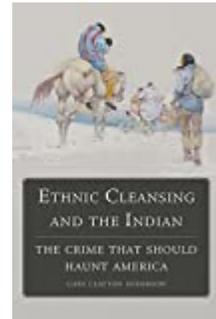




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Naming the Crime: Genocide, Extermination, or Ethnic Cleansing?

With perhaps the most provocative book published on Native American history in 2014, historian Gary Clayton Anderson has waded into the turbulent American genocide debate to advance a bold thesis certain to arouse impassioned rebuttals. Discarding the United Nations' definition of genocide and innovatively substituting the Rome Statute of the International Criminal Court as his preferred legal standard, Anderson argues that "the best term for what happened to Indians throughout the course of American history is 'ethnic cleansing,' not 'genocide,' as it is defined today" (p. 6). In *Ethnic Cleansing and the Indian: The Crime That Should Haunt America*, Anderson has staked out a decidedly original position, but is it a defensible one?

Between 1492 and 1900, the Native American population of what is now the continental United States fell from perhaps as many as 5,000,000 people to less than 250,000. To a large extent, this stunning collapse resulted from the introduction into the Western Hemisphere of deadly Old World pathogens such as smallpox, cholera, and measles, which wrecked havoc on previously unexposed New

World populations. Epidemic diseases, however, do not tell the whole story, since thousands of Indigenous people perished in brutal wars of conquest waged by English, French, Dutch, Russian, and Spanish invaders, and by their Euro-American and Mexican successors, each of whom went on to impose violent policies of enslavement, forced assimilation, and territorial expropriation. The appalling death tolls directly and indirectly attributed to imperialist wars and projects have led many students of Native American history to allege that the Indigenous demographic collapse resulted not from the unintended tragedies wrought by disease but rather the monstrous crime of genocide.

For the past thirty years, this most serious of accusations has deeply divided scholars working in the fields of both Native American history and global genocide studies. Often waxing bitter and acrimonious, especially when it spills beyond the confines of the academy, the ongoing Native American genocide debate has generated a great deal of scholarship, an intense degree of heat, but no sign yet of an emerging consensus. Instead, the debate

appears hopelessly deadlocked, and much of the discussion has become frustratingly circular.

This is especially true regarding the vexing but essential matter of defining "genocide." Accurately assessing the degree to which Indigenous population losses resulted from genocide depends heavily on what exactly is meant by that rhetorically powerful but highly contested and politicized term. Unfortunately, a clear and universally accepted definition remains elusive. Ever since Raphael Lemkin first coined the word in 1943, at least twenty-three competing definitions of genocide have been advanced by historians, sociologists, and other interested parties. While differing significantly in details, the various offerings tend to cluster around the two most popular and influential: the United Nations' definition spelled out in the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide, and the sharply contrasting definition referred to variously as the "common" or "colloquial" understanding of genocide.

The latter, informed much more by memories of Adolf Hitler than by readings of Lemkin, is simple and straightforward. Genocide, in the vernacular understanding, is exterminatory mass murder deliberately intended to physically annihilate a targeted group of people who have been defined and selected by the perpetrators for elimination. For the perpetrators, genocide can be an end in itself, or the means of achieving some other desired end.

Meanwhile, the UN definition is much broader and far less precise. Article II of the UN Convention defines genocide as any one of five acts "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such." The five genocidal acts explicitly listed in the convention are: "killing members of the group," "causing serious bodily or mental harm to members of the group," "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part," "imposing measures intended to prevent births within the group," and "forcibly transferring children of the group to another group."^[1] Because the UN Convention enjoys the status of international law and has been ratified by over 140 nations around the globe, many scholars, including the historians Ben Kiernan, Benjamin Madley, and Brendan Lindsay, argue that the United Nations' definition should be accepted as the standard for genocide studies.

