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GENOCIDE AND INDIAN RESIDENTIAL SCHOOLING: THE PAST IS PRESENT

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Introduction

The point of robbery is the material gain; however, even greater crimes such as the multiple murders of victims and bystanders, may seem (to the criminals, anyway) a logical extension of the original motive. It is *as if* murdering the robbery victim and his/her significant others somehow legitimizes the original crime. This line of thinking epitomizes Canada's policy towards North American indigenous peoples. If we had, as the thieves originally intended for us, simply put up with their actions or faded away into a "regrettable" past, Canada would have gotten away with its original crime of expropriating "its" piece of the continent from (according to Canada's own laws) its rightful owners. Our physical persistence into the 21st century, our continuing apprehension of our ways, our histories, and our rights, and our impudent tendency to shout out, "stop, thief!" on a more or less regular basis has made it imperative that Canada shoots the victims of its robbery. Of course, it has not been that easy; mass murder, genocide, fascist oppression, and the like are the tactics of other, rogue countries, not Canada. For example, in recent years, Canada has been willing to commit its military and policing forces to anti-genocide actions worldwide (e.g., Africa and the Balkans). As well, there are a host of additional reasons Canada could not, and cannot embark upon more blatant tactics of state making. What has been called for, and what as been delivered, has been something much more subtle.

Of course, this description will largely be unfamiliar, both to Canadians themselves and to that part of the international community that takes any notice of Canadian affairs. It simply is not well known that the genocide of Indigenous populations within its own recognized national boundaries is official, longstanding, continuing policy. That this fact has been efficiently camouflaged is hardly surprising, however-in major conflicts, countries typically do not reveal to their opponents what their armaments are, where they are located, and how they intend to use them. And, when the conflict is one of words *and* deeds, the war of words stands in equal need of being won.

Thus, the unfamiliarity of our description originates not in its untruth but in the effectiveness of Canadian propaganda. Since Canada maintained until recently a monopoly on what information was produced concerning indigenous peoples (and strongly supports a uniform ideological framework of understanding such issues to this day), our task here is to disarm the bodyguard of lies protecting Canada's past and present. To do this we will focus on one particular manifestation of Canada's policy of genocide, the Indian Residential Schooling episode and its aftermath. We have written at length about this institution and refer the reader to our previous work to fill in details we cannot provide in a brief article.1 Here, we concentrate on explicating the breadth and depth of Canada's genocidal machinations in service of resolving its "Indian Problem", and examine how contemporary events arising in the aftermath of revelations concerning Indian Residential Schooling evidence a continuing commitment to genocide.

Time Present and Past

Some History

The bare bones of the history of Indian Residential Schooling in Canada are by now well known, having been the subject of several recent book-length works2 and figuring prominently in the national news media for more than a decade now.3 Indian residential schools started up in 1879 as a newly independent Canada broke away from the historical relations (and legal obligations) the British Empire had accumulated

with respect to First Nations. Where Great Britain had recognized (at least in theory) international treaty obligations to long-standing allies in the wars for control of North America, Canadian leader now saw only impediments to their expansion manifested in creatures irrelevant to the national integrity they envisioned. Pre-Confederation initiatives, such as the *Gradual Civilization Act* (1857), gave rise to various institutions patterned upon those having already shown "promise" elsewhere in North America and the British Empire for "reducing" indigenous populations. While publicly justified as a Canadian version of the White Man's Burden, they had the explicitly materialist bases of training Indians for trades relevant to settler society while expunging forms of life that would interfere with settler power and control.4 The intention behind these earlier initiatives survived Canadian Confederation.

The *Indian Acts* (1876, 1880 and 1886) and the *Indian Advancement Act* (1884) established Canada's wholesale abrogation of its responsibilities, implementing a host of direct attacks on First Nations forms of life, including: the abolition of status as independent, self-governed peoples; legislation of the rules of band membership; abolition of traditional political systems and imposition of federally-controlled election systems; banning spiritual activities; and formal creation of residential and industrial schools. Additionally, the *Indian Act* of 1886 made school attendance mandatory for Indian children for the first time, imposing fines and jail sentences on parents for failure to comply. While "assimilation" was the often-cited spirit and intention of these actions, it was a conspicuously limited version of it. Operation of Indian residential institutions was soon subcontracted to Canadian churches, which had long been engaged in an assault on Native spirituality euphemistically known as "conversion". The "schools" created by this pact operated under a set of assumptions shared by government employer and employee: that (1) the subjects of this joint exercise were of limited mental and spiritual capacity, so that the manufacture of God-fearing menials was as much as could be accomplished; (2) the removal of subjects from unwholesome influences (e.g., parents, siblings, relatives, other members of indigenous communities) would enhance the achievement of the goals of this exercise; (3) because of the refractoriness and mental limitations of the subject population, extreme measures applied individually within institutions were justified 5; and (4) the government would largely permit the churches to operate as they saw fit.6 The life to which their charges were being assimilated was thus more similar to the domestication of animals than to the creation of citizens. Even if assimilation is limited to the objectionable goal of enforced "citizenification",7 this was not what the Canadian governments and churches were doing.

The assumptions underlying church-run residential schools were, of course a recipe for disaster. The litany of institutional and individual abuses which are now documented, carried out by church, governmental and civil functionaries, runs to many pages,8 and occasionally includes specific acts that bear comparison (in intensity, if not frequency) with any horror of the 20th century. It has been the sexual, physical and emotional abuses that occurred within these schools, which has aroused public interest (such as it is), stimulated governmental action (such as it is), and formed the basis for more than 8,000 civil charges against churches and the government. However, we consider these abuses of limited relevance to our topic.9 They have, we believe, taken center stage in contemporary discussion of Indian Residential Schooling so that another, more important topic may be ignored - that Indian Residential Schooling was genocide.

Hate That Surpasseth All Understanding

"Genocide" is a "fulcrum word", one that, with its legitimate introduction into old terrain, changes entirely the nature of the information given or the arguments made. In a book on international humanitarian law, we should not have to mention that it is a word of recent origin, coined by Raphael Lemkin in 1944 as part of his campaign to get the Allied Powers to do something about what Nazi Germany was doing to the Jews of Europe. We should also not have to mention that, under the United Nations Genocide Convention (1948), Article II, a range of action are specified as constituting genocide, including:

a. Killing members of [a national, ethnical, racial, or religious group, as such];

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; and

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

Nor need we point out that Article III identifies the punishable acts of genocide as:

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

We perhaps *do* need to point out that, even in a close examination of the text of the Convention, the phrase "except when these acts are committed against North American indigenous peoples" is nowhere to be found.

