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A 385 Year Experiment to Erase a People: Intergenerational Acts of Genocide Against the Narragansett Indian Tribe by the United States of America and the State of Rhode Island

Taylor A. Dumpson

ABSTRACT

Since Roger Williams' arrival in Narragansett Territory in 1636, and his subsequent settlement of the Providence Plantations, the Narragansett Indian Tribe--the Indigenous people to this land--have faced a series of intergenerational atrocities, including attempted genocides. For generations, these heinous wrongs have not been corrected by state or federal courts, which have often compounded the harms against the Narragansett people. Although the American legal system has played a role in perpetuating the intergenerational harms experienced by the Narragansett people, these institutions also have the opportunity to be a part of the solution.

The Article examines the existing domestic legal framework for holding the United States accountable for acts of genocide, and its limitations, under 18 U.S.C. § 1091. The Article then explores the Narragansett Indian Tribe's historically tenuous relationship with the State of Rhode Island and the United States, through an examination of genocidal acts and formative events that have affected those governments' relationships with the Tribe. Finally, the Article suggests the use of restorative justice and reparations as a means bring accountability, reconciliation and justice.

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Thank you to my Mother, Grandmother, and the Ancestors, for providing me with the foundation. Without you, I could not be. Thank you, Bella, for your prayers, mentorship, and guidance. Thank you, Darlene, for your sharp eye and wisdom. Thank you, Jocelyn, for your direction and encouragement. In Memory of Kyle Linn Lamphere (Simonds Mauweesemum Sequettass), for your vision, support, and passion for passing on knowledge and culture to the next generation. *Kutaputush wutchee Nahahiganseck ninnimissinûwock.* Thank you to the Narragansett People.

An ode to our collective resilience, strength, and perseverance.

INTRODUCTION

Narragansett tribal elders, past and present, have documented and recounted numerous actions taken by the State of Rhode Island¹ and the United States federal government to exterminate the Narragansett people and their way of life. Yet, the Narragansett people have not received an adequate remedy. Based on oral and written tribal history, state and federal law, and the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), the United States and the State of Rhode Island have committed, and continue to commit, intergenerational acts of genocide against the Narragansett tribal people.

Implicit in the United States and Rhode Island's interactions with the Narragansett Indian Tribe is an anti-Indigenous Eurocentric ideology that considers the Narragansett to be a "disposable people."² Today, Narragansett people still deal with the vestiges and trauma of state-sanctioned violence. Although the United States ratified the United Nations Genocide Convention in 1988 and enacted a domestic corollary under the United States Code, state responsibility only attaches for acts of genocide committed by the United States after 1988. Consequently, there is no domestic mechanism for holding the federal government or the state of Rhode Island accountable for genocidal acts committed against the Narragansett before the United States became bound to the Convention. Thus, for the Narragansett Indian Tribe and its tribal community to be made whole from acts of genocide, additional civil remedies and restorative justice processes must be enacted to hold the state and federal governments accountable in a domestic framework.³

¹ Until it was changed through referendum in November 2020, Rhode Island's official state name was the "State of Rhode Island and Providence Plantations." Tom Mooney, *We're just Rhode Island now: Voters decide to drop 'Plantations' from state name*, THE PROVIDENCE JOURNAL (Nov. 4, 2020), <https://www.providencejournal.com/story/news/local/2020/11/04/close-vote-ri-does-away-plantations-state-name/6159803002/>.

² Ruth Wallis Herndon & Ella Wilcox Sekatau, *The Right to a Name: The Narragansett People and Rhode Island Officials in the Revolutionary Era*, 44 ETHNOHISTORY 434, 444 (1997).

³ The specific focus of this article is on the Narragansett's experience with genocide in a domestic framework, while recognizing that the Tribe exists as a domestic dependent nation in a dualist system. Though the scope of this article is focused on the United States' corollary to the United Nation's Genocide Convention, this article does not focus on state responsibility in the international framework or look to the International Court of Justice (ICJ) for adjudication. For more information on the Convention's application in the international framework, see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, 2015 I.C.J. Rep. 3 (Feb. 3) (an ICJ adjudication for genocide against the Croats in Serbia); *Application of the Convention on the Prevention and*

The first section of this paper provides an overview of the Narragansett Indian Tribe's tumultuous relationship with the United States and State of Rhode Island over the past four centuries. The second section addresses the Genocide Convention and the academic framework with which genocide will be analyzed. Although the Genocide Convention uses a strict definition for which acts constitute genocide, this article draws upon academic frameworks offered by Professors Rosenberg and Stanton which characterize genocide as a process rather than a singular event: they argue that genocide should be understood on a continuum, and as occurring over the course of generations. The third section of this article uses *Cohen's Handbook of Federal Indian Law*⁴ to frame the United States' anti-Indigenous policies and provide context for inter-sovereign relations between the Narragansett people, the United States government, and the state of Rhode Island.⁵ Using the Convention's definition of genocide, and its five enumerated acts, this section identifies a series of intergenerational harms committed by the state and federal government to demonstrate an intent on behalf of the United States and the State of Rhode Island to destroy the Narragansett people in whole or in part, beginning with the founding of the Rhode Island Colony in 1636.⁶

The final section argues that the state of Rhode Island and the United States government have the burden to reconcile with, and remedy the harms inflicted upon, the Narragansett people. This section will explore a path toward recognizing, acknowledging, and respecting the existence of the Narragansett Indian Tribe and its sovereignty by imploring state and federal actors to center reconciliation conversations on Narragansett voices and worldviews, and to name the past harms inflicted.

Punishment of the Crime of Genocide (*The Gambia v. Myanmar*) (Jan. 23, 2020) (an ICJ adjudication for genocide against the Rohingya people in Myanmar).

⁴ COHEN'S HANDBOOK OF FEDERAL INDIAN LAW (Nell Jessup Newton et al., eds., 2012) [hereinafter "COHEN'S HANDBOOK"].

⁵ This section is organized according to the following key time periods identified in *Cohen's Handbook of Federal Indian Law*: (1) "Post-Contact and Pre-Constitutional Development"; (2) "The Formative Years"; (3) "Allotment and Assimilation"; and (4) "Self-Determination and Self-Governance." See COHEN'S HANDBOOK, *supra* note 4, at xxiii (table of contents). For an introduction to United States anti-Indigenous federal policy, see *Johnson v. M'Intosh*, 21 U.S. 543, 603-04 (1823) (finding that discovery of foreign lands by European Christian nations establishes the exclusive right to title).

⁶ Although Rhode Island was a British colony and followed its British Charter until 1842, this article specifically focuses its discussion of liability on the United States because Rhode Island was one of the 13 original colonies and the last state to ratify the United States Constitution.

Ultimately, this article argues that true reconciliation with the Narragansett Indian Tribe requires: (1) the de-centering of Eurocentric values and revisionist views of history; (2) the creation of a domestic law civil remedy that centers on traditional Narragansett concepts of justice, addresses the needs of the Narragansett people created by past genocides, and holds the United States and Rhode Island accountable for acts of genocide that pre-date the Convention; and (3) that the United States and state of Rhode Island commit to ending this 385-year experiment to erase a people.

I. *K'pépeyup náwwot*⁷ (We have long been here)

For the past 30,000 years, the *Nahahiganseck* (“Narragansett”) people—*People of the Small Point*—have resided in the New England area.⁸ However, “since the founding of the Rhode Island Colony in 1636 to the present day, representatives of both the state and the tribe have disagreed, argued, and physically fought over many matters, large and small.”⁹ Of the matters fought over, acts of genocide against the Narragansett people are a recurrent theme. The histories of genocide against the Narragansett Tribe have been well-documented throughout history, although they have not always been recorded in a legal, written framework.

The Narragansett people have had a tumultuous relationship with Rhode Island, the United States and its predecessor, from Metacom’s War in 1675 and the Great Swamp Massacre to the 2006 Smoke Shop Raid and the 2017 destruction of ceremonial stone landscapes. According to Narragansett Medicine Man John B. Brown¹⁰ and his colleague Dr. Paul A. Robinson, former Principal State Archaeologist at the RI Historical Preservation and Heritage Commission, “many in the tribe view the state as the governing entity of an enemy that has occupied the core of Narragansett Country for [over] 368 years.”¹¹ In essence, the atrocities that happened to the Narragansett people in the pre-Constitution era never ended: the atrocities merely took a different form, maintaining the same intent to

⁷ See FRANK WAABU O’BRIEN, GRAMMATICAL STUDIES IN THE NARRAGANSETT LANGUAGE 44 (2d ed. 2009) (ebook).

⁸ *Early History*, NARRAGANSETT INDIAN TRIBE, <http://narragansettindiannation.org/history/early/> (last visited Apr. 17, 2020); Oral history of the Narragansett people.

⁹ John Brown III & Paul Robinson, “*The 368 Years’ War*”: *The Conditions of Discourse in Narragansett Country*, in CROSS-CULTURAL COLLABORATION: NATIVE PEOPLES AND ARCHAEOLOGY IN THE NORTHEASTERN UNITED STATES 59, 62 (Jordan E. Kerber ed., 2006).

¹⁰ Medicine Man John B. Brown is the Author’s distant cousin.

¹¹ Brown III, *supra* note 9, at 62.

exterminate the Narragansett people. Just as the United States was built on the genocides of Indigenous people, Rhode Island's expansion came at the expense of genocides against the Narragansett.

Nevertheless, the Narragansett people are resilient and continue to resist the effects of colonialism. Lorén Spears, Narragansett cultural educator and director of the Tomaquag Museum, explains that “[d]espite colonization, enslavement, massacres, detribalization, government-sanctioned genocide, attacks on sovereignty, historical and lateral traumas, we are still here and we still use our language.”¹² The Narragansett people have continued to preserve their way of life by hosting their annual August Meeting,¹³ or “pow-wow,”¹⁴ which is the oldest in the North American continent; creating a tribal newspaper, *Narragansett Dawn*, which was published from 1935 to 1936;¹⁵ and establishing the Tomaquag Museum, which is dedicated to sharing Native American history, culture, and arts. It is through actions like these that the Narragansett people today remember “the noble characteristics of the Narragansetts of long ago,” who were “just” and “square,” and lovers of peace.¹⁶

One of the most recent displays of resistance to oppression by Narragansett community members followed the increase in visibility of police brutality and the 2020 National Reckoning. Many in the community marched down the streets of Rhode Island to protest the injustices seen in their community and across the country. Like many Black, Brown, and Indigenous communities around the world, the Narragansett people teach the principle articulated best by Aboriginal elder, Lilla Watson, which states that “your liberation is bound together with mine.”¹⁷ In the vein of liberation, these Narragansetts spoke at rallies, gave land acknowledgements, and gathered in ceremony with allies to unite against a common enemy, the system of governance which was built on the genocide of Indigenous people, the

¹² ROGER WILLIAMS, A KEY INTO THE LANGUAGE OF AMERICA XII (Dawn Dove et al. eds., Westholme, Tomaquag Museum 2019).

