return of her six children.[125]

The removal by adoption of Indigenous children into white familes was also common in Australia. A National Inquiry of Australia estimated that between 1910 and 1970 up to one-third of Indigenous children had been forcibly removed from their homes in what is known among Aboriginal peoples there as "the Stolen Generation".[126] Often removed by reason of mere poverty, approximately 17 percent of the children were forcibly removed by social services through adoption into white families.[127] Denmark also has a history of its social services agencies taking Indigenous Inuit children from their families in

[115] Totten 2011, 128; Schabas 2000, 170; San José 2020 (Yazidi); Ibrahim 2018 (Yazidi); Cameron 2023 (Ndebele).

[116] The Leys of Burgos, 26-27.

[117] Jacobs 2009.

[118] 1974 Hearings; Byler 1977, 1; Barsh 1980, 1288-90; Miss. Band of Choctaw Indians v. Holyfield 1989, 32.

[119] 1974 Hearings, 17; Barsh 1980, 1287 n.3, 1290 n.16.

[120] 25 U.S.C. § 1901(5).

[121] Jacobs 2014; Baswan 2024.

[122] Jones 2010

[123] Edmonds, 2013.

[124] *Ibid.*, para.72.

[125] See Jacobs 2009.

[126] Australian Human Rights Commission, 31, chap. 22.

[127] *Ibid.*

Greenland and removing them to Denmark where they suffer forced assimilation.[128]

The institutionalized and non-institutionalized theft of children has been a major tool used to promote slavery, colonialism, forced assimilation, and Christian conversion for over 430 years.[129] The use of children as weapons of war and colonial occupation continues. During its invasion of Ukraine, Russia removed hundreds of thousands of children from Ukraine and placed them in Russian homes and schools.[130] On March 17, 2023, the International Criminal Court issued arrest warrants for Russian President Vladimir Putin and his Commissioner for Children's Rights for the war crime of unlawful deportation of children from occupied Ukraine.[131] "Forcibly transferring children of the [national, ethical, religious, or religious] group to another group" works to destroy the group and is therefore genocide under Convention Article 2(e). The sterilization of women and the theft of children work to destroy nations by depriving nations of future generations and historic continuity and "causing serious bodily or mental harm to members of the group." They operate as genocide under Convention Article 2(b), in inflicting upon the group "conditions of life calculated to bring about its physical destruction in whole or in part."[132]

Certainly as elements of the group's life and as targets of genocidal conduct, tribes and nations possess a territory or domain, a collective right of self-determination or governance, and, with peoples, possess a distinct cultural and social identity among their members.[133] Indeed, the attachment to a specific territory, to ancestral lands,[134] or to a specific natural "relative,"[135] may be inseparable from the collective identity of the national group, making the removal of the group from their territory, or the destruction of their familial relative, a killing, at least in part, of their national identity.

Since nations are defined by their possession and governance of a territory or domain, the extinguishment of that territory or domain—the target of settler colonialism[136]—would destroy the national character of Native peoples. This goal was accomplished by the so-called "Doctrine of Discovery", the first of the three fundamental genocidal doctrines concocted and invoked by US Supreme Court Chief Justice John Marshall when he formally created federal (colonial) Indian (racist) law in a trilogy of decisions from 1823 to 1834. Those doctrines of the slow genocide

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[128] Cali Tzay 2023; Bryant 2025.

[129] *See, e.g.*, Castillo 2017; Costo 1987, 3; Newcomb 2008, 45-46. *See generally*, Tinker 1993. *Also*, Australian Human Rights Commission, 22.

[130] Humanitarian Research Lab 2024; Kelly 2023. Russia was assisted in this by Belarus; Khoshnood 2023.

[131] ICC Press Release 2023.

[132] Genocide Convention 1948, art. 2(c).

[133] ICCPR, art. 1; ICESCR, art. 1; UNGA Res. 1514; UNDRIP, arts. 1-7, 9-16, 25-26, 31, 33.

[134] Short 2016, 29, 36, 50-54 (removal); Dann v. United States 2002, para. 129, 131, n. 93 (spiritual connection to ancestral lands); Whanganui River Claims Settlement 2017, 14-15; Whitt 2007; Moreton-Robinson, 2020; Watson 2015, 114; Lyng v. Northwest Indian Cemetery Protective Ass'n (1988,) 459-462 (J. Brennan, dissent).

[135] *See*, Hubbard, 2014, 294 (familial attachment to buffalo). For example, the Oceti Sakowin Oyate ("Sioux,") are known as the "Buffalo people," the Nez Perce are known as the "Horse Nation," the Menominee are tied to the sturgeon, and the Makah to the whale. The Indigenous peoples of the southwest and Mexico are spiritually tied to corn such that the allowance of GMO patented corn into Mexico to supplant traditional varieties threatens their existence;. Villafaña 2018.

[136] Wolfe 2006; Short 2016, 24 (quoting Jürgen Zimmerer).

of Indigenous peoples and First Nations then spread to other colonial and successor colonial States.[137] They remain the domestic law of those States and the United States today.[138] In *Johnson v. M'Intosh* (1823), *Cherokee Nation v. Georgia* (1831), and *Worcester v. Georgia* (1834), Chief Justice Marshall invoked and distorted a doctrine of the Law of Nations that allowed a nation to take possession of a "desert" territory, meaning territory that was not in the possession of any "person."[139] The Law of Nations at the time (and now) did not allow one nation to invade the territory of another nation[140] that was already occupied, let alone take possession, occupy, and assert ownership of it.[141] Chief Justice Marshall was well-versed in the international law of the time.[142] In its three opinions, the colonial high court[143] bent these recognized principles of international law out of a purported colonial "necessity"[144] to concoct a doctrine of international and property law that applied *"sui generis" (only)* to Indigenous nations and peoples.[145] Marshall reasoned that their race (Indian),[146] religion (non-Christian),[147] and ethnicity ("uncivilized" / non-European)[148] justified the court's overlooking of their pre-invasion existence, possession, and occupation of their territories and lands since "time immemorial."[149] According to Chief Justice Marshall: "So far as respected the authority of the crown, no distinction was taken between vacant lands and lands occupied by the Indians. The title, subject only to the right of occupancy by the Indians, was admitted to be in the King ...."[150]

The *M'Intosh* decision was closely followed by the colonial high court's decision in *Cherokee Nation v. Georgia* (1831). In *Cherokee Nation*, the state of Georgia, through legislation, sought to "annihilate the Cherokees as a political society and to seize, for the use of Georgia, the lands of the Nation."[151] Chief Justice Marshall ruled that Indigenous nations were not "foreign" nations, but uncivilized nations under the "protection" of the United States as "domestic dependent nations...in a state of pupilage" which "resembles that of a ward to his guardian."[152] "They and their country are considered ...as being so completely under the sovereignty and dominion of the United States that any attempt [by foreign nations]

[137] *See*, Watson 2011; Miller 2021.

[138] Watson 2015, 19; City of Sherrill v. Oneida Indian Nation 2005, fn 1 (doctrine of discovery); United States v. Jicarilla Apache Nation 2011 (trust doctrine); Haaland v. Brackeen 2023 (plenary power doctrine).

[139] Vattel 1758, Bk I, secs. 205, 207; *ibid.*, Bk II, secs. 86, 88.

[140] *Ibid.*, Bk I, secs. 9, 15, 207; Bk II, secs. 18, 54, 64, 92-94.

[141] *Ibid.*, Bk II, secs. 18, 90–94, 97-98; Johnson v. M'Intosh 1823, (C.J. Marshall, "a principle of universal law").

[142] Johnson v. M'Intosh 1823, 567-517, 574; Worcester v. Georgia, 31 U.S., 561 (citing Vattel on the Law of Nations and treaties of protection). Rudko 1991, 3-5 (prior to becoming a justice of the US Supreme Court, Marshall had also served as the fourth US Secretary of State under President John Adams; Paul 2018, 193-214..

[143] This alone was a violation of the Law of Nations as no nation had the right or jurisdiction to rule upon the rights of another nation. Vattel 1758, Bk II, secs. 55, 84, 103, 265.

[144] *Ibid.*, 590.

[145] Cherokee Nation v. Georgia 1831, 16-17; Paul 2018, 402-406, 414-416, 321-422.

[146] Johnson v. M'Intosh 1823, 591.

[147] *Ibid.*, 573, 576-577.

[148] *Ibid.*, 573, 590.

[149] *Ibid.*, 573-574, 579, 583-585, 587-588, 591 ("extravagant pretension,") 592; Cherokee Nation v. Georgia 1831 (since "time immemorial.")

[150] Johnson v. M'Intosh 1823, 596; also, 603.

[151] Cherokee Nation v. Georgia 1831 3, 15.

[152] *Ibid.*, 17.

to acquire their lands, or to form a political connexion with them, would be considered by all as an invasion of our territory and an act of hostility."[153] Thus, the Marshall Trilogy by judicial fiat severed all Indigenous peoples from the ultimate ownership of and sovereignty over their territories, lands, and resources - an act of genocide that attempts to extinguish the "national" character of Indigenous peoples and render them unequal to that of all other nations.

The relationship pronounced in *Cherokee Nation* between the State and the Indigenous nations as well as peoples found within its claimed territory describes a classic colonial relationship, unlawful then and today under international law.[154] The Law of Nations at the time of the decision imposed upon a nation occupying another a duty of reasonable care of the occupied nation and its people.[155] The relegation of Indigenous nations and peoples in *Cherokee Nation* to an incompetent, childlike status in need of care and upbringing by the colonial power, extended the colonial relationship not only to occupation but to absolute control, "plenary" authority, over its dependent wards modeled after a common law trust relationship. This incompetent status ultimately deprives the Indigenous national ward of its sovereignty, of a legal personality, and even, as Hannah Arendt put it, the right to have rights.[156] As the "guardian" exercising its trust authority, the colonial State has total (plenary) power over its incompetent ward.[157] It is an extinguishment by colonial law of the right of Indigenous nations to have rights, an act of judicial genocide. Even today, the United States as the colonial guardian holds and (mis) manages virtually all remaining common and most private Indigenous lands in "trust" for its Indigenous wards.[158]

The targeting and theft of Indigenous territories and lands has been the primary policy of the United States exercising its "trust" authority and assumed plenary power over Indigenous nations through various allotment, assimilation, termination, treaties and agreements, Congressional acts, and by rulings of the colonizer's courts imposed on Indigenous peoples from 1823 to the present day. Treaty-making and allotment has reduced ancestral Native territories by 99%.[159] In only the last few years, the courts have ruled that the territories of the Southern Cheyenne and Arapaho Nation[160] and the Osage Nation[161] were extinguished in this manner. Colonial rule then continued to break up the small percent that remained of Indigenous lands by imposing an alien form of private property on lands formerly held by Indigenous

[153] *Ibid*., 17-18. Watson 2015, 96 (Australian First Nations).

[154] Supra notes 141 and 142; also, Vattel 1758, Bk II, secs. 7 (forbids one nation's imposition of its culture upon another), 59 (forbids the imposition of one nation's religion upon another), 93-94, 97.

[155] Vattel 1758, Bk III, sec. 201.

[156] Arendt 1994, 299-300. Watson 2015, 97. Under federal (colonial) Indian law, an Indigenous nation even outside the trust relationship only has rights if it has been "recognized" to exist by the United States. See, Tee-Hit-Ton v. United States 1955.

[157] *See* Cherokee Nation v. Georgia 1831., 25; Seminole Nation v. United States 1942, 296; United States v. Jicarilla Apache Nation, 2011., 174; Merrion v. Jicarilla Apache Nation 1982.

[158] Cong. Res. Serv., Cobell 2012. See also, US Sec. of Interior, Trust Responsibility Memo.

[159] Wade 2021; Wolfe 2006, 400; Watson 2015, 112 ("The extinguishment of native title is another example of a covert form of genocide, so covert that it is dressed up as a form of recognition.").

[160] Whitebuffalo v. Oklahoma 2022.

[161] McCauley v. Oklahoma 2024 para.4.

nations and peoples in common. By privatizing Indigenous lands, the colonial power opened them up to eventual alienation from Indigenous ownership with devastating impacts on their economies.[162]

The United States was not alone in this. Sartre remarked on the impacts of the imposition by the French of its Civil Code (Napoleon law) of private property on the communally held lands of the Indigenous peoples of Algeria. "Thus, they systematically destroyed the infrastructure of the country, and tribes of peasants soon saw their lands fall into the hands of French speculators."[163] Treaties between European States, Indigenous nations and peoples of Africa were used to take Indigenous lands and territories.[164] The private ownership of land, alien to Indigenous nations and peoples, was, and is, fundamental to Western thought.[165] According to Martin Luther, "the possession of private property was an essential difference between man and beast."[166] The fundamental and alien concept of Western property law was used by Chief Justice Marshall as primary support for the ruling that Indigenous nations and peoples did not own their lands because they had not "seized" them, leaving all of their lands *terra nullius* ("empty") and open to the claims of the invading empires of Europe under their Doctrine of Discovery.[167]

Largely through its exercise of forced or coerced agreements, the United States has also physically destroyed the traditional governance of Native nations. Under the Indian Reorganization Act of 1934 and similar laws governing Native nations, "tribal" constitutions, laws, governments, and courts are created by, act under the authority of, and are subject to, the continuing authority of the colonial power, the United States. The court in *Harjo v. Kleppe* characterized the Presidential appointment of tribal chiefs in place of the Creek Nation's traditional governing body as "bureaucratic imperialism."[168] The destruction in whole or in part of a nation's territory, the wholesale theft of a nation's lands and natural resources, and the destruction of its governing institutions, of its sovereignty, work together as an intentional and integrated effort to inflict "on the group conditions of life calculated to bring about its physical destruction" and constitute further acts of genocide under Convention Article 2(c).

B. KILLING AN ETHNICITY

Article 2 of the Convention also refers to the killing, in whole or part, of an ethnical group. While there are some 6-9,000 nations, it has been estimated that there are as many as 24,000 ethnicities.[169] "Ethnical" has been defined as "relating or belonging to a group of people who can be seen as distinct because they have a shared culture, tradition, language, history, etc."[170] In that sense, a nation, tribe, or people is an ethnical

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[162] *See*, e.g., Cobell v. Salazar 1996. *Also*, Crepelle 2023.

[163] Sartre 1968, 63.

[164] Olusoga 2010, 42, 64, 85.

[165] Locke 1690, chap. 5; Vattel 1758, chap. 7; Stannard 1992, 233-236.

[166] Quoted in Stannard 1992, 233.

[167] Johnson v. M'Intosh 1823, 568-69.

[168] Harjo v. Kleppe 1976, 1130. Lemkin, in a footnote to his seminal book on genocide, remarked on the term "ethnocide" as conceptually similar to genocide; Lemkin 1944, 79n.

[169] Joshua Project.

[170] Cambridge Dictionary, "ethnic." *See* Baumann 2004.

subgroup possessed of a common territory and a collective identity expressed in the right to self-determination or governance. While the killing of a national group is focused on the destruction of the collective social or political identity, the killing of an ethnical group relates to the destruction of the group's shared cultural identity.

If members composing an ethnical group are intentionally targeted because of their ethnicity and killed in mass,[171] the group itself suffers a "physical" destruction. However, the destruction of a group's ethnical identity does not necessarily require physical destruction by the mass killing of the individual members of the group. The physical destruction of an ethnical group may instead be accomplished with the destruction of the physical ethnical manifestations of the group such as its connection to its territories and lands,[172] its literature and media, its educational institutions and programs, its museums and centers of history, its sacred sites and places of worship, its cultural centers and practices,[173] its traditional familial structures, its culturally-centered economies, etc. The physical destruction of an ethnical group is the very goal, for example, of the forced assimilation of members of the group, or the group as a whole, by and into a dominant and more powerful social, ethnical, or political entity.[174]

The intentional, physical, destruction of a group's ethnicity is genocide under Convention Article 2(c). As Professor Wolfe concluded on settler colonialism, it eliminates to replace. Like settler colonialism, "assimilation" is, by definition, the elimination of one ethnic identity for the replacement of the colonizer's ethnic identity. A colonial power through its rule may intentionally accomplish the elimination of an ethnic group in place through an imposed social, cultural, or religious assimilation, or an overwhelming ethnic dilution, without killing or removing the members of the group. Jean-Paul Sartre remarked on this: "Indeed, colonization is not a matter of mere conquest …it is by its very nature an act of cultural genocide. Colonization cannot take place without systematically liquidating all the characteristics of the native society."[175] And later, "it is not true that the choice is between death or submission. For submission, in those circumstances, is submission to genocide."[176]

The very first laws in the Americas were the Leys (Laws) of Burgos of 1512 by which the Spanish imperialists regulated the slavery of Indigenous peoples, destroying their traditional communities and ways under the guise of exposing them to a superior civilization and Christianity. For example, it required the taking of the eldest sons of Indigenous leaders and the placement of them with Dominican priests to learn Spanish and be indoctrinated with the Christian faith before sending them back to their communities to do the same to their own peoples.[177] Even slavery was seen as benefitting the slave because it exposed him or her to a

[172] Genocide Convention 1948, art.2 (a).

[173] Shaw 2007, 50-62 (expulsion and forced removal).

[174] *See, e.g.*, Zarandona 2023; Strecker 2023; Marsoobian 2023 (Armenian).

[175] Watson 2015, 117-118.

[176] Sartre 1968, 63.

[177] *Ibid.*, 75.

civilized life and Christianity.[178] On this, some three hundred years later, US Supreme Court Chief Justice John Marshall (in)famously declared in Johnson v. M'Intosh:

> ...the character and religion of its inhabitants afforded an apology for considering them as a people over whom the superior genius of Europe might claim an ascendency. The potentates of the old world found no difficulty in convincing themselves that they made ample compensation to the inhabitants of the new, by bestowing on them civilization and Christianity, in exchange for unlimited independence. [179]

This colonial policy and practice on the destruction of the ethnic identity of Indigenous peoples through forced assimilation was continued by Christian churches and the United States and other successor colonial States for over 400 years in violation of Convention Articles 2(b) and (c).[180] [181] Working in concert, the colonial State became the institutional and coercive instrument of the religious entities in the destruction of Indigenous spirituality (religicide) and forcible replacement with that of the dominant religious entity. Likewise, the religious entity provided moral cover and the institutions of conversion to colonial States in the destruction of Indigenous nations and peoples. All of the later treaties with Native nations drafted by the United States included assimilationist provisions such as the transition to farming through allotments, the privatization of communally-held land, the provision of a Westernized education, etc.[183] These policies were continued through the growth of a large body of statutory and case law by the Congress and courts of the colonizer, known as federal Indian law, imposing and implementing colonial and assimilationist doctrines and rule.

One particular decision, *Standing Bear v. Crook*,[183] lauded in federal Indian law[184] as establishing Indians as "humans", exemplifies such judicial assimilation. In 1879, Ponca chief Ma-chú-nu-zhe (Standing Bear) and his tribe were forcibly removed in the dead of winter to Oklahoma from their ancestral territory in the

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[178] Byun 2011; Hernandez 2001.

[179] Johnson v M'Intosh 1823, 572.

[180] THEFT OF INDIGENOUS CHILDREN - Characterizing Indian education as "400 years of failure," a report of the US Senate's Special Subcommittee on Indian Education concluded that "[t]he goal, from the beginning of attempts at formal education of the American Indian, has been not so much to educate him as to change him." Special Subcomm. on Indian Educ., 1969, 3, 8, 10. Secretary of the Interior (1891), 66-67; The National Native American Boarding Schools Healing Coalition (2020); The Maine Wabanaki-State Child Welfare Truth & Reconciliation Commission (2015). Both Canada and Australia also engaged in widespread forced removal of Indigenous children to Christian boarding schools far from their communities and homes. Truth & Reconciliation Commission (2015); Australian Human Rights Commission (1997); Watson 2015, 119-120. See also, Kreiken 2010, Jacobs 2009.

[181] INDIGENOUS ENSLAVEMENT – Reséndez 2016, 4; Nixon 2011, 6; Piatt 2019, 32; Castillo 2015; Costo 1987, 3; Newcomb 2008, 45-46. See generally, Tinker 1993. The US Supreme Court affirmed the legality of Indigenous slavery as late as 1838. Choteau v. Marguerite 1838. See also, Lemkin's discussion of the theft and enslavement of Indigenous children in Tasmania. Curthoys in Moses 2007, 88-89.

[182] *See, e.g.*, Ft. Laramie Treaty of 1868, articles 3, 6, 8 (land allotments for farming), article 7 ("civilizing" through education); Otis 1973; Anderson 2014, 330.

[183] Standing Bear v. Crook.

[184] *See, e.g.*, Starita 2009; USCourts 2020.

Dakota Territory. His son, Bear Shield, along with about one-third of the tribe died on the way. When Standing Bear turned back to bury his son on their ancestral lands, he was arrested.[185] An issue arose when he petitioned the court for his release because only human beings had standing to file a petition with the court.[186] The judge opined that he was a person and allowed him to return to his ancestral lands because he had left his tribe and his "wasted race" and "adopted the general habits of the whites."[187] Standing Bear's brother, Big Snake, who had not left his tribe or assimilated, upon hearing of his brother's authorization to return to their ancestral lands, also attempted to return but was restrained and murdered by the US military.[188] In other words, the Native person (a "good Indian") who had left his tribe and fully assimilated was a "human being" while his brother who retained his ethnicity (a "bad Indian"), was not. Or, as put by Frederick Hoxie: "Assimilated natives would be proof positive that America was an open society, where obedience and accommodation to the wishes of the majority would be rewarded with social equality."[189] Tragically, Standing Bear suffered through two types of ethnical destruction, the ethnic cleansing of his peoples' homelands through their removal to Oklahoma and the loss of his ethnicity through coerced assimilation into the colonizer's culture.

Colonial rule was institutionalized in the United States through its creation of domestic laws "legalizing" (forcing) assimilation and slow genocide, including prominently: the establishment of the Bureau of Indian Affairs in 1832 to oversee all matters involving Native nations and peoples both on and off their reservations,[190] the Indian Removal Act of 1830, the end of treaty-making with Native nations in 1871, the Major Crimes Act of 1885, the allotment acts of the late 1800s,[191] the Indian Citizenship Act of 1924, the Indian Reorganization Act of 1934, the Termination Acts of the 1950s,[192] the annual Indian Appropriations Acts particularly regarding education, health, Native economies, and so forth.

A key method of assimilation was through the education of Indigenous children. At the urging of several Christian denominations, the United States formally adopted an Indian Boarding School Policy beginning with the Indian Civilization Act Fund of 1819. The express intent behind this policy was to destroy the Indigenous culture and identity of Indigenous people and replace it with a Euro-American one.[193] As the founder of the first off-reservation boarding school, Brigadier General Richard Henry Pratt, (in)famously remarked that the goal of the policy was to "[k]ill the Indian in him, and save the man."[194] Historian David Wallace Adams referred

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[185] Sarita 2009, 698-99.

[186] *Ibid.*, 697, 700-01..

[187] *Ibid.*, 695, 701. Five years later, the US Supreme Court in Elk v. Wilkins, citing Standing Bear and Dred Scott v. Sanford, ruled that a Native man who had left his tribe and become civilized was a U.S. citizen. In 1870, the US Congress passed an act providing that a member of the Winnebago tribe of Minnesota could become a citizen if possessed of "sufficient intelligence" and had "adopted the habits of civilized life." Act of 1870, chap. 296, sec. 10.

[188] Brown 1970, chap. 15; Bear 1999.

[189] Hoxie 1989, 34.

[190] 4 Stat. 564.

[191] *E.g.*, General Allotment Act 1887.

[192] *E.g.*, Termination Act 1953; Pub. L. 280.

[193] Frye 2021.

[194] Pratt 1892, 46.

to it as "education for extinction."[195] From 1858 to 1871, in many treaties between the United States and the Indigenous nations, the United States included provisions making attendance at on-reservation schools, established and run by the government, compulsory for Indigenous children with the goal of "civilizing" them through a Euro-American and Christian education.[196] In 1891, a compulsory attendance law enabled federal officers to forcibly take Indigenous children as young as four-years-old from their homes and send them off for assimilation in boarding schools largely operated by Christian missionaries, Christian churches, and military personnel with federal funding.[197] The Christian churches were complicit and co-conspirators with the colonial State in committing genocide. From 1891 until the 1970s, the United States forcibly reeducated, indoctrinated, and Christianized hundreds of thousands of Native children in 367 boarding schools, as much as 83% of Native school-age children.[198]

As with the Chief's son under the Leys of Burgos, these "graduates" of Indian boarding schools, having lost their language, culture, and Indigenous identities, became unwitting agents of colonial dominance and destruction of Indigenous spirituality (religicide), culture (culturecide), history (erasure), language (linguicide),[199] economies (impoverishment), communities, peoples, and nations.[200] Similar education genocide efforts have been employed by Australia,[201] Canada,[202] New Zealand,[203] Denmark in Greenland (Inuit),[204] Sweden (Sami or Sápmi),[205] China in Tibet[206] and Xinjiang,[207] India in Attapadi,[208] and Russia in the Ukraine.[209] In November 2022, United Nations experts issued a letter to China expressing their concerns over China's large-scale campaign to assimilate Tibetan children.[210] Patrick Wolfe noted that frontier Indian-killer Phillip Sheridan and boarding school policy founder Richard Pratt "were both practitioners of genocide. The question of the degree of the genocidal practice is not the definitional issue."[211]

The destruction of ethnic groups was also accomplished through State-sanctioned ethnogenesis. Slavery and the rape and taking of Indigenous women by colonizers was a common occurrence during imperial domination and colonization.[212] It resulted in the destruction,

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[195] Adams 2020.

