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## The Ongoing Traumatic Experience of Genocide for American Indians and Alaska Natives in the United States: The Call to Recognize Full Human Rights as Set Forth in the United Nations Declaration on the Rights of Indigenous Peoples

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# **The Ongoing Traumatic Experience of Genocide for American Indians and Alaska Natives in the United States: The Call to Recognize Full Human Rights as Set Forth in the United Nations Declaration on the Rights of Indigenous Peoples**

## **Cover Page Footnote**

Sisseton-Wahpeton Oyate citizen, Professor of Law, University of Idaho College of Law, Native American Law Program Director.

# **THE ONGOING TRAUMATIC EXPERIENCE OF GENOCIDE FOR AMERICAN INDIANS AND ALASKA NATIVES IN THE UNITED STATES: THE CALL TO RECOGNIZE FULL HUMAN RIGHTS AS SET FORTH IN THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES**

Angelique Townsend EagleWoman\* (Wambdi A. WasteWin)\*\*

## **INTRODUCTION: MYTHS OF SUBJUGATION**

The power of myth and storytelling is well-known in American Indian communities. Oral traditions continue to have vitality and relevance in those communities as a means of providing instruction on the tribal worldview, philosophy and the accepted norms of human behavior in relation to each other and to other living beings. In the relationships between Tribal Nations and the United States, myth and storytelling have been and continue to be powerful tools in perpetuating the subjugation of and human rights violations against American Indians in judicial decisions, American history textbooks, and the mainstream media. The dehumanization of American Indians is a tradition that stems from the founding of the United States. The so-called "founding fathers" engaged in myth and storytelling at the creation of the new settler nation-state on North American soil. For Native peoples, the challenge in correcting foundational governmental and nation-building myths is ongoing and at times, deeply frustrating. However, the consequence for Native peoples not taking up the challenge is to succumb to externally imposed derogatory labeling, that results in self-denigration, and ultimately, lifelong victimization.

By bringing the principles in the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration)<sup>1</sup> to life in the United States, American Indians and Alaska Natives can address the derogatory myth and storytelling at the core of U.S. history. The UN Declaration sets forth a minimum standard of human rights for Indigenous peoples around the globe. Some of the most powerful principles in the UN Declaration include the rights for Indigenous peoples to counter settler-nation myths

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\*Sisseton-Wahpeton Oyate citizen, Professor of Law, University of Idaho College of Law, Native American Law Program Director.

\*\*This article is dedicated to the truth-tellers in Indigenous communities. In the Dakota way, the sacred seventh generation prophesied by the White Buffalo Calf Woman has been born. Those who are the parents and teachers of this generation are part of the sacred sixth generation. It is our responsibility as the sixth generation to hold on to our ways, histories, cultures, and ways of life to instruct this special sacred seventh generation to bring the strength back to our Tribal peoples.

<sup>1</sup> U.N. Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, P 3, U.N. Doc. A/RES/61/295 (Sept. 13, 2007) [hereinafter Declaration].

with their own version of history and truth telling.<sup>2</sup> Additionally, nation-states, such as the United States, have an affirmative obligation under the UN Declaration to prevent "[a]ny form of propaganda designed to promote or incite racial or ethnic discrimination directed against" Indigenous peoples.<sup>3</sup> Most students in the United States can graduate from high school without ever learning about contemporary tribal governments, the eras of United States Indian policy, or the ongoing human rights issues that impact American Indians over generations.<sup>4</sup> By actively seeking out American Indian Studies courses on university campuses, a small number of college students can gain basic knowledge on the history, literature, and legal relationships of American Indians in the United States. According to an informal survey conducted by the author on the American Associations of Law Schools (AALS), out of 202 ABA accredited law schools 94 offered an Indian Law course on a regular basis in 2012-2013, roughly 46.5%.<sup>5</sup> The importance of this subject area cannot be overstated for American Indians in the United States. Most United States citizens do not know that a basic principle of federal Indian law is that the United States Congress exercises plenary authority over American Indians. Although United States citizens elect members of Congress to represent them, most United States citizens know very little about this authority or how it is asserted over American Indians.

Part I of this article will discuss the early contact between Native Americans and Europeans. The European and, later, United States justifications for the genocide, dispossession and impoverishment of Native Americans will be discussed. Part II will review the legal justifications employed by United States Presidents and leaders to systematically dispossess American Indians of their lands and resources. The shift from political alliances to military massacres of American Indians signaled the next phase of dehumanization. Following military domination, the United States has imposed a perpetual incompetency on American Indians and asserted trusteeship. This policy frames the contemporary relationship between American Indians and the United States. Part III will examine the genocidal acts perpetrated by the United States to oppress American Indians and Alaska Natives. The section will conclude with the resistance efforts of Native Americans. In Part IV, the application of the UN Declaration on the Rights of Indigenous Peoples will provide human right standards for re-

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<sup>2</sup> See *id.*, Articles 8, 12, 13, and 14.

<sup>3</sup> *Id.* at Article 8(2)(e).

<sup>4</sup> See Alys Landry, *'All Indians Are Dead?' At Least That's What Most Schools Teach Children*, INDIAN COUNTRY TODAY MEDIA NETWORK (November 17, 2014), <http://indiancountrytodaymedianetwork.com/2014/11/17/all-indians-are-dead-least-thats-what-most-schools-teach-children-157822>. "The study also revealed that all 50 states lack any content about current Native events or challenges. 'Nothing about treaties, land rights, water rights,' Shear said. 'Nothing about the fact that tribes are still fighting to be recognized and determine sovereignty.'" *Id.*

<sup>5</sup> Results on file with the author. Survey conducted on the "NDNLAWPROF" list from March 29, 2013 to April 4, 2013 (email list for those teaching in the field of Indian law, law professors across the country responded to the question of whether an Indian law course was offered at their law school).

establishing basic human rights for American Indians through the international evolution of Indigenous peoples' collective rights.

### I. THE U.S. COLUMBUS DAY CELEBRATION OF THE GENOCIDE OF NATIVE AMERICANS

One of the formal federally recognized holidays in the United States is "Columbus Day" purporting to celebrate the Italian colonizer who was the catalyst to long term Spanish subjugation and genocide of Natives in the Americas. The betrayal of the United States government in holding up for heroism a known masochistic murderer and subjugator of Indigenous Americans cuts deep as a symbolic statement. In addition, this United States celebration and myth-propagation is grounded in the ideals of European supremacy, rights of conquest over foreign peoples, and greed for others' natural resources, particularly gold.<sup>6</sup> The Spanish rulers, who authorized Columbus' invasion, and later governorship, relied on the Christian Church doctrine of the late 1400s establishing the right to enslave non-Christians and exploit their resources.<sup>7</sup> A review of the actual tyranny of Christopher Columbus reveals his complete disregard for the humanity of Native Americans and his greed for gold.

It was Christopher Columbus as the named Governor of the Spanish "discovery" that attempted to enslave 500 Arawak tribal peoples in the Americas and send them to Spain, but two hundred died on the voyage.<sup>8</sup> His intense quest for gold began to satisfy the Spanish financiers of his voyages. He then set in motion the cruel and inhumane punishment system for the Arawak tribal peoples to deliver gold or have their hands cut off.<sup>9</sup>

When it became clear that there was no gold left, the Indians were taken as slave labor on huge estates, known later as *encomiendas*. They were worked at a ferocious pace, and died by the thousands. By the year 1515, there were perhaps fifty thousand Indians left. By 1550, there were five hundred. A report of the year 1650 shows none of the original Arawaks or their descendants left on the island.<sup>10</sup>

The actions of the Spaniards under the Italian governor, Christopher Columbus, can only be viewed as outright genocide as the policy of the first Europeans in the Americas.

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<sup>6</sup> See HOWARD A. ZINN, A PEOPLE'S HISTORY OF THE UNITED STATES 2-3 (2005).

<sup>7</sup> See ROBERT A. WILLIAMS, JR., THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT: THE DISCOURSES OF CONQUEST 76-80 (1990).

<sup>8</sup> See ZINN, *supra* note 6 at 4. "In the year 1495, they went on a great slave raid, rounded up fifteen hundred Arawak men, women, and children, put them in pens guarded by Spaniards and dogs, picked the five hundred best specimens to load onto ships."; *Id.*

<sup>9</sup> See ZINN, *supra* note 6 at 4.

<sup>10</sup> ZINN, *supra* note 6 at 5.

In the books of the first priest in the Americas, Bartholome de las Casas, the atrocities of the Spaniards were documented and described the complete disregard for the human life and dignity of Native Americans.<sup>11</sup> De Las Casas spent his life advocating for the freeing of Native Americans from the encomienda system, preaching the immorality of the Spanish conquest and genocide, and asserting the property rights of the Natives.<sup>12</sup>

Another prominent Spanish intellectual figure that advocated for the human status of American Indians was Franciscus de Victoria. In 1532, Victoria argued that American Indians had property rights, the right not to be enslaved, and could only be subject to a just war by the Spaniards if in violation of Victoria's universal laws.<sup>13</sup> He opined that should American Indians prevent the Spaniards from proselyting Natives to Christianity or engaging in economic activity, then a just war could be declared by the Spanish. Also, he asserted that the Spaniards could place Indians under a guardianship for their best interests.<sup>14</sup> Three centuries later, this line of reasoning would be used in judicial decisions to justify the actions of the United States towards American Indians; relying upon the "doctrine of discovery"<sup>15</sup> and asserting a "ward/guardian" relationship over American Indians.<sup>16</sup>

When Indigenous peoples' populations diminished or they resisted being enslaved for sex and labor, Europeans turned to the trans-Atlantic slavery system

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<sup>11</sup> *Id.* at 6-7.

<sup>12</sup> See Scott A. Taylor, *The Native American Law Opinions of Judge Noonan: Do We Hear the Faint Voice of Bartholome de Las Casas?*, 1 U. ST. THOMAS L.J. 148, 151 (2003).