Others (including this reviewer) strongly disagree, objecting that the UN version is at once too narrow and too broad: too narrow in the sense that it does not ac-

knowledge political factions or socioeconomic classes as potential victim groups, and too broad in that it appears to encompass other horrendous crimes that should not be conflated with genocide, such as slavery, ethnocide (forced assimilation), forced migration, and mass incarceration. Indeed, as the genocide scholar Adam Jones has correctly pointed out, the UN Convention is so widely cast that "one does not need to kill anyone at all to commit genocide!" (emphasis in original).^[2] Given such glaring shortcomings, it is little wonder that Frank Chalk and Kurt Jonassohn famously concluded that "the UN definition is of little use to scholars."^[3]

The validity of their blunt assessment is confirmed by the plethora of alternative meanings that genocide scholars have felt compelled to craft. As Chalk and Jonassohn had discovered, the UN Convention is simply too blunt an instrument for the precise analysis of complex historical events. Today, it often seems as if there are as many definitions of genocide as there are genocide scholars. In crafting their unique variations, many scholars have pulled back from the UN Convention toward the narrower vernacular view. Others, however, have moved in the opposite direction and reached the point at which nearly every violent or coercive act associated with conquest can be labeled as genocide.

In Native American studies, such extremes have been voiced by numerous writers, such as Elizabeth Cook-Lynn, who argues that "genocide is not now nor has it ever been just a matter of the physical extermination of a people through mass killings, enslavement or torture, or enforced segregation or colonial apartheid. *It is the denial of basic human rights through the development of a nationalistic legal and social and intellectual system that makes it impossible for a domestic people or domestic nation to express itself collectively and historically in terms of continued self-determination*" (emphasis in original).^[4] Such a sweeping definition, of course, renders genocide so imprecise that it becomes effectively meaningless, useful only for setting up false (but politically potent) equivalencies between exterminatory mass murder, on the one hand, and, on the other, fundamentally distinct policies and institutions such as Indian removal, reservations, boarding schools, land cessions, and allotments. Were these really all the same? Did they each constitute genocide?

The exasperating inability of scholars to address such questions without rancorous quarreling over definitions has prompted Anderson to offer an intriguing solution to the definitional stalemate. Rejecting the problematic

UN Convention and arguing that "genocide will never become a widely accepted characterization for what happened in North America," Anderson urges scholars instead to adopt the 2002 Rome Statute as their standard framework for evaluating and comparing the crimes committed by white Europeans and Euro-Americans against Indigenous peoples (p. 4).

The outgrowth of the ad hoc tribunals set up to prosecute the perpetrators of genocide in Bosnia, Serbia, and Rwanda, the Rome Statute established the International Criminal Court (ICC). Seated at The Hague, the ICC holds global jurisdiction over cases involving genocide and a host of related crimes. Article 6 of the Rome Statute defines genocide by repeating, verbatim, Article II of the UN Convention. Thus, at first glance, it appears to offer no resolution to the definitional dilemma in genocide studies. Anderson, however, is not interested in Article 6. Instead, he finds great analytical potential in the scholarly deployment of Article 8, which catalogues military "war crimes," and especially Article 7, which lists eleven separate "crimes against humanity." Significantly, Article 7 effectively breaks up the more capacious definitions of genocide (including the UN Convention rubric duplicated in Article 6) and implicitly endorses the vernacular understanding by singling out the crime of "extermination." Also named are the other crimes too often lumped together as "genocide," such as enslavement, deportation or forcible transfer of population, apartheid, and deliberate persecution of targeted groups, whether defined on "political, racial, national, ethnic, cultural, religious, gender..., or other grounds."^[5] Praising the clarity and specificity of Articles 7 and 8, Anderson urges their application to the long sweep of American Indian history. Given the current gridlock stalling the Native American genocide debate, Anderson's proposal is a good one that merits serious consideration.

Unfortunately, Anderson's own work with the Rome Statute does not provide a very encouraging model for others to follow. Right from the start, Anderson sows needless confusion by referring repeatedly to the Rome Statute in the plural and by mistaking its judicial overseer, the ICC, for the UN's International Court of Justice (ICJ), better known as the World Court (pp. 5-7). Although both are seated at The Hague, the ICC and ICJ are two separate judicial bodies.