[196] *See generally*, Laurence 1977.

[197] Running Bear 2019.

[198] Frye 2021.

[199] Indigenous languages are more than just words. They are direct links to a peoples' ancestors and carry their history, their culture and ways of life, and their spiritual and familial relationship to the world around them.

[200] *See* Adams 2020, 276–83; Willinsky 1998, 24 (Professor John Willinsky described this as "intellectually staged" conquest alongside imperialism's other exploits).

[201] Australian Human Rights Commission (1997); Watson 2015, 119-121, 133-134; Minton 2020, 66-94.

[202] Truth & Reconciliation Commission (2015).

[203] Minton 2020, 48-65.

[204] *Ibid.* 95-112.

[205] *Ibid.*, 113-140.

[206] McGranahan 2019.

[207] Zenz 2019 (Uyghurs).

[208] George 2024, 2-3.

[209] Uehling 2024.

[210] Varennes 2022; Buckley 2025 (Chinese boarding schools).

[211] Wolfe, 2006, 398.

[212] Lemkin 2007, 83-85; Thornton 1987; Smith 2005; Galeano 2007.

at least in part, of existing Indigenous ethnic identities and the creation of new groups and new ethnicities, such as the Metis in Canada, the Genizaro in Mexico and the Southwestern United States, the Creoles of the Caribbean, and the Mestizo throughout Latin America, as well as the Maroons of the Americas, descendants of the African Diaspora.[213]

Another method of ethnocide employed by some colonial States was and is to force assimilation by overwhelming the Indigenous population through the intentional mass movement of members of the dominant ethnicity into Indigenous territories. As previously discussed, the United States and Canada were established and built upon such governmental mass European Christian resettlement policies known as "Manifest Destiny."[214] More recently, China, for example, has implemented a program of Sinicization through the movement of millions of Han Chinese into Tibet.[215] The government of Russia also forcibly moved large numbers of ethnic Russians into territories it controlled, including Crimea[216] and the Baltic States,[217] in an effort to destroy and replace the ethnicity of the Indigenous populations there.

The killing of an ethnical group in whole or part, particularly under the colonial rule and occupation experienced by Indigenous peoples, was and is accomplished by the killing of members of the group, by reducing group membership through rape, forced intermarriage, and sterilization of women members, by the theft of member children, through removal from their lands, and through forced or coerced assimilation under colonial domination. They were and are acts of genocide under Convention Articles 2(b) and (c). According to Patrick Wolfe, repeating an observation made by French social philosopher Alexis de Tocqueville some 100 years earlier, "[i]ndeed, depending on the historical conjuncture, assimilation can be a more effective mode of elimination than conventional forms of killing, since it does not involve such a disruptive affront to the rule of law that is ideologically central to the cohesion of settler society."[218]

C. KILLING A RELIGION

While usually broader than a group's ethnicity, the group's spiritual or religious beliefs are part of and, for Indigenous peoples, often the core of its ethnicity. The Organization of American States provided in its 1948 Declaration on the Rights and Duties of Man:[219]

> Inasmuch as spiritual development is the supreme end of human existence and the highest expression thereof, it is the duty of many to serve that end with all his strength and resources.
>
> Since culture is the highest social and historical expression of that development, it is the duty of man to preserve and foster culture by every means within his power.

[213] *See* Sidbury 2011.

[214] *Infra*, note 237.

[215] McGranahan 2019; Domingo 2019.

[216] Williams 2015.

[217] Idzelis 1985, 79.

[218] Wolfe 2005, 402. Infra, note 341. (de Tocqueville).

[219] IACHR, Preamble.

The term "indigenous" is defined as "born or originating in a particular place." It is derived from the Latin *indigena*, meaning "sprung from the land."[220] Indigenous peoples have been described as "autochthonic", meaning "native, sprung from the soil." In Sanskrit, Greek, and Latin it is derivative of "earth" (as opposed to "sky").[221] What these definitions have in common is that they refer to people who have "sprung from the land", whose origins are from the Earth, literally "Earth people". Chthonos was the Greek god of the Earth and chthonic people are those who revere the Earth as Mother. "Chthonic" is used to refer to people who live in or in close harmony with Mother Earth.[222]

All "peoples" have geographic spaces they occupy and use. But, speaking generally, an Indigenous link to their lands and natural relatives is literally opposite from that of Western and other non-Indigenous peoples.[223] They are entirely different ontologies. This distinctive and defining spiritual characteristic of Indigenous peoples has been acknowledged and invoked numerous times by international tribunals.[224] It is this spiritual link to their lands shared with their natural relatives that makes the removal of Indigenous peoples from the lands that define them, and the destruction of their natural relatives[225] that also define them, genocide under Convention Articles 2(b) and (c). Colonial States engage in the destruction of Indigenous spirituality by harming and preventing access to the sacred places of Indigenous peoples. Notable examples are the separation of the peoples of the Očhéthi Šakówiŋ Oyáte (the Great Sioux Nation) from their sacred Ȟe Sápa (Black Hills),[226] the contamination of the San Francisco Peaks sacred to the Navajo and 19 other Native peoples,[227] injury to Mt. Graham a spiritual center of the Apache peoples,[228] and harm to Mauna Kea sacred to Native Hawaiians.[229]

It has been estimated that there are over 10,000 religions in the world.[230] How does one go about killing a religion? Since the time of the Crusades, the Catholic Church has used the power of European kingdoms and nations to extend its reach as the "Universal" Church to "infidels" and "heathens".[231] During the so-called Age of Discovery, the Catholic Popes issued three decrees globally sanctifying the invasions of Indigenous territories by European empires purportedly for the coerced or forced conversion of Indigenous peoples to Christianity. In 1452, the Pope issued the *Dum Diversas*:

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[220] Online Etymology Dictionary, Indigenous.

[221] Online Etymology Dictionary, autochthonic.

[222] Glenn 2004, 59-68, 78-91. The Lakota, for example, revere the earth as "Unci Maka" or "grandmother earth." Win 1994, 205; King 1994, 205; Indigenous peoples of Abla Yala also refer to her as "Pachamama" (Mother Earth). On Earth Day, 2010, the World People's Conference on Climate Change and the Rights of Mother Earth convened in Cochabamba, Bolivia, by then Bolivian President Evo Morales formally adopted the "Universal Declaration of the Rights of Mother Earth." Ayma 2011.

[223] *See* Lyng v. Northwest Indian Cemetery Protective Ass'n 1988, 459-462 (J. Brennan, dissent).

[224] *See* Dann 2002, paras. 131, 132, 133, 171, 172; Awas Tingni 2001, para. 149; Yakye 2005, para. 131; Endorois 2010, paras. 78-80; Ogiek 2017, paras. 105, 107-108.

[225] *Mitákuye Oyás'iŋ.*

[226] United States v. Sioux Nation of Indians 1980.

[227] United States v. Navajo Nation 2003; Navajo Nation v. United States, IACHR, Petition.

[228] LaDuke 1999, 19-32.

[229] Medeiros 2021.

[230] Wasserman 2024.

[231] Williams 1990.

> We grant you by these present documents, with our Apostolic Authority, full and free permission to invade, search out, capture, and subjugate the Saracens [Muslims] and pagans and any other unbelievers and enemies of Christ wherever they may be, as well as their kingdoms, duchies, counties, principalities, and other property ...and to reduce their persons into perpetual servitude.[232]

and the Romanus Pontifex in 1455 to cover the invasion of Africa. Following Columbus's stumbling upon the islands of the Caribbean, the Catholic Pope issued the Inter Caetera of 1493 to sanctify the imperial and colonial invasions of the Americas.[233] While the expressed purpose of these declarations was to extend Christianity and the rule of the Universal Church to all of the known world, it provided moral and purported legal cover over the next 500 years for the pillage and destruction of Indigenous nations, peoples, and their natural wealth, as well as the theft and settlement of their territories and lands.[234] Such conduct violates the Genocide Convention's prohibitions under Article 2 (a) and (b) of the "killing" of or "causing serious bodily or mental harm" to members of the religious group. The "physical" manifestations of a religious group are its members (Article 2 (a)) and its sacred places, items, and practices of ceremony. The destruction of a religious group's sacred places and items and the banning of ceremony satisfies the conduct prohibited by Article 2 (c) of "deliberately inflicting on the group conditions of life calculated to bring about its [the group's] physical destruction in whole or part."

Three hundred years after the Leys of Burgos, Chief Justice Marshall attempted to justify the Doctrine of Discovery partly on the benefits of forced conversion to Christianity: "The potentates of the old world found no difficulty in convincing themselves that they made ample compensation to the inhabitants of the new, by bestowing on them civilization and Christianity, in exchange for unlimited independence."[235] The belief of the white Christian nations and people of Europe that they were the chosen people of god drove both white and religious superiority in the colonization and destruction of Indigenous nations and peoples under the religious concept of "Manifest Destiny."[236] The first US laws regarding Indigenous peoples, known as the 1883 Code of Indian Offenses, were designed to foster their assimilation by criminalizing Indigenous religious ceremony, practices, and practitioners.[237] The legal prohibition of Indigenous religion by the United States remained in effect until 1978.[238]

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[232] Boniface.

[233] Generally, Newcomb 2008; Williams 1990, 71-81.

[234] Casas 1552 ("The reader may ask himself if this is not cruelty and injustice of a kind so terrible that I beggars the imagination and whether these poor people would not fare far better if they were entrusted to the devils in Hell than they do at the hands of the devils of the New World who masquerade as Christians."); Williams 1990, 185 (quoting Sir Francis Bacon: "It cannot be affirmed if we speak ingeniously that it was the propagation of the Christian faith that was the [motive] …of the discovery, entry, and plantation of the New World; but gold and silver, and temporal profit and glory."); Stannard 1992, 206; Newcomb 2008; Williams 1990; Tinker 1993; Jennings 1976, 6-8. Also, Nunpa 2020.

[235] Johnson v. M'Intosh 1823, 572.

[236] Tinker 1993, viii, 10, 16-17, 69-94; Davidson 2005; Scott 2020; Nunpa 2020.

[237] Price 1883; Nupa 2020. Canada also banned Indigenous religious practices. Tovias 2008.

[238] AIRFA 1978.

Indigenous religions were also banned by law in the Caribbean[239] and other parts of the colonized world, and continues even to the present day.[240] This conduct clearly violated Convention Articles 2 (b) and (c).

As previously discussed, between 1819 through the 1970s Christian Churches operated Indian boarding schools in the United States (and Canada and Australia) pursuant to federal law and with federal funding under an express mandate to assimilate hundreds of thousands of Indigenous children by forcibly suppressing their traditional ways and spirituality and converting them to Western civilization and Christianity.[241] The legality of federal funding of Christian churches in educating Native children and converting them to Christianity was upheld by the US Supreme Court.[242] The forced conversions of Indigenous children by the Christian entities and the colonial State acting in concert were in violation of Convention Article 2 (b), (c), and (e) (forcibly transferring children of Indigenous spiritual beliefs and ways to those of the Christian groups).

During the 19th century, Mormons purchased hundreds of enslaved Indigenous children from the Spanish under the belief that Indigenous peoples of the Americas were the fallen Lamanites of the Book of Mormon that should be brought back to the Mormon Church.[243] In 1852, at the urging of the Mormon Church, Congress passed an "Act for the Relief of Indian Slaves and Prisoners" which provided that Indian children could be indentured to Mormon families in return for the purchase price[244] - again, in violation of Convention Articles 2 (b), (c), (d) (by removing future generations of Indigenous believers), and (e). Over the past few decades, the conservative, largely white, Christian nationalist movement has orchestrated attacks on the separate status and sovereignty of Indigenous nations and peoples as legal barriers to their ability to fulfill the biblical command to "make disciples of all nations" by adopting and Christianizing Indigenous children[245] In other words, some Christian nationalists believe that they are compelled by their God to commit religicide. Christian nationalism was also behind the destruction of the Jewish religion during the Holocaust of the Second World War.[246] Such movements combined with the power of the State not only act to destroy national groups and ethnical groups but religious groups as well.

Of course, Christian entities and States are not the only ones to engage in the destruction of another group's religion.[247] The Armenian genocide of World War I has been viewed as being driven by a desire to eliminate the Christian communities in the Ottoman Empire and Turkey.[248] A second genocide of Indigenous Armenians by Azerbaijan may be taking place

[239] McKee 2018.

[240] Pew Research Center 2024.

[241] Adams 2020; Laurence 1977.

[242] Quick Bear v. Leupp 1908.

[243] Bennion 2012, 1-3.

[244] Jacobs 2009, 53.

[245] Talbot 2022; Nightlight; Joyce 2014.

[246] Hoover 1989.

[247] See discussion, Bartov 2001; Bergen 2010.

[248] See Morris 2021.

in Nagorno-Karabakh.[249] In 2010, leaders of the Khmer Rouge regime were convicted by a special criminal tribunal of the genocide of an Indigenous group in Cambodia, the Cham, who were targeted due to their Islamic religious belief.[250] In Myanmar, after an investigation, the UN Special Rapporteur concluded that the nationalist Buddhists' and government's 50-year persecution of the Rohingya Muslims "bear the hallmarks of genocide."[251] Following its takeover of Iraq in 2014, the Islamic State / Daesh in Iraq and Syria (ISIS) engaged in a campaign to destroy the Yazidi and other religious groups in the region which included mass murders, torture, enslavement, sexual violence, forcible conversions, human trafficking, and other crimes.[252] In a strong joint resolution two years later the European Parliament condemned that conduct as systematic mass murder and genocide and urged action in the International Criminal Court.[253]

At the time of Columbus, the Universal (Catholic) Church issued "convert-or-die" or be enslaved edicts to the Indigenous peoples they found in Africa and the Americas.[254] Edmond Paris documented a more recent convert-or-die effort involving the Vatican to forcibly convert Serbs, Gypsies, and Jews of Croatia to Christianity during the Second World War.[255] In 2014, the Islamic State group (ISIS) gave the Yazidi peoples the same ultimatum in that genocide.[256] No religious group has ever been prosecuted for genocide despite being complicit with States in the commission of genocides of other religious groups. The liability, criminal and civil, of religious entities should not be overlooked given the histories of States or dominant religions acting together or in complicity in the occurrence of many genocides.

These genocides of religious groups, each of them, have in common all of the conduct listed in Convention Article 2(a)-(e). As recognized in the American Declaration, spiritual development is the "supreme end" and "highest expression" of human existence. The destruction of a group's religion tears at the core of the group's identity, existence, culture, and future. It leaves a body without a soul. The death of that body's spirituality is genocide. The chthonic nature of Indigenous spiritually makes Indigenous groups particularly vulnerable to forced assimilation and other destructive and genocidal acts by colonial powers.

D. KILLING A RACE

Convention Article 2 includes as genocidal conduct the intentional killing, in whole or part, of a "racial" group. An analysis of the Marshall Trilogy of decisions that concocted domestic legal justification for the destruction of Indigenous nations and peoples by the United States reveals that "race" was the primary characteristic underlying the genocidal policies and conduct.

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[249] Tatikyan 2024; Ocampo 2023.

[250] ECCC, Closing Order, paras. 745-770, 1336-1342.

[251] Rohingya 2019, 8.

[252] Bishai 2024.

[253] European Parliament 2016.

[254] See supra notes 233-234; Requerimiento.

[255] Paris 1990.

[256] Abouzeid 2018, 6.

The second and third cases in the Trilogy, *Cherokee Nation v. Georgia*[257] and *Worcester v. Georgia*,[258] applied the first decision, *Johnson v. M'Intosh*,[259] in ruling that "Indians" were uncivilized, incompetent, "savages" and "heathens" in need of the "protection" (domination) of the colonial parent. However, the actual facts underlying those decisions expose the deception in Marshall's rationale invoked to justify and legalize colonial domination and rule. At the time of these decisions, the Cherokees were known as the largest of the "Five *Civilized* Tribes" and possessed a constitution and government modeled after that of the United States, had leaders educated in prominent US universities, had their own alphabet and media, were owners of private estates, plantations, and even slaves, and had accepted and converted to Christianity.[260] The *only* remaining characteristics that differentiated them from the dominant white society were their pre-colonial existence and their denominated race. They were pre-existing nations in the way of colonial expansion, and they were "Indians."[261]

The United Nations General Assembly has recognized this link between colonialism and racism. A large part of the UN Charter is focused on the liberation of "non-self-governing territories" from colonial occupation and rule.[262] Shortly after its creation in 1948, the UN General Assembly began regularly issuing resolutions calling for the immediate "eradication" of colonialism from the world.[263] We are now in the "Fourth International Decade for the Eradication of Colonialism"[264] in which the UN once again renewed its initial call for the "speedy and unconditional end [to] colonialism in all its forms and manifestations."[265]

In 1965, the United Nations adopted the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), a binding treaty condemning racial discrimination.[266] The Treaty has been acceded to or ratified by nearly all of the UN member States. It includes within the term "racial," referring to "race, colour, descent, or *national or ethnic origin*."[267] Relevant to this discussion, the ICERD declares without any reservation "that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination in theory or in practice, anywhere."[268] It expressly "affirms the necessity

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[257] 39 U.S. 1.

[258] 31 U.S. 515.

[259] 21 U.S. 543.

[260] Perdue 2007, 20-41; Echo-Hawk 2010, 89-90; Wolfe 2006," 396-397.

[261] As Mi'kmaq writer Pamela Palmater put it, the racializing of Indigenous people redefined them, and their rights, from collective, sovereign nations to less civilized and less human individuals – "From Peoples to Indians." Palmater 2011, 37-43. Also, Wolfe, 2006, 388 ("Indigenous North Americans were not killed, driven away, romanticized, assimilated, fenced in, bred White, and otherwise eliminated as the original owners of the land but *as Indians.*" (emphasis by Wolfe)).

[262] UN Charter, chaps. XI, XII, and XIII.

[263] *See* UNGA Res. 1514; see UN Dag Hammarskjold Library (this UN website provides a full list of UN resolutions and other UN documents relating to decolonization). For a history of the promulgation of the UNGA Res 1514, see Burke (2010), chap. 2.

[264] UNGA Res. 75/123.

[265] UNGA Res. 1514.

[266] ICERD.

[267] *Ibid.*, art. 1, sec. 1 (emphasis provided).

[268] *Ibid.*, Preamble, para. 5; see also, UNESCO.

of speedily eliminating racial discrimination throughout the world in all its forms and manifestations" and reaffirmed the 1960 UN resolution on immediate global decolonization.[269] By linking colonization with doctrines of racial superiority and the UN decolonization resolution with the elimination of all forms of racism, the Treaty expressly recognized colonialism as a manifestation of racism. The ICERD was enforced by the High Court of Australia in its 1988 *Mabo* decision which held that Australian property law discriminated against an Indigenous group's rights to its own Indigenous concept of land tenure.[270] In 2006, the UN Committee charged with enforcement of the Treaty issued a decision finding that US federal Indian law racially discriminated against the Western Shoshone Nation.[271] Racism, colonialism, imperialism, religism, and modernity form links on a chain of oppression and destruction of Indigenous peoples.

The modern concept of "race" did not exist prior to the colonial period, the Age of Empires. It was concocted by the imperial powers as the purported moral and legal justification for the enslavement, colonial domination and exploitation of Indigenous peoples and nations.[272] Tony Barta surmised that genocide was more the result of historical processes than the Darwinian natural condition of its victims asserted by colonial powers.[273] "Early racist discourses formed the necessary preconditions for two centuries of discrimination, dissolution and genocide of Indigenous peoples in the absence of scientific racism."[274] Nationalism was racialized just as racism was nationalized.[275]

In essence, the prohibition on the killing of a race found in Genocide Convention Article 2 is not for the protection of a race but is in response to the racializing, the racial targeting, of a group of people for destruction by reason of certain common physical characteristics or histories.[276] In contrast to national and ethnical groups, a racial group is defined by its supposed biological rather than social character. So, how does one go about "killing a racial[ized] group" in whole or in part? Obviously, that can occur in a number of different ways. The racial group can be identified and targeted for extermination through mass murder as occurred in the United States,[277] Namibia,[278] Germany,[279] and Haiti,[280] in violation of Convention Article 2(a).

The destruction of a racial group can also occur by "race branding" through the use by colonial powers of the quantum (percentage) of Indigenous blood and other biological determinants such as skin, eye, and hair color and facial features to define members of an

[269] Ibid., Preamble, paras. 4 and 5.

[270] Mabo 1988.

[271] Western Shoshone v. United States, UN CERD.

[272] Guillaumin 1995, 61-98; Hannaford 1996; Weitz 2003, 16-32; Finzsch 2007, 2; Lingaas 2018. See also, López 2006.

[273] Barta 2007, 32. Also, Gigoux 2020.

[274] Finzsch 2007, 19; Weitz 2003, 32-42.

[275] Finzsch 2007, 2 (citing Etienne Balibar). See also, Kakel 2013.

[276] Lingaas 2018; Kakel 2013.

[277] Stannard 1992, 126-131,145, 204-221, 232, 240-246.

[278] Lindqvist 2014.

[279] Schafft 2002.

[280] Robins 2009, 3 ("subaltern" genocide).

Indigenous group.[281] Blood quantum has been used to remove lands from Indigenous nations and decimate membership in a "statistical elimination."[282] As Professor Wolfe noted: "In this way, the restrictive racial classification of Indians straightforwardly furthered the logic of elimination."[283] Colonial States, including the United States, Canada, and Australia, engaged in "benevolent genocide" using such race-based determinants in their laws and institutions to facilitate the transfer of Indigenous children into Caucasian families through the late 20th Century, at least in part, to "breed out" Indigenous blood over generations, becoming white by absorption through a "biological assimilation."[284]

Programs sterilizing thousands of Indigenous women diminished the membership of the racial group.[285] Rape, the enslavement of Indigenous women, and racial intermarriage, a common occurrence during imperial domination and colonization of North America[286] and Australia, also resulted in reducing group membership.[287] As Norbert Finzsch observed, "the colonial gaze and a desire for indigenous women shaped gender relations of the male colonialists with Aboriginal women. The latter represented not only sexual gratification but also symbolized Australian land and its conquest."[288] Prominent Latin historian Eduardo Galeano related the story of when the Spanish fortress of Arauco in present day Chile was under siege by the Mapuche in 1563. To demands to surrender or die, the Spanish Captain responded that if they died, they would still win the war by making children from Mapuche women "who'll be your masters!" [289] The "race" of the group is destroyed in whole or part under Convention Article 2(a) by killing members of the group through mass murder or by destroying the group itself, slowly, through the imposition of race-based biological identifiers and attrition genocide under Articles 2 (b) and (c).

The assimilationist policies, laws, and programs that caused the destruction of Indigenous nations and ethnicities and the attrition of Indigenous peoples through colonial domination, poverty, and illness were not directed at a specific nation or peoples, but were instead targeted at a "race" of Indigenous people such as the "Indians" of the Americas, the "aborigines" of Australia or Canada, or the "blacks" of Africa and Australia, who were often described, at least initially, as "savages," "less civilized," or less human than the white peoples of the European "race". [290]

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[281] *Supra* note 277.

[282] Jaimes 1992, 137; Limerick 1987, 338; Unrau 1989; Nielson 1982 (Utes); Palmater 2011 (Canada). *See also*, Wolfe, 2006," 388, 400.

[283] Wolfe 2006, 388.

[284] Jacobs 2009, 66, 69, 70, 73, 139-140, 383, 420; Watson 2015, 118-119, 146-147.

[285] *Supra* notes 101-112.

[286] Mawani 2002, 49-54; Thornton 1987; Smith 2005; Galeano 2007.

[287] Totten 2011, 128; Schabas 2000, 170; San José 2020 (Yazidi); Ibrahim 2018 (Yazidi).

[288] Finzsch 2007, 17. Also, Smith 2005, 55. Even today, a common means of acquiring and alienating Indigenous lands by non-Indigenous persons is through the marriage of Indigenous persons.

[289] Galeano 1982, 130.

[290] Like Germany's reference to US law as authority legalizing euthanasia, white supremacy, lebensraum (Manifest Destiny), and "reservations," US Supreme Court Chief Justice Marshall's *M'Intosh* decision (and suspect and internally contradictory reasoning) has been cited to as authority by other colonial States in justifying their exercise of colonial domination of Indigenous nations and peoples. Watson 2011; Miller 2021.

