

The Suppression of Canadian Guilt: Genocide

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*This essay argues that the Canadian state has committed genocide against its Indigenous peoples, and that the state is aware of its past crimes and has avoided indictments of genocide by deliberately creating narrow definitions of genocide that are non-binding in the Canadian case. This essay first examines the disparities between the legal definitions of genocide held by the United Nations and Canadian government, and then compares those definitions to a basis of primarily 20th century historical evidence surrounding claims of genocide. Having found that what occurred in Canada constitutes as genocide according to the UN but not under Canadian law, this essay goes on to examine the deliberate exclusion of certain UN definition principles from Canadian law and the resistance of Canada towards UN definitions. This essay argues that Canadian law offers a deliberately narrowed definition of genocide because the state seeks to avoid indictments of genocide that might cause fiscal burdens and an upheaval of the Pearsonian Peacekeeping national mythology that permeates Canadian culture and morality.*

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**Introduction**

‘Genocide’ has been a contested term ever since it was invented by Dr. Raphael Lemkin in 1943<sup>201</sup>. The discrepancies found within definitions of genocide have important moral and legal implications, especially with regards to countries that have potentially committed genocide. Canada is one of these countries, having been accused of committing state-sponsored genocide against its Indigenous inhabitants using the Indian Residential School (IRS) system, forced sterilization campaigns, and the ‘60s Scoop.’<sup>202</sup> Many of these accusations have gained traction using evidence brought forth by Canada’s Truth and Reconciliation Commission (TRC), which attempted to raise awareness around the history of the IRS system. Most notably, the TRC exposed the IRS system’s modern legacy of “disparities that condemn many Aboriginal people to shorter,

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<sup>201</sup> James Hughes, “Genocide,” In *The Routledge Handbook of Ethnic Conflict*, 2nd ed, (London: Routledge, Taylor & Francis Group, 2016), 119-38

<sup>202</sup> David B. MacDonald, “Canada’s History Wars: Indigenous Genocide and Public Memory in the United States, Australia and Canada,” *Journal of Genocide Research* 17, no. 4 (2015): 411-31.

poorer, and more troubled lives” and “cultural genocide [which] has left most Aboriginal languages on the verge of extinction.”<sup>203</sup>

It is important to note that while some also indict Canada of ethnic cleansing (the mass transferal of an ethnic group from one place to another and the erasure of their cultural footprint upon their homeland<sup>204</sup>), many Canadians are unaware of the distinction between ethnic cleansing and genocide and sometimes use the two interchangeably<sup>205</sup>. Thus, this paper will focus on accusations of genocide as they are more prevalent. It is also important to note that this paper will primarily focus upon events that occurred within the 20<sup>th</sup> century, and thus it will not analyze more obvious examples of genocide such as the frontier killings, biological warfare, and massacres that decimated Indigenous populations in the early stages of colonization<sup>206</sup>. The genocidal nature of recent events is highly disputed, and carries more moral gravity and relevance than the events of the distant past.

This essay seeks to answer the question of why the Canadian government has adopted a weaker and more narrowed definition of genocide than that provided by the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG). The answer shall be attained by first comparing Canadian and CPPCG definitions of genocide and then demonstrating that the Canadian government’s historical use of assimilation tactics throughout the 20<sup>th</sup> century was genocidal as defined by the CPPCG, but not under Canadian law. After examining the process by which the Canadian government pushed for a narrower definition during the negotiation of the CPPCG, this essay shall argue that the Canadian state’s deliberate narrowing of an already exclusive definition of genocide was done with the goal of preventing fiscal reparations and upsets within Canadian national identities and mythologies that would come as a result of the Canadian state being found guilty of genocide against its Indigenous peoples.

## **Legal Definitions**

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<sup>203</sup> Truth and Reconciliation Canada, *Canada’s Residential Schools: The Legacy* (Winnipeg: Truth and Reconciliation Commission of Canada, 2015), 5.

<sup>204</sup> John McGarry, "Expulsions," lecture, Chernoff AUD, Kingston, ON, October 3, 2018.; Erin K Jenne, "The causes and consequences of ethnic cleansing," In *The Routledge Handbook of Ethnic Conflict*, 2nd ed, (London: Routledge, Taylor & Francis Group, 2016), 110-18.