Much more damaging to his project, however, is Anderson's inability to resist tampering with his adopted framework. Anderson immediately blurs the clarity of Article 7 by equating its crime of "deportation or forcible

transfer of population" with "ethnic cleansing." A modern phrase that first became familiar to Americans during the humanitarian crises that engulfed the former Yugoslavia in the 1990s, "ethnic cleansing" is, much like genocide, a complex and contested term. For Anderson, ethnic cleansing is clearly distinct from genocide and extermination, and instead is synonymous with the crime of "deportation or forcible transfer," which, according to the Rome Statute, "means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present."^[6] If Anderson is correct, then he is safe in using ethnic cleansing, expulsion, deportation, and removal as interchangeable terms, which he proceeds to do throughout his work.

But is he correct? To support his usage, Anderson invokes the authority of historian Norman M. Naimark, a leading scholar of late twentieth-century ethnic conflict in Eastern Europe and the former Soviet Union. As quoted by Anderson, Naimark explains that "the intention of ethnic cleansing is to remove a people and often all traces of them from a concrete territory. The goal, in other words, is to get rid of the "alien" nationality, ethnic, or religious group and to seize control of the territory they had formerly inhabited. At one extreme of its spectrum ethnic cleansing is closer to forced deportation or what has been called "population transfer"; the idea is to get people to move, and the means are meant to be legal and semi-legal" (p. 12).

Anderson then points out that "Naimark's definition mirrors that of the Rome Statutes [sic], where the crime of "deportations [sic] or forcible transfer of population" is defined as a crime against humanity, not as genocide" (p. 12). However, Anderson quotes only a portion of Naimark's definition, which pulls a wide array of criminal acts under the umbrella of ethnic cleansing. Significantly, Anderson has omitted Naimark's final two sentences, which go on to explain that, "at the other extreme, however, ethnic cleansing and genocide are distinguishable only by the ultimate intent. Here, both literally and figuratively, ethnic cleansing bleeds into genocide, as mass murder is committed in order to rid the land of a people."^[7] And, indeed, as Kiernan helpfully explains with his admonition not to confuse criminal intent with motive, when one intentionally commits exterminatory mass murder, one is guilty of genocide regardless of whether one's ultimate motive is the seizure of territory or the fulfillment of some mad vision of racial purity.^[8] Thus, Anderson errs badly by imposing "ethnic cleansing" onto the Rome Statute, which does not define or even mention the term. After adopting the Rome Statute

as his analytical framework, Anderson should have remained faithful to it.

Instead, Anderson further complicates his project by insisting on three additional and highly problematic amendments. First, he claims that, "for either genocide or ethnic cleansing to occur, a legitimate government must plan, organize, and implement the crime" (p. 13). While numerous scholars agree that genocide can result only from a deliberate government plan or policy, many others do not. The UN Convention includes no such requirement, and, more important, neither does the Rome Statute, either in Article 6 (genocide) or Article 7 (extermination and other crimes against humanity). Not only has Anderson once again deviated from his adopted model, but he also has virtually guaranteed its rejection by scholars of settler colonialism, who rightly emphasize the leading roles played by non-state actors in committing genocidal crimes against Native peoples, often in outright defiance of official government policies and authorities.

Second, Anderson insists that the crime of genocide (and, by implication, that of extermination under Article 7) requires an exterminatory motive as well as intent on the part of the perpetrator. For Anderson, mass murder in pursuit of territorial gain cannot be labeled genocide. Thus, depending on the specific circumstances, such acts usually constitute either war crimes or ethnic cleansing. Again, however, nothing in the UN Convention or the Rome Statute supports such an argument.