On the face of it, it is impossible to deny that the international legal definition of genocide applies to the actions carried out by Canadians (the governments, the churches, and, under the legal definition of "complicity", the public at large) against indigenous peoples from the time of Confederation in 1867. The full range of acts constituting genocide arguably applies; for example, in each of his annual reports from 1905 to his "retirement" in 1920, Peter Bryce, Chief Medical Officer to the Department of Indian Affairs, stressed that governmental health policy was causing the unnecessary deaths of far too many of the government's Indian charges. In 1922, he summarized the government's injustices in a pamphlet in which he certainly would have used the word "genocide" had it been available to him. 10 Enough circumstantial evidence exists that Canada engaged in each of the specific acts of genocide set out in the Convention to justify at least the suspicion that genocide was national policy.11

The Convention, of course, could not apply in any reasonable sense to actions before 1948, when it was established. However, it is plain that the continuing existence of Indian Residential Schooling in the period 1948 to 1986 constitutes genocide as defined by international law. Canadian governments most certainly *did* legislate indigenous children away from their parents, forcibly transferring them to other groups, the churches. It perhaps bears repeating that *any*, not *all* of the acts under Article II constitute genocide.

How, then, is the undeniable denied? Why is the recognition that Indian Residential Schooling was, first and foremost, genocide *no part* of governmental and church reactions to charges currently being brought against them? Why is it *no part* of media coverage of the history of the institution or the fallout from residential school revelations? The manner in which this particular elephant was de-materialized is an act even Houdini would envy.

Setting the Stage

To begin, we need to give some reasons *why* genocide was the strategy settled upon by successive Canadian governments. Elsewhere we have spent considerable space rebutting the usual excuses given for the behavior of the governments and churches. 12 We find no evidence (nor, indeed can there be any) that Indian Residential Schooling was caused by a "misplaced and mistaken enthusiasm for the missionary imperative", or by a collective Canadian urge to "embrace our poor Red Brother", or even by an "unremitting and hostile racial animosity of White against Red". All such explanations do, indeed, de-*materialize* an entirely material imperative to eliminate indigenous peoples as separate and distinguishable peoples.

In prosaic terms, many of the methods of land grabbing in the service of nation building were unavailable to the new Canadian state in 1867. Expropriation by Right of Conquest, a claim made by the United States after its "wars" with Stone Age peoples, could not apply, since, as everyone knew, 13 indigenous nations were allies of the Crown in the fight for North America, no action of First Nations after British-American struggles died down could even remotely be considered a *causus belli*, and *one does not conquer one's allies*. The fiction of *terra nullius*, ownership by the occupation of "empty land" (such as was claimed by the Europeans invading Australia), could also not be used, since, having been allied formally during the struggle for North America, British and Canadians had acknowledged that *people* were

occupying North America (one does not make treaties, even informal ones, with moose and badgers). Acquisition of First Nations lands was, accordingly, limited to due process (nation-to-nation negotiation) or outright theft. While even those arrangements commonly held to be "due process" must be viewed skeptically (historical accounts from the European perspective acknowledge deliberate acts of chicanery at treaty signings, and historical accounts from the First Nations perspective 14 insist that land surrenders were no part of what was agreed to), to this day enormous regions of what is commonly called Canada (e.g., the Maritime Provinces, three-fourths of British Columbia, nine-tenths of Quebec, etc.) exist without even a pretense of due process of extinguishment of aboriginal title.

This 20th and 21st century problem probably seemed much less pressing earlier when the "common wisdom" (borrowed from the prejudices of the United States) assured everyone concerned that Indians would soon "vanish" as a result of the unfolding of the natural order. Again, it has been our persistence that has demanded the attention of Canada's power brokers. In a world where mass destruction of the victims of outright theft was progressively becoming less of an option, their metaphorical and legal destruction was a sufficient strategy. After all, the only completely successful mass destruction of a population in the British Dominion was bureaucratic, not physical. 15 Modern historians of the "demise" of the Tasmanian indigenous people could wax poetic about man's inhumanity to man, 16 even as the still-living dispossessed were shoved into the margins of the occupying European society.

Canada could (would!) do something similar. The "elimination of the Indian problem" could be recast not as a count of corpses, but as an ongoing reduction of the roster of those who had a legal claim to aboriginal title or to a Canadian obligation for service and compensation. The breadth of the initiatives in the *Indian Act* of 1876 is entirely consistent with this necessity. In this genocide by assimilation we do not see either prejudice or zeal as the underlying (and inaccessible) motives for Indian policy, 17 but rather perfectly discernible and purely material bases: the expropriation of the wealth of indigenous peoples and the disguising of those actions.

Residential School Problems in the 20th Century

By 1917, all the churches were contributing their own money to their residential school operations, and the tactics of hiring out indigenous children to surrounding settler communities (the church receiving the wages, not the children), forcing the children to replace school operational staff, "cutting corners" on food, health care, teaching materials, etc., and, in some places, even using the children as slave labor in profit-making, church-owned businesses, were quickly adopted. 18 In the early 1940s the federal government was reorienting away from residential schools to cheaper day schools and doing its best to hold the line in its fee negotiations with the churches (the popular notion that residential schools were phased out on humanitarian grounds is a complete fiction). More significantly, however, it was becoming increasingly clear to the government that the schools were not "working" - Indians were not vanishing, their forms of life, though disrupted, remained functional and distinct from the dominant ideology, and *some* Indians were beginning, not just to read, but to read things like treaties, deeds, and histories.

The Genocide Convention

The Canadian program of genocide by assimilation confronted its largest obstacle as the deeds of Nazi Germany became more generally known and as Allied countries moved to establish the United Nations. Spurred on by the man who had coined the word, the UN dedicated a great deal of attention to drafting a convention against genocide. Lemkin's original notion of genocide explicitly included what is now talked of as "cultural genocide" or ethnocide:

> Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different action aiming at the destruction of essential foundations of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. 19

Lemkin's draft genocide convention for the UN strongly maintained this position, and it was met with significant and suspicious resistance by Canada and the United States. Both countries were committed to the equating of genocide with mass homicide. Privately, the federal government was well aware that, as it stood, its treatment of indigenous people would qualify as genocide.20 Publicly, the equation of genocide with mass homicide was a means of repudiating the proposed genocide convention in its entirety; homicide was already a punishable offence under each country's laws and as such, a genocide convention would be redundant. Nation-states would thus be eminently justified in choosing not to implement it. Further, the homicide interpretation would allow Canada and the United States to expropriate the moral "high ground", pointing their self-congratulatory fingers at monstrous countries committing crimes unfathomable within their own humanitarian, freedom-loving, peaceful borders. 21

A comparison between the (Lemkin-driven) Secretariat and Ad Hoc Committee's draft of the convention and the Convention ultimately adopted by the General Assembly in 1948 is horrifyingly instructive. The Lemkin draft defined genocide as "a criminal act directed against any racial, national, linguistic, religious or political group of human beings", with the purpose of "destroying it in whole or in preventing its preservation or development". It goes on to describe three equivalent categories of acts constituting genocide: physical (causing the death of members of a group or injuring their health or physical integrity); Biological (restricting births); and cultural (destroying the specific characteristics of a group). It was this third category of genocide to which Canada adamantly objected. According to Ward Churchill, " The United Sates and Canada, acting in concert, were able to arrange the deletion of almost the entire provision on cultural genocide, as well as all explicit reference to slow death measures".22 During the general debate on the Convention the Canadian delegation expressed general approval, but "reserved Canada's right to move the deletion of Article III" on cultural genocide. 23 According to Canada's representatives, inclusion of cultural genocide was "neither within the Council's term of reference nor properly included in a convention designed for the protection of human life". 24 The objection was duly noted, and, in spite (or rather, because) of the fact that it mutilated Lemkin's original definition and initial draft, it was sustained by the General Assembly as evidenced by the watered-down Genocide Convention ultimately adopted.

