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MODERN HORROR IN THE FIRST WORLD – THE STOLEN CHILDREN OF CANADA AND AUSTRALIA

ABSTRACT

Cultural genocide poses a particular threat to the world's indigenous peoples, even now, that the displacement of Native children from their families and their placement in institutions by the Australian and Canadian governments is well documented. Bodies of children barely old enough to talk, hundreds of unmarked graves, more and more statements by survivors, all shocked and shaped Canada in 2021. It is now clear that the common policy of the Australian and Canadian governments were policies of assimilation, with residential schools constituting an assault on Aboriginal children, an assault on Aboriginal culture, leaving the children scarred for life. As a result of such discoveries, members of the stolen generations have filed lawsuits in both Canada and Australia. In the field of education policy and cultural genocide, relying on comparative case studies whilst using qualitative methods and considering key factors such as the environment at the premises, the targeted group, as well as litigation and liability, this article seeks to find the similarities and differences between the boarding school systems of the two countries. Thus, by the end of reading this article, the reader will know that the answer to the question of whether or not the Australian and Canadian system of targeted discrimination can be classified as cultural genocide is yes. The work approaches the topic primarily from a social science perspective rather than as a legal essay; however, it uses legal documents to support its aim of raising awareness and disseminating knowledge.

Keywords: genocide, aboriginal, indigenous, residential school, Canada, Australia

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INTRODUCTION

Racial justice is still something that is yet to be achieved all over the world even in the 21st century. Many individuals have been subjected to inhumane prejudice, and suffered individual discrimination, and some still do. According to the European Commission, racial discrimination is

“any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.²

Besides the European Commission, the United Nations also addresses the problem, with its mission continuing to be focused on combating racism and eliminating racial discrimination, and international organisations, whether universal or regional, governmental or non-governmental are called upon to cooperate in the fight against the tyranny and oppression of racism, racial segregation, apartheid and genocide, so that all peoples of the globe might live in peace.³

The term cultural genocide, a form of racial discrimination, is appropriate to describe the aboriginal experience in Canada and Australia. The recent discovery of nearly 1,300 unmarked graves⁴ at four former residential schools in western Canada has startled and horrified Canadians. This number will only grow as more inquiry is conducted, considering fresh gravesites being discovered every year. Indigenous people have long anticipated such discoveries, as the legacy of Canada's Indian residential school system has haunted their families and lives. However, the news has reopened old wounds. Stories of pupils digging graves for their peers,

² European Commission s. a.

³ United Nations 1978.

⁴ MOSBY–MILLIONS 2021.

unmarked burials on school grounds, and students who disappeared in mysterious circumstances have long been told by survivors of residential schools. The poor treatment of Aboriginal people in Canada is similar to that of Indigenous Australians, Australia's Stolen Generation, the generations of children removed under various government policies. The Truth and Reconciliation Commission of Canada, as well as the authors of the Australian report entitled *Bringing Them Home*, the name given to the final report of the *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* conducted by the Human Rights and Equal Opportunity Commission (now called the Australian Human Rights Commission), have received and collected many of these experiences, these being examined by this article.

GENOCIDE

The word genocide was first used by Raphael Lemkin,⁵ a Polish lawyer, in his book entitled *Axis Rule in Occupied Europe*. The word itself consists of two parts, the Greek prefix being *genos*, meaning tribe, and the Latin suffix *cide*, meaning killing. It was partly in response to Nazi practices of systematic slaughter of Jews during the Holocaust that Lemkin developed the term, and partly in response to previous events in history where actions were targeted against a certain group based on their religion or race.⁶ It was also Raphael Lemkin, who later took part in a campaign to have genocide classified and codified as an international crime, which happened in 1946, being recognised under international law by the United Nations General Assembly. Two years later, it was codified as an independent crime in the 1948 *Convention on the Prevention and Punishment of the Crime of Genocide*, also known as the Genocide Convention. "The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to

⁵ LEMKIN 1944: XI.

⁶ United Nations s. a.

punish.”⁷ As of 2024, this Convention has been ratified by 149 states, and it has been stated numerous times by the International Court of Justice, that it incorporates concepts that are part of general international customary law, meaning that even if States have not ratified it, as a matter of law, they are all bound by the premise that genocide is a crime punishable under international law.⁸

Article 2 of the Convention contains the definition of genocide.

