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David B. MacDonald

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# Canada's history wars: indigenous genocide and public memory in the United States, Australia and Canada

DAVID B. MACDONALD

In this article, I explore the slow development of a national debate in Canada about genocide in the Indian residential schools, which I compare to earlier 'history wars' in Australia and the United States. In the first section I begin with a brief introduction to the history of the IRS system and some of its legacies, as well as attempts at redress. These include financial compensation through the 2006 IRS Settlement Agreement, an official apology and the creation of a Truth and Reconciliation Commission (TRC), which has been a nodal point for articulating claims of genocide. I follow this in the second section with an analysis of the history wars in the United States and Australia over indigenous genocide, before engaging in the third section with debates about genocide in Canada. Overt debates about genocide have been relatively slow in developing, in part because of the creation of a TRC, mandated with collecting the 'truth' about the IRS system while similarly engaging in 'reconciliation' (a contested term) with settler Canadians. While Canada's history wars may seem slow in getting off the ground, the TRC's more 'balanced' approach and wide-ranging engagement with non-Aboriginal societal actors may have a greater effect in stimulating national awareness than in the United States and Australia.

## Introduction

In January 2013, a prominent statue of Sir John A. Macdonald was defaced in his hometown of Kingston, Ontario. 'Murderer' and 'colonizer' were spray-painted in blood red along the granite plinth, while paint of the same hue splattered the bronze likeness of the man above. Macdonald is remembered both as Canada's first prime minister and as a key architect of the Indian Residential Schools (IRS) system, which ravaged Aboriginal communities for over a century. The graffiti coincided with two upcoming events: first the visit of Canada's heritage minister to commemorate what would have been Macdonald's 198th birthday, and second an Idle No More demonstration in favour of Aboriginal rights.<sup>1</sup> A blood-stained statue is one symbolic aspect of an emerging contestation over national memory in Canada. A key focus is whether the United Nations Convention on the Prevention of Genocide (UNGC) should be used to interpret the intentions and practices of the IRS system, with particular reference to Article 2(e), prohibiting the forcible transfer of children from one group to another.

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In this article, I explore the slow development of a national debate in Canada about genocide and its aftermath, which I compare to earlier 'history wars' in Australia and the United States. In the first section I begin with an introduction to the history of the IRS system and some of its legacies, including attempts at redress. These include financial compensation through the 2006 Settlement Agreement, the official apology and the creation of the Truth and Reconciliation Commission of Canada (TRC), which has been a nodal point for articulating claims of genocide. I follow this in the second section with an analysis of the history wars in the United States and Australia over indigenous genocide, before engaging, in the third section, with debates about genocide in Canada. Overt debates have been relatively slow in developing here, in part because of the creation of a TRC, mandated with collecting the 'truth' about the IRS system while similarly engaging in 'reconciliation' (a contested term) with settler Canadians. The TRC process has engendered a deeper understanding of genocide within Aboriginal communities, well beyond the simplistic comparisons with the Holocaust that marked earlier American writing on the issue. In the process, Aboriginal peoples have developed allies in the Canadian Jewish and other genocide survivor communities.

History wars can be defined as debates over collective memory within a national territory, between those separated by generational, ethnic, ideological or other divisions deemed to be of fundamental importance to members of the groups involved. Often prompted by catalytic events such as anniversaries or commemorations, they can develop when revisionist historians seek to counter hegemonic approaches with those highlighting the experiences of subaltern populations, and exposing instances of strategic forgetting, or 'chosen amnesia'.<sup>2</sup> Dominant narratives can exert a severe toll on indigenous peoples, whose own experiences often stand at odds with how the settler government wishes itself to be seen. Conflicts over meaning and memory often develop when those promoting a conservative view of the nation and its founding denounce new narratives as disloyal and distorted portrayals of the past. Often there is a sense that personal identity and collective egos are threatened when the nation and its narratives seem to be under assault.<sup>3</sup>

Invoking genocide (the 'crime of crimes'<sup>4</sup>) has particular salience in changing how historical relationships between indigenous peoples and settlers are interpreted. In Canada, accusations of genocide may work to undermine the country's traditional view of being 'a nation of peacemakers', while similarly questioning what Regan has called the 'myth of innocence' over how and why an Aboriginal presence has been virtually erased from mainstream history and society.<sup>5</sup> Genocide claims have also been seen as an affront to American exceptionalist narratives of being both a chosen and benign nation,<sup>6</sup> with Australian conservatives similarly threatened by such discussions. Genocide accusations have obvious moral dimensions; they act to criminalize the national past, recasting founders of the state as perpetrators of atrocious abuses against indigenous peoples, and as destroyers, rather than visionaries who created civilization where there was none before.<sup>7</sup>

### Indian residential schools and Canada's TRC

Claims and counterclaims of indigenous genocide in Australia and the United States spawned a large literature from the 1990s onwards.<sup>8</sup> Canadian genocide scholarship is now coming into its own, after proceeding in fits and starts since the 1970s.<sup>9</sup> In previous publications, I have articulated the case for the UNGC to be applied to the crimes committed by the federal government in establishing and maintaining the IRS system. The founders of the IRS system, I have argued,<sup>10</sup> possessed the requisite *dolus specialis* to 'destroy, in whole or in part, an identifiable group of persons'.<sup>11</sup>

