Michigan Journal of International Law

Volume 44 | Issue 3

2023

ReBraiding Frayed Sweetgrass for Niijaansinaanik: Understanding Canadian Indigenous Child Welfare Issues as International Atrocity Crimes

Alyssa Couchie
William S. Richardson School of Law

https://doi.org/10.36642/mjil.44.3.rebraiding

REBRAIDING FRAYED SWEETGRASS FOR NIIJAANSINAANIK (OUR CHILDREN): UNDERSTANDING CANADIAN INDIGENOUS CHILD WELFARE ISSUES AS INTERNATIONAL ATROCITY CRIMES

Alyssa Couchie[*]

ABSTRACT

The unearthing of the remains of Indigenous children on the sites of former Indian Residential Schools ("IRS") in Canada has focused greater attention on anti-Indigenous atrocity violence in the country. While such increased attention, combined with recent efforts at redressing associated harms, represents a step forward in terms of recognizing and addressing the harms caused to Indigenous peoples through the settler-colonial process in Canada, this note expresses concern that the dominant framings of anti-Indigenous atrocity violence remain myopically focused on an overly narrow subset of harms and forms of violence, especially those committed at IRSs. It does so by utilizing a process-based understanding of atrocity and genocide that helps draw connections between familiar, highly visible, and less recognized forms of atrocity violence, which tend to be overlapping and mutually reinforcing in terms of their destructive effects. This process-based understanding challenges the neocolonial, racist, and discriminatory attitudes reflected in the drafting and interpretation of the Genocide Convention and other atrocity laws that ignore the lived experiences of subjugated groups. Utilizing this approach, this note argues that, as applied to Indigenous populations, Canada's longstanding discriminatory child welfare practices and policies represent an overlooked process of anti-Indigenous atrocity violence. Only by understanding current child welfare challenges facing Indigenous communities as interwoven with longstanding anti-Indigenous atrocity processes, such as the IRS system, can we understand what is at stake for affected communities and fashion appropriate remedies in international and domestic law.

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[*] J.D. Candidate, Class of 2023, William S. Richardson School of Law. Proud member of Nbisiing Anishinaabeg (Nipissing First Nation). My deepest gratitude to my grandfather, Ephraim Couchie, a residential school survivor. If not for his strength and resilience I would not be here today. I would also like to extend my thanks and sincere appreciation to Professor Randle DeFalco who provided me with invaluable guidance and support. Chi-miigwech.

INTRODUCTION

> We believe that the Creator has entrusted us with the sacred responsibility to raise our families . . . for we realize healthy families are the foundation of strong and healthy communities. The future of our communities lies with our children, who need to be nurtured within their families and communities.[1]

Sweetgrass, or *wiingaashk*, the hair of Mother Earth, is a sacred medicine to the Anishinaabe and many other Indigenous peoples of North America. It is traditionally divided into three sections and woven into a braid creating strength. We as Indigenous[2] peoples are much like the sweetgrass braid, where individual, family, and community are the three strands. All three were once woven together, united and strong. In the Canadian context, generations of violence perpetrated against *niijaansinaanik* (our children) through their forcible transfer to the Indian Residential School ("IRS") system and child welfare systems has injured, dehumanized, and in many instances, killed our peoples, leaving our braid frayed and in danger of coming apart.[3]

One of the largest and most visible sources of violence committed against Indigenous children and communities in Canada is the former IRS system. From 1883 to the closure of the schools in the 1990s, approximately 150,000 Indigenous children were forced to attend these schools, which were intentionally designed to strip attendees of their Indigenous identity.[4] Countless attendees were also subject to horrific acts of abuse, and many were even killed.[5] Only recently has the full scale of the atrocities committed against Indigenous children and communities through the IRS system begun to garner national attention. On May 27,

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[1] 3 ROYAL COMM'N ON ABORIGINAL PEOPLES, REPORT OF THE ROYAL COMMISSION ON ABORIGINAL PEOPLES 10 (1996) (Can.) (citing Statement of Charles Morris, Executive Director, Tikinagan Child and Family Services, Sioux Lookout, Ontario (Dec. 1, 1992)) [hereinafter RCAP VOL. 3].

[2] The term Indigenous in this article is used to encompass First Nations, Métis, and Inuit peoples that reside within the territory known as Canada. The term Inuit is used to refer to Indigenous peoples who traditionally reside in the far north. The term Métis is used to refer to those peoples that are descendants of the union of Indigenous peoples and Europeans at first contact who then developed into distinct cultural communities. The term First Nations is used to refer to those Indigenous peoples that are neither Métis or Inuit. Formerly known as "Indian", however First Nations is not a legal term while the term "Indian" is. *Terminology*, INDIGENOUS FOUND., http://indigenousfoundations.arts.ubc.ca/terminology (last visited April 23, 2022).

[3] *See, e.g.*, TRUTH & RECONCILIATION COMM'N CAN., HONOURING THE TRUTH, RECONCILING FOR THE FUTURE: SUMMARY OF THE FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION OF CANADA (2015) [hereinafter TRC EXEC SUMMARY].

[4] *See* Statement of Apology from Stephen Harper, Prime Minister of Canada, to Former Students of Indian Residential Schools (June 11, 2008), http://www.rcaanc-cirnac.gc.ca/eng/1100100015644/1571589171655.

[5] *See, e.g.*, TRC EXEC SUMMARY, *supra* note 3.

2021, the Tk'emlúps te Secwèpemc community confirmed, with the aid of ground penetrating radar, that they had located the remains of 215 children on the grounds of the former Kamloops Indian Residential School in British Columbia.[6] Many other Indigenous communities in Canada have since made similar announcements and others are in the process of locating and exhuming numerous mass graves on or near former IRS sites across the country.[7]

The exhumations have also forced a greater acknowledgement of the harms committed against Indigenous communities through settler-colonial processes. The horrific nature of these mass graves has buttressed long-contested claims that the IRS system was a component of a genocide perpetrated against Canada's Indigenous peoples.[8] Under the Convention on the Prevention and Punishment of the Crime of Genocide, genocide is defined as the commission of certain acts "with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group as such."[9] The so-called "base crimes" that constitute genocide when committed with this intent are killing, causing serious bodily or mental harm, deliberately inflicting living conditions calculated to bring about physical destruction, preventing births, and — crucially — "forcibly transferring children of the group to another group."[10] In conjunction with the spectacular nature of these mass graves and their apparent connection to the Genocide Convention's base crimes, the long-standing debate about genocide in Canada has often focused narrowly on select forms of harm causation, such as the IRS.[11]

In early 2022, on the heels of these highly publicized exhumation projects, the Canadian government announced that a multibillion-dollar

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[6] Paula Newton, *'Unthinkable' Discovery in Canada as Remains of 215 Children Found Buried Near Residential School*, CNN (June 1, 2021, 7:00 AM), http://www.cnn.com/2021/05/28/world/children-remains-discovered-canada-kamloops-school/index.html.

[7] *Canada: Indigenous Community Finds 93 Potential Unmarked Graves*, AL JAZEERA (Jan. 25, 2022), http://www.aljazeera.com/news/2022/1/25/canada-indigenous-community-uncovers-93-potential-unmarked-graves.

[8] Whether the violence and oppression that Indigenous populations in Canada suffered qualifies, legally and/or socially, as a "genocide" remains the subject of a longstanding debate. A complete discussion of the nuances of this debate is outside the scope of this article. For a helpful overview of the debate, see Tony Barta, *Colonial Genocide in Indigenous North America*, 6 COLONIAL STUD. 180 (2016).

[9] Convention on the Prevention and Punishment of the Crime of Genocide art. 2, Dec. 9, 1948, 78 U.N.T.S. 277 (entered into force Jan. 12, 1951) [hereinafter Genocide Convention].

[10] *Id.*

[11] For a discussion of the spectacular's place in our understanding of atrocity crimes, see RANDLE C. DEFALCO, INVISIBLE ATROCITIES: THE AESTHETIC BIASES OF INTERNATIONAL CRIMINAL JUSTICE 41–54 (2022). For a discussion of debates on genocide in Canada, see David B. MacDonald & Graham Hudson, *The Genocide Question and Indian Residential Schools in Canada*, 45 CAN. J. POL. SCI. 427, 427–49 (2012).

settlement had been reached, the largest in Canadian history, with various Indigenous organizations.[12] The settlement stems from, among other things, the Canadian government's discriminatory and inequitable treatment of Indigenous children by government-affiliated child welfare programs.[13] Mass removals of Indigenous children from their families and communities and their overrepresentation in the Canadian child welfare system are a result of this discriminatory and inequitable treatment.[14] While in some respects this recent settlement and other forms of official acknowledgment of the harms suffered by Indigenous communities represent a step forward in terms of recognizing and addressing the harms caused to Indigenous peoples through the settler-colonial process in Canada, this recognition remains myopically focused on a narrow subset of the harms and forms of violence inflicted upon Indigenous peoples in Canada, especially those harms committed at IRSs.[15] Meanwhile, other forms of settler-colonial atrocity violence, even those intimately connected with the IRS experience, remain largely overlooked.

One such oft-overlooked set of harms intimately connected to the IRS system are those stemming from the mass removal of Indigenous children from their home communities through the child welfare system.[16] In what

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[12] Ryan Tumilty, *Government Announces $40 Billion Settlement over Indigenous Child-Welfare System*, NAT'L POST (Jan. 4, 2022), http://nationalpost.com/news/politics/government-announces-40-billlion-settlement-over-indigenous-child-welfare-system.

[13] Catherine Porter & Vjosa Isai, *Canada Pledges $31.5 Billion to Settle Fight over Indigenous Child Welfare System*, N.Y. TIMES (Jan. 10, 2022), http://www.nytimes.com/2022/01/04/world/canada/canada-indigenous-children-settlement.html.

[14] Cindy Blackstock, *The Complaint: The Canadian Human Rights Case on First Nations Child Welfare*, 62 MCGILL L.J. 293 (2016) (citing ROSE-ALMA J. MCDONALD & PETER LADD, ASSEMBLY OF FIRST NATIONS, FIRST NATIONS CHILD AND FAMILY SERVICES: JOINT NATIONAL POLICY REVIEW (2000) (Can.)).

[15] One example of official acknowledgment is the Truth and Reconciliation Commission of Canada ("TRC"), which "provided those directly or indirectly affected by the legacy of the system with an opportunity to share their stories and experiences," and issued calls to action in an attempt to further reconciliation efforts. The TRC was established as part of the settlement agreement stemming from the IRS class-action. *Truth and Reconciliation Commission of Canada*, GOV'T CAN., http://www.rcaanc-cirnac.gc.ca/eng/1450124405592/1529106060525 (last visited Feb. 27, 2023). Another example is the National Inquiry Into Missing and Murdered Indigenous Women and Girls ("MMIWG Inquiry") which examined and reported "on the systemic causes of all forms of violence against Indigenous women and girls". *See generally Our Mandate, Our Vision, Our Mission*, NAT. INQUIRY INTO MISSING AND MURDERED INDIGENOUS GIRLS, http://www.mmiwg-ffada.ca/mandate (last visited Feb. 23, 2023). A more recent example is the official apology from the Vatican delivered by Pope Francis. *Read the Full Text of Pope Francis' Speech and Apology*, CTV NEWS (July 25, 2022, 7:50 PM) http://www.ctvnews.ca/canada/read-the-full-text-of-pope-francis-speech-and-apology-1.6001384. These are examples of efforts to acknowledge settler-colonial atrocities, but such efforts have tended to focus narrowly on a subset of atrocity processes, focusing on some, while neglecting others and the connections between them.

[16] While the Final Report of Canada's TRC included a chapter entitled "Child welfare: A system in crisis" discussing the connections between the country's child welfare system and the legacies

has been dubbed the "Sixties Scoop" and "Millennium Scoop," the Canadian government forcibly transferred thousands of Indigenous children to non-Indigenous households and communities through the child welfare system.[17] This note reframes these "Scoops" as continuations of the atrocity violence perpetrated against Indigenous children and families through the forced assimilation of Indigenous children within the IRS system. These forced removals of Indigenous children out of Indigenous communities should be viewed as an extension of the broader anti-Indigenous genocidal processes that remain ongoing in Canada.[18] After all, these removals can still be framed as one of the Genocide Convention's base crimes, "forcibly transferring children from one group to another."[19]

This note makes these connections by using a process-based understanding of international criminal law ("ICL") generally and genocide specifically.[20] It challenges dominant understandings of harm

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of the IRS system, the chapter frames child removals of Indigenous children primarily as a "legacy" of the system, despite the fact that the welfare system itself is increasingly accepted as a system of atrocity violence. Meanwhile, while the Canadian government has increasingly acknowledged the violence and wrongfulness of the IRS system, it has been far more recalcitrant in making similar acknowledgments in the context of the child welfare system. *See* 5 TRUTH & RECONCILIATION COMM'N CAN., CANADA'S RESIDENTIAL SCHOOLS: THE LEGACY, THE FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION OF CANADA 11–39 (2015) [hereinafter THE LEGACY].