As we have already noted, however, the Genocide Convention adopted in 1948 still contained provisions clearly identifying the treatment by Canada (and the United States) of indigenous peoples as genocide, most conspicuously Article II e. Canada toyed with the idea of simply not adopting the Genocide Convention at all. As Lester Pearson said:

> I am further of the option that no legislation is required by Canada at this time to implement this convention...I do not think any legislation is "necessary" inasmuch as I cannot conceive of any act of commission or omission occurring in Canada as falling within the definition of the crime of genocide contained in article II of the convention, that would not be covered by the relevant section of the criminal code. 25

Of course, this was disingenuous; parliamentarians had already been discussing the Convention in terms of Canada's treatment of indigenous peoples.

However, failing to adopt the convention (the strategy followed by the United States 26) would have been a conspicuous omission from a country that had done so much to influence its final form. Canada consequently adopted a more complex strategy, a strategy upon which they had already embarked when eviscerating Lemkin's proposals. "Genocide" would be redefined yet again in a Canadian context. In doing this, the government was not merely following its won lead, but had the support of ostensibly "progressive" non-governmental offices. The Canadian Civil Liberties Union, for example, opined:

> ...section 267A (e) would make it an offense to advocate forcibly transferring the children of one group to another group, with the intent of destroying the group. Could it be argued that the proposals to impose integrated education upon the children of Doukhobors or Indians for example, might fall within this prohibition? The risk contained in this sub-section is that a court might be persuaded that the proposal to transfer children in such a way is intended to "destroy" a culture, i.e., a group. Clearly whatever one thinks of compulsory integrated education, the advocacy of it in such circumstances should not

> constitute a criminal offence. In our view, the concept of genocide should be limited to *physical* destruction.27

That is, a court might actually read what the genocide law says, along with governmental statements to the effect that destroying Indian cultures is *exactly* what residential schools were designed to do and this might have the effect that, either or both, the government would have to stop what it was doing to indigenous peoples, and the people having carried out the forcible transfers would be subjected to prosecution. To *avoid* this (the changes and the prosecutions, that is, not the forcible transfers), a supposedly arm's-length public advocacy group was telling the government of Canada that it should ignore international law and adopt a watered down definition of genocide. Even the government's own special committees could do no more:

> For purposes of Canadian law, we believe that the definition of genocide should be drawn somewhat more narrowly than in the international Convention so as to include only killing and its substantial equivalents...The other components of the international definition, viz, causing serious bodily or mental harm to members of a group and forcibly transferring children of one group to another group with the intent to destroy the group we deem inadvisable for Canada- the former because it is considerably less than a substantial equivalent of killing in our existing legal framework, the latter because it seems to have been intended to cover certain historical incidents in Europe that have little essential relevance to Canada where mass transfers of children to another group are unknown.28

Potential embarrassments removed, both Houses of Parliament hypocritically and unanimously "adopted" the UN Genocide Convention on 21 May 1952. (In fact, the vote merely certified Canada's determination to bring its laws into correspondence with the Convention.) And the current sections of the Criminal Code of Canada dealing with genocide as a crime in Canada lists only 40 per cent of the specific acts set out in Article II-"Causing serious bodily or mental harm", "Imposing measures intended to prevent births", and "Forcibly transferring children" do not survive. As Thomas Mann observed, "opinions cannot survive if one has no chance to fight for them".

Slamming One More Door

The maneuvers effectively eliminated any possibility that indigenous peoples would be able, some day, to show up in a Canadian court and bring a charge of genocide against churches, governments or other functionaries, a lesson recently enforced in Alberta for example. 29 Even in 1952, however, it was clear indigenous peoples might at some point become aware of what has been perpetrated upon them and seek redress in an international court. Hitler might have been able to exempt himself from culpability in a German court, but the dispensation would not withstand international scrutiny.

The way around international scrutiny was not complicated: simply declare minority peoples "citizens of the country" (an action, again, that would have itself been considered an act of genocide under Lemkin's original considerations) and international doors would slam shut. Thornberry calls attention to this "loophole" when he states:

> The opening phrases of Article 27 [of the United Nations Covenant on Civil and Political Rights] are tentative: "in those states in which ethnic, religious or linguistic minorities exist...". This almost invites denial by States that any minorities may be fund within their jurisdiction. In fact, this may very well have been the purpose of the clause, originally suggested by the representative of Chile to the UN Human Rights Commission at its 9th session.
>
> A number of States parties to the Covenant have responded to the "invitation" by denying the existence of any minorities on their territory to which the Article could apply...30

Canada was among those states, unilaterally declaring Status Indians "citizens" in 1960 in a public relations ceremony that cast the (93 year) omission as "an oversight" which demonstrated that Canadian

willingness to welcome its Red Brothers (and Sisters) into the mosaic. In fact, however, indigenous peoples were by this now enjoined from seeking redress or remedy in the machinery of international law that would be developed as extensions to the Covenant on Civil and Political Rights proclaimed in 1966.

Answers

We are now in a position to answer some of the questions we posed earlier. Genocide is no part of governmental or church reactions to, or public consciousness concerning Indian Residential Schooling, because Canada has deliberately taken every conceivable step to obviate the identification of genocide with federal policies and the individual actions of government functionaries, bureaucrats, church officials, and law enforcement officers. Extending our robbery metaphor, it is as if, somehow, the crooks were empowered to rewrite the law, and redefine their actions not as crimes, but as downright humanitarian behavior.

The success urged the additional testing of boundaries. For example, during the period in which residential schools were phased out, Canada took advantage of their captive populations to do a little research. Thus, so far, it has been revealed that the federal government sponsored research denying basic dental care to residential school inmates, and that unpasteurized (that is, potentially tuberculosis-injected) milk was authorized for the children's consumption, 31 just to see what would happen. Other, even more outrageous experiments continue to be hinted at. The blocking of international remedy has also meant that Canada can maintain its long-standing pretenses that, for example, (1) the Indian Treaties are not *really* treaties, so that they do not take precedence over national law (as international instruments ordinarily do), (2) the government's willingness to meet treaty obligations is a voluntary (and potentially discardable) undertaking, and (3) outstanding claims and grievances are not nation-to-nation matters, but issues to be decided by duly designated Canadian courts.

Nevertheless, the ugly fact that Indian Residential Schooling was genocide remains, regardless of whatever sophistry Canadian spin-doctors might produce; defining rocks as turkeys does not produce a banquet. And, while the intellectual shell game in which Canada engaged might be expected to gull indigenous peoples (after all, we were systematically non-educated for an extended period of Canadian history, and many of us finally achieved a semblance of education long after the graves of truth has grown over) it is harder to see why Canadians as a whole failed to notice any problem during the operation of residential schools. We see a combination of reasons accounting for this. For one thing, like most peoples, Canadians are kept blissfully ignorant of their (and everybody else's) rights and responsibilities as citizens of the world. As Popper reminds us, observing is not an involuntary act, but is a conditioned and selective *choice*. For another, the material grounds for dispossessing indigenous peoples is shared, to greater or lesser extents, by all Canadians; all Canadians may not have donned masks and held guns, but they are all, to some degree receivers of stolen goods.

