



## Guiding Questions

### Yes, Native Americans Were the Victims of Genocide

by Roxanne Dunbar-Ortiz

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US policies and actions related to Indigenous peoples, though often termed "racist" or "discriminatory," are rarely depicted as what they are: classic cases of imperialism and a particular form of colonialism—settler colonialism. As anthropologist Patrick Wolfe writes, "The question of genocide is never far from discussions of settler colonialism. Land is life—or, at least, land is necessary for life." The history of the United States is a history of settler colonialism.

The extension of the United States from sea to shining sea was the intention and design of the country's founders. "Free" land was the magnet that attracted European settlers. After the war for independence but preceding the writing of the US Constitution, the Continental Congress produced the Northwest Ordinance. This was the first law of the incipient republic, revealing the motive for those desiring independence. It was the blueprint for gobbling up the British-protected Indian Territory ("Ohio Country") on the other side of the Appalachians and Alleghenies. Britain had made settlement there illegal with the Proclamation of 1763.

In 1801, President Jefferson aptly described the new settler state's intentions for horizontal and vertical continental expansion, stating: "However our present interests may restrain us within our own limits, it is impossible not to look forward to distant times, when our rapid multiplication will expand itself beyond those limits and cover the whole northern, if not the southern continent, with a people speaking the same language, governed in similar form by similar laws." This vision of manifest destiny found form a few years later in the Monroe Doctrine, signaling the intention of annexing or dominating former Spanish colonial territories in the Americas and the Pacific, which would be put into practice during the rest of the century.

The form of colonialism that the Indigenous peoples of North America have experienced was modern from the beginning: the expansion of European corporations, backed by government armies, into foreign areas, with subsequent expropriation of lands and resources. Settler colonialism requires a genocidal policy. Native nations and communities, while struggling to maintain fundamental values and collectivity, have from the beginning resisted modern colonialism using both defensive and offensive techniques, including the modern forms of armed resistance of national liberation movements and what now is called terrorism. In every instance they have fought and continue to fight for survival as peoples. The objective of US authorities was to terminate their existence as peoples—not as random individuals. This is the very definition of modern genocide.

The objective of US colonialist authorities was to terminate their existence as peoples—not as random individuals. This is the very definition of modern genocide as contrasted with premodern instances of extreme violence that did not have the goal of extinction. The United States as a socioeconomic and

How does Dunbar-Ortiz' introduction help to set up her later argument?

How does she frame the nature of interaction between Native Americans and others? What alternative interpretations of that interaction does she refute?

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political entity is a result of this centuries-long and ongoing colonial process. Modern Indigenous nations and communities are societies formed by their resistance to colonialism, through which they have carried their practices and histories. It is breathtaking, but no miracle, that they have survived as peoples.

Settler-colonialism requires violence or the threat of violence to attain its goals, which then forms the foundation of the United States' system. People do not hand over their land, resources, children, and futures without a fight, and that fight is met with violence. In employing the force necessary to accomplish its expansionist goals, a colonizing regime institutionalizes violence. The notion that settler-indigenous conflict is an inevitable product of cultural differences and misunderstandings, or that violence was committed equally by the colonized and the colonizer, blurs the nature of the historical processes. Euro-American colonialism, an aspect of the capitalist economic globalization, had from its beginnings a genocidal tendency.

So, what constitutes genocide? My colleague on the panel, Gary Clayton Anderson, in his recent book, "Ethnic Cleansing and the Indian," argues: "Genocide will never become a widely accepted characterization for what happened in North America, because large numbers of Indians survived and because policies of mass murder on a scale similar to events in central Europe, Cambodia, or Rwanda were never implemented." There are fatal errors in this assessment.

The term "genocide" was coined following the Shoah, or Holocaust, and its prohibition was enshrined in the United Nations convention presented in 1948 and adopted in 1951: the UN Convention on the Prevention and Punishment of the Crime of Genocide. The convention is not retroactive but is applicable to US-Indigenous relations since 1988, when the US Senate ratified it. The genocide convention is an essential tool for historical analysis of the effects of colonialism in any era, and particularly in US history.

In the convention, any one of five acts is considered genocide if "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group":

- (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.*<sup>iii</sup>

The followings acts are punishable:

- (a) *Genocide;*
- (b) *Conspiracy to commit genocide;*
- (c) *Direct and public incitement to commit genocide;*
- (d) *Attempt to commit genocide;*
- (e) *Complicity in genocide.*

The term "genocide" is often incorrectly used, such as in Dr. Anderson's assessment, to describe extreme examples of mass murder, the death of vast numbers of people, as, for instance in Cambodia. What took place in Cambodia was horrific, but it does not fall under the terms of the Genocide Convention, as the Convention specifically refers to a national, ethnical, racial or religious group, with individuals within that group targeted by a government or its agents because they are members of the group or by attacking

What historical context does Dunbar -Ortiz offer for using the term "genocide?"

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the underpinnings of the group's existence as a group being met with the intent to destroy that group in whole or in part. The Cambodian government committed crimes against humanity, but not genocide. Genocide is not an act simply worse than anything else, rather a specific kind of act. The term, "ethnic cleansing," is a descriptive term created by humanitarian interventionists to describe what was said to be happening in the 1990s wars among the republics of Yugoslavia. It is a descriptive term, not a term of international humanitarian law.

Although clearly the Holocaust was the most extreme of all genocides, the bar set by the Nazis is not the bar required to be considered genocide. The title of the Genocide convention is the "Convention on the Prevention and Punishment of the Crime of Genocide," so the law is about preventing genocide by identifying the elements of government policy, rather than only punishment after the fact. Most importantly, genocide does not have to be complete to be considered genocide.

US history, as well as inherited Indigenous trauma, cannot be understood without dealing with the genocide that the United States committed against Indigenous peoples. From the colonial period through the founding of the United States and continuing in the twentieth century, this has entailed torture, terror, sexual abuse, massacres, systematic military occupations, removals of Indigenous peoples from their ancestral territories, forced removal of Native American children to military-like boarding schools, allotment, and a policy of termination.

Within the logic of settler-colonialism, genocide was the inherent overall policy of the United States from its founding, but there are also specific documented policies of genocide on the part of US administrations that can be identified in at least four distinct periods: the Jacksonian era of forced removal; the California gold rush in Northern California; during the Civil War and in the post Civil War era of the so-called Indian Wars in the Southwest and the Great Plains; and the 1950s termination period; additionally, there is the overlapping period of compulsory boarding schools, 1870s to 1960s. The Carlisle boarding school, founded by US Army officer Richard Henry Pratt in 1879, became a model for others established by the Bureau of Indian Affairs (BIA). Pratt said in a speech in 1892, "A great general has said that the only good Indian is a dead one. In a sense, I agree with the sentiment, but only in this: that all the Indian there is in the race should be dead. Kill the Indian in him and save the man."

Cases of genocide carried out as policy may be found in historical documents as well as in the oral histories of Indigenous communities. An example from 1873 is typical, with General William T. Sherman writing, "We must act with vindictive earnestness against the Sioux, even to their extermination, men, women and children . . . during an assault, the soldiers can not pause to distinguish between male and female, or even discriminate as to age."