Canada's IRS system was established in the mid 1880s and was conceived in partially benign terms: helping Aboriginal peoples better adapt to life in a settler-dominated colonial society. The federal government worked closely with mainline Canadian churches, who were together responsible for running most schools until the 1950s. The Catholic Church ran approximately sixty per cent, the Anglicans about thirty per cent, with the Presbyterian, Methodist and United Churches running most of the remainder. From 1920 until the 1950s, attendance for children aged five to sixteen was compulsory.<sup>12</sup> At least 150,000 children passed through 125 schools, the last of which closed only in 1996.<sup>13</sup> There are approximately seventy-five thousand Survivors<sup>14</sup> alive today, and many face a myriad of social, economic and other problems as a result of their experiences. Within the context of continued structural racism, problems of intergenerational trauma remain extremely serious, since Survivors learned few parenting skills, and were deracinated from their languages, territories and cultures.

Public discussion began in 1990 when Assembly of Manitoba Chiefs leader Phil Fontaine openly declared his history of physical and sexual abuse and encouraged others to come forward.<sup>15</sup> Fontaine's revelations took place against the backdrop of the Oka crisis in Quebec, where armed Kanien'kehá:ka warriors squared off with the Quebec military, then Canadian armed forces, to defend traditional lands from being expropriated by the Oka town council. These events laid the basis for the 1991 Royal Commission on Aboriginal Peoples (RCAP), which helped build public knowledge of the IRS system.<sup>16</sup> RCAP's subsequent report in 1996 highlighted the serious problems of the IRS system: under-funding, widespread verbal, physical and sexual abuse, as well as the 'very high death rate' from tuberculosis, 'overcrowding, lack of care and cleanliness and poor sanitation'.<sup>17</sup> RCAP recommended the establishment of a public inquiry into the system to listen to Survivors, collect evidence and recommend forms of compensation, with the ultimate goal of issuing a formal apology, helping rebuild damaged lives and communities, while promoting public knowledge of the abuses in the system through education.<sup>18</sup>

In 1998, the federal government released a 'Statement of Reconciliation', accompanied by a \$350 million 'Healing Fund'. Churches involved had submitted apologies much earlier, beginning in 1986. The next decade saw widespread litigation against churches and the federal government, including major class action suits involving tens of thousands of Survivors.<sup>19</sup> In the wake of some church bankruptcies, the government stepped in, and in 2006 the IRS

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Settlement Agreement was signed between legal representatives of IRS Survivors and government and church plaintiffs. The agreement set out a variety of compensatory mechanisms, including Common Experience Payments (CEP) for all Survivors, an Independent Assessment Process (IAP) for more serious abuses, a commemoration fund and funds to promote healing and health support.<sup>20</sup> These covered only certain categories of Survivor however, and schools run by provincial governments were not part of the agreement, nor were day schools, although demonstrable forms of abuse took place there as well.<sup>21</sup> In 2008, stemming from the Settlement Agreement, Prime Minister Stephen Harper formally apologized, regretting that ‘mistakes’ had been made, while eliding reflection on the wider colonial social and institutional context that made the IRS possible. As Nobles recalls, he was able both to ‘apologise and to limit the apology’s anticipated effects’.<sup>22</sup>

Under Schedule N of the agreement, a Truth and Reconciliation Commission was established, which has had ramifications for the discussion of genocide in Canada. The Commission was comprised of one chief commissioner and two additional commissioners, a Survivor’s committee to provide advice and support and a network of administrative and support staff. With a budget of \$60 million, its mandate from 2009 to 2015 included numerous regional and seven National Events, where statements from Survivors and their families were taken, either in public or private settings. Events also brought churches, institutional representatives and other groups expressing ‘statements of reconciliation’.<sup>23</sup>

The Commission’s successes by its conclusion included collecting over 7,000 statements from Survivors, ninety-six from former employees, compiling a list of over 3,200 children who died in or soon after leaving residential school, while also increasing public knowledge of the IRS system from thirty to sixty per cent over the course of the TRC’s mandate.<sup>24</sup>

Furthermore, the TRC exemplified many Aboriginal protocols and practices, an important symbolic move in promoting positive Aboriginal spaces for truth-telling, commemoration and healing. Two of three commissioners were Aboriginal (Chief Commissioner Justice Murray Sinclair and Commissioner Chief Wilton Littlechild) while the third, Marie Wilson, was married to a Dene Survivor Stephen Kakfwi.<sup>25</sup> The work of the TRC, especially National Events, was infused with Aboriginal symbolism, which included prayers, drumming, singing and smudging, and a focus on traditional spirituality as a method of promoting individual and community healing. A core mandate of the TRC was education, and its new National Centre for Truth and Reconciliation (located at the University of Manitoba) is tasked with documenting the history, the crimes and the aftermath of the system. Canada’s history wars may have a greater effect in stimulating national awareness than in the United States and Australia because of the more sustained mandate and national presence of the TRC. However, as I will discuss later, a certain inbuilt caution on the part of the TRC due to lessons learned from the US and Australia as well as their mandate has prevented any official finding of genocide.