[17] The term "Sixties Scoop" has been used to describe a period, beginning in the 1950s and ending in the early 1990s, in which a rapid escalation in Indigenous child welfare removals occurred, largely due to assimilationist policies that focused on adoption of Indigenous children by non-Indigenous families and the refusal of both federal and provincial governments to adequately fund prevention programs. *See* Raven Sinclair, *Identity Lost and Found: Lessons from the Sixties Scoop*, 3 FIRST PEOPLES CHILD & FAM. REV. 65, 66 (2007). In order to draw a line of continuity connecting the "Sixties Scoop" to ongoing child welfare issues affecting Indigenous communities, including removals outside of Indigenous communities, some have used the term "Millennium Scoop" to describe the continued mass removals of First Nations children from their homes and communities. Such mass removals persist largely due to discriminatory funding practices to Indigenous-run child welfare agencies, as well as the federal and provincial governments' continued refusal to fund preventative programs that would address the issues of poverty, addiction, and trauma that were a direct result of Canada's IRS system and, if addressed, would enable Indigenous children to remain in their home communities. Another contributing factor is the persistent refusal of the federal government and mainstream child welfare agencies to acknowledge traditional Indigenous community parenting models and knowledge as acceptable. BARBARA FALLON ET AL., ASSEMBLY OF FIRST NATIONS, DENOUNCING THE CONTINUED OVERREPRESENTATION OF FIRST NATIONS CHILDREN IN CANADIAN CHILD WELFARE: FINDINGS FROM THE FIRST NATIONS/CANADIAN INCIDENCE STUDY OF REPORTED CHILD ABUSE AND NEGLECT-2019 (2021), http://cwrp.ca/publications/denouncing-continued-overrepresentation-first-nations-children-canadian-child-welfare.

[18] There is a longstanding debate about genocide in Canada, often focusing narrowly on select forms of harm causation, such as the Indian Residential School system. For a discussion of these debates, see, for example, MacDonald & Hudson, *supra* note 11.

[19] Genocide Convention, *supra* note 9, art 2(e).

[20] For examples of such approaches, see, for example, Sheri P. Rosenberg & Everita Silina,

and violence as static events with neatly defined starting and ending points that are generally limited to mass killings and other overt forms of violence.[21] Such static notions of genocide and atrocities shape social understandings of shared histories and pervade relevant areas of law, particularly ICL.[22] By reframing, anti-Indigenous atrocity violence in Canada as a longstanding, evolving, multifaceted *process*, this note demonstrates the capaciousness and variegated nature of such violence, as well as its arguably ongoing nature.[23] According to such an understanding, one can better see and appreciate that although the IRS system ceased operations in 1996 and official government policies have evolved since the "Sixties Scoop," the two longstanding processes were inextricably interwoven to produce a singular primary outcome: the mass forcible transfer of Indigenous children to non-Indigenous homes effectuated through Canadian government programs. Once viewed in this manner, the definitions of genocide and other categories of international crimes, such as crimes against humanity, do not need to be expanded to view these processes as integral components of many decades of the sustained commission of atrocity crimes against Indigenous populations in Canada.[24] The definitions simply need to be reinterpreted. Currently, actors associated with ICL (courts, judges, lawyers, academics,

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Genocide by Attrition: Silent and Efficient, *in* GENOCIDE MATTERS: ONGOING ISSUES AND EMERGING PERSPECTIVES 106 (Joyce Apsel & Ernesto Verdeja eds., 2013); Helen Fein, *Genocide by Attrition 1939-1993: The Warsaw Ghetto, Cambodia, and Sudan: Links between Human Rights, Health, and Mass Death*, 2 HEALTH & HUM. RTS., no. 2, 1997, at 10, 12 (1997).

[21] For an overview of this dominant understanding of atrocity crimes as solely consisting of highly visible, intuitively recognizable eruptions of mass physical violence, see DEFALCO, *supra* note 11, at 24–62. *See generally* KERRY WHIGHAM, RESONANT VIOLENCE: AFFECT, MEMORY, AND ACTIVISM IN POST-GENOCIDE SOCIETIES 3 (2022) (arguing that "genocidal violence entails a force that far exceeds the horror of mass killing. It also manifests in any number of other forms of violence that continue long after mass killing comes to an end.").

[22] *See* Randle C. DeFalco, *Time and the Visibility of Slow Atrocity Violence*, 21 INT'L CRIM. L. REV. 905, 906 (2021).

[23] Many scholars and activists view the situation in Canada as an ongoing, systematized atrocity or genocide being committed against Indigenous populations. *See, e.g.*, Brittany Hobson, *'End this Ongoing Genocide:' Indigenous Advocates Call for Change After Women Killed*," NAT'L POST (Dec. 2, 2022) http://nationalpost.com/pmn/news-pmn/canada-news-pmn/end-this-ongoing-genocide-indigenous-advocates-call-for-change-after-women-killed (quoting Hilda Anderson-Pyrz, chair of the National Family and Survivors Circle, as stating, [w]e must hold our governments and institutions to their promises to ensure measurable outcomes and concrete actions are in place . . . . [These institutions] should really open their eyes and recognize the genocide that is continuing in this country."); *see also* WHIGHAM, *supra* note 21, at 158 (observing that Indigenous activists who occupied Alcatraz island and prison in 1969 "stress[ed] the continuing persecution of American Indians and the ongoing settler colonial project to take their lands").

[24] *See infra* Part I. For a more general discussion of how biases against unspectacular forms of atrocity violence, such as those described in this note against Indigenous populations in Canada lead to unnecessarily narrow presumptions concerning the potential boundaries of ICL liability, see DEFALCO, *supra* note 11, at 99–148.

politicians, etc.) repeatedly choose to interpret specific provisions of ICL, such as the provision of the Genocide Convention on the forced transfer of children, in ways that exclude forms of mass killing and harm causation such as those described in this note.[25] Crucially, nothing in the actual substance of ICL itself, *de lege lata*, necessarily demands such narrow readings, as much of ICL remains amenable to various interpretations, which Itamar Mann refers to as the "open texture" nature of ICL.[26]

As such, this note makes two primary contentions. First, the decision whether to see and conceptualize the Canadian IRS and child removal systems as intertwined processes of international crime commission is not one solely dictated by a "neutral" analysis of the substance of ICL. Rather, how one chooses to interpret certain provisions of ICL is tied up in a broader set of normative forces that cannot be disaggregated from phenomena such as settler-colonialism and white supremacy.[27] One can choose to see or not see these processes as violative of ICL without necessarily advocating for an "expansion" of existing law.[28] Second, choosing not to view the IRS and child removal systems as intertwined atrocity processes impedes much-needed social healing processes. Only by understanding current child welfare challenges facing Indigenous communities as interwoven with longstanding anti-Indigenous atrocity processes can we understand what is at stake for affected communities, develop appropriate remedies, and ultimately conceive of an international law that truly addresses itself to the harms it purports to prohibit and which begins to meaningfully distance itself from its racist, colonial roots, beyond mere placatory gestures.[29]

To make out this argument this note proceeds in five parts. Part I defines the process-based understanding of atrocity violence and explains why it is the ideal conceptual lens for examining the forcible removal of

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[25] *See infra* Part I. *See generally* DEFALCO, *supra* note 11, at 99–148.

[26] Itamar Mann, *Border Violence as Crime*, 42 U. PENN. J. INT'L L. 675, 689 (2021) (quoting H.L.A. HART, THE CONCEPT OF LAW 124–128 (3d ed. 2012) in relation to the "open texture of law").

[27] Along these lines, while outside the scope of this note, choices made by ICL actors to shape and interpret ICL, most significantly, ICL actors who are predominantly drawn from elite, professional communities clustered in the Global North, could be framed as a form of neocolonial epistemic violence. That is a refusal to see and recognize certain forms of violence *as violence* at all grounded in an exclusionary worldview. For an overview of epistemic violence as a concept and its relevance to notions of what counts as "violence" within international relations, see Claudia Brunner, *Conceptualizing Epistemic Violence: An Interdisciplinary Assemblage for IR*, 9 INT'L POL. REV. 193 (2021).

[28] For a more detailed argument along these lines analyzing specific provisions of ICL open to broader interpretation and providing case study examples, see generally DEFALCO, *supra* note 11, at 99–148.

[29] A full discussion of the deeply racist and colonial roots of international law is beyond the scope of the present inquiry. For an excellent study of this topic, see ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY, AND THE MAKING OF INTERNATIONAL LAW (2005).

Indigenous children from their families, communities, and culture, by the Canadian government. Only with a process-based understanding of atrocity violence are we able to see the broader array of forms of atrocity violence that exist in the shadows of the more spectacular and overt forms. This process-based understanding of atrocity violence also allows us to make necessary connections between these less recognized forms of violence, which tend to be overlapping and mutually reinforcing in terms of their destructive effects. This framing helps illustrate that we cannot begin to discuss the harms associated with the IRS system without contextualizing such harms within the broader, ongoing history of forced government removals of Indigenous children from their homes, communities, and cultures. Nor can we truly begin the process of rebraiding our sweetgrass, of healing and restoring our Indigenous communities, without acknowledging all facets of these continued forced government removals.

Part II provides a historical overview of the IRS system. It outlines the harms and lasting devastating impacts this system caused to Indigenous children, families, communities, and cultures, and outlines the racist assimilationist rationales that the IRS system was predicated on.

Part III demonstrates how the harms and effects of the IRS system have been both reproduced and exacerbated by Canada's discriminatory child welfare system, beginning with the "Sixties Scoop," and continuing to present day with the "Millennium Scoop." This section also demonstrates how the same racist assimilationist thinking that underpinned the IRS system, a system now widely viewed as a source of mass atrocity violence, also underpinned the child welfare system's application to Indigenous children and communities at least until the end of the "Sixties Scoop" era in the early 1990s.

Part IV then explains the "Millennium Scoop" era, which remains ongoing and continues to perpetuate the harms and devastating impacts of the IRS system and the "Sixties Scoop." Even though the Canadian government now explicitly disavows the racist assimilationist rationales embraced in previous eras.

Part V concludes with a discussion of how the selective recognition of prior atrocities, limited largely to physical and sexual violence perpetrated against Indigenous children at IRSs, is directly related to the ongoing failure to improve the child welfare system's application to Indigenous children, their families, and their communities. It emphasizes that by focusing exclusively on the mass graves and shocking stories of neglect, violence, and sexual abuse, as we tend to do, we ignore critically important context and implications of broader harms and impacts that must be addressed to effectuate real, positive, measurable change not only for Indigenous child welfare, but more broadly for Indigenous children,

families, and culture. Concluding that the selective interpretation of ICL is inextricably linked with neocolonial racist attitudes that impedes much needed social healing by choosing to ignore the less spectacular, and banal atrocity processes that are intertwined with instances of mass eruptions of shocking violence. In this instance the IRS and child welfare removal systems.

Although this note only focuses on the Canadian IRS and child welfare systems, similar framing and arguments could be applied to the American boarding school and child welfare systems.[30] To properly rebraid our sweetgrass we need to see, acknowledge, and understand all the harms and effects of settler-colonial violence, not just the shockingly spectacular ones.

I. THROUGH THE LENS OF ATROCITY VIOLENCE AS AN (OFTEN-SLOW) PROCESS

When Raphael Lemkin first coined the term "genocide" in 1944, his definition was significantly broader than what became the legal definition of genocide as an international crime. Lemkin's definition encompassed much more than forms of physical destruction, including cultural, religious and economic components.[31] Lemkin intended the term genocide:

> to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such group.[32]

Lemkin believed that the preservation of a group's culture was not only integral to the group's survival, but was also critical to human flourishing more broadly, as he viewed the destruction of cultural diversity as "disastrous for civilization."[33] Although Lemkin was the driving force behind the United Nations Convention on the Prevention and Punishment

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[30] *See* Theresa Rocha Beardall & Frank Edwards, *Abolition, Settler Colonialism, and the Persistent Threat of Indian Child Welfare*, 11 COLUM. J. RACE & L. 533 (2021).
[31] RAPHAEL LEMKIN, AXIS RULE IN OCCUPIED EUROPE; LAWS OF OCCUPATION, ANALYSIS OF GOVERNMENT, PROPOSALS FOR REDRESS 79 (1944).
[32] *Id.*
[33] TAMARA STARBLANKET, SUFFER THE LITTLE CHILDREN: GENOCIDE, INDIGENOUS NATIONS AND THE CANADIAN STATE 47 (2018) [hereinafter SUFFER THE LITTLE CHILDREN].

of the Crime of Genocide ("Genocide Convention" or "Convention"),[34] his efforts to incorporate this multifaceted and fluid temporal approach to genocide into international law failed.[35] Nations, including Canada, strongly opposed the inclusion of what has come to be referred to as "cultural" genocide in legal definitions, maintaining that the protections went too far and that the term genocide should be limited to the mass physical destruction of a group.[36] Canada's position, conveniently, has allowed it to avoid any fault or condemnation for the harms it systematically perpetrated against the Indigenous peoples that reside within its borders.