<sup>13</sup> *Id.* at 152 (pointing to the difference in views between De Las Casas and Victoria over the requirements for just war to be waged against American Indians).

<sup>14</sup> See DAVID E. GETCHES, CHARLES F. WILKINSON, ROBERT A. WILLIAMS, JR. & MATTHEW L.M. FLETCHER, CASES AND MATERIALS ON FEDERAL INDIAN LAW 51-53 (6th ed. 2011).

<sup>15</sup> See *Johnson v. McIntosh*, 21 U.S. 543 (1823). "The United States, then, have unequivocally acceded to that great and broad rule by which its civilized inhabitants now hold this country. They hold, and assert in themselves, the title by which it was acquired. They maintain, as all others have maintained, that discovery gave an exclusive right to extinguish the Indian title of occupancy, either by purchase or by conquest; and gave also a right to such a degree of sovereignty, as the circumstances of the people would allow them to exercise." *Id.* at 587.

<sup>16</sup> See *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831). "They may, more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupillage. Their relation to the United States resembles that of a ward to his guardian.

They look to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the president as their great father. They and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and dominion of the United States, that any attempt to acquire their lands, or to form a political connexion with them, would be considered by all as an invasion of our territory, and an act of hostility.

These considerations go far to support the opinion, that the framers of our constitution had not the Indian tribes in view, when they opened the courts of the union to controversies between a state or the citizens thereof, and foreign states."; *Id.* at 13.

forcing Africans to involuntarily relocate to the Western Hemisphere.<sup>17</sup> This same mentality occurred along the eastern seaboard of the newly-formed United States. In contradiction to the well-known United States myth of democratic white settler farmers, Euro-Americans re-established aristocracy hierarchies and forced other cultural and racial groups to become their laborers<sup>18</sup> or be subjected to genocidal violence.<sup>19</sup>

From this history of devastation of Native Americans, the United States has sounded a national unifying common cause for celebration of "Columbus Day".<sup>20</sup> This United States celebration has been paired since 1892 with the first national "pledge of allegiance" recitation by schoolchildren.<sup>21</sup>

A former Baptist minister named Francis Bellamy wrote the original Pledge of Allegiance in 1892. It was first published in *Youth's Companion*, a children-oriented magazine that had hired Bellamy shortly after his resignation from his religious post. Bellamy also served as chairman of a committee of the National Columbian Public School Celebration in connection with his service to *Youth's Companion*. As chairman, he was charged to develop a program to celebrate the 400th anniversary of Christopher Columbus's landing in the Americas. Bellamy's program centered on a flag-raising ceremony that included his new salute to the flag, the "Pledge of Allegiance." During the summer months before his

<sup>17</sup> See Patricia M. Muhammad, *The Trans-Atlantic Slave Trade: A Forgotten Crime Against Humanity As Defined By International Law*, 19 AM. U. INT'L L. REV. 883, 894 (2004).

<sup>18</sup> See Jenny S. Martinez, *Antislavery Courts and the Dawn of International Law*, 117 YALE L.J. 550, 555 (2008). "In 1800, slavery was a fundamental part of the world's economic and social order. Though not practiced in Europe itself, European colonies in the Western Hemisphere relied heavily on slave labor to support their plantation economies. Slave trading ships crossed the Atlantic flying the flags of all the seafaring European nations, as well as the newly independent United States of America. In the first decade of the nineteenth century, an estimated 609,000 slaves arrived in the New World." *Id.*

<sup>19</sup> See DIRK HOERDER, *CULTURES IN CONTACT: WORLD MIGRATIONS IN THE SECOND MILLENNIUM* 215 (2002). "In agricultural North America, south of the fur empire, developments differed from the Spanish and Portuguese quest for riches, which had turned into settler colonization almost inadvertently. The Jamestown, Virginia, colonists of 1607 stood halfway between both types of settlement. When expectations of an abundance of precious stones and of First Peoples' (forced) labor did not materialize, the gentlemen adventurers among the 600 first arrivals did not deign to work. Most starved, some 10 percent survived...While the French state attempted to replicate feudal society, the English Pilgrim fathers and mothers, after their stopover in the Netherlands, by compact established governmental structures semi-independent from Great Britain, but they retained social hierarchies between masters and servants modeled on British society."; *Id.*

<sup>20</sup> See Lilian Handlin, *Discovering Columbus*, 62 AMERICAN SCHOLAR (Issue 1) 81 (1993). "Americans who eventually named more than sixty places in the United States after Columbus, did so in spite of a confused and controversial record. They shaped his image in accordance with their own needs. Hence popularizers with their own ideas about the mariner's utility proved more influential than scholars in defining his features."; *Id.*

<sup>21</sup> See Bryan Wheeler, *The Pledge of Allegiance in the Classroom and the Court: An Epic Struggle Over the Meaning of the Establishment Clause of the First Amendment*, 2008 B.Y.U. EDUC. & L.J. 281, 284 (2008).



flag ceremony, Bellamy successfully petitioned President Benjamin Harrison and Congress to issue a proclamation in observance of the Columbus Day celebration. While the Pledge of Allegiance was first recited in public schools as part of a Columbus Day Celebration on October 12, 1892, thousands of other public and private schools participated in the Pledge during the official Columbus Day Celebration on October 21, 1892.<sup>22</sup>

Spanish authorized genocide of Native Americans carried out by Columbus was fueled by greed, perversion and the ability to dehumanize and deny human status to others from a different culture. This is what the celebration of Columbus Day represents in reality.

Historian Howard Zinn detailed a "Columbus Day" speech by railroad official Chauncey DePew in 1892, in Albany, New York that celebrated United States wealth, civilization and power.

The "patriotism" that Chauncey DePew invoked in celebrating Columbus was profoundly tied to the notion of the inferiority of the conquered peoples. Columbus' attack on the Indians was justified by their status as sub-humans. The taking of Texas and much of Mexico by the United States just before the Civil War was done with the same racist rationale. Sam Houston, the first governor of Texas, proclaimed: 'The Anglo-Saxon race must pervade the whole southern extremity of this vast continent. The Mexicans are no better than the Indians and I see no reason why we should not take their land.'<sup>23</sup>

For tribal peoples in mid-North America, the United States aggrandizement of Columbus as a celebrated historical figure perpetuates a myth intended to convey European and white superiority over Native Americans. Further, embedding this aggrandizement in the public school curriculum in the United States signals to American Indian children, and all children, in those classrooms that the United States upholds the genocidal actions of Columbus, and later the U.S.,, as necessary and worthwhile for the expansion of white Western civilization.<sup>24</sup> This disregard for the human rights of non-

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<sup>22</sup> *Id.*

<sup>23</sup> HOWARD ZINN, HOWARD ZINN ON HISTORY 109 (2001).

<sup>24</sup> See THERESA DELEANE O'NEILL, DISCIPLINED HEARTS: HISTORY, Identity, and DEPRESSION IN AN AMERICAN INDIAN COMMUNITY 23 (1996). (reviewing Indian-white interactions on the Flathead Indian Reservation in Montana). "Less overt racism takes many forms. For example, a fifth grade class with both Indian and white students performed a pioneer game task over several weeks in which the children formed wagon trains and planned their trips westward into the 'uninhabited' land west of the Mississippi.



Christians/non-whites, and particularly American Indians, seems inconsistent with the principles taught as embodied in the United States Constitution, United States public policy, and United States jurisprudence.

## **II. FROM COLUMBUS TO THE U.S. "FOUNDING FATHERS": EXPOSING INHUMANE ACTIONS AGAINST AMERICAN INDIANS**

The glorification of historical figures like Columbus committing aberrant tortuous, murderous behavior is not uncommon in the United States. In fact, many of the so-called "founding fathers" who established the settler nation-state propagated enduring political opinions that Native Americans in their homeland were less than human, were not worthy of land ownership,<sup>25</sup> deserved to die if they refused to meet United States official demands, and that the white man's God actively killed off Natives to clear the land for the Euro-Americans. Schoolchildren are taught the praiseful myths of individuals and are not taught the true opinions of these Euro-American men regarding Native Americans as evidenced in their writings, documented speeches, and military commands.

Humanizing the United States "founding fathers" could be an exercise in revealing a cautionary tale of the discriminatory racist intentions brought over from Europe towards Native peoples that are no longer acceptable or desirable in the United States consciousness. This discussion will compare the myths and reality of the following prominent U.S. political figures: A) Benjamin Franklin; B) George Washington; C) Thomas Jefferson; D) Andrew Jackson; E) Abraham Lincoln; and F) Theodore Roosevelt.

### **A. Benjamin Franklin and Native Political Principles**

Lobbying for the adoption of the Iroquois Confederacy model of government, Benjamin Franklin had observed the alliance of the Six Nations as superior to the divine

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On the way, they had to contend with various natural obstacles, including a 'fierce and warring group of wild Indians,' as it was described on a homework sheet."; *Id.*

<sup>25</sup> The justification of dispossession of American Indians and Alaska Natives appears in U.S. Supreme Court decisions using derogatory language about tribal peoples. *See for example*, *Johnson v. M'Intosh*, 21 U.S. 543 (1823). "But the tribes of Indians inhabiting this country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country was to leave the country a wilderness, to govern them as a distinct people was impossible, because they were brave and as high spirited as they were fierce, and were ready to repel by arms every attempt on their independence."; *Id.* at 590; *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272 (1955). "Every American schoolboy knows that the savage tribes of this continent were deprived of their ancestral by force and that, even when the Indians ceded millions of acres by treaty in return for food, blankets, and trinkets, it was not a sale but the conquerors' will that deprived them of their land."; *Id.* at 289-90.

monarchy concept from European governmental principles.<sup>26</sup> Although admiring the alliance, his word choice belied the deep-rooted racism he adhered to in speaking of the democratic system developed by Native Americans. In 1751, Franklin gave a speech to a group of colonists on the wisdom of the Iroquois Confederacy while at the same time denouncing them as "savages."