In one sense, as with ethnocide, these colonial policies and laws are less about the destruction of an Indigenous "race" than the domination, protection, and growth of an assumed superior or privileged race. This is reflected in Israel's "chosen" Jewish race,[291] pre-revolutionary South Africa's white race,[292] Nazi Germany's Aryan race,[293] Japan's Yamato race,[294] and China's Han race.[295] In other words, Indigenous peoples are not targeted for destruction because of their "race," but because they are in the way of the expansion of another more powerful and assumed superior "race" of peoples.[296] As professors Ronald Niezen[297] and James Anaya[298] have suggested, Indigenous peoples may be defined not by their "race" but by their victimization by the (white) imperial powers of Europe. Restated, a group is not "scientifically" identified and does not self-identify as a "race," but instead is so-defined and targeted as a race by the group's oppressor.[299] Recent attacks in US courts on Indian peoples, for example, are actually not focused on the Indian race but on preserving and enforcing white privilege, targeting the so-called federally "exclusive Indian benefits" as supposed discrimination against the rights of white people.[300]

This dynamic highlights the apartheid roots of the domestic policies, laws, and institutions of colonial States such as the United States,[301] Canada,[302] Australia,[303] and Israel.[304] Like genocide and colonialism, apartheid has been condemned globally by the large majority of the UN General Assembly Member States in the adoption of the International Convention on the Suppression and Punishment of the Crime of Apartheid in 1973. In the Convention, "apartheid" is described as a list of "inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them."[305] The listed acts committed against the race, in relevant part, include acts that could fall under the Genocide Convention as well: (a) denial of the right to life and liberty by (i) murder, (ii) infliction of serious bodily or mental harm, or the infringement of [the victimized race's] freedom or dignity; (b) deliberate imposition of living conditions calculated to cause its or their physical destruction in whole or in part; (c) any measures calculated to prevent a racial group from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions prevent full development of such a group; and (d) any measures designed to divide the population along racial lines by

[291] Lentin 2020, Khalidi 2020, 10.

[292] Dubow 2014.

[293] Olusoga 2010; Kakel 2013.

[294] Kiernan 2007, 478, 483-484.

[295] Miao 2024; Brett 2012; Domingo 2019.

[296] Wolfe 2006, 388.

[297] Niezen 2003, 4-5, 9-14, Chap. 3.

[298] Anaya 2004, 4. Also, Daes, para. 69.

[298] Lingaas 2018.

[300] Reid 2024, 362-366.

[301] *For example.*, Federal Indian Law.

[302] *For example*., The Indian Act.

[303] Watson 2015, 116 notes 36-38 (Aboriginal Acts), 118.

[304] Dugard 2013.

[305] Apartheid Convention, art. II.

the creation of separate reserves for members of the racial group, the expropriation of landed property belonging to a racial group.[306] Of the almost 200 UN Member States, only four voted against the Apartheid Convention, including the colonial States of Great Britain and Portugal and the successor colonial States of South Africa and, quite understandably, the United States. Under international law, the "sui generis" federal "Indian" law of the United States is apartheid law. While the Apartheid Convention is not focused on the "killing" of a race, the destruction of a race in whole or in part may be a goal of apartheid laws and the "inhuman" "crime" of apartheid and thus be in violation of Genocide Convention Articles 2 (b) and (c).

The Indians of the Americas, the Aboriginals of Australia and Canada, and other colonized peoples of color are the only "race" (and thereby the only ethnicity, peoples, and nations) still subject by reason thereof to denial of collective human rights, of full equality of the rights of nations and peoples, and often, as Hannah Arendt put it, of even the right to have rights. While refusing to dispense with colonial rule, the High Court of the United States has acknowledged the "offensiveness" of a race-based colonial relationship to the US Constitution's guarantees of racial equality. [307]

Most colonial policies, laws, and institutions pertaining to Indigenous nations and peoples are directed at the incremental destruction of Indigenous nations and peoples through forced assimilation over generations by targeting them as a "race". While such conduct, like slavery, has been euphemistically rebranded by the perpetrators as "beneficial", the motivations for such domination and forced assimilation are not relevant. If the intent to engage in the prohibited conduct is present, it matters not if it was malicious or benevolent. The true motivation is the State's interest in the continuation of colonial domination and exploitation. Racial domination is still white supremacy. "Benevolent" genocide is still genocide.

III. EVIDENCING GENOCIDAL INTENT THROUGH STRUCTURE

> No one colonizes innocently … no one colonizes with impunity either.
> Aimé Césaire[308]

Genocidal intent may be express or implied from conduct. On intent, Schabas opined that "it is inconceivable that an infraction of such magnitude could be committed unintentionally."[309] Shaw has described "intent" as "a logical deduction that flows from evidence of the material acts."[310] The Rome Statute of the International Criminal Court (ICC), which was established in 1998 to hear certain international crimes including genocide, states that intent exists where the "person means to engage in the

[306] *Ibid.*

[307] Washington v. Confederated Bands and Tribes 1979, 500-01. *See also*, Johnson v. M'Intosh 1823, 590 ("fiction"), 591 (factual "pretense"); Worcester v. Georgia 1823, 543 ("difficult to comprehend"), 544 ("extravagant and absurd idea"). Similarly, the High Court of Australia in its *Mabo II* decision while purportedly tossing the doctrine of discovery then supplanted it with an imperial doctrine, the King's "radical title," to maintain its colonial rule over the Indigenous peoples found there.

[308] Césaire 1950, 39.

[309] *Ibid.*, 213-214.

[310] Shaw 2007, 83.

conduct" and "means to cause that consequence or is aware that it will occur in the ordinary course of events."[311] The material acts evidencing genocidal intent may be incremental in nature, the result of decision-making over time and adaptations to changing circumstances [312]. Like Professor Wolfe's observation that colonization is not an event but a structure, genocide may also not occur as an event in time but as a structure over time. The structure imbeds, organizes, and makes the conduct pervasive and permanent. Lemkin described genocide as "synchronized attacks on all aspects of life of the captive peoples."[313] It may be systemic and institutionalized, integrated and embedded in colonial institutions. Genocide structured by colonial institutions occurs incrementally over the entire period of colonization in the gradual destruction—in whole or part—of the nation, ethnic identity, religion, and / or race of the colonized peoples. As set forth in the Genocide Convention, the required specific intent does not have to encompass the destruction of the entire group, but only the intent to destroy part of the group.[314]

The "evidence" and proof of genocidal intent may then be found in the colonial structure, the policies, laws, and institutions of the colonial power itself.[315] At the time of the Holocaust of World War II, the genocidal intent of the Nazi government was expressed in Germany's own domestic law, known as the Nuremberg Laws, which "legalized" eugenics and the persecution and destruction of Jews, Gypsies, and others.[316] Apartheid was legalized by the domestic laws of South Africa.[317] As such, the assimilationist federal Indian law of the United States,[318] the Indian Act of Canada,[319] or the Israeli laws pertaining to Palestinians,[320] are expressions of genocidal intent which are then fulfilled by their governing colonial institutions including their executive and administrative agencies, militaries and law enforcement agencies, judiciaries and legislatures.[321] As put by Kiera Ladner, nations and peoples can be "killed" "through legislation and slow-moving poison."[322]

The existence of a plan, of a genocidal structure, by its nature obviates the need to search for intent. To have intent, the perpetrator must have knowledge. The Rome Statute defines "knowledge" as "awareness that a circumstance exists or a consequence will occur in the ordinary

[311] Rome Statute, art. 30(2).

[312] Ibid., 84.

[313] Lemkin 1944, 22, note 52.

[314] Travis 2012.

[315] See Prosecutor v. Goran Jelisić 2001, para. 48 ("The existence of a plan or policy …may facilitate proof of the crime.").

[316] Law and the Holocaust; Law, Justice, and the Holocaust. The Nazis "legalized" genocide as a matter of domestic law using the US Supreme Court's eugenics decision affirming forced sterilization in Buck v. Bell, 274 U.S. 200 (1927) (which is still the law of the United States) as their starting point. See Nuremburg Documents 2009; Olusoga 2010, 285, 302; also, US Holocaust Memorial Museum (listing series of laws passed to legalize genocide). The US policies and law designating "Indians" as inferior peoples and establishing the internment camps known as reservations were also used by the Germans first as legal precedence for the pre-World War I genocide of the Herero and Nama Indigenous peoples of Namibia and later the Holocaust of World War II. Guettel 2010; Kakel 2013, 8-24; Olusoga 2010, 106-114, 133, 304, 340.

[317] Apartheid Laws & Regulations; Apartheid Legislation.

[318] USDOI, Federal Law and Indian Policy Overview.

[319] Annett 2001; Coast 2013; Ladner 2014.

[320] Dugard 2013.

[321] See discussion, Goldhagen 2009, 102.

[322] Ladner 2014.

course of events."[323] The plan evidences the perpetrator's "knowledge", particularly where the perpetrator devised the plan and/or executed it. The International Criminal Tribunal found the existence of a plan as evidence of knowledge of genocidal circumstances in the trial of former Yugoslavian leaders Karadzic and Mladic.[324] Certainly, colonial legislation and law setting forth the plan and establishing the institutions for dominating, destroying, and forcibly assimilating Indigenous nations and peoples satisfies this element.

Under the language of the Genocide Convention, the intent also must be "specific", meaning that it must be an intent "to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such."[325] Again, as here, where genocide has been institutionalized in the law of the perpetrator, that law is itself an expression of the perpetrator's specific knowledge and intent. Laws authorizing the mass killing of Indigenous peoples; the theft of Indigenous children for re-education (destruction of ethnic identity for assimilation); the theft of Indigenous children for adoption into white families; the sterilization of Indigenous women; the forcible conversion of Indigenous peoples to another religion; the outlawing the practice of Indigenous spirituality and culture; the destruction of Indigenous economic, physical, and psychological well-being; the destruction of Indigenous national independence and sovereignty; the destruction of Indigenous traditional institutions of governance and law; the destruction of Indigenous territories, lands, and natural resources; the forced or coerced removal of Indigenous peoples from the homelands; and so forth, are certainly clear and unequivocal declarations of a State's specific intent.

Conversely, to perpetuate continuing colonial rule and slow genocide, the colonial State's domestic judicial decisions, legislation, and executive actions in one way or another must refuse to recognize the current independent sovereign equality of pre-colonial Indigenous nations.

Indigenous peoples have a 500-year history of resistance to colonialization and genocide.[326] International and some domestic tribunals have issued many decisions finding that individuals have committed genocide while acting in an official capacity for a State.[327] Surely the conviction of a State's high officials of the crime of genocide when acting for the State would evidence knowledge and specific intent on the

[323] Rome Statute, art. 30(3).

[324] Schabas 2000, 208 (see discussion of this question by Professor Schabas at 207-213).

[325] Genocide Convention 1948, art. 2.

[326] *See, e.g.*, Mander 2006 (global); Hall 2009 (global); Schroder 1998 (Mexico); Olusoga 2010 (Namibia); Khalidi 2020 (Palestine); Na'Allah 1998 (Nigeria - Ogoni); Taylor 2016 (St. Vincent - Garifuna); Meyer 2010 (Americas); James 1992 (North America); Brown 1970 (United States); LaDuke 1999 (North America); Churchill 2002 (North America); Steiner 1968 (United States); Josephy 1971 (United States); Coast 2011 (Canada).

[327] *See* International Criminal Court, Cases. The Genocide Convention, Article IV, refers to the punishment of "persons," including "rulers, public officials or private individuals," but not States, nations, or groups. *See* Gaeta 2007; Professor Schabas has opined that while the Convention does not explicitly provide that States themselves may be responsible for genocide, Article IX may bootstrap State responsibility, but not criminality, through its reference to "disputes" "relating to the responsibility of a State for genocide…shall be submitted to the International Court of Justice at the request of any of the parties to the dispute." Schabas 2009, 418-446. Several cases have been filed with the International Court of Justice pursuant to this provision. *Ibid.*, 425-446.

part of the State itself in the commission of the crime. Colonial States cannot reasonably deny knowledge and specific intent when their colonial and genocidal acts are exposed or directly challenged by Indigenous peoples in wars, occupations, demonstrations, protests, domestic and international petitions and lawsuits, investigations and reports, the press and media, publications, and other avenues of resistance. The State's intentional refusal to decolonize when confronted with its wrongful conduct is an expression of specific intent. Over the past 60+ years, the United States appears to be the *only* State out of some 180 voting UN Member States that has voted against all of the hundreds of decolonization instruments adopted by the UN General Assembly.[328] A State's knowledge and specific intent to commit slow genocide are inherent in the definition and nature of its colonial rule.[329]

Explicit admissions of knowledge and intent to commit wrongful conduct, including genocide, are also contained in the "apologies"[330] and the express avoidance and denial[331] of colonial States and their institutions. There have been some 25 apologies by States to Indigenous peoples from about 14 States in addition to several churches that were involved in colonialism and genocide.[332] Denial is considered the last stage of Professor Gregory Stanton's "ten stages of genocide."[333] Approximately 21 countries have criminalized genocidal denial.[334] In order to apologize for, or deny genocide, the colonial State must have knowledge of the facts and its own specific intent regarding its own conduct.

Due to the nature of colonial rule and occupation as a structure imposed on subservient nations and peoples through the colonizer's laws and institutions over time, there should be very little room for any evidentiary dispute over a State perpetrator's knowledge and specific intent in a colonial genocide.

V. PROTRACTED, SLOW, GENOCIDE OF INDIGENOUS PEOPLES

> Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups themselves.
>
> Raphäel Lemkin[335]

[328] The UN General Assembly condemned colonialism and has made calls for decolonization every year since UNGA Resolution 1514 in 1960, approximately 150 times over 63 years. Each year the member States of the General Assembly with near unanimity have endorsed the call while the United States stands alone as the only State to have voted against every single one. The great global call to immediately end and eradicate all forms and manifestations of colonialism and racism threatens the continuing colonial rule, domination, and exploitation by the United States over Indigenous peoples and nations. *See* UNGA decolonization resolutions for the following sessions (United Nations Digital Library, "Voting Data" word search – "colonial").

[329] Wolfe 2006; *generally*, Moses 2007.

[330] *See* Apologies to Indigenous peoples, List. See generally, Gibney 2008; Brooks 1999.

[331] *See* Denials of genocides of Indigenous peoples; Cohen 2001.

[332] *See* Apologies to Indigenous peoples, List; generally, Gibney 2008.

[333] Stanton 1996.

[334] Pruitt 2017, 271.

[335] Lemkin 1944, 79.

The power of coloniality is the relentless, systematic, institutionalized process of creeping genocide proceeding deliberately—and often covertly—hidden by the semantics of the colonizer[336] over such a great period of time that it acquires a veneer of being lawful and an acceptable,[337] if not even a beneficial, fated relationship.[338] In 1831, while visiting the United States as a young scholar to study America's early experiment in democracy, French historian Alexis de Tocqueville witnessed firsthand the removal (ethnic cleansing) of Indigenous peoples from their ancestral homelands in the southern United States during what has become known as the "Trail of Tears" under the Indian Removal Act of 1830.[339] On this de Tocqueville commented:

> The Spaniards were unable to exterminate the Indian race by those unparalleled atrocities which brand them with indelible shame, nor did they succeed even in wholly depriving it of its rights; but the Americans of the United States have accomplished this twofold purpose with singular felicity, tranquilly, legally, philanthropically, without shedding blood, and without violating a single great principle of morality in the eyes of the world. It is impossible to destroy men with more respect for the laws of humanity.[340]

Sauk Chief Ma-ka-tai-me-she-kia-kiak (Black Hawk) has observed: "How smooth must be the language of the whites, when they can make right look like wrong and wrong look like right."[341] Linguists understand that a crucial part of colonialism is the linguistic relations of power and the use of semantics to colonize the minds of both the colonizers and the colonized.[342] A colonized mind can facilitate or even promote their own continuing oppression and exploitation by accepting the legitimacy of—and even utilizing

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[336] South African anti-apartheid martyr Steven Biko declared: "The most potent weapon in the hands of the oppressor is the mind of the oppressed."; Biko 1978. George Orwell made the central theme of his dystopian masterpiece, 1984, an oppressor State which controls the oppressed by controlling their minds through semantics, what he termed "doublethink."; Orwell 1949, 44. Doublethink, or doublespeak, is language that deliberately obscures, disguises, distorts, or reverses the meaning of words. It disguises the nature of the truth for political purposes; Orwell 1946. According to Orwell, political language "is designed to make lies sound truthful and murder respectable, and to give an appearance of solidity to pure wind"; Ibid. Orwell further exposed the purpose of political language: "Who controls the past controls the future: who controls the present controls the past"; *Ibid.* Words themselves can act as pervasive "monuments" to white supremacy and the perpetuation of colonial mythologies; McGill 2022.

[337] Professor Leigh Patel noted: "Settler colonialism has been such a long-standing structure in the Westernized world that its ability to absorb, contain, and dilute demands for liberation and abolition should never be underestimated." Patel 2021, 137. *Also*, Tee-Hit-Ton Indians v. United States 1955, 289-290 (J. Reed) ("Every American schoolboy knows that the savage tribes of this continent were deprived of their ancestral ranges by force and that, even when the Indians ceded millions of acres by treaty in return for blankets, food and trinkets, it was not a sale but the conquerors' will that deprived them of their land.").

[338] When it is called out by the international community for violations of human rights of Indigenous peoples, the United States even today routinely and disingenuously responds that its domestic law guarantees the rights of Indigenous peoples. See United States of America 2020, 12; United States of America 2015; United States of America 2010 (declaring that the United will interpret the UN DRIP as consistent with federal [colonial] Indian law); United States of America 2001; International Indian Treaty Council 2014.

[339] Indian Removal Act 1830; Tocqueville 1835, *Future Condition of Three Races - Part III*, chapter XVIII, a-b.

[340] Tocqueville 1835, *ibid.*

[341] Black Hawk 1833, 97.

[342] Veronelli 2013; Tirrell 2012.

themselves—colonial law in the determination of their rights.[343] This has been referred to as "dysconscious racism", an uncritical habit of mind that justifies inequity and exploitation by accepting the existing order of things as given.[344] As Professor Joyce King remarked: "It is not the *absence* of consciousness (that is, not unconsciousness or a lack of knowledge) but an *impaired* consciousness or distorted way of thinking about race as compared to, for example, critical consciousness."[345] The colonized mind has been described as a "conceptual and social prison of modernity/coloniality" that traps Indigenous peoples under colonial rule even while they exercise limited permitted independence under a veneer of decolonization.[346] Such colonial language was, and is, a protracted program of propaganda and education, the "dangerous speech and dangerous ideology" of the masses of Americans by colonial institutions habitually excusing those who have participated or benefited.[347] The US Holocaust Museum acknowledged the key role of semantics in genocide: "The Holocaust did not begin with killing; it began with words."[348]

Law is expressed in the words and deeds of an institution implementing a sovereign's system and policies of governance over its domain and people. Federal Indian law, and the domestic law regarding Indigenous peoples of other colonial and successor States, is the institutionalized and systemic colonial policies of domination, exploitation, assimilation, and annihilation of Native nations, peoples, and resources by the colonial power. Accordingly, and contrary to popular understanding even among scholars, genocide may be protracted with the destruction of a peoples' identity occurring over a long period of time, over even hundreds of years as with the Indigenous peoples of the Americas.[349] This "slow genocide" has been defined as "the emotional and physical harm done to survivors of violence over time. . .[and] emotional and physical harm resulting from witnessing or participating in violence and the continuing experiences of living in unsafe and violent communities."[350]

Some have labeled this process as "genocide by attrition."[351] Historian Mark Levene has referred to this incremental destructive process as "creeping genocide."[352] "It is this state-community dynamic which has led, in each instance [referring to the Maya Indians of Guatemala, the Kurds of Turkey and Iraq, the Tibetan peoples, and the peoples of East

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[343] *See, e.g.*, Coulter 1982, 51-60 (examining the unqualified use by tribal lawyers of colonial doctrines in arguments to the United States Supreme Court).

[344] King 1991, 135; Okhremtchouk 2018.

[345] *See* King, ibid. This definition highlights the significance and importance of Critical Theory, Critical Race Theory, and TribalCrit in the liberation of the minds of both the colonized and the colonizer.

[346] *See* Veronelli 2023, 120.

[347] Maynard 2016; Waller 2002.

[348] US National Holocaust Museum 2016. Also, Tirrell 2012.

[349] *See* Whitt 2019 (examining the extermination of the Beothuk Nation and the Powhatan Confederacy over three centuries by the England and the United States and settler colonialism as genocide); Ostler 2010 (the 150-year history of the Lakota struggle for the Black Hills); Flood 2019 (250-year history of the colonization of the Indigenous peoples of Australia); Rohingya 2019 (50-year history of genocide by Myanmar); Kahalidi 2020 (detailing the 100-year colonization and genocide in Palestine); Onondaga Nation 2023 (Onondaga challenge to 200-year colonial rule of the United States).

[350] Cottam 2006; also Steele 2018.

[351] Rosenberg 2012;

[352] Levene 1999.

Timor and Irian Jaya], through a series of State strategies characterized here as a 'genocidal process,' to their culmination, at some stage, in the actuality of genocide."[353] The Rohingya[354] and the Indigenous Kachin peoples have been resisting ethnic cleansing by Myanmar for some 60 years.[355] The Indigenous peoples of West Papua New Guinea have also been struggling against Indonesian rule for six decades.[356] All have been described as "slow genocides".[357] Slow genocide has also been suggested to describe the slow-moving persecutions of the Indigenous Banyamulenge in the DRC[358] and the Indigenous peoples of Darfur.[359] The Canadian Indian Residential Schools program has been characterized as intergenerational "slow genocide".[360] The Indigenous peoples of the Omo Valley of Ethiopia have been described as enduring a slow genocide as a result of their removal from their lands and deprivation of water resources.[361] In response to the Genocide Convention's limitation to pre-adoption offenses, an argument can be made that because "its effects are still palpable after it came into force, then it may be prosecutable."[362] Francesca Albanese, the UN Special Rapporteur on the situation of human rights in the Palestinian territory concluded: "Settler-colonialism is a dynamic, structural process and a confluence of acts aimed at displacing and eliminating Indigenous groups, of which *genocidal extermination / annihilation* represents the peak."[363]

The world has recently witnessed in real-time the genocide in Gaza [364] as the very tragic end result of over 100 years of Israel's Zionist policies and colonial invasions and rule over Palestinian peoples.[365] In March 2022, the Prosecutor of the International Criminal Court announced the opening of an investigation into the situation in Palestine.[366] In December 2022, the UN General Assembly requested an advisory opinion from the International Court of Justice on the legal consequences of Israel's occupation of Palestinian territory.[367] On December 29, 2023, following Israel's invasion of Gaza in response to the October 7, 2023 Hamas attacks in Israel, the Republic of South Africa instituted proceedings on behalf of the Palestinian people ("a distinct national, racial and ethical group") against the State of Israel, asserting breaches of the Genocide Convention.[368] On May 20, 2024, the ICC Prosecutor announced his request for arrest warrants for three Hamas leaders and for Israel's

[353] *Ibid.*, 363.

[354] Rohingya 2019, 8; Urahman 2022; Green 2015.

[355] Hogan 2018.

[356] Tatchell 2020.

[357] *Supra* notes 354-357.

[358] Ntanyoma 2022.

[359] ICG 2004.

[360] Kazan 2022.

[361] Human Rights Watch 2014.

[362] *Ibid.*

[363] Albanese 2024, 3 (citing Lemkin 1944 at 92 and Wakeman 2022) (emphasis by Albanese).

[364] UN Special Committee 2024; Albanese 2024; Amnesty International 2024; Human Rights Watch 2024.

[365] *Ibid.*; also, Kahalidi 2020; Cook 2010; Wolfe, 2006, 388-390, 393; Short 2016, 68-92.

[366] ICC Press Release, Prosecutor 2021.

[367] UNGA ICJ Request on Palestine.

[368] South Africa v. Israel, Application 2023, 1.

Prime Minister, Benjamin Netanyahu, and former Minister of Defense, Yoav Gallant, asserting a long list of "war crimes and crimes against humanity" committed in Gaza including use of starvation, murder, extermination, persecution, and other inhumane acts.[369] Then, on September 20, 2024, the UN Special Committee established to investigate Israeli conduct in the Occupied Territories issued its formal report finding serious concerns of breaches of international humanitarian and human rights laws, "including starvation as a weapon of war, the possibility of genocide in Gaza and an apartheid system in the West Bank…."[370]

Israel and its close allies, including the United States, which in complicity has been supplying Israel with the bombs and other weapons used in the destruction of Gaza,[371] have portrayed Israel's action as defensive and permitted under the laws of war.[372] Their characterizations self-servingly ignore and avoid the context of Israel's 100+ year colonial domination and destruction of Palestinian territories and peoples. The United Nations has been engaged in this conflict since 1947 when it recommended the partition of Palestine to create a Jewish State.[373] Since 1967, there have been 131 UN Security Council resolutions on the Arab-Israeli conflict, mostly condemning Israel's colonial conduct.[374] South Africa's application to the International Criminal Court asserts a slow genocide:

> South Africa is also aware that acts of genocide inevitably form part of a continuum — as Raphaël Lemkin who coined the term 'genocide' himself recognised. For this reason it is important to place the acts of genocide in the broader context of Israel's conduct towards Palestinians during its 75-year-long apartheid, its 56-year-long belligerent occupation of Palestinian territory and its 16-year-long blockade of Gaza …. [W] hen referring in this Application to acts and omissions by Israel which are capable of amounting to other violations of international law, South Africa's case is that those acts and omissions are genocidal in character, as they are committed with the requisite specific intent (*dolus specialis)* to destroy Palestinians in Gaza as a part of the broader Palestinian national, racial and ethnical group.