¹³ 2019 *Narragansett Indian Tribes August Meeting Powwow*, CRAZY CROW TRADING POST, <https://www.crazycrow.com/site/event/narragansett-indian-tribes-august-meeting-powwow/> (last visited Apr. 17, 2020).

¹⁴ The word “pow-wow” is derived from the Narragansett word “Powwáw” or medicine person. WILLIAMS, *supra* note 12, at 110.

¹⁵ *Special Collections Publications (Miscellaneous): The Narragansett Dawn*, UNIVERSITY OF RHODE ISLAND, https://digitalcommons.uri.edu/sc_pubs/5/ (last visited Apr. 17, 2020).

¹⁶ Cassius Champlin, President, Narragansett Tribal Council, Address, *To Our Youth*, 3, <https://dawnlandvoices.org/collections/items/show/354>.

¹⁷ Attributed to a speech Ms. Watson gave at the 1985 United Nations Decade for Women Conference in Nairobi. “Liberation” and “You Are On Aboriginal Land,” SOVEREIGN UNION, <http://nationalunitygovernment.org/content/liberation-and-you-are-aboriginal-land> (last visited Jan. 31, 2021).

backs of enslaved Africans, and white supremacy's perpetual denial "about what America is and who Americans are."¹⁸

While attempts to pacify these wrongs have been made, the hard work of righting them has yet to be completed. In 2010, President Obama took a major step towards acknowledging past wrongs by signing the Defense Appropriations Act, which included a provision in Section 8113 titled, "Apology to Native Peoples of the United States." This apology stated: "The United States, acting through Congress . . . *apologizes on behalf of the people of the United States* to all Native peoples for the many instances of violence, maltreatment, and neglect inflicted on Native Peoples by citizens of the United States."¹⁹ Although the apology was given on behalf of United States citizens, it stops short of providing full accountability for actions committed by the Executive branch and military by expressly disclaiming legal liability, stating that "[n]othing in this section—(1) authorizes or supports any claim against the United States; or (2) serves as a settlement of any claim against the United States."²⁰ So, while the United States "recognizes that there have been years of official depredations, ill-conceived policies, and the breaking of covenants by the Federal Government regarding Indian tribes," it has failed to commit itself to concrete actions towards meaningful reconciliation.²¹ This apology lacked the teeth necessary to bring about substantial and systemic change because the United States failed to specifically address the steps to be taken by the federal government to rectify these acts of violence and genocide.²²

Likewise, while there have been numerous monuments, statues, and plaques erected in dedication to past wrongs against the Narragansett people, Rhode Island's policies and interactions with the Tribe have often been counterproductive to progress.²³ Amicable

¹⁸ Ibram X. Kendi, *Denial is the Heartbeat of America: When have Americans been willing to admit who we are?*, THE ATLANTIC (Jan. 11, 2011), <https://www.theatlantic.com/ideas/archive/2021/01/denial-heartbeat-america/617631/>.

¹⁹ "Apology to Native Peoples of the United States," Defense Appropriations Act of 2010 (H.R. 3326), § 8113, 3453 (italics added).

²⁰ *Id.* at 3453-54.

²¹ *Id.* at 3453.

²² For more information on the "Apology to Native Peoples of the United States," see Defense Appropriations Act of 2010 (H.R. 3326), § 8113, 3453.

²³ For example, in 1936, when Rhode Island declared its first "Rhode Island Indian Day," Narragansett Indians remained statutorily barred from voting under the state constitution. Despite being granted United States citizenship under the Snyder Act of 1924, Narragansett people could not vote in Rhode Island as "Indian" unless they voted as a under the racial category of "Negro," which remained the case until the legislature amended the provision in 1950. See *The Narragansett Dawn* Sept. 1936; see also *Our Neighbors the Narragansett* (Robert Rose, 1996). <https://www.youtube.com/watch?v=D7HjLcPEow>.

gestures, like apologies and statues, are a fine way to concede a wrong but do little to actually remedy it. Finding a remedy that adequately addresses the violence the Narragansett people endured requires a root-cause analysis.

II. *Páuquana*²⁴ (There is slaughter): Genocide as an Intergenerational, Non-Linear Process of Annihilation

a. The Genocide Convention

The United Nations has recognized genocide as an independent crime since 1948, when the Convention on the Prevention and Punishment of the Crime of Genocide was promulgated.²⁵ Under Article II of the Genocide Convention, the United Nations defined genocide as:

[A]ny of the following acts committed with an 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; [and/or] (e) Forcibly transferring children of the group to another group.²⁶

Thus, under the Convention, it is clear that two elements are necessary to prove that a State²⁷ has committed an act of genocide: the *mens rea* and *actus reus* elements.²⁸ The *actus reus* element requires the actual commission of a prohibited act, while the *mens rea* element requires two prongs to be met. The first prong is the general intent requirement that mandates there be an intent to commit one of the five

²⁴ WILLIAMS, *supra* note 12, at 159.

²⁵ *Genocide*, UNITED NATIONS OFFICE ON GENOCIDE PREVENTION AND THE RESPONSIBILITY TO PROTECT, <https://www.un.org/en/genocideprevention/genocide.shtml> (last visited Apr. 17, 2020).

²⁶ Convention on the Prevention and Punishment of the Crime of Genocide art. II, Dec. 9, 1948 G.A. Res. 260A (III) [hereinafter *Genocide Convention*], https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf.

²⁷ “State” with a capital “S” refers to a nation-state, like the United States of America, whereas “state” with a lower-case “s” refers to the state of Rhode Island and Providence Plantations.

²⁸ See *Genocide*, *supra* note 25.

enumerated acts. The second prong is the *dolus specialis requirement*, or specific intent element, which requires the intent to destroy a protected group either in whole or in part.²⁹

For a State to demonstrate the specific intent necessary to satisfy the definition of genocide, courts in the international context have looked to the State's actions.³⁰ Unlike people, States cannot have mental state in the literal sense; therefore, the focus of specific intent is on State-specific policies and plans over time.³¹ Notably, because there is no motive requirement in the definition of genocide, the State's justification for such actions is irrelevant. Thus, to demonstrate that the United States and Rhode Island have committed acts of genocide against the Narragansett people, one must (1) prove that the Narragansett people are a protected group for purposes of the Convention; (2) look to the actions and policies of the state and federal governments to identify an intent to destroy a protected group; and (3) identify that the state and federal governments took an action or failed to prevent one of the five prohibited acts from occurring.

Although the United Nations established this definition of genocide in 1948, it was another four decades before the United States ratified the Convention on November 25, 1988, and enacted 18 U.S.C. § 1091, a domestic corollary to the Genocide Convention under the United States Code.³² The United States' obligations associated with its ratification of the Convention were not retroactively applied. Therefore, for State liability to legally attach for acts of genocide committed by the United States, the acts must have occurred post-ratification. Although the United States cannot be held legally responsible in International Courts for committing acts of genocide prior to 1988 or for violations of 18 U.S.C. § 1091 before it became law, Sheri Rosenberg counters that "genocide is a process, not an event": post-1988 events should not be looked at in a vacuum, but rather as the latest phase in a continuum.³³ As such, it would be improper to limit the analysis of this paper to only genocidal actions

²⁹ *Id.*

³⁰ See WILLIAM A. SCHABAS, GENOCIDE IN INTERNATIONAL LAW 6 (2d ed. 2009) (finding that "state policies embody the state's *mens rea*").

³¹ See Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgement, 2007 I.C.J. ¶¶ 167-70 (Feb 26), <https://www.icj-cij.org/public/files/case-related/91/091-20070226-JUD-01-00-EN.pdf>.

³² *Depository: Status of Treaties: Convention on the Prevention and Punishment of the Crime of Genocide*, UNITED NATIONS, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4&clang=_en (last visited Apr. 17, 2020)

³³ Sheri P. ROSENBERG, *Genocide Is a Process, Not an Event*, 7 GENOCIDE STUDIES & PREVENTION: AN INT'L J. 16, 16 (2012).

taken in the past 33 years. Therefore, actions taken by the United States and Rhode Island, from first settlement through ratification of the Convention, are relevant to consider when applying the Convention's legal definition.

Courts in the United States look to whether an ethnic group is "cognizable" to constitute a protected class.³⁴ For example, "federal laws [bar] discrimination based on a person's race, color, national origin, gender, sexual orientation, disability, or religion."³⁵ Since the Narragansett tribal people make up a sovereign nation, are a federally recognized tribe with a documented history,³⁶ and share cultural and biological ties to Eastern Woodlands people, the Narragansett are a protected "national" and "ethnic" group³⁷ for the purposes of the Convention. According to the United States Department of Justice, "American Indians and Alaska Natives are protected by federal civil rights laws."³⁸ Currently, those protections extend to all enrolled members of the 574 federally recognized Native American tribes in the United States.³⁹

However, it can be difficult to prove that Indigenous people are a protected group for purposes of the Convention for three reasons. First, the distinction between race and ethnicity is often conflated. For example, while the United States Census Bureau uses a broad definition of racial group that "reflect[s] social definitions in the U.S. and [is] not an attempt to define race biologically, anthropologically, or genetically," the Bureau's delineated racial categories reference

³⁴ *Castaneda v. Partida*, 430 U.S. 482, 494 (1977) (holding that a group is a protected class when it can be shown that the group belongs to "a recognizable, distinct class, singled out for different treatment under the laws, as written or as applied").

³⁵ U.S. DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION, PROTECTING THE CIVIL RIGHTS OF AMERICAN INDIANS AND ALASKA NATIVES, <https://www.justice.gov/sites/default/files/crt/legacy/2014/06/19/protect.pdf> (last visited Nov. 5, 2020).

³⁶ See U.S. DEPARTMENT OF THE INTERIOR, RECOMMENDATION AND SUMMARY OF EVIDENCE FOR PROPOSED FINDING FOR FEDERAL ACKNOWLEDGEMENT OF THE NARRAGANSETT INDIAN TRIBE OF RHODE ISLAND PURSUANT TO 25 CFR 83, 1 (July 29, 1982).

³⁷ "Some of the criteria by which ethnic groups are identified are ethnic nationality (i.e., country or area of origin, as distinct from citizenship or country of legal nationality), race, colo[r], language, religion, customs of dress or eating, tribe or various combinations of these characteristics." *Ethnocultural Characteristics*, UNITED NATIONS STATISTICS DIVISION, <https://unstats.un.org/unsd/demographic/sconcerns/popchar/popcharmethods.htm> (last visited Apr. 19, 2020).