Edgar Friedenberg provides an explanation for Canadian acquiescence to injustice in terms of the psychosocial climate needed for Canada to operate, overall, in its customary manner. We find his analysis important because he explicates the very psychosocial climate Canada has been trying (in, for example, the residential schools) to impose on indigenous peoples all along. He argues that:

> Peace, order and good government in Canada depend ultimately on the deep acquiescence of the people in the idea that they really have no inalienable rights; ultimately, the final decision rests with the cabinet. Instead, they have ombudsmen, negotiators whose responsibility is to present the citizen's case to the authorities and try to get him a better deal... But it is of the essence of their position that ombudsmen have no authority, while their clients, as such, are not asserting rights-if they were, they would turn to lawyers instead.
>
> In practice, this system has worked quite well, perhaps as well as or better than an adversary system based on well-defined rights would have. But it depends, for its success, on a citizenry ready finally to accept Papa's definition of the situation and Papa's resolution to it, and persuaded, ultimately, that it has no right to ask questions that probe into matters it has been told are not its concern. 32

Any magician will tell you that, in order for some magic tricks to succeed, you have to know your audience; you must be aware of what it is prepared to accept in the way of the set-up, and, if it is not quite "there", it must be led to the proper frame of mind and set of expectations. Canadian governments and churches have been able to avoid the "G" word because they know their audience.

The Genocide Fulcrum: What is Past is Prologue

So far, we have argued that, although incontestably applicable, the Canadian government took steps, internally and externally, to assure that the word "genocide" would never become linked with its actions and policies regarding indigenous peoples in the residential schools. The government also took steps to ensure that it would never become a legal basis in national or international courts to pursue redress or remedy regarding those actions and policies, and would never become associated in the popular Canadian mind with indigenous issues in Canada in general and the residential school policy in particular. Genocide would be far too useful a tool for prising open doors Canada had every intention of keeping tightly shut.

This might serve to characterize Canada's strategies during the period of 1948 to 1986, when Indian Residential Schooling continued to operate in a slowly deteriorating fashion, but it is important to ask whether the present-day avoidance of the term is sustained merely by inertia or whether new, more urgent needs are served by maintaining the fiction of inapplicability. Guided solely by the persistence of an anti-genocide reflex in contemporary events, it is obvious that Canada and its functionaries still regard the word as dangerous. The Law Commission of Canada explicitly examined Chrisjohn and Young's argument as focusing on Article II c of the UN Convention (ignoring their emphasis on Article II e) and then dismissed it, making no effort to acquaint their readers with the full roaster of acts of genocide that might apply. One hesitates to suggest that the Law Commission of Canada deliberately misled its readership, but one is then left with the alternative explanation that the "law commissioners" were too thick to read to the end of the relevant paragraph in the Genocide Convention. If, indeed, the mischaracterization was deliberate, it would plainly be another case of knowing that the audience would not bother to check Chrisjohn and Young's argument in the original or obtain and read a copy of the Genocide Convention for themselves.

In another incident, earlier this year a New Brunswick paper solicited an opinion from Professor Andrea Bear Nicholas on the issues of Burnt Church, which it ran, once large sections had been excised without her authorization.34 Less than one week later the newspaper ran as the "letter of the day" a blatantly misinformed racist attack on Professor Bear Nicholas taking issue with, among other things, her use of the word "genocide", and, citing as its authority, the *Encyclopaedia Britannica*.35 However, Professor Bear Nicholas' attempt to respond to the almost incoherent missive ("Does [Mr.Neilsen] really think that the nations of the world actually refer to the *Encyclopaedia Britannica* for their definition of genocide?") did not even warrant a response from the newspaper, much less publication. The *New Brunswick Telegraph Journal*, it is apparent, is perfectly content to leave shameless lies about the definition of genocide undisturbed in the public consciousness.

We could multiply these examples indefinitely. What they demonstrate is that, despite the fact that Canada is no longer engaged (in an obvious way, at least) in acts against indigenous peoples that are indisputably genocide, Canadians of all stripes engage in all sorts of mental gymnastics in order to maintain a studied ignorance of the full implications of Indian Residential Schooling. We now show that this is because dominant Canadian society has read George Orwell's dictum, "who control the past, controls the future; who controls the present controls the past", not as an admonition, but as an instruction manual.

Time Present

The Impact of the G-Word on Current Events

To repeat, if indigenous peoples had merely put up with their treatment by successive Canadian governments and their functionaries, or had vanished without a trace when it was "decent" of us to do so, there would perhaps be no need to do anything at all. But since the closure of the residential schools, there has been first a trickle, now a flood, and potentially a tidal wave recoiling from Canadian policies and practices. The original strategy of "deny everything" was forced to give way to modern tactics of crisis

management as undeniable evidence of residential school abuses accumulated (e.g., verdicts of "guilty of child sexual abuse" in trials in Canadian courts for clergy formerly operating residential schools). A thumbnail sketch of the present circumstances arising in the aftermath of Indian Residential Schooling includes:

1. The creation in 1998 of a $350 million national "healing fund" by the federal government to support ostensibly community-based projects aimed at mitigating the local effects of Indian Residential Schooling 36;
2. The filing of lawsuits (with more in preparation) representing 10,000 "survivors" from across Canada who are seeking financial compensation from the government and the churches for specific acts of abuse that occurred to them while incarcerated in residential schools37;
3. Looming financial bankruptcies of the four major churches (Catholic, Anglican, United, and Presbyterian) which had been engaged in the operation of residential schools38;
4. Fractious events and outcomes in existing lawsuits, including insultingly small awards,39 wholesale dismissal of cases,40 and allegations of the use of unethical tactics (by officers) to impede case development and progression41;
5. A spate of "research" out of academia arguing that "Indians really wanted residential schools" and that "residential schools actually helped Indian children"42;
6. Wholesale promotion and adoption (by indigenous peoples and their accused) of "alternatives" to adversarial court proceedings.43

There are of course, more categories of events we could include here, and substantially more specific instances we could cite under each category, but these will suffice as an overview.

The word "genocide" is significantly absent from the ongoing discussions within each of these categories of current events, regardless of what perspective on them is taken. What changes are brought about when the G-Word is interjected, what doors does the crowbar of "genocide" open that Canadians would prefer remain closed? Fortunately, Chrisjohn and Young anticipated most of the developments listed above in 1994, and we refer the reader to that work to get greater detail on how the omission of the concept of genocide warps their understanding.44 Here we provide thumbnail analyses of the thumbnail sketches. However, the last development is a relatively new red herring, and warrants separate treatment under its own heading.