It would be a strange thing...if Six Nations of Ignorant savages should be capable of forming such a union and be able to execute it in such a manner that it has subsisted for ages and appears indissoluble, and yet that a like union should be impractical for ten or a dozen English colonies, to whom it is more necessary and must be more advantageous, and who cannot be supposed to want an equal understanding of their interest.<sup>27</sup>

This is an example of exploiting the conceptual governmental system of the Iroquois while at the same time devaluing the leadership embodying that system. By dehumanizing Native Americans, Euro-Americans were able to perpetuate all manner of immoral and genocidal acts on people held to a lesser status. The exploitation of Native intellectualism, creativity, and resources has been a constant theme starting with the men glorified as the "founding fathers" of the United States.

### ***B. George Washington's Plan to Dispossess Native Americans of their Lands***

From the very first United States President, the intent to dispossess and relegate American Indians to an inferior status is evidenced in the writings of George Washington. In a letter dated September 7, 1783 from George Washington to James Duane following the colonial rebellion from Great Britain, Washington set forth his views on how to establish new western states as part of the United States and at the same time to claim those lands from Native Americans.

At first view, it may seem a little extraneous, when I am called upon to give an opinion upon the terms of a Peace proper to be made with the Indians that I should go into the formation of New States; but the Settlement of the Western Country and making a Peace with the Indians are so analogous that there can be no definition of the one without involving considerations of the other. for I repeat it, again, and I am clear in my opinion, that policy and economy point very strongly to the expediency of being upon good terms with the Indians, and the propriety of purchasing

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<sup>26</sup> See Donald A. Grinde, Jr., *Iroquois Political Thought and the Roots of American Democracy*, EXILED IN THE LAND OF THE FREE: DEMOCRACY, INDIAN NATIONS, AND THE U.S. CONSTITUTION 227, 240 (1992).

<sup>27</sup> *Id.* at 242.

their Lands in preference to attempting to drive them by force of arms out of their Country; which as we have already experienced is like driving the Wild Beasts of the Forest which will return as soon as the pursuit is at an end and fall perhaps on those that are left there; when the gradual extension of our Settlements will as certainly cause the Savage as the Wolf to retire; both being beasts of prey tho' they differ in shape. In a word there is nothing to be obtained by an Indian War but the Soil they live on and this can be had by purchase at less expence, and without that bloodshed, and those distresses which helpless Women and Children are made partakers of in all kinds of disputes with them...<sup>28</sup>

With the goal in mind to establish new states from Native American lands, George Washington as the first U.S. President set the plan in motion that would continue for the next century and a half.

### ***C. Thomas Jefferson's "American Empire" building from Native American Lands***

In another example, Thomas Jefferson published a book where he set out to describe American Indians in a section on "animals" engaging in comparisons between the productions of the environment in Europe to that in North America.<sup>29</sup> Jefferson positions himself as defending the American Indian male who is denigrated in the writings of French naturalist Georges Louis Leclerc (Count de Buffon).<sup>30</sup> And yet, he states that Native Americans are a "barbarous people" and characterized Native women as "submitted to unjust drudgery" as a result.<sup>31</sup> His discourse continues hypothesizing on the "child-bearing" habits of American Indians and stating that when women are married to white men they have as many children as white women.<sup>32</sup> He further discussed the amount of hair on the bodies of Indians. His final thought in the section on Indians is that "[b]efore we condemn the Indians of this continent as wanting genius, we must consider that letters have not yet been introduced among them."<sup>33</sup>

Later in the work, Jefferson opined that Indians engaged in carving designs and eloquent oratory.<sup>34</sup> His statements are made in the context of finding African-descended people lacking in those regards, so there is an underlying racial hierarchy to his positive statements about American Indians. These opinions held by Thomas

<sup>28</sup> FRANCIS PRUCHA, DOCUMENTS OF UNITED STATES INDIAN POLICY 2 (3rd ed. 2000).

<sup>29</sup> THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA 62-63 (1853).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 65.

<sup>32</sup> *Id.* at 65-66.

<sup>33</sup> *Id.* at 69.

<sup>34</sup> *Id.* at 151.

Jefferson directly from his own writings are not taught to public schoolchildren. Rather, the myth of Jefferson as the drafter of the Declaration of Independence is exalted along with the idea of being a well-educated "founding father."<sup>35</sup> In truth, he was steeped in racism as an aristocratic slavery overseer that deliberately denied the right to due process and equal treatment to anyone who was not a white male.<sup>36</sup>

Further, Jefferson developed the plan to dispossess Tribal Nations of their lands through legal agreements to pave the way for his agricultural plan for the lands west of the Mississippi River.<sup>37</sup> In 1803, in a private letter to the governor of the Indiana Territory, William Henry Harrison, Jefferson expressed the following plan to decimate tribal governments, gain ownership of tribal lands, and assimilate American Indians into his version of the United States Empire.

To promote this disposition to exchange lands, which they have to spare and we want, for necessities, we shall push our trading houses, and be glad to see the good and influential individuals among them run in debt, because we observe that when these debts get beyond what the individuals can pay, they become willing to lop them off by a cession of lands. At our trading houses, too, we mean to sell so low as merely to repay us cost and charges, so as neither to lessen nor enlarge our capital. This is what private traders cannot do, for they must gain; they will consequently retire from the competition, and we shall thus get clear of this pest without giving offence or umbrage to the Indians. In this way our settlements will gradually circumscribe and approach the Indians, and they will in time either incorporate with us as citizens of the United States, or remove beyond the Mississippi. The former is certainly the termination of their history most happy for themselves; but, in the whole course of this, it is essential to cultivate their love. As to their fear, we presume that our

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<sup>35</sup> See *Brief Biography of Thomas Jefferson, Learning Resources for Kids*, THE MONTICELLO CLASSROOM, <http://classroom.monticello.org/kids/resources/profile/81/Brief-Biography-of-Thomas-Jefferson/> (last visited May 21, 2015).

<sup>36</sup> See JEFFERSON, *supra* note 29, at 155. "I advance it therefore as a suspicion only, that the blacks, whether originally a distinct race, or made distinct by time and circumstances, are inferior to the whites in the endowments both of body and mind. It is not against experience to suppose that different species of the same genus, or varieties of the same species, may possess different qualifications. Will not a lover of natural history then, one who views the gradations in all the races of animals with the eye of philosophy, excuse an effort to keep those in the department of man as distinct as Nature had formed them? This unfortunate difference of color, and perhaps of faculty, is a powerful obstacle to the emancipation of these people."

<sup>37</sup> See Mark Hirsch, *Thomas Jefferson, Founding Father of Indian Removal* 54-58 (2009), <http://westgatehouse.com/art263.html> (last visited May 21, 2015).

strength and their weakness is now so visible that they must see we have only to shut our hand to crush them...<sup>38</sup>

Thus, Thomas Jefferson revealed his truest intent to economically cripple tribal communities and force land cessions. He went on to carry out his plans beyond the Mississippi River to gain tribal territories.

Two major actions were initiated by Jefferson to seize American Indian lands: the 1803 Louisiana Purchase<sup>39</sup> and the expedition of Lewis and Clark with the authority to declare United States sovereignty over tribal lands.<sup>40</sup> "The Expedition" was part of Jefferson's plan to assimilate Indians and their assets into American society, to remove the Indian tribes from America's path to continental expansion, and to exterminate Indians and tribes if necessary to advance American empire."<sup>41</sup>

#### ***D. Andrew Jackson - The "Indian Killer"*<sup>42</sup>**

Following the empire-building path of Jefferson, Andrew Jackson became one of the U.S. Presidents. As a general, he had developed a reputation for killing hundreds of Native Americans in their villages and divvying up their lands to his cronies.

President Andrew Jackson had been a successful and prolific crusader against Indian tribes throughout his military career and, though the Cherokee pleaded with him to honor peace treaties signed by previous administrations guaranteeing protection, Jackson supported Georgia's depredations against the tribe in that state. Jackson had long been an advocate of Indian removal and his blood-stained resume in previous Indian wars--including the killing of 800 traditionalist Creek Indians at Hors[e]hoe Bend in 1814 and the razing of over 300 Seminole homes in the First Seminole War in 1818--was well-known by Americans of every race. Jackson is America's quintessential Indian killer. Though he has been celebrated in recent years with a spate of biographies written by award-winning authors whose works minimize his malevolence and in places border on hagiography, he is considered "the equivalent of Hitler"

<sup>38</sup> PRUCHA, *supra* note 28 at 22

<sup>39</sup> See Robert J. Miller, *The Doctrine of Discovery in American Indian Law*, 42 IDAHO L. REV. 1, 83 (2005).

<sup>40</sup> See Robert J. Miller, *Agents of Empire*, 64-MAR OR. ST. B. BULL. 35, (Feb., 2004).