The so-called "Indian Wars" technically ended around 1880, although the Wounded Knee massacre occurred a decade later. Clearly an act with genocidal intent, it is still officially considered a "battle" in the annals of US military genealogy. Congressional Medals of Honor were bestowed on twenty of the soldiers involved. A monument was built at Fort Riley, Kansas, to honor the soldiers killed by friendly fire. A battle streamer was created to honor the event and added to other streamers that are displayed at the Pentagon, West Point, and army bases throughout the world. L. Frank Baum, a Dakota Territory settler later famous for writing *The Wonderful Wizard of Oz*, edited the *Aberdeen Saturday Pioneer* at the time. Five days after the sickening event at Wounded Knee, on January 3, 1891, he wrote, "The Pioneer has before declared that our only safety depends upon the total extermination of the Indians. Having wronged them for centuries we had better, in order to protect our civilization, follow it up by one or more wrong and wipe these untamed and untamable creatures from the face of the earth."

In what ways does Dunbar-Ortiz propose to analyze her claim for genocide as the appropriate framework for understanding the experience of Native Americans?

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Whether 1880 or 1890, most of the collective land base that Native Nations secured through hard fought for treaties made with the United States was lost after that date.

After the end of the Indian Wars, came allotment, another policy of genocide of Native nations as nations, as peoples, the dissolution of the group. Taking the Sioux Nation as an example, even before the Dawes Allotment Act of 1884 was implemented, and with the Black Hills already illegally confiscated by the federal government, a government commission arrived in Sioux territory from Washington, DC, in 1888 with a proposal to reduce the Sioux Nation to six small reservations, a scheme that would leave nine million acres open for Euro-American settlement. The commission found it impossible to obtain signatures of the required three-fourths of the nation as required under the 1868 treaty, and so returned to Washington with a recommendation that the government ignore the treaty and take the land without Sioux consent. The only means to accomplish that goal was legislation, Congress having relieved the government of the obligation to negotiate a treaty. Congress commissioned General George Crook to head a delegation to try again, this time with an offer of \$1.50 per acre. In a series of manipulations and dealings with leaders whose people were now starving, the commission garnered the needed signatures. The great Sioux Nation was broken into small islands soon surrounded on all sides by European immigrants, with much of the reservation land a checkerboard with settlers on allotments or leased land. Creating these isolated reservations broke the historical relationships between clans and communities of the Sioux Nation and opened areas where Europeans settled. It also allowed the Bureau of Indian Affairs to exercise tighter control, buttressed by the bureau's boarding school system. The Sun Dance, the annual ceremony that had brought Sioux together and reinforced national unity, was outlawed, along with other religious ceremonies. Despite the Sioux people's weak position under late-nineteenth-century colonial domination, they managed to begin building a modest cattle-ranching business to replace their former bison-hunting economy. In 1903, the US Supreme Court ruled, in *Lone Wolf v. Hitchcock*, that a March 3, 1871, appropriations rider was constitutional and that Congress had "plenary" power to manage Indian property. The Office of Indian Affairs could thus dispose of Indian lands and resources regardless of the terms of previous treaty provisions. Legislation followed that opened the reservations to settlement through leasing and even sale of allotments taken out of trust. Nearly all prime grazing lands came to be occupied by non-Indian ranchers by the 1920s.

By the time of the New Deal–Collier era and nullification of Indian land allotment under the Indian Reorganization Act, non-Indians outnumbered Indians on the Sioux reservations three to one. However, "tribal governments" imposed in the wake of the Indian Reorganization Act proved particularly harmful and divisive for the Sioux. Concerning this measure, the late Mathew King, elder traditional historian of the Oglala Sioux (Pine Ridge), observed: "The Bureau of Indian Affairs drew up the constitution and by-laws of this organization with the Indian Reorganization Act of 1934. This was the introduction of home rule. . . . The traditional people still hang on to their Treaty, for we are a sovereign nation. We have our own government." "Home rule," or neocolonialism, proved a short-lived policy, however, for in the early 1950s the United States developed its termination policy, with legislation ordering gradual eradication of every reservation and even the tribal governments. At the time of termination and relocation, per capita annual income on the Sioux reservations stood at \$355, while that in nearby South Dakota towns was \$2,500. Despite these circumstances, in pursuing its termination policy, the Bureau of Indian Affairs advocated the reduction of services and introduced its program to relocate Indians to urban industrial centers, with a high percentage of Sioux moving to San Francisco and Denver in search of jobs.

Beyond warfare and physical violence, what does Dunbar-Ortiz identify as genocidal policies and how does she say these policies meet the standard of genocide?

How does Dunbar-Ortiz assess the effects of policies that, in their own historical context, were promoted as better for native peoples?

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The situations of other Indigenous Nations were similar.

Pawnee Attorney Walter R. Echo-Hawk writes:

*In 1881, Indian landholdings in the United States had plummeted to 156 million acres. By 1934, only about 50 million acres remained (an area the size of Idaho and Washington) as a result of the General Allotment Act of 1887. During World War II, the government took 500,000 more acres for military use. Over one hundred tribes, bands, and Rancherias relinquished their lands under various acts of Congress during the termination era of the 1950s. By 1955, the indigenous land base had shrunk to just 2.3 percent of its [size at the end of the Indian wars].*

According to the current consensus among historians, the wholesale transfer of land from Indigenous to Euro-American hands that occurred in the Americas after 1492 is due less to British and US American invasion, warfare, refugee conditions, and genocidal policies in North America than to the bacteria that the invaders unwittingly brought with them. Historian Colin Calloway is among the proponents of this theory writing, "Epidemic diseases would have caused massive depopulation in the Americas whether brought by European invaders or brought home by Native American traders." Such an absolutist assertion renders any other fate for the Indigenous peoples improbable. This is what anthropologist Michael Wilcox has dubbed "the terminal narrative." Professor Calloway is a careful and widely respected historian of Indigenous North America, but his conclusion articulates a default assumption. The thinking behind the assumption is both ahistorical and illogical in that Europe itself lost a third to one-half of its population to infectious disease during medieval pandemics. The principle reason the consensus view is wrong and ahistorical is that it erases the effects of settler colonialism with its antecedents in the Spanish "Reconquest" and the English conquest of Scotland, Ireland, and Wales. By the time Spain, Portugal, and Britain arrived to colonize the Americas, their methods of eradicating peoples or forcing them into dependency and servitude were ingrained, streamlined, and effective.

Whatever disagreement may exist about the size of pre-colonial Indigenous populations, no one doubts that a rapid demographic decline occurred in the sixteenth and seventeenth centuries, its timing from region to region depending on when conquest and colonization began. Nearly all the population areas of the Americas were reduced by 90 percent following the onset of colonizing projects, decreasing the targeted Indigenous populations of the Americas from a one hundred million to ten million. Commonly referred to as the most extreme demographic disaster—framed as natural—in human history, it was rarely called genocide until the rise of Indigenous movements in the mid-twentieth century forged new questions.