Finally, Anderson maintains that mass murders cannot qualify as acts of genocide or extermination unless they generate a very large number of fatalities. But how many? Thousands? Millions? Anderson never says, but he makes it quite clear that the killing of hundreds does not reach whatever required figure he has in mind, even when the death toll amounts to a substantial percentage of a targeted group's total population. Anderson's playing of what he calls "the numbers game" has no foundation in any provision of the Rome Statute's Article 7, which wisely avoids setting any numerical marks for defining the crime of extermination (pp. 10-12).

Taken together, Anderson's revisions almost preordain a failed search for acts of genocide or extermination. Nevertheless, that likely outcome might still have been avoided, at least in part, if Anderson had conducted more thorough historical detective work. As Madley has rightly observed, what the American genocide debate sorely requires for eventual resolution are two things: a standard definition of genocide and a wealth of deeply

researched case studies of specific events that can generate the detailed evidence necessary to render convincing verdicts of genocide.[9]

Anderson seems poised to offer both when, after recommending the Rome Statute as a universal yardstick, he proceeds to identify what he describes as "the six most infamous attacks on Indians" in North America (p. 11). These include the notorious slaughters at Bear River (1863), Sand Creek (1864), and Wounded Knee (1890), along with the destruction of the Pequots (1637) and the lesser-known massacres of the Yuki in northern California (1859) and the Piegan in Montana (1870). Remarkably, however, Anderson never follows through with an in-depth evaluation of even one of these six controversial events, each of which has been cited frequently by scholars as clear evidence of genocide. Instead, Anderson offers only brief summations that range in length from just three paragraphs on the Yuki to a mere one sentence on Wounded Knee (pp. 214-215, 336).

Such abrupt dismissals do not permit any meaningful analysis or careful weighing of complex and often contradictory evidence. Nevertheless, they are characteristic of Anderson's entire book. The fundamental problem here is that Anderson attempts to cover too much ground too quickly. In 305 pages, he tries to assess the entire span of American history from John Cabot's arrival in 1497 to Geronimo's surrender in 1886. The inevitable result is a sweeping but shallow survey that compels Anderson to argue by repeated assertion rather than systematic analysis.

The assertions fly thick and fast. By this reviewer's admittedly incomplete count, Anderson renders at least fifty-nine separate verdicts of "ethnic cleansing, not genocide" and offers seventeen or so additional determinations of "not genocide" in various cases, such as the bloodbaths at Bear River and Wounded Knee, which he classifies instead as "war crimes" based on his reading of the Rome Statute. Well, perhaps. Because the ultimate aim of US Indian policy always remained the acquisition of land and not the physical annihilation of Native peoples, most of Anderson's unproven assertions most likely are correct. But not all. There were simply too many instances in which exterminatory mass murder was intentionally committed in order to seize Indian territory and to subdue Indigenous peoples. Anderson's remarkable failure to find extermination or genocide anywhere in the annals of Native American history begs credulity and defies too much accumulated evidence to the contrary.

This is particularly true for California, where the evidence has been stacked high and deep by scholars following the pathbreaking lead of demographer Sherburne Cook. Indeed, thanks to the recent publication of Lindsay's tendentious *Murder State: California's Native American Genocide, 1846-1873* (2012) and Madley's monumental *An American Genocide: The United States and the California Indian Catastrophe, 1846-1873* (2016), California has, at least for the moment, emerged as the epicenter of the American genocide debate. Anderson's chapter 10, "The Stealing of a Golden Land: Ethnic Cleansing in California," thus arrives at a critical moment. Regrettably, it proves a major disappointment that serves mainly to highlight his hasty approach to the past.

Anderson's California chapter is replete with errors. Many of them are relatively minor (incorrect dates, garbled names, confused geography, and so forth) but the cumulative effect quickly undermines whatever confidence a reader might yet have left in Anderson's weakly supported judgments. Still more troubling is that, in addition to his tendency to rely on assertion over analysis, Anderson sometimes resorts to silence or evasion when confronted by shocking events that surely could qualify as extermination under the Rome Statute.