Ultimately, genocide was defined in the Convention as:

> 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.[37]

This definition is typically interpreted as limiting genocide to acts that bring about the immediate physical destruction of the group and acts that create the conditions that provide a route to that physical destruction.[38] The only remnant of "cultural" genocide to survive the drafting stage was the " [f]orcibl[e] transfer of a group's children to another group."[39] Of course, such transfers may also result in the physical destruction of the group; however, such a connection is not mandated by the plain language of the Convention's text. Notably, Canada failed to incorporate the forcible transfer of children ("FTC") prong in its domestic definition of genocide.[40] One might conclude that Canada omitted the forcible transfer of children provision from its own definition of genocide to avoid scrutiny of the IRS system.[41] The narrower definition of genocide that the Genocide Convention adopted conforms to dominant broader understandings of atrocities and genocides as large-scale eruptions of

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[34] WILLIAM A. SCHABAS, GENOCIDE IN INTERNATIONAL LAW: THE CRIME OF CRIMES 24–25 (2000).
[35] *See* Pauline Wakeham, *The Slow Violence of Settler Colonialism: Genocide, Attrition, and the Long Emergence of Invasion*, 24 J. GENOCIDE RSCH. 337, 343–45 (2021).
[36] SUFFER THE LITTLE CHILDREN, *supra* note 33, at 58.
[37] Genocide Convention, *supra* note 9, art 2.
[38] *See* Rosenberg & Silina, *supra* note 20.
[39] SUFFER THE LITTLE CHILDREN, *supra* note 33, at 55–56.
[40] Criminal Code, R.S.C. 1985, c C-46 (Can.).
[41] *See* SUFFER THE LITTLE CHILDREN, *supra* note 33, at 207–08.

spectacular violence.[42] Traditional perspectives conceptualize genocide and other atrocities as static events with defined starting and ending points that are generally limited to eruptions of mass killings and other overt forms of physical violence.[43] As the late legal and genocide scholar Sheri Rosenberg explains, "it is the excessive focus on violent deaths and a preoccupation with the numbers of victims that have obscured alternative means of annihilation."[44] These conceptualizations are dominated by the Holocaust paradigm[45] and ICL's narrow interpretation of the Genocide Convention.[46] For example, genocide scholar Helen Fein argues that "[t]he interpretation of Nazi crimes as an unleashing of murderous violence that swiftly annihilated large numbers of victims has obscured the more complex and messy nature of the genocidal process that took place during the Holocaust."[47]

These sentiments are shared by Evelyne Schmid and Sonja Starr, who both point out the dearth of actual prosecutions of international crimes, including genocide as well as situations beyond those involving direct and immediate forms of violent killing.[48] The notion of genocide as a potentially slower process of destruction by attrition, in contrast to the dominant yet problematic framings of international crimes as committed exclusively amidst the chaos of war and crisis focuses our attention on the discriminatory processes that lead to the targeted destruction of a group, rather than solely on its outcome.[49] Rosenberg argues that "[G]enocide is a fluid and complex social phenomenon, not a static term . . . . [It] is a process, a collective cataclysm, that relies more heavily—than currently appreciated—on indirect methods of destruction for its success."[50] Such

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[42] DeFalco, *supra* note 22, at 908.
[43] *See, e.g.*, Wakeham, *supra* note 35, at 337–56; Fein, *supra* note 20, at 12; SUFFER THE LITTLE CHILDREN, *supra* note 33, at 39–88 .
[44] Sheri P. Rosenberg, *Genocide is a Process, Not an Event*, 7 GENOCIDE STUD. & PREVENTION: INT'L J. 16, 18 (2012).
[45] Rosenberg & Silina, *supra* note 20, at 107.
[46] *Id.*
[47] *Id.* For example, approximately 13.7 percent of all Jewish Holocaust victims died as a result of disease and starvation due to their confinement in ghettoes, prior to their deportation to extermination camps. The emphasis on strict legalism in genocide interpretation coupled with the conceptual linking of genocide with a particular understanding of the Holocaust have imposed a restrictive reading of the Genocide Convention. Fein, *supra* note 20, at 12.
[48] Sonja Starr, *Extraordinary Crimes at Ordinary Times: International Justice Beyond Crisis Situations*, 101 NORTHWEST. UNIV. L. REV. 1257 (2007) (critiquing the myopic focus of international criminal tribunals on crimes committed during periods of war and other international crises). *See generally* EVELYNE SCHMID, TAKING ECONOMIC, SOCIAL AND CULTURAL RIGHTS SERIOUSLY IN INTERNATIONAL LAW (2015) (making a similar critique, framed around the dearth of prosecutions of international crimes involving economic, social, and cultural human rights violations, despite the potential applicability of ICL to many such scenarios).
[49] Starr, *supra* note 48; SCHMID, *supra* note 48; Rosenberg, *supra* note 44, at 19.
[50] Rosenberg, *supra* note 44, at 17–18.

"indirect methods of destruction" often include sets of mutually reinforcing policies and practices that lead to the slow destruction of a group as opposed to a more rapid and direct outbreak of mass killing.[51]

Rosenberg's view reflects Lemkin's understanding of Genocide and is not a view that necessarily conflicts with the Genocide Convention's definition. As noted by Rosenberg and Silina, the Genocide Convention's text, when examined as a whole, clearly encompasses more indirect methods of destruction commonly associated with genocide prosecutions.[52] In particular, the FTC prong of the Genocide Convention would seem to support the view that genocide is more than a spectacular eruption of mass violence with well-defined start and end points, and instead also includes multifaceted overlapping discriminatory processes that inevitably lead to the same conclusion: the slow destruction in whole or in part of a protected group.

However, despite the prohibition of FTC being enumerated in the Genocide Convention and its coequal listing to the other base crimes, it has been largely ignored and generally considered a legal anachronism.[53] This has occurred, at least in part, because many argue it is primarily a form of cultural genocide which was, as previously noted, specifically excluded by the drafters from the definition of genocide,[54] even though such transfers can also be part of the physical destruction of the group. This narrow interpretation, by the international community, of not only the FTC prong but also the entirety of the Genocide Convention's definition, denies protected groups recourse to justice. Canada has endorsed and furthered this narrow interpretation by leaving the FTC prong out of its domestic genocide implementation entirely.

In addition, as noted by Randle DeFalco, limited temporal views of genocide and atrocity violence make other slow harms, violence, and abuse invisible to prosecution, and also effectively narrow the scope of harms that can be addressed by transitional justice efforts.[55] Slow

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[51] Rosenberg & Silina, *supra* note 20, at 107.

[52] *Id.* at 108.

[53] Kurt Mundorff, *Other Peoples' Children: A Textual and Contextual Interpretation of the Genocide Convention, Article 2(e)*, 50 HARV. INT'L. J. 61, 62 (2009).

[54] RUTH AMIR, TWENTIETH CENTURY FORCIBLE CHILD TRANSFERS: PROBING THE BOUNDARIES OF THE GENOCIDE CONVENTION, at xxiv (2018).

[55] DeFalco, *supra* note 22, at 906; Transitional justice refers to how societies respond to the legacies of massive and serious human rights violations. *What is Transitional Justice*, INT'L CTR. TRANSITIONAL JUST., http://www.ictj.org/what-transitional-justice (last visited Apr. 19, 2023). Transitional justice as both literature and practice offers more than just a set of neutral instruments for the achievement of the goals of justice, truth and reconciliation. structural violence and intolerable physical atrocity. Ultimately, transitional justice is a definitional project, explaining who has been silenced by delineating who may now speak, describing past violence by deciding what and who will be punished and radically differentiating a new regime in relation to what actions were taken by its predecessor. Despite its claims to exposure,

violence, as described by Rob Nixon, is "violence that occurs gradually and out of sight, a violence of delayed destruction that is dispersed across time and space, an attritional violence that is typically not viewed as violence at all."[56] The obfuscation of the interwoven connection between Canadian Indigenous child welfare programs and the IRS system is another example of the backgrounding of slow violence or attritive genocidal processes in favor of the relatively quick and spectacular.

This backgrounding of slow violence impedes transitional justice efforts by shaping the narratives which dictate when and what a society is transitioning from.[57] The backgrounding and shaping of narratives also impact validation of who is a victim and may influence how they see themselves and how they deal with their trauma.[58] Examining indigenous child welfare issues in Canada through the theoretical lens of slow atrocity violence allows us to properly see the "Sixties Scoop" and the present day "Millennium Scoop" as forms of genocide or atrocity violence that are tightly interwoven or "braided" with the violence perpetrated against Indigenous children within the IRS system. There is conceptual space within existing definitions of atrocity crimes such as genocide for such recognition, yet all too often choices are made not to make such connections. Further, this lens of slow atrocity violence allows us to see and understand the many causes of the slow destruction of our children, families, and communities—the fraying of our sweetgrass braid—and only when we can see and understand the true scope of the harm can we properly address it and meaningfully work to rebraid it.

II. THE INDIAN RESIDENTIAL SCHOOL SYSTEM'S SPECTACULAR VIOLENCE

Canadian IRS operations commenced in the 1880s and did not cease until the 1990s, with the last school closing in 1996.[59] Indigenous children were removed from their families, uprooted from their communities, and forcibly transferred to residential schools to rid Canada of its "Indian problem."[60] It is estimated that 150,000 Indigenous children were forcibly

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revelation and memorialization, the project of transitional justice may simultaneously perpetuate invisibility and silence. Zinaida Miller, *Effects of Invisibility: In Search of the'Economic' in Transitional Justice*, 2 INT'L J. TRANSITIONAL JUST. 266, 267–68 (2008).

[56] DeFalco, *supra* note 22, at 907 (quoting ROB NIXON, SLOW VIOLENCE AND THE ENVIRONMENTALISM OF THE POOR 2 (2011)).

[57] *Id.* at 909.

[58] *Id.* at 916.

[59] TRC EXEC SUMMARY, *supra* note 3, at 3.

[60] *Id.* at 2.

transferred to these "schools."[61] The children placed into the IRS system were between the ages of four and sixteen, and in most cases, they were required to live on-site ten months of the year.[62] The Canadian government did not run the schools, and instead partnered with the Roman Catholic, Anglican, United, Methodist, and Presbyterian churches, providing these churches with funding to operate them.[63]

The IRS system was intimately connected to the removals of Indigenous children. Canada's *Truth and Reconciliation Commission* stated that "[i]n establishing residential schools, the Canadian government [labelled parents as being indifferent to the future of their children and] essentially declared Aboriginal people to be unfit parents."[64] This rationale for the forcible transfer of Indigenous children may have started with the IRS, but it continues to pervade federal and provincial child welfare policies and laws, allowing for the forcible removal of Indigenous children from their homes and communities to this day.[65] This part provides an overview of the history of the IRS system and its deep entanglement with child removals.

After Confederation in 1867, the Canadian federal government assumed responsibility for Indigenous peoples and for educating their children pursuant to the British North America Act ("BNA").[66] A little more than a decade later the 1876 Indian Act was passed, consolidating all prior legislation concerning Indigenous peoples and asserting further control over them.[67] The Indian Act determined who was and who was not "Indian," outlined ways that individuals could lose their identity ("status")[68] as an "Indian," limited the powers of Indigenous governance, limited and controlled Indigenous finances, restricted hunting and travel, and prohibited cultural practices; essentially dictating all aspects of the

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[61] Statement of Apology from Stephen Harper, *supra* note 4.

[62] TRC EXEC SUMMARY, *supra* note 3, at 60; TRUTH & RECONCILIATION COMM'N CAN., THEY CAME FOR THE CHILDREN: CANADA, ABORIGINAL PEOPLES, AND RESIDENTIAL SCHOOLS 24 (2012) [hereinafter THEY CAME FOR THE CHILDREN].

[63] This arrangement lasted well into the late 1960s. At this point the federal government took over operating most of the residential schools. THEY CAME FOR THE CHILDREN, *supra* note 62, at 20.

[64] TRC EXEC SUMMARY, *supra* note 3, at 3.

[65] *See* THE LEGACY, *supra* note 16, at 11–39.