“In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group;
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group;
- e) Forcibly transferring children of the group to another group.”⁹

This definition is reproduced verbatim in Article 6 of the Rome Statute of the International Criminal Court (ICC), Article 2 of the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and Article 4 of the Statute of the International Criminal Tribunal for Rwanda (ICTR).¹⁰ According to the Convention, for an offender to be guilty of genocide, the group targeted, intended to be destroyed must fall under one of the following four categories: national, ethnic, racial, or religious group.

⁷ United Nations 1948: 1.

⁸ United Nations s. a.

⁹ United Nations 1948: 1.

¹⁰ LINGAAS 2015: 1.

COMPARING CANADIAN AND AUSTRALIAN
RESIDENTIAL SCHOOLS

As some governments, including Rwanda, are being forced to address the unpleasant reality that genocide is still not eliminated today due to indigenous peoples increasingly asserting allegations of past and continuing maltreatment through international legal procedures, the two above-mentioned cases, these being Australia's "Stolen Generation", and Canada's "Hidden Holocaust", specifically draw our attention to this problem. The forceful removals of Australian Aboriginals were classified as genocide by an Australian government study, while similar allegations have been made in studies concerning native experiences in Canada's residential schools.¹¹ Both in Canada and in Australia, forcible removal of First Nations children from their homes was part of the Assimilation strategy, which was founded on the misguided assumption that assimilation would improve the lives of First Nations people. The development of residential schools, which were typically run in collaboration with Christian missions with the stated goal of Christianising indigenous peoples, was the primary technique for attaining this integration. As Australia and Canada progressively come to terms with the harsh truth of the impact of European settlement on indigenous peoples, and with more and more evidence coming to light, we can see that the two situations are quite close to one another. Examining them deeper, how similar are they? This article will compare the two from three perspectives, these being the establishment of the schools, as well as the conditions and the targeted group of assimilation.

CANADA

Looking at the targeted group in Canada, it was the First Nations, Métis and Inuit children who were removed due to the government policies concerning

¹¹ INNES 2010.

the integration of Aboriginal peoples into the community. According to Statistics Canada, the three groups defined as the Aboriginal peoples of Canada in the Constitution Act, 1982, Section 35 are First Nations (North American Indian), Métis or Inuk (Inuit). A person may be in more than one of these three specific groups.¹² According to the 2016 Census, there are about 1.67 million persons in Canada who identify as Aboriginal. They are the fastest growing population in Canada, whose number grew by 42.5% between 2006 and 2016, and also the youngest population, about 44% were under the age of 25 in 2016.¹³ The central goals of Canada's Aboriginal policy for over a century have been to eliminate Aboriginal governments, ignore Aboriginal rights, terminate the Treaties, and cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious and racial entities in Canada through a process of assimilation. Against them, residential schools were only one of the elements in a larger agenda of "aggressive assimilation" and colonialism.

As far as the establishment is concerned, in Canada, because competing European powers sometimes required armed alliances, full-scale efforts to "civilise" aboriginal peoples did not commence until British control was established in 1812. At a conference in Orilla, Ontario in 1846, the government decided to fully commit to Indian residential schools.¹⁴ A few years later, the British North America Act stipulated that the new colonial powers were responsible for "Indians and lands reserved for the Indians" when Canada became an independent country in 1867. The policy used was "save the man; kill the Indian." In other words, for Native peoples to become fully "human", they would have to lose their Native cultures,¹⁵ the goal was to completely assimilate the Indians into the society. The idea was to purposely disconnect children from their families' and communities' educational, cultural and spiritual influences. The first residential schools were built in New France by the catholic missionaries to offer care and education, however, due to the fact that First Nations people were mainly

¹² Statistics Canada s. a.

¹³ Statistics Canada 2017.

¹⁴ SMITH 2009: 8.