<sup>205</sup> John McGarry, " Genocide," lecture, Chernoff AUD, Kingston, ON, September 26, 2018.

<sup>206</sup> Andrew Woolford and Jeff Benvenuto, "Canada and colonial genocide," *Journal of Genocide Research* 17, no. 4 (2015): 373-90.

Genocide is recognized as a method of managing diversity within a state by abolishing said diversity via the systematic destruction of members of a certain ethnic group<sup>207</sup>. The main contested issue in defining genocide is what constitutes destruction; is it purely physical (slaughter and executions) or can it be cultural (total assimilation) or biological (preventing reproduction)? These distinctions are often found in popular discourse, however for the purposes of this paper these distinctions will be treated as unneeded abstractions of the same thing: genocide. Furthermore, many of the policies explored later have features of all three types of genocide.

The most widely recognized official definition of genocide is that provided by Article II of the CPPCG, as the Convention has been ratified or acceded to by hundreds of countries since its enactment in 1951<sup>208</sup>. Article II holds that genocide is:

Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of a group; (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; (e) Forcibly transferring children of the group to another group.<sup>209</sup>

While Canadian law draws its framework from the UN definition, genocide in Canada is more narrowly defined. Canadian law describes genocide as “any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely, (a) killing members of the group; or (b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.”<sup>210</sup> Within the law, an ‘identifiable group’ is identified as “any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability.”<sup>211</sup> The Canadian definition selectively draws upon the CPPCG’s Article II (a) and (c) to be enacted within the Canadian legal framework and excludes Article II (b), (d), and (e).

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<sup>207</sup> John McGarry and Brendan O’Leary, *The Politics of Ethnic Conflict Regulation: Case Studies of Protracted Ethnic Conflicts* (London; New York, NY: Routledge, 1993).

<sup>208</sup> Hughes, “Genocide,” 119-38.

<sup>209</sup> “Convention on the Prevention and Punishment of the Crime of Genocide.” OHCHR, 1951. Retrieved March 2, 2018.

<sup>210</sup> “Consolidated Federal Laws of Canada, Criminal Code,” Canada Occupational Health and Safety Regulations, November 07, 2018, <https://laws-lois.justice.gc.ca/eng/acts/C-46/section-318.html>.

<sup>211</sup> *Ibid.*

What is the motive behind Canada's narrowed definition of genocide? Why would Canada risk its international reputation as a humanitarian, peacekeeping nation to create a conservative piece of legislation concerning one of the most sensitive topics in modern politics? At least part of this answer comes from the history of genocide in Canada.

### **A Canadian Genocide: Historical Evidence**

There is a wide basis of historical evidence upon which claims of genocide have been made in Canada. Allegations of genocide often target policies implemented under the *Indian Act* of 1876 and one of its predecessors, the *Gradual Civilization Act* of 1857, which provided state funding for the Canadian Indian Residential School (IRS) system<sup>212</sup>. The subsequent population transfers known as the '60s Scoop' and mass-sterilization campaigns have also been labeled as genocidal<sup>213</sup>.

The IRS system was designed to assimilate Indigenous children into Euro-Canadian society by isolating them from their cultures and indoctrinating them with Euro-Canadian beliefs, most notably Christianity<sup>214</sup>. Approximately 150,000 children passed through the 125 church-run residential schools of the IRS system throughout its existence<sup>215</sup>. The forced separation of children from their families coupled with abuse and neglect caused lasting trauma and emotional disconnection in many former students<sup>216</sup>.

Abuse and neglect often took the form of rampant sexual and physical abuse of children at the hands of school administrators and staff within the IRS system (of which the government was aware). Mistreatment also led to death, and it is estimated that at least 6,000 children perished unnaturally while attending residential schools<sup>217</sup>. Many fatalities stemmed from deliberate abuses such as the provision of milk infected with tuberculosis to children within the schools<sup>218</sup>. This

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<sup>212</sup> Murray R. Thomas, "Can money undo the past? A Canadian example," *Comparative Education* 39, no. 3 (2003): 331-43.; Andrew Woolford and Jeff Benvenuto, "Canada and colonial genocide," *Journal of Genocide Research* 17, no. 4 (2015): 373-90.