Creation of a Healing Fund

While the 1998 announcement of a $350 million "healing fund" was obviously impressive to some people at the time (probably enough money was spent on the announcement "ceremony" to run a woman's shelter for several years), what kind of response is such a program to a *genocide*? Is it hush money, a bag-job, an empty, pathetic, and dismissive wave of the hand (as Harry Daniels pointed out at the ceremony, $350 million sounds like a lot of money until you realize that that is what Canada was willing to pay big business not to build helicopters), or what? Canada has spent 119 years explicitly trying to destroy the indigenous forms of life; does anyone pretend to believe that all the king's horses and all the king's men would be able to reconstitute such a thoroughly *frapped* Humpty-Dumpty, even for $350 million?

More troubling is the characterization of the fund as a "healing" one. In a room full of genocide perpetrators and genocide victims, which group is the "sick" one in need of "therapy"? True, some Holocaust survivors did sue for and receive (grudgingly small) awards to pay for psychotherapeutic treatment, but was this the limit of what they could have expected? They also got to see at least some of their tormentors arrested and tried, and punishment meted out to them, as world public opinion drastically (though not completely) changed regarding anti-semitism. At least some who survived also got some of their expropriated property returned to them, although European banking practices have forced hunting expeditions for this property to continue right to the present day. Indigenous peoples, however, can expect nothing of this, even to the extent of outright wholesale denial of what happened to them and why. The Holocaust Deniers are the lunatic fringe in the mainstream society, while the Genocide Deniers are the legitimate authorities and scholars when Indians are the subjects. We see the aftermath of our own genocide recast as psychosocial problems inhering in *us*, and can expect, at best, a few therapeutic sessions with a king's horse or a king's man.

And it is, almost literally, a king's (or queen's) man. The offices of the healing fund function as a fully-fledged mainstream bureaucracy, despite the presence of permanent tans on the board of directors.

Supplicants (that is right, the indigenous communities must make proper entreaties to the fund) apply by a standard form to the fund, and when they are turned down they are offered a start-up grant, which they then pay to largely non-indigenous consulting agencies to write them a "proper" submission. Indigenous peoples, you see, must forcibly be brought into the ways of civilization in order to receive money to help them undo having forcibly been brought into the ways of civilization.

Sometimes the king's man is not a bureaucrat, but a therapist. We simply ask, what would have been the role of a therapist in a concentration camp; for whom would he/she have worked? The therapist's job would have been to make the physically intolerable and morally indefensible appear to be slightly more defensible ("turn that frown upside down!"). Their employers would not have been the inmates and victims in the concentration camp, but the perpetrators.

Who is being served by the denial of genocide and the pathologizing of victims of Indian Residential Schooling?

The Filing of Lawsuits

We must again emphasize that, while we are against lawsuits as a means of dealing with the aftermath of Indian Residential Schooling, we do not wish to imply that individuals so inclined should be talked out of filing suit. Our objection is, more broadly, that the results settle nothing. Our objections (in point form) are listed as follows:

1. The court system sitting in judgment of such suits is the same court system that did not see anything wrong with residential schools for 119 years, and that did not, between 1948 and 1986, notice any misalignment or moral distances between what constituted international law and what Canada was doing to Indian children;
2. As we have discussed at length here, great care was taken by Canadian officials to enjoin the court system from even considering the central feature of Canadian policies and actions, specifically, that they constituted genocide. Among other things, the deliberate avoidance of applying "genocide" to Canada's actions has had the consequence of enabling courts to throw out cases as having passed the statute of limitations. Of course, there is no statute of limitations for the crime of genocide;
3. The open-and-shut cases that would have resulted from Canada's adoption of the full Genocide Convention have been turned into "yes, you did", "no, I didn't" shouting matches;
4. Indigenous peoples are forced to relive their most horrendous personal experiences (genocide, in fact) and endure cross-examination about the possibility that they are "liars", "money-grubbers", "ingrates" and so on;
5. Lawyers (and mostly non-indigenous ones) are either paid a sizable proportion of the awards and settlements or are paid up-front (we are not saying that lawyers should not be paid for their work; rather, we are asking why is anyone at all being paid for their work that no one should be arguing about?); and
6. The Jews did not have to go into a Nazi court to seek justice after the Holocaust, nor were they required to "prove" in such a court that "genocide is bad".

Finally, as noted in our objection to the healing fund, this area of activity surreptitiously continues the attack on indigenous peoples begun in the residential schools. The ideology of the courtroom enforces adherence to a personal, internal, and individual perspective on the abuses,45 with personal, internal, individual resolutions (such as they are). It is not ironic but scandalous that the only slim measure of justice indigenous peoples can seek in a Canadian court demands that first we surrender what we have fought so hard to maintain: or our ways.

To be fair, we feel obliged to point out the one good reason to continue litigation. When the weak and powerless are under attack, the only defense may be to strike out at a sensitive area. The government and churches seem to have only one sensitive area: their wallets.

Looming Bankruptcies

Not a great deal of comment is necessary here. The residential school churches made their decisions, first, to participate in the genocide of residential schooling, and second, to make common cause with the government rather than with indigenous peoples once the scandal began to break.46 We have no sympathy with their self-constructed plight; the application of the word "genocide" to their actions merely reveals a moral bankruptcy which far outstrips the financial version with which they are now concerned.

In their efforts to stem the financial flow, at least two of the churches have hired lobbyists to petition the federal government to set limits on their liabilities, and one has instructed its laity to bombard Ottawa with letters demanding relief.47 The parishioners, of course, have no idea that they are assisting their churches in evading responsibility for genocide.48 These campaigns are analogous to the guards of Auschwitz or Dachau, and their families, petitioning the Nazi government to get the Jews off their backs.

The churches are all complaining about the money they are losing in court, but in fact the awards are uniformly much less than those obtained by non-Indians when a clergyman is found guilty of abusing one of them; it is just that there are so many indigenous claims. However, there is an alternative to paying their legal staffs for court proceedings: they can confess to their deeds and assume their responsibilities. Instead, they fight cases to the last, appeal judgments they consider adverse, and are (sometimes) "rewarded" with sizable reductions in awards.49

This might be the behavior expected from Firestone Tires or Ford Motor Company, but it is inappropriate behavior for institutions that presume to lecture everyone else about morality and ethics. While the Churches worry about whether they will be able to save their institutions, looking at their role in Canada's genocide they might better ask whether there is anything worth saving.

Fractious Outcomes

We have nothing more to add here to what we said in *Filing Lawsuits*, above. The Canadian court system, as constituted, is no place to resolve issues of Canada's genocide of indigenous peoples.