³⁸ U.S. Department of Justice Civil Rights Division: Protecting the Civil Rights of American Indians and Alaska Natives, <https://www.justice.gov/sites/default/files/crt/legacy/2014/06/19/protect.pdf>

³⁹ *Frequently Asked Questions*, UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF INDIAN AFFAIRS, <https://www.bia.gov/frequently-asked-questions> (last visited Nov. 5, 2020).

ethnic groups originating from specific geographic locations.⁴⁰ Although the Bureau's definition of racial group includes the consideration of "racial and national origins and sociocultural groups," it is difficult to distinguish between categories like race and ethnicity.⁴¹

Second, many unrecognized and state-recognized tribes across the United States have not yet satisfied the requirements for federal recognition under the Procedures for Federal Acknowledgment of Indian Tribes, or do not plan to seek federal recognition. Some of the challenges unrecognized and state-recognized tribes experience are difficulty proving lineage using tangible records or allotment rolls due to an erasure of Native people in legal documents (known as the "paper genocide"⁴²), difficulty navigating politics within the Bureau of Indian Affairs, being displaced from their traditional territories yet fighting to be recognized as the Indigenous People to that region, and even living in one's ancestral homelands while disconnected from a broader tribal community. By not having federal recognition, many unrecognized and state-recognized tribes are forced to register instead as "associations" or to not register at all, resulting in some communities being seen as illegitimate and being shut out from accessing educational, employment, financial, and preservation resources. And still, there are people across Indian Country who are unenrolled or disenrolled from federally recognized tribes despite having tribal lineage, because of adoption, blood quantum policies, and anti-Blackness,⁴³ for example.

Third, and most importantly, Indigenous Peoples' status as a protected group is further complicated by defining indigeneity using colonial definitions. The rules of hypodescent that have historically governed how Indigenous communities and communities of African descent are defined—by blood quantum and the one-drop rule respectively—creates a unique struggle for people of Afro-Indigenous heritage. Associate Professor Enid Logan from the University of Minnesota discusses how blood quantum and the one-drop rule are two sides of the same hypodescent coin: blood quantum, or one's percentage of Native blood, was first imposed on Native communities by European settlers as a way "to [cause Native populations to]

⁴⁰ *2020 Census Questions: Race*, UNITED STATES CENSUS BUREAU, <https://2020.census.gov/en/about-questions/2020-census-questions-race.html> (last visited Nov. 5, 2020).

⁴¹ *Id.*

⁴² For more on the paper genocide, see § III(b)(ii), *infra*.

⁴³ For more information on how racialization has impacted both Black and Indigenous communities, see *Rethinking Race: The Sociology of American Indian Identity*: University of Minnesota, <https://cla.umn.edu/sociology/news-events/story/rethinking-race-sociology-american-indian-identity>.

decrease in number, or disappear entirely, simply “to justify the expropriation of their land.”⁴⁴

On the other hand, the one-drop rule was imposed on people of African descent to “expan[d] the number of people considered to be permanently unfree laborers, and later, exploitable second-class citizens, into perpetuity.”⁴⁵ In the United States, Black blood is “understood as some sort of indelible ‘stain’ that can never be erased, never be diluted. But indigenous ‘blood’ and identity are understood to be always disappearing.”⁴⁶ Since these definitions were first imposed on the Narragansett people, this dichotomy has had tremendous impacts on the tribal community. Despite the fact that the Narragansett people define themselves on the basis of lineal descent, their mixed-race ancestry was ultimately how the State of Rhode Island to justified unilaterally declaring the Tribe extinct in 1884.

Defining indigeneity is complex, whether the definition is based on self-identification by Indigenous communities, or is imposed by those who colonized them. Depending on which definition is used, there are real world implications for the civil and human rights protections guaranteed to Native People and their descendants in the United States. Using colonial definitions to determine who is “Indian enough” to received heightened protection as a protected group is the same hypodescent technique that has been used over the course of generations to redefine Indigenous communities in an attempt to ultimately bring them into inexistence.

b. “Genocide in Slow Motion”

To analyze genocide as a process is to view “genocide in slow motion” and observe the “slow process of annihilation that reflects the unfolding phenomenon of the mass killing of a protected group rather than the immediate unleashing [of] violent death.”⁴⁷ Professor Sheri P. Rosenberg critiques the traditional “genocide as an event” framework as a “rigid test,” that “has caused some authors and policy makers to lose sight of the fact that genocide is a fluid and complex social phenomenon, not a static term.”⁴⁸ Simply put, genocide “must be understood as an unfolding process to be viewed against or within historical, political, and social factors.”⁴⁹

Another genocide scholar, Dr. Gregory H. Stanton, has emphasized the idea that “the process [of genocide] is not linear,” but

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Rosenberg, *supra* note 33, at 19.

⁴⁸ *Id.* at 17.

⁴⁹ *Id.*

rather happens in “[s]tages [that] may occur simultaneously [as e]ach stage itself is a process.”⁵⁰ This is similar to Professor Rosenberg’s theory of “genocide by attrition,” which looks at genocide as a “collective cataclysm, that relies more heavily...on indirect methods of destruction for its success.”⁵¹ Neither of these models nor this article seeks to change how genocide is defined, but rather how genocide is understood. This article uses Dr. Stanton’s ten stages of genocide framework to highlight several ways that a state may demonstrate its specific intent to commit genocide against protected group of people. Stanton’s stages are not to be understood as ten requirements for establishing genocide, but rather as a way to identify specific intent. Stanton’s stages include (1) classification;⁵² (2) symbolization;⁵³ (3) discrimination;⁵⁴ (4) dehumanization;⁵⁵ (5) organization;⁵⁶ (6) polarization;⁵⁷ (7) preparation;⁵⁸ (8) persecution;⁵⁹ (9) extermination;⁶⁰ and (10) denial.⁶¹ Taken together, Professor Rosenberg and Dr. Stanton advise those studying genocide to do so through “a process-based view” that considers genocide as something

⁵⁰ Gregory H. Stanton, *The Ten Stages of Genocide*, GENOCIDE WATCH, <https://www.genocidewatch.com/tenstages> (last visited Apr. 17, 2020).

⁵¹ Rosenberg, *supra* note 33, at 18.

⁵² Classification is the use of “categories to distinguish people into ‘us and them’ by ethnicity, race, religion or nationality.” Stanton, *supra* note 50.

⁵³ Symbolization is the “[giving of] names or other symbols to the classifications” of group members. *Id.*

⁵⁴ Discrimination is when the “dominant group uses law, custom, and political power to deny the rights of other groups.” *Id.*

⁵⁵ Dehumanization is where “[o]ne group denies the humanity of the other group [and where m]embers of it are equated with animals, vermin, insects or diseases...At this stage, hate propaganda in print, on hate radios, and in social media is used to vilify the group.” *Id.*

⁵⁶ The organization stage focuses on how genocide is organized “usually by the state, often using militias to provide deniability of state responsibility.” *Id.*

⁵⁷ Polarization is where “[e]xtremists drive the groups a part [and h]ate groups broadcast polarizing propaganda...[and the] dominant group passes emergency laws or decrees that grants them total power of the targeted group.” *Id.*

⁵⁸ The preparation stage of genocide focuses on when the “[n]ational or perpetrator group leaders plan the ‘Final Solution’ to the Jewish, Armenian, Tutsi or other targeted group ‘question.’” *Id.* (no citation for quotation).

⁵⁹ Persecution is when “[v]ictims are identified and separated out because of their national, ethnic, racial or religious identity...[and, often times] they are deliberately deprived of resources such as water or food in order to slowly destroy the group.” *Id.*

⁶⁰ “Extermination begins, and quickly becomes the mass killing legally called ‘genocide.’ It is ‘extermination’ to the killers because they do not believe their victims to be fully human.” *Id.* (no citation for quotation).

⁶¹ “Denial is the final stage that lasts throughout and always follows genocide...The perpetrators dig up the mass graves...[and] deny that they committed any crimes, [] often blam[ing] what happened on the victims.” *Id.*

experienced non-linearly and intergenerationally, which is the framework adopted in this paper.

III. *Nickqueintónckquock* (They come against us): Evidence of an Intent to Destroy the Narragansett People

Cohen's Handbook of Federal Indian Law provides a historical analysis of policies and actions taken by colonial governments against the Indigenous peoples of the Americas. This section analyzes government action from 1492 to present-day within the context of the federal Indian policies of the time, to better understand the interactions between the Narragansett people, the United States, and the state of Rhode Island.

a. Post-Contact and Pre-Constitutional Development (1492-1789)

During the period of “Post-Contact and Pre-Constitutional Development” between 1492 and 1789, the United States adopted the “right of discovery,” which “gave a European nation the sole authority to acquire the specified land from its native inhabitants to establish settlements.”⁶² At this time, the primary goals of the British colonies were “survival, procurement of land, and the establishment of favorable trade relations with Indians.”⁶³ Further, it was when tribes resisted this discovery doctrine that “attacks were taken as cause for just wars against them, with dispossession of Indian property by conquest in reprisal.”⁶⁴ This is the context for the first genocidal acts taken against the Narragansett people.

i. Narragansett Conversion to Christianity (1643)

After the English colonist Roger Williams was exiled from the Massachusetts Colony in 1636 in pursuit of religious freedom,⁶⁵ he sought refuge among the Narragansett people and obtained land use

⁶² COHEN'S HANDBOOK § 1.02[1], *supra* note 4, at 13 (footnote omitted).

⁶³ *Id.* at 14 (footnote omitted).

⁶⁴ *Id.* at 16 (footnote omitted).

⁶⁵ *Rhode Island founder banished from Massachusetts*, HISTORY, <https://www.history.com/this-day-in-history/rhode-island-founder-banished-from-massachusetts> (last visited Apr. 17, 2020).

rights⁶⁶ from Narragansett Sachems.⁶⁷ Before publishing his book *A Key into the Language of America*, Roger Williams “spent at least five years traveling with and trading among the Narragansett.”⁶⁸ Despite his zealousness for religious freedom, Williams simultaneously sought to convert the Narragansett people from their traditional spiritual practices to Christianity. Williams’ efforts to convert the Narragansett people as early as 1643 were detailed in Chapter 21 of his book.⁶⁹

Now because this book, by God’s good providence, may come into the hands of many God-fearing people, who may have the opportunity to talk with some of their *wild* brothers and sisters and may speak a word for their and our Glorious Maker, which may also benefit their souls ... I, myself, have many hundreds of times spoken to great numbers of them. They have listened with great delight and great convictions. *Who knows how many may rise to the exalting of the Lord Jesus Christ in their conversion and salvation?*⁷⁰

It appears that to justify the conversion of the Narragansett people, Williams understood them to be “wild,” pagan people. Later, when discussing the spiritual practices of the Narragansett, Williams wrote that the Narragansett “branch their God into many gods.”⁷¹ Narragansett elders challenge that description by clarifying that “[t]he Narragansett believe in one Creator. They also respect the spirit within all creation.”⁷²

Similarly, when speaking of *Nikommo*, a traditional Narragansett holiday where participants exchange gifts with one another, Williams stated that “[t]hrough this feasting and gifts, the Devil encourages the pleasantry of their worships.”⁷³ Yet again, Narragansett elders critique this account by stating that “Williams’s perspective is one from the Christian faith, which espouses that all religions not derived from Christianity are ‘the devil’s work,’ or ‘heathen,’ ‘pagan,’ or ‘infidel.’... The Narragansett are a prayerful

⁶⁶ *Early History*, *supra* note 8.

