

The Convention on the Prevention and Punishment of Genocide and its relationship with Indigenous Australians

Criminology: linking theory, policy and practice

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Overview

- The Convention on the Prevention and Punishment of Genocide 1948
- Lemkin's definition vs. The UN definition
- Article 2(e)
- Intent
- Violence
- State crime
- Colonialism
- Genocide?
- Implications...

Convention on the Prevention and Punishment of Genocide

Adopted by resolution 260 (III) A of the United Nations General Assembly on 9 December 1948

Article 2

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

- a) Killing members of a group;
- b) Causing serious bodily or mental harm to members of a 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.

Article 3

The following acts shall be punishable:

- a) Genocide;
- b) Conspiracy to commit genocide;
- c) Direct and public incitement to commit genocide;
- d) Attempt to commit genocide;
- e) Complicity in genocide.

Lemkin's definition vs. The UN definition

The destruction of essential foundations of life of a group:	The destruction of a group in whole or in part:
political	national
social	ethnic
legal	racial
intellectual	religious
spiritual	
economic	
biological	
physiological	
religious	
moral	

Lemkin's definition vs. The UN definition continued

- UN definition provides a very narrow definition of genocide
- Soviet Union and China would not agree to sign off on the broader definition of genocide that included *politicide* and the United States would not agree to the concept of *cultural genocide*
- Lemkin's definition pertains to the destruction of the identity of a group, which can occur by the physical destruction of a group but not exclusively to the direct killing of a group (Curthoys and Docker 2001; Churchill 1997)

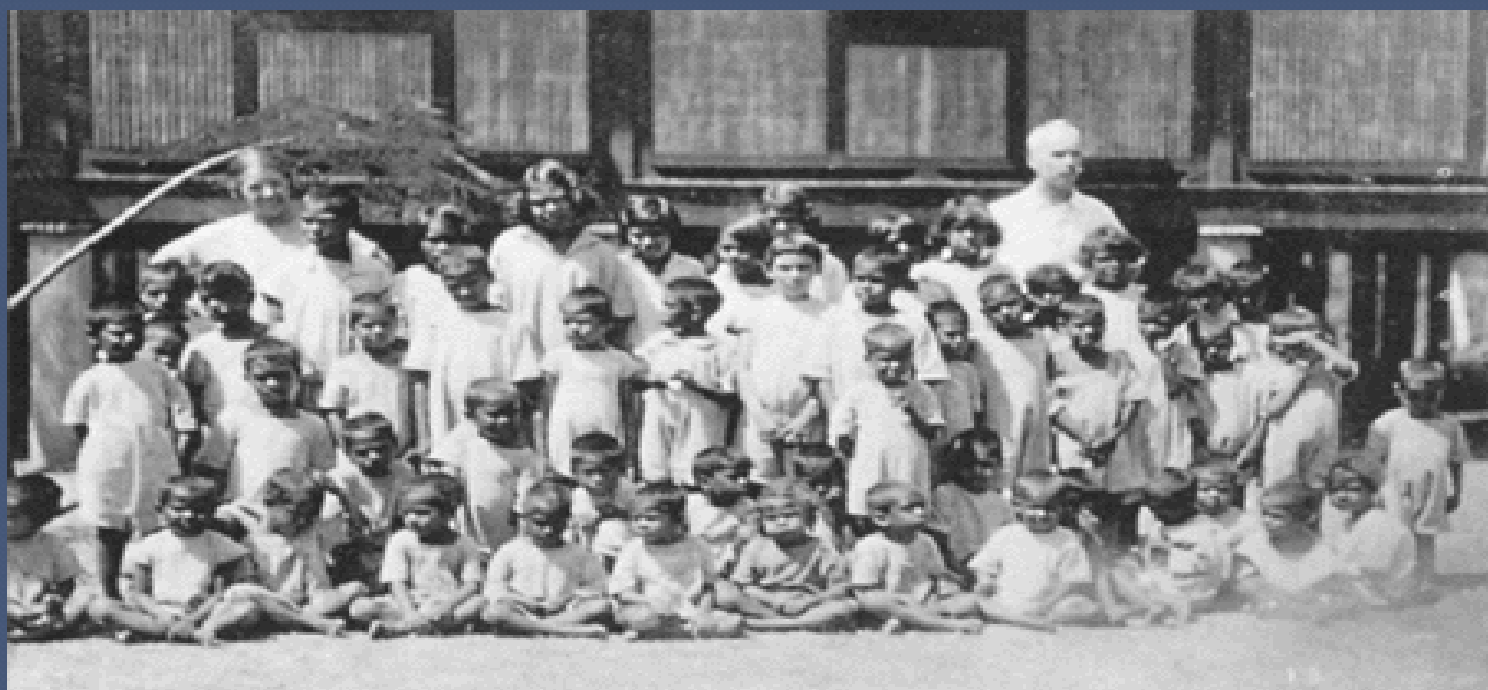
Article 2(e)