<sup>41</sup> *Id.*

<sup>42</sup> See GALE COUREY TOENSING, *Indian-Killer Andrew Jackson Deserves Top Spot on List of Worst U.S. Presidents*, INDIAN COUNTRY TODAY MEDIA NETWORK.COM (Feb. 2, 2012), <http://indiancountrytodaymedianetwork.com/2012/02/20/indian-killer-andrew-jackson-deserves-top-spot-list-worst-us-presidents-98997>.

to scholars like Donna Akers, whose great-great-great grandmother walked the Trail of Tears."<sup>43</sup>

His administration was responsible for the formal Indian Removal Act of 1830<sup>44</sup> that violated every legal treaty entered into with Tribal Nations in eastern and southeastern lands.<sup>45</sup> He dealt in the slave trade, knowingly lied to Tribal leaders, and enriched himself by taking tribal lands. In elementary schoolbooks, he is depicted as "Jackson the frontiersman, soldier, democrat, man of the people - not Jackson the slaveholder, land speculator, executioner of dissident soldiers, exterminator of Indians."<sup>46</sup>

### ***E. Abraham Lincoln and Mass Execution of the Dakota Peoples***

Countless memorials, school buildings, streets and other public dedications have been made to United States President Abraham Lincoln without reference to his inhumane treatment of American Indians. His biographers often gloss over the facts surrounding the largest mass execution in the United States perpetrated in Mankato, Minnesota on December 26, 1862 under the authority of President Lincoln.<sup>47</sup> Thirty-eight Dakota Sioux men were hung on a specially built scaffold in front of a crowd of whites for the resistance efforts made during the Dakota War of 1862 in response to sham treaties and starvation conditions.<sup>48</sup> The list of men to be hung were reviewed and personally approved by Lincoln.<sup>49</sup> The charges brought against the men were part of an impromptu panel of five military officers that allowed any white to testify to witnessing a crime committed by any of the men held in a concentration camp at Fort Snelling.<sup>50</sup> Most of those confined at Fort Snelling had protected white settlers from the anger of the younger men resisting further United States governmental orders to remain starving on the small strip of reservation or be considered hostile.<sup>51</sup>

<sup>43</sup> Nathan Goetting, *The Marshall Trilogy and the Constitutional Dehumanization of American Indians*, 65 GUILD PRAC. 207, 217-18 (2008).

<sup>44</sup> Act of May 28, 1830, 4 Stat. 411.

<sup>45</sup> See ANGELIQUE TOWNSEND EAGLEWOMAN & STACY LEEDS, *MASTERING AMERICAN INDIAN LAW* 11-12 (2013).

<sup>46</sup> ZINN, *supra* note 6 at 130 (2005).

<sup>47</sup> See Paul Finkelman, "I Could Not Afford to Hang Men for Votes." *Lincoln the Lawyer, Humanitarian Concerns, and the Dakota Pardons*, 39 WM. MITCHELL L. REV. 443, 447-448 (2013) (attempting to justify and excuse the mass execution of the thirty-eight Dakota men wrongfully hung in Mankato, Minnesota by focusing on the potential for Lincoln to order the execution of more than three hundred men).

<sup>48</sup> See Angelique EagleWoman, *Wintertime for the Sisseton-Wahpeton Oyate: Over One Hundred Fifty Years of Human Rights Violations by the United States and the Need for a Reconciliation Involving International Indigenous Human Rights Norms*, 39 WM. MITCHELL L. REV. 486, (2013)

<sup>49</sup> See Carol Chomsky, *The United States - Dakota War Trials: A Study in Military Injustice*, 43 STAN. L. REV. 13, 32-33 (1990).

<sup>50</sup> *Id.* at 22-28.

<sup>51</sup> See Howard J. Vogel, *Rethinking the Effect of the Abrogation of the Dakota Treaties and the Authority for the Removal of the Dakota People from their Homeland*, 39 WM. MITCHELL L. REV. 538, 546 (2013).



### ***F. Theodore Roosevelt Pulverizing Tribal Community and Culture***

Another glorified United States President that systematically violated treaties and declared tribal lands as federal public lands across the country was Theodore Roosevelt. Schoolchildren are educated on how the "Teddy bear" is his namesake, but are not told of his racist views towards American Indians. In fact, he was responsible for the loss of the reserved lands belonging to tribal peoples through treaty relations with the United States, and he was fervent in his actions to break up the tribal family. One of his most oft-quoted statements was made in 1886: "I don't go so far as to think that the only good Indians are dead Indians, but I believe that nine out of ten are, and I shouldn't like to inquire too closely into the case of the tenth. The most vicious cowboy has more moral principle than the average Indian."<sup>52</sup> The other most widely known quotation is from the Dec. 3, 1901 State of the Union address to the United States Congress where he characterized the General Allotment Act of 1887<sup>53</sup> (commonly referred to as the Dawes Act after its sponsor, Senator Henry Dawes) "as a mighty pulverizing machine to break up the tribal mass. It acts directly upon the family and the individual."<sup>54</sup>

Under the General Allotment Act, the United States President was empowered to declare a legally reserved land base by a Tribal Nation as "open" for allotment, and divide up the lands into small parcels; selling off the "surplus" at the government determined price to the federal government.<sup>55</sup>

Between 1887 and 1934, the tribal lands of 118 reservations were allotted, although many reservations, particularly in the Southwest, escaped allotment. From 1887 to 1900, the federal government approved 53,168 allotments, totaling nearly 5 million acres, and almost 36 million acres were allotted by 1920. By 1934, approximately 27 million acres, or two-thirds of all the land allotted to tribal members, had passed by sale or involuntary transfer from the Indian fee owner into non-Indian ownership.<sup>56</sup>

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<sup>52</sup> Scott Allen Merriman, *Roosevelt, Theodore*, ENCYCLOPEDIA OF UNITED STATES INDIAN POLICY AND LAW, at 680, (Vol. 2, 2009).

<sup>53</sup> 25 U.S.C. § 331 (repealed).

<sup>54</sup> Theodore Roosevelt, First Annual Message, (Dec. 3, 1901) *available at* <http://www.presidency.ucsb.edu/ws/?pid=29542>; *See also*, NATIVE LAND LAW: GENERAL PRINCIPLES OF LAW RELATING TO NATIVE LANDS AND NATURAL RESOURCES § 9:5 246 (2013-2014 Lawyers Edition). "The General Allotment Act sought to assimilate and dissolve Indian nations and their citizens, open their lands, and eradicated their separate political identity." *Id.*

<sup>55</sup> *See* NATIVE LAND LAW: GENERAL PRINCIPLES OF LAW RELATING TO NATIVE LANDS AND NATURAL RESOURCES § 4:3 72-73 (2013-2014 Lawyers Edition).

<sup>56</sup> COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 16.03[2][b] 1073-74 (2012 edition) (hereinafter COHEN'S).



This led to the creation of the national parks and forests from the tribal lands designated "surplus;" and has been attributed to Theodore Roosevelt as a policy of "preserving" the natural features of the country for the United States public.<sup>57</sup> In reality, this was an illegal, unconsented to land grab from the Tribal Nations, and then a re-appropriating of those lands owned by tribal peoples to the ownership of the United States on a might makes right basis.

Theodore Roosevelt served as United States President from 1901 to 1909, one of the worst United States Indian policy eras, referred to as the allotment and assimilation era. This era is where social experimentation was perpetuated on American Indian children and tribal lands forcibly taken in violation of treaties signed with the United States.<sup>58</sup> While the tribal lands are absolutely necessary to the spirituality and continued existence of American Indians, Roosevelt was also a proponent of the military and religious boarding school model of education for American Indian children which authorized the kidnapping of the children from their families and kept them against their will in government authorized schools.<sup>59</sup> "Throughout the late 1800s and up through the mid-1900s, the United States Indian policy on education was to remove children from tribal communities and send them to distant boarding schools to receive educational, vocational, and 'civilization' training. The trauma experienced by the tribal community in having their children taken and the trauma experienced by the children, some as young as 4 years old, to be taken to the a foreign military-style boarding school environment was intense and long lasting."<sup>60</sup> To add insult to injury, the funding for many of the government boarding schools was federally appropriated under the so-called United States trustee function from the treaty payments owed to the Tribal Nations.<sup>61</sup>

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<sup>57</sup> See *Theodore Roosevelt and Conservation, Theodore Roosevelt National Park North Dakota*, NATIONAL PARK SERVICE, <http://www.nps.gov/thro/historyculture/theodore-roosevelt-and-conservation.htm> (last visited May 21, 2015). "After he became President in 1901, Roosevelt used his authority to protect wildlife and public lands by creating the U.S. Forest Service and establishing 51 Federal Bird Reservations, 4 National Game Preserves, 150 National Forests, 5 National Parks, and enabling the 1906 American Antiquities Act which he used to proclaim 18 National Monuments. During his presidency, Theodore Roosevelt protected approximately 230,000,000 acres of public land." *Id.*

<sup>58</sup> See EAGLEWOMAN & LEEDS, *supra* note 45 at 12-15.

<sup>59</sup> See Theodore Roosevelt, First Annual Message, *supra* note 54. "In the schools, the education should be elementary and largely industrial. The need of higher education among the Indians is very, very limited." *Id.*

<sup>60</sup> EAGLEWOMAN & LEEDS, *supra* note 45 at 90-91.