Much like the single line he devotes to Wounded Knee, Anderson affords just one incorrect and misleading sentence to the infamous Humboldt Bay Massacre of February 26, 1860, perhaps the most clear-cut act of genocide in American history. In a series of well-organized and coordinated predawn assaults, white settlers bent on eradicating the peaceful Wiyot slaughtered the sleeping inhabitants of three unguarded villages, sparing no one, not even infants, most of whom were killed with hatchets. In a single bloody morning, the tiny Wiyot tribe, numbering around 800 individuals, lost at least 153 people, and perhaps as many as 300. Regarding this appalling butchery, Anderson has only this to say: "In a horrible massacre another group [of white settlers] supposedly killed eighty Wiyot women and children on an island off Humboldt Bay" (p. 215).

Not only does Anderson omit the other attacks that took place simultaneously with the assault on the Indian Island village, he consequently understates the actual death toll, which also included adult male Wiyots, not just women and children. Worse, by means of the adverb "supposedly," Anderson, without any explanation or justification, deliberately casts doubt upon the very occurrence of this well-known and heavily documented atrocity, which the California writer Bret Harte bravely

condemned in a Humboldt County newspaper editorial three days after the killings.[10] Still, even the "alleged" slaying of "just" eighty members of an eight-hundred-person tribe should have merited Anderson's close attention. Instead, he simply moves on. Anderson's inability (or refusal?) to locate genocide or extermination at Humboldt Bay makes one wonder if he can spot them anywhere, with or without the aid of the Rome Statute.

Notes

[1]. UN Convention on the Prevention and Punishment of the Crime of Genocide, Article II. Copy available online, *Prevent Genocide International*, <http://www.preventgenocide.org/law/convention/text.htm>.

[2]. Adam Jones, *Genocide: A Comprehensive Introduction* (London and New York: Routledge, 2006), 13.

[3]. Frank Chalk and Kurt Jonassohn, *The History and Sociology of Genocide: Analyses and Case Studies* (New Haven, CT: Yale University Press, 1990), 10. The glaring deficiencies of the UN definition were vividly underscored recently by historian Roxanne Dunbar-Ortiz's appalling denial of the Cambodian genocide of 1975-79. Because the 1,700,000 victims of Pol Pot's Khmer Rouge were not targeted for elimination as members of a "national, ethnical, racial, or religious group" as required by the UN Convention, Dunbar-Ortiz concluded that the mass murders committed in Cambodia's infamous killing fields were "not genocide." See Roxanne Dunbar-Ortiz, "Yes, Native Americans Were the Victims of Genocide," *History News Network*, May 12, 2016, <http://historynewsnetwork.org/article/162804>.

[4]. Elizabeth Cook-Lynn, *Anti-Indianism in Modern America: A Voice from Tatekeya's Earth* (Urbana: University of Illinois Press, 2001), 193.

[5]. Rome Statute of the International Criminal Court, Article 7. Copy available online, *Prevent Genocide International*, <http://www.preventgenocide.org/law/icc/statute/part-a.htm>.

[6]. Rome Statute, Article 7, Section 2 (d).

[7]. Norman M. Naimark, *Fires of Hatred: Ethnic Cleansing in Twentieth-Century Europe* (Cambridge, MA: Harvard University Press, 2001), 3-4.

[8]. Ben Kiernan, *Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur* (New Haven, CT: Yale University Press, 2007), 17-19. For an-

other definition of ethnic cleansing that comprises a wide spectrum of crimes that include genocide, see Andrew Bell-Fialkoff, *Ethnic Cleansing* (New York: St. Martin's Press, 1996), 1-4.

[9]. Benjamin Madley, "Reexamining the American Genocide Debate: Meaning, Historiography, and

New Methods," *American Historical Review* 120 (February 2015), 98-99, 108-109, 132-134.

[10]. "Indiscriminate Massacre of Indians, Women and Children Butchered," *The Northern Californian* (Union, now Arcata, CA), February 29, 1860.

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