⁶⁷ WILLIAMS, *supra* note 12, at 119 (“In our tribal nation, historically, we had sachems or sub-chiefs as well as a chief sachem who led in a format that was more like a democracy whereby the people had a strong voice on the decisions for the community.”).

⁶⁸ *Id.* at XV.

⁶⁹ *Id.* at 118 (emphasis added).

⁷⁰ *Id.* at 113 (second emphasis added).

⁷¹ *Id.* at 108.

⁷² *Id.*

⁷³ *Id.* at 112.

people, greeting the day in prayer, working in prayer, and celebrating in prayer.”⁷⁴

Narragansett oral tradition speaks of a forced assimilation and “indoctrin[ation] into Christian faith,” which did not allow the Narragansett “to utilize their language” or practice their traditional ways.⁷⁵ This conversion of the Narragansett people is documented through “prayers and sermons [that] were translated into Narragansett” and through the use of the Narragansett Indian Church.⁷⁶ The result of this conversion and assimilation was “a vast reduction in the use of Narragansett” which has been preserved through “prayers, songs, names, greetings, and popular words.”⁷⁷ Today, the Narragansett people still speak of the forced conversion of their people in order to share ceremonies with future generations and ensure the survival of traditional Narragansett spiritual practices.

Although some Narragansett converted to Christianity, others resisted and maintained their traditional practices. However, even the Narragansett people who converted infused traditional Narragansett spirituality into their new Christian ways. Rev. Samuel Niles,⁷⁸ an ordained Indian minister, established the Narragansett Indian Church, which has remained “an integral part of our tribal history. [It is m]ore than just a church, this meeting house was the central gathering place for our community, allowing us the ability to maintain our political, cultural, and spiritual practices despite government interference.”⁷⁹ Despite Williams’ attempt to eradicate Narragansett traditional spirituality, the Narragansett continue to practice their ways.

While it may appear that Roger Williams was merely a private actor during this time period, making his actions not attributable to a state, he is known as the founding father of the State of Rhode Island without whose efforts and interactions with the Narragansett he would have never acquired Providence Plantation, and the state would not exist. Williams made a strategic choice to “other” the Narragansett tribal people by referring to them as “wild” and other animalistic

⁷⁴ *Id.*

⁷⁵ *Id.* at XII.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Rev. Samuel Niles (1706-1785) is the Author’s 9th great-grandfather, who “was the first of many ordained Indian ministers to serve the Narragansett Community . . . [building] a wooden-frame church in 1750.” ROBERT S. GRUMET ET AL., *HISTORIC CONTACT: INDIAN PEOPLE AND COLONISTS IN TODAY’S NORTHEASTERN UNITED STATES IN THE SIXTEENTH THROUGH EIGHTEENTH CENTURIES* 137 (1995).

⁷⁹ Quote from Silvermoon Mars LaRose, a descendant of early Narragansett minister, Rev. Samuel Niles II, and distant relative of the Author. *Tomaquag Museum’s New Narragansett Indian Church Exhibit*, CHARLESTOWN CITIZENS ALLIANCE, <https://charlestowncitizens.org/2018/03/18/tomaquag-museums-new-narragansett-indian-church-exhibit/> (last visited Apr. 17, 2020).

terms, calling their religious practices Devil worship, and forcing them to assimilate into European Christian ways. Williams disregarded the religious freedoms and spiritual practices of the Narragansett people and intended to destroy their way of life. Though Williams and his followers may have considered the conversion of the Narragansett to be a noble act done to “save” their souls, Williams “was not respectful to the Indigenous people’s spiritual beliefs,” and demonized their spiritual practices, despite his well-known desire to defend religious freedom.⁸⁰ Williams’ subjective motive in converting the Narragansett to Christianity for their own benefit is irrelevant to the elements of genocide. Thus, it appears that as early as 1643 there was specific intent to cause serious mental harm to members of the group by demonizing the Narragansett’s traditional spiritual practices and forcing them to assimilate and convert to Christianity.

ii. The Robbing of Narragansett Sachem Pessicus’ Sister’s Grave (1655)

In 1655, European settler and Rhode Island resident John Garriad of Warwick desecrated the grave of Narragansett Sachem Pessicus’ sister.⁸¹ When Garriad robbed the grave and “mangl[ed] her flesh,” it “nearly trigger[ed] a Narragansett] attack against the town” of Warwick, Rhode Island.⁸² This caused the Narragansett people serious mental harm such that “they were ‘so bold as to talk of men’s lives and of fighting.’”⁸³ Though Rhode Island arrested and prosecuted Garriad, this was before the state established laws prohibiting grave robbing in the colony. Although Narragansett leadership “did not show up” for the proposed court date, it was “perhaps [because] the Narragansett simply did not trust the English to deliver justice.”⁸⁴ Thus, the court found that Garriad was “by law cleared from his bonds,” and not liable for the harm caused.⁸⁵ This injustice communicated to Narragansett people and non-Indians alike that the Narragansett are disposable and not deserving of respect as a tribe. By allowing this grave robbing to go unpunished, the state demonstrated a lack of respect for the dead and for sacred resting places, and a refusal to acknowledge the harm inflicted on the Narragansett people.

⁸⁰ WILLIAMS, *supra* note 12, at 112 n.9.

⁸¹ DANIEL R. MANDELL, KING PHILIP’S WAR: COLONIAL EXPANSION, NATIVE RESISTANCE, AND THE END OF INDIAN SOVEREIGNTY 25 (2010).

⁸² ERIK R. SEEMAN, DEATH IN THE NEW WORLD: CROSS-CULTURAL ENCOUNTERS, 1492-1800, at 61 (2011); MANDELL, *supra* note 81, at 25.

⁸³ SEEMAN, *supra* note 82, at 161.

⁸⁴ *Id.* at 161-62.

⁸⁵ *Id.* at 162.

iii. King Philip's War (1675-76) and Its Aftermath

In 1675, the Narragansett people joined Metacom's War (or "King Philip's War"), under the leadership of Narragansett Sachem Canonchet, to support the neighboring Wampanoag Tribe and their Sachem, Metacom,⁸⁶ in their efforts to reclaim tribal lands in Massachusetts.⁸⁷ In retaliation for Narragansetts joining the war, on December 19, 1675,⁸⁸ "a military force of Puritans from Plymouth, Massachusetts Bay, and Connecticut massacred a group of Narragansett, mostly women, children, and elderly men living at an Indian winter camp in the Great Swamp."⁸⁹ During this massacre, the New England Colonies sent "a brigade of one thousand men" to attack the Narragansett.⁹⁰ When the colonial troops arrived at the Great Swamp, in December 1675, they found a "fortress containing six hundred lodges"⁹¹ and set them on fire in the middle of the winter. In a 1938 article in the National Park Service (NPS) Regional Review, which announced the opening of the Great Swamp site to the public, Gerald H. Hyde, former NPS Inspector for Massachusetts and Rhode Island, shared an early account of the massacre:

The shrieks and cries of the women and children, the yelling of the warriors, exhibited a most horrible and appalling scene, so that it greatly moved some of the soldiers. They were in much doubt and they afterwards seriously inquired whether burning their enemies alive could be consistent with humanity and the benevolent principle of the gospel...⁹²

Not only did King Philip's War bring death to hundreds of Narragansett warriors, the colonists killed hundreds of Narragansett civilians. In the words of Medicine Man John B. Brown and his colleague Paul A. Robinson, this "began a relationship of mutual distrust, disrespect, and contempt, one that led to the destruction of

⁸⁶ Wampanoag Sachem Metacom or Metacomet was also known as King Philip. Oral history of the Narragansett people.

⁸⁷ *Early History*, *supra* note 8.

⁸⁸ DONNA GENTLE SPIRIT BARRON, *THE LONG ISLAND INDIANS AND THEIR NEW ENGLAND ANCESTORS: NARRAGANSETT, MOHEGAN, PEQUOT & WAMPANOAG TRIBES* 5 (2006).

⁸⁹ The Great Swamp was a Narragansett encampment located in today's South Kingston, Rhode Island. See *Early History*, *supra* note 8.

⁹⁰ SPIRIT BARRON, *supra* note 88, at 5.

⁹¹ *Id.*

⁹² Gerald H. Hyde, *Historic Swamp Opened at Last*, *THE REGIONAL REVIEW* Vol. I No. 6 (Dec.1938), https://www.nps.gov/parkhistory/online_books/regional_review/vol1-6f.htm (last visited July 3, 2021).

many villages and towns and the killing of hundreds of English and thousands of Indians in the King Philip's War."⁹³ The Great Swamp Massacre decimated the Narragansett people, and those who survived "retreated deep into the forest and swamp lands in the southern area of the State,"⁹⁴ which would later comprise the present-day Narragansett Reservation.

In response to the Great Swamp Massacre, Narragansett Sachem Canonchet "led attacks at Warwick and Rehoboth, and burned almost all of Providence."⁹⁵ However, in 1676, Canonchet was captured.⁹⁶ Rather than "[d]eliver the Indians of Philip [the Wampanoag Sachem],"⁹⁷ or be killed by a *wompésu*,⁹⁸ Canonchet refused and chose execution "by a combined group of Mohegans, Pequots, and Western Niantics."⁹⁹

Settlers attempted to starve the Narragansett people and force them to move by disrupting their local sources of food and ecosystems. Specifically, after the Great Swamp Massacre, "colonists . . . introduced the common hog to the area . . . [which] would roam along the coast and dig up the clam beds, a traditional food source for the Indians."¹⁰⁰ According to *Cohen's Handbook*, this practice was not new amongst the colonies as "[t]he English often induced Indians to part with their lands with methods that ensured little more than a façade of legality. These practices included letting livestock in to destroy Indian crops"¹⁰¹

The impact of the King Philip's War and its aftermath—the Great Swamp Massacre, Canonchet's execution, and the introduction of domesticated hogs—on the Narragansett Tribe cannot be overstated. In the October 1935 copy of the *Narragansett Dawn*, Princess Redwing implored the Narragansett people 260 years later to "[t]hink of the massacre in [the] Great Swamp where men, women, and children of Narragansett blood were burned, with the white men's guns in their faces. Our brave men fought not for riches, but for the homes of their children."¹⁰² The actions of the Colonies, taken

⁹³ Brown III, *supra* note 9, at 65-66.

⁹⁴ *Early History*, *supra* note 8.

⁹⁵ *Canonchet, -1676*, NATIVE NORTHEAST PORTAL, <https://nativenortheastportal.com/bio/bibliography/canonchet-1676> (last visited Apr. 17, 2020).

⁹⁶ *Id.*

⁹⁷ Edwin L. Sabin, *Canonchet*, WAR PATHS 2 PEACE PIPES, <https://www.warpaths2peacepipes.com/native-american-stories/canonchet.htm> (last visited Apr. 17, 2020).

⁹⁸ Narragansett word for white man.