¹⁵ SMITH 2009: 2.

self-sufficient, it was difficult to compel them to attend school. Until the 1950s, the federal government and mainline Canadian churches collaborated closely to administer most schools in Canada. By 1896, the Canadian Government had financed 45 church-run residential schools, of which the Catholic Church ran nearly 60%, the Anglicans ran around 30% and the Presbyterian, Methodist and United Churches ran the majority of the rest. Residential schools were also seen as a way of attempting to integrate Aboriginal people into the growing North American economy, but this was not the case, as they were also unfortunately seen as a way of forcing integration exposing them to a virulent and harsh form of Christianity.¹⁶

The impact of these institutions on First Nations students, families and communities was disastrous. The schools were known for their exposure to white settler culture. Isolated from their peers, youngsters were instilled with a mindset that was entirely strange to them. Children grew ashamed of being indigenous since education was solely in English and aboriginality was widely mocked in the curriculum. The kids were frequently crammed into small rooms, fed insufficient amounts of food, refused required medical treatment, and were mistreated mentally, physically and sexually. “The physical abuse was every day”, one survivor, John Jones says. “And being assaulted verbally – if I didn’t do things the way that they wanted me to do, I was called a dirty, stupid Indian that would be good for nothing.”¹⁷ Roulette, another survivor said the following about her first day of school: “A nun silently handed me a pencil and paper and, when I didn’t respond quickly enough, punched me in the face. There was blood everywhere. I didn’t know what I did wrong. I just cried and cried, and then I had to clean up all the blood.”¹⁸ This system and its structure elicited one of two responses: passivity or aggression. The rewards for those who were “passive” were quite beneficial. Acceptance of the foreign language, religion and culture was rewarded in a number of ways, including more positive attention from the adults in authority, as well as perks such as better treatment, food and

¹⁶ CHARLES-DEGAGNÉ 2013: 344.

¹⁷ CHANG et al. 2021.

¹⁸ MEHLER PAPERNY 2021.

clothes. It has to be pointed out that this behaviour did not mean that the student did not experience any form of abuse, but much less than those who responded to the system with aggression.¹⁹ These students broke the norms of the institutions, occasionally refusing to participate in classroom or vocational teaching, stealing food to supplement the meagre institutional meals, fleeing in terror and frustration, and sometimes attempting to burn the schools down. When detected, these young people were typically brutally punished since they were considered a major danger to individual staff members' authority as well as the general purpose of integration and Christianisation.²⁰ About the meals, survivors reported the food was inedible and insufficient. Children would attempt to eat it and end up throwing up, then were forced to taste their own vomit.²¹ The sanitary conditions at these schools were also very poor, with fatality rate within them being above 50% as early as November 1907, according to the Canadian press.²² In File Hills Industrial school in Saskatchewan, 69% of students died of tuberculosis in one decade at the turn of the century. A medical inspector carried out an investigation and warned of outbreaks, but his report was largely ignored.²³

For a very long time, these stories were all hidden from Canadians, and from the whole world. It was later the Commission, which was established by the Indian Residential Schools Settlement Agreement, who spent six years traveling across Canada to hear from Aboriginal people who had been taken from their families as children, forcibly if necessary. More than 6,000 people testified before the Commission, the majority of whom had lived at the institutions as children. The reports of that experience are often difficult to believe as events that could have occurred in a country like Canada, which has long prided itself on being a model of democracy, peace and prosperity. As of January 2022, more than 1,300 unmarked graves have been confirmed or suspected so far, but this number will only rise

¹⁹ CHARLES-DE GAGNÉ 2013: 348–349.

²⁰ CHARLES-DE GAGNÉ 2013: 348–349.

²¹ MEHLER PAPERNY 2021.

²² The Truth Commission into Genocide in Canada 2001.

²³ SMITH 2009: 9.

with more investigation being done, as each week there are news of new gravesites being found. The revelations have shocked a country that has endured centuries of widespread and systemic mistreatment of Indigenous peoples. “This was a crime against humanity, an assault on a First Nation people”, as told by Chief Bobby Cameron of the Federation of Sovereign Indigenous Nations, the provincial federation of Indigenous groups.