US scholar Benjamin Keen acknowledges that historians "accept uncritically a fatalistic 'epidemic plus lack of acquired immunity' explanation for the shrinkage of Indian populations, without sufficient attention to the socioeconomic factors . . . which predisposed the natives to succumb to even slight infections." Other scholars agree. Geographer William M. Denevan, while not ignoring the existence of widespread epidemic diseases, has emphasized the role of warfare, which reinforced the lethal impact of disease. There were military engagements directly between European and Indigenous nations, but many more saw European powers pitting one Indigenous nation against another or factions within nations, with European allies aiding one or both sides, as was the case in the colonization of the peoples of Ireland, Africa and Asia, and was also a factor in the Holocaust. Other killers cited by Denevan are overwork in mines, frequent outright butchery, malnutrition and starvation resulting from the breakdown of Indigenous trade networks, subsistence food production and loss of land, loss of will to live or reproduce (and thus suicide, abortion, and infanticide), and deportation and enslavement. Anthropologist Henry Dobyns has pointed to the interruption of Indigenous peoples' trade networks. When colonizing powers

How does Dunbar-Ortiz refute historical consensus on the Columbian Exchange?

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seized Indigenous trade routes, the ensuing acute shortages, including food products, weakened populations and forced them into dependency on the colonizers, with European manufactured goods replacing Indigenous ones. Dobyns has estimated that all Indigenous groups suffered serious food shortages one year in four. In these circumstances, the introduction and promotion of alcohol proved addictive and deadly, adding to the breakdown of social order and responsibility. These realities render the myth of “lack of immunity,” including to alcohol, pernicious.

Historian Woodrow Wilson Borah focused on the broader arena of European colonization, which also brought severely reduced populations in the Pacific Islands, Australia, Western Central America, and West Africa. Sherburne Cook—associated with Borah in the revisionist Berkeley School, as it was called—studied the attempted destruction of the California Indians. Cook estimated 2,245 deaths among peoples in Northern California—the Wintu, Maidu, Miwak, Omo, Wappo, and Yokuts nations—in late eighteenth-century armed conflicts with the Spanish while some 5,000 died from disease and another 4,000 were relocated to missions. Among the same people in the second half of the nineteenth century, US armed forces killed 4,000, and disease killed another 6,000. Between 1852 and 1867, US citizens kidnapped 4,000 Indian children from these groups in California. Disruption of Indigenous social structures under these conditions and dire economic necessity forced many of the women into prostitution in goldfield camps, further wrecking what vestiges of family life remained in these matriarchal societies.

Historians and others who deny genocide emphasize population attrition by disease, weakening Indigenous peoples ability to resist. In doing so they refuse to accept that the colonization of America was genocidal by plan, not simply the tragic fate of populations lacking immunity to disease. If disease could have done the job, it is not clear why the United States found it necessary to carry out unrelenting wars against Indigenous communities in order to gain every inch of land they took from them—along with the prior period of British colonization, nearly three hundred years of eliminationist warfare.

In the case of the Jewish Holocaust, no one denies that more Jews died of starvation, overwork, and disease under Nazi incarceration than died in gas ovens or murdered by other means, yet the acts of creating and maintaining the conditions that led to those deaths clearly constitute genocide. And no one recites the terminal narrative associated with Native Americans, or Armenians, or Bosnian.

Not all of the acts iterated in the genocide convention are required to exist to constitute genocide; any one of them suffices. In cases of United States genocidal policies and actions, each of the five requirements can be seen.

First, *Killing members of the group*: The genocide convention does not specify that large numbers of people must be killed in order to constitute genocide, rather that members of the group are killed because they are members of the group. Assessing a situation in terms of preventing genocide, this kind of killing is a marker for intervention.

Second, *Causing serious bodily or mental harm to members of the group*: such as starvation, the control of food supply and withholding food as punishment or as reward for compliance, for instance, in signing confiscatory treaties. As military historian John Grenier points out in his *First Way of War*:

*For the first 200 years of our military heritage, then, Americans depended on arts of war that contemporary professional soldiers supposedly abhorred: razing and destroying enemy villages and fields; killing enemy women and children; raiding settlements for captives; intimidating and brutalizing enemy noncombatants; and assassinating enemy leaders. . . . In the frontier wars between 1607 and 1814,*

How does Dunbar-Ortiz place her argument in the synthetic context of other genocides?

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*Americans forged two elements—unlimited war and irregular war—into their first way of war.*

Grenier argues that not only did this way of war continue throughout the 19th century in wars against the Indigenous nations, but continued in the 20th century and currently in counterinsurgent wars against peoples in Latin America, the Caribbean and Pacific, Southeast Asia, Middle and Western Asia and Africa.

*Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part:* Forced removal of all the Indigenous nations east of the Mississippi to Indian Territory during the Jackson administration was a calculated policy intent on destroying those peoples ties to their original lands, as well as declaring Native people who did not remove to no longer be Muskogee, Sauk, Kickapoo, Choctaw, destroying the existence of up to half of each nation removed. Mandatory boarding schools, Allotment and Termination—all official government policies—also fall under this category of the crime of genocide. The forced removal and four year incarceration of the Navajo people resulted in the death of half their population.

*Imposing measures intended to prevent births within the group:* Famously, during the Termination Era, the US government administrated Indian Health Service made the top medical priority the sterilization of Indigenous women. In 1974, an independent study by one the few Native American physicians, Dr. Connie Pinkerton-Uri, Choctaw/Cherokee, found that one in four Native women had been sterilized without her consent. Pinkerton-Uri's research indicated that the Indian Health Service had "singled out full-blooded Indian women for sterilization procedures." At first denied by the Indian Health Service, two years later, a study by the U.S. General Accounting Office found that 4 of the 12 Indian Health Service regions sterilized 3,406 Native women without their permission between 1973 and 1976. The GAO found that 36 women under age 21 had been forcibly sterilized during this period despite a court-ordered moratorium on sterilizations of women younger than 21.

*Forcibly transferring children of the group to another group:* Various governmental entities, mostly municipalities, counties, and states, routinely removed Native children from their families and put them up for adoption. In the Native resistance movements of the 1960s and 1970s, the demand to put a stop to the practice was codified in the Indian Child Welfare Act of 1978. However, the burden of enforcing the legislation lay with Tribal Government, but the legislation provided no financial resources for Native governments to establish infrastructure to retrieve children from the adoption industry, in which Indian babies were high in demand. Despite these barriers to enforcement, the worst abuses had been curbed over the following three decades. But, on June 25, 2013, the U.S. Supreme Court, in a 5-4 ruling drafted by Justice Samuel Alito, used provisions of the Indian Child Welfare Act (ICWA) to say that a child, widely known as Baby Veronica, did not have to live with her biological Cherokee father. The high court's decision paved the way for Matt and Melanie Capobianco, the adoptive parents, to ask the South Carolina Courts to have the child returned to them. The court gutted the purpose and intent of the Indian Child Welfare Act, missing the concept behind the ICWA, the protection of cultural resource and treasure that are Native children; it's not about protecting so-called traditional or nuclear families. It's about recognizing the prevalence of extended families and culture.

So, why does the Genocide Convention matter? Native nations are still here and still vulnerable to genocidal policy. This isn't just history that predates the 1948 Genocide Convention. But, the history is important and needs to be widely aired, included in public school texts and public service announcements. The Doctrine of Discovery is still law of the land. From the mid-fifteenth century to the mid-twentieth century, most of the non-European world was colonized under the Doctrine of Discovery, one of the first principles of international law Christian European monarchies promulgated to legitimize investigating,

How does knowing that local and state health agencies in the United States and other countries continued forced sterilization policies into the 1990's add to Dunbar-Ortiz' argument here?