<sup>61</sup> See Andrew K. Frank, *Indian Civilization Fund Act*, AMERICAN INDIAN HERITAGE MONTH: COMMEMORATION VS. EXPLOITATION (2011), available at <http://www.historyandtheheadlines.abc-clio.com/contentpages/ContentPage.aspx?entryId=1171801&currentSection=1161468&productid=5>. "In 1824, the Indian Civilization Fund subsidized thirty-two schools and contributed to the ostensible education of more than 900 Indians. Funds allocated from various Indian treaties helped augment the program, and, by 1830, the Indian Civilization Fund helped support fifty-two schools with 1,512 enrolled students." *Id.*

The irony and tyranny of the United States in the Mount Rushmore Monument with the faces of George Washington, Thomas Jefferson, Abraham Lincoln and Theodore Roosevelt in the sacred Paha Sapa (Black Hills) of the Dakota/Lakota/Nakota serves as a reminder that the settler-nation myths persist.<sup>62</sup> In the 1980 United States Supreme Court case, *United States v. Sioux Nation*,<sup>63</sup> the Court held that the Dakota/Lakota/Nakota had their sacred lands in the Black Hills illegally taken by the federal government. Rather than return the stolen lands, the United States Supreme Court opined that the federal government must pay the value of the lands.<sup>64</sup> All of the contemporary Tribal Nations involved in the litigation have unanimously refused any money and stand united that the Paha Sapa were never sold to the United States.<sup>65</sup>

To begin humanizing Native peoples within the settler-nation myths, exposure of the "founding fathers" and historical top federal officials in the United States must be initiated. What consequences flow from the acknowledgment that less than heroic altruistic motives guided the architects of the formation and implementation of the United States of America as a new nation-state? From a Native perspective, the storytelling of United States ideals has had a hollow ring due to the many broken promises, violations of legal agreements and outright military attacks by the United States towards tribal peoples.<sup>66</sup> The men holding the position of United States President, in the history described above, all engaged in the policy of the United States to dispossess American Indians of their homelands and kill those in resistance to that plan. Negative actions by the United States are often referred to as "blemishes" on the

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<sup>62</sup> See *History & Culture, Mount Rushmore National Memorial South Dakota*, NATIONAL PARK SERVICE <http://www.nps.gov/moru/historyculture/index.htm> (last visited May 21, 2015). "The purpose of the memorial is to communicate the founding, expansion, preservation, and unification of the United States with colossal statutes of Washington, Jefferson, Lincoln and Theodore Roosevelt" - Gutzon Borglum. *Id.*

<sup>63</sup> *United States v. Sioux Nation*, 448 U.S. 371 (1980).

<sup>64</sup> *Id.* at 423-424. "In sum, we conclude that the legal analysis and factual findings of the Court of Claims fully support its conclusion that the terms of the 1877 Act did not affect 'a mere change in the form of investment of Indian tribal property.' *LoneWolf v. Hitchcock*, 187 U.S. at 568. Rather, the 1877 Act effected a taking of tribal property, property which had been set aside for the exclusive occupation of the Sioux by the Fort Laramie Treaty of 1868. That taking implied an obligation on the part of the Government to make just compensation to the Sioux Nation, and that obligation, including an award of interest, must now, at last, be paid." *Id.*

<sup>65</sup> U.N. Doc. A/HRC/21/47/Add.1, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, The situation of indigenous peoples in the United States of America (Aug. 30, 2012). "The Lakota and other Sioux tribes have refused to accept payment required in accordance with a 1980 Supreme Court decision and continue to request the return of the Black Hills; this is despite the fact that the people of these tribes are now scattered on several reservations and are some of the poorest among any group in the country." *Id.* at 11.; See also, John P. LaVelle, *Rescuing Paha Sapa: Achieving Environmental Justice by Restoring the Great Grasslands and Returning the Sacred Black Hills to the Great Sioux Nation*, 5 GREAT PLAINS NAT. RESOURCES J. 40, 63-64 (2001).

<sup>66</sup> See generally, DEE BROWN, *BURY MY HEART AT WOUNDED KNEE: AN INDIAN HISTORY OF THE AMERICAN WEST* (2007); MICHAEL L. NUNNALLY, *AMERICAN INDIAN WARS: A CHRONOLOGY OF CONFRONTATIONS BETWEEN NATIVE PEOPLES AND SETTLERS AND THE UNITED STATES MILITARY, 1500s -1901* (2007).

national reputation by U.S. historians, rather than appropriately calling for a deep reconsideration of the creation myth and the ongoing subjugation resulting therefrom.

For American Indians, real consequences flow from these subjugation myths as detailed throughout this article. The contemporary lives of Native Americans are absent from public schoolbooks for the most part and as one elementary social studies book summed up "Native Americans lost the animals they used for food, lost their land, caught diseases, and were sent to reservations."<sup>67</sup> By teaching this type of erroneous closed chapter summary to schoolchildren, the present day lives of tribal peoples are absent from the mainstream knowledge base.<sup>68</sup> Tribal leaders asserting tribal sovereignty and the rights to full jurisdiction in tribal territories are marginalized and Native American issues are without context.<sup>69</sup> While mainstream United States citizens believe the chapter was closed and they have little contemporary information on the trust status imposed on American Indians and Alaska Natives, the United States Congress claims and exercises plenary power over tribal peoples and the power is upheld by the United States Supreme Court.<sup>70</sup>

### III. THE SURVIVAL OF TRIBAL NATIONS IN MID-NORTH AMERICA IN RESISTANCE TO U.S. GENOCIDAL POLICIES

Since the formation of the United States on July 4, 1776, the settler-nation<sup>71</sup> has engaged in a long term and persistent policy of genocide against American Indians. This policy was carried over from the European norms of religiously approved wars against non-Christians. Through the few centuries of interaction with the United States, American Indians have consistently battled the genocide that continues to undergird U.S. Indian policy.<sup>72</sup> In this section, the United States actions against tribal peoples in

<sup>67</sup> National Geographic School Publishing, WESTWARD EXPANSION TEACHER'S GUIDE SOCIAL STUDIES 83 (2007).

<sup>68</sup> See Cindy Long, *Celebrating American Indian Heritage Boosts Achievement: Learning and preserving their history and culture is key to Native American student success*, NATIONAL EDUCATION ASSOCIATION available at <http://www.nea.org/home/37093.htm>. "Too often the history, culture and contributions of American Indians and Alaska Natives are absent from the curricula taught in many school systems across the country, even in districts with a high population of Native American students." *Id.*

<sup>69</sup> See Landry, *supra* note 4.

<sup>70</sup> See *Michigan v. Bay Mills Indian Community*, 134 S.Ct. 2024 (2014). "Indian tribes are 'domestic dependent nations' that exercise 'inherent sovereign authority.' As dependents, the tribes are subject to the plenary control by Congress." *Id.* at 2030.

<sup>71</sup> See Kristen A. Carpenter & Angela R. Riley, *Indigenous Peoples and the Jurisgenerative Movement in Human Rights*, 102 CAL. L. REV. 173, 201 (2014). "In the past twenty years, most prominently in the so-called settler nations of Canada, Australia, New Zealand, and the United States, indigenous studies scholars have increasingly engaged decolonization theory." *Id.* at 201.

<sup>72</sup> See "Genocide," MERIAM-WEBSTER ONLINE DICTIONARY, available at <http://www.merriam-webster.com/dictionary/genocide>. "Genocide = the deliberate and systematic destruction of a racial, political, or cultural group." *Id.* See also, "Genocide," Black's Law Dictionary (9th ed. 2009) defining the

mid-North America will be reviewed through the definition of genocide under international law.

The term genocide was formally defined in 1948, in the United Nations Convention on the Prevention and Punishment of the Crime of Genocide.<sup>73</sup> The definition contained in Article II is as follows:

In the present Convention, genocide means 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 the 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>74</sup>

This UN Convention went into effect in 1951, as an international legal agreement in opposition to the Nazi Germany Holocaust, which resulted in the deliberate and systematic killing of six million Jewish people.<sup>75</sup> The United States officially signed on to this Convention on December 11, 1948. The Convention was domestically ratified almost forty years later on November 25, 1988, with filed reservations and understandings that deny the International Court of Justice jurisdiction over the United States for the crimes listed in the Convention unless consent is given by the federal government.<sup>76</sup>

In reviewing each of the categories that compose the definition of genocidal acts, the United States has perpetrated each type of act against American Indians. In the first section (a) Killing members of the group, the United States military, under official orders, killed unarmed men, women and children that were American Indian as a general practice since the formation of the United States in 1776 up through the early

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term as: "An international crime involving acts causing serious physical and mental harm with the intent to destroy, partially or entirely, a national, ethnic, racial, or religious group." *Id.*

<sup>73</sup> G.A. Res. 260, U.N. GAOR, 3rd Sess., Part 1, at 174, U.N. Doc A/810 (1948) available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=a/res/260](http://www.un.org/ga/search/view_doc.asp?symbol=a/res/260) (III).

<sup>74</sup> *Id.*

<sup>75</sup> See Steven R. Ratner, *The Genocide Convention After Fifty Years*, 92 AM. SOC'Y INT'L L. PROC. 1 (1998).

<sup>76</sup> *The Convention on the Prevention and Punishment of Genocide*, UNITED STATES OF AMERICA RESERVATIONS, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSOnline&tabid=2&mtdsg\\_no=IV-1&chapter=4&lang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSOnline&tabid=2&mtdsg_no=IV-1&chapter=4&lang=en#EndDec).

1900s. The targeted killing of American Indians is less documented after the Wounded Knee Massacre on December 29, 1890.

In section (d), preventing the births of members of the group is included as a genocidal act. Killing women able to give birth fits within that category. Additionally, many American Indian women were sterilized in United States Indian Health Service facilities without their knowledge or consent as late as the 1960s and 1970s.<sup>77</sup> "Various studies reveal that the Indian Health Service sterilized between 25 and 50 percent of Native American women between 1970 and 1976."<sup>78</sup> In the Nov. 4, 1976 Government Accountability Office (GAO) report titled, "Investigation of Allegations Concerning Indian Health Service," a reported 3,046 sterilizations of American Indian women occurred in four IHS regions: Aberdeen, Albuquerque, Oklahoma City and Phoenix during the fiscal years 1973-1976.<sup>79</sup> The sterilizations were performed on women between the ages of 15 and 44 often with improper consent forms that did not meet Indian Health Service regulations.<sup>80</sup>

Recently, the violence and, particularly, sexual violence experienced by American Indian women has garnered national and international attention as the United States has failed to implement appropriate law enforcement responses on and near reservations.<sup>81</sup> The protection of healthy childbearing Native American women is key to the continued survival of Tribal Nations. From sterilization to lack of law enforcement protection,<sup>82</sup> Native American women remain vulnerable to genocidal actions and omissions of the United States government. The 2007 Amnesty International Report, "Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA," squarely placed the responsibility for the shocking rate of victimization of Native American women on the United States government.

