International Law and Canada's Crimes of Genocide

Starblanket, Tamara. "'Kill the Indian in the Child': Genocide in International Law." In *Indigenous Peoples as Subjects of International Law*, edited by Irene Watson, 171-200. London: Routledge, 2017.

This factsheet is a distillation of Tamara Starblanket's chapter in the book *Indigenous Peoples as Subjects of International Law*. The factsheet will (1) review the drafting of the United Nations Genocide Convention from an Indigenous* standpoint to reveal how the domination of settler-state interests resulted in the exclusion of the Indigenous experience of cultural genocide from international law, and (2) will show that the Canadian state has violated and continues to violate the Genocide Convention, despite Canada's attempts to evade accountability for its crimes.

* Starblanket clarifies that "Indigenous Peoples" in her chapter means "the Original Peoples and Nations." As in her chapter, this factsheet will use both terms.

Part 1: Drafting the Crime of Genocide

This section details the major failings of the United Nations Genocide Convention in regards to protecting the Original Peoples and Nations of Great Turtle Island, including how settler-states like Canada successfully intervened in the 1948 drafting process to evade being held accountable for ongoing crimes of genocide.

Raphael Lemkin's Definition of Genocide

- Raphael Lemkin was an international lawyer who coined the word "genocide" in the 1940s.
- Lemkin defined genocide as the "destruction of a nation or of an ethnic group."
- Lemkin described genocide as accomplished in two phases by an invading state:
  - (1) The destruction of the national pattern of the oppressed group.
  - (2) The imposition of the national pattern of the oppressor. This imposition may involve the removal of the oppressed population from their land and settlement by the oppressor's own nationals, and / or the **assimilation** of the oppressed population into the oppressor's national pattern.
- By Lemkin's definition, the attempted "civilization" of Indigenous Peoples of Great Turtle Island is genocide, because settlers forcibly imposed European cultural patterns onto the Original Peoples and Nations.
- Colonialism in Canada matches the definition of genocide as understood by the man who coined the term.



Raphael Lemkin, the lawyer who coined "genocide" in the 1940s.

Colonialism and International Law

- Legal scholar Antony Anghie argues that international law was forged out of an attempt to create a legal system that could accommodate the exploitative relationship between the European and non-European worlds in the colonial confrontation.
- Colonialism is the basis of international law to the detriment of Original Peoples and Nations around the world.
- Anghie explains that the drafting of the Genocide Convention was influenced by the "civilizing mission"— a concept that was used to justify colonialism as a means of "saving" supposedly "uncivilized" non-Europeans through assimilation.

The Colonial Clause

- In the Genocide Convention, the "colonial clause" gives colonial states the freedom to decide whether or not the Genocide Convention will apply to "their" colonial possessions.
- Critics argued that giving colonial powers the choice of whether to extend the protections of the Genocide Conventions to colonies severely diminished the effectiveness of preventing genocide.
- The colonial clause ensured that colonial territories could be kept in a position of inferiority to their oppressors.

The Removal of "Cultural Genocide"

- "Cultural genocide," defined as a dominant power forcing their cultural pattern over another national identity, was **removed** from the definition of the crime of genocide in the Genocide Convention.
- Colonial powers like the United Kingdom and settler-states like Canada and the United States advocated removing cultural genocide because they did not want their violent treatments of Original Peoples and Nations to be construed as genocide, which would lead to international recrimination.
- The Canadian delegate argued that the inclusion of cultural genocide was a protection that went "too far," stating that genocide "should be limited to the mass physical destruction of human groups."
- Canada proposed dealing with assimilation under a human rights framework rather than a genocidal framework, which functioned to conceal Canada's destructive laws and policies regarding Indigenous Peoples.
- The destructive colonial "civilization process" on Great Turtle Island has been hidden by the removal of cultural genocide from the Genocide Convention.
- Critics of the removal of cultural genocide, such as the USSR, argued that the omission would prevent the punishment of perpetrators of genocide.
- The removal of cultural genocide as a crime does not lessen its destructive effects on the victims of colonization.
- Scholar Sharon Venne states that "genocide is genocide no matter what form it takes and no matter what you call it."

No Mention of Theories of Racial Superiority

- Critics like the USSR expressed concern that theories of racial superiority were not mentioned in the preamble of the Genocide Convention, arguing that fascism, Nazism, and doctrines of racial superiority were at the heart of genocide.
- This exclusion is a major limitation of the Genocide Convention, as doctrines of racial superiority led to the genocide against the Original Peoples on Great Turtle Island and all over the world.

"Forcible Transferral of Children"

- For all its faults, the Genocide Convention does state that the forcible transferring of children away from their national community is **genocide**.
- Since human groups depend on their children for the continuation of their national identities, forcible removal of children leads to the eventual disappearance of national identities.
- Delegates agreed that the removal of children not only resulted in assimilation, but could also have physical and biological effects since it could cause serious harm or death to children.