### Disputing history: history wars in the USA and Australia

The term 'history war' was initially coined in 1994, when the Smithsonian Institution planned to host an exhibition featuring a moral discussion about whether the US Air Force was justified in the atomic bombing of Japan. This inaugurated a rhetorical conflict involving so-called liberals against conservatives over whether political correctness had become too pervasive in American culture.<sup>26</sup> The debate reflected a longer-standing argument as to whether the US was a moral actor in world history and had the legitimacy to assert positive myths of exceptionalism in its foreign policy.<sup>27</sup>

Concomitant to this was an emerging triangular relationship between representations of the Holocaust, American exceptionalist narratives and America's history of genocide against indigenous people. Central to this debate was the Americanization of the Holocaust, the two-part process whereby first the Jewish Holocaust came to assume an iconic status as the worst evil of all time, and second the Holocaust became an important symbol in *American* life, defining American history as the antithesis of Nazi Germany. In 1978, President Carter created a presidential commission on the Holocaust, which eventually paved the way for the United States Holocaust Memorial Museum (USHMM), opened in 1993.<sup>28</sup> The USHMM promoted the iconic status of the Holocaust as *the* model for understanding other genocides, as what Torpey has called a 'kind of gold standard against which to judge other cases of injustice'.<sup>29</sup> It also, as Michael Berenbaum, project director of the museum, stated, was to stand as an antipode for 'the professed values of American society: democracy, pluralism, respect for differences, individual responsibility, freedom from prejudice, and an abhorrence of racism'.<sup>30</sup>

A backlash developed against both aspects of Americanization, and the use of Holocaust imagery to frame the colonization of the Americas became widespread during the 1990s, especially after catalytic events such as the sesquicentennial of Columbus's voyages to the Americas.<sup>31</sup> The argument was fairly simple: Americans had little moral right to hold themselves up as exemplars of liberty and justice when they had committed genocidal crimes against indigenous peoples which were as bad as those committed against Jews during the Holocaust.

Revisionist historians David Stannard (1992) and Ward Churchill (1997) presented the Americanization of the Holocaust as inherently destructive to indigenous interests, sugar-coating American history by highlighting its goodness to Jews, while suppressing its own dark past. Revisionist writing stressed the very high mortality rates among Native Americans that accompanied five centuries of European colonization. It highlighted an extensive catalogue of colonial massacres from the seventeenth century, nineteenth-century forced marches such as the Cherokee 'Trail of Tears', the deliberate spreading of disease, mass starvation, the decimation of food supplies such as the killing of some sixty million bison during the 1870s and the widespread theft of land, among other themes. Stannard's work, for example, began in the immediate period before Spanish conquest, and continued well into twentieth-century America, demonstrating consistent although evolving and changing genocidal intents and practices.<sup>32</sup>

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Stannard and Churchill introduced a number of arguments countering both Holocaust uniqueness and American exceptionalism:

- First, the colonization of the Americas or ‘American Holocaust’ constituted the world’s largest genocide. Between ninety and a hundred million people died, making this ‘far and away, the most massive act of genocide in the history of the world’.<sup>33</sup>
- Second, Hitler was inspired by settler genocides: ‘Nazism was never unique: it was instead only one of an endless succession of “New World Orders” set in motion by “the Discovery”’.<sup>34</sup>
- Third, America’s founding fathers were infused with a ‘virulent Anglo-Saxon supremacism’ little different from ‘Nazi Aryanist ideology’.<sup>35</sup> Claiming that Hitler was inspired by America’s success at killing indigenous peoples, Stannard concluded that ‘on the way to Auschwitz the road’s pathway led straight through the heart of the Indians and of North and South America’.<sup>36</sup>
- Fourth, while state denial of atrocities was inevitable, Holocaust uniqueness boosters were morally worse than established state-based deniers such as Turkey.<sup>37</sup> Using the Holocaust as the benchmark for comparison denied other genocides the right to be recognized.<sup>38</sup>

Such revisionism also challenged the work of Holocaust uniqueness theorists, particularly those who purposefully denied the label genocide to indigenous and other peoples. Both Steven Katz and Guenter Lewy produced works during this period denying genocide in America on the basis that disease was ‘unintended’, while colonizers did their best to keep indigenous peoples alive.<sup>39</sup> Katz redefined genocide as the intent to commit total ‘unmediated, intended, complete *physical* eradication of every Jewish man, woman and child’.<sup>40</sup> Privileging this totalizing intent allowed Katz to exclude all other instances of genocide in world history,<sup>41</sup> including, *inter alia*, the genocide of North America’s indigenous peoples and the Armenian genocide.<sup>42</sup>

While this academic debate fell below the public radar, and was hardly as publicised as the German *Historikerstreit*, the debate took claims and counterclaims of genocide much further than the Germans dared to do. First, ethnic affiliation was extremely important in the American debate, focusing on identity politics and representation over ideology, class and generational shifts. Second, both sides promoted forms of exceptionalism and uniqueness, whether it was Holocaust uniqueness or the uniqueness of European colonization. Third, the debate was so heavily infused with hyperbole that it was difficult to separate fact from sensationalized rhetoric. Fourth, the core of the debate was the nature of American exceptionalism—whether the US was an exceptionally moral actor in world history, or whether it acted as two genocidal bookends for Hitler, both inspiring him through earlier massacres and wars, then continuing his legacy in the conduct of its foreign policy in Indochina and elsewhere. Fifth, the audience was narrow, located primarily within academic circles with little input from the broader public on either side through the media. Nor was there much official

interest from elected officials in state or federal branches of the government, nor among tribal officials. Finally, the focus was on promoting virulent and incommensurable versions of the 'truth', with little interest in reconciliation between these extreme positions. In both the Australian and Canadian cases, there would be notable qualitative differences.