The application places Gaza within the context of the 1948 Nakba,[375] Israel's occupations of the West Bank since 1967,[376] its institutionalization of apartheid through a "regime of discriminatory laws, [377] its routine persecutions of Palestinians,[378]

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[369] CC Press Release, Prosecutor 2024.

[370] UN Special Committee on Palestine 2024.

[371] See Donnelly v. Thompson 2024 (claims against US officials for authorizing complicity in genocide).

[372] US State Dept. 2024; Executive Order of Feb. 6, 2025; Holligan 2024.

[373] List of UN Resolutions Concerning Palestine.

[374] *Ibid*.

[375] South Africa v. Israel, Application 2023, para. 22. A previous application in 2019 to the ICJ by Gambia against Myanmar regarding the Rohingya also argued that Myanmar's genocidal conduct was part of a continuum beginning over 30 years ago and involving various criminal behavior and apartheid. Gambia v. Myanmar 2019.

[376] *Ibid.*, paras. 33-34.

[377] *Ibid.*, para. 35.

[378] *Ibid.*, para. 36-39.

and its devastation, war crimes, and genocide in Gaza.[379] The arguments of South Africa to the ICJ in January of 2024 put the crime of genocide in the Gaza Strip within the context of Israel's colonization of Palestine since 1948 as an "ongoing Nakba [ethnic cleansing] of the Palestinian people" which "inevitably form part of a continuum of illegal acts."[380]

Whether nations, ethnicities, religions, or races of peoples are destroyed quickly, slowly, physically, or through the loss of that which identifies and defines them by mass killing over time, by the extinguishment of their future generations, by the theft of their territories, lands, and natural resources, by the elimination of their sovereignties and governance, or by the extermination of their spiritualities and cultures, is irrelevant to the fact that they are still destroyed in whole or in part—and are thus victims of genocide. In Chinese culture, the power of Chinese law is expressed in *lingchi*, a death by a thousand cuts, as the most severe method of capital punishment.[381] This slow, incremental, destruction has been described as the "chipping" or "whittling" away of Indigenous identity.[382] As Sartre remarked: "Let us say that a choice must be made between a violent and immediate death and a slow death from mental and physical degradation. Or, if you prefer, *there is no choice at all.*"[383] A slow genocide is still genocide.

IV. CONCLUSION - SEEKING AN EFFECTIVE REMEDY

> Initially subjective, the breaches made in colonialism are the result of victory of the colonized over their old fear and over the atmosphere of despair distilled day after day by a colonialism that has incrusted itself with the prospect of enduring forever.
>
> Franz Fanon, A Dying Colonialism[384]

By the very first article of the Genocide Convention, the signatory States commit to "undertake to prevent and to punish" crimes of genocide. The punishable conduct under Article 3 includes genocide, conspiracy, public incitement, attempt, and complicity. Article 4 lists the "persons" subject to punishment as including

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[379] *Ibid.*, paras. 18-19, 27-29, 40-107.

[380] *Ibid.*, Transcript of 11 Jan. 2024, 17. See also, Lindman 2010; Barghouti 2010.

[381] Brook 2008.

[382] *See discussion*, Rolnick 2011; Royster 1995); Otis 1973 (the 1887 Allotment Act broke up communal Indigenous land holdings into private ownership and reduced the lands in Native hands from some 150 million acres to 78 million by 1900. Much of the lands in private Native hands were then subsequently transferred to non-native owners.)

[383] Sartre 1968, 75 (emphasis by Sartre).

[384] Fanon 1959, 53 (emphasis in original).

"constitutionally responsible rulers, public officials or private individuals." Notably, the Convention is limited to individual "persons" and does not expressly list nations, States, or corporations.

Convention Article 5 places the initial responsibility for enforcement upon the signatory States ("the Contracting Parties") through domestic legislation giving effect to the provisions of the Convention and providing "effective penalties for persons guilty of genocide or any of the acts enumerated in Article 3." Under Article 6, the persons charged are to be "tried by a competent tribunal of the State in the territory of which the act was committed." Of the 153 countries that have ratified or acceded to the Genocide Convention, over 80 have implemented the Convention by enacting domestic laws criminalizing genocide.[385] In the United States, for example, the crime of genocide committed within the United States or by a national of the United States is punishable by death or life imprisonment and a fine of not more than $1,000,000.[386] Guatemala is well known for having enforced its own penal code against its former president and high government officials for the genocide of Indigenous people.[387] The colonial States of Israel,[388] Australia,[389] Canada,[390] and Russia,[391] all accused of genocide, also have domestic laws penalizing genocide. Like the Genocide Convention, none of the domestic laws criminalize conduct by States, corporations, or organizations, just individuals.

1. Hiding Behind the Trees, the International Criminal Court

Under Article 6 of the Genocide Convention, if the relevant State fails to act, the persons charged can be tried by an "international penal tribunal," having jurisdiction with respect to the signatory States that have accepted the Tribunal's jurisdiction. Article 9 also provides that any signatory State may call upon the United Nations to take appropriate action to prevent or suppress the conduct criminalized under Article 3. In 1998, the UN General Assembly convened a diplomatic conference in Rome which finalized and adopted a convention known as the Rome Statute, establishing the International Criminal Court (ICC) as an independent tribunal to prosecute "individuals" (but not States, organizations, or corporations)[392] for genocide, crimes against humanity, war crimes, and crimes against aggression.[393] The ICC obtained jurisdiction over crimes that took place in a State party's territory or were committed by a State party's national and were referred to the Prosecutor by the UN Security Council, by a State party requesting an investigation, or *proprio*

[385] Prevent Genocide International.

[386] 50A U.S.C. Sec. 1091.

[387] Artículo 376 of the Código Penal of Guatemala; Kemp 2014.

[388] The Crime of Genocide (Prevention and Punishment) Law, 5710-1950, 11th Nisan, 5709, 1950 (the law is not limited to Israeli nationals and gives Israeli courts jurisdiction for genocide committed outside Israel the same as that committed within Israel.)

[389] Genocide Convention Act, Act No. 27, 1949.

[390] Criminal Code – R.S.C., 1985, c. C-46 (Section 318.)

[391] Russian Federal Criminal Code, Article 357: Genocide.

motu (on the Prosecutor's own motion) after receiving information from States, organs of the UN, intergovernmental or non-governmental organizations, or other reliable sources.[394] The Treaty does not recognize any immunity nor have any statute of limitations,[395] but is limited to conduct that occurred *ratione temporis*, after the Treaty took effect.[396] The Rome Statute obtained enough State ratifications and accessions to come into effect on July 1, 2002. One hundred and twenty-five States are parties to the Statute with another twenty-nine having signed but not ratified the Treaty. Four signatory colonial States, Israel, the United States,[397] and Russia, who all have domestic laws against genocide, have formally withdrawn their signatures from the Rome Statute and the jurisdiction of the International Criminal Court.

With respect to genocide by colonization as discussed above in this commentary, the domestic and international criminal laws against genocide possess a number of fatal flaws, including: (1) failure to include the liability of States, nations, and governments as well as organizations and corporations that are collectively, politically, or institutionally responsible for acts of genocide; (2) failure to extend coverage retroactively to genocidal acts committed prior to the adoption of the respective genocide law; and (3) failure to provide for fully adequate and appropriate remedies to victims of prolonged colonial genocide.[398]

The domestic laws of genocide leave the victims under the fiction that the offending colonial power would bring genocide charges against its own current or former officials. While the more powerful States remain in control of the tribunal, Indigenous nations and peoples are rendered beggars at the mercy of the State, the parties to the Genocide Convention in an international arena dominated by the same colonial powers guilty or having histories of genocide.

As a crime against "groups," against nations, ethnicities, religions, and races, genocide cannot be committed by "natural persons" acting alone. Individual prosecutions of "former" or even sitting government officials, regime leaders, militant groups, or warlords for genocide seldom result in convictions and, even when successful, provide no relief at all to the victimized group. As a true response to colonial genocide, the process established by the Genocide Convention[399] and Rome Statute to address this crime of crimes is, in its essence and effectiveness, impotent

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[392] Rome Statute, arts. 25 ("The Court shall have jurisdiction over *natural persons* pursuant to this Statute." (emphasis supplied)), 27, 28. *Compare* Bosnia and Herzegovina v. Serbia and Montenegro, Judgment, 26 Feb. 2007, paras. 162-171 (finding jurisdiction over the offending State under the ICTY); Gaeta 2007.

[393] Rome Statute, arts. 1 (complementary to domestic jurisdictions), 5 (crimes), 6 (genocide – defined in accordance with the Genocide Convention.)

[394] *Ibid.*, arts. 12, 13, 14, 15.

[395] *Ibid.*, art. 29.

[396] *Ibid.*, arts. 11, 24.

[397] Bolton 2002. Most recently, US President Donald Trump issued an "emergency" executive order accusing the ICC of engaging in "illegitimate and baseless actions targeting America and our close ally Israel" and imposed sanctions on the Court and its officials and staff, including family members. EO of Feb. 6, 2025. In response, 79 States defended the ICC Gaza actions by condemning the US sanctions. Joint Statement 2025.

[398] For reparations for injuries suffered by Indigenous peoples from colonialism, *see* Lenzerini 2008.

[399] International Criminal Court, Cases; International Criminal Court, Wikipedia (this website charts the process and results of all ICC investigations and prosecutions.)

and meaningless. Of the sixty-six investigations conducted by the ICC, only twenty-nine individuals, mostly from Africa, have been indicted and just eleven convicted who received sentences from fines to thirty years (the greatest imprisonment to date)—with no reparations to any victimized group[400]. Despite all of the past and ongoing colonial genocides, not even *one* of the ICC investigations or indictments has resulted in a conviction of any current or former government official or ruler.[401] Those same criminal States and governments that largely wrote the laws on genocide imbued within them a shield against their own criminal liability by limiting the scope of the genocide criminal laws to individuals and by depriving the victims of an appropriate or adequate remedy. Genocide Convention Article 5 places "responsibility" of enforcement upon the signatory States while providing no responsibility upon any State for the crime itself.[402] Disingenuously, State responsibility under the Convention does not include State accountability or liability.[403] In finding a remedy to genocide, the loss of organic groups such as nations and peoples within the arbitrary territories and artificial identities and standing of States, and to the individual scapegoats of collective State accountability, is what James Scott in *Seeing Like a State* has analogized to hiding sight of the forest while managing the individual trees.[404]

2. The International Court of (In) Justice

While the International Criminal Court was established as a criminal tribunal independent of the United Nations, Article 7 and Chapter XIV of the 1945 Charter of the United Nations established a judicial body, the International Court of Justice (ICJ), to hear and settle disputes between UN Member States. The ICJ is the successor to the Permanent Court of International Justice established in 1920 after the First World War under Article 14 of the Covenant of the League of Nations (the Treaty of Versailles) and the Statute of the Permanent Court of International Justice (PCIJ).[405] The PCIJ had jurisdiction over all cases referred by the parties, where provided for in treaties or conventions, and when needed, to decide issues of international law and obligations.[406] Only States or members of the League could be parties in cases before the PCIJ.[407] Like the United "Nations", the League of "Nations" was a misnomer as only "States" could

[400] *Ibid.*

[401] *Ibid.* This is distinguished from the special tribunals, such as those following World War II, Rwanda, and the Balkans War, established to hear war crimes and crimes against humanity through which a few former government officials, but not States, nations, or regimes, were convicted of crimes. The one notable exception would be the questionable dicta in Bosnia and Herzegovina v. Serbia and Montenegro, Judgment, 26 Feb. 2007, paras. 162-171 (finding jurisdiction over the offending State under the ICTY); Gaeta 2007.

[402] Gaeta 2007.

[403] *Ibid.*

[404] Scott 2020, 11-22. Also, Watson 2015, 96.

[405] Covenant of the League of Nations; Statute of the Permanent Court. An international court had been proposed since at least 1305 by Pierre Dubois and 1623 by Émeric Crucé. Hudson 1922, 245. The PCIJ was preceded by the Permanent Court of Arbitration established by the 1899 Hague Convention for the Pacific Settlement of International Disputes.

[406] Statute of the Permanent Court, arts. 36 and 37.

[407] *Ibid.*, art. 34.

be members.[408] There is nothing "national" in the composition of these inter-"national" bodies. The State-only membership and jurisdiction provisions of the PCIJ were carried over to the International Court of Justice.[409] The ICJ can also issue advisory opinions on any legal question referred to it by a State or the UN itself. [410] The rulings of the ICJ are binding only on the parties before it[411] and are not appealable.[412] By UN Charter Article 94, "[e]ach Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party." If a party failed to perform its obligations under an ICJ judgment, the other party could seek recourse to the UN's Security Council to take measures to give effect to the judgment.[413]

Under UN Charter Article 93(1), all UN Member States are automatically parties to the Court's Statute. Article 93(2) does allow the UN General Assembly to permit non-UN Members to be parties in a case before the ICJ, but it is still limited to non-UN Member "States". Non-State groups like those listed for protection in the Genocide Convention, including nations and peoples, lack standing under the UN Charter to be parties in any matter involving genocide, colonial rule, and their own survival. While the ICJ may bring before it a State party liable for a collective offense under the Genocide Convention, nations, ethnicities and members of religions and races have to find a "responsible" UN Member State willing to step forward to enforce the Convention against another member State.

Since its establishment in 1945, the ICJ has entertained almost 200 cases. Six have pursued allegations of genocide under Article VIII of the Genocide Convention: Bosnia and Herzegovina v. Serbia and Montenegro (1993 / 2007); Croatia v. Serbia (1999 / 2015); Democratic Republic of the Congo v. Rwanda (2002); Gambia (Rohingya) v. Myanmar (2019) (pending); Ukraine v. Russian Federation (2022) (pending); South Africa (Palestine/Gaza) v. Israel (2023) (pending).[414] Only two, Gambia (Rohingya) v. Myanmar and South Africa (Palestine/Gaza) v. Israel, were brought by States, on behalf of Indigenous peoples, complying with their Article 1 obligation under the Genocide Convention to prevent acts of genocide anywhere. Both cases are very recent and are still pending before the ICJ.[415] Only one, the most recent action merely requesting an *advisory opinion*, South Africa (Palestine/Gaza) v. Israel, alleged the destruction of a nation, ethnicity, religion, and race by colonial genocide.[416] The statutory structure of the ICJ suffers from the same inherent failings as the ICC. While in contrast to the ICC, the ICJ does

[408] Covenant of the League of Nations, art. 1. Article 1, paragraph 2 of the Covenant, in contrast to the UN Charter, did allow "[a]ny fully self-governing State, Dominion or Colony" to become a member if approved by two-thirds of the Assembly. However, of the 63 members of the League, none of them appear to be a non-State dominion (a nation), or a colony. See, "The Green Papers Worldwide: Roster of the League of Nations[1920 thru 1946], Notably the colonial "empires" of Great Britain and Japan were members.

[409] Statute of the ICJ, arts. 34(1) (parties), 35(1) (parties), 36 (jurisdiction), 37 (treaty jurisdiction)

[410] *Ibid.*, chap. IV.

[411] *Ibid.*, art. 59.

[412] *Ibid.*, art. 60.

[413] UN Charter, art. 94(2).

[414] International Court of Justice, Cases.

[415] *Ibid.*, Gambia v. Myanmar 2019 and South Africa v. Israel 2023.

[416] *Ibid.*, South Africa v. Israel 2023.

cover States as collective offenders, it omits non-state collective offenders such as nations, militias, organizations, and corporations. The ICJ is further limited to States as party petitioners as well, depriving victimized nations and peoples of standing to bring claims against genocidal States. The omission of the victims of genocide as parties to a matter before the ICC may work to limit the remedies the Court awards, even though it is provided broad authority under Article 36(2)(d) of its Statute. Finally, like the ICC, the ICJ is not retroactive and therefore does not cover acts committed by a State before that State's accession to, or ratification of, the UN Charter. While the States of the world assigned the ICJ with the task of remedying international disputes and bringing a sense of "justice" to the world, it has instead provided false hope and failed colonized nations and Indigenous peoples as a high court of injustice.

3. Inherent Judicial Bias Against Fourth World Nations

The International Court of Justice and the International Criminal Court have come under severe criticism and have been accused of bias and as tools of Western imperialism, only punishing small, weak, largely African States and their leaders while ignoring crimes committed by richer and more powerful Western States.[417] The judges for the ICJ are elected by the UN General Assembly and the UN Security Council from a list provided by the Permanent Court of Arbitration.[418] Those for the ICC are nominated and elected by the State parties to the Rome Statute.[419] None of the 6-9,000 nations or some 24,000 ethnicities (peoples) of the world intended to be protected from genocide have any role in the selection of the judges that will investigate, sit on, and decide on the matters of survival involving them. Several studies of the decisions from these tribunals have shown that the direct and indirect control by the member States of the UN over the selection of judges has resulted in an inherent Western-Euro cultural, linguistic, political, and economic bias.[420]

4. Fulfilling a Mission, Reforming the Law and the Courts

Given the 500+ years of resistance of Indigenous peoples to imperial invasions and colonial domination, the hundreds if not thousands of well-documented instances of colonial genocide continuing to this day, the 80-year global condemnation of colonialism and racism in all their forms and manifestations, the 80-year existence of the International Court of Justice, the 75-years that have passed since the promulgation of the Genocide Convention by the UN General Assembly, the long-settled international law that outside of any international treaty colonialism, racism, and genocide are prohibited as violations of *jus cogens* norms and the collective fundamental rights of all

[417] Brett 2020; Vihinen 2023; McDonald 2019.

[418] Statute of the International Court of Justice, art. 4.

[419] Statute of the International Criminal Court, art. 36.

[420] Posner 2004; Ma 2017; Hernández 2012

nations and peoples—and given the mandatory *erga omnes* obligations[421] and the declarations of State responsibility / obligations contained in customary international law and in every international instrument regarding the rights of nations and peoples, colonialism, racism, crimes against nature, and genocide—the near complete and abject failure of the member States of the UN, of these international tribunals, and of the United Nations itself, to come to the aid of Indigenous nations and peoples under the unrelenting thumb of slow genocide is wholly immoral and inexcusable. In the shadow of Srebrenica and Rwanda, Adam Lebor characterized this systemic UN failure of "command responsibility" in the face of genocide as "complicity with evil".[422]

The failures of the ICC and the ICJ to provide or share control over the remedial process with the specific victimized groups identified in the Genocide Convention can be fairly easily corrected through simple limited amendments to their Statutes fulfilling the purpose of the Convention to protect these groups from the crime of crimes. Other international human rights tribunals, such as the Inter-American Commission on Human Rights, provide direct access to victims, including nations and groups.[423] For example, the Commission recently admitted claims by the Onondaga Nation challenging the United States' continuing colonial domination involving the loss of the Nation's territory and lands.[424] Many other collective human rights actions have been brought and resolved in those tribunals by nations, peoples, and Indigenous groups against the States of the Americas.[425] Upon referral by the Commission, non-State parties may also appear before the Inter-American Court of Human Rights in actions against states.[426] Article 14 of the Rome Statute for the ICC could be amended to allow for prosecution investigation referrals from a State *or Nation* Party, or a Genocide Convention Article 2 group. Similarly, Articles 34(1) and 35(1) of the Statute of the International Court of Justice can be amended to provide that "*States, nations, and peoples*" may be parties and appear in cases before the Court.

The collective liability of States and other collective entities can be addressed through the amendment of Article 25 of the Rome Statute by merely deleting references to "individual" liability and "natural" persons and adding a definition of "persons" as including collective entities such as States, nations, groups, organizations, and corporations. After all, the fathers of modern international law analogized from the rights and obligations of natural persons to develop the Law of Nations.[427] The law of the United States on the rights of persons, for example, recognizes corporations, including public corporations such as municipalities, as "persons."[428] The

[421] Chow 2021.

[422] Lebor 2006, x, chap. IX (quoting from Brahimi Report, ix.).

[423] *See, e.g.*, Inter-American Commission on Human Rights, Rules and Procedures, art. 23.

[424] Onondaga Nation v. United States 2023.

[425] *See generally*, Inter-American Commission on Human Rights, Cases, Merits.

[426] American Convention on Human Rights, art. 61; see, e.g., Case of the Saramaka People v. Suriname 2007, Merits Decision, Inter-American Court on Human Rights, Ser. C, No. 185, IHRL 3058 (12 August 2008); Anaya 2002.

[427] Dickinson 1917.

[428] *See, e.g.*, Citizens United v. F.E.C. 2010; Monell v. Dept. of Soc. Servs. of the City of New York 1978.

addition of collective liability would correspond to Article 27's dispensing of the official capacity defense and would extend to collective entities as persons having indirect liability of commanders and supervisors found in Article 28. Certainly, the ultimate commander or supervisor of a public official is the government itself. As for the International Court of Justice, the inclusion of "nations and peoples" within the definition of parties found in Articles 34(1) and 35(1) would extend the jurisdiction of the Court beyond States to nations and peoples under Article 36(1) of the Court's Statute. On the real and perceived bias of judges, that issue could be addressed, at least in part, simply by amending ICC Article 36(4) and ICJ Article 4 to include the victimized nations, peoples, and groups in the selection of jurists.

Regarding the non-retroactivity of the ICC[429] and ICJ, *ratione temporis*, the crimes against humanity including the crime of genocide were not created by the Genocide Convention and the other treaties of the 20th century. As previously noted, they have existed for hundreds of years as fundamental (inalienable) rights and *jus cogens* norms of customary international law not needing any positive law or treaty to be enforceable.[430] They are the "inalienable"[431] and "unenumerated"[432] rights referred to in the US Declaration of Independence and Constitution and the Universal Declaration of Human Rights. Crimes against humanity were also part of both the common and positive law (the Law of Nations) during the growth of empires, colonialism, and the birth of slow genocide. One of the founders of international law, Emer de Vattel, who was known to US Supreme Court Chief Justice John Marshall when he concocted the current colonial law of Indigenous peoples, opined on this in his seminal treatise of 1758, the Law of Nations. Vattel recited the natural law on the equality of nations:

> Nations …are naturally equal, and *inherent from nature* the same obligations and rights. Power or weakness does not in this respect produce any difference. A dwarf is as much as a man as a giant; a small republic is no less a sovereign state than the most powerful kingdom.[433]

Many of the treaties between European nations and Indigenous nations were known as "treaties of protection." They did not establish a colonial relationship or authorize colonial rule. On this, Vattel posits that a simple treaty of protection "does not at all derogate from [a nation's] sovereignty" and that if the more powerful nation "does not effectually protect the other in case of need, …it loses all the rights it had acquired … and the other …re-enters into the possession of all its rights, and recovers its independence, or its liberty."[434] He declared that no nation was entitled to impose their culture or religion upon another"[435] and that "[n]o nation therefore

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[429] Rome Statute, arts. 11 and 24.

[430] *See also*, Gaeta 2007, 642.

[431] United States Declaration of Independence, para. 2.

[432] United States Constitution, amend. IX; Black 1997.

[433] Vattel 1758, 75, *also* 281.

[434] *Ibid.*, 207.

[435] *Ibid.*, 265 (referring to the "ambitious Europeans who attacked the American nations, and subjected them to their greedy dominion, in order, as they pretended, to civilize the, and cause them to be instructed in the true religion – those usurpers, I say, grounded themselves on a pretext equally unjust and ridiculous.")

ought to commit any actions tending to impair the perfection of other nations, and that of their condition, or to impede their progress ...."[436] Vattel also recited the Law of Nations governing occupation pursuant to unjust wars:

> Whoever therefore takes up arms without a lawful cause, can absolutely have no right whatever .... He is chargeable with all the evils ...he is guilty of a crime against mankind in general. ...He who does an injury is bound to repair the damage, or to make adequate satisfaction if the evil be irreparable, and even to submit to punishment ....The nation in her aggregate capacity, and each individual particularly concerned, being convinced of the injustice of their possession, are bound to relinquish it, and to restore every thing which they have wrongfully acquired.[437]

On State responsibility, Vattel remarked: "Every nation ought, on occasion, to labour for the preservation of others, and for securing them from ruin and destruction, as far as it can do this ...."[438] Thus, there is a historical basis for the retroactive extension of the jurisdictions of the ICC and the ICJ over offenses of colonial and successor colonial States that were unlawful under the Law of Nations as it existed at the time. Since a State's benefits, its wealth, that were unlawfully obtained through acts of genocide continues and multiplies over time, equity demands that State liability also not be restricted by time, but extend back to the initiation of the crime and cover all spoils of its wrongful conduct. Providing a temporal excuse or immunity to a genocide offender is contrary to the equity and remedial purpose of the Genocide Convention and principles against impunity for serious violations of international criminal law.[439]

Even if States cannot be held accountable for genocides that occurred prior to the Genocide Convention, colonial genocide is institutionalized and occurs over time which, if initiated prior to the effective date of the instrument, flows through that date. It is a "continuing" offense which extends in substance or effect past the effective date of the Convention or relevant treaty.[440] For example, the destruction of a nation through the theft of its territory, lands, and resources by a colonial State is a continuing crime that extends until it is returned, with restitution and reparations for lost income and the destruction of the nation's economy. In the case of Mary and Carrie Dann against the United States, for example, the Inter-American Commission on Human Rights took up this issue and held that taking of their nation's (Western Shoshone) land and territory in 1872 were continuing offenses that extended past the 1951 ratification of the treaty that made the United States subject the laws of the tribunal.[441] The destruction of an ethnicity or religion by the theft of an Indigenous peoples' children through adoptions or boarding schools is transgenerational, as is the sterilization of Indigenous women and colonially imposed

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[436] *Ibid.*, 271.

