

NORTH AMERICAN GENOCIDES

When and how might the term “genocide” appropriately be ascribed to the experience of North American Indigenous Nations under settler colonialism? Laurelyn Whitt and Alan W. Clarke contend in this book that were certain events which occurred during the colonization of North America to take place today they could be prosecuted as genocide. The legal methodology they develop to establish this draws upon the definition of genocide as presented in the United Nations Genocide Convention and enhanced by subsequent decisions in international legal fora. Focusing on early British colonization, they apply this methodology to two historical cases: that of the Beothuk Nation from 1500 to 1830, and of the Powhatan *Tsenacommacah* from 1607 to 1677.

North American Genocides concludes with a critique of the Conventional account of genocide, suggesting how it might evolve beyond its limitations to embrace the role of cultural destruction in undermining the viability of human groups.

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North American Genocides

INDIGENOUS NATIONS, SETTLER COLONIALISM,
AND INTERNATIONAL LAW

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*We dedicate this book to our students,
from whom we have learned so much
and
to our parents, again and again.*

[B]oth the act of producing history and the act of remembrance are gestures toward finding meaning in the past. The patterns we choose to give shape to traces of the past fade away or fall apart when we claim that major events, or deaths, or lives have no meaning.
Jay Winter¹

¹ Jay Winter, *Historical Remembrance in the Twenty-First Century*, 617 ANNALS OF AM. ACAD. OF POL. SCI. 6, 7 (2008).

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Preface

That genocides of Indigenous Peoples occurred in North America has long been contested. They have tended to be dismissed with little or no informed scholarly argument – either historical or legal – and forgotten by the dominant society. We use the Conventional account of genocide – presented in the United Nations Genocide Convention (UNGC or Genocide Convention) and subsequently developed in international fora – to demonstrate that if the events in our case studies were to occur today they could be prosecuted as genocides. It is our hope that if their occurrence can be demonstrated using this standard, widely accepted legal definition of genocide, the untenability of such denial will finally be recognized.

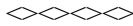
This dismissal of massive historical trauma and violence has allowed writers of Indigenous history to either avoid the topic altogether in their textbooks, or to mention it only briefly in passing. The result is a public woefully uninformed about the nature of both past and ongoing colonization in this hemisphere, and its impact on Indigenous Nations. We hope to undermine this state of denial about the foundations of North American nation-states, and to encourage the writing of official origin stories that are faithful to the past and, by being so, can better serve present and future generations.

And yet we, along with many others, are deeply dissatisfied with various features of the Conventional account. This is especially true of its failure to take seriously the role of culture in undermining, and destroying, human group viability. Accordingly, we also offer a critique of the Conventional account in this regard, based upon the *travaux préparatoires* (drafting history) of the treaty, as well as on recent international case law and customary international law. We believe that it enhances our understanding of genocide in vital ways, especially with regard to the cultural dimensions of genocide.

Our concern for the Conventional account's failure to recognize and accommodate a stand-alone role for cultural means of destroying human group viability was enhanced by the recent report of Canada's Truth and Reconciliation Commission (TRC). The TRC maintained that the establishment and operation of Indigenous

residential schools constituted “cultural genocide” – a concept that established legal scholars contend has no recognized legal implications. We wanted to develop an analysis of the forcible transfer of children (one of the five acts of genocide listed in the UNGC) that was capable of sustaining the TRC’s claim.

Finally, we suggest that legal accounts of genocide are, on their own, inadequate, particularly as regards genocide prevention. We support the continued development of recent socio-historical accounts of systemic genocide that regard globalization and climate change as intensifiers of genocidal and ecocidal violence. By increasing social inequities and destabilizing populations, those Peoples across the planet least responsible for these phenomena are already most impacted by them, and will likely continue to be so. To address this, we do not need to choose between legal and systemic accounts of genocide, but to cultivate them both.



We are deeply grateful to many people, organizations, and places who have helped us along the way, and who have made it possible to complete this long project.

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