The Meaning of the Genocide Convention for Original Nations

- The drafting of the crime of genocide in international law from an Indigenous standpoint reveals the domination of state interests and the exclusion of Indigenous Peoples' experiences, like that of cultural genocide.
- The deletion of cultural genocide gives colonial settler-states the license to destroy with impunity, and allows their genocides to go unchecked.
- After the passing of the Genocide Convention, states had an obligation to ratify the convention into domestic law; when implementing the convention into its laws, Canada removed critical components.
- The fact that Canada's penal laws exclude crimes it is actively engaged in calls into question the ability of the Genocide Convention to protect Indigenous Peoples and Nations.
- The removal of cultural genocide from international law renders Original Nations invisible.
- Indigenous Nations' ability to protect the rights of their children from cultural genocide are extraordinarily limited under current international law.
- Despite the attempts of colonial and settler-states to avoid accountability, there there is enough leeway in the Genocide Convention to make the legal claim that the Canadian state is actively perpetuating genocide in their ongoing forcible transferral of Indigenous children.
- Canada's laws and policies clearly demonstrate an intent to destroy the national identity of Indigenous Nations through the theft and assimilation of Indigenous children.
- The genocidal forcible transferring of Indigenous children into colonial institutions and settler society continues without redress in international law.



The Genocide Convention was drafted and adopted by the United Nations in 1948. The role of settler-states in defining a crime they were (and still are) actively engaged in calls into question the ability of the Genocide Convention protect Original Peoples and Nations from Genocide.

Part 2: Canada's Historic and Ongoing Genocide

This section details Canada's history of genocide and ongoing genocide against Original Peoples and Nations. The section ends with a consideration of how Original Peoples will move beyond colonialism and genocide.

Indigenous Nations Are Subjects of International Law

- Sharon Venne argues that Indigenous Nations are subjects of international law.
- The Peace and Friendship treaties made between Indigenous Nations and the Crown of Great Britain affirm the international legal status of the Original Nations.
- Canada, as a colony of Great Britain, inherited the legal obligation to implement the treaties according to their original spirit and intent.
- Treaties affirm the inherent authority granted to Indigenous Nations by the Creator to their land, nationalities, laws, and government.
- Sharon Venne explains that the Cree signatories of Treaty 6 in 1876 were guided by laws designed to protect and honour the land, for the benefit of their own lives and the lives of future generations.
- The authority to protect the land and their children was never surrendered by Original Nations.
- The Canadian state has violated treaties with Indigenous Nations in several ways, the most important being the forcible transferring of Indigenous Peoples' children from their Nations to the colonizer's people and society, which is a genocidal act.



A treaty medal, showing the nation-to-nation relationship between Indigenous Nations and the Crown of Great Britain.

Foundations and Frameworks of Genocide in Canada

Dehumanizing Language

- Birgil Kills Straight and Steven Newcomb explain that, even from the earliest colonial laws and documents like the Doctrine of Discovery, dehumanizing language was used to refer to non-Europeans.
- This violent categorization by settler-states is used to justify colonization and the genocide that follows colonization.
- Colonial law and policy uses this subhumanizing and dehumanizing language in order to justify the theft of Original Peoples' territories and to illegitimate their sovereignty.
- The destruction of Indigenous Peoples and Nations is guided by dehumanizing terminology that is deeply embedded into the framework of the colonial settler-state.
- Raphael Lemkin explained that such dehumanizing "laws of occupation" are indispensable to colonial invasion and genocide.

White Supremacy

- Kent McNeil explains that nineteenth-century colonial laws and policies towards Indigenous Peoples were deeply influenced by theories of white supremacy and "social darwinism."
- The basis of the genocidal removal of children into the residential school system in Canada were theories of white superiority.
- Genocide in Canada is deeply linked to white supremacy, demonstrating why the Genocide Convention should have mentioned the connection between genocide and racial hierarchy.

The "Civilizing Mission"

- The "civilizing mission" is the genocidal process in which settler-states attempt to impose "civilized" white settler identity onto Original Peoples.
- Dehumanizing, inferior classifications like "pagan" and "uncivilized" were used through the civilizing mission in Canada to claim that Indigenous Peoples and their Nations were not sovereign and to justify the legislated removal of their children from their families.
- The residential school system was designed by the Canadian government to "civilize" or "absorb" Indigenous Peoples' children into Canadian society or the colonial "body politic."
- First Canadian Prime Minister John A. Macdonald stated to Parliament in 1883 that the Canadian state intended to assimilate Indigenous children through residential schools so they would speak, think, and write like "civilized" white Christians.
- This civilizing mission is what the Canadian state hoped to conceal by pushing for the removal of cultural genocide from the Genocide Convention in 1948.
- The forcing of a cultural pattern onto a population to whom it is foreign is still genocide despite what the Genocide Convention says.