Academic Research

Taking, first, the notion that "Indians really wanted" residential schools, we need do no more that cite what Chrisjohn and Young wrote back in 1994:

> Some have argued that Aboriginal Peoples themselves embraced and fought for the creation of Residential Schools, one implication being that they thereby become complicit in abuses associated with them. In rebuttal, only two points need be made: first, Indian Residential Schools were at the time the only schools the government of Canada offered Aboriginal Peoples, so the "choice" being presented was between bad education and no education at all. Had the government presented a third option, say, Aboriginally controlled on-site day schools, we question whether even a single Residential School would ever have been built.
>
> Second, as the targets of genocide, we find it impossible to believe the word choice" applies in any way to their actions. In this regard, it should be recalled that some Jewish groups set up police forces to assist in the implementation of Nazi policy in the Ghettos and concentration camps. Furthermore, in some cases, Jews paid for their own transportation to the death camps. Does anyone seriously maintain such actions were "choices" signaling their desire for or acquiescence to or complicity in genocide? By extension, we reject any notion that First Nations parents or organizations are responsible in any way for Residential Schools: as oppressed, marginalized populations, First Nations were offered an immoral pseudo-choice by the government, a pseudo-choice designed to implicate them unfairly in their own destruction....50

Taking next the notion that "residential schools really helped some Indian children", we cite elsewhere from the same work, "we would do well to consider that the Nazis *could* have carried out the Holocaust politely. Was their crime merely that they were excessively nasty and truculent in rounding up and transporting the Jews?"51 Or, in other words, *how* you are conducting a genocide is less important than *that* you are conducting one.

Further, the pathetic reasoning that the schools helped some people, so they were *somewhat* okay:

> ...isn't taken to its logical conclusion: why limit the benefits of this exercise in character-building to the Aboriginals (who, after all, have never properly offered their thanks)? Let's send all Canadian boys and girls at age 5 or 6 off somewhere far away (say, central Asia), and pay someone to beat and starve them into learning a new language, a new religion, and a new culture. Thirty or forty years from now, what a bumper crop of leaders this country will harvest!52

These academic suggestions can only be made when the word "genocide" is avoided, because once present, it immediately reveals the vacuity and reprehensibility of the suggestions.

Alternative Dispute Resolution

Alternative Dispute Resolution (or ADR) pretends to address at least some of the kinds of concerns we have raised thus far. Nevertheless, it is another Trojan Horse and needs to be revealed as such.

ADR is promoted by both the federal government and the churches ostensibly as a response to the mounting number of survivors of Indian Residential Schooling pursuing justice and seeking compensation. It is explicitly outside the mechanisms of the judicial system. Litigation is portrayed to indigenous peoples by the defendants (the government and the churches) as an expensive, slow, and adversarial process "set up to establish one party as winner and the other as loser. It is not a system which leads to healing and reconciliation."53 ADR is touted as the efficient and fair alternative to the costly and emotionally painful courtroom. Functionally, it is a loosely defined category of non-judicial mechanisms emphasizing reconciliation, compromise, mediation and arbitration. Offering "win-win" solutions and peaceful reconciliation of therapeutic benefit to all parties, ADR stresses the value of process as opposed to outcome.

Those advocating it, however, are either unaware of its ideological origins or are consciously suppressing them. Based on the principles of Christian harmony ideology (which stress compromise and conciliation) ADR arose during the mid-1970s as a response to social movements of the 1960s. First imposed by missionaries on indigenous peoples, the harmony law model is from the outset a coercive system of forced pacification deployed to facilitate colonization.54 Although touted as a "humane" and "healing" process, ADR has always been a mechanism for maintaining and perpetuating a status quo in which indigenous peoples are marginalized. Rather than address the social inequities and oppression in question, the ideology of ADR silences dissent. As Laura Nader argues, "An intolerance for conflict seeped into the culture to prevent, not the cause of discord but the expression of it, and by means to create consensus, homogeneity, and agreement".55 The ideological origins and documented previous uses of ADR against indigenous peoples demonstrate that it is not value-neutral with respect to Canada's genocide. It is, instead, more of the same dominant society gruel that was force-fed Indian children in residential schools.

Cloaked in the rhetoric of therapy (a rhetoric we have already plainly rejected in our discussion of the healing fund), ADR operates in the realm of "perceptions" and "feelings", not "facts". Plaintiffs are "patients" in need of "treatment", not alterations in their social and economic relations.56 Justice is abandoned as a goal or aim (however ideal) and, instead, the process is welded to interpersonal relationships. Advocates of ADR hold that "anything can be negotiated and should be".57 By coercing (with rhetorical sticks and carrots) those who were subjected to genocide into participating in ADR, the discussion of genocide is, once again, eliminated from the public's view, and instead framed as an interpersonal "dispute". Would anyone tolerate the characterization of Hitler's treatment of the Jews as "a dispute" ("We want to work you to death and slaughter you wholesale, and you don't want us to, so we have an authentic dispute. Let's see if we can't come up with a win-win strategy.")? Yet, the demand is thought of as unexceptional when made of indigenous peoples.

The legal and moral issues concerning the federal government and the churches' machinery of genocide by assimilation are degraded into matters of personal, internal, felt experiences. The federal government refuses to settle claims charging cultural loss or genocide (stating that they "don't believe those are appropriate claims to bring into the courtroom"58), and instead prefers (along with the churches) to characterize residential schooling "victims" as suffering personal trauma needing therapeutic intervention. ADR, in emphasizing process effectively depoliticizes Indian Residential Schooling.

Being private, not public, and outside the legal system, ADR is without regulation, accountability, or enforcement. This is particularly frightening, given that the Anglican church has written that ADR is a process guided by principles, not rules, "intended to assist in establishing a fair and humane process, but able to be modified or even discarded according to the wishes of the parties at the table".59 Issues of power (that is, who has it and who does not) are completely omitted from consideration, and instead all parties come to the table as "equals" in need of "healing". Due process and equal protection are notions equated with the sluggish cold beast of adversarial law, and have no place in ADR. Consensus marks the conclusion of an ADR, reached when the participants agree to "accept the total package, even if there are certain aspects of the package with which they do not fully agree".60 ADR participants are forced to compromise,

by the very nature of the procedure, a platypus with no resemblance to accountability and justice.61 The argument that litigation is too expensive and slow is merely a tactical justification for the use of ADR, for even the Anglican church acknowledges that ADR is likely to be as expensive as litigation.62 the real gain to be made by substituting ADR for even the existing, genocide-blind legal system is that all remedies relating to the contemptuous treatment of indigenous peoples by Canada and the churches are buried under the rhetoric of "healing, closure, reconciliation and renewal".

The fact that ADR has found its advocates in nominally indigenous advocacy organizations should not be surprising for a number of reasons. First, after all, few people (Indian or otherwise) are likely to be familiar with its disreputable origins. Second, the anti-litigation campaign of the 1970s and 1980s (documented admirably by Laura Nader) was not specifically aimed at residential school disputes (which had not yet begun) and was more than likely assimilated by the mass of inhabitants of North America thoughtlessly, along with Nike commercials and advertisements for McDonald's. As well, those indigenous adopters and advocates of ADR had long personal histories working in "mental health" related fields, and of psychologizing (that is, depoliticizing and decontextualizing) indigenous issues. Finally, and most importantly, a clear overview of what is objectionable about ADR would require prolonged analyses of ideologies, histories, political economies and related subjects. This is a job description for a worker that, certainly, no Canadian government or church would employ, that no indigenous advocacy organization sees a need for or has the luxury of supporting, and that no organization has gone out of its way to produce. "Knowing one's audience", again, requires the production of characteristics within it that will predispose the audience to fall for one's tricks.