Indigenous peoples in the USA face deeply entrenched marginalization - the result of a long history of systemic and pervasive abuse and persecution. Sexual violence against Indigenous women today is

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<sup>77</sup> See Jane Lawrence, *The Indian Health Service and the Sterilization of Native American Women*, THE AMERICAN INDIAN QUARTERLY 400 (2000).

<sup>78</sup> *Id.* at 410.

<sup>79</sup> See *Comptroller General of the United States, Investigation of Allegations Concerning Indian Health Service* 3, U.S. GOVERNMENT ACCOUNTABILITY OFFICE (Nov. 4, 1976) available at <http://www.gao.gov/assets/120/117355.pdf>.

<sup>80</sup> *Id.* at 4.

<sup>81</sup> See Sarah Deer, *Sovereignty of the Soul: Exploring the Intersection of Rape Law Reform and Federal Indian Law*, 38 SUFFOLK U. L. REV. 455, 463 (2005). See also, Amanda M.K. Pacheco, *Broken Traditions: Overcoming the Jurisdictional Maze to Protect Native American Women from Sexual Violence*, 11 J.L. & SOC. CHALLENGES 1, 29-30 (2009).

<sup>82</sup> To understand the intricacies of the jurisdictional issues with criminal prosecution for violence against Native Americans, see EAGLEWOMAN & LEEDS, *supra* note 45 at Chapter 3.

informed and conditioned by this legacy of widespread and egregious human rights abuses. It has been compounded by the federal government's steady erosion of tribal government authority and its chronic under-resourcing of those law enforcement agencies and service providers which should protect Indigenous women from sexual violence. It is against this backdrop that American Indian and Alaska Native women continue to experience high levels of sexual violence, a systemic failure to punish those responsible and official indifference to their rights to dignity, security and justice.<sup>83</sup>

According to the Amnesty Report, the rates of violence against Native American women indicate that one in three women will be raped in their lifetime.<sup>84</sup> Further, the Amnesty Report details that reported statistics by the United States Department of Justice are not accurate as most women do not trust law enforcement enough to report the crime.<sup>85</sup>

Amnesty International has documented many incidents of sexual violence against American Indian and Alaska Native women but the great majority of stories remain untold. Violence against women is characteristically underreported. Barriers to reporting include fear of breaches in confidentiality, fear of retaliation, and a lack of confidence that reports will be taken seriously. For Native American and Alaska Native women, historical relations with federal and state government agencies also affect the level of reporting sexual violence.<sup>86</sup>

Thus, Native American women under the trusteeship of the United States have been subjected to genocidal acts inherently harming the ability to give birth to the next generations of Natives.

Grouping together Article II Sections (b) and (c) of the UN Convention, U.S. Indian policy has caused all manners of trauma and mental harm to American Indians and has imposed measures to bring about the physical destruction of American Indians. When United States leaders set out to destroy tribal cultures and take tribal lands, they employed a variety of tactics that went to the heart of tribal cultural.<sup>87</sup> One tactic was to

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<sup>83</sup> *Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA* 1, AMNESTY INTERNATIONAL USA (2007) available at <http://www.amnestyusa.org/pdfs/mazeofinjustice.pdf>.

<sup>84</sup> *Id.* at 2.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 4.

<sup>87</sup> See Robert B. Porter, *The Demise of the Ongwehoweh and the Rise of the Native Americans: Redressing the Genocidal Act of Forcing American Citizenship Upon Indigenous Peoples*, 15 HARV. BLACKLETTER L.J. 107, 167 (1999) (asserting that the Indian Citizenship Act of 1924 was a genocidal act



generate debt knowing that tribal leaders would feel that it was part of their integrity to honor their debts and thus be forced into land cessions. Another favored tactic in early United States history was to kill, in massive numbers, the animal food sources indigenous to North America.<sup>88</sup> In this way, the buffalo, deer, elk, moose, and other native populations were slain to gain control over tribal territories by forcing the tribal peoples to relocate where hunting was possible.<sup>89</sup> A third tactic was through the reservation policy; the United States government confined tribal peoples to a smaller and smaller portion of their reserved homelands and declared those who left the reservation "hostile" to be shot at will.<sup>90</sup>

In contemporary times, the inability of tribal peoples to live from the resources of the land has caused directly and indirectly widespread health conditions, a decreased life expectancy, and diminished the cultural standard of physical fitness. "One of the more obvious manifestations of colonization is the extreme change in health conditions (obesity, diabetes, heart disease, etc.) of Natives brought on by regressing from a diet of vegetables, fruits, game meats and active hunting/gathering/cultivating lifestyle to a daily routine consuming a diet of processed, fatty, salted diet, and sitting still."<sup>91</sup>

The decline in Native American health and the consequences of poverty under the United States trusteeship was detailed in the 2003 United States Commission on Civil Rights report, "A Quiet Crisis: Federal Funding and Unmet Needs in Indian

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by the United States under Article II Section (c) of the UN Convention on the Prevention and Punishment of Genocide).

<sup>88</sup> See Adrian Jawort, *Genocide by Other Means: U.S. Army Slaughtered Buffalo in Plains Indian Wars*, INDIAN COUNTRY TODAY MEDIA (May 9, 2011) available at <http://indiancountrytodaymedianetwork.com/2011/05/09/genocide-other-means-us-army-slaughtered-buffalo-plains-indian-wars-30798>.

<sup>89</sup> See Larry Sager, *Rediscovering America: Recognizing the Sovereignty of Native American Indian Nations*, 76 U. DET. MERCY L. REV. 745, 754 (1999). "Alexis de Tocqueville commented on the non-violent use of the law in the United States to control the indigenous population. 'Nowadays, the dispossession of the Indians is accomplished in a regular and, so to say, quite legal manner.' Tocqueville was referring to the practice of whites buying land after the game had fled or been destroyed, which was considered a more convenient and agreeable form of justice than the sword. By this means, former Secretary of War Louis Cass predicted the diminution and eventual extinction of the American Indian." *Id.*

<sup>90</sup> See SARAH PENMAN, HONOR THE GRANDMOTHERS: DAKOTA AND LAKOTA WOMEN TELL THEIR STORIES 56-57 (2000). "Our ancestors wanted to just be free to travel because if you put them on the reservations, they said, 'We're gonna starve' and that's what they did they [the government] rationed food to them. The soldiers were dipping hard-tack in coffee or tea and then eating it in front of our ancestors while they were hungry. They'd eat a piece of meat and instead of giving it to them they'd throw it out to the dogs.

There was no circle of life; it was slowly breaking apart. They were starving because they couldn't go plant corn, and they couldn't go make tea, they couldn't dig up turnips, they couldn't get cherries, they couldn't get anything because if you leave the reservation you get punished and it was always the soldiers that were the killers." *Id.* [interview with Stella Pretty Sounding Flute].

<sup>91</sup> DEVON A. MIHESUAH, RECOVERING OUR ANCESTORS' GARDENS: INDIGENOUS RECIPES AND GUIDE TO DIET AND FITNESS 50 (2005).



Country."<sup>92</sup> According to the Civil Rights report, Native Americans have a much lower life expectancy than all other groups in the United States and a greater affliction of disease.<sup>93</sup> The poverty level of American Indians/Alaska Natives has not been well-documented in the United States, but the statistics that are currently available illustrate American Indians as having the highest rate of poverty.<sup>94</sup>

On a spiritual and social level, the genocidal acts of the United States in the destruction of the natural world are ongoing. The stewardship of Mother Earth is also central to the positive mental and physical health of American Indians.<sup>95</sup> Central to tribal worldviews is the relationship between American Indians/Alaska Natives and all living beings including birds, animals, fish, and many others.<sup>96</sup> "In the Pacific Northwest, where salmon are a fundamental part of tribal cultures, salmon populations have drastically declined over the past century due to dams, loss of habitat, pollution, deforestation, and other factors. The impacts of climate change will put additional stresses on salmon populations, as ocean water temperature rises and streamflow patterns change in response to reduced mountain snowpack and earlier spring snowmelt."<sup>97</sup> With the clearcutting of forests, paving over of lands, polluting of waterways, and the resulting consequences of climate change, the United States continues to cause trauma and physical harm to American Indians through the loss of other living beings and the degradation of the natural world.<sup>98</sup>

Finally, the United States has violated Article II Section (e) of the UN Convention by forcibly transferring American Indian children from their families to non-Indian

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<sup>92</sup> See *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country*, U.S. COMMISSION ON CIVIL RIGHTS (July 2003) available at <http://www.usccr.gov/pubs/na0703/na0204.pdf>.

<sup>93</sup> *Id.* at 34.

<sup>94</sup> See Suzanne Macartney, Alemayehu Bishaw, and Kayla Fontenot, *Poverty Rates for Selected Detailed Race and Hispanic Groups by State and Place: 2007-2011*, U.S. CENSUS BUREAU, available at <http://www.census.gov/prod/2013pubs/acsbr11-17.pdf>. "By race, the highest national poverty rates were for American Indians and Alaska Natives (27.0 percent)..." *Id.* at 2; See also, Angelique EagleWoman, *Tribal Nations and Tribal Economics: The Historical and Contemporary Impacts of Intergenerational Material Poverty and Cultural Wealth in the United States*, 49 WASH. L. J. 805, 826 (2010) (noting the lack of reliable household income data for American Indians for nearly all of the 1800s and most of the 1900s).

<sup>95</sup> See Angelique EagleWoman, *Cultural and Economic Self-Determination for Tribal Peoples in the United States Supported by the UN Declaration on the Rights of Indigenous Peoples*, 28 PACE ENVTL. L. REV. 357, 362 (2010)(discussing the shared Indigenous history of loving Mother Earth).

<sup>96</sup> See Rebecca Tsosie, *Tribal Environmental Policy in an Era of Self-Determination: The Role of Ethics, Economics, and Traditional Ecological Knowledge*, 21 VT. L. REV. 225, 274-282(1996).