<sup>213</sup> Andrew Woolford and Jeff Benvenuto, "Canada and colonial genocide," *Journal of Genocide Research* 17, no. 4 (2015): 373-90.

<sup>214</sup> Andrew Woolford and James Gacek, "Genocidal Carcerality and Indian Residential Schools in Canada," *Punishment & Society* 18, no. 4 (2016): 400-19.

<sup>215</sup> David B. MacDonald, "Canada's History Wars: Indigenous Genocide and Public Memory in the United States, Australia and Canada," *Journal of Genocide Research* 17, no. 4 (2015): 413.

<sup>216</sup> Woolford and Gacek, "Genocidal Carcerality and Indian Residential Schools in Canada," 412.

<sup>217</sup> Ronald Niezen, "Templates and Exclusions: Victim Centricism in Canada's Truth and Reconciliation Commission on Indian Residential Schools," *Journal of the Royal Anthropological Institute* 22, no. 4 (2016): 921; Woolford and Gacek, "Genocidal Carcerality and Indian Residential Schools in Canada," 404.

<sup>218</sup> Karen Stote, "An Act of Genocide: Eugenics, Indian Policy, and the Sterilization of Aboriginal Women in Canada," (PhD diss., ProQuest Dissertations Publishing, 2012) 116-117.

coincided with disproportionately high mortality rates from the disease within Indigenous populations and is thought to be part of government experiments that were reportedly carried out within the schools<sup>219</sup>. In 1907, the *Report in Indian Schools of Manitoba and the Northwest* described tuberculosis fatalities that may have claimed between 24 and 33 percent of children attending residential schools within the region<sup>220</sup>.

Genocide within Canada is not limited to policies of the *Indian Act* such as the IRS system. As Woolford and Benvenuto note that the government's destructive actions have also included "forced removals, negligent disease spread, prohibition of cultural practices such as the potlatch, welfare-state child removals, the sterilization of Aboriginal women and the ecological devastation of indigenous territories."<sup>221</sup> The mention of welfare-state child removals refers to the 60s Scoop. As the federal policy of residential schools lost momentum, provincial governments took up the mantle, removing approximately 20,000 Indigenous children from their biological families under 'welfare' acts and placing them in non-Indigenous households during the 1960s through to the 1980s<sup>222</sup>. This was an effective way for the government to deprive Indigenous children of their culture and assimilate them into Euro-Canadian society.

Mass, non-consensual sterilization was another tactic used by the Canadian government both inside and outside the IRS system on Indigenous people, usually women<sup>223</sup>. In places such as Northern Canada, "nearly 70 percent of tubal ligations performed during the course of an eleven-year period, from 1966–1976, were carried out on Aboriginal peoples."<sup>224</sup> These sterilization campaigns were designed to weaken Indigenous titles to land and reduce their population, thus minimizing local resistance to settlers and federal paternalistic obligations towards Indigenous peoples<sup>225</sup>.

It is thus clear that mass-sterilization, the IRS system, and the 60s Scoop "served to destroy Aboriginal peoples' forms of life and to reduce the numbers of those considered Aboriginal in the

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<sup>219</sup> Ibid.

<sup>220</sup> Ibid., 100.

<sup>221</sup> Woolford and Benvenuto, "Canada and colonial genocide," 373-90.

<sup>222</sup> "Saskatchewan Minister Hopes Government Gives '60s Scoop Apology by Year's End." *Saskatoon StarPhoenix*. November 01, 2018. Accessed November 4, 2018. <https://thestarphoenix.com/news/local-news/saskatchewan-minister-hopes-government-gives-60s-scoop-apology-by-years-end>.

<sup>223</sup> Stote, "An Act of Genocide: Eugenics, Indian Policy, and the Sterilization of Aboriginal Women in Canada."

<sup>224</sup> Ibid.

<sup>225</sup> Ibid.

eyes of the federal government.”<sup>226</sup> With these grievances established, an analysis may begin to determine if what occurred constitutes as genocide.