[66] 1 TRUTH & RECONCILIATION COMM'N CAN., CANADA'S RESIDENTIAL SCHOOLS: THE HISTORY, PART 1 ORIGINS TO 1939, THE FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION OF CANADA 131 (2015), http://archives.nctr.ca/NCTR-EDU-003-001-005 [hereinafter THE HISTORY PART I].

[67] *See* Indian Act, S.C. 1876, c 18 (Can.).

[68] The Canadian government separates Indians into two distinct categories: status and non-status. "Status" is the legal standing of those eligible to registered under the Indian Act § 6. Those registered are subject to regulation of the Indian Act and are entitled to certain benefits. Indian Act, S.C. 1876, c 18 (Can.); *About Indian Status*, GOV'T CAN., http://www.sac-isc.gc.ca/eng/1100100032463/1572459644986 (last visited Jan. 24, 2023).

lives of those subjected to it.[69] The goal of the Act was to eventually eliminate Indian "status" through assimilation.[70] The overall goal of the IRS system was to ensure Indigenous children were disconnected from their culture and identity to assimilate them into the dominant settler culture.[71] This goal was borne out of Canada's broader discriminatory policies aimed at eliminating Indigenous peoples as distinct groups with their own languages, cultures, governments, and identities, in an effort to acquire land and resources.[72]

Long before Canada became a nation, various churches were operating a small number of boarding schools for Indigenous children with limited government support.[73] In 1878, the Deputy Minister of the Department of the Interior, J.S. Dennis, advised Prime Minister MacDonald that the goal of the country's Indian policy should be self-sufficiency and total absorption into Canadian society, thereby eliminating the government-to-government relationship.[74] Dennis contended the best way to achieve these goals was the implementation of residential schools.[75]

Shortly thereafter, in January 1879, the federal government appointed Nicholas Davin to investigate the United States' implementation of boarding schools.[76] Davin's report argued that day schools were ineffective "because the influence of the wigwam was stronger than the influence of the school." He explained that if assimilation were to have any chance for success "we must catch [Indigenous children] very young" and they must be "constantly within the circle of civilized conditions."[77] Davin's answer was the implementation of residential schools in partnership with the churches.[78] Davin recommended a partnership with the churches because: (1) the churches would supplant existing spiritual and cultural beliefs with Christianity, and (2) it would be cheaper because religious teachers would not need to be paid as much as secular government employees.[79] Davin's recommendations, however, were not immediately implemented.[80]

Still, support for residential schools grew. Bishop Vital Grandin of

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[69] *See* Indian Act, S.C. 1876, c 18 (Can.).
[70] TRC EXEC SUMMARY, *supra* note 3, at 1.
[71] *Id.* at 2.
[72] SUFFER THE LITTLE CHILDREN, *supra* note 33, at 90.
[73] TRC EXEC SUMMARY, *supra* note 3, at 51.
[74] THE HISTORY PART I, *supra* note 66, at 153.
[75] *Id.*
[76] *Id.*
[77] NICHOLAS F. DAVIN, REPORT ON INDUSTRIAL SCHOOLS FOR INDIANS AND HALF-BREEDS 1 (1879).
[78] *Id.* at 12.
[79] TRC EXEC SUMMARY, *supra* note 3, at 59.
[80] THE HISTORY PART I, *supra* note 66, at 158.

Saint Albert, Alberta began advocating for residential schools with a letter to Prime Minister MacDonald in 1880 emphasizing the church schools' past successes of indoctrinating Indigenous youth.[81] Bishop Grandin put forth a proposal requesting that the government give the church's schools children as young as five for indoctrination, based on these successes.[82] He further proposed that the children be required to stay in these schools until they were married or reached twenty-one years of age.[83] As a result of these recommendations and Davin's investigation, in the spring of 1883, Parliament approved a request for $43,000 Canadian dollars to open three residential schools.[84] Prime Minister Macdonald cemented the creation of the residential schools by telling the House of Commons:

> When the school is on the reserve the child lives with its parents, who are savages; he is surrounded by savages, and though he may learn to read and write his habits, and training and mode of thought are Indian. He is simply a savage who can read and write. It has been strongly pressed on myself, as the head of the Department, that Indian children should be withdrawn as much as possible from the parental influence, and the only way to do that would be to put them in central training industrial schools where they will acquire the habits and modes of thought of white men.[85]

On December 1, 1883, the first government funded and built residential school opened in Battleford, Saskatchewan.[86] By 1900 there were a total of twenty-two industrial schools and thirty-nine residential schools in operation[87] and in 1920, an amendment to the Indian Act made attendance for children aged five to sixteen compulsory.[88]

The assimilation-based policies the schools were founded on were only further entrenched over the years. This entrenchment was evidenced when Deputy Minister of Indian Affairs, Duncan Campbell Scott, told a parliamentary committee, "[o]ur object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic."[89]

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[81] *Id.* at 159.
[82] *Id.*
[83] *Id.*
[84] *Id.* at 160–61.
[85] HC Deb (9 May 1883) (14) 1107–1108 (Can.).
[86] THE HISTORY PART I, *supra* note 66, at 161.
[87] *Id.* Industrial schools differed from residential schools in that they were intended to prepare Indigenous children for integration into Canadian society through education in the trades. Industrial schools were larger than the residential schools and tended to be located in urban areas, away from reserves. As time progressed there was no real distinction between the two institutions. TRC EXEC SUMMARY, *supra* note 3, at 57.
[88] Indian Act, S.C. 1920, c 50 (Can.); *see also* Vandna Sinha & Anna Kozlowski, *The Structure of Aboriginal Child Welfare in Canada*, 4 INT'L INDIGENOUS POL'Y J., Apr. 2013, at 3.
[89] TRC EXEC SUMMARY, *supra* note 3, at 3.

The policy for the residential school system never changed and was one of the most damaging contributions to the attempted destruction of Indigenous Peoples.[90]

The "mere" assimilationist approach, rather than an outright physical destructionist approach, at first glance may appear to demonstrate a lack of genocidal intent on behalf of the designers and implementers of the IRS system. However, again, this conceptual framing is a choice. As Schmid notes, the "special and socially constructed meaning of some members of the group has been found to imply that the perpetrator intended to destroy a sufficiently substantial part of a group."[91] Many of those who designed and implemented the IRS system evinced a clear desire to destroy Indigenous peoples as groups by assimilating them, including through means that caused the physical destruction (i.e. deaths) of a very substantial number of members of the group itself. It is hardly a normative stretch to conclude that this amounted to genocidal intent.

To truly understand the harms inflicted by Canada's settler government and its destructive assimilation policies and the forced transfer of Indigenous children to the IRS system, one must have some sense of what was lost. Indigenous peoples maintained close knit societies with their own languages, cultures, spirituality, and technologies; they were self-sufficient.[92] Our teachings emphasized an interconnectedness and interdependency between ourselves, the land, water, and all life forms, which culminated in a great respect for the world.[93] Indigenous spirituality and education were interwoven into everyday life.[94] Children learned how to live in balance and how to contribute to their community's survival through storytelling, participation in ceremony, and, most of all, by example.[95] The bond between child and parent was exceptionally strong.[96] There was an abundance of love.[97] The *wiingaashk* (sweetgrass) braid, where individual, family, and community are the three strands, were woven together, united and strong.

The following discussion recounts the experiences of many Indigenous children at IRSs that ultimately led to fraying of our *wiingaashk* (sweetgrass) braid, a severing of bonds with parents, community, culture, and identity. The traumas and horrors of spectacular violence began with the forcible transfer into the IRS system. Children as

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[90] SUFFER THE LITTLE CHILDREN, *supra* note 33, at 90.
[91] SCHMID, *supra* note 48, at 225–26.
[92] THEY CAME FOR THE CHILDREN, *supra* note 62, at 7.
[93] *Id.*
[94] *Id.* at 8.
[95] *Id.*
[96] *Id.*
[97] *Id.*

young as four were loaded into the backs of trucks, boats, and planes, often not comprehending the reasons, only seeing the chaos and fear in their parents' faces and questioning why they were being sent away.[98] Upon arrival, harm and violence began in earnest, with children being stripped of their clothes and bathed.[99] Long braided hair, which has spiritual significance, was cut short or in some instances completely shaved off.[100] Many children were not only stripped of their clothes but of their names as well, being provided with new Christian names.[101] All the children were given a number and a new wardrobe that corresponded to that number.[102] The number assigned to a child became that child's de facto name, as staff would often only use the number when referring to a child.[103] Siblings were separated from one another, depriving them of any means of support and love.[104] Additionally, children were forbidden from speaking their languages, essentially cutting off communication with one another.[105] Many children became crushed by the sheer loneliness of their situation.[106]

Day-to-day life in the schools was unbearable due to its strict regimentation and exceptionally harsh discipline.[107] Common forms of discipline included shaming, ear pulling, being hit with a strap or stick, withholding food, and solitary confinement that could last more than a week.[108] Children were disciplined for any number of infractions, including but not limited to, speaking their language, dancing, and singing.[109] Numerous students broke under the harshness and loneliness of their lives and attempted to run away.[110] Very few runaways made it home and those who did were often returned to the schools where they faced humiliation and punishment.[111] Most runaways were caught and returned to face the same degrading consequences, and some runaways suffered from or succumbed to the elements, with reports of severe

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[98] SUFFER THE LITTLE CHILDREN, *supra* note 33, at 98; *see* TRUTH & RECONCILIATION COMM'N CAN., SURVIVORS SPEAK: A REPORT TO THE TRUTH AND RECONCILIATION COMMISSION OF CANADA (2015).

[99] THEY CAME FOR THE CHILDREN, *supra* note 62, at 22.

[100] *Id.* The spiritual significance of the braid varies from nation to nation. Often signifying strength and a connection to the creator and mother earth. The three strands are often said to represent the mind, body, and soul.

[101] *Id.*

[102] *Id.*

[103] *Id.*

[104] *Id.* at 22.

[105] *Id.* at 23.

[106] *Id.* at 24.

[107] *Id.*

[108] *Id.* at 39–42.

[109] *Id.* at 39.

[110] *Id.*

[111] *Id.*

frostbite and even death.[112] Under the dominant conceptualization of genocide, the changing of children's names, cutting of their hair, and the prohibition on speaking their languages, singing, and dancing would not be considered genocide because these actions do not result in the immediate physical destruction of all or part of a protected group. But if we examine these actions through the theoretical lens of slow atrocity violence, we can see that these actions are a part of the processes that lead to the eventual destruction of the group, at least in part.

Physical, sexual, and emotional abuse were also commonplace, with complaints from parents, Chiefs, and former staff being made to IRS administrators and government authorities alike beginning as early as the 1880s.[113] Incidents of violence were too numerous to detail here but included beatings, burning or scalding children, forced sexual intercourse with persons in positions of authority, and public inspections of genitalia.[114] Some students were even subjected to medical experimentation aimed at studying the untreated effects of malnutrition.[115] The students also suffered from chronic malnutrition and were subjected to many diseases that ran rampant through the institutions, largely due to cramped living quarters, insufficient ventilation, and school administrators' refusal to turn sick students away or send them home.[116] The incidents of malnutrition and the issues with the living quarters can be directly linked to the severe underfunding of the IRS system, as the schools did not receive nearly enough money to support the children.[117]

Children at the IRSs also faced unduly harsh conditions because the institutions subjected the children to forced labor, which was also directly linked to the chronic underfunding referenced above.[118] Until the 1950s, the IRS system depended on child labor to survive and operated on a half-day system.[119] Half of the day was spent on learning while the other half was to be spent on "vocational training."[120] This "training" typically did not amount to any more than farm labor, cooking, cleaning, and sewing,

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[112] *Id.*
[113] THE HISTORY PART I, *supra* note 66, at 163.
[114] SUFFER THE LITTLE CHILDREN, *supra* note 33, at 117, 125.
[115] Ian Mosby, *Administering Colonial Science: Nutrition Research and Human Biomedical Experimentation in Aboriginal Communities and Residential Schools, 1942-1952*, 46 SOC. HISTORY 145 (2013).
[116] SUFFER THE LITTLE CHILDREN, *supra* note 33, at 105, 114.
[117] An example of this severe underfunding can be found in the funding scheme for the IRS in 1938; the Canadian government was only providing $180 Canadian dollars per child per year to IRSs in Manitoba, when it knew that the Children's Aid Society of Manitoba estimated that the absolute minimum of support needed for one child was $1 Canadian dollar a day or $365 Canadian dollars per year. THEY CAME FOR THE CHILDREN, *supra* note 62, at 18.
[118] *Id.* at 35–36.
[119] *Id.*
[120] *Id.*

and it did not actually prepare the children for life after leaving the institution.[121] Moreover, even the limited half-day of learning was not adhered to. Indian Commissioner W.A. Graham, after observing IRS sites in Saskatchewan and Alberta, concluded that the "boys are being made slaves of," and that the half day system was not being adhered to: Graham found that out of a forty-two day period the boys had only attended classes for nine days.[122] The girls were no better off; most spent early morning hours working in the kitchen and their afternoons sewing. [123]

The half day system made it harder for the children to earn a living after leaving the institution because they were not taught skills appropriate for success in their communities.[124] For instance, residential schools in British Columbia did not teach fishing skills, even though many Indigenous communities in the area operated fisheries.[125] Girls were often forced to remain at residential schools following graduation to arrange their marriages.[126] During this time the girls were forced to work full-time for no pay.[127] The fact that education was not prioritized and that the provided "training" did not actually prepare children for life after graduation further demonstrates that the overall goal of the IRS system was not to educate. Instead the goal was to assimilate and strip children of their Indigenous identities, effectively destroying the group through a combination of forms of abuse that were physical, emotional, and cultural in nature.