[437] *Ibid.*, 586-87, 593-94, 603-07.

[438] *Ibid.*, 262. On state responsibility *see* Bastaki 2024.

[439] *See* Ahmed and Quayle 2009.

[440] Nissel 2004; St. Charles 2020.

[441] Dann v. United States 2002, paras. 2, 3, 39-42, 166-67.

poverty with the resultant loss or shortness of life. In another case before the Inter-American Commission, the tribunal held that pre-treaty contaminations by the US military of a Puerto Rican island were continuing human rights violations that provided the tribunal with present jurisdiction *ratione temporis*.[442] These and the other trappings of colonial domination and slow genocide continued, and still continue, long past the UN General Assembly's adoption of the Genocide Convention or its creation of the international courts empowered to hear such crimes of survival. As long as colonial domination exists, the claims of Indigenous peoples against their colonizers, including claims of slow genocide, remain alive.

B. ON FINDING AN EFFECTIVE AND ADEQUATE REMEDY

Hiding the Remedial Ball

The States of the world collected in the General Assembly of the United Nations have had over seventy-five years to provide real protections and effective remedies from slow genocide to colonized nations and peoples—and have wholly failed to do so. Modern international law and institutions, including the United Nations and its organs, are the creation and domain of "States" to the detriment of nations and peoples. States and their institutions are artificial, political, self-empowered, creations subject to the "positive" laws they themselves devise. In contrast, nations and peoples, particularly Indigenous nations and peoples, are organic and subject to natural law. Under Article 1 of its 1920 Convention, membership in the League of Nations was open to "[a]ny fully self-governing State, Dominion or Colony." Subsequently, while pompously declaring the "equality" of all nations and peoples, large and small,[443] the largely Western colonial powers that drafted the UN Charter expressly revised the League's membership to exclude all nations and peoples.[444] In so doing and making its membership exclusive to States, the Charter itself relegated all nations and peoples to an *unequal* status under the Charter and under the international laws and bodies its "General Assembly" of States would go on to promulgate and create, including the ICC and the ICJ. It has rot at its core. This is compounded by the domination and control colonial and genocidal States have exercised over the UN and its laws since its founding. Genocide scholar Adam Jones noted the UN's "abysmal record in confronting and forestalling genocide" and concluded that, because of concessions made to placate the United States, the International Criminal Court might become "just another toothless legal body."[445] Daniel Goldhagen observed that vetoes by the Soviet Union(now Russia), China, and the United States have "eviscerated" the Genocide Convention so it could not stop their own and their client States' elimination practices.[446] The ineffectiveness of the United Nations was a "foregone conclusion".[447]

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[442] Torres v. United States 2022, paras. 2-21, 46.

[443] UN Charter, Preamble para.1, art. I(2).

[444] UN Charter, arts. 3 and 4 (UN membership limited to "States").

[445] Jones 2024, 394, 375.

[446] Goldhagen 2009, 536.

[447] *Ibid.*

> For virtually all its history, the UN membership has been overwhelmingly dictatorships. As recently as 1987, 60 percent of the member countries were dictatorships .... Dictatorships dominated the General Assembly. ...Throughout its history, the United Nations culture and bureaucracy has been greatly comprised of representatives of regimes wanting most of all a free hand to maintain their illegitimate rule .... [448]

After analyzing the political nature of the State and the occurrences of genocides since 1900, Rudolph Rummel contended that the more authoritarian a State, the more likely it is to commit genocide.[449] "It is empirical that true Power kills, absolute Power kills absolutely."[450] In response to Rummel, sociologist Michael Mann noted that there is a "dark side" to democracy as well.[451] Mann posits that democracies are based on an ideology of equality which moves towards the dominant ethnic group in the creation of mono-ethnic populations, an evitable ethnic cleansing through assimilation.[452] The States that dominate the UN cannot be expected to turn upon themselves in the eradication of colonial rule and genocide.

This internal corruption is repeated in the laws emanating from the UN that are meant to abolish colonialism and State racism "wherever found." The primary anti-colonial declaration is the UN General Assembly's 1960 Resolution 1514 which condemns colonialism in "all its forms and manifestations" as "a denial of fundamental human rights" and contrary to the UN Charter. The Resolution calls for the end of all "repressive measures of all kinds directed against dependent peoples," for the "respect" of the rights of dependent peoples "to complete independence, and the integrity of their national territory," and for immediate transfer of "all powers to the peoples" of colonized territories "without any conditions or reservation."[453]

To this grand resolution, the colonial powers inserted a qualifier that provides: "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."[454] The provision purportedly prohibiting decolonization when it would "dismember or impair" the territorial integrity of a colonial State was repeated in subsequent UN decolonization resolutions.[455] This became known as the "Blue Water" or "Salt Water" thesis concocted by colonial States as a geographical excuse from their *erga omnes*, statutory, and legal decolonization obligations as to any nation or peoples found within their claimed colonial boundaries.[456] Even in the seminal 2007 UN Declaration on the Rights of Indigenous Peoples after proclaiming that "indigenous peoples are

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[448] *Ibid.*, 536-537.

[449] Rummel 1998.

[450] *Ibid.*

[451] Mann 2005.

[452] *Ibid.*

[453] UNGA Res. 1514, Preamble, Declarations 1, 4, 5.

[454] *Ibid.*, Declaration 6.

[455] *See* UNGA Res. 2625, 124.

[456] Robbins 2015; Lightfoot 2020; Wolfe 2008, 122.

equal to all other peoples," the colonial powers insisted again on inserting an out in Article 46 to protect and continue their domination over Indigenous nations and peoples: "Nothing in this Declaration may be interpreted 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." This self-serving contention has no basis in law, history, or fact. As Professor Moses remarked: "Nothing I have said about settler colonialism requires there to be a spatial hiatus (or 'blue water') between metropole and colony."[457]

This colonial thesis directly contradicts the UN Charter's and the Law of Nations' fundamental principle of the equality of nations and peoples. It ingenuously distorts the fact that *it is the colonial powers and their successors, by definition, who are the invaders and violators of the territorial integrity of the pre-existing nations and peoples*, not the other way around. It is self-serving political doublespeak. Yet, despite that, the political reality is that the colonial States and their successors continue to control the process and the institutions of international law and perpetuate their colonial rule over and exploitation of Indigenous nations and peoples.

2. Inventing an Effective Remedy for the Crime of Crimes

Following the Holocaust of the Second World War and the deficiencies in the law Lemkin identified during the Nuremberg trials, he out of necessity invented the "new" international crime of genocide. It has yet to develop into the global remedy Lemkin intended. Genocides continue largely unabated and states while in control of the rules and the process routinely avoid punishment and accountability. Many States, particularly the ones with colonial character or histories, when they sign on to the Genocide Convention do so with "reservations" that effectively render their acceptance at least in part a nullity.[458] The UN as a force against genocide is an institutional and systemic failure.[459] The high-level panel of experts convened by the UN concluded on the UN's response to the genocides in Srebrenica and Rwanda: The impartiality of the UN in the face of genocide "can in the best case result in ineffectiveness and in the worst may amount to complicity with evil."[460] For Indigenous nations and peoples, colonial domination and slow genocide in the plain view of the UN and the world is a daily and intergenerational reality.

An effective remedy to colonialism and genocide cannot be expected from an institution that is controlled by or is complicit with the offenders. Lemkin invented the crime but failed to incorporate an appropriate and effective remedy. The denial of an effective remedy is itself a human rights violation.[461] *Ubi ius ibi remedium*—"where there is a right, there is a remedy" is a basic

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[457] Wolfe 2008, 122.

[458] *See* Declarations and Reservations to the Genocide Convention; Schabas 2000, 521-538; ICJ Advisory Opinion 1951.

[459] Goldhagen 2009, 534-538.

[460] Brahimi Report, ix. See also Goldhagen 2009, 535 (do-nothing practice of the UN).

[461] *See e.g.*, Dann v. United States 2002, paras. 67-75, 173; Onondaga Nation v. United States 2023, paras. 46-49.

principle of international law.[462] Understanding this, the Center for World Indigenous Studies (CWIS), a leading Indigenous peoples' think tank led by the late Cree / Oneida scholar Rudolph C. Rÿser, Ph.D., in collaboration with the Ezidi Nation and in consultation with other Fourth World Nations and several States' governments, facilitated the development of an independent criminal tribunal controlled by nations rather than States, the Nations International Criminal Tribunal (NICT).[463] According to Dr. Rÿser: "The Nations International Criminal Tribunal is founded on the idea that indigenous peoples should take responsibility for legally and politically holding accountable States, other entities created by States and individuals for crimes of genocide, crimes against humanity, aggression, and all the other gravest crimes committed against indigenous nations and communities, including the crimes of culturecide and ecocide."[464]

The NICT Preamble recognized that:

> the international agreements and treaties between States' governments and other legal instruments adopted to protect against and punish crimes carried out against peoples have failed to provide the Nations of the world with due process, redress, or remedy for criminal acts either by denying Nations' access to justice, denial of due process by granting immunity to officials and citizens of States or by politicizing judicial systems ...,[465]

and affirmed that:

> it is the duty of all Nations and States to exercise lawful jurisdiction over States or Nations, persons, business organizations, government and non-government organizations, intergovernmental organizations, armed groups, and other entities responsible for internationally recognized crimes ....[466]

The NICT was established as a tribunal fully independent and complementary to the existing international and domestic tribunals that hear crimes of genocide and other crimes against humanity.[467] There is precedence for this in that the International Criminal Court was established by treaty as an independent tribunal separate from the United Nations.[468] In the aftermath of genocides and other atrocity crimes of the 20th century, other *ad hoc* or temporary international criminal tribunals have been created by the UN to investigate and prosecute the perpetrators of genocide and other crimes against humanity. In 1993, following the Balkan War, the UN Security Council established the International Criminal Tribunal for the former Yugoslavia,[469] and, the next year after the genocide in Rwanda, established the International Criminal Tribunal

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[462] *See* Greve 2017; also, Chorzów Factory, 20 ("[I]t is a principle of international law, and even a general conception of law, that any breach of an engagement involves and obligation to make reparation.").

[463] Rÿser 2024; Rÿser 2023.

[464] Rÿser 2024.

[465] NICT, Preamble, para. 3.

[466] *Ibid.*, para. 9.

[467] *Ibid.*, art. 4.

[468] Rome Statute, generally.

[469] Statute of the International Criminal Tribunal for the Former Yugoslavia, 1 (history of the ICTY).

for Rwanda.[470] In 2010, the UN established a stand-alone body, the International Residual Mechanism for Criminal Tribunals,[471] to carry out the functions of the Yugoslavia and Rwanda Tribunals and any future such international criminal tribunals. The UN Security Council also established two criminal tribunals by agreement with Sierra Leone, the Special Court for Sierra Leone (now the Residual Special Court for Sierra Leone) in 2002 following the Sierra Leone Civil War[472] and, by agreement with Cambodia, the Extraordinary Chambers in the Courts of Cambodia (ECCC) in 2003 following the Cambodian genocide as a hybrid tribunal.[473] However, these criminal tribunals were structured after the ICC and, like the ICC, were limited to the prosecution of individual offenders. An independent internationalized war crimes court has also been proposed for the conflict between Ukraine and Russia.[474]

Particularly relevant to this discussion are the initial prosecutions of the ECCC for the genocide of an Indigenous group in Cambodia, the Cham, who were systemically killed (some 36% died), removed from their territory, and prohibited from practicing their culture or Islamic religion under the policy of the Khmer Rouge government.[475] Eight persons were charged and three convicted by the ECCC of genocide and crimes against humanity.[476] The "hybrid" structure of the ECCC Tribunal is highly significant as a method that could be used to remedy some of the problems inherent in the ICC and other international tribunals hearing matters involving Indigenous nations and peoples. Article 3 of the ECCC Agreement provided for the Trial Chambers to be composed of three Cambodian judges and two international judges, and the appellate Chamber to be composed of four Cambodian judges and three international judges.[477] The investigating judges and the prosecutors were composed of one Cambodian and one international person under the Agreement.[478]

The crimes within the jurisdiction of the NICT are set forth in Article 8 of the Treaty and include the crimes of colonization, aggression, genocide, against humanity, war, against nature, terrorism, gender-based violence and femicide, forced removal of children, apartheid, and military occupation.[479] The Treaty provides that there is no statute of limitations and that jurisdiction *ratione temporis* is to be determined according to the customary international law of the parties.[480] The NICT also provides for the application of the customary laws of nations and peoples in addition to State international law.[481] On the selection of

[470] *See* Greve 2017; also, Chorzów Factory, 20 ("[I]t is a principle of international law, and even a general conception of law, that any breach of an engagement involves and obligation to make reparation.").

[471] UNGA Resolution 1966.

[472] Agreement Between the UN and Sierra Leone 2002.

[473] Agreement Between the UN and Cambodia 2003.

[474] Case Western Reserve Univ. 2023. *Also*, Glusman 2024.

[475] ECCC, Closing Order, paras. 745-770, 1336-1342.

[476] ECCC, cases; ECCC, Closing Order.

[477] Agreement Between the UN and Cambodia 2003, art. 3(2).

[478] *Ibid.*, arts. 5 and 6.

[479] NICT, sec. 2.

[480] *Ibid.*, arts. 14 and 15, 47. Jurisdiction is not set by the date of a party's ratification or accession to the Treaty but by whether or not the act was recognized internationally as a crime at the time it was committed.

[481] *Ibid.*, art. 25.

members and tribunal judges, the Treaty includes signatory States and nations as equals in this process thereby minimizing Western judicial bias.[482] The NICT is structured to engage, honor, and address Indigenous realities.[483] Finally, in contrast to the ICC and ICJ, the Treaty provides for appropriate open-ended relief in addition to penal remedies. Under Article 69, the goal of the sentence is full "reparations" to victims "in accordance with the principles set out in this Charter and relevant international legal instruments." For example, particularly regarding a State, corporate, or organizational offender, the sentence could include any of those restorative justice remedies set forth in the UN Guidelines on Reparations.[484]

"Restorative Justice" which seeks harmony in response to social conflict and injury, is at the core of Indigenous conflict resolution. This contrasts with the punitive nature of Christian retributive justice.[485] In the international law of restorative justice:

> The essential principle ... is that reparation must, as far as possible, wipe out all consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed. [It must consist of r] estitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear."[486]

This full-reparations rule has been followed by the ICJ in issuing relief against a State in several cases. It held that Uganda had an obligation to make full reparations to the Democratic Republic of the Congo (DRC) after it had invaded and occupied part of the DRC. [487] In a dispute between Hungary and Slovakia over the Gabčíkovo-Nagymaros Project, the ICJ ruled that both nations were at fault and ordered compensation by each.[488]

In December 2005, the United Nations General Assembly adopted a resolution establishing "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law."[489] The UN Guidelines set forth a structure and a process for providing a remedy for victims of ethnic cleansing and genocide as well as other gross human rights violations that could apply here. Although directed at immediate victims,[490] it does provide for "collective" remedies. To the extent that the violations are continuing through generations, it may address the slow genocide of Indigenous peoples. Section IX sets forth the scope and requirements for reparations. It requires "proportionality" to the gravity of the violations

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[482] *Ibid.*, sec. 3.

[483] Regarding Indigenous realities, *see* Woolford 2011, 74-75.

[484] UN Basic Principles and Guidelines, *generally*.

[485] *See e.g.*, Yazzie 1994; Austin 2009.

[486] Chorzów Factory, 47; Vattel 1758, Bk II, secs.51, 141, 338; Bk III, chap. XIV (the right of postliminium). *See also*, ILO 169, art. 16.

[487] Dem. Rep. Congo v. Uganda 2005.

[488] Gabčikovo-Nagymaros Project.

[489] *See* UN Basic Principles and Guidelines.

[490] *Id.* at sec. V.

and harm suffered, the establishment of programs for reparation, restitution whenever possible (including the right of return and the return of property wrongfully taken), and compensation for physical or mental harm and "moral damage," among other actions.[491] It requires "full and public disclosure of the truth," an official declaration restoring the dignity, the reputation, and the rights of the victims as well as persons closely connected with the victims, "a public apology, including acknowledgement of the facts and acceptance of responsibility," commemorations and tributes to the victims, and inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.[492] The nature and scope of appropriate reparations should be determined by the victims and not by the violator of rights.[493]

Many genocide scholars have opined on how to go about ending genocide. Most seem to rely on continuing to hold individuals criminally accountable[494] even though this has proven to be wholly ineffective in stemming future genocides. Prosecuting individuals for genocide has no more effect on future genocides than the death penalty has on dissuading individuals from committing homicide.[495] Daniel Goldhagan argued for the need of a "powerful anti-eliminationist discourse" among not only political entities but also the media and ordinary citizens, a consciousness raising that would fully inform and mobilize a quick response to the early stages of genocide.[496] Adam Jones and others have suggested looking out for "early warning signs" and then engaging in humanitarian interventions to stop genocide before it begins.[497] Israel Charny proposed the establishment of a standing "International Peace Army" as an arm of the UN ready to quickly respond to eruptions of genocide anywhere in the world.[498] Professor Schabas proposes reliance upon the various organs and institutions of the United Nations despite their "abysmal record" to date.[499]

The previous discussion suggests that, at least as experienced by nations and peoples and as related by both Lemkin and Wolfe, genocide is, at its roots, a collective rather than an individual crime. The victims, by definition, have a collective character as "groups," and the perpetrators rarely, if ever, act or even can act alone. Mark Levene has contended that "genocide, instead of being treated as a series of unrelated aberrations ...needs to be viewed as one critical by-product ...of what is actually a very seriously dysfunctional modern international system."[500] Tony Barta follows up from Sartre's reference to a State's "living out a relationship of genocide" in recognizing that "[s]uch a relationship is systemic, fundamental to the type of society rather than the type of state, and

[491] *See* UN Basic Principles and Guidelines, sec. IX, paras. 15, 16, 19, 20.

[492] Id. at para. 22. For a more in-depth discussion *see* Lenzerini 2009.

[493] *See* Lenzerini, ibid., 15; also, Grey 2017.

[494] Ratner 2001; Stone 2010.

[495] Shaw 2007, 161.

[496] Goldhagen 2009, 517-532.

[497] Jones 2024, 389-398.

[498] Charny 1999.

[499] Schabas 2000, 453-479.

[500] Levene 2004, 153, 162.

has historical ramifications extending far beyond any political regime."[501] He points to the colonial nature of such relationships which put the land at the center[502] and argues that the analytical focus should be on "genocidal societies," not States.[503] Genocide too often becomes the inevitable consequence of a colonial relationship. As Dirk Moses observed, "the two phenomena are profoundly connected."[504] "In that sense the relations of genocide are alive, and every negotiation will continue to be witnessed by the Aboriginal dead."[505]

As Vattel opined on colonial occupation in the Law of Nations, "[i]f the people do not voluntarily submit, the state of war still subsists."[506] In other words, resistant colonized nations and peoples remain in a state of perpetual war against the colonizer. As long as colonial relationships exist in multi-ethnic States, genocide—including slow genocide—of occupied nations and peoples remains an inherent and constant risk to their survival. The prevention of genocide in multi-national and multi-ethnic States then requires an approach that ends the colonial relationship, perhaps in the manner set forth in the UN declarations on decolonization and restorative justice. UN General Assembly Resolution 1541(XV), for example, declares that liberation of colonized peoples can occur through (a) emergence as a sovereign independent State; (b) *free* association with an independent State; or (c) integration with an independent State.[507] This requires that occupied nations and peoples "freely determine their political status and freely pursue their economic, social and cultural development."[508] For example, beginning in 1960, numerous Indigenous nations held as "trust territories" by Western empires were liberated as independent nation-states.[509] In 2009, Bolivia, itself a successor to part of the Spanish Empire, transitioned from an entrenched dictatorship to a multinational democracy which at least in theory shares power in free association with seven Indigenous nations as a "plurinational" State.[510] Through treaty negotiations with the Queen of England, in 1999 the Nunavut peoples freely associated with Canada as a largely autonomous territory and nation.[511] In 2015, Indigenous peoples in the Peruvian Amazon united to create the Wampís Nation as an autonomous territory and nation in free association with the State of Peru.[512] Michael Mann has suggested that in some cases a solution may be found in the *voluntary* relocation of ethnic populations to avoid future conflict.[513]

However, this resolution of the political status of some nations represents only a small fraction of the 6,000 to 9,000 nations under colonial rule

[501] Barta 2000, 239.

[502] *Ibid.*, 247-248.

[503] *Ibid.*, 240.

[504] Moses 2007, viii.

[505] *Ibid.*, 249.

[506] Vattel, Bk III, sec. 201.

[507] UNGA Res 1541, Principle VI (emphasis supplied). *See also*, Vattel, Bk III, secs. 213-214.

[508] ICCPR, art. 1(1).

[509] See List of former Trust Territories.

[510] Constitution of Bolivia, art. 1.

[511] Nunavut Agreement 1993.

[512] Wampís Nation.

[513] Mann 2005, 525. See also, Ignatieff 1993.

and occupation and faced with slow genocide. Solutions to past or current genocides, whether through the ICJ, the NICT, or another tribunal, must include efforts to resolve the underlying power dynamics between the victimized group and the offending State or other collective entity. Genocide is the method, the means to an imperial or colonial end which is the taking of the wealth of another nation or peoples. State responsibility without State liability regarding imperial or colonial genocide is meaningless because it is a collective crime or offense. It requires a collective remedy, an offending State's obligation to fully repair or compensate for any and all injuries it caused to a victimized nation or peoples unrestricted by time. This means that the remedy is not merely the termination of imperial or colonial rule, but the full restoration of a nation's and peoples' future contained in its identity and domestic and international persona, truth and history, right to self-determination (status, sovereignty, and governance), domain and territorial integrity, lands and resources, culture and language, customary law and institutions, economy and wealth, and all that was destroyed or taken from them by the offending State. This will only occur once the criminal, civil, and moral liability of States for genocide, imperialism, colonialism, racism, and other crimes against humanity (in all their forms and manifestations) are fully, effectively, and adequately secured and enforced by international tribunals and institutions available to all nations and peoples; *and*, once the recognition and equality of all nations and peoples, large and small, equal to that of "States," and Indigenous realities are fully embraced in international tribunals and institutions as settled matters of international law.[514] Until then, colonial genocide will not end and will remain a crime without a remedy.[515]

[514] See Lam 1992.

[515] Woolford 2011, 75 ("We expect [colonized Indigenous peoples] feel that the genocide has not yet ended and will not end until they decolonize their communities and reclaim self-determination."); Watson 2015, 88 (the "myth of postcolonialism"). Also, Tuck 2012 (decolonization as not and "end" but an "elsewhere.")

