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COVER ART: Donald McKay and Jack's capturers, Photographic portraits of Modoc Indians of the Modoc War, PC 006, California Historical Society.

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A Dark History Hits Home

California's Governor Apologizes for the State's Native Genocide and Takes a First Step Toward Healing

ABSTRACT In June 2019, Governor Gavin Newsom apologized to tribal leaders for the genocide his predecessors waged against California's Native peoples, the most comprehensive such admission to date at the state level. The apology broke through widespread public denial of this historical atrocity and prompted extensive media coverage. In California's case, vigilantes, state-sponsored and -funded militias, army campaigns, and abysmal reservation conditions cut an estimated population of 150,000 in 1846 to 15,000 by 1900. Remarkably, California's tribes, augmented by migration of Native Americans from other parts of the United States, have demonstrated great resilience and are now building their cultural presence in state and nation. **KEYWORDS:** Native Americans, California, Genocide, California Truth and Healing Council

RARELY DOES A political leader admit responsibility for a past wrong, much less tender an apology to the wronged and move toward reconciliation. All that happened on June 18, 2019, when California governor Gavin Newsom stood before a gathering of tribal leaders in Sacramento to admit to and apologize for the state-sponsored genocide waged against their ancestors in the nineteenth century. "California must reckon with our dark history," an emotional Newsom said, adding that he felt ashamed of his former ignorance of the atrocity. With the genocide now a matter of public record and responsibility admitted, the governor continued, the state and its tribal nations can begin to "work together to build bridges, tell the truth about our past, and begin to heal deep wounds."[1]

James C. Ramos, the first California Indian elected to the state assembly, gave a blessing to open the meeting, sang a traditional bird song, and flanked the governor as he spoke. For him, Newsom's admission and apology was personal. Ramos explained, "I grew up in a mobile home on the San Manuel Indian Reservation and experienced poverty firsthand that many generations before me have lived through." And, he went on, the governor's speech "marked the beginning of a new relationship between the state and the more than 700,000 Native Americans who make the state of California their home."[2]

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Newsom's apology, memorialized in Executive Order N-15-19, set off a significant media wave. The story was reported in a long list of print and online outlets, including the *New York Times*, *Los Angeles Times*, *Sacramento Bee*, *USA Today*, *San Francisco Chronicle*, *East Bay Times*, UPI, AP, *Al Arabiya*, *Manchester Guardian*, Breitbart.com, indianz.com, *High Country News*, *Indian Country Today*, *Huffington Post*, *Last Real Indians*, and History.com.

The unprecedented breadth of responsibility California has taken on sparked this widespread attention. In 2013, Kansas governor Sam Brownback apologized officially for the 1838 Potawatomi Trail of Death, when that tribal nation was forced out of Indiana and into Kansas, a journey that killed over forty people, mostly children. On the 150th anniversary of the Sand Creek Massacre in 2014, Colorado governor John Hickenlooper apologized to descendants of the hundreds of Cheyennes and Arapahos targeted in that atrocity. Last year, Alaska governor Bill Walker offered an apology to his state's Native peoples for a variety of wrongs, including the forced removal of children to boarding schools.[3] Never before, though, had a governor apologized for a systematic, publicly funded, decades-long effort to annihilate a state's indigenous inhabitants.

There is a reason why: genocides do not happen all at once. Rather, they advance through stages, from discrimination and dehumanization to persecution, then to widespread, normalized killing. In the last stage, denial, the genocide's perpetrators, enablers, and bystanders retreat into silence, as if this fresh hell had never happened.[4] It did, though, and Newsom's admission and apology was the latest in a rising chorus of voices breaking through the silence to name the dark stain on the Golden State's history for what it is.

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The nineteenth century lacked the word *genocide*. The term first entered the lexicon during World War II, when it was assembled from Greek and Latin roots by Raphaël Lemkin, a Polish-Jewish lawyer seeking to create a legal category for the annihilation campaign Nazis were waging against Jews, Roma, homosexuals, Slavs, communists, and other groups. Lemkin defined genocide as a "coordinated plan of different actions aiming at the destruction of essential foundations of life of national groups, with the aim of annihilating the groups themselves."[5] Lemkin then lobbied and cajoled until the United Nations General Assembly passed the 1948 law that defines genocide as an international crime and gives it a legal structure prosecutors can bring into a courtroom.[6]

Owing to the postwar timing of genocide's birth as a legal concept, the Holocaust became the default paradigm: a centrally planned, hierarchically organized effort that used widespread systematic violence for efficient, fast, and massive slaughter. This pattern largely fits two other well-known genocides that were brought before international courts: the killing fields of Khmer Rouge Cambodia and the slaughter of Tutsis, Twas, and moderate Hutus in Rwanda. Those genocides were centrally planned, lasted from a few months to a few years, and claimed victims in the hundreds of thousands to the millions.[7] Yet such is not the only model for genocide, nor is this how international law defines the crime.