How does Dunbar-Ortiz express the significance of this debate over Native American relations and genocide?

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mapping, and claiming lands belonging to peoples outside Europe. It originated in a papal bull issued in 1455 that permitted the Portuguese monarchy to seize West Africa. Following Columbus's infamous exploratory voyage in 1492, sponsored by the king and queen of the infant Spanish state, another papal bull extended similar permission to Spain. Disputes between the Portuguese and Spanish monarchies led to the papal-initiated Treaty of Tordesillas (1494), which, besides dividing the globe equally between the two Iberian empires, clarified that only non-Christian lands fell under the discovery doctrine. This doctrine on which all European states relied thus originated with the arbitrary and unilateral establishment of the Iberian monarchies' exclusive rights under Christian canon law to colonize foreign peoples, and this right was later seized by other European monarchical colonizing projects. The French Republic used this legalistic instrument for its nineteenth- and twentieth-century settler colonialist projects, as did the newly independent United States when it continued the colonization of North America begun by the British.

In 1792, not long after the US founding, Secretary of State Thomas Jefferson claimed that the Doctrine of Discovery developed by European states was international law applicable to the new US government as well. In 1823 the US Supreme Court issued its decision in *Johnson v. McIntosh*. Writing for the majority, Chief Justice John Marshall held that the Doctrine of Discovery had been an established principle of European law and of English law in effect in Britain's North American colonies and was also the law of the United States. The Court defined the exclusive property rights that a European country acquired by dint of discovery: "Discovery gave title to the government, by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession." Therefore, European and Euro-American "discoverers" had gained real-property rights in the lands of Indigenous peoples by merely planting a flag. Indigenous rights were, in the Court's words, "in no instance, entirely disregarded; but were necessarily, to a considerable extent, impaired." The court further held that Indigenous "rights to complete sovereignty, as independent nations, were necessarily diminished." Indigenous people could continue to live on the land, but title resided with the discovering power, the United States. The decision concluded that Native nations were "domestic, dependent nations."

The Doctrine of Discovery is so taken for granted that it is rarely mentioned in historical or legal texts published in the Americas. The UN Permanent Forum on Indigenous Peoples, which meets annually for two weeks, devoted its entire 2012 session to the doctrine. But few US citizens are aware of the precarity of the situation of Indigenous Peoples in the United States.

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### Were American Indians the Victims of Genocide?

by Guenter Lewy

*Guenter Lewy, who for many years taught political science at the University of Massachusetts, has been a contributor to Commentary since 1964. His books include "The Catholic Church & Nazi Germany, Religion & Revolution, America in Vietnam," and "The Cause that Failed: Communism in American Political Life." This essay was originally published by Commentary, September 2004*

On September 21, the National Museum of the American Indian will open its doors. In an interview early this year, the museum's founding director, W. Richard West, declared that the new institution would not shy away from such difficult subjects as the effort to eradicate American Indian culture in the 19th and 20th centuries. It is a safe bet that someone will also, inevitably, raise the issue of genocide.

The story of the encounter between European settlers and America's native population does not make for pleasant reading. Among early accounts, perhaps the most famous is Helen Hunt Jackson's *A Century of Dishonor* (1888), a doleful recitation of forced removals, killings, and callous disregard. Jackson's book, which clearly captured some essential elements of what happened, also set a pattern of exaggeration and one-sided indictment that has persisted to this day.

Thus, according to Ward Churchill, a professor of ethnic studies at the University of Colorado, the reduction of the North American Indian population from an estimated 12 million in 1500 to barely 237,000 in 1900 represents a "vast genocide . . . , the most sustained on record." By the end of the 19th century, writes David E. Stannard, a historian at the University of Hawaii, native Americans had undergone the "worst human holocaust the world had ever witnessed, roaring across two continents non-stop for four centuries and consuming the lives of countless tens of millions of people." In the judgment of Lenore A. Stiffarm and Phil Lane, Jr., "there can be no more monumental example of sustained genocide—certainly none involving a 'race' of people as broad and complex as this—anywhere in the annals of human history."

The sweeping charge of genocide against the Indians became especially popular during the Vietnam war, when historians opposed to that conflict began drawing parallels between our actions in Southeast Asia and earlier examples of a supposedly ingrained American viciousness toward non-white peoples. The historian Richard Drinnon, referring to the troops under the command of the Indian scout Kit Carson, called them "forerunners of the Burning Fifth Marines" who set fire to Vietnamese villages, while in *The American Indian: The First Victim* (1972), Jay David urged contemporary readers to recall how America's civilization had originated in "theft and murder" and "efforts toward . . . genocide."

Further accusations of genocide marked the run-up to the 1992 quincentenary of the landing of Columbus. The National Council of Churches adopted a resolution branding this event "an invasion" that resulted in the "slavery and genocide of native people." In a widely read book, *The Conquest of Paradise* (1990), Kirkpatrick Sale charged the English and their American successors with pursuing a policy of extermination that had continued unabated for four centuries. Later works have followed suit. In the 1999 *Encyclopedia of Genocide*, edited by the scholar Israel Charny, an article by Ward Churchill argues that extermination was the "express objective" of the U.S. government. To the Cambodia expert Ben Kiernan, similarly, genocide is the "only appropriate way" to describe how white settlers treated the Indians. And so forth.

Compare how the two authors chose to introduce their arguments.

What historical context does Lewy give to this debate?

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That American Indians suffered horribly is indisputable. But whether their suffering amounted to a "holocaust," or to genocide, is another matter.

## II

It is a firmly established fact that a mere 250,000 native Americans were still alive in the territory of the United States at the end of the 19th century. Still in scholarly contention, however, is the number of Indians alive at the time of first contact with Europeans. Some students of the subject speak of an inflated "numbers game"; others charge that the size of the aboriginal population has been deliberately minimized in order to make the decline seem less severe than it was.

The disparity in estimates is enormous. In 1928, the ethnologist James Mooney proposed a total count of 1,152,950 Indians in all tribal areas north of Mexico at the time of the European arrival. By 1987, in *American Indian Holocaust and Survival*, Russell Thornton was giving a figure of well over 5 million, nearly five times as high as Mooney's, while Lenore Stiffarm and Phil Lane, Jr. suggested a total of 12 million. That figure rested in turn on the work of the anthropologist Henry Dobyns, who in 1983 had estimated the aboriginal population of North America as a whole at 18 million and of the present territory of the United States at about 10 million.

From one perspective, these differences, however startling, may seem beside the point: there is ample evidence, after all, that the arrival of the white man triggered a drastic reduction in the number of native Americans. Nevertheless, even if the higher figures are credited, they alone do not prove the occurrence of genocide.

To address this issue properly we must begin with the most important reason for the Indians' catastrophic decline—namely, the spread of highly contagious diseases to which they had no immunity. This phenomenon is known by scholars as a "virgin-soil epidemic"; in North America, it was the norm.