AUSTRALIA

Aboriginal Australians may very well be the world’s oldest human group, having come from Africa on boats 70,000 years ago, according to one theory.²⁴ They can be divided into two groups: Aboriginal peoples, who are descended from those who already lived on the island when Britain colonised it in 1788, and Torres Strait Islander peoples, who are descended from residents of the Torres Strait Islands, a group of islands off the coast of Queensland, Australia. Legally, “Aboriginal Australian” is recognised as “a person of Aboriginal or Torres Strait Islander descent who identifies as an Aboriginal or Torres Strait Islander and is accepted as such by the community in which he or she lives”.²⁵ The life of Aboriginals in Australia was similar to those of Canada. Victoria was the first state to establish legislation authorising the removal of Aboriginal children from their parents in the 1860s. Other states and territories soon followed, as did the federal government when it was founded in the early 1900s. Thousands of Aboriginal children were forcibly removed from their families, communities and culture for over a century, many never to be seen again. There is not a single Aboriginal and/or Torres Strait Islander community that has not been irreversibly impacted by this catastrophe, affecting 1 in 3 children.²⁶ Indigenous peoples and cultures were devastated by Australia’s colonisation: populations were decimated, traditional lands and means of self-sufficiency were taken, and government policies aimed

²⁴ BLAKEMORE 2023.

²⁵ BLAKEMORE 2023.

²⁶ The Australian Institute of Aboriginal and Torres Strait Islander Studies s. a.

at assimilation legitimised the separation of Indigenous children from their families so that they could grow up to be “white” Australians.²⁷

Living standards at Australian residential schools were terrible, minimal requirements essential to life were barely met. Physical labour was prioritised over education, and although nonindigenous children got five hours of instruction each day, indigenous children received two hours of education before being sent to work. Quoting one of the survivors on the topic of education,

“I wanted to be a nurse, only to be told that I was nothing but an immoral black lubra, and I was only fit to work on cattle and sheep properties [...] I strived every year from grade 5 up until grade 8 to get that perfect 100% mark in my exams at the end of each year, which I did succeed in, only to be knocked back by saying that I wasn’t fit to do these things [...] Our education was really to train us to be domestics and to take orders.”²⁸

Apart from the lack of education and opportunities, avoiding assigned chores frequently resulted in public humiliation, head shaving, and bread and water fasts. Children were often gathered together like animals and humiliated, their skin colours being evaluated for official records. The condition at the schools was so bad that students regularly ran away, many of whom committed suicide, or died in harsh geographical surroundings. Disease exposure and inadequate medical treatment were also distinguishing characteristics of the institutions, to the point that “Residential Schools endangered the bodies of aboriginal children through exposure to disease, over work, underfeeding and various forms of abuse.”²⁹ Quoting one of the survivors,

“I’ve seen girls naked, strapped to chairs and whipped. We’ve all been through the locking up period, locked in dark rooms. I had a problem of

²⁷ WOOD 2013.

²⁸ Commonwealth of Australia 1997: 148.

²⁹ FARGHER 2013: 67.

fainting when I was growing up and I got belted every time I fainted and this is belted, not just on the hands or nothing. I've seen my sister dragged by the hair into those block rooms and belted because she's trying to protect me [...]. How could this be for my own good? Please tell me.”³⁰

Furthermore, the institutions generally had poor physical infrastructure, and resources were insufficient to fix it or to make sure the children were decently clothed, nourished and housed. According to Doris Pilkington, author of the Australian book *Follow the Rabbit-Proof Fence*, the conditions were “more like a concentration camp than a residential school for Aboriginal children”.³¹ “There was no food, nothing. We was all huddled up in a room [...] like a little puppy-dog [...] on the floor [...]. Sometimes at night time we'd cry with hunger, no food [...]. We had to scrounge in the town dump, eating old bread, smashing tomato sauce bottles, licking them. Half of the time the food we got was from the rubbish dump.”

“It's a wonder we all survived with the food we got. For breakfast we got a bit of porridge with saccharine in it and a cup of tea. The porridge was always dry as a bone. Lunch was a plate of soup made out of bones, sheep's heads and things like that, no vegetables. For dinner we had a slice of bread with jam and a cup of tea. After our dinner we were locked up in a dormitory for the night.”³²

Every child in every placement was at risk of sexual exploitation and abuse, with girls being at more risk than boys. Citing Confidential evidence 679, from a man in Western Australia: “When I was at Castledare I was badly interfered with by one of those brothers. I still know the room [in the church]. I was taken, selectively taken, and I was interfered with by one of those brothers. And if you didn't respond in a way, then you were hit, you were hit hard. I never told anyone that.” Almost one-fifth (19%) of inquiry

³⁰ Commonwealth of Australia 1997: 139.