### *Australia*

By the time genocide in Australia was seriously discussed in the mid 1990s, Holocaust Americanization as a global phenomenon was well underway, framing debates over morality and national identity in a variety of contexts.<sup>43</sup> Unlike the US debate, however, there was little effort made among historians or politicians to 'Australianize' the Holocaust by claiming that an Australian genocide was akin to Hitler's Final Solution. The Holocaust's moral lessons and imagery were not marshalled here, in part because Jewish social scientists and Aboriginal peoples formed an explicit alliance in this particular debate. In general, the Jewish community in Australia contains the largest number of Holocaust survivors outside Israel,<sup>44</sup> and Jewish-Aboriginal relations have a long and positive history.<sup>45</sup>

Genocide claims in Australia stem from two sources. First, Aboriginal and Torres Strait Islander peoples were victims of massacre and disease during the colonization of Australia from the late eighteenth century. Initially peaceful contact gave way to 'competition for land', where the priorities underwent a shift from 'assimilation to extermination'.<sup>46</sup> Frontier massacres began at the end of the eighteenth century and continued until 1928.<sup>47</sup> Second were the 'Stolen Generations', produced when Australian officials tried to prevent Aboriginal births, and transferred 'half-caste' Aboriginal children out of their family groups.<sup>48</sup> Another aspect of this campaign was the active prevention of marriage between 'full-bloods' and 'half-castes', in favour of 'half-caste'/white marriages as a means of 'breeding out the colour'.<sup>49</sup> Between 20,000 and 25,000 Aboriginal children were separated from their parents from 1910 to 1970.<sup>50</sup>

The beginnings of the history wars go back to debates about national history in the run-up to the bicentennial of the British First Fleet landing in Sydney in 1788. While this was officially seen as a celebration, Aboriginal protesters proposed 'a year of mourning' for the beginning of British colonialism.<sup>51</sup> The history wars took an important role in public consciousness from 1996 when Prime Minister John Howard condemned the use of 'black armband history' (a term coined three years earlier by historian Geoffrey Blainey) to make the balance sheet of Australian history appear overwhelmingly negative when in fact the reverse was true.<sup>52</sup> Many on the left responded by accusing the Howard government of donning a 'white blindfold'.<sup>53</sup> Howard's stance typified Liberal Party attitudes and policies over the course of the twentieth century. In Howard's mind, the government of the time had done nothing illegal and hence had nothing to apologize for.<sup>54</sup>

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Genocide had little mainstream appeal until 1997, when the Australian Human Rights Commission's report *Bringing them home (BTH)* argued that Aboriginal child removals violated Article 2(e), in that somewhere from ten to thirty per cent of Aboriginal children had been forcibly separated from their families.<sup>55</sup> The authors put the matter this way: 'When a child was forcibly removed that child's entire community lost, often permanently, its chance to perpetuate itself in that child. The Inquiry has concluded that this was a primary objective of forcible removals and is the reason they amount to genocide'.<sup>56</sup>

Initial reactions to *BTH* were largely negative. A key locus of genocide denial<sup>57</sup> was the journal *Quadrant*. Hitherto one of the vanguard publications advancing the case for an Australian genocide,<sup>58</sup> *Quadrant* swung to the right in late 1997, as a plethora of articles defending and/or denying government policies towards Aborigines appeared, treating purveyors of 'political correctness' with a large dose of 'common sense'.<sup>59</sup> *Quadrant* and other publications promoted a number of arguments denying that Aboriginal experiences constituted genocide. These included the argument that 'half castes' could not claim Aboriginal status since they were half-European,<sup>60</sup> while others blamed the fate of Aborigines during British settlement on their own backwardness.<sup>61</sup> Furthermore, revisionist accounts stressed that frontier massacres were based on misinterpreted statistics and falsehoods. Windshuttle, for example, concluded that Australian history represented 'the least violent of all Europe's encounters with the New World'.<sup>62</sup>

For most writers on the left, Holocaust uniqueness was unchallenged, in part due to recognition that overt comparisons with the Holocaust would have had little traction with the Australian public.<sup>63</sup> When a comparative element was introduced, it was done cautiously, often promoted by academics from Jewish (some with Holocaust Survivor) backgrounds, who displayed sympathies for both victim people.<sup>64</sup> Comparisons reflected the belief that Jews and Aborigines were subject to similar forms of discrimination by the Australian government.<sup>65</sup> Comparisons were often made to the *Historikerstreit* and the need for Australia to fully recognize the significance of genocidal crimes as foundational acts in the creation of the state.<sup>66</sup> What emerged from the history wars on the left was a focus on promoting the Australian genocide as being qualitatively and quantitatively different from the Holocaust, and not especially unique, but rather a subset of other colonial crimes.<sup>67</sup> The result was more public support for the leftist position. In 1991, the Council for Aboriginal Reconciliation (CAR) was formed to help promote awareness of the Stolen Generations. It scored some notable public successes. The Council was able to encourage over a million signatures in 'sorry books', where Australians expressed remorse about the treatment of Aboriginal peoples. Other efforts included community projects to encourage reconciliation.<sup>68</sup>