⁹⁹ *Canonchet, -1676*, *supra* note 95.

¹⁰⁰ SPIRIT BARRON, *supra* note 88, at 5.

¹⁰¹ COHEN'S HANDBOOK §1.02[1], *supra* note 4, at 15.

¹⁰² Princess Redwing, Editorial, THE NARRAGANSETT DAWN, October 1935, at 133.

together, demonstrate a specific intent to destroy the Narragansett tribe in whole and in part.

Not only do the colonists' actions during King Philip's War provide evidence of an intent to kill members of the Narragansett Tribe, but the Great Swamp Massacre also provides evidence of a specific intent to impose measures on the Narragansett people intended to prevent births within the group by killing Narragansett women and children. Notably, however, Rhode Island was not acting alone in its efforts to bring about the end of the Narragansett people as the Colonies were organized and united in their fight against the Indian tribes in New England.

The colonists threatened the Narragansetts' safety in the region by disrupting tribal government and tribal leadership with the execution of Canonchet, which subjected the Narragansett people to a destabilized tribal government. A stable tribal government is necessary for any tribe's protection and autonomy. Lastly, the introduction of the common hog was intended to inflict conditions on the Narragansett people to bring about their physical destruction, through what Professor Rosenberg calls the "slow process of annihilation," in an attempt to starve the Tribe to death.

iv. Introduction of Indian "Indentured" Servitude (1750-1800)

From 1750 to approximately 1800, Narragansett children were being introduced to slavery by another name: indentured servitude.¹⁰³ During this time period, Rhode Island officials "considered it better to take a child from an 'improper' situation than to support its family with poor relief."¹⁰⁴ For example, in 1767, Rhode Island passed a law giving town officials the authority to "'bind out to apprenticeship poor children, who are likely to become chargeable to the town wherein they live.'"¹⁰⁵

Approximately 30 years later, Rhode Island expanded the town officials' authority to indenture children from parents who "appeared 'unable to maintain' their children, or were being supported 'at the charge of the state.'"¹⁰⁶ Often times, however, this policy was used to justify the removal of "Indian children from their mothers, training them to take their place as menial laborers in a society dominated by

¹⁰³ Herndon & Sekatau, *supra* note 2, at 440.

¹⁰⁴ *Id.*

¹⁰⁵ Ruth Wallis Herndon & Ella Wilcox Sekatau, *Colonizing the Children: Indian Youngsters in Servitude in Early Rhode Island*, in REINTERPRETING NEW ENGLAND INDIANS AND THE COLONIAL EXPERIENCE 137, 167 n.24 (Colin G. Calloway et al. eds., 2003) (quoting Acts and Laws [1767], 232).

¹⁰⁶ *Id.* (quoting *Public Laws* [1798], 350-51).

Anglo-Americans, and propagating the colonial relationship of ‘savage’ but conquered Indian servant and ‘civilized’ but paternal Anglo-American master.”¹⁰⁷ Evidence that this policy was pretextual in nature is seen by the fact that “one quarter of the children were identified only by racial designation rather than by family circumstances, showing that officials used the terms ‘Indian,’ ‘mustee,’ ‘black,’ and ‘Negro’ as synonyms for ‘poor,’ or ‘bastard,’ or ‘orphan.’”¹⁰⁸

Through this process of transferring Narragansett children to well-off Anglo-Americans, the child was cut off from his or her family, Native culture, and language.¹⁰⁹ According to Narragansett oral tradition, “Anglo-American officials often rewrote Narragansett names to conform to European language patterns, or deliberately applied false names, as a strategy to write Indian family lines out of existence.”¹¹⁰ Rhode Island’s policy during the last half of the 18th Century of forcibly transferring Narragansett children for assimilation shows evidence of a specific intent to destroy the Narragansett people: Narragansett children were classified and dehumanized as “improper”¹¹¹ and “savage”¹¹²; policy makers permitted this practice to continue for at least fifty years; and the state of Rhode Island’s officials justified their actions as beneficial to the children. Ultimately, the state of Rhode Island had a specific intent to destroy the Narragansett’s native culture through the forcible transfer of Narragansett youth. This practice corresponds with Dr. Stanton’s classification, dehumanization, preparation, persecution, and denial stages of genocide.

b. The Formative Years (1789-1871)

During the treaty-making period between 1789 and 1871, “[t]he overriding goal of the United States . . . was to obtain Indian lands, particularly after those lands became encircled by non-Indian settlements.”¹¹³ Notably, the United States Constitution was ratified by the Colonies at this time, with Rhode Island becoming the last state to ratify it in 1790.¹¹⁴ By the end of the period there was a “trend toward federal control over matters involving Indian intercourse with

¹⁰⁷ *Id.* at 160.

¹⁰⁸ *Id.* at 147.

¹⁰⁹ *Id.* at 155.

¹¹⁰ *Id.*

¹¹¹ Herndon & Sekatau, *supra* note 2, at 440.

¹¹² Herndon & Sekatau, *Colonizing the Children*, *supra* note 105, at 160.

¹¹³ COHEN’S HANDBOOK § 1.03[1], *supra* note 4, at 26.

¹¹⁴ Andrew Glass, *Rhode Island ratifies Constitution, May 29, 1790*, POLITICO (May 5, 2014), <https://www.politico.com/story/2014/05/this-day-in-politics-107177>.

non-Indians, and away from exclusive tribal authority.”¹¹⁵ This is the context for the next set of genocidal acts against the Narragansett people.

i. Rhode Island Replaced the Sachem’s Role with the Tribal Council (1792)

Despite congressional passage of the 1790 Indian Trade and Intercourse Act, which made clear that “no person shall be permitted to carry on any trade or intercourse with the Indian tribes, without a license for that purpose,” Rhode Island continued to engage directly with the Narragansett Indian Tribe without federal authorization.¹¹⁶ For example, in 1792, Rhode Island abolished the position of the Sachem (which ruled the Tribe since time immemorial¹¹⁷) and “took over the affairs of the Tribe with a five-man council.”¹¹⁸ Disrupting the Narragansetts’ traditional form of government and replacing it with a foreign structure was another way Rhode Island intended to destroy the Narragansett way of life.

ii. *Aldrich v. Hammer* and the Beginning of the Paper Genocide (1793)

The 1793 Rhode Island Supreme Court decision *Aldrich v. Hammer* set the foundation for what would become known as the “paper genocide” in the New England area. In *Aldrich*, the court overruled a request by Mr. Hammer, a Narragansett Indian, for a reduction in criminal charges on the basis that he was incorrectly classified by race as a “Negro.”¹¹⁹ The legal erasure of Narragansett people like Mr. Hammer from official documentation began as “town officials stopped identifying native people as ‘Indian’ in the written record and began designating them [by color] as ‘Negro’ or ‘black,’ thus committing a form of documentary genocide against them.”¹²⁰ Further, the process of labeling Narragansett people as Black can be seen in official state documents across Rhode Island throughout the later-1700s and the 1800s: “Individual native people were still named

¹¹⁵ COHEN’S HANDBOOK § 1.03[1], *supra* note 4, at 30.

¹¹⁶ An Act to Regulate Trade and Intercourse With the Indian Tribes §1 (1790), https://pages.uoregon.edu/mjdennis/courses/hist469_trade.htm

¹¹⁷ PETER C. MANCALL & JAMES H. MERRELL, AMERICAN ENCOUNTERS: NATIVES AND NEWCOMERS FROM EUROPEAN CONTACT TO INDIAN REMOVAL, 1500-1850, at 429 (James Hart Merrell ed., 2000).

¹¹⁸ SPIRIT BARRON, *supra* note 88 at 6.

¹¹⁹ Herndon & Sekatau, *supra* note 2, at 444.

¹²⁰ *Id.* at 437.

in the pages, of course; officials simply called them something besides ‘Indian.’”¹²¹

The paper genocide was a deliberate action taken by Rhode Island officials to “replac[e] cultural description with physical description.”¹²² The result of this policy was that the designation of Black covered “not only the people among them who had been torn from their African homeland but also the Narragansett among them who had been pushed off their native land.”¹²³ This policy was used by Rhode Island to strip the Narragansett people of their “ancestral lands” by forcing them to be viewed “as a people without property in a society that measured worth by ownership in real estate.”¹²⁴ According to Narragansett oral tradition, “ownership and accumulation of goods, in personal property and also in real estate, were foreign concepts to the Narragansett.”¹²⁵

Not only did the paper genocide have tangible implications for the Narragansett people, it also affected their ability to self-identify. Some in the community to struggled with internalized anti-Blackness as the result of losing “tribal distinctiveness,” as the Narragansett were denied the opportunity to self-identify on the census, with census enumerators instead chose their identity markers using labels like “black” or “colored,” to describe their skin color not their heritage.¹²⁶ By having darker skin and Afro-Indigenous heritage, many Narragansett felt conflicted by these colonial labels as they watched the “one-drop rule”¹²⁷ attempt to strip them of their indigeneity. The toll of the paper genocide on the Narragansett people inflicted so much self-hatred that this “hatred surfaced at ‘crying rocks’ and unmarked graves, where some native mothers abandoned babies fathered by non-Indians.”¹²⁸ The idea that coming from Afro-Indigenous heritage diluted one’s indigeneity was a concept forced on the Narragansett people to perpetuate their erasure, and conflicts with the traditional Narragansett world view, which defines its community by lineage, as the Narragansett “intended . . . their children [to] enjoy and use an area as long as they treated it with respect and honor. . .” regardless of their

¹²¹ *Id.* at 445.

¹²² *Id.* at 447.

¹²³ *Id.* at 445.

¹²⁴ *Id.* at 438.

¹²⁵ *Id.* at 439.

¹²⁶ *Id.* at 447.

¹²⁷ The one-drop rule is the colonial idea that having at least one African or Black ancestor taints one’s bloodline, and makes their descendants completely Black, despite being of mixed-race heritage or being white-passing.

¹²⁸ *Id.*

skin tone, for “[h]uman beings do not own the Earth Mother; she owns them.”¹²⁹

By using the paper genocide to erase Narragansett people from legal documents and town records, “local leaders helped ensure that native people would not regain land in their towns.”¹³⁰ Reclassifying Narragansett people by “[u]sing terms like ‘colored’ in the public record was a way to assimilate and eradicate tribal communities. The same would occur within the Nocke [Noka] Family.”¹³¹ When Rhode Island began classifying the Narragansett people by color, rather than by culture, it caused them to lose their tribal distinctiveness, as a means of preparing for the eradication of their existence as a people.

iii. Narragansett Tribe was Encouraged to Move West (1822)

By the end of the 1700s and the beginning of the 1800s, the United States policies toward Indigenous people demonstrated a clear intent: “[s]hould *any tribe* be foolhardy enough to take up the hatchet at any times, the seizing [of] the whole country of that tribe, and driving them across the Mississippi, as the only condition of peace, would be . . . *a furtherance of our final consolidation.*”¹³² During this period, the federal government’s primary goal was to make “a vast area available for white settlement while reducing the conflict of sovereign authority caused by the presence of independent Indian governments within state boundaries.”¹³³ Thus, it is no surprise that the Narragansett people were approached by an agent of the Secretary of War regarding removal in 1820.¹³⁴

The United States’ desire for the Narragansett Tribe to relocate west was not simply a quest for land but was also an attempt to destroy the Narragansett as a coastal tribe. As a coastal people, the Narragansett relied on the water for survival as they “traversed in rivers, estuaries, bay, and ocean using the[ir] canoes for trade, travel, hunting, fishing, and whaling.”¹³⁵ When the Secretary of War and his

¹²⁹ *Id.* at 439.