³¹ PILKINGTON 1996: 72.

³² Commonwealth of Australia 1997: 138.

witnesses who spent time in a facility said they were physically assaulted there.³³ Children at these institutions grew up without anyone to really care for them, anyone to love them, this leaving them scarred for life, and depressed. “I’ve often thought, as old as I am, that it would have been lovely to have known a father and a mother, to know parents even for a little while, just to have had the opportunity of having a mother tuck you into bed and give you a good-night kiss – but it was never to be” – said Tasmania, who was fostered at 2 months in 1936.³⁴ Removing the children from their parents also had a negative impact on their skills and learning. Separation can have an impact on a variety of abilities. Some developmental phases regress just momentarily, while others become melancholy for the rest of their lives. When the organisation of attachment behaviour is disrupted, it is more than likely to result in learning issues, poor ego integration, and substantial control fights with caregivers. Professor Beverley Raphael, an international trauma specialist, warned the Inquiry that many separated children would have issues in relationships because their feelings had been dulled as a result of the trauma they had experienced. Several witnesses described how this had affected them, as well as their unwillingness to trust people.

“One of the biggest ones is I cannot really love anyone no more. I’m sick of being hurt. Every time I used to get close to anyone they were just taken away from me. The other fact is, if I did meet someone, I don’t want to have children, cos I’m frightened the welfare system would come back and take my children.”³⁵

³³ Commonwealth of Australia 1997: 142.

³⁴ Commonwealth of Australia 1997: 155.

³⁵ Commonwealth of Australia 1997: 161.

WERE RESIDENTIAL SCHOOLS
INSTITUTIONS OF "GENOCIDE"?

The guilt of Australia is assessed under Article 2, subsection (e) and (b) of the United Nations Convention of the Prevention and Punishment of the Crime of Genocide 1948, while the state liability of Canada is assessed by Article 2, subsection (b) and (c). As stated previously, Article 2 of the Convention on Genocide defines "genocide" 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."³⁶

STATE LIABILITY OF AUSTRALIA

According to subsection (e), in order for the act to classify as genocide, the removal of children must have been forcibly accomplished, meaning that it was done by physical or mental compulsion, or without consent. Looking at the situation in both countries, this was definitely the case. In Australia, the testimony of Aboriginal tribes in *Bringing Them Home* illustrates the dread they faced: survivors tell of hiding their children beneath mats and shrubbery to avoid being apprehended by armed police. When children who had been concealed were discovered, there was frequently a physical confrontation, which was usually led by the mothers of the children. Furthermore, subsection (e) mentions the transferring of children of the group to another group, something that also happened with Australia's

³⁶ United Nations 1948: 1.

Stolen Generation. The main goal of the residential schools that aboriginal children were transferred to was breaking the bonds that bind Aboriginal children to their communities and ensuring that they “never drifted back to the black”.³⁷ “They changed our names, they changed our religion, they changed our date of birth, they did all that. That’s why today, a lot of them don’t know who they are, where they’re from.”³⁸ White Australians working for the church or the government re-parented, educated and cared for the children. Dr Brent Waters, a child and adolescent psychiatrist, has spoken with a number of people who have been forcefully taken in New South Wales.

“The people that I’ve talked to who were placed in white families were – and I haven’t seen any that were absolutely fulsome about their family experience, most of them had some reservations – things seem to have gone quite well until they got into the teenage years. Then they started to become more aware of the fact that they were different. Some of these were quite light kids, but nevertheless that they were different. And it was the impact of what peers were doing and saying which seemed to be most distressing to them. And sometimes their families didn’t deal with that very well. They were dismissive. ‘Look, the best thing to do is just forget you were ever Aboriginal’ or ‘Tell them that you came from Southern Europe’. To pass off what was obviously a difference in skin colour. But in none of those families was there a sense that one way to manage this situation was to recapture your sense of Aboriginality. There seemed to be no honour and dignity in being an Aboriginal, even if you’d been brought up by a family.”³⁹

Australia’s state liability can also be shown by subsection (b) of Article 2 of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide 1948.⁴⁰ The book *Bringing Them Home* describes the anguish endured by Aboriginal children whose parents never visited them and who were routinely told that the circumstances of their removals were that their mother couldn’t take care of them or had not wanted them. “Your family don’t

³⁷ FARGHER 2013: 62.