<sup>97</sup> Daniel Cordalis and Dean B. Suagee, *The Effects of Climate Change on American Indian and Alaska Native Tribes*, 22-WTR NAT. RESOURCES & ENV'T 45, 46 (2008).

<sup>98</sup> For the failure of the U.S. federal courts to protect tribal sacred sites and cultural landscapes, see *Lyng v. Northwest Indian Cemetery Association*, 485 U.S. 439 (1988); *Navajo Nation v. United States Forest Service*, 535 F.3d 1058 (9th Cir. 2008)(en banc).

families. American Indian children have suffered through all of the actions of the United States and have been, at times, specially targeted as a population.

Over multiple generations, American Indian/Alaska Native people have survived an onslaught of traumatic assaults that have had enduring consequences for individuals, families, and communities. These assaults include the violence of massacres, pandemics, forced relocation and genocidal policies, as well as more subtle and equally destructive practices of spiritual and cultural prohibition, and the removal of children to Indian boarding schools.<sup>99</sup>

The kidnapping of American Indian children and forcibly containing them in military-style government and government-sanctioned religious boarding schools qualifies as another act of genocide the United States government has perpetrated.<sup>100</sup> It is difficult to overestimate the severe and long lasting impacts of the United States policy to assimilate American Indian children into a white model. The accounts of mental, physical and sexual abuse from boarding school survivors are horrific and have been largely undocumented to date.<sup>101</sup>

Virtually imprisoned in the schools, children experienced a devastating litany of abuses, from forced assimilation and grueling labor to widespread sexual and physical abuse. Scholars and activists have only begun to analyze what Joseph Gone (Gros Ventre), a psychology professor at the University of Michigan, Ann Arbor, calls "the cumulative effects of these historical experiences across gender and generation upon tribal communities today."<sup>102</sup>

In the aftermath of the boarding school experiences, the United States engaged in a federally funded project known as the "Indian Adoption Project" in the late 1950s to remove American Indian children from their homes and place them up for adoption to white families. The Bureau of Indian Affairs partnered with the United States Children's

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<sup>99</sup> Christopher D. Campbell and Tessa Evans-Campbell, *Historical Trauma and Native American Child Development and Mental Health: An Overview*, AMERICAN INDIAN AND ALASKAN NATION CHILDREN AND MENTAL HEALTH: DEVELOPMENT, CONTEXT, PREVENTION, AND TREATMENT 1 (2011).

<sup>100</sup> See Andrea A. Curcio, *Civil Claims for Uncivilized Acts: Filing Suit Against the Government for American Indian Boarding School Abuses*, 4 HASTINGS RACE & POVERTY L.J. 45, 55-56 (2006) (detailing the BIA policies to force American Indian children to attend the government approved boarding schools); See Andrea Smith, *Soul Wound: The Legacy of Native American Schools*, AMNESTY INTERNATIONAL MAGAZINE (Mar. 26, 2007) available at <http://www.amnestyusa.org/node/87342>.

<sup>101</sup> *Id.* at 72.

<sup>102</sup> *Id.* "Rampant sexual abuse at reservation schools continued until the end of the 1980s, in part because of pre-1990 loopholes in state and federal law mandating the reporting of allegations of child sexual abuse." *Id.*

Bureau and private adoption agencies to "systematically place an entire child population across lines of nation, culture, and race."<sup>103</sup> The pervasive policy of the United States to break apart American Indian and Alaska Native families by removing the children has been relentless.

A partial reform of this policy was the passage of the 1978 Indian Child Welfare Act (ICWA),<sup>104</sup> intended to set a high barrier for state social workers and courts to overcome prior to removing an American Indian or Alaska Native child from his/her home. As recently as 2013, the United States Supreme Court failed to uphold the provisions of the ICWA for the parental rights of a Cherokee father to custody of his Cherokee daughter, who was put up for voluntary adoption by her non-Indian mother to a white couple.<sup>105</sup> In the state of South Dakota, a class action lawsuit has been filed by the Oglala Sioux Tribe and American Indian parents asserting that the state's courts followed a systemic pattern of terminating parental rights to American Indian children and placing the children into white adoptive homes.<sup>106</sup> All of these examples amount to a perpetual act of genocide by the United States government to forcibly remove American Indian children from their tribal communities, cultures, and nationalities.

In resistance to all of the genocidal acts of the United States, Native Americans still assert their rights to dignity, stewardship of the indigenous homelands, rights to follow tribal practices in educating and nurturing their children, rights to raising their children in tribal homes and communities, and rights to govern through tribal processes. Living in resistance to the United States imposed trusteeship, acts of genocide, and plenary authority, Native Americans continue to assert the tribal viewpoints on history, European invasions, culture clash, and the experiences of contemporary American Indians and Alaska Natives. Through organizations like the American Indian Movement,<sup>107</sup> Idle No More,<sup>108</sup> the International Indian Treaty Council,<sup>109</sup> the National Indian Education Association<sup>110</sup> and many others, the contemporary rights of American Indians and Alaska Natives to live as tribal peoples in

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<sup>103</sup> Ellen Herman, *Indian Adoption Project*, THE ADOPTION HISTORY PROJECT (2012) available at <http://pages.uoregon.edu/adoption/topics/IAP.html>.

<sup>104</sup> 25 U.S.C. § 1901 et seq.

<sup>105</sup> See *Adoptive Couple v. Baby Girl*, 133 S.Ct. 2552 (2013).

<sup>106</sup> See *Oglala Sioux Tribe v. Van Hunnik*, American Civil Liberties Union (September 30, 2014), available at <https://www.aclu.org/racial-justice/ogla-sioux-tribe-v-van-hunnik>.

<sup>107</sup> See *American Indian Movement Grand Governing Council*, AMERICAN INDIAN MOVEMENT, available at <http://www.aimovement.org/>.

<sup>108</sup> See generally, IDLE NO MORE, <http://www.idlenomore.ca/>.

<sup>109</sup> See *International Indian Treaty Council: Working for the Rights and Recognition of Indigenous Peoples*, INTERNATIONAL INDIAN TREATY COUNCIL, <http://www.iitc.org/>.

<sup>110</sup> See NATIONAL INDIAN EDUCATION ASSOCIATION, <http://www.niea.org/>.

their homelands are persistently raised. These rights became more apparent in 2007 with the passage of the UN Declaration on the Rights of Indigenous Peoples.<sup>111</sup>

#### IV. COLLECTIVE HUMAN RIGHTS - THE PROMISE OF THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES FOR NATIVE AMERICANS

With the adoption of the UN Declaration on the Rights of Indigenous Peoples (UN Declaration) in the UN General Assembly on September 13, 2007,<sup>112</sup> a new era was ushered in for Indigenous populations across the globe with the shared history of resisting genocide, colonization, and forced removal. In the UN Declaration, collective rights were recognized for Indigenous peoples as a group entitled to protections, self-governance, and minimum human rights. Four nations voted to oppose the UN Declaration: Australia, Canada, New Zealand, and the United States.<sup>113</sup> The United States was the last to officially reverse its opposition to the UN Declaration, approving it on Dec. 16, 2010 in remarks delivered by President Barack Obama.<sup>114</sup> Applying many of the provisions of the UN Declaration would drastically stem the tide of genocidal acts the United States has committed against American Indians and Alaska Natives. The UN Declaration sets a floor of minimum collective human rights for Indigenous peoples. Enforcing the UN Declaration would bring about a greater humanity for United States citizens and would lend greater credibility to the professed ideals of the United States government as a protector of human rights.<sup>115</sup>

To right the wrongs of the past in relation to American Indians and Alaska Natives, the United States government, through its three branches of the executive, legislative, and judicial, would need to recognize a full self-determination principle for

<sup>111</sup> U.N. Declaration, *supra* note 1.

<sup>112</sup> See CHARMINE WHITE FACE, ZUMILA WOBAGA, *INDIGENOUS NATIONS' RIGHTS IN THE BALANCE: AN ANALYSIS OF THE DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES 1-4* (2013) (detailing the changes to the text in violation of agreements with Indigenous drafters and the revised version that was ultimately adopted by the UN General Assembly).

<sup>113</sup> See *General Assembly Adopts Declaration on Rights of Indigenous Peoples; 'Major Step Forward' Towards Human Rights for All*, GENERAL ASSEMBLY PRESS RELEASE (Sept. 13, 2007), available at <http://www.un.org/press/en/2007/ga10612.doc.htm>.

<sup>114</sup> See *Remarks by the President at the White House Tribal Nations Conference*, DEPT. OF THE INTERIOR, WASHINGTON, D.C., available at <http://www.whitehouse.gov/the-press-office/2010/12/16/remarks-president-white-house-tribal-nations-conference>. "And as you know, in April, we announced that we were reviewing our position on the UN Declaration on the Rights of Indigenous Peoples. And today I can announce that the United States is lending its support to this declaration." *Id.*; See also, *UN Declaration on the Rights of Indigenous Peoples Review*, U.S. DEPARTMENT OF STATE available at <http://www.state.gov/s/tribalconsultation/declaration/>.