¹³⁰ *Id.* at 453.

¹³¹ ROBERT A. GEAKE & LORÉN M. SPEARS, FROM SLAVES TO SOLDIERS: THE 1ST RHODE ISLAND REGIMENT IN THE AMERICAN REVOLUTION 117 (2016). The Author of this paper traces her direct lineage to the same Noka family, mentioned in *From Slaves to Soldiers*, and has been personally impacted by the effects of the “paper genocide.”

¹³² COHEN’S HANDBOOK § 1.03[3], *supra* note 4, at 39 (emphases added) (footnote omitted) (quoting private letter from Thomas Jefferson to William Henry Harrison).

¹³³ *Id.*

¹³⁴ U.S. DEPARTMENT OF THE INTERIOR, *supra* note 36, at 8.

¹³⁵ WILLIAMS, *supra* note 12, at 94 n.2.

agent approached the Tribe to request removal from their coastal, ancestral territories to the inland territories of other Indigenous peoples, this was part of the federal government's plan to eradicate the Narragansett people. However, the United States' attempt at removal was unsuccessful. Narragansett leadership at the time rejected removal by demonstrating the Narragansett were "nominally independent, electing their own council, maintaining a school and a church."¹³⁶

iv. Rhode Island Prohibited Narragansett Members from Voting (1842)

Until 1843, Narragansett people were prohibited from voting in the state of Rhode Island. Between 1663 and 1842, Rhode Island was "governed under a Royal Charter Granted by King Charles II of England,"¹³⁷ and its first constitution was adopted in 1843. In its first constitution, Rhode Island explicitly discriminated against the Narragansett people by prohibiting tribal members from voting in elections. Article II Section 4 of Rhode Island's 1842 Constitution states: "no pauper, lunatic, person non compos mentis, person under guardianship, *or member of the Narragansett tribe of Indians*, shall be permitted to be registered or to vote."¹³⁸

By equating Narragansett tribal members with persons suffering from mental impairments and people under guardianship in the state constitution, Rhode Island suggested the Narragansett lacked the intellectual capacity to cast votes on their own behalf.¹³⁹ Not only is equating the Narragansett people to "lunatics" degrading; it also inflicted mental harm on the group by further polarizing the European-Americans from the Narragansett people.

v. The Robbing of Narragansett Sachem Thomas Ninigret and His Daughter's Grave (1859)

Almost two hundred years after the 1655 grave robbing of Sachem Pessicus' sister, Narragansett graves were desecrated again in 1859 when nine white Rhode Island residents robbed the graves of

¹³⁶ U.S. DEPARTMENT OF THE INTERIOR, *supra* note 36, at 1, 3.

¹³⁷ *Constitution of the State of Rhode Island and Providence Plantations: Introduction*, STATE OF RHODE ISLAND GENERAL ASSEMBLY, <http://www.rilin.state.ri.us/RiConstitution/Pages/constintro.aspx> (last viewed Apr. 17, 2020).

¹³⁸ *A Call to Arms: Thomas Wilson Dorr's Forceful Effort to Implement the People's Constitution*, RHODE ISLAND HISTORICAL SOCIETY 9, <http://rihs.org/assets/files/A%20Call%20to%20Arms%20RI%20History.pdf> (last viewed Apr. 17, 2020) (emphasis added) (quoting R.I. CONST. art. II., SBC 4 (1842)).

¹³⁹ *See generally id.*

Narragansett Sachem Thomas Ninigret and his daughter.¹⁴⁰ After robbing the Ninigret family graves, “[t]he relics from the sachem’ graves [were] dispersed” and distributed amongst prestigious institutions and private citizens.¹⁴¹ The Rhode Island Historical Society kept “[t]he skull of the princess, the spoons, some pewter porringers, a piece of iron chain, [and] some beads.”¹⁴² The Peabody Museum at Harvard University kept “[Ninigret’s daughter’s] shoe soles, silver wire chain, some kettles, a small pewter vessel and some glass,” and Oscar Tyler of Washington, Rhode Island kept for himself a “lock of Princess Ninigret’s hair.”¹⁴³

The 1859 grave robbing propelled three tribal members—Henry Hazard, Joshua Noka,¹⁴⁴ and Gideon Ammons¹⁴⁵—to sue “the ‘grave-robbers’ . . . for grave-robbing, [which was] a misdemeanor against the laws of Rhode Island” at that time.¹⁴⁶ These members understood grave robbing to be a violation of both Rhode Island law and the sacred traditions of the Narragansett people. However, the Supreme Court of Rhode Island disagreed with the tribal members and “acquitted [the grave robbers] and exonerated them from blame.”¹⁴⁷ Taken together, the grave robbing and the subsequent acquittal demonstrate the state of Rhode Island’s intent to cause serious mental harm to the Narragansett people by denying them a remedy for the destruction of their sacred places. These actions most plainly correspond to Dr. Stanton’s dehumanization and denial stages of genocide.

c. Allotment and Assimilation (1871-1929)

During the Allotment and Assimilation period between 1871 and 1929, “[p]olicymakers . . . determined that the old hunter way and the new industrial way could not coexist.”¹⁴⁸ Moreover, racist rhetoric like “Kill the Indian and Save the Man,”¹⁴⁹ and “[t]he American Indian

¹⁴⁰ VOLUMES 16-20: INDIAN GRAVES 23 (1923) (Rhode Island Historical Society, Rhode Island Historical Society Collections); *Desecrating Indian Graves*, NATIVE AMERICAN NET ROOTS, <http://nativeamericannetroots.net/diary/324> (last viewed Apr. 17, 2020).

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Joshua Noka (1818-1900) is the Author’s 6th great-uncle.

¹⁴⁵ Gideon Ammons (1811-1899) is the Author’s distant cousin.

¹⁴⁶ INDIAN GRAVES, *supra* note 140, at 23.

¹⁴⁷ INDIAN GRAVES, *supra* note 140, at 24.

¹⁴⁸ COHEN’S HANDBOOK § 1.04, *supra* note 4, at 71 (footnote omitted).

¹⁴⁹ *Id.* at 77 (footnote omitted) (quoting Richard Henry Pratt, founder of Carlisle School).

is to become the Indian American”¹⁵⁰ became popular across the United States as the country continued its attempt to force Indigenous People to leave their traditional ways and assimilate into western culture.

The driving force behind the allotment policy was “the acquisition of Indian lands and resources,” while “[t]he theory of assimilation justified [allotment] legislation as beneficial to Indians.”¹⁵¹ Yet, as *Cohen’s Handbook* explains, “[f]rom the Indian perspective, allotment, or distribution of Indian lands, was coupled with acculturation, or change of Indian culture and lifeways.”¹⁵²

i. The Rhode Island General Assembly & Narragansett Detribalization

While the federal government spoke to the Narragansett about relocating west in 1820, Rhode Island’s General Assembly “formally met to ‘Inquire into the Justice, Expediency, and Practicability of abolishing the tribal relations of the Narragansett Indians, of Conferring the rights of citizenship upon the members thereof’” by 1879.¹⁵³ By March 31, 1880, the Rhode Island General Assembly’s inquiry moved beyond mere discussion to passing “an Act to abolish the tribal authority and tribal relations of the Narragansett Tribe of Indians.”¹⁵⁴ The Act explicitly stated that “[f]rom and after the passage of this act, the tribal authority of the Narragansett tribe of Indians shall cease . . . and all person who may be members of said tribe shall cease to be members thereof.”¹⁵⁵

The basis for the Narragansett’s detribalization was not rooted in United States federal law, but was an action taken by Rhode Island without federal authorization.¹⁵⁶ The Indian Trade and Intercourse Act of 1790 made clear that:

No sale of lands made by any Indians, or any nation or tribe of Indians within the United States, shall be valid to any person or persons, *or to any state*, whether having the right of pre-emption to such lands or not,

¹⁵⁰ *Id.* at 75 (footnote omitted) (quoting Commissioner of Indian Affairs Hiram Price).

¹⁵¹ *Id.* at 72.

¹⁵² *Id.* at 74.

¹⁵³ GEAKE & SPEARS, *supra* note 131, at 117.

¹⁵⁴ Act of Mar. 31, 1880, ch. 800, R.I. Pub. L. No. 15-20, 15 (1880).

¹⁵⁵ *Id.*

¹⁵⁶ “This was the basis of the Narragansett claim that eventually won the return of eighteen hundred acres in 1978 and tribal recognition from the federal government in 1983.” Herndon & Sekatau, *supra* note 2, at 454 n.1.

unless the same shall be made and duly executed at some public treaty, held under the authority of the United States.¹⁵⁷

Nevertheless, the committee tasked with inquiring into the detribalization of the Narragansett reported that: there is not a person of pure Indian blood in the tribe, and that characteristic features varying through all the shades of color, from the Caucasian to the Black race, were made manifest at the several meetings of the Committee. *Their extinction as a tribe has been accomplished as effectually by nature as an Act of the General Assembly will put an end to the name.*¹⁵⁸

Rhode Island heavily justified its unilateral action upon the idea that the Narragansett ceased to exist “by nature” due to mixed-race ancestry. However, the Narragansett understood themselves and their tribal community differently. When approached by the Rhode Island Committee tasked with detribalizing the Narragansett, the tribal leadership responded by stating, “We have not sent for this committee, and we know of no particular occasion for its visiting us at this time.”¹⁵⁹ They further stated:

[W]hile one drop of Indian blood remains in our veins, we are entitled to the rights and privileges guaranteed by your ancestors to ours by solemn treaty, which without a breach of faith you cannot violate. . . . *We deny your right to take from us that which never came from you.*¹⁶⁰

However, in the 1880 Act to Abolish the Narragansett Tribe, the Rhode Island legislature gave the commissioners¹⁶¹ “full power” to determine who was a Narragansett Indian, and whether those individuals were “entitled to receive portions of said purchase

¹⁵⁷ Indian Trade and Intercourse Act of 1790, Pub. L. No. 1-33, §4, 1 Stat. 137, 138 (emphasis added).

¹⁵⁸ STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, NARRAGANSETT TRIBE OF INDIANS, REPORT OF THE COMMITTEE OF INVESTIGATION MADE TO THE HOUSE OF REPRESENTATIVES AT ITS JANUARY SESSION, A.D. 1880, at 6 (1880) (emphasis added).