³⁸ Commonwealth of Australia 1997: 134.

³⁹ Commonwealth of Australia 1997: 136.

⁴⁰ United Nations 1948: 1.

care about you anymore; they wouldn't have given you away. They don't love you. All they are, are just dirty, drunken blacks."⁴¹ These children were scarred mentally. After being placed in state care, fostered or adopted out, or sent to work, a large percentage of Indigenous children were psychologically, physically and sexually assaulted. The facilities' living conditions were severe, with rigid regimens, and the children were frequently hungry and cold. There was little tenderness, but lots of corporal punishment. As punishments, children were lashed, beaten, thrown in dark locations, or tied up. Depression, anxiety, low self-esteem, post-traumatic stress and suicide are all widespread among the Stolen Generations, according to psychiatrists.⁴²

This act meets the definition of cultural genocide, the systematic destruction of traditions, values, language and other elements that make one group of people distinct from another. Children who were removed from their parents for an undetermined period of time had their hair cut off, were prohibited to speak their native language, and were given a number instead of a name. They could not practice any of their traditions and were constantly told to forget everything they knew about it, as it was something to be ashamed of.⁴³ Losing their language was one of the most devastating effects.

"It was like somebody came and stabbed me with a knife. I couldn't communicate with my family because I had no way of communicating with them any longer. Once that language was taken away, we lost a part of that very soul. It meant our culture was gone, our family was gone, everything that was dear to us was gone. When I finally met [my mother] through an interpreter she said that because my name had been changed, she had heard about the other children but she'd never heard about me. And every sun, every morning as the sun came up the whole family would wail. They did that for 32 years until they saw me again. Who can imagine what a mother went through?"⁴⁴

All of these conditions definitely support the state liability of Australia.

⁴¹ Commonwealth of Australia 1997: 135.

⁴² WOOD 2013.

⁴³ Commonwealth of Australia 1997.

⁴⁴ Commonwealth of Australia 1997: 113.

STATE LIABILITY OF CANADA

According to subsection (c), in order for the act to classify as genocide, it has to be “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part”, meaning the circumstances must be harsh enough to kill a significant portion of the targeted population.⁴⁵ *Prosecutor v. Akayeshu* is a case that clarifies the requirements that must be met to meet paragraph (c), while *Prosecutor v. Kayishema*⁴⁶ broadens this list, adding other elements to it. According to these two judgments, conditions include: bare subsistence diet, scarcity of medical supplies, as well as inadequate housing, hygiene and clothing.⁴⁷ Looking at the conditions of residential schools in Canada, this list of requirements is definitely met. When not obeying the laid-out rules, children experienced harsh forms of punishment, which very often lead to their deaths.

“Boys sometimes peed their bed, and the counselor would make us form two lines facing each other with our belt in our hands. And as each of the person that was being punished for peeing the bed [passed], we would have to whip them with our belt as they passed to the lines. I chose not to with my friends, and as a result, I had to go through that line and get whipped myself. And each time their punishment took place, I chose not to whip them, but to get punished with them” – John Jones, residential school survivor stated.⁴⁸

Many Indigenous children who were taken to residential schools never returned home, according to the Truth and Reconciliation Commission. Some perished of illnesses such as tuberculosis, while others died while attempting to flee, therefore subsection c), this being “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole

⁴⁵ United Nations 1948: 1.

⁴⁶ UNHCR 1999.

⁴⁷ UNHCR 1998.