However, the CAR lost its funding in 2000, eclipsed by other issues such as the 9/11 terrorist attacks, the Bali bombings and debates about asylum seekers. The Howard government proved adept at deploying the politics of fear to promote its own agenda.<sup>69</sup> By the time Labour Prime Minister Kevin Rudd formally apologized in 2008 for some of the crimes committed against Aboriginal peoples

(although not genocide), the history wars had run their course.<sup>70</sup> Nobles rightly observes that in neither the Australian nor the Canadian cases did apologies presage any form of real change on the part of governments, who adopted a rhetoric of change while cementing their hold over national power.<sup>71</sup>

### The Canadian history wars

Unlike other aspects of Canadian history, the IRS system had few apologists by the 1970s, from which time discussion focused on various negative aspects of the schools. Trevithick in a seminal article (1998) divided IRS scholarship into traditional and revisionist accounts, both stressing the negative repercussions on Aboriginal health and welfare, but differing as to the motives of the government, one side seeing racism and cynicism, the other some level of altruism mixed with mismanagement.<sup>72</sup>

Among revisionists, the 1990s was marked by some academic discussion of genocide, akin to the Stannard-Churchill thesis. What distinguished this period from the American history wars was the lack of interest from Holocaust historians or the general public in pushing against this narrative; it was largely ignored. One of the earlier efforts to promote revisionist history was Chrisjohn and Young's 1997 book *The circle game* (based on their 1994 RCAP submission which formed the nucleus of the book), which invoked the Holocaust to systematically understand the horrific crimes committed in residential schools. The authors began their study by asking:

What if the Holocaust had never stopped, so that, for the State's victims, there was no vindication, no validation, no justice, but instead the dawning realization that this was how things were going to be? ... And what if others could find no option other than to accept the slow, lingering death the State had mapped out for them, or even to speed themselves along to their State-desired end? What if? Then, you would have Canada's treatment of the North American Aboriginal population in general, and the Indian Residential School Experience in particular.<sup>73</sup>

In this analogue to Stannard-Churchill, Jews were 'lucky' that the Holocaust ended; Aboriginal peoples were not so fortunate. Rhetoric aside, Chrisjohn presented a spirited analysis with valuable psychological insights into the IRS system and its detrimental effects on Survivors and their families. In 1996, Agnes Grant in *No end of grief* also saw the utility of the Holocaust as a means of attracting attention to crimes in the IRS system, and also saw commonalities between Holocaust and IRS Survivors in that 'for whole families damaged beyond repair by the Residential school system, it is not so unreasonable a comparison'.<sup>74</sup>

By 1999, in the second edition of his *Unjust society*, noted Cree historian Harold Cardinal similarly cast the IRS experience as a form of genocide akin to the Holocaust, and drew out the analogy at some length, eventually conceding that while '[s]ome Jewish people may feel offended by this comparison ... when one considers the scale on which the Americas were depopulated of their

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original inhabitants and the atrocities that Indian Nations encountered at the hands of Europeans, the parallel is unavoidable'.<sup>75</sup>

With a focus on bureaucratic control and domination, Neu and Therrien's *Accounting for genocide* (2003), also made numerous parallels between the Holocaust and the IRS system. Following the Stannard-Churchill lead, the authors argued that '[t]hroughout history, both Jews and Indians have been presented as frightening: the wild and savage Indian, the wandering stateless Jew'. Both groups as 'outsiders' represented a danger to the 'heterophobia' of the modern bureaucratic state.<sup>76</sup> The authors employed Zygmunt Bauman's work on bureaucracy and the Holocaust, and highlighted parallels with Canada. First, both Nazi Germany and Victorian Canada had idealized visions of what they could achieve if troublesome 'others' were either assimilated or removed. In both cases, Jews or Indians were perceived as 'weeds' to be removed from the 'ideal garden'.<sup>77</sup> Second, bureaucratic forms of genocide arose out of a rational pursuit of efficiency. Both Jews and Indians were problematized and solutions were sought to these 'problems' through 'cost/benefit analysis, budgeting and the development of incentive and disincentive schemes'.<sup>78</sup> The Canadian genocide also figured as a precedent for the Holocaust. 'The Nazi death camps, social engineering experiments in the extreme', the authors reasoned, 'may have found their infancy in the social engineering projects of Canada: assimilation and absorption, compulsory enfranchisement . . .'.<sup>79</sup>

While such work was well cited within Aboriginal publications,<sup>80</sup> it was little referenced outside, and received very little if any media attention. Why was this the case? While admittedly speculative, one could argue first that RCAP missed a valuable opportunity to use the genocide lens to view Aboriginal experiences. Had RCAP promoted a national conversation about genocide, and concluded, as did *BTH*, that the IRS system was genocidal, works by Chrisjohn, Grant, Therrien and Neu might have assumed a different gloss—as a body of work supporting the conclusions of a royal commission. This would have provided a level of institutional legitimacy for genocide claims, and the public might have taken this collection of assertions more seriously.