¹⁵⁹ Frank Moore, *An Indian Opinion of Citizenship, A Reference Scrap Book: Being a Monthly Record of Important Events Worth Preserving*, 1 RECORD OF THE YEAR 1, 166 (1876) (quoting the Narragansett Delegation).

¹⁶⁰ *Id.* (quoting the Narragansett Delegation) (emphasis added).

¹⁶¹ *I.e.*, the three individuals tasked with detribalizing the Narragansett people.

money.”¹⁶² By 1881, “a list of 324 members was certified by the Rhode Island Supreme Court,” identifying the “Final List of the Members of the Narragansett Tribe of Indians Entitled to a Share of the Purchase Money.”¹⁶³ For example, Hannah Noka Rice,¹⁶⁴ daughter of John Noka,¹⁶⁵ was identified in the list. Hannah married outside of the tribe in 1850 and had eight children living in 1881,¹⁶⁶ but only four were counted as tribal members.¹⁶⁷ Rather than allowing Hannah and her children to self-identify as Narragansett, they were labeled “mulatto” in 1860, “black” in the 1870 census, “mulatto” again in 1880, and by the end of detribalization half of Hannah’s children were labeled Narragansett while the other half were considered non-Indians.

Empowering Rhode Island—not the Narragansett people—to determine who was a Narragansett Indian not only denied the Tribe rights to self-determination but caused intergenerational harm to their descendants through the perpetuation of the paper genocide. Rhode Island sought to destroy the Narragansett people by grouping them by skin color and not by culture, stripping them of their tribal citizenship, planning and executing a policy to abolish the Tribe, and then justifying that unilateral detribalization as a means to give them citizenship.

ii. The Century Without Federal Recognition (1881-1982)

From 1881 to 1983, the Narragansett Tribe was no longer federally recognized as a result of Rhode Island’s unilateral actions taken to “detrribalize,” or remove status from, the Narragansett people on the basis of having mixed-race heritage. Despite not being recognized for more than a century, the Narragansett people continued to preserve their culture and history for future generations. For example, Narragansett elders Princess Redwing and Ernest Hazard created the *Narragansett Dawn* in 1935, a monthly newsletter that preserved Narragansett culture, history, spirituality, and traditions

¹⁶² Act of Mar. 31, 1880, ch. 800, R.I. Pub. L. No. 15-20, at 15 (1880).

¹⁶³ R.I. COMM’N ON THE AFFAIRS OF THE NARRAGANSETT INDIANS, REP. OF COMM’N ON THE AFFAIRS OF THE NARRAGANSETT INDIANS, Jan. Sess., app. C (1881) (“Final List of the Members of the Narragansett Tribe of Indians Entitled to a Share of the Purchase Money”).

¹⁶⁴ Hannah Noka Rice (1831-1897) is the Author’s 4th great-grandmother.

¹⁶⁵ John B. Noka (1809-1865) is the older brother of Joshua Noka, one of the three men who brought suit against the 1859 grave robbers, and the Author’s 5th great-grandfather.

¹⁶⁶ See 1875 RHODE ISLAND STATE CENSUS: SOUTH KINGSTON.

¹⁶⁷ R.I. COMM’N ON THE AFFAIRS OF THE NARRAGANSETT INDIANS, *supra* note 163, app. C.

while also providing a place to discuss the relevant issues of the time like President Roosevelt's New Deal and the Wheeler-Howard bill, which would later become the "Indian Reorganization Act."¹⁶⁸

While the Indian Reorganization era (1928-1942) brought with it "more tolerance and respect for traditional aspects of Indian culture,"¹⁶⁹ the Narragansett people were spending all of it without recognition by the federal government. Despite the promise of the Indian Reorganization Act for other tribes, the Act has not been read to apply to the Narragansett, since they were not federally recognized at the time the Act became law. The closest the Narragansett people got to a semblance of recognition during this time was the establishment of Rhode Island Indian Day in 1936, by the same legislature that detribalized their people fifty-five years earlier.¹⁷⁰

iii. Unmarked Narragansett Graves Unearthed in Construction (1982)

In June 1982, prior to the Tribe's regaining federal recognition, the Tribe was infuriated when developers unearthed "several unmarked [Narragansett] graves" in a "seventeenth-century Narragansett Indian cemetery in North Kingstown, Rhode Island."¹⁷¹ Specifically, "many Narragansett people viewed that disturbance as part of, and consistent with, the previous several hundred years of mistreatment, ill will, and disregard for the wishes and human rights of the tribe."¹⁷² Due to the unearthing, Narragansett "human skeletal remains and burial artifacts" were again scattered, similar to the 1655 and 1859 grave robberies. In 1982, "Rhode Island lacked legislation for protecting unmarked cemeteries during construction projects or for protecting small historic cemeteries in the path of development."¹⁷³

By enabling the destruction of traditional Narragansett burial sites, in an effort to expand development, the state of Rhode Island failed to enact legislation protecting historic, unmarked cemeteries facing demolition, demonstrating a specific intent to cause serious mental harms to members of the Narragansett Tribe. Rhode Island's failure to adopt a protective policy corresponds to Dr. Stanton's dehumanization and denial stages of genocide, as the bodies of Narragansett people were again desecrated, and their graves destroyed.

¹⁶⁸ Redwing, *supra* note 102, at 2.

¹⁶⁹ COHEN'S HANDBOOK § 1.05, *supra* note 4, at 79.

¹⁷⁰ U.S. DEPARTMENT OF THE INTERIOR, *supra* note 36, at 1, 5.

¹⁷¹ Brown III, *supra* note 9, at 59, 66; FRANCIS P. MCMANAMON ET AL., EDS., *ARCHAEOLOGY IN AMERICA: AN ENCYCLOPEDIA* 124 (2009).

¹⁷² Brown III, *supra* note 9, at 66.

¹⁷³ *Id.* at 67.

Despite gaining federal recognition the following year, Narragansett people continue to face genocide acts at the hands of state actors.

d. Self-Determination and Self-Governance (1961-Present)

The Self-Determination and Self-Governance period from 1961 to present-day¹⁷⁴ has focused on “the principle that Indian tribes are, in the final analysis, the primary or basic governmental unit of Indian policy.”¹⁷⁵ Federal Indian policies also reflect the change of ideas in the post-1960s era, similar to the “growing national awareness of the problems facing other ethnic and racial minorities.”¹⁷⁶

In 1968, President Lyndon B. Johnson announced “a new goal for our Indian programs: A goal that ends the old debate about ‘termination’ of Indian programs and stresses self-determination [as] a goal that erases old attitudes of paternalism and promotes partnership and self-help.”¹⁷⁷ Just fifteen years later, and after a century being detribalized, the Narragansett people regained federal recognition on April 11, 1983.¹⁷⁸ Regrettably, genocidal acts continued against the Narragansett people even after federal recognition.

i. The Smoke Shop Raid (2003)

In July 2003, twenty years after gaining federal recognition, the Narragansett Indian Tribe established a tax-free tobacco smoke shop on tribal lands. Despite the Tribe’s recognized status as a sovereign nation, on July 14, 2003, the Rhode Island State Police conducted a violent raid on the smoke shop without federal authorization. The state police left approximately ten Narragansett injured and arrested eight, while confiscating approximately \$900 and the cigarettes being sold.¹⁷⁹

One individual arrested during the smoke shop raid was Narragansett leader Bella Noka,¹⁸⁰ who, when asked about her experience, said “I always wondered how my ancestors felt...On that

¹⁷⁴ COHEN’S HANDBOOK § 1.07, *supra* note 4, at 93.

¹⁷⁵ *Id.* at 94.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Perseverance*, NARRAGANSETT INDIAN TRIBE, <http://narragansettindiannation.org/history/perseverance/> (last visited Apr. 17, 2020); *see also* U.S. DEPARTMENT OF THE INTERIOR, *supra* note 36, at 18.

¹⁷⁹ Michael Mello, *Raid of R.I. tribe’s smoke shop gets ugly*, SOUTH COAST TODAY (July 15, 2003), <https://www.southcoasttoday.com/article/20030715/news/307159966>.

¹⁸⁰ Bella Noka is the Author’s distant cousin.

day I knew.”¹⁸¹ As Noka describes it, “Narragansett rights are stripped away with the swipe of the political pen,” describing the ease with which state actors were able to act with impunity while Narragansett sovereignty was violated by unauthorized police action on Tribal lands. Narragansett Sachem Matthew Thomas was also arrested during the smoke shop raid.¹⁸² In his words, the Narragansett people “are still fighting [the King Philip’s War as] the tribe is continually stripped of its rights and dignity in the executive, judicial and legislative branches as evidenced by y the excessive use of force used in the smoke-shop raid, and the loss¹⁸³ in federal court.”¹⁸⁴

In May 2006, the First Circuit for the United States Court of Appeals ultimately determined, in *Narragansett Indian Tribe v. Rhode Island*, 449 F.3d 16 (1st Cir. 2006), that Rhode Island’s actions during the Smoke Shop raid did not violate the Narragansett Tribe’s sovereignty, as the Rhode Island Indian Claims Settlement Act (the Settlement Act), 25 U.S.C. §§ 1701-1716, authorized state officers “to execute the warrant against the Tribe and to arrest tribal members incident to the enforcement of the State’s civil and criminal laws.” The Rhode Island Settlement Act,¹⁸⁵ also known as the 1978 compact, was an agreement entered into by the State of Rhode Island and the Narragansett Tribal Community, prior to gaining federal recognition, that sought to return 1,800 acres of Narragansett traditional homelands to the Tribe in exchange for Rhode Island laws governing the settlement lands.¹⁸⁶

In 2003, the Narragansett Indian Tribe opened the Smoke Shop on the tribal settlement lands but did so without complying with Rhode Island’s cigarette tax.¹⁸⁷ The Tribe argued that “its sovereign status as a federally recognized Indian tribe precluded the State from applying its cigarette tax scheme to the Tribe’s sale of cigarettes on the settlement lands.”¹⁸⁸ The State of Rhode Island disagreed. Nevertheless, the First Circuit agreed with the State, finding that “the

¹⁸¹ Brown III, *supra* note 9, at 63.

¹⁸² Mello, *supra* note 179.

¹⁸³ Pam Belluck, *Tribe Loses Suit on Tax-Free Tobacco*, N.Y. TIMES (Dec. 30, 2003), <https://www.nytimes.com/2003/12/30/us/tribe-loses-suit-on-tax-free-tobacco.html>.

¹⁸⁴ Brown III, *supra* note 9, at 59, 63.

¹⁸⁵ *Narragansett Indian Tribe v. Rhode Island*, 449 F.3d 16, 19 (1st Cir. 2006).

¹⁸⁶ While the Narragansett Indian Tribe is federally recognized and is entitled to be treated as a sovereign, domestic dependent nation for purposes of federal law, the Tribe’s sovereignty over their returned settlement lands remains limited in scope by Rhode Island state law, which has led many in the Tribe question the legality of the Compact. Those who question the Compact’s legality argue that the Compact should have been invalidated once the Tribe gained federal recognition.