Perhaps most distressing were the high mortality rates throughout the IRS system, which had been known to the government almost since the system's inception.[128] Many students died while living at residential schools or shortly after returning home.[129] Duncan Campbell Scott noted that "fifty percent of children who passed through these schools did not live to benefit from the education which they received therein."[130] Canada's *Truth and Reconciliation Commission* noted that it is unlikely that the number of children that died in IRSs will ever be truly known, largely due to destroyed, missing, and inadequate records.[131] However,

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[121] *Id.*
[122] *Id.* at 36.
[123] *Id.* at 37.
[124] *Id.* at 35–36.
[125] *Id.*
[126] *Id.* at 37.
[127] *Id.* at 37.
[128] *Id.* at 29.
[129] *Id.*
[130] Tamara Starblanket, *Kill the Indian in the Child: Genocide in International Law*, *in* INDIGENOUS PEOPLES AS SUBJECTS OF INTERNATIONAL LAW 171, 196 (Irene Watson ed., 2017); 1 ROYAL COMM'N ON ABORIGINAL PEOPLES, REPORT OF THE ROYAL COMMISSION ON ABORIGINAL PEOPLES: LOOKING FORWARD, LOOKING BACK 330–31 (1996) (Can.).
[131] TRC EXEC SUMMARY, *supra* note 3, at 92.

through the use of official records, the *Truth and Reconciliation Commission* estimated that approximately 3,200 children died at IRSs.[132] It is now quite evident from the mapping and exhumation of mass graves at numerous former residential school sites that this number is substantially higher. At the time of writing, the death toll had surpassed 1,500 additional children, with many more former IRS sites still to be mapped and exhumed.[133] The physical and sexual violence inflicted on these children, and the numerous deaths that occurred as a result of the IRSs, fit neatly into dominant notions of genocide characterized by spectacular and overt forms of mass killings and violence.

The impetus for ending the IRS system did not originate out of its violence or abuses, but rather the government's determination that the children were not learning any valuable skills.[134] In the 1940s, the federal government began the long, drawn-out process of closing the schools and transferring the responsibility for Indigenous education to the provinces.[135] Not surprisingly, the move to a provincial education in mainstream schools still reflected the assimilationist policies that were the foundation and rationale undergirding opening the IRS system.[136] As

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[132] *Id.* at 93.

[133] It must be noted that some of these discoveries still need to be verified through exhumation and that since the Truth and Reconciliation Commission Report release in 2015, the Truth and Reconciliation archivists have added approximately 1,000 children to its official estimate. *See, e.g.*, Ka'nhehsí:io Deer, *Why It's Difficult to Put a Number on How Many Children Died at Residential Schools*, CBC NEWS (Sept. 29, 2021), http://www.cbc.ca/news/indigenous/residential-school-children-deaths-numbers-1.6182456; Newton, *supra* note 6; Ian Froese, *Team Investigating Brandon's Former Residential School for Graves Turns to Elders for Clues*, CBC NEWS (June 20, 2021), http://www.cbc.ca/news/canada/manitoba/team-investigating-brandon-former-residential-school-help-model-follow-1.6073118; Bryan Eneas, *Sask. First Nation Announces Discovery of 751 Unmarked Graves near Former Residential School*, CBC NEWS (June 24, 2021), http://www.cbc.ca/news/canada/saskatchewan/cowessess-marieval-indian-residential-school-news-1.6078375; Alex Migdal, *182 Unmarked Graves Discovered near Residential School in B.C.'s Interior, First Nation Says*, CBC NEWS (June 30, 2021), http://www.cbc.ca/news/canada/british-columbia/bc-remains-residential-school-interior-1.6085990; *More Than 160 Unmarked Graves Found near Another B.C. Residential School Site: Penelakut Tribe*, CTV NEWS VANCOUVER (July 12, 2021), http://bc.ctvnews.ca/more-than-160-unmarked-graves-found-near-another-b-c-residential-school-site-1.5506774; Bethany Lindsay & Bridgette Watson, *93 Potential Burial Sites Found near Former B.C. Residential School*, CBC NEWS (Jan. 25, 2022), http://www.cbc.ca/news/canada/british-columbia/williams-lake-st-josephs-residential-school-1.6326467; Brendan Ellis, *Sask. First Nation Discovers 54 Possible Unmarked Graves on Grounds of Former Residential Schools*, CTV NEWS REGINA (Feb. 15, 2022), http://regina.ctvnews.ca/sask-first-nation-discovers-54-unmarked-graves-at-the-site-of-former-residential-schools-1.5782102; Daniela Germano, *169 Potential Graves Found at Site of Former Residential School in Northern Alberta*, CBC NEWS (Mar. 1, 2022), http://www.cbc.ca/news/canada/edmonton/potential-graves-grouard-mission-kapawe-no-first-nation-1.6368924.

[134] THEY CAME FOR THE CHILDREN, *supra* note 62, at 18.

[135] *Id.* at 18–19.

[136] *Id.* at 19.

stated in the 1967 *Hawthorn Report*, "[s]chool integration represents the first step toward the dissolution of most reserves, because education makes it possible for the Indians to adapt themselves to the White Canadian's way of life."[137]

During the fifty-year period (1946-1996) it took to ultimately shut down the residential school system, the system saw its highest enrollments, with the number of students totaling 10,000 in 1953.[138] This increase in enrolment may be attributable to the government's shift toward using most residential schools as child welfare facilities.[139] Almost forty percent of the 10,000 students enrolled in 1953 were placed there because the government had declared their parents neglectful and unfit.[140] The government was thus using "child welfare" to excuse its assimilationist violence. Around this time the government also removed the requirement for compulsory attendance.[141] By 1966, seventy-five percent of children enrolled in IRSs were from homes considered "unfit."[142] The families of children deemed "at risk" did not receive preventative support from the government or child welfare resources to help keep the children in their homes. Instead, children were simply removed.[143] The children being removed were often children of former IRS attendees that had not learned any parenting skills because they had been forcibly removed from their own familial homes.[144] In 1969, the government transferred responsibility for operating the IRSs away from churches and took full control.[145] The closures slowly continued, with the last three residential schools closing in the mid-1990s.[146]

The harm and violence perpetrated against these children has damaged their physical, mental, emotional, and spiritual selves.[147] These children lost their language, their cultures, and their very identities.[148] The forcible removals made many of these children enemies of their own people.[149] Shauna Troniak, a researcher for the Canadian government,

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[137] 2 M.-A. TREMBLAY, F.G. VALLEE & J. RYAN, A SURVEY OF THE CONTEMPORARY INDIANS OF CANADA: ECONOMIC, POLITICAL, EDUCATIONAL NEEDS AND POLICIES, 88 (H.B. Hawthorn ed., 1967).
[138] THEY CAME FOR THE CHILDREN, *supra* note 62, at 19.
[139] *Id.*
[140] *Id.*
[141] *Id.*
[142] *Id.*
[143] *Id.*
[144] SUFFER THE LITTLE CHILDREN, *supra* note 33, at 127, 132.
[145] THEY CAME FOR THE CHILDREN, *supra* note 62, at 19.
[146] *Id.*
[147] Starblanket, *supra* note 130, at 195.
[148] *Id.*
[149] *Id. "*As a result of the widespread forced indoctrination, Indigenous children have come to self-loath their identity and their Peoples and Nations. It has been demonstrated that forcibly removing children can make them enemies of their own people. The children do not remember

characterizes the harmful effects:

> The traumas of physical and sexual abuse, social and emotional dislocation, and cultural loss have manifested, for many survivors and their communities, in after effects such as substance abuse, violence, and family breakdown. Many survivors' descendants have experienced and continue to experience inter-generational traumas as a result of this unresolved trauma.[150]

Intergenerational trauma is a common manifestation in many atrocity and post-atrocity societies, further substantiating claims that the IRS system was a form of genocide.[151] One of the most far-reaching effects of the IRS system has been the destruction of the ability to parent.[152] As former students became parents, family dysfunction grew, creating destructive patterns that were passed on to successive generations.[153] Many survivors expressed to the *Truth and Reconciliation Commission* that they did not know how to be a parent.[154] One survivor asked "[h]ow are we supposed to know how to be a parent when you don't have any guidance from anybody? All I had in my life was anger."[155] Residential schools did not provide children with much-needed familial models, much less the loving and culturally appropriate ones they had been forcibly removed from.[156] Instead, the IRS system doled out punishment, abuse, and oppression.[157]

This loss of parenting and the perpetuation of inter-generational trauma is but one example of the obscured and invisible forms of the slow atrocity process which the international community's current

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why they should have a mutual beneficial relationship with Mother Earth. Indigenous Peoples' original languages are fundamental to the national identities on Great Turtle Island. The young ones are forcibly 'civilized' and consumed into the 'predatory colonial body politic' and come to identify with the colonizing language rather than their own languages. An effect is that Indigenous Peoples enter into colonial processes that terminate their national identity." *Id.*

[150] SHAUNA TRONIAK, PUB. NO. 2011–76-E, ADDRESSING THE LEGACY OF RESIDENTIAL SCHOOLS (2011), http://publications.gc.ca/collections/collection_2011/bdp-lop/bp/2011-76-eng.pdf (Can.).

[151] *See* BREAKING INTERGENERATIONAL CYCLES OF REPETITION: A GLOBAL DIALOGUE ON HISTORICAL TRAUMA AND MEMORY (Pumla Gobodo-Madikizela ed., 2016); Brent Bezo & Stefania Maggi, *Living in "Survival Mode:" Intergenerational Transmission of Trauma from the Holodomor Genocide of 1932-1933 in Ukraine*, 134 SCO. SCI. & MED. 87 (2015); Alissa Der Sarkissian & Jill D. Sharkey, *Transgenerational Trauma and Mental Health Needs Among Armenian Genocide Descendants*, 18 INT'L J. ENV'T RSCH. & PUB. HEALTH, no. 19, 2021, http://doi.org/10.3390/ijerph181910554.

[152] SUFFER THE LITTLE CHILDREN, *supra* note 33, at 132; *see* THE LEGACY, *supra* note 16, at 11–39.

[153] SUFFER THE LITTLE CHILDREN, *supra* note 33, at 127.

[154] THEY CAME FOR THE CHILDREN, *supra* note 62, at 79.

[155] *Id.* at 79 (quoting George Amato a victim of the IRS system).

[156] SUFFER THE LITTLE CHILDREN, *supra* note 33, at 136–37.

[157] *Id.*

conceptualization of genocide ignores. This harm is a direct result of the FTC and inevitably leads to the destruction of the group albeit at a slower rate. Increased child removals, performed by the child welfare system of Indigenous children are a direct result of residential school system's destruction of the ability to parent. Tamara Starblanket neatly summarizes this cyclical dynamic when stating that "[t]he government invokes the traumatic parenting patterns it created that lead to the massive and widespread removals of the child welfare system."[158]

III. CONTINUING ATROCITY: THE "SIXTIES SCOOP"

Despite the continued FTC and the continuation of assimilationist policies and rationales that underscored the IRS system in the "Sixties Scoop" era, dominant notions of what constitutes genocide or atrocity would not recognize the harms committed. In contrast to the harms perpetrated in the IRS system, the deaths, violence, and harms produced in this era do not generally conform to spectacular eruption of mass violence, but rather result from overlapping processes that attack the groups' identity and destroy it slowly through less visible means. State sanctioned removals of Indigenous children did not cease with the phasing out of residential schools. Such removals not only did not cease, but even during the heyday of the schools, child welfare removal processes operated side by side with school policies.