REFERENCES

Books:

Adams, David Wallace, *Education for Extinction: American Indians and the Boarding School Experience, 1875-1928* (Univ. Press of Kansas, 2020)

Akers, Donna L., *Living in the Land of Death: The Choctaw Nation, 1830-1860* (Mich. St. Univ. Press, 2004)

Anaya, S. James, *Indigenous Peoples: International Law*, (Oxford U. Press, 2004)

Anderson, Gary Clayton, *Ethnic Cleansing and the Indian: The Crime That Should Haunt America* (Univ. of Okla. Press, 2014)

Annett, Kevin D., *Hidden From History: The Canadian Holocaust: The Untold Story of the Genocide of Aboriginal Peoples by Church and State in Canada* (Truth Commission Into Genocide, 2001)

Arendt, Hannah, *The Origins of Totalitarianism* (Harcourt, Brace, Jovanovich, 1994) (originally published in 1951)

Austin, Raymond, *Navajo Courts and Navajo Common Law* (Univ. of Minn. Press, 2009)

Ayma, Evo Morales, *The Rights of Nature: The Case for a Universal Declaration of the Rights of Mother Earth* (Council of Canadians, 2011)

Biko, Steven, *Black Consciousness in South Africa* (Random House, 1979)

Black, Charles L. Jr., *A New Birth of Freedom: Human Rights, Named & Unnamed* (Putnam, 1997)

Black Hawk, *Life of Ma-Ka-Tai-Me-She-Kaik or Black Hawk: With an Account of the Late War* (1833)

Brett, Peter and Line Engbo Gissel, *Africa and the Backlash Against International Courts* (Bloomsbury Pub., 2020)

Brook, Timothy, Jerome Bourgon, Gregory Blue, *Death By a Thousand Cuts* (Harvard Univ. Press, 2008)

Brooks, Roy L. (ed.), *When Sorry Isn't Enough: The Controversy over Apologies and Reparations for Human Injustice* (NYU Press, 1999)

Brown, Dee, *Bury My Heart at Wounded Knee* (Holt, Reinhart & Winston, 1970)

Burke, Roland, *Decolonization and the Evolution of International Human Rights*, (U. of Penn. Press, 2010)

Casas, Bartolomé de las, 1552 (Nigel Griffin, trans.), *A Short Account of the Destruction of the Indies* (Penguin Classics, 1999)

Castillo, Elias, *A Cross of Thorns: The Enslavement of California's Indians by the Spanish Missions* (Craven Street Books, 2015)

Césair, Aimé, *Discourse on Colonialism* (Monthly Review Press, 1950)

Churchill, Ward, *Struggle for the Land: Native North American Resistance to Genocide, Ecocide and Colonization* (City Lights Books, 2002)

Coast, Kerry, *The Colonial Present: The Rule of Ignorance and the Role of Law in British Columbia* (Clarity Press, 2011)

Cohen, Stanley, *States of Denial, Knowing About Atrocities and Suffering* (Polity Press, 2001)

William A. Cook (ed.), *The Plight of the Palestinians: A Long History of Destruction* (Palgrave Macmillan, 2010)

Costo, Rupert & Jeannette Henry Costo, eds, *The Missions of California: A Legacy of Genocide* (Univ. of Texas, 1987)

Cowles, C.S., *Show Them No Mercy: 4 Views on God and Canaanite Genocide* (Zondervan, 2003)

Crawford, James, *The Creation of States in International Law, 2nd Ed.* (Oxford U. Press / 2007)

Denetdale, Jennifer, *The Long Walk: The Force Navajo Exile* (Infobase Pub., 2009)

Derderian, Shahen, *Death March: An Armenian Survivor's Memoir* (Ishkhan Jinbashian, trans.) (H&K Manjikian Pubs, 2008)

Dermko, G.J., W.B. Wood, *Reordering the world: Geopolitical perspectives on the twenty-first century* (Routledge, 1994)

Drinnon, Richard, *Facing West: The Metaphysics of Indian-Hating and Empire Building* (Univ. of Okla. Press, 1980)

Dubow, Saul, *Apartheid, 1948-1994* (Oxford U. Press, 2014)

Echo-Hawk, Walter R., *In the Courts of the Conqueror: The 10 Worst Indian Law Cases Ever Decided* (Fulcrum Pub., 2010)

Ehle, John, *Trail of Tears: The Rise and Fall of the Cherokee Nation* (Knopf Doubleday Pub., 2011)

Executive Board of Authors and Editors, *Cohen's Handbook of Federal Indian Law* (LexisNexis 2012)

Fanon, Franz, *A Dying Colonialism* (1959) (Grove Press, 1965 trans.)

Flood, Josephine, *The Original Australians: Story of the Aboriginal People* (Allen & Unwin, 2019)

Galeano, Eduardo, *Genesis* (W.W. Norton & Co., 1998)

Galeano, Eduardo, *Open Veins of Latin of America: Five Centuries of the Pillage of a Continent* (Monthly Review Press, 1997)

Gibney, Mark, Rhoda E. Howard-Hassman, Jean-Marc Coicaud, and Niklaus Steiner (eds.), *The Age of Apology: Facing Up to the Past* (Univ. of Penn. Press, 2008)

Glenn, H. Patrick, *Legal Traditions of the World* (2nd ed.), (Oxford U. Press, 2004)

Goldhagen, Daniel Jonah, *Worse Than War: Genocide Eliminationism and the Ongoing Assault on Humanity* (Public Affairs, 2009)

Green, Penny, Thomas MacManus, and Alicia de la Cour Venning, *Countdown to Annihilation: Genocide in Myanmar* (Int'l St. Crime Inst., 2015)

Guillaumin, Collette, *Racism, Sexism, Power and Ideology* (Routledge, 1995)

Hall, Thomas D. and James V. Fenelon, *Indigenous Peoples and Globalization: Resistance and Revitalization* (Paradigm Pubs., 2009)

Hannaford, Ivan, *The History of an Idea in the West* (Johns Hopkins Univ. Press, 1996)

Hinton, Alexander Laban, *Annihilating Difference: The Anthropology of Genocide* (Univ. of Calif. Press, 2002)

Horowitz, Irving Louis, *Genocide, State Power and Mass Murder* (Transaction Books, 1976)

Hoxie, Federick E., *A Final Promise: The Campaign to Assimilate the Indians, 1880–1920* (Nebraska Univ. Press, 1989)

Hughes, Robert, *The Fatal Shore* (Random House, 1986)

Ignatieff, Michael, *Blood and Belonging: Journeys into the New Nationalism* (The Noonday Press, 1993)

Jacobs, Margaret C., *White Mother to a Dark Race: Settler Colonialism, Maternalism, and the Removal of Indigenous Children in the American West and Australia, 1880-1940* (Univ. of Neb. Press, 2009)

James, Annette M. (ed.), *The State of Native America: Genocide, Colonization, and Resistance* (South End Press, 1992)

Jones, Adam, *Genocide: A Comprehensive Introduction* (4th Ed.) (Routledge, 2024)

Josephy, Jr., Alvin M. (ed.), *Red Power: The American Indians' Fight for Freedom* (McGraw-Hill, 1971);

Kakel III, Carroll P., *The Holocaust as Colonial Genocide: Hitler's 'Indian Wars' in the 'Wild East'* (Palgrave, 2013)

Keal, Paul, *European Conquest and the Rights of Indigenous Peoples: The Moral Backwardness of International Society* (Cambridge Univ. Press, 2009)

Kévorkian, Raymond, *The Armenian Genocide: A Complete History* (Bloomsbury Pub., 2011)

Kahalidi, Rashid, *The Hundred Years' War on Palestine: A History of Settler Colonialism and Resistance: 1917-2017* (Henry Holt & Co., 2020)

Kiernan, Ben, *Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfu* (Yale Univ. Press, 2007)

Kimerling, Judith, *Amazon Crude* (Nat. Res. Defense Council, 1991)

LaDuke, Winona, *All Our Relations: Native Struggles for Land and Life* (South End Press, 1999)

LaDuke, Winona, *Recovering the Sacred: The Power of Naming and Claiming* (Haymarket Books, 2005)

Lauren, Paul Gorden, *The Evolution of Human Rights: Visions Seen* (2nd Ed.) (University of Penn. Press, 2003)

Lebor, Adam, *'Complicity with Evil': The United Nations in the Age of Modern Genocide* (Yale Univ. Press, 2006)

Lemkin, Raphäel, *Axis Rule in Occupied Europe* (Carnegie, 1944)

Lentin, Ronit, "Palestinian Lives Matter: Racialising Israeli Settler-Colonialism," J. of Holy Land and Palestine Studies, 19(2), 133-149 (2020)

Lenzerini, Federico, *Reparations for Indigenous Peoples: International & Comparative Perspectives* (Oxford Univ. Press, 2008)

Limerick, Patricia Nelson, *The Legacy of Conquest: The Unbroken Past of the American West* (Norton, 1987)

Lindqvist, Sven, *The Dead Do Not Die: Exterminate the Brutes and Terra Nullius* (The New Press, 2014)

Locke, John, *Second Treatise of Government* (1690), https://english.hku.hk/staff/ kjohnson/PDF/ LockeJohnSECONDTREATISE1690.pdf

López, Ian Haney, *White by Law: The Legal Construction of Race* (NYU Press, 2006)

Lorey, David E. and William H. Beezley (eds.), *Genocide, Collective Violence, and Popular Memory: The Politics of Remembrance in the Twentieth Century* (SR Books, 2002)

Madley, Benjamin, *An American Genocide* (Yale Univ. Press, 2016)

Mander, Jerry and Victoria Tauli-Corpuz (eds.), *Paradigm Wars: Indigenous Peoples' Resistance to Globalization* (Sierra Club Books, 2006)

Mann, Michael, *The Dark Side of Democracy: Explaining Ethnic Cleansing* (Cambridge Univ. Press, 2005)

Mannix, Daniel P., Malcolm Cowley, *Black Cargoes: A History of the Atlantic Slave Trade* (Viking Press, 1962)

Martin, James J., *The Man Who Invented 'Genocide'* (Inst. For Historical Rev., 1984)

Meyer, Lois and Benjamín Maldonado Alvarado (eds.), *New World of Indigenous Resistance* (City Lights Books, 2010)

Minton, Stephen James (ed.), *Residential Schools and Indigenous Peoples: From Genocide via Education to the Possibilities for Processes of Truth, Restitution, Reconciliation, and Reclamation* (Routledge, 2020)

Moses, A. Dirk and Dan Stone (eds.), *Colonialism and Genocide* (Routledge, 2007)

Moses, A. Dirk (ed.), *Empire, Colony Genocide: Conquest, Occupation, and Subaltern Resistance in World History* (Berghahn Books, 2008)

Na'Allah, Abdul Rasheed (ed.), *Ogoni's Agonies: Ken Saro-Wiwa and the Crisis in Nigeria* (African World Press, 1998)

Newcomb, Steven T., *Pagans in the Promised Land: Decoding the Doctrine of Christian Discovery* (Fulcrum Pub., 2008)

Nielson, Parker M., *The Dispossessed: Cultural Genocide of the Mixed-Blood Utes* (Univ. of Okla. Press, 1982)

Niezen, Ronald, *The Origins of Indigenism: Human Rights and the Politics of Identity* (Univ. of Cal. Press, 2003)

Nixon, Guy, *Slavery in the West: The Untold Story of the Slavery of Native Americans in the West* (Xlibris, 2011)

Nunpa, Chris, *The Great Evil: Christianity, the Bible, and the Native American Genocide* (Sharp Press, 2020)

Olusoga, David and Casper W. Erichsen, *The Kaiser's Holocaust: Germany's Forgotten Genocide* (Bloomsbury House, 2010)

Orwell, George, *1984* (1944 (Planet eBook))

Ostler, Jeffrey, *The Lakotas and the Black Hills: The Struggle for Sacred Ground* (Viking, 2010)

Otis, D.S., *The Dawes Act and the Allotment of Indian Lands* (Univ. of Okla. Press, 1973)

Palmatter, Pamela D., *Beyond Blood: Rethinking Indigenous Identity* (Purich Publ., 2011)

Paris, Edmond, *Convert or Die! Catholic Persecution in Yugoslavia During World War II* (Chick Pub., 1990)

Patel, Leigh, *No Study Without Struggle: Confronting Settler Colonialism in Higher Education* (Beacon Press, 2021)

Paul, Joel Richard, *Without Precedent: Chief Justice John Marshall and Hist Times* (Riverhead Books, 2018)

Piatt, Bill & Moses Gonzales, *Slavery in the Southwest: Genizaro Identity, Dignity and the Law* (Carolina Academic Press, 2019)

Power, Samantha, *"A Problem from Hell": America and the Age of Genocide* (HarperCollins Pub., 2003)

Purdue, Theda and Michael D. Green, *The Cherokee Nation and the Trail of Tears* (Viking, 2007)

Rafter, Nicole Hahn, *The Crime of All Crimes: Toward a Criminology of Genocide* (NYU Press, 2016)

Ratner, Steven R. and Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law* (Oxford Univ. Press, 2001)

Rawls, John, *The Law of Peoples* (Harvard Univ. Press, 1999).

Reséndez, Andrés, *The Other Slavery: The Uncovered Story of Indian Enslavement in America* (Mariner Books, 2016)

Roberts, David A., *A Newer World: Kit Carson, John C. Fremont, and the Claiming of the American West* (Simon & Schuster, 2001)

Robins, Nicholas A. and Adam Jones (eds.), *Genocide by the Oppressed: Subaltern Genocide in Theory and Practice* (Indiana Univ. Press, 2009)

Rudko, Frances Howell, *John Marshall and International Law* (Greenwood Press, 1991)

Rummel, Rudolph, *Statistics of Democide: Genocide and Mass Murder since 1900* (LIT Verlag Münster, 1998)

Rÿser, Rudolph C., *Indigenous Nations and Modern States: The Political Emergence of Nations Challenging State Power* (Routledge, 2012)

Sarita, Joe, *"I am a man": Chief Standing Bear's journey for justice* (St. Martin's Press, 2009)

Sartre, Jean-Paul, *On Genocide* (Beacon Press, 1968)

Schabas, W.A., *Genocide in International Law* (Cambridge Univ. Press, 2000)

Schroder, Susan (ed.), *Native Resistance and the Pax Colonial in New Spain* (Univ. of Neb. Press, 1998)

Scott, James C., *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (Yale Univ. Press, 2020)

Shaw, Martin, *What Is Genocide?* (Polity Press, 2007)

Short, Damien, *Redefining Genocide* (Zed Books, 2016)

Smith, Andrea, *Conquest, Sexual Violence and American Indian Genocide* (South End Press, 2005)

Stannard, David E., *American Holocaust: The Conquest of the New World* (Oxford Univ. Press, 1992)

Stein, Edith, *Der Aufbau der menschlichen Person: Vorlesung zur philosophischen Anthropologie* (Freiburg: Herder, 2004)

Stein, Stan, *The New Indians* (Harper & Row, 1968)

Stone, Dan (ed.), *The Historiography of Genocide* (Palgrave Macmillan, 2010)

Strecker, Amy and Joseph Powderly, *Heritage Destruction, Human Rights and International Law* (Brill, 2023)

Tatz, Colin, *With Intent to Destroy: Reflecting on Genocide* (Verso, 2003)

Taylor, Christopher, *The Black Carib Wars: Freedom, Survival, and the Making of the Garifuna* (Signal Books, 2016)

Theobald, Brianna, *Reproduction on the Reservation: Pregnancy, Childbirth, and Colonialism in the Long Twentieth Century* (UNC Press, 2019)

Thornton, Russell, *American Indian Holocaust and Survival: A Population History Since 1492* (Univ. of Okla. Press, 1987)

Tinker, George E., *Missionary Conquest: The Gospel and Native American Cultural Genocide* (Fortress Pub., 1993)

Tocqueville, Alexis de, *Democracy in America* (1835)

Totten, Samuel and Robert K. Hitchcock (eds.), *Genocide of Indigenous Peoples / Genocide: A Critical Bibliographic Review, Vol. 8* (Transaction Pubs, 2011)

Unrau, William E., *Mixed-Bloods and Tribal Dissolution* (Univ. of Kansas, 1989)

Vattel, Emmerich de, *The Law of Nations, or The Principles of Natural Law* (1758), https://lonang.com/wp-content/download/Vattel-LawOfNations.pdf

Waller, James, *Becoming Evil: How Ordinary People Commit Genocide and Mass Killing* (Oxford Univ. Press, 2002)

Watson, Irene, *Aboriginal Peoples, Colonialism and International Law* (Routledge, 2015)

Weitz, Eric D., *A Century of Genocide: Utopias of Race and Nation* (Princeton Univ. Press, 2003)

Whitt, Laurelyn and Alan W. Clarke, *North American Genocides: Indigenous Nations, Settler Colonialism, and International Law* (Cambridge Univ. Press, 2019)

Williams, Brian Glyn, *The Crimean Tartars: From Soviet Genocide to Putin's Conquest* (Oxford Univ. Press, 2015)

Willinsky, John, *Learning to Divide the World: Education at Empire's End* (Univ. of Minn. Press, 1998)

Wishart, David J., *An Unspeakable Sadness: The Dispossession of the Nebraska Indians* (Univ. of Neb. Press, 1994)

Woolford, Andrew, Jeff Benvenuto, and Alexander Laban Hinton (eds.), *Colonial Genocide in Indigenous North America* (Duke Univ. Press, 2014)

Zarandona, José Antonio González, Emma Cunliffe, Melathi Saldin (eds.), *The Routledge Handbook of Heritage Destruction* (Routledge, 2023)

Articles and Reports:

Abouzeid, Rania, "When the Weapons Fall Silent: Reconciliation in Sinjar After ISIS," European Council on Foreign Relations, Policy Brief (October 2018), https://ecfr.eu/wp-content/uploads/when_the_weapons_fall_silent_reconciliation_in_sinjar_after_isisFINAL.pdf

Ahmed, Anees and Merryn Quayle, "Can genocide, crimes against humanity and war crimes be pardoned or amnestied?, Amicus Curiae 79:15-20 (autumn, 2009)

Albanese, Francesca, "Anatomy of a Genocide: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories since 1967, Francesca Albanese," Human Rights Council, A/HRC/55/73 (25 March 2024)

Amnesty International, '*You Feel Like You Are Subhuman*': Israel's Genocide Against Palestinians in Gaza (2004), https://www.amnesty.org/en/documents/mde15/8668/2024/en/

Anaya, S. James and Claudio Grossman, "The Case of Awas Tingni v. Nicaragua: A New Step in the International Law of Indigenous Peoples," Ariz. J. of Int'l and Comp. L. 19(1): 1-15 (2002)

Australian Human Rights Commission, *Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, Commonwealth of Australia (1997), https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf

Barghouti, Omar, "European Collusion in Israel's Slow Genocide," in Cook 2010, 181-184

Barsh, Russell Lawrence, "The Indian Child Welfare Act of 1978: A Critical Analysis," Hastings L.J. 31:1287 (1980)

Barta, Tony, "Mr. Darwin's Shooters: On Natural Selection and the Naturalizing of Genocide," in Moses 2007, 20-41

Barta, Tony, "Relations of Genocide: Land and Lives in the Colonization of Australia," in Michael N. Wallimann and Isidor Dobkowski (eds.), *Genocide and the Modern Age*, 2nd ed. (Syracuse Univ. Press, 2000), 237-252

Baumann, Timothy, "Defining Ethnicity," The SAA Archaeological Record (2004)

Bear, Hairy, "The Killing of Big Snake, a Ponca Chief, October 11, 1879," in Roy L. Brooks (ed.), *When Sorry Isn't Enough* (NYU Press, 1999)

Bishai, Susan, "Issue Brief: Religious Freedom Challenges in Iraq 10 Years After ISIS's Genocide," US Comm'n on Int'l Religious Freedom (September 2024), https://www.uscirf.gov/sites/default/files/2024-09/2024%20Iraq%20Genocide%20Issue%20Brief.pdf

Bolt, Jutta, "The Partitioning of Africa," *African Econ. Hist. Network* (January 2016), https://www.aehnetwork.org/wp-content/uploads/2016/01/Bolt.The-Partitioning-of-Africa.pdf

Brett, Rebecca, "A critical analysis of processes of racialization in Tibet," CERS, Working Paper (2012), https://cers.leeds.ac.uk/wp-content/uploads/sites/97/2013/05/Racialisation_and_Tibet_Rebecca_Brett.pdf

Byler, William, "The Destruction of American Indian Families," in Steven Unger (ed.), *The Destruction of American Indian Families* (Assoc. Amer. Ind. Affairs, 1977)

Byun, Chang-Uk, "The Valladolid Debate Between Las Casas and Sepúlveda of 1550 on the Conquest and the Intellectual-Religious Capacity of American Indians," Korean Presbyterian Journal of Theology, 42:257-276 (2011)

Cali Tzay, José Francisco, "Report of the Special Rapporteur on the rights of Indigenous Peoples on his visit to Denmark and Greenland," United Nations Human Rights Council, A/HRC/54/31/Add.1 (3 August 2023)

Cameron, Hazel, "Operation Guurahundi: A Policy of Genocidal Rape and Sexual Violence in Zimbabwe, 1983-1984," State Crime 13(1):4-34 (2023)

Charny, Israel W., "An International Peace Army: A Proposal for the Long-range Future," in Israel W. Charney (ed.), *The Encyclopedia of Genocide* (ABC-CLIO, 1999), 650-652

Chino, Michelle, Darlene Haff, Carolee Dodge-Francis, "Patterns of Food Use Among American Indians," Pimatisiwin 7(2):279-289 (2009)

Chow, Pok Yin, "On Obligations Erga Omnes Partes," Georgetown J. of Int'l Law 52:469-504 (2021)

Congressional Research Service, "The Indian Trust Fund Litigation: An Overview of *Cobell v. Salazar,*" (Nov. 30, 2012), https://www.everycrsreport.com/files/20121130_RL34628_71a31d97fb633117d376ef9920d4a5429c19299b.pdf

Cottam, M., J. Huseby, and F. Lutze, "Slow Genocide: The Dynamics of Violence and Oppression in Refugee Camps and American Ghettos," Washington State Univ. (2006), https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=a440b89a4d3c2aabdcdbffad1fa9cecef8a5ad82

Coulter, Robert T., "The Failure of Indian Rights Advocacy: Are Lawyers to Blame?" in *Rethinking Indian Law* (National Lawyers Guild, 1982)

Crepelle, Adam, "Federal Policies Trap Tribes in Poverty," American Bar Ass'n Human Rts Mag., 48(2) (Jan. 6, 2023)

Curthoys, Ann (ed.), "Tasmania" in Moses 2007, 74-100

Daes, Erica-Irene A., "Working Paper by the Chairperson Rapporteur on the Concept of Indigenous People," UN Doc. E/CN.4/Sub.2/AC.4/1996/2 (10 June 1996)

Daly, Kathleen and Victoria Meyer, "Redress for Institutional Abuse of Children: The Unique Case of Norway, International Redress Project Special Report," Griffith University (2023)

Davidson, Lawrence, "Christian Zionism as Representation of American Manifest Destiny," Critical Middle Eastern Studies 14(2):157-169 (Summer 2005)

Dickinson, Edwin DeWitt, "The Analogy Between Natural Persons and International Persons in the Law of Nations," Yale L. J. 26:564-591 (1917)

Docker, John, "Are Settler-Colonies Inherently Genocidal? Re-reading Lemkin" in Moses 2008, 81-101

Domingo, Marta, "Causes of Ethnic Unrest in China: The Cases of Xinjiang, Tibet, and Inner Mongolia," Institut Barcelona Estudis Internacionals (student paper) (2019), https://www.ibei.org/ibei-student-paper-50_240393.pdf

Dugard, John and John Reynolds, "Apartheid, International Law, and the Occupied Palestinian Territory," European J. of Int'l Law, 24(3):867-913 (2013)

Edmonds, Chloe R., "The Crime of All Crimes: Genocide's Primacy in International Law," Master's Thesis, Georgetown University (April 25, 2016), https://repository.library.georgetown.edu/handle/10822/1040700#:~:text=Akayesu%2C%20genocide%20was%20declared%20to,gained%20primacy%20within%20international%20law

European Parliament, Joint Resolution, P8_TA(2016)0051 (4 Feb. 2016), https://www.europarl.europa.eu/doceo/document/TA-8-2016-0051_EN.pdf

Expert Mechanism on the Rights of Indigenous Peoples, "Indigenous Peoples' Rights in the Context of Borders, Migration and Displacement," UN Human Rights Council, (3 May 2019), A/HRC/EMRIP/2019/2

Farrell, Justin, Paul Berne Burow, Katheryn McConnell, Jude Bayham, Kyle White, and Gal Koss, "Effects of Land Dispossession and Forced Migration on Indigenous Peoples in North America," Science (29 Oct. 2021) 374 (6567)

Fein, Helen, "Genocide by Attrition 1939-1993: The Warsaw Ghetto, Cambodia, and Sudan: Links Between Human Rights, Health, and Mass Death," Health and Human Rights, 2(2):10-45 (1997)

Finzsch, Norbert, "'It is scarcely possible to conceive that human beings could be so hideous and loathsome': Discourses of Genocide in Eighteenth- and Nineteenth-century America and Australia" in Moses 2007, 1-19

Frye, Andrea H., "Brief Historical Background: Savin' 'Them' from 'Themselves,'" 2021 Advanced Fam. L. 47-III (2021)

Fukurai, Hiroshi, "Fourth World Nations vs. The States': 'Nation-Destroying' Projects From 1946 to 2020; Post WWII Wars, Armed Conflicts and Indigenous Military Resistance," Fourth World Journal (summer 2023), 23(1):33-48

Gaeta, Paola, "On What Conditions Can a State Be Held Responsible for Genocide?" European J. of Int'l L., 18(4):631-648 (Sept. 2007)

George, Mathew Sunil, K.A. Ramu, Rajendra Prasad, N.S. Prashanth, Susheela Kenjor, and Janie Busby Grant, "'How Can Our Children Learn From us About our Way of Life or Understand Who They Are?': Residential Schools and Their Impact on the Wellbeing of Indigenous youth in Attapadi, South India," Transcultural Psychiatry 0(0): 1-13 (2024)

Gigoux, Carlos, "'Condemned to Disappear': Indigenous Genocide in Tierra del Fuego," J. of Genocide Res. 24(1):1-22 (8 Dec. 2020)

