**Were American Indians the Victims of Genocide?**

**by Guenter Lewy**

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

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

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

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

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

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

**II**

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

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

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

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

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

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

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

But right away we are in highly debatable territory. It is true that the cramped quarters of the missions, with their poor ventilation and bad sanitation, encouraged the spread of disease. But it is demonstrably untrue that, like the Nazis, the missionaries were unconcerned with the welfare of their native converts. No matter how difficult the conditions under which the Indians labored—obligatory work, often inadequate food and medical care, corporal punishment—their experience bore no comparison with the fate of the Jews in the ghettos. The missionaries had a poor understanding of the causes of the diseases that afflicted their charges, and medically there was little they could do for them. By contrast, the Nazis knew exactly what was happening in the ghettos, and quite deliberately deprived the inmates of both food and medicine; unlike in Stannard’s"furnaces of death," the deaths that occurred there were meant to occur.

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

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

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

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

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

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

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

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

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

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

**III**

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

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

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

The torture of prisoners was indeed routine practice for most Indian tribes, and was deeply ingrained in Indian culture. Valuing bravery above all things, the Indians had little sympathy for those who surrendered or were captured. Prisoners. unable to withstand the rigor of wilderness travel were usually killed on the spot. Among those—Indian or European—taken back to the village, some would be adopted to replace slain warriors, the rest subjected to a ritual of torture designed to humiliate them and exact atonement for the tribe's losses. Afterward the Indians often consumed the body or parts of it in a ceremonial meal, and proudly displayed scalps and fingers as trophies of victory.

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

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

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

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

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

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

The hatred kindled by King Philip’s War became even more pronounced in 1689 when strong Indian tribes allied themselves with the French against the British. In 1694, the General Court of Massachusetts ordered all friendly Indians confined to a small area. A bounty was then offered for the killing or capture of hostile Indians, and scalps were accepted as proof of a kill. In 1704, this was amended in the direction of"Christian practice" by means of a scale of rewards graduated by age and sex; bounty was proscribed in the case of children under the age of ten, subsequently raised to twelve (sixteen in Connecticut, fifteen in New Jersey). Here, too, genocidal intent was far from evident; the practices were justified on grounds of self-preservation and revenge, and in reprisal for the extensive scalping carried out by Indians.

**IV**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**V**

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

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

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

Even as it outlaws the destruction of a group"in whole or in part," the convention does not address the question of what percentage of a group must be affected in order to qualify as genocide. As a benchmark, the prosecutor of the International Criminal Tribunal for the Former Yugoslavia has suggested"a reasonably significant number, relative to the total of the group as a whole," adding that the actual or attempted destruction should also relate to"the factual opportunity of the accused to destroy a group in a specific geographic area within the sphere of his control, and not in relation to the entire population of the group in a wider geographic sense." If this principle were adopted, an atrocity like the Sand Creek massacre, limited to one group in a specific single locality, might also be considered an act of genocide.

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

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

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

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

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

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

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