Child welfare policies continued to allow for the increased removal of Indigenous children from their homes and communities, placing them in non-Indigenous households at alarming rates.[159] In 1947, the Canadian Welfare Council and the Canadian Association of Social Workers came before the Senate and House of Commons advocating for changes to the Indian Act that would permit provincial governments to provide health, child welfare, and education services on-reserves.[160] Their efforts were successful, at least to some extent, because in 1951 the Indian Act was amended to include Section 88, which authorized the removal of Indigenous children by provincial child welfare agencies.[161] However, the amendment did not provide funding to support the expansion of provincial

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[158] *Id.* at 98.
[159] *See* RCAP VOL. 3, *supra* note 1, at 23.
[160] Holly A. McKenzie, Colleen Varcoe, Annette J. Browne, & Linda Day, *Disrupting the Continuities Among Residential Schools, the Sixties Scoop, and Child Welfare: An Analysis of Colonial and Neocolonial Discourses*, 7 INT'L INDIGENOUS POL'Y J., Apr. 2016, at 1, 6.
[161] MARILYN BENNETT, FIRST NATIONS FAM. & CARING SOC'Y OF CAN., FIRST NATIONS FACT SHEET: A GENERAL PROFILE OF FIRST NATIONS CHILD WELFARE IN CANADA 2, http://fncaringsociety.com/sites/default/files/docs/FirstNationsFS1.pdf (citing Natural Parents v. Superintendent of Child Welfare (1976), 60 D.L.R. 3d 148 (S.C.C.) (Can.)).

authority, and it was not until Aboriginal Affairs and Northern Development Canada (AANDC) started to provide federal funds that the scope of provincial agencies expanded onto reserves.[162]

The AANDC funding paved the way for the continuation of mass removals of Indigenous children from their families and communities. This time, the government forcibly transferred the children into non-Indigenous foster and adoptive homes.[163] This era of rapid escalation in Indigenous child welfare removals began in the 1950s and lasted through the 1980s, a process later described as the "Sixties Scoop" by Patrick Johnston.[164] The term reflects the significant increases in Indigenous child removals during the 1960s and the fact that the children were literally "scooped" from their families and communities, often without their knowledge or consent.[165] Often, these children were never returned.[166]

The "Sixties Scoop" was not the result of one specific policy or child welfare program.[167] It was a continuation of the Canadian government's broader assimilationist policy through a new set of legal processes. Indeed, the gradual phasing out of the IRS system, which began in 1969 in the wake of sustained protests, coincided with the escalation of child removals.[168] As the *Truth and Reconciliation Commission* stated, "Canada's child-welfare system has simply continued the assimilation that the residential school system started."[169] Following in the footsteps of the IRS system, non-Indigenous social workers entered Indigenous homes and communities believing that the "only hope for the salvation of the Indian people lay in the removal of their children."[170] No consideration was given to the potential long-term effects on either the children or their communities.[171] Much like the rationalizations for the IRS system, child welfare programs and policies ignored and devalued Indigenous

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[162] VANDNA SINHA ET AL., ASSEMBLY OF FIRST NATIONS: ONTARIO, KISKISIK AWASISAK: REMEMBER THE CHILDREN. UNDERSTANDING THE OVERREPRESENTATION OF FIRST NATIONS CHILDREN IN THE CHILD WELFARE SYSTEM 7 (2011) http://cwrp.ca/publications/kiskisik-awasisak-remember-children-understanding-overrepresentation-first-nations.

[163] *See id.*

[164] *Id.* Patrick Johnston was a program director at the Canadian Council on Social Development when he authored *Native Children and the Child Welfare System* (1983). He first wrote about the topic in an article entitled *Indigenous Children at Risk* in 1981. Patrick Johnston, *Revising the "Sixties Scoop" of Indigenous Children*, POL'Y OPTIONS (July 26, 2016), http://policyoptions.irpp.org/magazines/july-2016/revisiting-the-sixties-scoop-of-indigenous-children.

[165] Sinclair, *supra* note 17, at 66.

[166] *See id.*

[167] *Id.* at 66–67.

[168] *See* Kona Keast-O'Donovan, *Convicting the Clergy: Seeking Justice for Residential School Victims Through Crimes Against Humanity Prosecutions*, 45 MANITOBA L.J. 42, 44–45 (2022).

[169] TRC EXEC SUMMARY, *supra* note 3, at 138.

[170] Sinclair, *supra* note 17, at 67.

[171] McKenzie, Varcoe, Browne, & Day, *supra* note 160, at 7.

conceptualizations of what constitutes a family as well as their established practices for child rearing.[172] For instance, the role of grandparents, extended family, and community in raising children was ignored in favor of the Eurocentric view that parents are solely responsible for raising children.[173] Indigenous practices of allowing children to learn by experience were framed as "lax parenting" and became justification for removal.[174]

Further complicating matters were the jurisdictional disputes that arose between the provincial and federal governments in which both levels attempted to shift financial responsibility for Indigenous child welfare programs to the other.[175] The federal government argued that it was only financially responsible for on-reserve programs and services, while the provincial government contended that the federal government is constitutionally responsible for all Indigenous peoples.[176] These jurisdictional disputes persist to this day and often result in inadequate funding models.[177] Joyce Timpson, a social worker, prepared a report for the Royal Commission on Aboriginal Peoples ("RCAP")[178] that offered significant evidence indicating that combining: (1) the federal government's funding for First Nations children's in-care costs; (2) the lack of federal funding for preventive measures; and (3) the provinces' resistance to employing preventive measures inevitably results in increased removals.[179]

It is estimated that over 11,000 children were removed during the "Sixties Scoop" which lasted from roughly the late 1950s until the early 1990s.[180] In some Indigenous communities, up to one third of their child population was removed, and by the 1970s, one in three Indigenous children were forcibly transferred to adoptive or foster homes.[181] In

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[172] *See* RCAP VOL. 3, *supra* note 1, at 10.
[173] 1 TRUTH & RECONCILIATION COMM'N CAN., CANADA'S RESIDENTIAL SCHOOLS: THE HISTORY, PART 2 1939-2000, THE FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION OF CANADA 150 (2015).
[174] *Id.*
[175] TRC EXEC SUMMARY, *supra* note 3, at 190.
[176] *Id.*
[177] *See, e.g.*, Cindy Blackstock, *(Editorial) Indigenous Child Welfare Legislation: A Historical Change or Another Paper Tiger?*, 14 FIRST PEOPLES CHILD & FAM. REV. 5 (2019), http://fpcfr.com/index.php/FPCFR/article/view/367 [hereinafter *Blackstock Editorial*].
[178] The Royal Commission on Aboriginal Peoples ("RCAP") was mandated to investigate and propose solutions to the challenges affecting the relationship between Aboriginal peoples (First Nations, Inuit, Métis Nation), the Canadian government and Canadian society as a whole. *Royal Commission on Aboriginal Peoples*, LIBR. & ARCHIVES CAN., http://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/royal-commission-aboriginal-peoples/Pages/introduction.aspx (last visited Feb. 27, 2023).
[179] *See* RCAP VOL. 3, *supra* note 1, at 24.
[180] Sinha & Kozlowski, *supra* note 88.
[181] *Id.*; Sinclair, *supra* note 17, at 66.

Saskatchewan alone, eighty to ninety percent of Indigenous status children were forcibly transferred to non-Indigenous homes during a four year period in the late 1970s and early 1980s.[182] In some cases, the mass removals required the hiring of buses because of the sheer numbers of children being taken out of the communities.[183] Between 1971 and 1981, seventy to eighty-five percent of the Indigenous children who were adopted were placed in non-Indigenous households.[184] Moreover, Indigenous children were significantly overrepresented in the adoption system: By 1980, twelve percent of the children in "care"[185] were identified as Indigenous, despite the fact that Indigenous children only accounted for two percent of Canada's total population.[186]

Throughout this era, it was common practice to advertise on television and newspapers that Indigenous children were available for adoption.[187] Provincial child welfare agencies were placing Indigenous children up for adoption in other provinces and even other countries, and rarely were children placed in their communities or within Indigenous households.[188] Canada used the *Jay Treaty*,[189] notably a treaty which Canada refuses to recognize, to facilitate the forcible transfer of Indigenous children to homes in the United States.[190] Indigenous children from Canada predominantly ended up in Louisiana, Alabama, Mississippi and other southern states.[191] Some of these children were actually sold to couples and some of these couples only wanted the children for labor purposes.[192] Many of these adoptive or foster parents perpetuated Canadian assimilationist attitudes and held racist beliefs about Indigenous peoples and their cultures that in turn negatively impacted the children in their care.[193]

In removing an Indigenous child, the destructive effects are

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[182] FALLON ET AL., *supra* note 17, at 15.
[183] Cindy Blackstock, Nico Trocme, & Marlyn Bennett, *Child Maltreatment Investigations Among Aboriginal and non-Aboriginal Families in Canada*, 10 VIOLENCE AGAINST WOMEN, Aug. 2004, at 1, 3.
[184] SINHA ET AL., *supra* note 162, at 7.
[185] The term "in care" refers to children in the care of child welfare agencies for the purpose of protecting them from neglect or abuse. RCAP VOL. 3, *supra* note 1, at 22.
[186] SINHA ET AL., *supra* note 162, at 7.
[187] Sinclair, *supra* note 17, at 67.
[188] *See* Nico Trocme, Della Knoke, & Cindy Blackstock, *Pathways to the Overrepresentation of Aboriginal Children in Canada's Child Welfare System*, 78 SOC. SERV. REV. 577, 579 (2004).
[189] A treaty that allows Indigenous peoples to freely move across borders established in 1783 and later ratified by the United States in 1794. Treaty of Amity, Commerce, and Navigation, U.K.-U.S., Nov. 19, 1794, 8 Stat. 116.
[190] Sheldon Rosenstock, *Jay's Treaty and Indigenous Immigration*, FIRST NATIONS DRUM (July 11, 2019), http://www.firstnationsdrum.com/2019/07/jays-treaty-and-indigenous-immigration.
[191] Johnston, *supra* note 164.
[192] *See* McKenzie, Varcoe, Browne, & Day, *supra* note 160, at 7.
[193] *Id.*

compounded and significantly more traumatic because the child is not only removed from their parents, but also removed from their extended family, community, and culture.[194] During the era of the "Sixties Scoop" many child welfare experts were expressing the general belief that the mere act of removing a child, regardless of race or ethnicity, from their parents was inherently destructive.[195] In certain cases, children did need to be removed from their homes, and while some children were placed in loving adoptive homes, the fact remains that these children were removed from their culture, thereby losing their very identities.[196] Transracial adoption studies provide further validation of these damaging effects: Although transracial adoption on the whole does not tend to produce any adverse effects, transracial adoptions involving Indigenous children consistently result in adverse outcomes.[197] One of these studies asked parents whether they thought their Indigenous child would be able to identify with their Indigenous culture. Disturbingly, one couple indicated that "it was unlikely their child would identify with their culture because there is no contemporary American Indian culture."[198] The damage from this type of erroneous belief would necessarily translate into a loss of culture and identity.[199] These slow processes that produce loss of culture and identity are examples of the invisible atrocities overlooked by and not encapsulated in the dominant notions of genocide and atrocity.

Similar to residential school survivors, many survivors of the "Sixties Scoop" report being neglected and abused physically, emotionally, sexually, and spiritually.[200] Therefore, it should come as no surprise that the children were similarly affected, with many running away, becoming ashamed of their culture, experiencing drug and alcohol addiction, becoming involved with the criminal justice system, and dealing with mental health problems and high suicide rates.[201] Intergenerational trauma affects the children of those taken during the "Sixties Scoop" just as it affects the children of IRS survivors,[202] providing further substantiation that the "Sixties Scoop" should be considered a continuation of the atrocity that began with the IRS system. In fact, the damage wrought by

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[194] *Id.*
[195] RCAP VOL. 3, *supra* note 1, at 23–24.
[196] Johnston, *supra* note 164.
[197] Sinclair, *supra* note 17, at 65.
[198] *See id.* at 70.
[199] *See id.* at 66.
[200] McKenzie, Varcoe, Browne, & Day, *supra* note 160, at 7.
[201] THEY CAME FOR THE CHILDREN, *supra* note 62, at 80.
[202] *See* Peter W. Choate, Taylor Kohler, Felicia Cloete, Brandy CrazyBull, Desi Lindstrom, & Tatoulis Parker, *Rethinking* Racine v. Woods *from a Decolonizing Perspective: Challenging the Applicability of Attachment Theory to Indigenous Families Involved with Child Protection*, 34 CAN. J.L. & SOC. 55, 65 (2019).

child removals leads some researchers to argue the child welfare systems' forcible transfers of Indigenous children causes substantially more damage than the residential school system because children in the residential school system at least had the limited comfort of being with other Indigenous children; children in the IRS system knew who their parents were and that they were from an Indigenous community.[203] On the other hand, the child removed through the child welfare system is alone and isolated from all they once knew.[204] Cheam First Nation Chief Ernie Crey contrasts the damage between the IRS and child welfare systems:

> Children stayed in an aboriginal peer group; they always knew their First Nation of origin and who their parents were, and they knew that eventually they were going home. In the foster and adoptive care system, aboriginal children typically vanished with scarcely a trace, the vast majority placed until they were adults in non-aboriginal homes where their cultural identity, their legal Indian status, their knowledge of their own First Nation and even their birth names were erased, often forever.[205]

The destructive and damaging effects of the "Sixties Scoop" are far-reaching, stripping apprehended children of their culture, their identities as Indigenous peoples, their mental and physical health, and their ability to parent, thereby perpetuating the effects of the IRS system and ensuring the damage will continue to affect future generations.[206] This era led to a further severing of bonds with parents, community, culture, and the child's identity, further fraying of our *wiingaashk* (sweetgrass) braid. Under a process-based understanding of genocide, it would be easy to see the slow genocide that began with the IRS system has continued with the "Sixties Scoop." In contrast to the dominant conceptualization, the process-based understanding of genocide acknowledges that more banal forms of violence result from discriminatory and assimilationist policies and that those policies inevitably lead to the destruction of at least part of the group. Despite the FTC being included as one of the base crimes, issues inevitably arise regarding whether genocidal intent exists. Again, as noted previously, the "mere" assimilationist approach, rather than an outright physical destructionist approach, at first glance may appear to demonstrate a lack of genocidal intent on behalf of the designers and implementers of the Indigenous child welfare system. However, again, this conceptual framing is a choice.