### **Application of Definitions**

While many accusations of genocide in Canada hold that the government committed ‘cultural genocide,’<sup>227</sup> the distinguishing of ‘cultural’ genocide does not change that what occurred was a genocide and may thus be considered unnecessary. Some may even argue that it is an insufficient label, due to the thousands of Indigenous peoples that died due to the deliberate spread of disease and negligence of the healthcare system. Qualifying Canadian genocide as ‘cultural’ is known to be a weaker and non-binding label when compared to simply stating ‘genocide’ and has been excluded from most legal understandings of genocide<sup>228</sup>. While it is important to recognize the cultural loss of Indigenous peoples, as Jesse Staniforth points out; “The word ‘cultural’ seems to suggest that the IRS system was designed to destroy cultures but not people, a fact far from the reality of Residential Schools. ‘Cultural’ is a civilizing adjective: it says that our policies were not truly evil, just deeply misguided.”<sup>229</sup>

The treatment of Indigenous peoples by the Canadian government is described by Article II (b), (d) and (e) of the CPPCG. According to Article II (b), Canada is guilty of genocide because many IRS system survivors suffer severe mental and/or physical injury from their time spent in the schools<sup>230</sup>. Article II (d) is evidenced by sterilization campaigns<sup>231</sup>. In 2012, TRC Chief Commissioner Justice Murray Sinclair claimed that the IRS system constituted genocide under the CPPCG by referencing Article II (e), stating: “the reality is that to take children away and to place them with another group in society for the purpose of racial indoctrination was—and is—an act of genocide...”<sup>232</sup> Thus, Justice Sinclair implicates the 60s Scoop and IRS system with Article II (e).

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<sup>226</sup> Ibid., 109.

<sup>227</sup> MacDonald, “Canada's History Wars: Indigenous Genocide and Public Memory in the United States, Australia and Canada,” 411-31; MacDonald and Hudson, “The Genocide Question and Indian Residential Schools in Canada,” 427-49.

<sup>228</sup> MacDonald, “Canada's History Wars: Indigenous Genocide and Public Memory in the United States, Australia and Canada,” 411-31.

<sup>229</sup> Jesse Staniforth, “‘Cultural Genocide’? No, Canada Committed Regular Genocide,” *The Toronto Star*, June 10, 2015, <https://www.thestar.com/opinion/commentary/2015/06/10/cultural-genocide-no-canada-committed-regular-genocide.html>.

<sup>230</sup> Woolford and Gacek, “Genocidal Carcerality and Indian Residential Schools in Canada,” 412.

<sup>231</sup> Stote, “An Act of Genocide: Eugenics, Indian Policy, and the Sterilization of Aboriginal Women in Canada.”

<sup>232</sup> Puxley, 2012, as cited in MacDonald, “Canada's History Wars: Indigenous Genocide and Public Memory in the United States, Australia and Canada,” 422.

Though the policies and actions that Indigenous peoples have been subject to clearly match the criteria within the CPPCG, many scholars note that it is difficult to prove the stipulation of *dolus specialis* (an intent to destroy) provided by the CPPCG<sup>233</sup>. To address this concern, MacDonald and Hudson note that “a number of prominent genocide scholars argue that even if there was no overarching and provable intent to destroy indigenous peoples... if the end result had genocidal consequences that was or even could have been foreseen, then genocide can be understood to have occurred.”<sup>234</sup> Furthermore, if one holds *dolus specialis* to be a core component of genocide, officials within the Canadian government such as Duncan Campbell Scott, deputy superintendent of the Department of Indian Affairs, made it abundantly clear that the IRS system and other such institutions were explicitly designed to “kill the Indian, save the man” and to deal with “the Indian problem.”<sup>235</sup> Indeed, Lt. Richard Pratt, a man often credited as one of the founding figures of Indigenous residential schools, once said that “we make our greatest mistake in feeding our civilization to the Indians instead of feeding the Indians to our civilization.”<sup>236</sup>

While it is clear that Canada has committed genocide as defined by the CPPCG, the Convention is limited in its ability to be used to prosecute states, as this would lead to an infringement upon said state’s sovereignty<sup>237</sup>. Furthermore, the use of the International Criminal Court to prosecute Canadian citizens for the crime of genocide is out of the question, as it cannot act on crimes committed before July 1<sup>st</sup>, 2002<sup>238</sup>. Hence, a definitive verdict of genocide will have to come from within Canada.