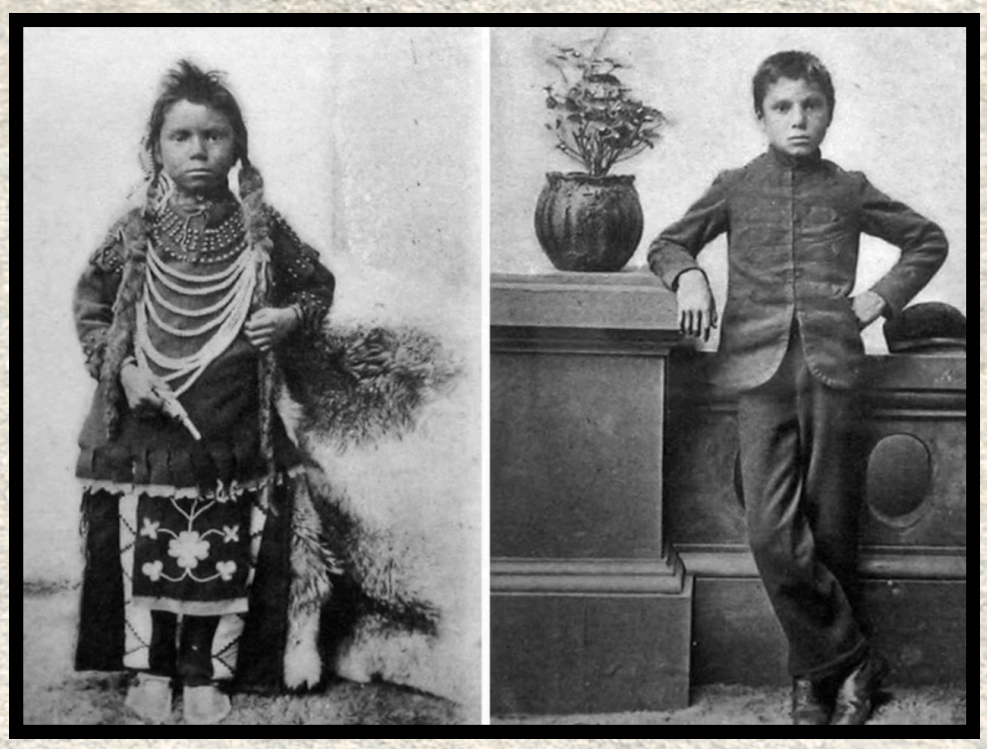
Canada's Residential Schools were Genocidal Institutions

The Model of Domination and Dehumanization

- "The Domination and Dehumanization of Original Nations and Peoples" is a model created by Steven Newcomb and used by Tamara Starblanket to unpack the genocidal, colonial nature of the residential school system.
- The model conceptualizes the settler-state "body politic" as a ravenously hungry predator attempting to consume Indigenous lands and Peoples.
- For example, Superintendent of Indian Affairs Duncan Campbell Scott stated in 1920 that the objective of the residential school system was to continue until there was not a single Indigenous Person in Canada who "has not been absorbed into the body politic."
- This model explains the process Indigenous Nations have collectively undergone by the forcible transferral of the children from one group (family, community, and nations) to another group (residential institutions and ultimately Canadian society).
- This model is in no way meant to obscure the human decision of genocide— human beings plan, create, and drive genocides.
- In this model, the process is colonialism and the result is genocide.

"Total Institutions"

- Roland Chrisjohn, Sherry Young, and Michael Maraun describe residential schools as "total institutions"— institutions designed to unmake the identity of Indigenous children and remake them in the Canadian state's vision of a "civilized" person.
- "Total institutions" function to indoctrinate and brainwash Indigenous children.
- The process of indoctrination was carried out alongside torture, forced starvation, forced labour, sexual abuse, and death by disease and dilapidated living conditions.



Before and after images of Thomas Moore Keesick from Muscowpetung Saulteaux First Nation. He died of tuberculosis after contracting the disease at a residential school. These images were published by the Department of Indian Affairs in 1897 to show the "success" of residential schools, even though they knew that he had passed away from illness (Sitara).