¹⁸⁷ *Narragansett Indian Tribe v. Rhode Island*, 449 F.3d 16, 20 (1st Cir. 2006).

¹⁸⁸ *Id.* at 20.

Tribe surrendered any right to operate the settlement lands as an autonomous enclave.”¹⁸⁹ Although the Tribe later appealed this decision, the United States Supreme Court denied certiorari, allowing the judgement to stand.

Despite the First Circuit’s ruling, the actions of the Rhode Island state police demonstrate a disregard for the Narragansett people. The collective impact of the smoke shop raid on the Narragansett people can still be felt years later, as members gathered to commemorate the event on its tenth anniversary in 2013, which is now used for tribal meetings.¹⁹⁰ Simply put, Rhode Island demonstrated a specific intent to commit both serious bodily and mental harm to members of the Narragansett Indian Tribe by “bringing a few dozen troopers and police dog to execute a warrant” for seizing tax-free cigarettes on tribal lands.¹⁹¹ These actions correspond to Dr. Stanton’s dehumanization, organization, persecution and denial stages of genocide, as “state officials place[d] the blame on the Narragansetts for provoking this terrible incident.”¹⁹²

ii. Tennessee Gas Pipeline Destroyed Over 20 Narragansett Ceremonial Landscapes (2017)

In 2017, the Tennessee Gas Pipeline Company began construction of a natural gas pipeline in Massachusetts which had the potential to destroy 73 Narragansett “ceremonial stone landscapes in the pipeline’s path.”¹⁹³ Although the Tribe sought to prevent the destruction of these landscapes in federal court, the construction was completed by 2018 and “more than 20 ceremonial stone landscapes” were destroyed in the process.¹⁹⁴ When the case reached the U.S. Court of Appeals for the District of Columbia, the court ruled that “the tribe lack[ed] standing to seek relief because the ceremonial landscapes had been destroyed by the time it filed its petition for review.”¹⁹⁵

¹⁸⁹ *Id.* at 30.

¹⁹⁰ Paul Davis, *Narragansetts still angered by smoke-shop raid on 10th anniversary*, PROVIDENCE JOURNAL (July 14, 2013), <https://www.providencejournal.com/article/20130714/News/307149989>.

¹⁹¹ *Groups Condemn Police Raid of Narragansett Smoke Shop*, AMERICAN CIVIL LIBERTIES UNION OF RHODE ISLAND (July 15, 2013), <http://www.riaclu.org/news/archive-post/groups-condemn-police-raid-of-narragansett-smoke-shop>.

¹⁹² *Id.*

¹⁹³ *Court rules against Narragansett Tribe in pipeline dispute*, PROVIDENCE JOURNAL (Feb. 7, 2020), https://www.providencejournal.com/news/20200207/court-rules-against-narragansett-tribe-in-pipeline-dispute?fbclid=IwAR3hEmEZG1xr95aTc8JtfY9m_khEt_iYC-k0POA7LRtoebe7hIx5eh2ra9Y.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

The 2017 destruction of Narragansett ceremonial landscapes and the state and federal governments' failure to enact legislation to protect them is reminiscent of the desecration of other sacred Narragansett sites in years past. The Narragansett Indian Tribe explained to the Court that:

In our ancestral tradition, these ceremonial stone groupings are “prayers” to our Creator and Earth Mother calling for balance and harmony and should be left to their spiritual work. If they are moved, their ceremonial/spirit work is then broken[;] it cannot likely be re-connected as we are not privy to the original trauma that called forth these specific ancient ceremonial responses. If dismantled and rebuilt (as [Tennessee Gas] has offered), what then would be created is *an artistic replica* of an active ceremonial stone grouping that was put in place by long ago ancestors for a purpose that we, today, may be incapable of identifying or re-connecting with its original (and still active) specific spiritual task.¹⁹⁶

Thus, it is evident that by seeking to legally intervene, the Narragansett Indian Tribe sought to prevent the destruction of their ceremonial landscapes and to prevent significant mental harm to members of their tribe. The destruction of Narragansett ceremonial landscapes is most closely aligned with Dr. Stanton's dehumanization and denial stages of genocide, as the destruction itself seeks to disrupt the remaining cultural and spiritual relationships the Narragansett people have traditionally maintained with their ancestral territories. By permitting the ceremonial stone landscapes to be destroyed, Rhode Island and the United States government have demonstrated a specific intent—in the 21st Century—to erase the remaining physical evidence that the Narragansett Tribe existed long ago, and to perpetuate the false notion that the Narragansett people are extinct today.

IV. *Wunnishaūntá* (Let's agree): Recognizing and Acknowledging Past Genocides and Respecting the Continuous Existence of the of the Narragansett Indian Tribe

¹⁹⁶ Narragansett Indian Tribal Historic Preservation Office v. Federal Energy Regulatory Commission, 949 F.3d 8, 11 (D.C. Cir. 2020).

As Professor Rosenberg explains in *Genocide Is a Process, Not an Event*, when “one focuses on how the process of genocide unfolds and the acts that are often perpetrated on the victim—both indirectly and directly—during the genocidal process, then one might begin to link these preliminary or early acts to the efforts of genocide prevention.”¹⁹⁷ Thus, for tribal, state, and federal relations to improve and prevent future acts of genocide, it is paramount that the state of Rhode Island and the United States government recognize and acknowledge the past harms committed against the Narragansett people, rather than justify their actions as a necessary evil for the creation of the United States of America.

The United States’ failure to acknowledge past harms against Indigenous peoples has further compounded the injustices specifically faced by the Narragansett people as many in the community believe that if the government will not acknowledge its wrongs against Native people generally, as seen in the Obama Administration apology, then what makes them think that the government will acknowledge the harms it has specifically enacted on the Narragansett. For the federal and state governments to truly rectify the harms they have inflicted on the Narragansett people, taking accountability for those actions is the first step in the healing process. This requires the United States to take tangible steps toward identifying a remedy, and begin taking remedial actions, such as reparations and the return of traditional territories.

The reparations framework advocated for in this article is informed by international and grassroots sources, including the Office of the United Nations High Commissioner for Human Rights and the Movement for Black Lives, as well as by Narragansett elders. According to the United Nations, there are five requirements to establish full reparations¹⁹⁸: (1) restitution;¹⁹⁹ (2) compensation;²⁰⁰

¹⁹⁷ Rosenberg, *supra* note 33, at 17.

¹⁹⁸ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147 (Dec. 16, 2005), UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, <https://www.ohchr.org/en/professionalinterest/pages/remedyandreparation.aspx> (last visited Aug. 31, 2021).

¹⁹⁹ According to the Movement for Black Lives, restitution is defined as “[to] re-establish the situation which existed before the wrongful act was committed.” MOVEMENT FOR BLACK LIVES REPARATIONS NOW TOOLKIT 26 (2019), <https://m4bl.org/wp-content/uploads/2020/05/Reparations-Now-Toolkit-FINAL.pdf>.

²⁰⁰ The Movement for Black Lives states that compensation requires that “[t]he injuring state, institution or individual is obligated to compensate for the damage, if damage is not made good by restitution.” *Id.*

(3) rehabilitation;²⁰¹ (4) satisfaction;²⁰² and (5) a guarantee of non-repetition.²⁰³ Under this reparations framework, state and federal governments would be required to invest resources in the Narragansett community in a manner determined by Narragansett people, to account for past genocides and to commit to cessation.²⁰⁴

At its core, any remedy for these genocides should center on traditional Narragansett concepts of justice²⁰⁵ like fairness and equity, and the needs of the Narragansett people, irrespective of whether those needs are health, employment, educational, financial, environmental, cultural, or spiritual in nature. Although the United States government cannot be found legally responsible for acts of genocide committed before the ratification of the Genocide Convention, it can acknowledge its participation in those acts by providing reparations. Accepting civil responsibility for the genocide faced by the Narragansett involves the creation of a new legal cause of action under civil law for acts of genocide committed prior to 1988. Such a cause of action should equip the court with the discretion to provide equitable remedies for tribal communities affected by genocide, such as injunctions to prevent state actors from making major decisions that will impact the Tribe without its consent, and consent decrees to maintain court supervision. Such remedies should incorporate Indigenous principles of restorative justice, like reconciliation and communal forgiveness, for a more holistic approach to remedial action.

Additionally, an appropriate equitable remedy would require courts to work with the affected tribal community, the state that occupies the community's traditional territories, and the federal government, to develop a plan that what would make the tribal community "whole," even though it would not be possible, obviously, to return to the Tribe to the wholeness of its pre-colonial status. These remedies should include providing Narragansett descendants with reparations (beyond funds currently provided to the Tribe by the federal government) in a manner similar to the discussion proposed in

²⁰¹ The Movement for Black Lives defines rehabilitation as the provision of "legal, medical, psychological, and other care and services." *Id.*

²⁰² The Movement for Black Lives explains that "satisfaction is also needed" when "cessation, restitution, and compensation do not bring full repair." For example, an apology is a form of satisfaction. *Id.*

²⁰³ G.A. Res.60/147 (Dec. 16, 2005), <https://www.ohchr.org/en/professionalinterest/pages/remedyandrepairation.aspx>.

²⁰⁴ For more information on the reparations framework, see MOVEMENT FOR BLACK LIVES REPARATIONS NOW TOOLKIT, *supra* note 199.

²⁰⁵ See WILLIAMS, *supra* note 12, at 122 n.19.

the 116th Congress regarding reparations for descendants of enslaved Africans.²⁰⁶

While the discussion of imposing a new civil remedy certainly begs the question of how long the federal and state governments will remain under court supervision, the answer to this question should not be premised on efficiency, but rather on impact. This is not the first time that courts in the United States have been asked to supervise such kinds of actions, as there is precedent in the school desegregation context. After *Brown v. Board of Education II* was decided in 1955, requiring states to desegregate with “all deliberate speed,”²⁰⁷ various states resisting integration were placed under consent decree until they were determined to have eliminated the “vestiges of past discrimination” to the “extent practicable.”²⁰⁸ A similar principle should be applied in the genocide context.

Only when the impact of government actions can no longer be felt by the descendants of the individuals who first experienced the harm should the state and federal governments be released from court supervision. To paraphrase the Narragansett delegation in the detribalization era, so long as one drop of Indian blood remains—and the pain still felt by their ancestors lingers—the Narragansett people should be entitled to a court’s supervision to ensure the protection of their rights and privileges guaranteed by the settlers of Rhode Island.

Tuppaûnttash (Consider what I say).

²⁰⁶ See generally Commission to Study and Develop Reparations Proposals for African-Americans Act, H.R. 40, 116th Cong. (2019-2020), <https://www.congress.gov/bill/116th-congress/house-bill/40>.

²⁰⁷ 349 U.S. 294, 301 (1955).

²⁰⁸ Board of Educ. v. Dowell, 498 U.S. 237, 249-50 (1991).