Although the CPPCG applies to the Canadian treatment of Indigenous peoples, the Canadian government has yet to recognize its past actions as genocidal. This is for two reasons. First, the CPPCG does not necessarily hold any legal sway over Canada because the UN cannot create statutes that impose upon the sovereignty of member states<sup>239</sup>. Second, Canadian law provides a much narrower definition of genocide that Canadian lawyers and government officials

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<sup>233</sup> MacDonald, “Canada's History Wars: Indigenous Genocide and Public Memory in the United States, Australia and Canada,”

<sup>234</sup> MacDonald and Hudson, “The Genocide Question and Indian Residential Schools in Canada,” 427-49.

<sup>235</sup> Ruth Amir, “Cultural Genocide in Canada? It did happen here.” *Aboriginal Policy Studies* 7, no. 1 (2018).

<sup>236</sup> Adams, 1995, cited in Woolford and Gacek, “Genocidal Carcerality and Indian Residential Schools in Canada,” 412.

<sup>237</sup> Dawn Paley and Sandra Cuffe, “Genocide on Trial,” *Canadian Dimension*, December 3, 2013.

<https://canadiandimension.com/articles/view/genocide-on-trial>.

<sup>238</sup> OHCHR, “Convention on the Prevention and Punishment of the Crime of Genocide.”

<sup>239</sup> MacDonald, “Canada's History Wars: Indigenous Genocide and Public Memory in the United States, Australia and Canada,” 411-31.

argue does not apply to the IRS system, thus precluding Canada from a verdict of genocide. As noted earlier, the Canadian definition of genocide excludes the CPPCG's Article II (b), (d), and (e), the three stipulations that have been proven to have occurred within Canada.

### **The Intent Of Canadian Law**

Canada's possession of a narrow definition of genocide that deliberately excludes parts of the CPPCG which would apply to the state is not unique; several other colonial states are known to behave similarly<sup>240</sup>. The label of genocide is highly politicized, and usually offending states attempt to ensure that their laws do not implicate themselves<sup>241</sup>. Canada is guilty of selectively creating laws to ensure its own innocence, a behaviour most clearly demonstrated during the creation and ratification of the CPPCG.

The CPPCG definition is a diluted version of the original definition of genocide put forth by Dr. Raphael Lemkin in 1943, who held that genocide is the physical, cultural, and biological destruction of a people<sup>242</sup>. Lemkin saw these factors as being intermixed, whereas the Convention has left out cultural genocide from its definition at the behest of colonial states that suspected they might be guilty of cultural genocide<sup>243</sup>. As one of these states, Canada was "strongly opposed to the inclusion of cultural genocide in the Genocide Convention." During the creation of the CPPCG, the Secretary of State for External Affairs, Louis St. Laurent, told the Canadian UN representatives to resist the inclusion of any articles pertaining to cultural genocide and to vote against any such articles<sup>244</sup>. If an article on cultural genocide were to be included, he told the delegates to vote against the Convention<sup>245</sup>. Indeed, a Progress Report issued by the Canadian delegation stated that "the Canadian delegate had only one important task, namely to eliminate 'cultural genocide' from the Convention" and that "the remaining articles are of no particular concern to Canada."<sup>246</sup>

After the CPPCG was ratified, Canada further insulated itself by selectively implementing its definition of genocide. This narrow interpretation was justified by legislators who claimed that genocide was so foreign and repulsive to Canadian society that it was unnecessary to implement

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<sup>240</sup> John McGarry, "Genocide."

<sup>241</sup> Mathias Thaler, "Political imagination and the crime of crimes: Coming to terms with 'genocide' and 'genocide blindness.'" *Contemporary Political Theory* 13, no. 4 (2014): 358-79.

<sup>242</sup> Woolford and Gacek, "Genocidal Carcerality and Indian Residential Schools in Canada," 400-19.

<sup>243</sup> *Ibid.*, 412; Paley and Cuffe, "Genocide on Trial."

<sup>244</sup> Amir, "Cultural Genocide in Canada? It did happen here." 108.

<sup>245</sup> *Ibid.*

<sup>246</sup> *Ibid.*, 109 (as cited in Lapointe, 1948).

such an extensive legal framework, and thus genocide should be known to Canadians as simply the systematic killing and physical extermination of a group<sup>247</sup>. When commenting on parts of Article II that did not pertain to the physical destruction of people, the authors of the *Report of the Special Committee on Hate Crimes in Canada* suggested that Article II was “intended to cover certain historical incidents in Europe that have little essential relevance to Canada.”<sup>248</sup> They even falsely claimed that “mass transfers of children to another group are unknown ... in Canada.”<sup>249</sup> Even then, the physical killing aspect of genocide was seen as redundant due to pre-existing laws criminalizing murder of any kind<sup>250</sup>. Government officials concluded that Article II (b) and (e) were “inadvisable for [Canadian law]” and were to be excluded<sup>251</sup>.