To win a genocide conviction, a prosecutor must prove two elements. The first is intent: the defendant had to demonstrate a conscious, willful desire "to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such." The second is execution: the defendant must have committed specified acts aimed at destroying the targeted group, which range

from murder to stripping children from their families. The law does not require central organization, a specific time span, or a minimum number of deaths.

Because what happened in California differs from the atrocities in Europe, Cambodia, and Rwanda, the state's nineteenth-century genocide has long been hiding in plain sight, at least as far as people outside tribal communities were concerned. Denial was in full bloom. Yet, over time, scholars pulled the curtain back fold by fold and intimated that California had indeed perpetrated genocide against its indigenous inhabitants. A twentieth-century pioneer in this effort was Sherburne C. Cook, a University of California, Berkeley, physiologist whose demographic analyses of California's Native population pointed to a destruction too extensive to be happenstance. More scholars and writers took up the idea from various angles and underscored the likelihood of genocide: Jack D. Forbes, Robert Heizer, George Harwood Phillips, Theodora Kroeber, James J. Rawls, Albert Hurtado, Clifford Trafzer, Joel Heyer, Frank H. Baumgardner, Chad L. Hoopes, William Coffer, Jack Norton, Estle Beard, Lynwood Carranco, Russell Thornton, and William T. Hagen, among others.[8] Then, in the past several years, two historians wrote books that bore this dark tale into the public forum.

The first was Brendan C. Lindsay, whose book *Murder State: California's Native American Genocide, 1846–1873* appeared in 2012. Lindsay wrestles with how a democracy orchestrated mass murder: "Rather than an all-powerful central leader supported by a coterie of like-minded men controlling the government, one finds that individual Americans possessed of notions of democracy, ultra-individualism, and the pioneer spirit wanted to engage democracy to bring about their collective will to eliminate Native Americans as obstacles to landholding and general conceptions of wealth and security."[9] As Lindsay demonstrates, that is just what they did. The scholarly community paid attention: Lindsay received the 2014 Western Social Science Association President's Award for *Murder State*.

The second historian was Benjamin Madley, author of the 2016 book *An American Genocide: The United States and the California Indian Catastrophe, 1846–1873*. Madley proceeds year by year by year, detailing laws passed, state and federal funds allocated, murderous actions taken in more than 1,100 militia raids and some 115 military campaigns, reservations starved out, and children removed. The result was near annihilation on an unequaled scale: "The direct and deliberate killing of Indians in California between 1846 and 1873 was more lethal and sustained than anywhere else in the United States and its colonial antecedents."[10]

An American Genocide went on to win a number of awards, and for good reason. As the Harvard historian Philip Deloria explained, "Scholars had debated the applicability of the concept of genocide to Native American history, but Madley's book lays it all out there. His research implicates the state of California and the federal state. It makes clear how the funding streams went. It explodes the whole cultural discourse around Indian death. It shows intent to exterminate."[11]

To be sure, violence had marked European behavior toward California Indians from first contact. Spanish soldiers in San Diego in the early 1770s spent their spare time chasing and raping Kumeyaay women and killing men who got in the way. At least 62,600 indigenous people died in California missions, and Mexican forces killed substantial numbers of California Indians as well. Overall, California's indigenous population fell

from perhaps 310,00 to 150,000 under Spain and Mexico. Still, the Spaniards and the Mexicans wanted to retain an indigenous population as a colonial labor pool, even after Native peoples were manumitted by the Mexican Republic from 1833 on. Spaniards and Mexicans sought dominance and exploitation of forced labor, not genocide. As brutal, vicious, and lethal as those regimes were, extermination was never their goal.[12]

That dispensation changed when the United States took over in 1846. At the time, California had the largest Native population of any U.S. state or territory, some 150,000, and a very small non-Native population. Then the gold rush flooded California with incoming wealth seekers and shifted the new state's demographics. The increasingly numerous Euro-Americans typically considered Natives an obstacle to occupying the land and monetizing its minerals, timber, and agriculture.[13]