The most lethal of the pathogens introduced by the Europeans was smallpox, which sometimes incapacitated so many adults at once that deaths from hunger and starvation ran as high as deaths from disease; in several cases, entire tribes were rendered extinct. Other killers included measles, influenza, whooping cough, diphtheria, typhus, bubonic plague, cholera, and scarlet fever. Although syphilis was apparently native to parts of the Western hemisphere, it, too, was probably introduced into North America by Europeans.

About all this there is no essential disagreement. The most hideous enemy of native Americans was not the white man and his weaponry, concludes Alfred Crosby, "but the invisible killers which those men brought in their blood and breath." It is thought that between 75 to 90 percent of all Indian deaths resulted from these killers.

To some, however, this is enough in itself to warrant the term genocide. David Stannard, for instance, states that just as Jews who died of disease and starvation in the ghettos are counted among the victims of the Holocaust, Indians who died of introduced diseases "were as much the victims of the Euro-American genocidal war as were those burned or stabbed or hacked or shot to death, or devoured by hungry dogs." As an example of actual genocidal conditions, Stannard points to Franciscan missions in California as "furnaces of death."

But right away we are in highly debatable territory. It is true that the cramped quarters of the missions, with their poor ventilation and bad sanitation, encouraged the spread of disease. But it is demonstrably untrue that, like the Nazis, the missionaries were unconcerned with the welfare of their native converts.

How do you interpret Lewy's use of evidence compared to Dunbar-Ortiz' approach?

How does Lewy evaluate Native American population decline in light of the Columbian Exchange?

Notes:

## Guiding Questions

No matter how difficult the conditions under which the Indians labored—obligatory work, often inadequate food and medical care, corporal punishment—their experience bore no comparison with the fate of the Jews in the ghettos. The missionaries had a poor understanding of the causes of the diseases that afflicted their charges, and medically there was little they could do for them. By contrast, the Nazis knew exactly what was happening in the ghettos, and quite deliberately deprived the inmates of both food and medicine; unlike in Stannard's "furnaces of death," the deaths that occurred there were meant to occur.

The larger picture also does not conform to Stannard's idea of disease as an expression of "genocidal war." True, the forced relocations of Indian tribes were often accompanied by great hardship and harsh treatment; the removal of the Cherokee from their homelands to territories west of the Mississippi in 1838 took the lives of thousands and has entered history as the Trail of Tears. But the largest loss of life occurred well before this time, and sometimes after only minimal contact with European traders. True, too, some colonists later welcomed the high mortality among Indians, seeing it as a sign of divine providence; that, however, does not alter the basic fact that Europeans did not come to the New World in order to infect the natives with deadly diseases.

Or did they? Ward Churchill, taking the argument a step further than Stannard, asserts that there was nothing unwitting or unintentional about the way the great bulk of North America's native population disappeared: "it was precisely malice, not nature, that did the deed." In brief, the Europeans were engaged in biological warfare.

Unfortunately for this thesis, we know of but a single instance of such warfare, and the documentary evidence is inconclusive. In 1763, a particularly serious uprising threatened the British garrisons west of the Allegheny mountains. Worried about his limited resources, and disgusted by what he saw as the Indians' treacherous and savage modes of warfare, Sir Jeffrey Amherst, commander-in-chief of British forces in North America, wrote as follows to Colonel Henry Bouquet at Fort Pitt: "You will do well to try to inoculate the Indians [with smallpox] by means of blankets, as well as to try every other method, that can serve to extirpate this execrable race."

Bouquet clearly approved of Amherst's suggestion, but whether he himself carried it out is uncertain. On or around June 24, two traders at Fort Pitt did give blankets and a handkerchief from the fort's quarantined hospital to two visiting Delaware Indians, and one of the traders noted in his journal: "I hope it will have the desired effect." Smallpox was already present among the tribes of Ohio; at some point after this episode, there was another outbreak in which hundreds died.

A second, even less substantiated instance of alleged biological warfare concerns an incident that occurred on June 20, 1837. On that day, Churchill writes, the U.S. Army began to dispense "trade blankets" to Mandans and other Indians gathered at Fort Clark on the Missouri River in present-day North Dakota. He continues: Far from being trade goods, the blankets had been taken from a military infirmary in St. Louis quarantined for smallpox, and brought upriver aboard the steamboat *St. Peter's*. When the first Indians showed symptoms of the disease on July 14, the post surgeon advised those camped near the post to scatter and seek "sanctuary" in the villages of healthy relatives.

In this way the disease was spread, the Mandans were "virtually exterminated," and other tribes suffered similarly devastating losses. Citing a figure of "100,000 or more fatalities" caused by the U.S. Army in the 1836-40 smallpox pandemic (elsewhere he speaks of a toll "several times that number"), Churchill refers the reader to Thornton's *American Indian Holocaust and Survival*.

What concessions does Lewy make within his argument? Do you think they weaken or strengthen his claims?

Notes:



Supporting Churchill here are Stiffarm and Lane, who write that "the distribution of smallpox- infected blankets by the U.S. Army to Mandans at Fort Clark . . . was the causative factor in the pandemic of 1836-40." In evidence, they cite the journal of a contemporary at Fort Clark, Francis A. Chardon.

But Chardon's journal manifestly does not suggest that the U.S. Army distributed infected blankets, instead blaming the epidemic on the inadvertent spread of disease by a ship's passenger. And as for the "100,000 fatalities," not only does Thornton fail to allege such obviously absurd numbers, but he too points to infected passengers on the steamboat *St. Peter's* as the cause. Another scholar, drawing on newly discovered source material, has also refuted the idea of a conspiracy to harm the Indians.

Similarly at odds with any such idea is the effort of the United States government at this time to vaccinate the native population. Smallpox vaccination, a procedure developed by the English country doctor Edward Jenner in 1796, was first ordered in 1801 by President Jefferson; the program continued in force for three decades, though its implementation was slowed both by the resistance of the Indians, who suspected a trick, and by lack of interest on the part of some officials. Still, as Thornton writes: "Vaccination of American Indians did eventually succeed in reducing mortality from smallpox."

To sum up, European settlers came to the New World for a variety of reasons, but the thought of infecting the Indians with deadly pathogens was not one of them. As for the charge that the U.S. government should itself be held responsible for the demographic disaster that overtook the American-Indian population, it is unsupported by evidence or legitimate argument. The United States did not wage biological warfare against the Indians; neither can the large number of deaths as a result of disease be considered the result of a genocidal design.

### III

Still, even if up to 90 percent of the reduction in Indian population was the result of disease, that leaves a sizable death toll caused by mistreatment and violence. Should some or all of these deaths be considered instances of genocide?

We may examine representative incidents by following the geographic route of European settlement, beginning in the New England colonies. There, at first, the Puritans did not regard the Indians they encountered as natural enemies, but rather as potential friends and converts. But their Christianizing efforts showed little success, and their experience with the natives gradually yielded a more hostile view. The Pequot tribe in particular, with its reputation for cruelty and ruthlessness, was feared not only by the colonists but by most other Indians in New England. In the warfare that eventually ensued, caused in part by intertribal rivalries, the Narragansett Indians became actively engaged on the Puritan side.