Second, there was a lack of interest in countering these narratives, in contradistinction to the Australian case. Publications critical of Aboriginal rights, such as works by Widdowson and Howard, made only passing mention of genocide and failed to engage with these charges in any sustained form.<sup>81</sup> Trevithick was one of the few to argue that genocide claims were exaggerated, and took particular issue with Grant's book, accusing her of 'exaggeration, dramatization and oversimplification for her use of the Holocaust'.<sup>82</sup>

Grant's primary point, however, was that widespread public ignorance needed to be corrected. Grant focused her attention on the reality that the Holocaust 'is recognized and remembered in all countries of the world'. Genocide recognition in the Canadian context would not necessarily reduce the pain felt by Survivors, but it would at least 'reassure the survivors that the public is aware of the atrocities they suffered'.<sup>83</sup> The larger context of this revisionist work was and remains a high level of settler racism against Aboriginal peoples, exemplified by sedimented

structural inequalities that have been normalized. Aboriginal peoples, due to the ongoing legacies of colonialism, are often blamed for problems that have their origins in settler government policies.<sup>84</sup> While Canada is consistently rated as one of the top countries in the UN Human Development Index, Aboriginal peoples rank alongside citizens of Panama, Belarus and Malaysia in terms of *their* social and economic prospects, and these gaps are not narrowing.<sup>85</sup> James Anaya, United Nations Special Rapporteur on the rights of indigenous peoples, concluded in October 2013 that 'Canada faces a crisis when it comes to the situation of indigenous peoples of the country'.<sup>86</sup>

The context in which Aboriginal writers invoke the Holocaust and promote awareness of genocide, the context in which the TRC has carried out its mandate, is one of continued prejudice. An October 2014 nationwide poll demonstrated that of a representative sample of Canadians, thirty-seven per cent would not 'be OK with a romantic relationship with an aboriginal person', twenty-five per cent would be uncomfortable 'having an aboriginal neighbour', while twenty-four per cent nationally would not feel 'comfortable working for an aboriginal person'. Surprisingly, these statistics in the context of the study were not highlighted as problematic, given that the focus was on the even higher level of prejudice evident in the prairie provinces of Manitoba, Saskatchewan and Alberta where there are comparatively larger Aboriginal populations.<sup>87</sup>

### The TRC approach

The TRC was circumspect during its mandate about officially acknowledging genocide, although individual commissioners expressed their personal opinions on the subject. In 2012, Justice Sinclair argued on the CBC documentary series *8th Fire* that genocide had been committed, a claim he repeated publicly on several occasions.<sup>88</sup> AFN (Assembly of First Nations) National Chief Shawn Atleo made a similar argument around the same time.<sup>89</sup> Former Liberal Prime Minister Paul Martin followed this up at the 2013 Montreal TRC National Event by asserting that 'cultural genocide' had been committed.<sup>90</sup>

The TRC's 2012 interim report signally did not mention genocide, which provoked some discussion as to whether the Commission was succumbing to government pressure to downplay this discussion. In early 2012, Sinclair had a short exchange on Twitter with the Aboriginal Peoples Television Network (APTN) over whether he was back-tracking on his conclusion of genocide. He tweeted the following to APTN: 'IRS policy was an act of genocide under the UN Convention. Canada however cannot be convicted of the crime. Figure it out'.<sup>91</sup> He was relaying two arguments here: first the only way the government of Canada could be charged with genocide would be by being brought to the International Court of Justice by another state government; second, Canada had only incorporated elements 2(a) and 2(b) of the UNGC, such that forcible transfer is not counted as genocide under the Canadian Criminal Code.<sup>92</sup> In both arguments, Sinclair offered a judicial opinion about the practicalities of actually charging anyone with genocide.

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The Commission also seemed aware that challenging Holocaust uniqueness would be counterproductive in promoting healing, truth and reconciliation. In 2012, Sinclair argued: ‘the reality is that to take children away and to place them with another group in society for the purpose of racial indoctrination was—and is—an act of genocide and it occurs all around the world’.<sup>93</sup> Sinclair observed that uniqueness was not necessary for a finding of genocide, and that highlighting the similarities between the Canadian, American and Australian cases of forced removals was a more powerful argument in favour of genocide than any exclusivist claim. Similarly, the TRC encouraged the participation of genocide Survivors as ‘honorary witnesses’. Leaders with public stature in their communities, these men and women were inducted at the beginning of each National Event, after which they attended public testimonies and at the end of each day during the ‘call to gather’ delivered their impressions of what they had seen and heard. Two honorary witnesses have been genocide Survivors, Éloge Butera, who survived the Rwandan genocide, and Robbie Waisman, a Buchenwald Survivor.<sup>94</sup> Waisman has never used the term genocide to describe the IRS system in any public address, choosing instead to promote with Butera a focus on individual humanity and a message of hope moving into the future. He has argued: ‘we cannot, and we should not, compare sufferings. Each suffering is unique . . . I don’t compare my sufferings or the Holocaust to what happened in residential schools’.<sup>95</sup>

By mid 2014, Sinclair laid out the delicate balancing act the Commission was tasked with performing, arguing that indeed the removal of children ‘certainly speaks to the fact that this fell within the definition of genocide in the UN Convention’. However, the larger question concerned how this conclusion should be operationalized in the work of the Commission, which Sinclair dubbed ‘the reconciliation question’. The issue concerned how to acknowledge genocide, but also create a basis going forward for reconciliation to happen.<sup>96</sup>

In Canada, as in Australia, the stakes for an official commission articulating the case for genocide were high. The ‘g’ word could become a lightning rod for attack, and the wider recommendations of the TRC could be downplayed or ignored. Truth and reconciliation very much exist as part of a sum zero game—one advances to the detriment of the other. These types of strategic calculations did not attend previous history wars where little was at stake for the major decision-makers. German intellectuals on the right and left of the *Historikerstreit* were not tasked with framing the terms of how Germany was going to compensate and interact with its Jewish victims in the future, or reintegrate them into a post-Nazi political system. In the American case, American Indian activists and Holocaust historians were likewise not determining government policy. The Australian case brings us closer in terms of parallels to the Canadian situation, although the funding and scope of the Commission and its report were far smaller.