Canadian law also stipulates that since the terms for genocide were adopted in 1998, the prosecution of acts fitting those terms that occurred before 1998 is prohibited<sup>252</sup>. This prevents any prosecution of the Canadian government in relation to the IRS system, the 60s Scoop or sterilization campaigns, all of which concluded before 1998<sup>253</sup>. Thus, scholars are unsure if a criminal case within Canada is possible as this timeframe limit makes it so that “unless that statute is amended or there’s a Charter claim which states that that’s unconstitutional to prohibit the access to justice on that ground... there will be no [prosecutions of genocide].”<sup>254</sup>

### **The Rationale Behind Canadian Law**

There are several likely reasons that caused the government to insulate itself from accusations of genocide via exclusive legal definitions. The most probable of these reasons are the cultural and moral consequences of genocide and the financial and legal responsibilities the state would be held to if it was found guilty.

The Truth and Reconciliation Commission of Canada works assuming public ignorance towards the IRS system, and studies have found that before the commission began in 2008 only 30% of Canadians had ever heard of residential schools<sup>255</sup>. It is apparent that knowledge of the

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<sup>247</sup> Ibid.

<sup>248</sup> Churchill, 2004, 9;86 as cited in MacDonald and Hudson, “The Genocide Question and Indian Residential Schools in Canada,” 427-49.

<sup>249</sup> Ibid.

<sup>250</sup> Ibid.

<sup>251</sup> Ibid.

<sup>252</sup> Ibid.

<sup>253</sup> Ibid. 13.

<sup>254</sup> Paley and Cuffe, “Genocide on Trial.”

<sup>255</sup> MacDonald, “Canada's History Wars: Indigenous Genocide and Public Memory in the United States, Australia and Canada,” 414.

IRS system is not a part of Canadian national identity (national identity being the interconnection of values, national myths, collective memory, and heritage of a nation<sup>256</sup>). This is because Canadian national identity traditionally manifests as an internationalist humanitarian ideal that extrapolates upon ideas of Canadian morality and wisdom derived from such occurrences as the creation of peacekeeping and the early end of the slave trade in Canada<sup>257</sup>.

The Canadian national identity does not consider genocide as a possible part of the nation's past. Combined with the serious connotations of genocide as 'the crime of all crimes,'<sup>258</sup> accusations of genocide that criminalise the history of the nation are likely to result in a "knee-jerk emotional denial of the charge of genocide, not based on any reasoned legal consideration of the [CPPCG] or the facts of the case."<sup>259</sup> This is often called aspect blindness; the inability for a person or group to change their perspective on a concept<sup>260</sup>. Aspect blindness applies to Canadian history and identity as many Canadians cannot, or refuse to, reconceptualize Canada as a genocidal nation, especially older generations who lived while both genocide and humanitarian internationalism were taking place<sup>261</sup>. Indeed, many Canadians find that "in Canada, we have trouble processing the idea we are capable of [genocide]. It doesn't go with our being peacekeepers, a nice country that is apologizing all the time."<sup>262</sup> The Canadian government likely avoids accusations or verdicts of genocide to preserve its sanctimonious national identity and to avoid moral upheaval within the body politics' historical narratives. Furthermore, parties determined on reconciling the nation's past by acknowledging genocide would distance themselves from voters who subscribe to the traditional Canadian national identity.

Financial and legal responsibilities are another possibility that loom over the government should it be found guilty of genocide. This is shown by "more than 9,000 lawsuits [that] have been

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<sup>256</sup> Tim Nieguth and Tracey Raney, "Nation-building and Canada's National Symbolic Order, 1993-2015," *Nations and Nationalism* 23, no. 1 (2016): 87-108. doi:10.1111/nana.12170.

<sup>257</sup> MacDonald, "Canada's History Wars: Indigenous Genocide and Public Memory in the United States, Australia and Canada,"; Nieguth and Raney, "Nation-building and Canada's National Symbolic Order, 1993-2015," 87-108.