Hostilities opened in late 1636 after the murder of several colonists. When the Pequots refused to comply with the demands of the Massachusetts Bay Colony for the surrender of the guilty and other forms of indemnification, a punitive expedition was led against them by John Endecott, the first resident governor of the colony; although it ended inconclusively, the Pequots retaliated by attacking any settler they could find. Fort Saybrook on the Connecticut River was besieged, and members of the garrison who ventured outside were ambushed and killed. One captured trader, tied to a stake in sight of the fort, was tortured for three days, expiring after his captors flayed his skin with the help of hot timbers and cut off his fingers and toes. Another prisoner was roasted alive.

The torture of prisoners was indeed routine practice for most Indian tribes, and was deeply ingrained in Indian culture. Valuing bravery above all things, the Indians had little sympathy for those who surrendered or were captured. Prisoners unable to withstand the rigor of wilderness travel were usually

How does Lewy deal with the non-disease related population decline in the face of the claim for genocide? Does it appear he is considering all of the historical evidence?

Notes:

## Guiding Questions

killed on the spot. Among those—Indian or European—taken back to the village, some would be adopted to replace slain warriors, the rest subjected to a ritual of torture designed to humiliate them and exact atonement for the tribe's losses. Afterward the Indians often consumed the body or parts of it in a ceremonial meal, and proudly displayed scalps and fingers as trophies of victory.

Despite the colonists' own resort to torture in order to extract confessions, the cruelty of these practices strengthened the belief that the natives were savages who deserved no quarter. This revulsion accounts at least in part for the ferocity of the battle of Fort Mystic in May 1637, when a force commanded by John Mason and assisted by militiamen from Saybrook surprised about half of the Pequot tribe encamped near the Mystic River.

The intention of the colonists had been to kill the warriors "with their Swords," as Mason put it, to plunder the village, and to capture the women and children. But the plan did not work out. About 150 Pequot warriors had arrived in the fort the night before, and when the surprise attack began they emerged from their tents to fight. Fearing the Indians' numerical strength, the English attackers set fire to the fortified village and retreated outside the palisades. There they formed a circle and shot down anyone seeking to escape; a second cordon of Narragansett Indians cut down the few who managed to get through the English line. When the battle was over, the Pequots had suffered several hundred dead, perhaps as many as 300 of these being women and children. Twenty Narragansett warriors also fell.

A number of recent historians have charged the Puritans with genocide: that is, with having carried out a premeditated plan to exterminate the Pequots. The evidence belies this. The use of fire as a weapon of war was not unusual for either Europeans or Indians, and every contemporary account stresses that the burning of the fort was an act of self-protection, not part of a pre-planned massacre. In later stages of the Pequot war, moreover, the colonists spared women, children, and the elderly, further contradicting the idea of genocidal intention.

A second famous example from the colonial period is King Philip's War (1675-76). This conflict, proportionately the costliest of all American wars, took the life of one in every sixteen men of military age in the colonies; large numbers of women and children also perished or were carried into captivity. Fifty-two of New England's 90 towns were attacked, seventeen were razed to the ground, and 25 were pillaged. Casualties among the Indians were even higher, with many of those captured being executed or sold into slavery abroad.

The war was also merciless, on both sides. At its outset, a colonial council in Boston had declared "that none be Killed or Wounded that are Willing to surrender themselves into Custody." But these rules were soon abandoned on the grounds that the Indians themselves, failing to adhere either to the laws of war or to the law of nature, would "skulk" behind trees, rocks, and bushes rather than appear openly to do "civilized" battle. Similarly creating a desire for retribution were the cruelties perpetrated by Indians when ambushing English troops or overrunning strongholds housing women and children.

Before long, both colonists and Indians were dismembering corpses and displaying body parts and heads on poles. (Nevertheless, Indians could not be killed with impunity. In the summer of 1676, four men were tried in Boston for the brutal murder of three squaws and three Indian children; all were found guilty and two were executed.)

The hatred kindled by King Philip's War became even more pronounced in 1689 when strong Indian tribes allied themselves with the French against the British. In 1694, the General Court of Massachusetts ordered all friendly Indians confined to a small area. A bounty was then offered for the killing or capture of hostile Indians, and scalps were accepted as proof of a kill. In 1704, this was amended in the direction

Do the weapons chosen to execute a plan moderate the intent of the plan as Lewy seems to infer?

Notes:

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of "Christian practice" by means of a scale of rewards graduated by age and sex; bounty was proscribed in the case of children under the age of ten, subsequently raised to twelve (sixteen in Connecticut, fifteen in New Jersey). Here, too, genocidal intent was far from evident; the practices were justified on grounds of self-preservation and revenge, and in reprisal for the extensive scalping carried out by Indians.

### IV

We turn now to the American frontier. In Pennsylvania, where the white population had doubled between 1740 and 1760, the pressure on Indian lands increased formidably; in 1754, encouraged by French agents, Indian warriors struck, starting a long and bloody conflict known as the French and Indian War or the Seven Years' War. By 1763, according to one estimate, about 2,000 whites had been killed or vanished into captivity. Stories of real, exaggerated, and imaginary atrocities spread by word of mouth, in narratives of imprisonment, and by means of provincial newspapers. Some British officers gave orders that captured Indians be given no quarter, and even after the end of formal hostilities, feelings continued to run so high that murderers of Indians, like the infamous Paxton Boys, were applauded rather than arrested.

As the United States expanded westward, such conflicts multiplied. So far had things progressed by 1784 that, according to one British traveler, "white Americans have the most rancorous antipathy to the whole race of Indians; and nothing is more common than to hear them talk of extirpating them totally from the face of the earth, men, women, and children."

Settlers on the expanding frontier treated the Indians with contempt, often robbing and killing them at will. In 1782, a militia pursuing an Indian war party that had slain a woman and a child massacred more than 90 peaceful Moravian Delawares. Although federal and state officials tried to bring such killers to justice, their efforts, writes the historian Francis Prucha, "were no match for the singular Indian-hating mentality of the frontiersmen, upon whom depended conviction in the local courts."

But that, too, is only part of the story. The view that the Indian problem could be solved by force alone came under vigorous challenge from a number of federal commissioners who from 1832 on headed the Bureau of Indian Affairs and supervised the network of agents and subagents in the field. Many Americans on the eastern seaboard, too, openly criticized the rough ways of the frontier. Pity for the vanishing Indian, together with a sense of remorse, led to a revival of the 18th-century concept of the noble savage. America's native inhabitants were romanticized in historiography, art, and literature, notably by James Fenimore Cooper in his *Leatherstocking Tales* and Henry Wadsworth Longfellow in his long poem, *The Song of Hiawatha*.

On the western frontier itself, such views were of course dismissed as rank sentimentality; the perceived nobility of the savages, observed cynics, was directly proportional to one's geographic distance from them. Instead, settlers vigorously complained that the regular army was failing to meet the Indian threat more aggressively. A large-scale uprising of the Sioux in Minnesota in 1862, in which Indian war parties killed, raped, and pillaged all over the countryside, left in its wake a climate of fear and anger that spread over the entire West.