### **The TRC summary report**

On 31 May 2015, at the Delta Hotel in Ottawa, the TRC held its Final Event concluding its mandate, a four-day gathering which brought thousands of people

together, beginning with a march for reconciliation, and concluding on the afternoon of 3 June with an open air Buffy St Marie concert. On 2 June the commissioners officially unveiled their summary report (*Honouring the truth, reconciling for the future*), a book of recommendations and principles (*What we have learned: principles of truth and reconciliation*), a volume of Survivor testimonies (*The survivors speak*) and a twenty-page booklet, *Call to action*.<sup>97</sup>

Two issues stood out centrally. First, the TRC called for the implementation of ninety-four recommendations (not including a number of sub-recommendations), everything from increased funding for Aboriginal programming for the Canadian Broadcasting Corporation to the adoption into domestic law of the UN Declaration on the Rights of Indigenous Peoples, as well as a national monitoring body to oversee and report back annually on the implementation of the TRC recommendations. A final report of some two million words was promised for the end of the 2015 calendar year.

The second central point had to do with recognizing cultural genocide. The issue had been primed for the public in part by Martin's recognition in Montreal, but more importantly, Canadian Supreme Court Chief Justice Beverly McLachlin called the IRS system 'cultural genocide' in a public lecture on 28 May, part of an 'ethos of exclusion and cultural annihilation'.<sup>98</sup> To what extent McLachlin worked with the TRC to soften the public and lend weight to the report cannot be answered at this time. By Sunday 31 July, Ontario Premier Kathleen Wynne also called the IRS system cultural genocide in her opening address to the TRC in the grounds of Ottawa city hall. At this point, Justice Sinclair, addressing the crowd, also hinted that he would soon be able to use this term, although he would not do so before the official release of the report.

On 2 June, the report was released to a packed audience. Sinclair was finally able to tell the crowd that the Commission had ruled that 'cultural genocide' had been committed. Sinclair handed out copies of the summary report to assembled dignitaries including the leader of the opposition and the minister of Aboriginal affairs. Five hundred copies of the summary were available on a first-come basis in the lobby. Page 1 of the summary laid out the Commission's findings:

For over a century, the central goals of Canada's Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious and racial entities in Canada. The establishment and operation of residential schools were a central element of this policy, which can best be described as 'cultural genocide'.<sup>99</sup>

This above excerpt would be extensively quoted in the weeks ahead. Below this were further conclusions:

Physical genocide is the mass killing of the members of a targeted group, and biological genocide is the destruction of the group's reproductive capacity. Cultural genocide is the destruction of those structures and practices that allow the group to continue as a group. States that engage in cultural genocide set out to destroy the political and social institutions

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of the targeted group. Land is seized, and populations are forcibly transferred and their movement is restricted. Languages are banned. Spiritual leaders are persecuted, spiritual practices are forbidden, and objects of spiritual value are confiscated and destroyed. And, most significantly to the issue at hand, families are disrupted to prevent the transmission of cultural values and identity from one generation to the next. In its dealing with Aboriginal people, Canada did all these things.<sup>100</sup>

Was the TRC concluding that physical and biological genocide were also committed? The above paragraph is somewhat ambiguous and could be subject to two interpretations, either that Canada did ‘these things’ too or, alternatively, that Canada committed cultural genocide and these other two forms (since they were not in the first paragraph) were not actually committed by the state.

Two other issues stand out here. First, Sinclair remained consistent in his personal view that the UNGC would apply to the IRS system if it occurred now. He made this conclusion on CBC’s radio programme *The current* following the release of the summary report. His own views had therefore not changed, even though this legal conclusion did not find its way into the report.<sup>101</sup>

Second, there was an oblique reference to the UNGC embedded deep within the report. On page 264: ‘It is difficult to understand why the forced assimilation of children through removal from their families and communities—to be placed with people of another race for the purpose of destroying the race and culture from which the children come—can be deemed an act of genocide under Article 2(e) of the UN’s Convention on Genocide, but is not a civil wrong’. Here, there is a suggestion, although again ambiguous, that the removal of children violated the UNGC, but there is enough wiggle room to suggest that this is not the conclusion of the Commission.

My own discussions with former TRC staff suggest that genocide was never going to be officially recognized because the TRC’s mandate explicitly prohibited this from occurring. Schedule N of the 2006 Settlement Agreement made it clear that the TRC could not ‘hold formal hearings, nor act as a public inquiry, nor conduct a formal legal process’. It was also prevented from making reference to ‘the possible civil or criminal liability of any person or organization’, unless legal proceedings had already addressed these issues.<sup>102</sup> In other words, calling the IRS genocide under international law went beyond what the TRC could do legally. However, this legal restriction was poorly conveyed to the media and the general public. There was no sense that the TRC had deliberately pulled any punches in its analysis of the IRS system or in its evaluation of the malignant intent of successive Canadian governments.