Glusman, Graham M., "Justice from the General Assembly: An International Tribunal for the Crime of Aggression in Ukraine, Chicago J. of Int'l Law (Online 3.1) (Winter 2024)

Greve, Hanne Sophie, "Ubi Ius Ibi Remedium," FICHL Policy Brief Series, No. 80 (2017)

Grey, Sam, "Just and Unjust Reallocations of Historical Burdens: Notes on a Normative Theory of Reparations Politics," Les Alterliers De L'Ethique 12(2-3):60-83 (2017)

Griggs, Richard, "The Breakdown of States," Center for World Indigenous Studies (1999), https://cwis.org/wp-content/uploads/documents/statebrk.txt

Guettel, Jens-Uwe, "From the Frontier to German South-West Africa: German Colonialism, Indians, and American Westward Expansion," Modern Intellectual Hist., 7(3):523-552 (Nov. 2010)

Hernandez, Bonar Ludwig, "The Las Casas-Sepulveda Controversy: 1550-1551," http://history.sfsu.edu/sites/default/files/images/2001_Bonar%20Ludwig%20Hernandez.pdf

Hernández, Gleider I., "Impartiality and Bias at the International Court of Justice," Cambridge J. of Int'l and Comp. L. 3(1):183-207 (2012)

Hinton, Alexander Laban, "Colonial Genocide in Indigenous North America, A View from Critical Genocide Studies" in Woolford 2014, 325-332

Hogan, Libby, "'Slow genocide': Myanmar's invisible war on the Kachin Christian minority," The Guardian (May 13, 2018), https://www.theguardian.com/world/2018/may/14/slow-genocide-myanmars-invisible-war-on-the-kachin-christian-minority

Hoover, Arlie J., "'Christian Confrontations with the Holocaust': German Christian Nationalism: Its Contributions to the Holocaust," Holocaust and Genocide Studies, 4(3):311-322 (1 March 1989)

Hubbard, Tasha, "Buffalo Genocide in Nineteenth Century North America" in Woolford 2014, 292-305

Hudson, Manley O., "The Permanent Court of International Justice," Harvard L. Rev. 35(3):245-275 (1922)

Ibrahim, Hawkar, Verena Ertl, Claudia Catani, Azad Ali Ismail and Frank Neuner, "Trama and perceived social rejection among Yazidi women and girls who survived enslavement and genocide," BMC Medicine, 16:154 (2018)

Idzelis, Augustine, "Soviet Russian Colonial Practices in the Baltic States" in Michael S. Pap (ed.), *Russian Empire: some aspects of tsarist and Soviet colonial practices* (John Carroll Univ., 1985)

Indep. Special Interlocutor, "Sacred Responsibility: Searching for the Missing Children and Unmarked

Burials," (June 2023), https://osi-bis.ca/wp-content/uploads/2023/06/OSI_InterimReport_June-2023_WEB.pdf

Indian Child Welfare Program: Hearings Before the Subcomm. on Indian Affairs of the Senate Comm. on Interior and Insular Affairs, 93d. Cong., 2d. Sess. 70 (1974) (1974 Hearings)

Inquilla-Mamani, Juan and Emilio Chambi-Apaza, "Symbolic Communication and the Notice of 'Pachamama' in the 'Quechua' and 'Aimara' Cultures," Int'l J. of English Lit. and Soc. Sci., 4(2):504-512 (Apr. 2019)

International Indian Treaty Council, "Examination of the United States 7th, 8th, and 9th Periodic Reports: Alternative Report Regarding Lack of Implementation by the United States of Recommendation 29 of the Committee's 2008 Concluding Observations" (July 8, 2014), http://www.iitc.org/wp-content/uploads/2014/08/FINAL-CERD-joint-Alternative-Report-on-Non-Implemention-for-US-review-July-8-2014-w-attachments-corr_web.pdf

Jacobs, Margaret D., "The Habit of Elimination: Indigenous Child Removal in Settler Colonial Nations in the Twentieth Century" in Woolford (2014), 189-207

Jaimes, M. Annette, "Federal Indian identification policy: a usurpation of Indigenous sovereignty in North America" in her (ed.), *The State of Native America: Genocide, Colonization, and Resistance* (South End Press, 1992), 123-138

Joint Statement – Sanctions International Criminal Court (ICC), Government of the Netherlands (July 2, 2025), https://www.government.nl/documents/diplomatic-statements/2025/02/07/joint-statement---sanctions-international-criminal-court-icc

Kazan, Selen, "Residential School Graves, Canada's 'Slow' Genocide & the International Criminal Court," Yellowhead Inst., Issue 114 (April 20, 2022)

Kemp, Susan, "Guatemala Prosecutes former President Rios Mott: New Perspectives on Genocide and Domestic Criminal Justice," J. of Int'l Crim. Justice, 12(1):133-156.

King, Joyce E., "Dysconscious Racism: Ideology, Identity, and the Miseducation of Teachers," J. of Negro Educ. 60(2):133-146 (Spring, 1991)

Koch, Alexander, Chris Brierly, Mark M. Maslin, Simon L. Lewis, "Earth System Impacts of the European Arrival and the Great Dying in the Americas After 1492," Quaternary Science Reviews 207:13-36 (2019)

Koenning-Rutherford, Abbey, "Dishonoring the Earth: Ecocide as Prosecutable Genocide Against Indigenous People," Georgetown L. J. 111:1495-1531 (2023)

Krauzman, Marine and Urg Geneva, "International borders: Dividing lines for Indigenous Peoples' rights," Universal Rights Group, May 2, 2022, https://www.universal-rights.org/blog/international-borders-dividing-lines-for-indigenous-peoples-rights/

Krieken, Robert van, “Cultural Genocide in Australia,” in Stone 2010, 128-155

Kulamadayil, Lys, “Global Starvation Governance and International Law,” Third World Approaches to International Law Rev. (70/2024)

Ladner, Kiera L., “Political Genocide: Killing Nations through Legislation and Slow Moving Poison” in Woolford 2014, 226-245.

Lâm, Maivân Clech, “Making Room for Peoples at the United Nations: Thoughts Provoked by Indigenous Claims for Self-Determination,” Cornell Law Journal 25(3):603-622 (1992)

Laurence, Robert, “Indian Education: Federal Compulsory School Attendance Law Applicable to American Indians: The Treaty-Making Period: 1857-1871,” Am. Ind. L. Rev. 5:393 (1977)

Lawrence, Jane, “The Indian Health Service and the Sterilization of Native American Women,” Am. Indian. Q. 24:400 (2000)

Lawton, Philip Newton, “Edith Stein and the State,” The Montréal Rev. (May 2024), https://www.themontrealreview.com/Articles/Edith_Stein_and_the_State.php#:~:text=%E2%80%9CThe%20state%2C%E2%80%9D%20Stein%20says,state%20and%20ethnicity%20is%20chilling

Lemkin, Raphaël, “Acts Constituting a General (Transnational) Danger Considered as Offences Against the Law of Nations,” 5th Conference for the Unification of Penal Law in Madrid, Special Report (20 Oct. 1933), http://www.preventgenocide.org/lemkin/madrid1933-english.htm

Lemkin, Raphaël, “Tasmania,” in Moses 2007, 74-11

Lendman, Steve, “Israel’s Slow-Motion Genocide in Occupied Palestine,” in Cook 2010, 29-38

Levene, Mark, “The Chittagong Hill Tracts: A Case Study in the Political Economy of ‘Creeping’ Genocide,” Third World Quarterly 20(2):339-369 (April 1999)

Levene, Mark, “A Dissenting Voice: or How Current Assumptions of Deterring and Preventing Genocide May Be Looking at the Problem Through the Wrong End of the Telescope, Part 1,” J. of Genocide Res. 6 (2004)

Lightfoot, Sheryl and David MacDonald, “The UN as Both Foe and Friend to Indigenous Peoples and Self-Determination” in Jakob R. Avgustin, *The United Nations: Friend or Foe of Self-Determination?, E-Int’l Relations* (2020), 32-46

Lingaas, Carola, “The concept of race in international law,” Völkerrechtsblog (12 February 2018), https://voelkerrechtsblog.org/the-concept-of-race-in-international-criminal-law/

Logan, Tricia E., “Memory, Erasure, and National Myth” in Woolford 2014, 149-165

Ma, Xuechan and Shuai Guo, "An Empirical Study of the Voting Pattern of Judges of the International Court of Justice," ELR No. 3 (Dec. 2017)

Maddison, Sarah, "Indigenous Peoples and Colonial Borders: Sovereignty, Nationhood, Identity, and Activism," in Nancy A. Naples (ed.) and Jennifer Mendez, Bickham (ed.), *Border Politics: Social Movements, Collective Identities, and Globalization* (NYU Press, 2014), 153-176

Maine Wabanaki-State Child Welfare Truth & Reconciliation Commission, *Beyond the Mandate: Continuing the Conversation: Report of the Maine Wabanaki-State Child Welfare Truth & Reconciliation Commission* (June 14, 2015, https://d3n8a8pro7vhmx.cloudfront.net/mainewabanakireach/pages/17/attachments/original/1468974047/TRC-Report-Expanded_July2015.pdf?1468974047

Marsoobian, Armen T., "Genocide by Other Means: Heritage Destruction, National Narratives, and the Azeri Assault on the Indigenous Armenians of Karabakh," Genocide Studies Int'l 15(1) (2021)

Mawani, Renisa, "In Between and Out of Place: Mixed-Race Identity, Liquor, and the Law of British Columbia, 1850-1913" in Sherene H. Razack (ed.), *Race, Space, and the Law: Unmapping a White Settler Society* (Between the Lines, 2002), 47-72

Maynard, Jonathan Leader and Susan Benesch, "Dangerous Speech and Dangerous Ideology: An Integrated Model for Monitoring and Prevention," Genocide Studies and Prevention: An International Journal, 9(3):Article 8 (2016)

McGill, Bonnie M., Stephanie B. Borrelle, Grace C. Wu, Kurt E. Ingeman, Jonathan Berenguer, Uhuad Koch, Natchee B. Barnd, "Words aAe Monuments: Patterns in US National Park Place Names Perpetuate Settler Colonial Mythologies Including White Supremacy," People and Nature 00:1-18 (2022)

McGranahan, Carole, "Chinese Settler Colonialism: Empire and Life in the Tibetan Borderlands" in Stéphane Gros (ed.), *Frontier Tibet: Patterns of Change in the Sino-Tibetan Borderlands* (Amsterdam Univ. Press., 2019), 517-540

McKee, Andrew R., "American Religious Empire and the Caribbean," Oxford Research Enclopedias (2018)

Medeiros, Wailana, "How the 2019 Mauna Kea Protest Movement Sparked a Hawaiian Cultural Renaissance: A Mini Ethnography," SUURJ: Seattle U. Undergrad. Res. J. 5(7) (2021)

Miao, Ying, "Privilege and Prejudice: Han Victimhood and Legitimizing Islamophobia in China," The China Quarterly 260:948-969 (2024)

Miller, Robert J. and Olivia Stitz, "The International Law of Colonialism in East Africa: Germany, England, and the Doctrine of Discovery," Duke J. of Comparative & Int'l L. 32:1-59 (2021)

Moses, A Dirk, "Modernity and Genocide" in Stone 2010, 156-193

Naldi, Gini J., "The East Timor Case and the Role of the International Court of Justice in the Evolution of the Right of Peoples to Self-determination," Australian J. of Hum. Rts, 5(1):106 (1999)

National Native American Boarding Schools Healing Coalition, *Healing Voices, Volume 1: A Primer on American Indian and Alaska Native Boarding Schools in the U.S.*, (2d. ed. 2020), https://boardingschool-healing.org/wp-content/uploads/2021/09/NABS-Newsletter-2020-7-1-spreads.pdf

Newland, Bryan, *Federal Indian Boarding School Initiative Investigative Report*, U.S. Dep't of Interior (May 2022)

Newland, Bryan, *Federal Indian Boarding School Initiative Investigative Report, Vol. II*, U.S. Dep't of Interior (July 2024)

Nietschmann, Bernard Q., "The Fourth World: Nations Versus States," in G.J. Dermko, W.B. Wood, *Reordering the world: Geopolitical perspectives on the twenty-first century* (Routledge, 1994), 225-242

Nissel, Alan, "Continuing Crimes in the Rome Statute," Mich. J. of Int'l L. 25(3):653-689 (2004)

Ntanyoma, Rukumbuzi Delphin and Helen Hintzens, "Expressive Violence and the Slow Genocide of the Banyamulenge of South Kivu," Ethnicities 22(3):374-403 (2022)

Ñusta, Carranza Ko, "Unacknowledged Genocide: Coercive Sterilization of Indigenous Women in Peru," Violence: An International Journal, 4(1-2):11-29 (2023)

Ocampo, Luis Moreno, "Genocide against Armenians in 2023," (Aug. 7, 2023), https://luismorenoocampo.com/wp-content/uploads/2023/08/Armenia-Report-Expert-Opinion.pdf

Okhremtchouk, Irma S. and Adam T. Clark, "The Politics of Despair Enabled by Dysconscious Xenophobiaism: A Call to Action on Behalf of Immigrants and Their Children," Taboo: The Journal of Culture and Education, 17(2) (June 2018)

Orwell, George (as Eric Author Blair (George Orwell's pseudonym)), *Politics and the English Language* (1946), https://faculty.washington.edu/rsoder/EDLPS579/HonorsOrwellPoliticsEnglishLanguage.pdf

Posner, Eric A. and Miguel F.P. de Figueiredo, "Is the International Court of Justice Biased?" U. of Chicago Law School (2004), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1289&context=law_and_economics

Pratt, Captain R.H., "The Advantages of Mingling Indians with Whites," Proceedings of the National Conference of Charities and Correction, 19th Annual Session, June 23–22, 1892 (Isabel C. Barrows, ed., 1892) (NCCC)

Pruitt, William R., "Understanding Genocide Denial Legislation: A Comparative Analysis," Int'l J. of Crim. Justice Sciences, 12(2):270-284 (2017)

Ralstin-Lewis, D. Marie, "The Continuing Struggle Against Genocide: Indigenous Women's Reproductive Rights, Wicazo Sa Rev. 20:71 (2005)

Reid, Andrew B., "*Haaland v. Brackeen*: The Indian Child Welfare Act, States' Rights, and the Survival of America's First Peoples and Nations," Denver Law Review 101(2), 349-396 (2024)

Rensink, Brendon, "Genocide of Native Americans: Historical Facts and Historiographic Debates" in Totten 2011, 15-36

Robbins, Bruce, "Blue Water: A Thesis," Rev. of Int'l Amer. Studies 8(1) (summer 2015)

Rohingya – Application Instituting Proceedings and Request for Provisional Measures, International Court of Justice, 2019 General List No. 178 (11 November 2019)

Rolnick, Addie, "The Promise of Mancari: Indian Political Rights as Racial Remedy," N.Y. L. Rev. 86:958 (Oct. 2011)

Rosenberg, Sherry P., "Genocide is a Process, Not an Event," Genocide Studies and Prevention 7(1):16-23 (2012)

Royster, Judith, "The Legacy of Allotment," Ariz. St. L. J. 27:1-78 (1995)

Running Bear, Ursula, Zaneta M. Thayer, Calvin D. Croy, Carol E. Kaufman, Spero M. Manson, "The Impact of Individual and Parental American Indian Boarding School Attendance on Chronic Physical Health of Northern Plains Tribes," Nat. Inst. Of Health: Nat'l Libr. of Med, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6241300/#R5

Rÿser, Rudolph C., "Ezidikhan Nation Completes Draft Charter for International Tribunal," CWIS (April 19, 2023)

Rÿser, Rudolph Carl, "Fourth World Geopolitics, Coexistence and the New International Political Order" (dissertation), *The Union Institute ProQuest Dissertations Publishing (1996)*, 7, https://www.proquest.com/openview/e3781e28a84a6ae794933bbf6f1702d2/1?pq-origsite=gscholar&cbl=18750&diss=y

Rÿser, Rudolph C. "Original Peoples," in Rudolph C. Rÿser, *Biodiversity Wars: Coexistence or Biodiversity Collapse in the 21st Century*, pp. 2-35 (DayKeeper Press, 2020)

Rÿser, Rudolph C., "The Nations International Criminal Tribunal: A Brief Introduction," Fourth World Journal, 24(1):146-148 (2024)

San José, Paula Castellano, "The Rapes Committed Against the Yazidi Women: A Genocide? A Study of the Crime of Rape as a Form of Genocide in International Law," Comillas J. of Int'l Relations, 18:50-71 (2020)

Schafft, Gretchen E., "Scientific Racism in Service of the Reich: German Anthropologists in the Nazi Era" in Hinton 2002, 117-134.

Secretary of the Interior, *60th Annual Report of the Commissioner of Indian Affairs* (1891)

Sidbury, James and Jorge Cañizares-Esguerra, "Mapping Ethnogenesis in the Early Modern Atlantic," William and Mary Quarterly, 68(2):181-208 (April 2011)

Smith, Anthony, Joshua Caskey, and Griffen Stead, "'Murder by Starvation': The Holodomor" in Andrea Lanoux (ed.), *Being Ukraine* (2024), https://openpress.digital.conncoll.edu/beingukraine//

Special Subcomm. on Indian Educ., "Indian Education: A National Tragedy—A National Challenge, Report of the Comm. on Labor and Public Welfare," S. Doc. No. 91-501 (1969)

Standing Senate Committee on Human Rights, "The Scars That We Carry: Forced and Coerced Sterilization of Persons in Canada – Part II" (2022)

Stannard, David E., "Uniqueness as Denial: The Politics of Genocide Scholarship" in Allen S. Rosenbaum (ed.), *Is the Holocaust Unique? Perspectives on Comparative Genocide*, chap. 13, 245-281 (Westview Press, 1966)

St. Charles, Bonnie, "You're on Native Land: The Genocide Convention, Cultural Genocide, and Prevention of Indigenous Land Takings," Chicago J. of Int'l L. 21(1):227-262 (summer 2020)

Tatikyan, Sossi, "Legal and Political Aspects of the De-Armenization of Nagorno-Karabakh: Ethnic Cleansing, Genocide, Forced Displacement or Voluntary Exodus?" Int'l J. of Armenian Genocide Studies 9(1) (2024)

Tirrell, Lynn, "Genocidal Language Games" in Ishani Maitra and Mary Kate McGowan (eds.), *Speech and Harm: Controversies Over Free Speech*, 174-221 (Oxford Univ. Press, 2012)

Tovias, Blanca, "Navigating the Cultural Encounter: Blackfoot Religious Resistance in Canada," in Moses 2009, 271-295

Travis, Hannibal, "On the Original Understanding of the Crime of Genocide," Genocide Studies and Prevention, 7(1):30-55 (spring 2012)

Truth & Reconciliation Commission, *Canada's Residential Schools: The Legacy, The Final Report of the Truth and Reconciliation Commission of Canada, Volume 5* (2015), https://publications.gc.ca/collections/collection_2015/trc/IR4-9-5-2015-eng.pdf

Tuck, Eve and K. Wayne Yang, "Decolonization is Not a Metaphor," Decolonization: Indigeneity, Educ. & Soc. 1(1):1-40 (2012)

UN Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, "Right of peoples to Self-determination-Special Rapporteur Study (excerpts): Implementation of United Nations Resolutions Relating to the Right of Peoples Under Colonial and Alien Domination to Self-Determination," E/CN.4/Sub.2/405(vol.1), 20 June 1978 (UN Special Rapporteur Hector Gros Espiell / The Question of Palestine) (Espiell)

UN General Assembly, *Report of the Panel on United Nations Peace Operations*, A/55/305 – S/2000/809 (21 August 2000) (Brahimi Report)

UN IASG, "The Health of Indigenous Peoples" (June 2014), https://www.un.org/en/ga/69/meetings/indigenous/pdf/IASG%20Thematic%20Paper%20-%20Health%20-%20rev1.pdf

UN Special Committee, *Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories*, UN Office of the High Commissioner, A/79/363 (20 Sept. 2024)

United States of America, "Addendum of the United States of America to the Report of the Working Group on its Universal Periodic Review," UN Human Rights Council (August 31, 2015) (revised Sept. 16, 2015);

United States of America, "Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples" (July 2010), http://www.achp.gov/docs/US%20Support%20for%20Declaration%2012-10.pdf

United States of America, "National Report Submitted in Accordance With Paragraph 5 of the Annex to Human Rights Council resolution 16/21," Human Rights Council (August 12, 2020) 12, https://www.state.gov/wp-content/uploads/2020/11/US-report-on-UPR-13-Aug-2020.pdf

United States of America, "U.S. Observations and Note on the Inter-American Commission on Human Rights," Petition on Mary and Carrie Dann (December 17, 2001), http://www.state.gov/s/l/38647.htm

Urahman, Habib and Fahreen Alamgir, "The Political Economy of Slow Genocide, Racial Capitalism and Making of De facto Stateless Rohingya," Acad. Of Management Annual Meeting Proceedings (6 July 2022), https://forsea.co/a-tale-of-the-making-of-de-facto-stateless-rohingya/

Varennes, Fernand de, Special Rapporteur on minority issues, Alexandra Xanthaki, Special Rapporteur in the field of cultural rights, Farida Shaheed, Special Rapporteur on the right to education, & Nazila Ghanea, Special Rapporteur on freedom of religion or belief, Joint Letter of Allegation Addressed to the State Councilor and Minister for Foreign Affairs, U.N. Doc. CHN 6/2022, at 1–7 (Nov. 11, 2022)

Veronelli, Gabriela, "The Coloniality of Language: Race, Expressivity, Power, and the Darker Side of Modernity," Wagada 13:108-134 (summer 2023)

Vihinen, Janette, "Selective Justice Within the International Criminal Court and Global Inequalities," Lunds Universitet (2023), https://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=9140645&fileOId=9140646

Villafaña, Hana Xochitl, "The Global Reach of the Mexican Corn Revolution," Perspectives 45 (spring 2018)

Volscho, Thomas W., "Sterilization, Racism, and Pan-Ethnic Disparities of the Past Decade: The Continued Encroachment on Reproductive Rights," Wicazo Sa Rev. 25:17 (2010)

Wakeham, Pauline, “The Slow Violence of Settler Colonialism,” J. of Genocide Research, 24(3):340-346 (2022)

Wasserman, Pam, “World Population by Religion: A Global Tapestry of Faith,” Population Education (January 12, 2024), https://populationeducation.org/world-population-by-religion-a-global-tapestry-of-faith/

Watson, Blake A., “The Impact of the American Doctrine of Discovery on Native Land Rights in Australia, Canada, and New Zealand,” Seattle U. L. Rev. 34:507-551 (2011)

Weisz, George M., “Starvation Genocide and the Triumph of Raphael Lemkin,” Rambam Maimonides Med. J. 13(2) (2022)

Whitt, Laurie Anne, Mere Roberts, Waerete Norman, Vicki Grieves, “Belonging to Land: Indigenous Knowledge Systems and the Natural World,” Okla. City U. L. Rev. 26:701 (Summer 2001)

Win, Wawokiya, “Our Grandfather The Great Spirit,” in Theresa King (ed.), *The Divine Mosaic: Women’s Images of the Sacred Other*, 204-208 (Yes Int’l Publishers, 1994)

Wolfe, Patrick, “Settler Colonialism and the Elimination of the Native,” Journal of Genocide Research (2006), 8(4):387-409

Wolfe, Patrick, “Structure and Event: Settler Colonialism, Time, and the Question of Genocide” in Moses 2010, 102-132

Woolford, Andrew and Jasmine Thomas, “Genocide of Canadian First Nations,” in Totten 2011, 61-85

Humanitarian Research Lab, “Russia’s Systematic Program of Coerced Adoption and Fostering of Ukraine’s Children,” Yale School of Public Health (3 Dec. 2024), https://files-profile.medicine.yale.edu/documents/aa3bcb47-c4db-4d86-994c-22489c70581b

Yazzie, Robert, “Life Comes From It: Navajo Justice,” The Ecology of Justice 29 (Spring 1994)

Zenz, Adrian, “Break Their Roots: Evidence for China’s Parent-Child Separation Campaign in Xinjiang,” J. of Political Risk 7(7) (July 2019)

Web and Media Materials

Aboriginal Heritage Office, “A Brief Aboriginal History,” https://www.aboriginalheritage.org/history/history/

“Apartheid Laws & Regulations: Introduced and Rescinded: A Short Summary,” https://disa.ukzn.ac.za/sites/default/files/pdf_files/sljun95.3.pdf

“Apartheid Legislation in South Africa,” https://disa.ukzn.ac.za/sites/default/files/DC%20Metadata%20Files/Gandhi-Luthuli%20Documentation%20Centre/ApartheidLaws/ApartheidLaws.pdf

“Apologies to Indigenous Peoples,” List, Wikipedia, https://en.wikipedia.org/wiki/Apologies_to_Indigenous_peoples