Colorado was especially tense. Cheyenne and Arapahoe Indians, who had legitimate grievances against the encroaching white settlers, also fought for the sheer joy of combat, the desire for booty, and the prestige that accrued from success. The overland route to the East was particularly vulnerable: at one point in 1864, Denver was cut off from all supplies, and there were several butcheries of entire families at outlying ranches. In one gruesome case, all of the victims were scalped, the throats of the two children were cut, and the mother's body was ripped open and her entrails pulled over her face.

What do you think about Lewy's chronological approach to the debate as opposed to Dunbar-Ortiz' more point by point argument pulling evidence from across time periods?

What role does the romanticization of Native Americans play in the way settlers and the government treated them according to Lewy?

Notes:



## Guiding Questions

Writing in September 1864, the Reverend William Crawford reported on the attitude of the white population of Colorado: "There is but one sentiment in regard to the final disposition which shall be made of the Indians: 'Let them be exterminated—men, women, and children together.'" Of course, he added, "I do not myself share in such views." *The Rocky Mountain News*, which at first had distinguished between friendly and hostile Indians, likewise began to advocate extermination of this "dissolute, vagabondish, brutal, and ungrateful race." With the regular army off fighting the Civil War in the South, the western settlers depended for their protection on volunteer regiments, many lamentably deficient in discipline. It was a local force of such volunteers that committed the massacre of Sand Creek, Colorado on November 29, 1864. Formed in August, the regiment was made up of miners down on their luck, cowpokes tired of ranching, and others itching for battle. Its commander, the Reverend John Milton Chivington, a politician and ardent Indian-hater, had urged war without mercy, even against children. "Nits make lice," he was fond of saying. The ensuing orgy of violence in the course of a surprise attack on a large Indian encampment left between 70 and 250 Indians dead, the majority women and children. The regiment suffered eight killed and 40 wounded.

News of the Sand Creek massacre sparked an outcry in the East and led to several congressional inquiries. Although some of the investigators appear to have been biased against Chivington, there was no disputing that he had issued orders not to give quarter, or that his soldiers had engaged in massive scalping and other mutilations.

The sorry tale continues in California. The area that in 1850 became admitted to the Union as the 31st state had once held an Indian population estimated at anywhere between 150,000 and 250,000. By the end of the 19th century, the number had dropped to 15,000. As elsewhere, disease was the single most important factor, although the state also witnessed an unusually large number of deliberate killings.

The discovery of gold in 1848 brought about a fundamental change in Indian-white relations. Whereas formerly Mexican ranchers had both exploited the Indians and provided them with a minimum of protection, the new immigrants, mostly young single males, exhibited animosity from the start, trespassing on Indian lands and often freely killing any who were in their way. An American officer wrote to his sister in 1860: "There never was a viler sort of men in the world than is congregated about these mines."

What was true of miners was often true as well of newly arrived farmers. By the early 1850's, whites in California outnumbered Indians by about two to one, and the lot of the natives, gradually forced into the least fertile parts of the territory, began to deteriorate rapidly. Many succumbed to starvation; others, desperate for food, went on the attack, stealing and killing livestock. Indian women who prostituted themselves to feed their families contributed to the demographic decline by removing themselves from the reproductive cycle. As a solution to the growing problem, the federal government sought to confine the Indians to reservations, but this was opposed both by the Indians themselves and by white ranchers fearing the loss of labor. Meanwhile, clashes multiplied.

One of the most violent, between white settlers and Yuki Indians in the Round Valley of Mendocino County, lasted for several years and was waged with great ferocity. Although Governor John B. Weller cautioned against an indiscriminate campaign—"Your operations against the Indians," he wrote to the commander of a volunteer force in 1859, "must be confined strictly to those who are known to have been engaged in killing the stock and destroying the property of our citizens . . . and the women and children under all circumstances must be spared"—his words had little effect. By 1864 the number of Yukis had declined from about 5,000 to 300.

Though relating the specific events in more detail, Lewy interprets their intent and outcomes differently than Dunbar-Ortiz. How does he seem to arrive at his differing interpretation?

Notes:

The Humboldt Bay region, just northwest of the Round Valley, was the scene of still more collisions. Here too Indians stole and killed cattle, and militia companies retaliated. A secret league, formed in the town of Eureka, perpetrated a particularly hideous massacre in February 1860, surprising Indians sleeping in their houses and killing about sixty, mostly by hatchet. During the same morning hours, whites attacked two other Indian rancherias, with the same deadly results. In all, nearly 300 Indians were killed on one day, at least half of them women and children.

Once again there was outrage and remorse. "The white settlers," wrote a historian only 20 years later, "had received great provocation. . . . But nothing they had suffered, no depredations the savages had committed, could justify the cruel slaughter of innocent women and children." This had also been the opinion of a majority of the people of Eureka, where a grand jury condemned the massacre, while in cities like San Francisco all such killings repeatedly drew strong criticism. But atrocities continued: by the 1870's, as one historian has summarized the situation in California, "only remnants of the aboriginal populations were still alive, and those who had survived the maelstrom of the preceding quarter-century were dislocated, demoralized, and impoverished."

Lastly we come to the wars on the Great Plains. Following the end of the Civil War, large waves of white migrants, arriving simultaneously from East and West, squeezed the Plains Indians between them. In response, the Indians attacked vulnerable white outposts; their "acts of devilish cruelty," reported one officer on the scene, had "no parallel in savage warfare." The trails west were in similar peril: in December 1866, an army detachment of 80 men was lured into an ambush on the Bozeman Trail, and all of the soldiers were killed.

To force the natives into submission, Generals Sherman and Sheridan, who for two decades after the Civil War commanded the Indian-fighting army units on the Plains, applied the same strategy they had used so successfully in their marches across Georgia and in the Shenandoah Valley. Unable to defeat the Indians on the open prairie, they pursued them to their winter camps, where numbing cold and heavy snows limited their mobility. There they destroyed the lodges and stores of food, a tactic that inevitably resulted in the deaths of women and children.

Genocide? These actions were almost certainly in conformity with the laws of war accepted at the time. The principles of limited war and of noncombatant immunity had been codified in Francis Lieber's General Order No. 100, issued for the Union Army on April 24, 1863. But the villages of warring Indians who refused to surrender were considered legitimate military objectives. In any event, there was never any order to exterminate the Plains Indians, despite heated pronouncements on the subject by the outraged Sherman and despite Sheridan's famous quip that "the only good Indians I ever saw were dead." Although Sheridan did not mean that all Indians should be shot on sight, but rather that none of the warring Indians on the Plains could be trusted, his words, as the historian James Axtell rightly suggests, did "more to harm straight thinking about Indian-white relations than any number of Sand Creeks or Wounded Knees."

As for that last-named encounter, it took place on December 29, 1890 on the Pine Ridge Reservation in South Dakota. By this time, the 7th Regiment of U.S. Cavalry had compiled a reputation for aggressiveness, particularly in the wake of its surprise assault in 1868 on a Cheyenne village on the Washita River in Kansas, where about 100 Indians were killed by General George Custer's men.

Still, the battle of Washita, although one-sided, had not been a massacre: wounded warriors were given first aid, and 53 women and children who had hidden in their lodges survived the assault and were taken prisoner. Nor were the Cheyennes unarmed innocents; as their chief Black Kettle acknowledged, they had been conducting regular raids into Kansas that he was powerless to stop.