Overall, whether because of its mandate or something more, the TRC has succeeded in putting the IRS system and the term cultural genocide on the Canadian public radar. First, the TRC has been able to balance truth and reconciliation. In promoting the academic term cultural genocide, it has virtually eliminated the possibility of a large-scale denialist movement. Had it said genocide, it would have been open to attack from Canadian analogues to Windshuttle or Katz either promoting a form of right-wing denialism or Holocaust exclusivism. Instead, the term seems to have been quickly and unproblematically adopted by

Survivors, educators, community leaders, former prime ministers, Supreme Court justices and a wide range of others. In a poll taken shortly after the release of the reports, seventy per cent of respondents felt that the term 'cultural genocide' accurately described the IRS system. Among those who knew more, the numbers were higher: seventy-seven per cent for those who followed the TRC closely, down to seventy-four per cent for those who had read some material on the process.<sup>103</sup> In a sense the balance has worked out, with widespread acceptance of a weaker, non-legally binding label.

Second, cultural genocide provided the base for making the ninety-four recommendations, which many people will find far more important. The focus is on the future, on the implementation of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The UNDRIP is comprehensive and draws a roadmap which is far more forward looking than alleging breaches of the UNGC and seeking remedies for them.

### **Federal government reaction**

Interestingly, the federal government has not mirrored the mistakes of the Howard era in Australia and has arguably learned that to withhold an apology and compensation is to establish the conditions for a larger backlash in the future. While the Conservative government refuses to publicly accept that the IRS system constitutes genocide, government officials *have* acknowledged the intentionality behind the forcible removal of Aboriginal children. In his June 2008 apology, Harper conceded: 'Two primary objectives of the Residential Schools system were to remove and isolate children from the influence of their homes, families, traditions and cultures and to assimilate them into the dominant culture. . . . Indeed, some sought, as it was infamously said, "to kill the Indian in the child"'.<sup>104</sup> The government did not, however, admit that the IRS system was part of a larger colonial process, and did not apologize for crimes committed outside the ambit of the IRS system.

After the release of the summary report, the federal government was circumspect. The prime minister acknowledged the hard work of the commission but committed only to acting when he had read the final report at the end of 2015. This was certainly an example of passing the buck in the sense that Canada was scheduled to hold its federal election in October 2015. By this time the Harper Conservatives would either be back in power and could potentially ignore the report, or would be in the political wilderness, in which case their own political will would matter little.<sup>105</sup>

### **Conclusion**

Both 'sides' of this emerging history war have been careful in terms of the rhetorical content of their conclusions. The TRC has adopted cultural genocide, preferring to have Justice Sinclair make a few remarks, in consonance with other Aboriginal leaders, on the applicability of the UNGC. Similarly, the government has offered an official apology and has accepted many of the facts of the IRS

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system, while avoiding the labels genocide and cultural genocide. There may be something 'Canadian' in this approach, which is, in political cultural terms, seen to be less polemical and more willing to compromise and seek common ground.<sup>106</sup> However, the federal government has all the political power in this arrangement and any conclusions the TRC makes in its final report at the end of 2015 will be the last word from a subaltern process that has no judicial power.

The US case is perhaps important in terms of what not to do. Earlier Canadian revisionist claims were reminiscent of the Stannard-Churchill thesis, although they avoided the nastiness of that particular debate, which was hyperbolic and even, to an extent, antisemitic. More was perhaps learned from the Australian case, where Aboriginal genocide was not marketed as being unique, or as a challenger to the Holocaust. This seems to have been clearly picked up by the TRC. What about claims of genocide? The Australians articulated the case for genocide in a government-mandated commission, something RCAP refused to do. Here too the TRC seems to have learned a lesson: a claim of genocide has little authority unless it is legitimated by a court of law, or an elected government.

The TRC in applying cultural genocide has tried to strike a balance between truth and reconciliation. By adopting a non-legally binding term, it has stayed within its mandate, and has been able to cement the approval of Survivors, while also drawing high-profile allies from the settler mainstream. Its conclusions buttress studies that suggest that Aboriginal social and economic problems are the result of systemic long-term racism, ongoing colonization by white European settlers and the effects of genocide, which have included starvation, massacre, disease and the forced transfer of Aboriginal children through the IRS system and through other means such as adoption.<sup>107</sup>

By carefully backgrounding the discussion of UNGC-defined genocide in favour of a more innocuous label, the Commission has been able to avoid much of the polarization that characterized history wars in other contexts. It has been able to privilege the facts of what occurred, and has focused on implementing the UNDRIP, over seeking redress for violations of the UNGC. At the time of writing it is not clear if this strategy will achieve the desired effects, but if comparisons to previous history wars are any guide, the TRC has succeeded in gaining the attention of the mainstream settler public without alienating it.

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### Notes on contributor

**David B. MacDonald** is professor of political science at the University of Guelph, and was formerly a faculty member at the University of Otago and the Graduate

School of Management—Paris. He has written three books related to issues of genocide, nationalism, collective identity and the politics of memory, as well as numerous book chapters and articles on similar themes. He has also co-edited three books, and recently co-authored a political science textbook with Oxford University Press. His books include *Thinking history, fighting evil* (2009) and *Identity politics in the age of genocide* (2007). Much of his work has been funded by the Social Sciences and Humanities Research Council of Canada.