If you want to learn more about these images and Thomas Moore Keesick, listen to the following podcast episode: https://www.cbc.ca/radio/secretlifeofcanada/sloc-s4-ep-1-1.6335984

Genocidal Effects of Residential Schools

- The colonial mission could not be accomplished without the widespread destruction experienced by Indigenous Peoples' children in government-controlled residential schools.
- Residential schools indoctrinated children by conditioning them to think, speak, and write like settlers so they would be absorbed into settler society.
- Indigenous languages encode spiritual laws and responsibilities that embody how Indigenous Peoples are to relate in a beneficial way to Mother Earth; the forced imposition of the colonial English language was a tactic to destroy Indigenous children's world views and sever connections to their land.
- Residential schools trained Indigenous Children to become enemies of their people— they were made to believe their Peoples' national identity, spirituality, culture, language, original laws, and families were inferior.
- By telling children that their people are subhuman or worthless, the children came to see themselves through the eyes of the colonizer.
- Many survivors' descendants have experienced and continue to experience inter-generational traumas.
- Suicides, drug and alcohol addictions, and poverty in Indigenous Nations are all the direct result of the residential school era.
- Canada's forcible removal of children from their nations to the residential school system is genocide according to the Genocide Convention.

Canada's Awareness of its Genocide

- Genocide apologists argue that the Canadian government did not intend the harm caused to Indigenous Nations as a result of the residential school system— yet the state was well aware of the large-scale atrocities it was committing against Indigenous children.
- The Chief Physician of the Department of Indian Affairs, Dr. P.H. Bryce, criticized the unsanitary living conditions that facilitated the spread of tuberculosis among Indigenous children in 1907, and was pushed out of office because of it (Sitara).
- Superintendent of Indian Affairs Duncan Campbell Scott acknowledged that "fifty percent of children who passed through these schools did not live to benefit from the education which they received therein."
- Despite staff and officials knowing that residential schools were deadly for the children imprisoned within them, the 1920 amendment to the Indian Act increased enrolment rates.

The Child Welfare System is a Genocidal Institution

- The collective trauma brought about by the residential school system is now used by the Canadian state to justify the theft of Indigenous children and their placement in the child welfare system.
- The Sixties Scoop: the mass removal of Indigenous Children into the child welfare system in the 1960s.
- The residential school has been replaced by the non-Indigenous residence, or child welfare home.
- Provincial legislation continues to compel the forcible transferral of Indigenous Peoples' children into the child welfare system at appalling rates.
- It is reported that in some provinces, 80% of the children in the child welfare system are Indigenous, yet Indigenous Peoples make up only 5% of the total population of Canada.
- The concept of the "best interest of the child" that is used to justify the theft of children from their homes is a colonizer value-based judgement.
- Sharon Venne argues that the child welfare system is worse than the residential school system, because the children had one another for comfort and community in the boarding schools, but in the child welfare system a child is isolated from their Peoples and Nation.
- Indigenous children that are forcibly transferred to the child welfare system are deprived of the enculturation process within their own Nation, which robs them of their original laws, language, spirituality, family, and cultural relationship with Mother Earth.
- Original Peoples depend on their children to transmit healthy identities to future generations.
- The Canadian state is committing genocide through the child welfare system according to the Genocide Convention.
- Canada's genocide against Indigenous Peoples has not ceased and continues into the present day without redress.
- This time around, the Canadian state cannot claim that they do not know that their theft of Indigenous children is genocide, because they have already apologized for having done it with residential schools.



A 2011 rally in Toronto for the survivors of the Sixties Scoop, a genocidal effort by the Canadian state through the means of the child welfare system.

The Trap of Colonial Language

- Colonial language is paramount to the entrapment that Indigenous Peoples and Nations encounter when they bring their issues before colonial courts or processes.
- For example, the colonial concept of "land claims" contradicts the fact that the Original Peoples and Nations of Great Turtle Island were gifted the land by Creation.
- Colonial language like "land claims," "reconciliation," and "self-government" requires Indigenous Peoples to submit to the destructive domination of the settler-state (Sitara).
- The Canadian government changes the names of institutions like the "Department of Indian Affairs" into "Indigenous and Northern Affairs," yet fails to make any substantial changes to the ongoing, destructive colonial project.
- Prime Minister Stephen Harper's apology for residential schools used the words "abuse," "neglect," and "mistreatment," which was a use of euphemistic language to describe a genocidal experience.

Moving Beyond Colonialism

- **Self-determination** and recognition as subjects of international law is the road home for Original Nations and Peoples.
- Self-determination is the way Indigenous Peoples will re-humanize themselves as Original Nations and begin to heal from the dehumanizing experience of colonial domination.
- Settler states like Canada, Australia, and the United States must acknowledge the atrocities they have engaged in and must be held accountable for their crimes of genocide in the colonization of Great Turtle Island and other parts of the world.
- The Original Nations on Great Turtle Island were given laws by the Creator to live with Creation (Mother Earth) in a beneficial, respectful way, which was severed by the forcible transferring of Indigenous Peoples' children into residential institutions.
- Original Nations and Peoples must understand the effects of genocide so they can recover the obscured relationship with Mother Earth to protect Her for future generations.
- Protecting the good health of Mother Earth is integral because humankind depends on the earth for our very survival.

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