How does Lewy fit statements from Sherman and Sheridan, such as "*The more Indians we can kill this year the fewer we will need to kill the next, because the more I see of the Indians the more convinced I become that they must either all be killed or be maintained as a species of pauper*" by Sherman, into his argument that the intent of their actions was not genocide?

Notes:

The encounter at Wounded Knee, 22 years later, must be seen in the context of the Ghost Dance religion, a messianic movement that since 1889 had caused great excitement among Indians in the area and that was interpreted by whites as a general call to war. While an encampment of Sioux was being searched for arms, a few young men created an incident; the soldiers, furious at what they considered an act of Indian treachery, fought back furiously as guns surrounding the encampment opened fire with deadly effect. The Army's casualties were 25 killed and 39 wounded, mostly as a result of friendly fire. More than 300 Indians died.

Wounded Knee has been called "perhaps the best-known genocide of North American Indians." But, as Robert Utley has concluded in a careful analysis, it is better described as "a regrettable, tragic accident of war," a bloodbath that neither side intended. In a situation where women and children were mixed with men, it was inevitable that some of the former would be killed. But several groups of women and children were in fact allowed out of the encampment, and wounded Indian warriors, too, were spared and taken to a hospital. There may have been a few deliberate killings of noncombatants, but on the whole, as a court of inquiry ordered by President Harrison established, the officers and soldiers of the unit made supreme efforts to avoid killing women and children.

On January 15, 1891, the last Sioux warriors surrendered. Apart from isolated clashes, America's Indian wars had ended.

## V

The Genocide Convention was approved by the General Assembly of the United Nations on December 9, 1948 and came into force on January 12, 1951; after a long delay, it was ratified by the United States in 1986. Since genocide is now a technical term in international criminal law, the definition established by the convention has assumed prima-facie authority, and it is with this definition that we should begin in assessing the applicability of the concept of genocide to the events we have been considering.

According to Article II of the convention, the crime of genocide consists of a series of acts "committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group as such" (emphases added). Practically all legal scholars accept the centrality of this clause. During the deliberations over the convention, some argued for a clear specification of the reasons, or motives, for the destruction of a group. In the end, instead of a list of such motives, the issue was resolved by adding the words "as such"—i.e., the motive or reason for the destruction must be the ending of the group as a national, ethnic, racial, or religious entity. Evidence of such a motive, as one legal scholar put it, "will constitute an integral part of the proof of a genocidal plan, and therefore of genocidal intent."

The crucial role played by intentionality in the Genocide Convention means that under its terms the huge number of Indian deaths from epidemics cannot be considered genocide. The lethal diseases were introduced inadvertently, and the Europeans cannot be blamed for their ignorance of what medical science would discover only centuries later. Similarly, military engagements that led to the death of noncombatants, like the battle of the Washita, cannot be seen as genocidal acts, for the loss of innocent life was not intended and the soldiers did not aim at the destruction of the Indians as a defined group. By contrast, some of the massacres in California, where both the perpetrators and their supporters openly acknowledged a desire to destroy the Indians as an ethnic entity, might indeed be regarded under the terms of the convention as exhibiting genocidal intent.

Even as it outlaws the destruction of a group "in whole or in part," the convention does not address the question of what percentage of a group must be affected in order to qualify as genocide. As a benchmark, the prosecutor of the International Criminal Tribunal for the Former Yugoslavia has suggested "a

How does Lewy deal with the issue of the Genocide Convention compared to Dunbar-Ortiz' treatment?



## Guiding Questions

reasonably significant number, relative to the total of the group as a whole," adding that the actual or attempted destruction should also relate to "the factual opportunity of the accused to destroy a group in a specific geographic area within the sphere of his control, and not in relation to the entire population of the group in a wider geographic sense." If this principle were adopted, an atrocity like the Sand Creek massacre, limited to one group in a specific single locality, might also be considered an act of genocide.

Of course, it is far from easy to apply a legal concept developed in the middle of the 20th century to events taking place many decades if not hundreds of years earlier. Our knowledge of many of these occurrences is incomplete. Moreover, the malefactors, long since dead, cannot be tried in a court of law, where it would be possible to establish crucial factual details and to clarify relevant legal principles.

Applying today's standards to events of the past raises still other questions, legal and moral alike. While history has no statute of limitations, our legal system rejects the idea of retroactivity (*ex post facto* laws). Morally, even if we accept the idea of universal principles transcending particular cultures and periods, we must exercise caution in condemning, say, the conduct of war during America's colonial period, which for the most part conformed to then prevailing notions of right and wrong. To understand all is hardly to forgive all, but historical judgment, as the scholar Gordon Leff has correctly stressed, "must always be contextual: it is no more reprehensible for an age to have lacked our values than to have lacked forks."

The real task, then, is to ascertain the context of a specific situation and the options it presented. Given circumstances, and the moral standards of the day, did the people on whose conduct we are sitting in judgment have a choice to act differently? Such an approach would lead us to greater indulgence toward the Puritans of New England, who fought for their survival, than toward the miners and volunteer militias of California who often slaughtered Indian men, women, and children for no other reason than to satisfy their appetite for gold and land. The former, in addition, battled their Indian adversaries in an age that had little concern for humane standards of warfare, while the latter committed their atrocities in the face of vehement denunciation not only by self-styled humanitarians in the faraway East but by many of their fellow citizens in California.

Finally, even if some episodes can be considered genocidal—that is, tending toward genocide—they certainly do not justify condemning an entire society. Guilt is personal, and for good reason the Genocide Convention provides that only "persons" can be charged with the crime, probably even ruling out legal proceedings against governments. No less significant is that a massacre like Sand Creek was undertaken by a local volunteer militia and was not the expression of official U.S. policy. No regular U.S. Army unit was ever implicated in a similar atrocity. In the majority of actions, concludes Robert Utley, "the Army shot noncombatants incidentally and accidentally, not purposefully." As for the larger society, even if some elements in the white population, mainly in the West, at times advocated extermination, no official of the U.S. government ever seriously proposed it. Genocide was never American policy, nor was it the result of policy.

The violent collision between whites and America's native population was probably unavoidable. Between 1600 and 1850, a dramatic surge in population led to massive waves of emigration from Europe, and many of the millions who arrived in the New World gradually pushed westward into America's seemingly unlimited space. No doubt, the 19th-century idea of America's "manifest destiny" was in part a rationalization for acquisitiveness, but the resulting dispossession of the Indians was as unstoppable as other great population movements of the past. The U.S. government could not have prevented the westward movement even if it had wanted to.

How does Lewy use an argument about historical presentism as part of his defense against the application of the term genocide?

Notes:

In the end, the sad fate of America's Indians represents not a crime but a tragedy, involving an irreconcilable collision of cultures and values. Despite the efforts of well-meaning people in both camps, there existed no good solution to this clash. The Indians were not prepared to give up the nomadic life of the hunter for the sedentary life of the farmer. The new Americans, convinced of their cultural and racial superiority, were unwilling to grant the original inhabitants of the continent the vast preserve of land required by the Indians' way of life. The consequence was a conflict in which there were few heroes, but which was far from a simple tale of hapless victims and merciless aggressors. To fling the charge of genocide at an entire society serves neither the interests of the Indians nor those of history.

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