<sup>258</sup> MacDonald, "Canada's History Wars: Indigenous Genocide and Public Memory in the United States, Australia and Canada,"; Joseph Brean, "'Cultural Genocide' of Canada's Indigenous Peoples Is a 'mourning Label,' Former War Crimes Prosecutor Says," *National Post*, January 16, 2016. <https://nationalpost.com/news/canada/cultural-genocide-of-canadas-indigenous-people-is-a-mourning-label-former-war-crimes-prosecutor-says>.

<sup>259</sup> Michael A. Innes, "Genocide, Ethnocide, or Hyperbole? Australia's 'Stolen Generation' and Canada's 'Hidden Holocaust'," *Cultural Survival Quarterly* 25, no. 4 (2002): 54.

<sup>260</sup> Mathias Thaler, "Political imagination and the crime of crimes: Coming to terms with 'genocide' and 'genocide blindness.'" *Contemporary Political Theory* 13, no. 4 (2014): 358-79.

<sup>261</sup> *Ibid.*

<sup>262</sup> Larry Krotz, "A Canadian Genocide?" *The UC Observer*, March 2014, [https://www.ucobserver.org/features/2014/03/canadian\\_genocide/](https://www.ucobserver.org/features/2014/03/canadian_genocide/).

filed against the government,”<sup>263</sup> the ultimate cost of which “might reach billions of dollars.”<sup>264</sup> These estimates, from 2003, have likely grown far beyond the 1-2 billion dollars predicted<sup>265</sup> and may continue to grow into the future, in addition to the potential moral obligation for the state to put more funds into reparation programs<sup>266</sup>. Reparation funds will likely come exclusively from the Canadian government, which has been held accountable for 75% of the fiscal burden, and the churches that participated in the IRS system, which are accountable for the remaining 25% in some IRS system lawsuits<sup>267</sup>. This massive fiscal responsibility has caused “the churches and government... to avoid as much blame as possible for the indigenous people’s plight and to incur as little expense as possible in settling the lawsuits.”<sup>268</sup> The avoidance of expenses and legal duties is a strong motivator for the maintenance of Canada’s current genocide laws.

### **Conclusion**

Genocide is often thought of as “the greatest evil imaginable.”<sup>269</sup> Convictions of genocide are of the utmost gravity and can have drastic implications on the financial resources, culture, and identity of inculpatated nations. While the Canadian state has strived to protect itself from substantiated accusations of genocide, it is evident that by both Lemkinian and UN standards Canada is guilty of genocide<sup>270</sup>. What stands between the government and a verdict of genocidal behaviour is Canadian sovereignty and the state’s ability to create self-serving laws. The final verdict on Canada’s genocidal past may therefore lie in the ability of those who seek justice to

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<sup>263</sup> Murray R. Thomas, “Can money undo the past? A Canadian example,” *Comparative Education* 39, no. 3 (2003): 331-43.

<sup>264</sup> *Ibid.*

<sup>265</sup> *Ibid.*, 311.

<sup>266</sup> Barrera, Jorge. “Budget Boosts Funding for First Nations Self-government, Indigenous Services.” *CBC News*, February 28, 2018. <https://www.cbc.ca/news/indigenous/federal-budget-2018-indigenous-file-1.4552955>.

<sup>267</sup> Murray R. Thomas, “Can money undo the past? A Canadian example,” *Comparative Education* 39, no. 3 (2003): 334

<sup>268</sup> *Ibid.*, 337.

<sup>269</sup> Joseph Brean, “‘Cultural Genocide’ of Canada’s Indigenous Peoples Is a ‘mourning Label,’ Former War Crimes Prosecutor Says,” *National Post*, January 16, 2016. <https://nationalpost.com/news/canada/cultural-genocide-of-canadas-indigenous-people-is-a-mourning-label-former-war-crimes-prosecutor-says>.

<sup>270</sup> OHCHR, “Convention on the Prevention and Punishment of the Crime of Genocide.”; Woolford and Gacek, “Genocidal Carcerality and Indian Residential Schools in Canada,” 400-19.

enact constitutional amendments. A finding of guilt on the part of the Canadian government would permanently alter the way Canadians view their society and national identity.

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