<sup>115</sup> See *General Assembly Adopts Declaration*, *supra* note 111. In the opposition vote to the UN Declaration, the U.S. representative provided a statement on the U.S. role for promoting Indigenous rights. "At the same time, the United States would continue its work to promote indigenous rights internationally. In its diplomatic efforts, it would continue its opposition to racial discrimination against indigenous individuals and communities and continued to press for full indigenous participation in democratic electoral processes throughout the world." *Id.*

tribal peoples. This would mean revoking the Christian doctrine of discovery conveying any property right over tribal lands to the United States government,<sup>116</sup> fully relinquishing the trusteeship imposed on Tribal Nations in the United States,<sup>117</sup> and annulling the plenary power doctrine claimed by the United States Congress.<sup>118</sup> In the treaties entered into by the United States in the late 1700s and 1800s, a majority contained the promise by the United States of perpetual peace and friendship.<sup>119</sup> In the 2000s, it is time for the United States government to recognize that it exists with permanent Tribal Nation neighbors within mid-North America and that the United States must act with basic nation-to-nation respect in its dealings.<sup>120</sup>

On the most basic level, Article 3 of the UN Declaration provides that "Indigenous peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development."<sup>121</sup> Implementing this right in the United States would require relinquishment of the United States trust system and plenary doctrine over tribal governments and lands. In 1871, contrary to the United States Constitution, Congressman Henry Dawes of Massachusetts added a rider to a United States Congressional appropriations act to prohibit further treaty-making with Indian Tribes.<sup>122</sup> This federal law could not override the powers granted the United States President and

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<sup>116</sup> See *Johnson v. M'Intosh*, *supra* note 15 at 576. "The right of discovery given by this commission, is confined to countries 'then unknown to Christian people,' and of these countries Cabot was empowered to take possession in the name of the king of England. Thus asserting a right to take possession, notwithstanding the occupancy of the natives, who were heathens, and, at the same time, admitting the prior title of any Christian people who may have made a previous discovery." *Id.*

<sup>117</sup> See COHEN'S, *supra* note 56 at § 5.04[3][a].

<sup>118</sup> See *Michigan v. Bay Mills Indian Community*, *supra* note 70 at 2030.

<sup>119</sup> See Treaty with the Delawares, Sept. 17, 1778, 7 Stat. 13, reprinted in 2 INDIAN AFFAIRS: LAWS AND TREATIES 3 (Charles J. Kappler, ed. 1904) [hereinafter KAPPLER'S], available at <http://digital.library.okstate.edu/kappler/Vol2/treaties/de10003.htm>. "Article 2. That a perpetual peace and friendship shall from henceforth take place, and subsist between the contracting parties aforesaid, through all succeeding generations." *Id.* Treaty with the Iowa, Sept. 16, 1815, 7 Stat. 136, KAPPLER'S 123, available at <http://digital.library.okstate.edu/kappler/Vol2/treaties/iow0122.htm>. "Article 2. There shall be perpetual peace and friendship between all the citizens of the United States and all the individuals composing the said laway [sic] tribe or nation." *Id.* Treaty with the Sioux - Sisseton and Wahpeton Bands, July 23, 1851, 10 Stats. 949, KAPPLER'S 588 available at: <http://digital.library.okstate.edu/kappler/Vol2/treaties/sio0588.htm>. "Article 1. It is stipulated and solemnly agreed that the peace and friendship now so happily existing between the United States and the aforesaid bands of Indians, shall be perpetual." *Id.* Treaty with the Eastern Shoshoni, July 12, 1863, 18 Stats. 685, KAPPLER'S 848 available at: <http://digital.library.okstate.edu/kappler/Vol2/treaties/sho0848.htm>. "Article 1. Friendly and amicably relations are hereby re-established between the bands of the Shoshonee nation, parties hereto, and the United States; and it is declared that a firm and perpetual peace shall be henceforth maintained between the Shoshonee nation and the United States." *Id.*

<sup>120</sup> As noted in the dissent by Justice Hugo Black in *Federal Power Commission v. Tuscarora Indian Nation*, 362 U.S. 99, 142 (1960), "Great nations, like great men, should keep their word."

<sup>121</sup> Article 3, Declaration, G.A. Res. 61/295, P 3, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

<sup>122</sup> 16 Stat. 544, 566, Mar. 3, 1871.



the United States Senate to enter into and ratify treaties with other governments under the United States Constitution.<sup>123</sup> A return to treaty-making would be an important step in rebuilding the nation-to-nation perpetual peace and friendship relations promised by the United States.

To address the settler-nation myths of subjugation that have led to the justifications for the genocidal acts by the United States, specific provisions of the UN Declaration should be implemented to reframe teaching materials in the United States public school curricula about Native Americans. In Article 8(2)(e) of the UN Declaration, nation-states are directed to prevent and provide redress for "[a]ny form of propaganda designed to promote or incite racial or ethnic discrimination against [Indigenous peoples]."<sup>124</sup> Surely, the teachings that American Indians and Alaska Natives deserved to be killed by the United States military, have their lands taken, and be subjected to forced assimilation would be propaganda intended to bias the United States citizenry against Native Americans.

On the proactive side, the UN Declaration includes provisions intended to give voice to Indigenous peoples' viewpoints, cultures, and own history in the educational realm. First, Article 14 focuses on the rights of Indigenous children to culturally appropriate instruction with delivery in their own language.<sup>125</sup> Second, Article 15 addresses some of the issues raised in prior sections about the nation-state curricula in public schools concerning Native Americans.

#### Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.<sup>126</sup>

To implement Article 15 in the United States, public school districts would need to reach out to local Tribal Nations and develop appropriate curricula for their social studies and United States history lessons at the elementary school, middle school, high

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<sup>123</sup> See *U.S. v. Lara*, 541 U.S. 193, 218 (2004) (concurrence by Justice Thomas) (noting "the Act as constitutionally suspect" as the U.S. President is vested with the authority under the U.S. Constitution Art. II § 2 cl. 2 to make treaties).

<sup>124</sup> UN Declaration, Article 8(2)(e).

<sup>125</sup> *Id.* at Article 14.

<sup>126</sup> *Id.* at Article 15.

school, and college levels of instruction. This would serve to counteract the mainstream ignorance and misconceptions about the governance, cultures and humanity of American Indians and Alaska Natives.

Two other major provisions of the UN Declaration that would greatly assist in bringing justice to the lives of American Indians and Alaska Natives are: 1) Article 26 setting forth Indigenous peoples land rights;<sup>127</sup> and 2) Article 19 that articulates the standard of "free, prior and informed consent" required before nation-states adopt or implement any legislative or administrative measures that may affect Indigenous peoples.<sup>128</sup> The repudiation of the doctrine of discovery and the acceptance that Native Americans own their homelands would bring about a lasting security for future generations and fulfillment of the tribal commitment to land stewardship. Implementing the "free, prior and informed consent" standard of Article 19 would in effect displace the imposed United States trusteeship and allow Tribal Nations to exercise their self-determination fully.<sup>129</sup>

Finally, a dispute resolution process is sorely needed to resolve issues in forums not under the control of the United States. The UN Declaration Article 40 states the right to dispute resolution processes for Indigenous peoples with nation-states or other parties. In Larry Sager's 1999 article, he posits that "[t]he Indian Nations of the United States would benefit from an independent and neutral international forum, providing a fair and just adjudication of claims. Such a forum enhances the possibility that traditional notions of fairness will be achieved in a dispute between two sovereign nations."<sup>130</sup>

The United States has refused to submit to any international or regional judicial authority. In furtherance of perpetual peace and friendly relations, the United States must recognize the necessary step of authorizing jurisdiction for a neutral forum to settle disputes between Tribal Nations and the United States. The domestic courts of the United States have been the forums to, in essence legislate and uphold the doctrine of discovery, and uphold the ward/guardianship relationship and plenary authority of the United States Congress. Thus, another neutral forum must be assented to.

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<sup>127</sup> *Id.* at Article 26.

<sup>128</sup> *Id.* at Article 19.

<sup>129</sup> "Until we develop the scholarly literature that can transform consent into a legal requirement, we will not have made much progress in Indian law. Contemporary Indian leaders must understand the necessity of producing a large body of literature that will inform law clerks, judges, and justices of the Indian side of the story." Vine Deloria, Jr. (Standing Rock Sioux), *The Passage of Generations*, NATIVE VOICES: AMERICAN INDIAN IDENTITY & RESISTANCE 321 (2003).

<sup>130</sup> Sager, *supra* note 89 at 747-48.



## V. CONCLUSION: THE U.S. MUST ADOPT THE UN DECLARATION AND REVISE EDUCATION POLICY ON INDIAN HISTORY

The genocide of American Indians and Alaska Natives will not stop until major reforms are implemented in the United States. The UN Declaration is a huge step in the right direction to curtail the racial discrimination and genocidal justifications aimed at Native Americans in the United States. As Walter Echo-Hawk asserts, "The seeds of change must be planted in the United States. To become operational and enforceable in our own land, the provisions of the Declaration cannot be realized until they are fully incorporated into our domestic legal system."<sup>131</sup>

It is this call to fully realize human rights that Native Americans will continue to sound until the ears of United States citizens, lawmakers, judges, and leaders fill with the urgency of our tribal peoples to be free of the outdated and demeaning legal doctrines of past centuries. The seventh generation yet to be born is counting on the tribal peoples now alive to sound the call for the betterment of their lives.

We all know the thought that Indian people always think about the impact of their decision-making on the next seven generations ahead. Well, the seventh generation, since the American Indian holocaust in the nineteenth century, are probably among us now. If they are not, they soon will be. This generation of young children really are that seventh generation, and I think that it is helpful for us to think that, and ask ourselves, are these children the seventh generation, are they what our ancestors must have wanted them to be when they were going through the most grim time of Indian history. I think if we focus on that, and ask ourselves, "What can I do today to try to help these children get to the place that our ancestors must have wanted for them?" Then we will do well, things will get better, and in the future, we will see a healthier and more prosperous Native American people.<sup>132</sup>

In support of these future generations of Native Americans, we must continue to seek full human rights as tribal peoples to our culture, our lands, our governments, our history, and our ways of life.

<sup>131</sup> WALTER ECHO-HAWK, IN THE LIGHT OF JUSTICE: THE RISE OF HUMAN RIGHTS IN NATIVE AMERICA AND THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES 5 (2013).

<sup>132</sup> Kevin Gover, *"There is Hope": A Few Thoughts on Indian Law*, 24 AMER. IND. L. REV. 219, 228 (2000).