Conclusions

This is our case, then. Canada was founded upon (and we would argue, continues from) the outright theft of indigenous peoples lives, land and resources. If our physical genocide (which would render the continent *terra nullius* after the fact) was unattainable, our psychological, emotional, spiritual and bureaucratic genocide would have to suffice. In any event, the people likely to report the theft, complain about it, expect compensation for it, and stand as living moral reproof of it would simply fade away. It is to the everlasting credit of Raphael Lemkin, and people like him, that he realized that physical and social obliteration were not separate imperatives of unbridled, irresponsible power, but *one* imperative. It is, we hope we have shown, to the everlasting condemnation of those who pretended (and pretend) that they are distinct that such an ideology opens the door to genocide. And, given that the material circumstances "necessitating" our treatment from 1867 have altered not at all since then, any implied discontinuity between past and present is not to be found in Indian Residential Schooling, in its history, or in its aftermath. The past is present.

We have not said everything here that needs saying. For example, we are preparing considerably longer documents in support of our positions that assimilation is genocide, that "level playing-fields" enforce assimilation, that historical and material analyses provide superior insights into the "problems" of indigenous peoples, and that individually-based models of such problems are not facts, but ideologies which continue the attacks on our forms of life. In all these works, we repeat, in slightly altered form, that the genocide of indigenous peoples living in what the rest of the world is pleased to call "Canada" never stopped, but continues to this day in altered form.

In the end, however, we do not hold out much hope for our work. A sincere repudiation of its treatment of indigenous peoples and a candid effort at compensation would demand a fundamental reconstruction of the country from the ground up, so that Canada would no longer be Canada. It would, we think, be better, but such a depth of change would be at least profoundly disruptive to the average Canadian; to the primary beneficiaries of the theft of Canada, the prospect must be positively anathema. Consequently, we expect only more of the same. The satisfaction of being right (even if we are) is no compensation whatsoever for having to watch our hopes for our future being slowly strangled by practicalities, "new realities" and "dispute resolution".

In *The Circle Game*, Chrisjohn and Young end their recommendations with:

> ...Nine: if nothing is to be done in the way of bringing about these or similar recommendations, we ask that an open and honest declaration be made that our destruction, as Aboriginal Peoples, is official governmental policy.

> Hypocrisy is very thin soup: it nourishes not, and is also monotonous. We, for two, would rather live out our days on a "level killing field" than to die, in pieces, from a disease we're all too polite to name.63

The name is genocide, and the word must not be avoided, for avoiding it is the first, necessary step to hiding it and, when necessary, doing it again. We speak it, not because we believe it will bring about any major changes in Canada's treatment of indigenous peoples, but because we feel we have to shout "stop, thief".

The pain of Indian Residential Schooling is so great that we indigenous people must work as hard as we can to put as much distance as possible between it and our current circumstances. But the motto of the Holocaust is "Never Forget", not "Let's Forget as Quickly as Possible", and the pain of the concentration camp is remembered and enshrined precisely so that the Holocaust will not happen again. Those who have attempted, past and present, to nullify *our* genocide by sophistry know full well that no one will remember what they never knew happened in the first place.

Notes

1. Roland D. Chrisjohn and Sherri Young, *The Circle Game: Shadows and Substance in the Indian Residential School Experience in Canada* (Penticton, BC: Theytus Press, 1997).
2. Elizabeth Furniss, *Victim of Benevolence: Discipline and Death at the Williams Lake Indian Residential School, 1891-1920* (Vancouver, BC: Arsenal Pulp Press, 1995); Agnes Grant, *No End of Grief: Indian Residential Schools in Canada* (Winnipeg, MN:Pemmican Publications, 1996); John S. Milloy, *A National Crime: The Canadian Government and the Residential School System, 1879 to 1986* (Winnipeg, MN: University of Manitoba Press, 1999).
3. Although, significantly, the facts are largely misreported. For example, most newspaper accounts give the termination date for government-operated residential schools as the early 1960s *(before* Jean Chrétien, the current Prime Minister, held the Indian Affairs portfolio in Pierre Trudeau's cabinet) or at any point when a local residential school closed down, expunging the fact that they continued to operate under government control until the mid-1980s.
4. Milloy, *A National Crime*, pp.12-20.
5. The "Durieu System" of the Oblates of St. Joseph, for example, enforced a complete break of indigenous students from their families, from customary tribal celebrations, healers and apparel, and forbade use of alcohol, unchaperoned contact with the opposite sex, and gambling.
6. Consequently, the qualifications of church designates to "teach" were not scrutinized, since forced indoctrination was their task, not education.
7. Early discussion of the UN Genocide Convention included enforcing citizenship as an explicit act of genocide.
8. Chrisjohn and Young, *The Circle Game*, pp. 31-33.
9. This in no way should be taken as a condemnation of those individuals who have chosen to pursue a legal remedy for their mistreatment at the hands of the government and churches.
10. Peter H. Bryce, *The Story of a National Crime: Being and Appeal for Justice to the Indians of Canada* (Ottawa, ON: James Hope & Sons, Ltd., 1922).
11. Hitler's sterilization policies and concentration camp operations were patterned upon the treatment of indigenous peoples in Canada and the United States. See Sven Lindqvist, *"Exterminate All the Brutes": One Man's Odyssey in to the Heart of Darkness and the Origins of European Genocide* (New York, NY: The New Press, 1996).
12. Chrisjohn and Young, *The Circle Game*, chapter 2.
13. Bryce's *The Story of a National Crime* was subtitled: *The Wards of the Nation: Our Allies in the Revolutionary War: Our Brothers-in-Arms in the Great War*. See also Robert S. Allen*, His Majesty's Indian Allies: British Indian Policy in the Defense of Canada, 1774-1815* (Toronto, ON: Dundurn Press, 1992). But perhaps we have accorded people too much credit for what they know. The Chief Justice of the Canadian Supreme Court has, apparently from a knowledge of history derived from John Wayne movies rather than facts, recently referred to the indigenous peoples of Canada as "conquered".