Indigenous communities were not blind or ignorant to the

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[203] *Id.*
[204] *Id.*
[205] SUFFER THE LITTLE CHILDREN, *supra* note 33, at 133.
[206] *See* McKenzie, Varcoe, Browne, & Day, *supra* note 160, at 7.

continuation of destructive assimilationist policies and harms perpetrated by the Canadian and provincial governments through child welfare programs, and they resisted. In 1960, Indigenous resistance to child welfare programs began emerging – likely fueled by both the passage of the *Canadian Bill of Rights* and gaining the right to vote in 1961.[207] However, social workers and others involved in the child welfare system often whole-heartedly believed they were doing what was in the best interests of the children.[208] To quote the *Royal Commission on Aboriginal Peoples,* "[t]he road to hell was paved with good intentions and the child welfare system was the paving contractor."[209] While the good intentions of actors within the system do nothing to minimize the moral and legal culpability of the system's architects, these "good intentions" helped slow reforms, as it would be twenty years before any substantial changes to the system were implemented.

Eventually, the increasing resistance to the child welfare system's forced transfers of Indigenous children to non-Indigenous communities combined with the evidence of both the scale of the removals and the resulting damage to Indigenous children, families, and communities began to produce systemic changes.[210] For the first time, in 1981, the Canadian government authorized an Indigenous organization to deliver its own child welfare services.[211] In the following years, two publications drew further attention to the mass removals and the non-Indigenous placements: in 1983 *Native Children and the Child Welfare System* by Patrick Johnston (wherein the term "Sixties Scoop" was coined) and in 1985 Justice Edwin Kimelman's report on Manitoba's child welfare practices entitled *No Quiet Place*.[212] The Johnston research presented the first statistics confirming concerns, including the overrepresentation of Indigenous children, and validated what Indigenous peoples had been saying for years.[213] Justice Kimmelman's report provided a "harsh condemnation" of some of Manitoba's child welfare policies.[214] Together, these two publications led to a moratorium being placed on the adoption of Indigenous children by non-Indigenous parents in Manitoba in 1985, and other provinces quickly followed suit.[215] However, no moratorium was placed on the underlying removals. It is generally accepted that it was

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[207] Sinclair, *supra* note 17, at 67.
[208] RCAP VOL. 3, *supra* note 1, at 26.
[209] *Id.*
[210] SINHA ET AL., *supra* note 162, at 7.
[211] RCAP VOL. 3, *supra* note 1, at 26.
[212] Sinclair, *supra* note 17, at 68.
[213] RCAP VOL. 3, *supra* note 1, at 22.
[214] Sinclair, *supra* note 17, at 68.
[215] *Id.*

around this time, in the early 1980s, that the "Sixties Scoop" era ended.[216]

Subsequently, the transfer of child welfare responsibilities to Indigenous communities and agencies increased throughout the 1980s, with a total of thirty organizations attaining authorization by 1986.[217] During this same period, provincial child welfare legislation was changing to reflect the need for consultation with Indigenous communities in the planning and delivery of services, and, as a result, most child welfare legislation now includes special provisions.[218] In 1986 however, the Canadian government placed a moratorium on the transfer of child welfare responsibilities to Indigenous organizations, citing the need for a national child welfare policy.[219] In 1991, the moratorium ended with the implementation of the Indigenous and Northern Affairs Canada (INAC), the federal government's national child welfare policy, and Directive 20-1, a new funding model.[220] The funding model was implemented despite concerns expressed by Indigenous communities that it was inadequate.[221] The Canadian government also conditioned the transfer of child welfare responsibilities to Indigenous agencies with the requirement that these agencies operate under provincial child welfare laws.[222] This requirement restricts the amount of change that can be made to removal processes.[223] Despite these drawbacks, Indigenous run child welfare agencies began to increase steadily.

By 2008, 125 Indigenous child welfare agencies had been formed.[224] Many of these Indigenous agencies developed and implemented practices that incorporate Indigenous traditional conceptualizations of family and child rearing, which focus on prevention versus the need for removals.[225] These agencies have also instituted placement protocols, prioritizing placement with extended family first, then with members of their Indigenous community, and finally, if neither of these is possible, placement with a member of another Indigenous community. Consideration of non-Indigenous placement only occurs if all else fails.[226]

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[216] *See, e.g.*, Erin Hanson, *Sixties Scoop*, UNIV. OF B.C.: INDIGENOUS FOUND., http://indigenousfoundations.arts.ubc.ca/sixties_scoop (last visited Feb. 13, 2023).
[217] SINHA ET AL., *supra* note 162, at 7.
[218] Sinha & Kozlowski, *supra* note 88, at 8–9; *see Pre-Tribunal Timeline: History of First Nations Child and Family Services Funding*, FIRST NATIONS CHILD & FAM. CARING SOC'Y, http://fncaringsociety.com/pre-tribunal-timeline-history-first-nations-child-and-family-services-funding (last visited Feb. 13, 2023) [hereinafter *The Timeline*].
[219] *The Timeline*, *supra* note 218.
[220] *Id.*
[221] *Id.*
[222] *Blackstock Editorial*, *supra* note 177, at 5–6.
[223] *See* SINHA ET AL., *supra* note 162, at 7.
[224] *Id.*
[225] *Id.* at 8.
[226] RCAP VOL. 3, *supra* note 1, at 26.

Levels of authority vary between agencies, with some only providing support services to existing government services and others achieving full authority to provide all child welfare services on-reserve and in some jurisdictions off-reserve.[227] As discussed previously, these efforts are limited by the constraints of provincial child welfare laws and hampered by insufficient funding, failing to produce significant reductions in the overrepresentation of Indigenous children in care. Thus, the slow and banal processes of destruction persist as well as the harms produced through them.

IV. DISCRIMINATORY TREATMENT AND THE ATROCITY PERSISTS: THE "MILLENNIUM SCOOP"

Establishing Indigenous child welfare agencies is certainly a step in the right direction, but the overrepresentation of Indigenous children involved in removals is still rising.[228] It is estimated that three times as many Indigenous children are in care in this era of forcible transfers than there were in the peak of the IRS system.[229] The term "Millennium Scoop" has been used to describe the continued mass removals of Indigenous children from their homes and communities.[230] Currently, less than eight percent of children under fourteen years of age in Canada are Indigenous, yet they comprise over half of the children in foster care.[231] Recent statistics reveal that 299,217 investigations related to child maltreatment were conducted in Canada in 2019.[232] Of these, 45,918 involved Indigenous children, which equates to roughly fifteen percent of all investigations.[233] Indigenous children are thus almost four times more likely to be involved in a maltreatment investigation and just over seventeen times more likely to be removed from their home during that investigation.[234] Earlier findings from 2008 indicate Indigenous children are four times more likely to have an investigation opened than their non-

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[227] Trocme, Knoke, & Blackstock, *supra* note 188, at 579.
[228] TRC EXEC SUMMARY, *supra* note 3, at 184.
[229] FALLON ET AL., *supra* note 17, at 4.
[230] *Id.* at 15.
[231] *Reducing the Number of Indigenous Children in Care*, INDIGENOUS SERV. CAN. (Dec. 16, 2022), http://www.sac-isc.gc.ca/eng/1541187352297/1541187392851.
[232] FALLON ET AL., *supra* note 17, at 15. Defining child as anyone under fifteen years of age. Defining maltreatment as (1) physical abuse, (2) sexual abuse, (3) neglect, and (4) emotional maltreatment. In addition, child welfare agencies in Canada increasingly treat "exposure to intimate partner violence" as a distinct form of maltreatment and investigate situations in which there is no allegation/suspicion that maltreatment has already occurred, but in which the concern is that, because of factors like caregiver substance abuse, there is substantial risk that a child will be maltreated in the future. *Id.* at 26–27.
[233] *Id.* at 7.
[234] *Id.* at 3.

Indigenous counterparts.[235] These investigations often involve alleged neglect, which is directly correlated to poverty, inadequate living conditions, domestic violence, and substance abuse.[236] All of these factors are legacies of the IRS system, the "Sixties Scoop," and the broader longstanding atrocity perpetrated against Indigenous peoples through assimilationist practices and slow, mutually overlapping processes. In the words of "Millennium Scoop" survivor Reina Foster:

> The child welfare system today is a form of cultural genocide for Indigenous children. Just like the residential school system, as well as the Sixties Scoop, today's child welfare system is known as the Millennial Scoop. And it's the same legacy as to what the goals of residential schools were.[237]

Notably, the factors correlated to the alleged neglect—poverty, inadequate living conditions, domestic violence, and substance abuse—could be addressed with culturally appropriate support and preventative measures.[238] Canada's *Truth and Reconciliation Commission* found that inadequate funding for preventative measures and culturally appropriate supports for Indigenous children and their families are significant contributors to the continuation of mass removals.[239] "Millennium Scoop" survivor, Jaye Simpson, aptly sums up the situation:

> It's my firm belief that the foster care system is working the way it's designed: as a machine to destroy Indigeneity. And we need to look at restructuring it. And we need to look at how the system is removing Indigenous children from Indigenous mothers … An Indigenous mother may receive $600 [Canadian dollars ("CD")] on welfare to feed her children. The foster care system can say that's not good enough, take the child and put it in a home, and give that home $1800 [CD] to feed those children. So they're giving more money to non-Indigenous parents to feed Indigenous children, and they're not supplying Indigenous parents with any support.[240]

At the start of the new millennium, Indigenous child welfare programs for children in government care funded by the federal government were

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[235] Sinha & Kozlowski, *supra* note 88, at 2–3.
[236] *Id.*
[237] *The Millennium Scoop: Indigenous Youth Say Care System Repeats Horrors of the Past*, CBC RADIO (Jan. 25, 2018), http://www.cbc.ca/radio/thecurrent/a-special-edition-of-the-current-for-january-25-2018-1.4503172/the-millennium-scoop-indigenous-youth-say-care-system-repeats-horrors-of-the-past-1.4503179.
[238] TRC EXEC SUMMARY, *supra* note 3, at 187.
[239] *Id.* at 189–90.
[240] *The Millennium Scoop: Indigenous Youth Say*, *supra* note 237.

receiving, on average, twenty-two percent less funding than their non-Indigenous counterparts.[241] In 2005, the *Wen:de Report*, providing a more in-depth analysis, determined the funding gap was actually thirty percent.[242] Compounding the disproportionate funding is the lack of parity in the way federal funding is distributed to the provinces.[243] For instance, Indigenous child welfare, in mainstream agencies, in the province of Ontario is funded very differently than the province of British Columbia. In Ontario, mainstream agencies are reimbursed 93 cents for every dollar spent for maintenance costs and services on-reserve.[244] By contrast, in British Columbia, mainstream agencies only receive payment for estimated, rather than actual, maintenance costs.[245] As discussed previously, disparate funding practices directly contribute to continued harmful removals of Indigenous children from their families, communities, and culture, perpetuating the atrocity.