Bastaki, Jinan, "'Capacity to Influence', State Responsibility, and the Obligation to Prevent Genocide," Opinio Juris (March 30, 2024), opiniojuris.org/2024/03/30/the-capacity-to-influence-state-responsibility-and-the-obligation-to-prevent-genocide/

Baswan, Meera and Sena Yenilmez, "The Sixties Scoop," The Indigenous Foundation," https://www.theindigenousfoundation.org/articles/the-sixties-scoop

Bolton, John R., "International Criminal Court: Letter to UN Sec. Gen. Kofi Annan," (May 6, 2002), https://2001-2009.state.gov/r/pa/prs/ps/2002/9968.htm

Bryant, Miranda, "Denmark to Ditch 'Parenting Competency' Tests for Greenland Families," The Guardian (Jan. 20, 2025)

Buckley, Chris, "How China is Erasing Tibetan Culture, One Child at a Time," New York Times (Jan. 9, 2025)

Bureau of Indian Affairs (https://www.bia.gov/bia)

Cambridge Dictionary, "ethnic," https://dictionary.cambridge.org/us/dictionary/english/ethnic

Case Western Reserve University, "US Government Endorses Proposal for an Internationalized Ukraine War Crimes Court to Prosecute Russian Aggression" (April 10, 2023), https://case.edu/law/our-school/news/us-government-endorses-dean-scharfs-proposal-internationalized-ukraine-war-crimes-court-prosecute-russian-aggression

Cultural Survival, "Observations on the State of Indigenous Women's Rights in Mexico," (June 2018), https://www.culturalsurvival.org/sites/default/files/CEDAW_Report_Mexico_2018.pdf

"Declarations and Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide," Prevent Genocide International, http://www.preventgenocide.org/law/convention/reservations/

"Denials of Genocides of Indigenous peoples," Wikipedia, https://en.wikipedia.org/wiki/Denial_of_genocides_of_Indigenous_peoples

Holligan, Anna and Oliver Slow, "Israel Officials Support Gaza Destruction, Court Hears," BBC (11 January 2024), https://www.bbc.com/news/world-middle-east-67942983

Human Rights Watch, "20 Years After Rwanda – Ethiopia's 'Slow Genocide' in the Omo Valley," /The Ecologist (7 April 2014), https://theecologist.org/2014/apr/07/20-years-after-rwanda-ethiopias-slow-genocide-omo-valley

ICC Press Release, "Situation in Ukraine: ICC Judges Issue Arrest Warrants Against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova" (Mar. 17, 2023), https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and-Maria-Alekseyevna-Lvova-Belova

ICC Press Release, "Statement of ICC Prosecutor, Fatou Bensouda, Respecting an Investigation of the Situation in Palestine" (3 March 2021), https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-respecting-investigation-situation-palestine

ICC Press Release, "Statement of ICC Prosecutor Karim A.A. Khan KC: Applications For Arrest Warrants in the Situation in Palestine" (20 May 2024), https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state

IWGIA, "Canada," https://iwgia.org/en/canada.html

IGWIA, "China," https://iwgia.org/en/china.html

IGWIA, "Democratic Republic of Congo," https://iwgia.org/en/democratic-republic-of-congo.html

IGWIA, "India," https://iwgia.org/en/india.html

IGWIA, "Mexico," https://iwgia.org/en/mexico.html

IGWIA, "Russia," https://iwgia.org/en/russia.html

International Crisis Group, "Stopping Sudan's Slow-motion Genocide" (20 May 2004), https://www.crisisgroup.org/africa/central-africa/rwanda/stopping-sudans-slow-motion-genocide

International Criminal Court, Cases, https://www.icc-cpi.int/cases

International Criminal Court, Wikipedia, https://en.wikipedia.org/wiki/International_Criminal_Court#cite_note-71

Jawort, Adrian, "Genocide by Other Means: U.S. Army Slaughtered Buffalo in Plains Indian Wars," ICT (Sept. 13, 2018), https://ictnews.org/archive/genocide-by-other-means-us-army-slaughtered-buffalo-in-plains-indian-wars

Jones, Joseph, "*BC Authorities Snatch Three-Day-Old Indigenous Baby*," Vancouver Media Co-op (July 27, 2010), https://vancouver.mediacoop.ca/fr/story/bc-authorities-snatch-three-day-old-indigenous-baby/4303

Joshua Project, "How Many People Groups Are There?," https://joshuaproject.net/resources/articles/how_many_people_groups_are_there

Joyce, Kathryn, "The Adoption Crunch, the Christian Right, and the Challenge to Indian Sovereignty," Pol. Res. Assocs. (Feb. 23, 2014), https://politicalresearch.org/2014/02/23/adoption-crunch-christian-right-and-challenge-indian-sovereignty

Kelly, John, "From Infantrymen to Innovators: The Etymology of 'Pioneer'," Mashed Raddish (March 3, 2017), http://mashedradish.com/2017/03/03/from-infantrymen-to-innovators-the-etymology-of-pioneer/.

Kelly, Lidia, "Moscow Says 700,000 Children From Ukraine Conflict Zones Now in Russia," Reuters (Jul. 3, 2023),https://www.reuters.com/world/europe/moscow-says-700000-children-ukraine-conflict-zones-now-russia-2023-07 -03/#:~:text=%22In%20recent%20years%2C%20700%2C000%20children,neighbour%20Ukraine%20in%20February%202022

Khoshnood, Kaveh, Nathaniel Raymond, and Catlin Howarth, "Belarus' Collaboration with Russia in the Systematic Deportation of Ukraine's Children," Yale School of Pub. Health (Dec. 12. 2023), https://reliefweb.int/report/ukraine/belarus-collaboration-russia-systematic-deportation-ukraines-children-16-november-2023-enruuk

"Law and the Holocaust," US Holocaust Museum, https://ahecinfo.org/wp-content/uploads/Law-and-the-Holocast.pdf

"Law, Justice, and the Holocaust," US Holocaust Museum, *Holocaust Encyclopedia*, www.ushmm.org/wlc/en/article.php?ModuleId=10007887.

List of Indian Massacres, http://en.wikipedia.org/wiki/List_of_Indian_massacres

List of United Nations resolutions concerning Palestine, https://en.wikipedia.org/wiki/List_of_United_Nations_resolutions_concerning_Palestine#:~:text=Resolution%2069%3A%20Israel's%20admission%20to,and%20%22transfer%20of%20persons%22.

McDonald, Erin, "The International Criminal Court: An Unbiased or Eurocentric Institution?" McGill J. of Pol. Studies (Nov. 15, 2019)

Moreton-Robinson, Aileen, "'Our Story is the Land': Why the Indigenous Sense of Belonging Unsettles White Australia," ABC (8 Nov. 2020), https://www.abc.net.au/religion/our-story-is-in-the-land-indigenous-sense-of-belonging/11159992

Morris, Benny and Dror Ze'evi, "Not an Armenian Genocide, but a Genocide of Christians," Haaretz (May 4, 2021), https://www.haaretz.com/israel-news/2021-05-04/ty-article-opinion/not-an-armenian-genocide-but-a-genocide-of-christians/0000017f-e35d-d9aa-afff-fb5dea370000

National Museum of the American Indian, "Nation to Nation: Treaties Between the United States and American Indian Nations," https://americanindian.si.edu/nationtonation/#:~:text=The%20treaties%20featured%20in%20Nation,United%20States%20and%20Native%20Nations

Nightlight, "Adoption Fulfills the Great Commission," Nightlight Christian Adoptions, https://nightlight.org/statement-faith/#:~:text=Nightlight%20was%20founded%20in%201959,born%20of%20the%20Virgin%20Mary

Nuremberg Documents, Buck v. Bell Documents, Georgia St. U. Coll. of Law (2009), http://readingroom.law.gsu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1044&context=buckvbell

Olsen, Jan M., “Indigenous Women in Greenland Sue Denmark Over Involuntary Contraception in the 1960s and 1970s,” AP News (March 4, 2024), https://apnews.com/article/greenland-forced-contraception-lawsuit-compensation-denmark-539ef9e1e4ecd007dd34b2a024ecb0fa

Online Etymology Dictionary, “autochthonic,” https://www.etymonline.com/word/autochthonic?ref=etymonline_crossreference

Online Etymology Dictionary, “group,” https://www.etymonline.com/word/group

Online Etymology Dictionary, “indigenous,” https://www.etymonline.com/search?q=indigenous

Online Etymology Dictionary, “tribe,” https://www.etymonline.com/search?q=tribe

Pamphlet, https://twitter.com/lakotalaw/status/1525868769633083393

Parliament of Australia, “Commonwealth laws relating to Aboriginal and Torres Strait Islander peoples: a quick guide,” https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/Research/Quick_Guides/2023-24/Commonwealth_laws_relating_to_Aboriginal_and_Torres_Strait

Pew Research Center, “Globally, Government Restrictions on Religion Reached Peak Levels in 2021, While Social Hostilities Went Down,” https://www.pewresearch.org/religion/2024/03/05/globally-government-restrictions-on-religion-reached-peak-levels-in-2021-while-social-hostilities-went-down/

Povos Indígenas no Brasil, “Table of Indigenous Peoples,” https://pib.socioambiental.org/en/Table_of_Indigenous_Peoples

Prevent Genocide International, “The Crime of Genocide in Domestic Laws and Codes,” http://www.preventgenocide.org/law/domestic/

Royal Government of Cambodia, “The Extraordinary Chambers in the Courts of Cambodia,” https://www.eccc.gov.kh/en

Scott, Donald M., “The Religious Origins of Manifest Destiny,” Divining America, http://nationalhumanitiescenter.ort/tserve/nineteen/nkeyinfo/mandestiny.htm

Stanton, Gregory, “The Ten Stages of Genocide,” Genocide Watch (1996), https://archive.ph/20200514224350/https://www.genocidewatch.com/ten-stages-of-genocide

Steele, Jeanette, “US Naval War College Hosts its First Conference Examining Genocide (Dec. 21, 2018) (presentation by Professor Hayat Alvi on slow genocide), https://usnwc.edu/News-and-Events/News/US-Naval-War-College-hosts-its-first-conference-examining-genocide

Talbot, Margaret, “Amy Coney Barrett’s Long Game,” The New Yorker (Feb. 7, 2022), https://www.newyorker.com/magazine/2022/02/14/amy-coney-barretts-long-game

Tatchell, Peter, "Freedom for West Papua – A 'Slow Genocide,'" Peter Tatchell Fdn (25 Aug. 2020)

Theobald, Brianna, "A 1970 Law Led to the Mass Sterilization of Native American Women. That History Still Matters, Time Magazine (Nov. 27, 2019), https://time.com/5737080/native-american-sterilization-history/

Uehling, Greta, "Inside Russia's Campaign to Steal and Indoctrinate Ukrainian Children," Sapiens (2 July 2024), https://www.sapiens.org/culture/russia-stealing-ukraine-children-genocide/

United Nations Department of Economic and Social Affairs, "Indigenous Peoples: Health," https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/health.html

United Nations Dag Hammarskjold Library, "United Nations Documentation: Decolonization," https://research.un.org/en/docs/decolonization/keydocs

United Nations, "International Criminal Court issues arrest warrants: Pre-Trial Chamber I Rejects Israel's Challenges to Jurisdiction and Issues Warrants of Arrest for Benjamin Netanyahu and Yoav Gallant" (November 21, 2024), https://www.un.org/unispal/document/icc-arrest-warrant-netanyahu-21nov24/

United Nations, "Member States," https://www.un.org/en/about-us/member-states

United Nations, "The United Nations and Decolonization: List of Former Trust and Non-Self-Governing Territories" (List of former Trust Territories), https://www.un.org/dppa/decolonization/en/history/former-trust-and-nsgts

United States Holocaust Memorial Museum, "Coining a Word and Championing a Cause: the Story of Raphael Lemkin," *Holocaust Encyclopedia* (May 2, 2023), https://encyclopedia.ushmm.org/content/en/article/coining-a-word-and-championing-a-cause-the-story-of-raphael-lemkin

USAGOV, "Federally Recognized American Indian tribes and Alaskan native entities," https://www.usa.gov/tribes#:~:text=The%20U.S.%20government%20recognizes%20574,enrolling%2C%20and%20tracing%20your%20ancestry

USCourts, "Chief Standing Bear: A Hero of Native American Civil Rights (Oct. 29, 2020), https://www.uscourts.gov/data-news/judiciary-news/2020/10/29/chief-standing-bear-hero-native-american-civil-rights#:~:text=The%20remarkable%20story%20of%20Chief,nation%27s%20earliest%20civil%20rights%20heroes

USDOI, "Bureau of Indian Affairs, 200th Year," https://www.bia.gov/bia/history

USDOI, "Federal Law and Indian Policy Overview, History of Indian Law and Policy," https://www.bia.gov/bia/history/IndianLawPolicy

US National Holocaust Memorial Museum, "Law, Justice & the Holocaust" (listing series of laws passed to legalize genocide), http://www.ushmm.org/wlc/en/article.php?ModuleId=10007887

US National Holocaust Memorial Museum, "Museum Condemns Hateful Rhetoric at White Nationalist Conference; Calls on the Nation to Confront Hate Speech" (Nov. 21, 2016), http://www.ushmm.org/information/press/press-releases/museum-condemns-white-nationalist-conference-rhetoric

US Department of State, Department Press Briefing (transcript) (March 27, 2024), https://www.state.gov/briefings/department-press-briefing-march-27-2024/

US Secretary of the Interior, "Reaffirmation of the Federal Trust Responsibility to Federally Recognized Indian Tribes and Individual Indian Beneficiaries," Order No. 3335 (August 20, 2014) (US Sec. of Interior, Trust Responsibility Memo)

Wampís Nation, "Autonomous Territorial Government of the Wampís Nation," https://nacionwampis.com/

WFPUSA (World Food Program USA), "One Year of War in Ukraine: How Russia's Invasion Fueled the Global Hunger Crisis" (Feb. 27, 2023), https://www.wfpusa.org/articles/one-year-of-war-in-ukraine-how-russias-invasion-fueled-the-global-hunger-crisis/

Laws

International:

Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone (16 Jan. 2002)

Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea (6 June 2003)

Convention on the Rights and Duties of States, Dec. 26, 1933, 49 Stat. 3097, 165 L.N.T.S. 19, U.S.T. 881 (the Montevideo Convention)

Council of Castile, *Requerimiento* (1510), https://nationalhumanitiescenter.org/pds/amerbegin/contact/text7/requirement.pdf

IACHR (Inter-American Commission on Human Rights, *American Declaration on the Rights and Duties of Man* (2 May 1948)

International Labour Organization, C169 - I*ndigenous and Tribal Peoples Convention*, 1989, No.169, 27 June 1989 (ILO 169)

League of Nations, *Covenant of the League of Nations* (28 April 1919)

League of Nations, *Statute of the Permanent Court of International Justice*, 16 December 1920 (Statute of the Permanent Court)

Loni Edmonds and Children v. Canada, Petition 879-07, Admissibility Report No. 89/13, ¶¶ 8–9 (Inter-American Commission on Human Rights (IACmHR)) November 4, 2013

An Agreement Between: The Inuit of the Nunavut Settlement Area as represented by the Tungavik Federation of Nunavut and Her Magisty the Queen in Right of Canada (25 May 1993) (Nunavut Agreement)

Organization of American States, *American Convention on Human Rights*, "Pact of San Jose" (22 November 1969)

The Laws of Burgos of 1512-1513: Royal Ordinances for the Good Government and Treatment of the Indians, (Lesley Byrd Simpson, trans., 1960), 26-27

Treaty with the Sioux-Brule, Oglala, Miniconjou, Yanktonai, Hunkpapa, Blackfeet, Cuthead, Two Kettle, San Arcs, and Santee-and Arapaho, 4/29/1868; General Records of the United States Government; Record Group 11; National Archives (Ft. Laramie Treaty of 1868)

United Nations, *Charter of the United Nations*, 1 United Nations, Treaty Series, XVI, 24 October 1945 (UN Charter)

UNESCO, *Declaration on Race and Racial Prejudice* (27 Nov. 1978)

UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147, 20 March 2006

UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, United Nations, Treaty Series, vol. 78, p. 277, 9 December 1948 (Genocide Convention)

UN General Assembly, *Declaration on the Granting of Independence to Colonial Countries and Peoples*, A/RES/1514(XV), 14 Dec. 1960 (UNGA Res. 1514)

UN General Assembly, *Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, A/RES/2625(XXV), 24 Oct. 1970 (UNGA Res. 2625)

UN General Assembly, *Fourth International Decade for the Eradication of Colonialism*, A/RES/75/123, 10 Dec. 2020 (UNGA Res. 75/123)

UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination)*, UN Treaty Series, vol. 660, p. 196, 21 December 1965 (ICERD)

UN General Assembly, *International Covenant on Civil and Political Rights*, United Nations, Treaty Series, vol. 999, p. 171, 16 Dec. 1966 (ICCPR)

UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, United Nations, Treaty Series, vol. 993, p. 3, 16 Dec. 1966 (ICESCR)

UN General Assembly, *Rome Statute of the International Criminal Court* (last amended 2010), ISBN No. 92-9227-227-6 (17 July 1998) (Rome Statute)

UN General Assembly, *Statute of the International Court of Justice* (18 April 1946)

UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295, 2 Oct. 2007 (UNDRIP)

UN General Assembly, *Universal Declaration of Human Rights*, 217 A (III), 10 Dec. 1948 (UDHR)

UN General Assembly, *Vienna Convention on the Law of Treaties*, May 23, 1969, United Nations, Treaty Series, vol. 1155, p. 331 (Vienna Convention)

UN Security Council, *Statute of the International Criminal Tribunal for the Former Yugoslavia* (*as last amended* Sept. 2009)

UN Security Council, *Statute of the International Criminal Tribunal for Rwanda (as last amended on* 31 Jan. 2010)

Whanganui River Claims Settlement - Te Awa Tupua Act, Public Act 2017 No. 7 (March 20, 2017)

Domestic - US:

Executive Order of February 6, 2025, "Imposing Sanctions on the International Criminal Court"

Indian Citizenship Ace, Act of June 2, 1924, Public Law 68-175, 43 Stat. 253

Indian Civilization Act Fund Act of March 3, 1819, 3 Stat. 516, chap. 85

Indian Reorganization Act, Act of June 18, 1934, Public Law 109-221, 48 Stat. 984, 25 U.S.C. §461 *et. seq*.

Act of July 15, 1870, 16 Stat. 355.

Indian Removal Act, An act to provide for an exchange of land with the Indians residing in any of the state or territories, and for their removal west of the river Mississippi, 4 Stat. 411, May 28, 1830

General Allotment Act, An Act to Provide for the Allotment of Lands in Severalty to Indians on the Various Reservations (Dawes Act), Statutes at Large 24, 388-91, NADP Doc. A1887

Family Planning Services and Population Research Act of 1970, Pub. L. 91-572, 84 Stat. 1504 (1970)

Indian Termination Act, House Congressional Resolution 108 (1953)

Public Law 280, 67 Stat. 588 (1953)

Restatement (Third) of Foreign Relations Law of the United States §201 (1987)

Cases:

International and Other:

Advisory Opinion Concerning Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, International Court of Justice (28 May 1951)

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), International Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Case No. 921 (filed 20 March 1993)

Armed Activities on Territory of Congo (Dem. Rep. Congo v. Uganda), International Court of Justice, Gen. List No. 116 (Dec. 19, 2005) (Congo ICJ decision)

Awas Tingni - Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Inter-American Court of Human Rights Merits, Reparations and Costs, Judgment (ser. C) No. 79 (August 31, 2001)

Cayuga Indians (Great Britain) v. United States, US-Brit. Arb. Tribunal, 6 RIAA 173 (1926)

Chorzów Factory (Ger. V. Pol.), 1928 P.C.I.J. (ser. A) No. 17 (Sept. 13, 1928)

Croatia v. Serbia, International Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (1999)

Dann v. United States, Inter-American Commission on Human Rights, Case No. 11.42, Report No. 75/02, Merits (December 27, 2002)

Domingues v. United States, Inter-American Commission on Human Rights, Case No. 12.285, Report No. 62/02, Merits (Oct. 22, 2002)

ACHPR, Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, 276/2003 (4 February 2010) (Endorois)

Gabčikovo-Nagymaros Project, Hungary v Slovakia, Judgment, Merits, ICJ GL No 92, [1997] ICJ Rep 7, [1997] ICJ Rep 88, (1998) 37 ILM 162, ICGJ 66 (ICJ 1997)

Gambia v. Myanmar, Application Instituting Proceedings and Request for Provisional Measures, International Court of Justice (2019)

Gomez-Paquiyauri Brothers v. Peru, Inter-American Court on Human Rights, Ser. C., No. 110, Judgment, July 8, 2004

Kingdom of Cambodia v. Nuon, et. al., Extraordinary Chambers in the Courts of Cambodia, Case No. 002/19-09-2007-ECCC-OCIJ, Closing Order ("ECCC Closing Order"), 15 Sept. 2010, https://www.prakken-doliveira.nl/images/nieuws/2010/100915_-_ocij_closing_order_case_002.pdf

Kuna Indigenous People of Madungandi and Embra Indigenous People of Bayono and Their Members

(Panama), Inter-American Commission on Human Rights, Report No. 125/12, Case 12.354, November 13, 2012

Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, International Court of Justice, Advisory Opinion, 25 Feb. 2019 (Chagos Archipelago)

Mabo v. Queensland (No. 1), High Court of Australia, HCA 69, 166 CLR 188 (8 Dec. 1988)

Mabo v. Queensland (No. 2), High Court of Australia, HCA 23, 175 CLR 1, 66 ALJR 408 (3 June 1992)

Mornah v. Republic of Benin, African Court on Human and Peoples' Rights, Application No. 028/2018, Judgment, 22 Sept. 2022 (Mornah)

Navajo Nation v. United States of America, Inter-American Commission on Human Rights, Petition, 2 March 2015

Ogiek - ACtHR, African Commission on Human and Peoples' Rights v. Republic of Kenya, Application No. O06/2012, Judgment, 26 May 2017 (Ogiek), paras. 105, 107-108

Onondaga Nation v. United States, Inter-American Commission on Human Rights, Case No. 15-250, Amended Supplemental Submission, Brief on the Merits, 26 Dec. 2023

Prosecutor v. Goran Jelisić, International Criminal Tribunal for the Former Yugoslavia (ICTY), Case No. IT-95-10-A, Judgement, 5 July 2001

South Africa v. Israel, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, International Court of Justice (2023)

Torres v. United States, IACHR, Report No. 77/22, Petition 1561-13, Admissibility, 5 April 2022

UNGA Request for Advisory Opinion, Legal Consequences Arising From the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem, International Court of Justice (30 December 2022)

Western Shoshone v. United States, Committee for the Elimination of Racial Discrimination, Decision 1(68) (10 March 2006)

Yakye - Indigenous Community Yakye Axe v. Paraguay, Merits, Reparations and Costs, Judgment, (ser. C) No. 125 (June 17, 2005)

United States:

Cherokee Nation v. Georgia, 30 U.S. 1 (1831)

Choteau v. Marguerite, 37 U.S. 507 (1838)

Citizens United v. F.E.C., 558 U.S. 310 (2010)

City of Sherrill v. Oneida Indian Nation of New York, 544 U.S. 197 (2005)

Donnelly v. Thompson, Case No. 24-cv-09213, filed Dec. 19, 2024 (US Dist. Ct., N. Dist. of Cal.)

Dred Scott v. Sanford, 60 U.S. 393 (1856)

Haaland v. Brackeen, 599 U.S. _____ (2023)

Harjo v. Kleppe, 420 F.Supp. 1110 (D.D.C. 1976)

Elk v. Wilkins, 112 U.S. 94 (1984)

Johnson v. M'Intosh, 21 U.S. 543, 572 (1823)

Kiobel v. Royal Dutch Petroleum Co., 569 U.S. 108 (2013)

Lone Wolf v. Hitchcock, 187 U.S. 553 (1903)

Lyng v. Northwest Indian Cemetery Protective Ass'n, 485 U.S. 439 (1988)

McCauley v. Oklahoma, 2024 OK CR 8 (OK CR 2024)

McGirt v. Oklahoma, 591 U.S. _____, 140 S.Ct. 2452 (2020)

Merrion v. Jicarilla Apache Nation, 455 U.S. 130 (1983)

Miss. Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989)

Monell v. Dept. of Soc. Servs. of the City of New York, 436 U.S. 658 (1978)

United States v. Navajo Nation, 537 U.S. 488 (2003)

Seminole Nation v. United States, 316 U.S. 286 (1942)

Standing Bear (US ex rel.) v. Crook, 25 F.Cas. 695 (D.Neb. 1875)

Tee-Hee-Ton Indians v. United States, 348 U.S. 272 (1955)

United States v. Jicarilla Apache Nation, 864 U.S. 162 (2011)

United States v. Sioux Nation of Indians, 448 U.S. 371 (1980)

Whitebuffalo v. Oklahoma, Case No. F-2021-429 (OK CR 2022)

Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 561 (1932)

Washington v. Confederated Bands and Tribes of Yakima Indian Nation, 439 U.S. 463 (1979)

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