14. See, for example, Treaty 7 Elders & Tribal Council, with Walter Hilderbrandt, Dorothy First Rider, and Sarah Carter, *The True Spirit and Original Intent of Treaty 7* (Montreal, PQ: McGill-Queen's University Press, 1996).
15. John Cove, *What the Bones Say: Tasmanian Aborigines, Science, and Domination* (Ottawa, ON: Carleton University Press, 1995).
16. James Morris, *Heaven's Command: An Imperial Progress* (New York, NY: Penguin Books, 1984), pp.447-67.
17. More correctly, we do not see them as primary motives. The old Italian proverb, "one never forgives those whom one injures the most", puts the materialist horse properly in front of the idealist cart.
18. Milloy, *A National Crime*, pp. 73-5.
19. Raphael Lemkin, *Axis Rule in Occupied Europe* (New York, NY: Carnegie Endowment for International Peace, 1944), p.79.
20. Robert Davis and Mark Zannis, *The Genocide Machine in Canada* (Montreal, PQ: Black Rose Books, 1973).
21. "I say that the possibility of the crime of genocide being committed in Canada seems extremely remote." Lester Pearson, 1952, quoted in Davis & Zannis, *The Genocide Machine in Canada*, p.22.
22. Ward Churchill, *Forbidding the "G-Word": Holocaust Denial as Judicial Doctrine in Canada* (Other Voices, a web publication available at www.othervoices.org/2.1/churchill/denial.html).
23. Department of External Affairs, *Canada and the United Nations* (Ottawa, ON: Department of External Affairs, 1948), p. 191.
24. *Ibid*., p.191.
25. Lester Pearson, 1952, quoted in Davis and Zannis, *The Genocide Machine in Canada*, p.22.
26. Lawrence Leblanc, *The United Sates and the Genocide Convention* (Durham, NC: Duke University Press, 1991). Failing to adopt the Convention was the American strategy until the end of the Reagan era. When it finally was adopted, the US version made the international law subject to the interpretation of American courts. This is, of course, reprehensible, since international law supersedes national law. It also implies, if it is deemed sound legal reasoning, that Hitler and his friends, by simply declaring a law, could have exempted themselves from accountability for the Holocaust.
27. Davis and Zannis, *The Genocide Machine in Canada*, p.23. Such statements are not difficult to find; e.g., E. Brian Titley, *A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada* (Vancouver, BC: University of British Columbia Press, 1986).
28. Special Committee on Hate Propaganda in Canada, quoted in Davis and Zannis, The *Genocide Machine in Canada*, p.23.
29. *In the Matter of Certain Claims Arising from Indian Residential Schools and in the Matter of Case Management of the Residential School Claims*. A.J. No.638, Action No. 9901-15362, Alberta Court of Queen's Bench, Judicial District of Calgary, Nation J. Heard: 20 March 2000. Judgment: filed 31 May 2000.
30. Patrick Thornberry, *Minorities and Human Rights Law (*London: Minorities Rights Group, 1991), p.12.
31. David Napier, "Ottawa Experimented on Native Kids", *Anglican Journal*. Vol. 126, No.5 (May 2000), pp.1-4.
32. Edgar Z. Friedenberg, *Deference to Authority: The Case of Canada* (White Plains, NY: M.E. Sharpe, Inc., 1980), p. 55.
33. Chrisjohn and Young, *The Circle Game*. Law Commission of Canada, *Restoring Dignity: Responding to Child Abuse in Canadian Institutions* (Ottawa, ON: Ministry of Public Works and Government Services, 2000), p.66.
34. Andrea Bear Nicholas, "Fishery Deals, Genocide and the Perversion of Democracy", *Telegraph Journal* (31 January 2001).
35. Robert Neilson, "New Brunswick Had No Genocide", *Telegraph Journal* (5 February 2001).
36. See Jane Steward, *Gathering Strength: Canada's Aboriginal Action Plan* (Ottawa, ON: Department of Indian and Northern Affairs, January 1998).
37. See Christian Week Staff, “Gray Appointed to Resolve Residential School Crisis", *Christian Week Online* (http://www.christianweek.org/: 31 October 2000).
38. See Ian Hunter, "Let the Churches Bear the Financial Cross", *National Post* (7 September 2000); David Frum, "The Dissolution of Canadian Churches", *National Post* (19 August 2000).
39. See Paul Barnsley, "Decision 'Shocks'", *Windspeaker* (August 2001).

40. See Frank Landry, "Court Tells Residential School Complainants Suits Are Too Old", *Winnipeg Sun* (28 September 2001).
41. See Paul Barnsley, "Dirty Tricks Alleged in Residential School Lawsuits", *Windspeaker* (March 2000), p.3.
42. See United Church of Canada, *Response to Recent National Post Articles on Residential Schools*, 23 March 2001 (http://uccan.org/airs/010323.htm); Pat Fitzpatrick, "And Then Came the Dark Times: Native Claims to "Genocide" in the 20th Century Cheapens Death of Real Victims of Mass Murder and Muddies the Domestic Issue". *The Brunswickan* (5 November 1999). See also response by Roland Chrisjohn, "The Canadian Government did Engage in Genocide", *The Brunswickan* (12 November 1999).
43 David Wilson, "Are There Better Ways to Handle Native Lawsuits?" *United Church Observer* (March 2000).
44. Chrisjohn and Young, *The Circle Game*. While the book was published by Theytus Press in December of 1997, the title essay and all apppendicized essays except the last two were submitted to the Royal Commission on Aboriginal Peoples in October 1994, where they were put into service as dust collectors.
45. *Ibid*., throughout.
46. Kathy Blair, "Ottawa, Not Natives, Behind Many Lawsuits", *Anglican Journal* (April 2000).
47. Scott Pattison, "Anglicans to Plead to PM", *Edmonton Sun* (24 September 2000).
48. At the United Church conference in Fredericton in May 2000, United Church Officials told the current authors that their church consciously avoids the word "genocide" because it would be "too harsh" for their laity to bear.
49. David Wilson, "Alberni Judgment Brings Anger and Appeals", *United Church Observer* (September 2001).
50. Chrisjohn and Young, *The Circle Game*, pp.131-32.
51. *Ibid*., p.24.
52. *Ibid*., p.23.
53. Anglican Church of Canada, "Residential Schools: Litigation and Alternative Dispute Resolution" (Available at http://www.anglican.ca/ministry/rs/litigation/sdr.html).
54. Laura Nader, "Coercive Harmony: The Political Economy of Legal Models", *Kroeber Anthropological Society Papers* (Volume 80), pp.1-13. After examining the anthropological literature, Dr. Nader concludes that "harmony ideology is most likely part of the hegemonic control system that spread throughout the world with European colonization and Christian missionizing", p.3.
55. *Ibid*., p.4.
56. Laura Nader, "The ADR Explosion: The Implications of Rhetoric in Legal Reform", *Windsor Yearbook of Access to Justice*, Vol.8 (1998), pp. 269-91.
57. Laura Nader, "Coercive Harmony", p.7.
58. David Wilson, "Residential Schools: Bearing History's Burden", *United Church Observer* (November 2000).
59. Anglican Church of Canada, "Residential Schools: Litigation and Alternative Dispute Resolution".
60. Anglican Church of Canada, "Guiding principles for working together to build restoration and reconciliation (Available at http://www.anglican.ca/ministry/rs/litigation/principles.html).
61. Sean Healy, "The Empire Wants War, Not Justice", *ZNet Update* (27 October 2001). The decision of the US government to use either ADR, judicial or military mechanisms is based on which method best serves their interests. Rather than calling the events of 11September 2001 "crimes against humanity" and pursue justice through international law, the United States has declared them "acts of war"; as a result, "the normal rules and procedures don't apply and far wider agendas than 'bringing the perpetrators to justice' can be pursued".
62. Initial supporters of ADR in the United States sang the same "litigation explosion" tune, which was grounded in ideology, not fact. For further discussion see Laura Nader, "The ADR Explosion", pp. 277-281.
63. Chrisjohn and Young, *The Circle Game*, p. 112.