The discriminatory funding and administration of Indigenous child welfare has been the subject of domestic litigation. In 2007, Cindy Blackstock, Executive Director of the First Nations Child and Family Caring Society, filed a complaint with the Canadian Human Rights Tribunal (CHRT), alleging the federal government had failed "to provide equitable and culturally based child welfare services to First Nations children residing on reserve."[246] The federal government responded by spending millions of dollars in order to have the complaint dismissed for technical reasons.[247] Failing to have the complaint dismissed, the Canadian government resorted to numerous illegal tactics in an attempt to make the case go away.[248] For example, Canada's Privacy Commissioner found that government officials breached the Privacy Act when investigating the complainant. In addition, the CHRT found that the government purposefully withheld evidence, and also ruled that the government had illegally retaliated against Cindy Blackstock for filing the complaint.[249] In 2016, almost ten years after the initial complaint was filed, the CHRT affirmed the allegation finding that the Canadian government's "failure to provide equitable and culturally based child welfare services to First Nations amounted to discrimination,"[250] and led

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[241] Blackstock, *supra* note 14, at 293.
[242] *Id.*
[243] Sinha & Kozlowski, *supra* note 88, at 11–12.
[244] *Id.* at 12.
[245] *Id.*
[246] Johnston, *supra* note 164.
[247] Blackstock, *supra* note 14, at 322.
[248] *Id.* at 288–89.
[249] *Id.* at 322
[250] Johnston, *supra* note 164.

to "trauma and harm to the highest degree, causing pain and suffering."[251] The CHRT ordered the Canadian government to reform its child welfare programs, including by making changes to funding calculations.[252] The CHRT also ordered that the federal government compensate each child affected by the discriminatory funding to the on-reserve child welfare system after January 1, 2006, as well as each guardian the child was removed from (as long as the child was not removed for abuse). The compensation consisted of $40,000 Canadian Dollars, the maximum allowable under the *Canadian Human Rights Act*.[253]

Far from over, the battle raged on for another six years. During this time, various Indigenous groups filed class-action lawsuits against the Canadian government based on allegations similar to those dealt with by the CHRT.[254] Additionally, approximately twenty noncompliance orders were issued to the Canadian government by the CHRT.[255] In early October of 2019, the Canadian government sought judicial review of the 2016 CHRT order and a stay of that order in federal court.[256] The federal government claimed it was not opposing compensation or denying that discriminatory funding practices existed, but it believed that the CHRT did not have jurisdiction to order specific compensation like in a class action suit.[257] The federal government also argued that the CHRT erred when it found the discriminatory funding was ongoing.[258] The federal court disagreed with the federal government, upholding the CHRT order on September 29, 2021.[259] On October 29, 2021, the federal government announced its decision to appeal the federal court ruling, while also entering into settlement negotiations.[260] Actions speak much louder than words. It is evident from the Canadian government's actions throughout this litigation that they fail or refuse to recognize the extent of the harms their discriminatory and assimilationist policies have inflicted on

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[251] Olivia Stefanovich, *A 14-year fight over First Nations Child Welfare Could End Today–Here's What You Need to Know*, CBC NEWS (Oct. 29, 2021), http://www.cbc.ca/news/politics/canadian-human-rights-tribunal-case-explainer-1.6228999.
[252] Porter & Isai, *supra* note 13.
[253] Stefanovich, *supra* note 251.
[254] Porter & Isai, *supra* note 13.
[255] *Id.*
[256] Olivia Stefanovich, *Trudeau Government Seeks Judicial Review of Tribunal Decision to Compensate First Nations Kids*, CBC NEWS (Oct. 4, 2019), http://www.cbc.ca/news/politics/human-rights-tribunal-liberal-child-welfare-appeal-1.5308897.
[257] R. v. First Nations Child and Fam. Caring Soc'y of Can., [2021] F.C. 969, ¶¶85–87 (Can.).
[258] *Id.*
[259] *Id.*
[260] Olivia Stefanovich & Nick Boisvert, *Ottawa Will Appeal Court Ruling on Indigenous Child Welfare But Say It's Pursuing a Compensation Deal*, CBC NEWS (Oct. 29, 2021), http://www.cbc.ca/news/politics/ottawa-federal-court-ruling-appeal-decision-child-welfare-1.6229567.

Indigenous children, families, and communities. This failure or refusal to recognize these harms further enables the slow atrocity process to continue.

While the legal battle was raging, new federal Indigenous child welfare legislation was being developed.[261] On November 30, 2018, the Minister of Indigenous Services Canada ("ISC") announced that the federal government would be introducing "historic" Indigenous child welfare legislation in the upcoming legislative session.[262] The purported purpose of the legislation is to recognize Indigenous peoples' inherent jurisdiction over child welfare.[263] ISC claims that the legislation was the product of extensive collaborations "with national, regional[,] and community organizations representing First Nations, Inuit and Métis as well as Treaty Nations, self-governing First Nations and Inuit, provinces and territories, experts and people with lived experience, including Elders, youth[,] and women."[264] The resulting *Act respecting First Nations, Inuit and Métis children, youth and families* (the "Act") entered into force on January 1, 2020.[265]

Many Indigenous stakeholders have remained skeptical that the legislation will be able to adequately address the pitfalls of the current Indigenous child welfare system, identifying the following issues as insufficiently addressed in the Act: (1) jurisdictional disputes between federal, provincial, and territorial governments; (2) a lack of guaranteed funding; and (3) a lack of actual, meaningful consultation with Indigenous stakeholders.[266] Given the long history of jurisdictional disputes with regards to Indigenous child welfare, decades of discriminatory funding practices, and the refusal to accept Indigenous knowledge and child rearing practices as valid, the identified issues with the legislation seem to indicate that the federal government has missed the point yet again.

Finally, in early 2022, the Canadian government announced that a forty-billion-dollar settlement had been negotiated and an agreement in principle was in place. The settlement money will be split, with half of the funds designated to pay children and families who were harmed by the

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[261] *Blackstock Editorial*, *supra* note 177, at 5–8.
[262] *Id.*
[263] NAIOMI WALQWAN METALLIC, HADLEY FRIEDLAND, & SARAH MORALES, THE PROMISE AND PITFALLS OF C-92: AN ACT RESPECTING FIRST NATIONS, INUIT, AND METIS CHILDREN, YOUTH AND FAMILIES 4 (2019), https://yellowheadinstitute.org/bill-c-92-analysis.
[264] *Reducing the Number of Indigenous Children in Care*, *supra* note 231.
[265] Kylee Wilyman, *A Nation of Hollow Words: An Act Respecting First Nations, Inuit and Métis Children, Youth and Families*, SASK. L. REV. (2020), http://www.lawsociety.sk.ca/uncategorized/a-nation-of-hollow-words-an-act-respecting-first-nations-inuit-and-metis-children-youth-and-families.
[266] *See id.*; *Blackstock Editorial*, *supra* note 177, 5–6; METALLIC, FRIEDLAND, & MORALES, *supra* note 263, at 7–8.

unequitable and discriminatory funding practices, and half being used to improve child welfare services for Indigenous communities.[267] At the time of writing, the author is not aware of any concrete measures that will be implemented to improve Indigenous child welfare using the compensation, or if the Canadian federal government will dictate how the funds should be allocated and thereby again assume they know what is best for Indigenous children, their families, and communities.

As noted above, the "Millennium Scoop" is simply a continuation of the long, slow attritive genocide process that began with the spectacular and overt forms of violence and death that were commonplace in the IRS system. This is not to say that deaths and violence are not still occurring in the Canadian child welfare system, it is just that they do not rise to the same level of spectacle required to garner our attention and satisfy the current notion of genocide.[268] These occurrences are viewed as tragic, but not genocide. The forced transfer of children has only increased since the "Sixties Scoop" and so have the more obscured forms of violence like inter-generational trauma. All of these harms end at the same place – the inevitable destruction of at least part of the protected group.

V. CONCLUSION

The *wiingaashk* (sweetgrass) braid, where Indigenous individual, family, and community are the three strands woven together, united and strong remained intact prior to settler-colonialism and implementation of the IRS and child welfare systems that forcibly removed Indigenous children from their homes, communities, and culture. These and other systems of settler-colonial violence and oppression have left this braid frayed, though unbroken. The extent of the damage done to Indigenous communities, however, will continue to be minimized and decontextualized so long as the Canadian government, the settler community, and the international community choose to see only the spectacular forms of atrocity violence committed against Indigenous peoples and communities as genocide, including during the IRS system era. By focusing myopically on horrific instances of violence and mass graves, and holding true to the dominant conceptualization of genocide,

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[267] Tumilty, *supra* note 12.

[268] Kenneth Jackson, *Deaths as Expected: Inside a Child Welfare System Where 102 Indigenous Kids Died Over 5 Years*, APTN NAT'L NEWS (Sept. 25, 2019), http://www.aptnnews.ca/national-news/inside-a-child-welfare-system-where-102-indigenous-kids-died-over-5-years; Nicholas Frew, *4 in 5 People Who Died Last Year While Receiving Child Welfare in Alberta Were Indigenous*, CBC News (Aug. 9, 2020), http://www.cbc.ca/news/canada/edmonton/alberta-child-intervention-services-deaths-data-1.6540218.

we risk ignoring other banal and less visible forms of atrocity violence, such as the "Sixties" and "Millennium Scoops" and thus, cannot hope to identify and understand all the forces that have contributed to the fraying of our sweetgrass braid. If we do not know what has frayed the braid, we cannot possibly re-braid it and restore the strength that has been stolen from us.

Both the findings of the *Truth and Reconciliation Commission* and the *National Inquiry into Missing and Murdered Indigenous Women and Girls* support claims that the Canadian government has perpetrated genocide through their assimilationist policies that have led to the construction of, among other things, the IRS and child welfare systems.[269] Canada's *Truth and Reconciliation Commission* stated: "Canada's child-welfare system has simply continued the assimilation that the residential school system started."[270] These reports also acknowledge the trauma experienced by generations of children and families because of systemic harm that is still ongoing today.[271] However, for decades, little has been done to stop slow, long-standing processes of anti-Indigenous atrocities such as those attendant to child welfare practices. Too much attention has been placed on the horrifying and spectacular instances of neglect, physical and sexual violence, and death, with not enough focus on the discriminatory processes, mutually reinforcing policies, and indirect attempts to destroy Indigenous peoples through the forcible transfer of their children.

Through the lens of slow atrocity violence, we can properly see and make connections between these less recognized and oft-backgrounded traumas and violence that spanned the Canadian IRS and Indigenous child welfare systems. We can see the racist and assimilationist policies that devalued Indigenous knowledge and child rearing practices, that formed the underlying rationale for the IRS and Indigenous child welfare systems, and that inevitably led to the less recognized harms and violence that result from the loss of parenting skills: neglect, and the physical and emotional abuse of future generations. The loss of the Indigenous family unit, the loss of culture, and the loss of individual identity can all be seen as oft ignored and backgrounded injuries that resulted from these systems' infliction of inter-generational trauma. All of these more banal forms of trauma and violence contributed to the attempted slow destruction of Indigenous peoples as a whole and the inevitable fraying of our sweetgrass braid.

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[269] *See generally* TRC EXEC SUMMARY, *supra* note 3; NAT'L INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS, A LEGAL ANALYSIS OF GENOCIDE (2019) [hereinafter MMIWG REPORT].

[270] TRC EXEC SUMMARY, *supra* note 3, at 186.

[271] *See id.*; MMIWG REPORT, *supra* note 269, at 17.

By framing atrocity violence as a slow process, one spanning over a century in this instance, we can also readily identify the common causes that led to ever-increasing forcible transfers of Indigenous children that continue to this day: assimilationist policies and ways of thinking, ignorant and inaccurate beliefs that Indigenous peoples are unfit parents, the discriminatory funding of both the IRS and child welfare systems including the refusal to support preventative measures, and the persistent denial and minimization of these harms through jurisdictional disputes. Destroying Indigenous peoples and cultures has been a multifaceted process executed through violence and forced removals of Indigenous children, one that continues to this day.

Although the Canadian government has explicitly disavowed its assimilationist policies and agenda, it is clear from the issues identified with the recently passed Indigenous child welfare legislation that the Canadian government either fails or refuses to see and acknowledge these overlapping connections and the causes of this attritive atrocity process, despite the findings of its own Commissions, tribunal, and courts. If the Canadian federal government continually fails to address the jurisdictional disputes and lack of adequate funding that persist and continues to make no meaningful effort to consult with Indigenous peoples and take their recommendations and knowledge seriously, then all we are left with is more empty words. By refusing to acknowledge and view current child welfare challenges facing Indigenous communities as interwoven with longstanding anti-Indigenous atrocity processes, there can be no understanding of what is at stake for affected communities and no development of appropriate remedies. Choosing not to see the IRS and child welfare removal systems as intertwined with atrocity processes impedes much needed social healing and prevents the rebraiding of our sweetgrass.