⁴⁸ CHANG et al. 2021.

or in part” is definitely met. According to the Truth and Reconciliation Commission’s (TRC) report on Canada’s residential school system, up to 6,000 Indigenous children may have died in the 150 residential schools run by the Catholic and Anglican churches from the 1880s to 1996, and that is only a conservative measure. Since investigation is still ongoing to this day, this number is expected to rise significantly in the coming months, years. Furthermore, according to the report, living circumstances were no better than those in prisoner of war camps, with minimal clothes, sleeping on the ground, a maize and water diet, physical and sexual abuse, and wind-torn, structurally unstable school structures.⁴⁹ Quoting the Report, students were “treated like they were animals in a herd”, calling the whole experience “frightening, degrading, and humiliating”.⁵⁰ Children who died of sickness, children who committed suicide, and mysterious and unexplained deaths were also recounted to the Commission.⁵¹ When looking at subsection b), this being “causing serious bodily or mental harm to members of the group”, we can see that this exactly happened at these institutions. Phyllis Kretschmer, now 86, is a residential school survivor herself, and stated the following: “I received a strap along both hands and forearms. [...] Even more traumatic was witnessing an older relative being beaten on her bare bottom in front of everyone. Seeing the rage in the priest’s face as he struck my cousin repeatedly is a memory I can’t forget.”⁵² Quoting another survivor: “I am deaf in my right ear from being slapped in the ear and the head, and my left ear rings constantly.”⁵³ Apart from being beaten, children, as mentioned before in the section on conditions at Canadian residential schools, were often abused. As was told by Alsena, a survivor who was taught at the Blue Quills Indian Residential School near St Paul, Alberta, “I was molested by a nun.” In an interview with her, after long, heavy gasps and sobs, Alsena talks about the abuse, one instance in particular, when she was eight years old and being

⁴⁹ Truth and Reconciliation Commission of Canada 2012.

⁵⁰ Truth and Reconciliation Commission of Canada 2012: 11.

⁵¹ Truth and Reconciliation Commission of Canada 2012.

⁵² BENJOE 2021.

⁵³ BENJOE 2021.

washed by a nun.⁵⁴ Cultural genocide was definitely the situation at these institutions. It was clearly a systematic destruction of traditions, values, language and other elements. “We have been told that native culture was not good, and that our customs were no-good”, Alsená recalls.⁵⁵ Students were disciplined for speaking their mother tongue, everything was done in order to eradicate their native culture. All was done to destroy any memory left of their culture. All of the above-mentioned conditions definitely support the state liability of Canada.

SUMMARY

The Canadian and Australian state’s true goal was to integrate Aboriginal children by erasing their cultural identity and replace it with that of a white settler. In these circumstances, I conclude that the assimilationist aim carried out on such a large scale to destroy Aboriginal society as it existed historically fulfils the Convention of the Prevention and Punishment of the Crime of Genocide’s provisions, making this an act of direct cultural genocide in both countries. There was a direct intention to accomplish the goal effect of integrating Aboriginal people into white society, using boarding schools as the tool for destroying their own culture. The *mens rea* requirement is premised upon the idea that one must possess a guilty state of mind and be aware of his or her misconduct,⁵⁶ and the physical destruction has to have been planned, premeditated and purposefully inflicted. There is no argument on whether or not these requirements are met, it is clear they are. The infliction was intentional, the school circumstances were not by chance. The government knew about the conditions, knew about the death rates, knew about everything that was going on at these institutions. It was all part of one big plan, eradication of Aboriginal cultures. In Canada, Murray Sinclair, Chairperson for the Truth and Reconciliation Commission, stated in an interview that

⁵⁴ MORIN 2020.

⁵⁵ MORIN 2020.

⁵⁶ Cornell Law School s. a.

“mass graves, deaths, no surprise really, of course we knew”.⁵⁷ In Australia, it was all the same. They were aware that children were being abused, that no true education was being provided, and that the impact of these schools on children was horrible. The churches can justly be blamed for the everyday atrocities the children faced, but the federal government of both countries bears the ultimate responsibility for handing over education to churches without proper financing, accountability mechanisms, or monitoring.

The aforementioned meets the criteria of the Convention, demonstrating that Canada and Australia both perpetrated genocide against its indigenous peoples through the Residential Schools, and there is sufficient evidence to show this. The loss, sorrow and suffering that Aboriginal people have endured as a result of separation laws, policies and practices can never be repaid sufficiently. The loss of a child’s or parent’s love and devotion cannot be replaced. Children’s psychological, physical and sexual abuse by adults who saw them as part of a “despised race” cannot be fully compensated. These people in Australia and Canada have been scarred, scarred for life.

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