“Forcibly transferring children of the group to another group”

Evidence

- The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (NISATSIC) 1997
- The Inquiry found that fundamental safeguards which protected non-indigenous children were not in place when it came to Indigenous children.
- Components of forced removal: deprivation of liberty, deprivation of parental rights; abuses of power; breach of guardianship duties; and violations of human rights (Cunneen, 1999).
- NISATSIC interpreted that various Government policies articulated that Aboriginal children were to be removed from their families and become wards of the state and this constituted forced removal of children

The human face of forced removal



**“Kahlin Half-caste” Home, Darwin, 1928.
Photo from the National Archives of Australia.**

Intent

- Intent = complexity
- Due in part to a lack of clarity over a definition for intent. This is evident in Commonwealth, State and Territory laws, where the definition for intent differs in each jurisdiction.
- The Convention on the Prevention and Punishment of Genocide does not formally define intent
- Intent in the broadest sense:

“the planning and desire to perform an act”

Three schools of thought looking at *intent* in the context of genocide

- 1) Intent requires an overt articulation of an intention to destroy in whole or in part a particular group.
- 2) Intent can be overtly articulated or implicitly articulated; connected to the actions of one group against another, not the rhetoric (Churchill 1997).
- 3) The intent to destroy a particular group does not require any level of malevolence, it could be misguidedly interpreted as being in the “interests” of the particular group (Storey 1997; Cunneen 1999)

Violence

- ◉ The term genocide was 'coined' by Raphael Lemkin in 1944 in his pivotal text *Axis Rule in Occupied Europe*.
- ◉ The term is derived from the Greek word *genos* (tribe, race) and the Latin *cide* (killing).
- ◉ The discourse of genocide generally cannot separate violence from an act of genocide.
- ◉ Some academics believe it is inappropriate to suggest genocide can occur without violence
- ◉ Some believe it is a misrepresentation to suggest that explicit violence is necessary in invoking the term genocide
- ◉ The media has played an important role in creating a genocide consciousness and this centres around the holocaust



The collective memory of genocide:

violence

State Crime

- Genocide is far from a new act, predating the events of the Holocaust, however the acknowledgement that genocide is a crime of the state is relatively new.
- Discussions of genocide usually centre on acts by states that have violently attempted to “destroy in whole or in part” a particular group.
- It is vital to remember that although the definition of genocide is narrow *Article 3* stipulates that punishable under the Convention is more than genocide. The state is responsible for attempting genocide, conspiracy to commit genocide, direct and public incitement to commit genocide and complicity in genocide.
- How does state crime exist unless a state denounces itself as having broken the laws it put in place?

State Crime continued

- The laws/policies related to the various *Protection of Aborigines Acts* were gross violations of human rights.
- Australia played a pivotal role in the development of the Universal Declaration of Human Rights which came into affect in 1948.
- The policies directed at Aboriginal children are thematically contrary to the UNDHR and the Convention on the Prevention and Punishment of Genocide.
- However, Green and Ward (2004) do not believe that it is *helpful* to put what happened to the “Stolen Generation” and mass murder in the same category.

Colonialisation

- Terra nullius
- Confiscation of land
- Removing Aboriginal people from the land
- Introducing disease and alcohol
- Denying Aboriginal people the same rights as European settlers including: housing, wages, health care, education, lack of religious or cultural freedom
- Forced removal of children
- Australia, Canada, New Zealand, Americas all victims

Genocide?

- “To constitute an act of genocide the planned extermination of a group need not solely be motivated by animosity or hatred” (Lippman 1994; 22-23)
- The themes of Lemkin’s definition and the UN Convention are not the same, however the purpose is... NEVER AGAIN
- Criminology has not contributed enough to the discourse of genocide for a definitive answer to the question of genocide in Australia
- To look at forced removal in isolation makes this a particularly complicated area for society to digest and for criminology to tackle, however it is imperative that we persevere
- Criminology needs to engage further with postcolonial criminology

Implications....

- The implications of the policies of forced removal have been evident for decades and will continue to be evident for many years to come
- Indigenous Australians are over represented in every arm of the criminal justice system
- Research in criminology such as, juvenile justice, corrections, innovative court programs, therapeutic jurisprudence, post release programs, alcohol and illicit drugs, police programs, community crime prevention all have large components that focus on the involvement of the Indigenous population.
- Mental health implications have only just started to be explored

Success in the future is dependent upon
making peace with the past.