Native California comprised approximately a hundred distinct linguistic groups and hundreds of tribal nations, typically small and typically local, who tended to be more peaceable than warlike. Sensing how vulnerable these Natives were, settlers set their sights beyond claiming the lion's share of California land; they wanted all of it. So, when federal commissioners negotiated eighteen treaties with 119 tribes, setting aside 7.488 million acres as reservations, California's congressional delegation lobbied against the agreements as ludicrously generous to Natives. Flowing with the political tide, the U.S. Senate unanimously rejected all eighteen treaties.[14]

California next excluded Natives from legal protection. New laws—one of them titled, ironically, "An Act for the Government and Protection of Indians"—denied the right to vote by limiting citizenship to white males; legalized de jure custodianship of Native minors, convict leasing, and corporal punishment of Natives; and disallowed trial testimony by Natives against whites. Euro-Americans could get away with murder, mayhem, and rape unless a white person was willing to testify against them.[15] You can guess how often that happened.

Even as these exclusionary laws were being enacted, events around Clear Lake and the Russian River showed how effective organized violence against Natives could be. Andrew Kelsey and Charles Stone, who ran a cattle ranch near the lake, treated the local Eastern Pomo and Clear Lake Wappo people as their serfs and slaves. They kept them on starvation rations, whipped any who stepped out of line, raped women and girls at will, and killed for trivial offenses. So, when one of the ranchers' horses went missing, Natives knew the punishment would be terrible. Five men banded together to kill Kelsey and Stone, in December 1849, before they could act.

The retribution for those killings, exacted by vigilantes and U.S. Army units, took as many as a thousand California Indian lives across four counties over the following months. Few of those slain—who included women and children—had anything to do with the deaths of Kelsey and Stone, not that innocence mattered to most vigilantes or soldiers.[16] This episode set a precedent: massive, anti-Indian violence on the least pretext, a pattern that would be repeated again and again.

Mindful of this lesson and besieged by white voters who demanded state militias to "protect" them, Peter Burnett, California's first civilian governor, gave his Annual Message to the Legislature in January 1851. Burnett came to his role lugging racist baggage. An emigrant from the Little Dixie region of northwestern Missouri, where his family owned slaves,

Burnett first dove into politics in Oregon. There he championed excluding free blacks from the state, an idea he advocated for California as well when he moved south. Burnett also signed into law an onerous 1850 tax on foreign miners. Later, he lobbied enthusiastically for the 1882 Chinese Exclusion Act.[17]

Governor Burnett focused his 1851 address on the Natives he portrayed as the greatest impediment to California's progress and Euro-Americans' enrichment. Experience, he said, had demonstrated that Euro-Americans and Native Americans, owing to the laziness and avarice of the latter, "cannot live in the same vicinity in peace." Genocide, termed *extermination* in this pre-Lemkin era, was the solution: "The two races must ever remain at enmity. . . . [A] war of extermination will continue . . . to be waged until the Indian race becomes extinct. . . . The inevitable destiny of the [indigenous] race is beyond the wisdom or power of [the white] man to avert."[18]

In the mid-nineteenth-century United States, pseudoscientific theory supported a widespread belief that Natives were a primitive race doomed to vanish as a result of contact with superior, civilized Euro-Americans.[19] Burnett sought moral refuge in this fiction of inevitability, reluctantly advocating war as a way of hurrying fate along.

California legislators put state money where Burnett's mouth was. Over the following few years, $1.51 million—close to $40 million in today's dollars—was raised to fund state militia units that hunted Natives down, usually on the pretext of ending livestock theft or avenging the rare killing of Euro-Americans, then transported survivors to reservations where food was nonexistent and health conditions lethal. California's twenty-four volunteer state militia expeditions received generous reimbursement from Sacramento for time and materials, including horses, food, and ammunition. Indian killing paid well.[20]

By and large, the public supported the extermination effort. Even those few outraged by the violence usually kept their mouths shut. Indeed, speaking out could be dangerous. When the writer Bret Harte, then a young reporter in what is now Arcata, California, published his horror at massacres of Natives close to home in 1860, the threat of a lynch mob sent him fleeing for his life.

Henry Larabee, the vigilante who organized the killings of Wiyot Indians that sparked Harte's outrage and who made sure the writer feared for his safety, was a decidedly notorious vigilante leader. He boasted that he had personally killed sixty Native infants, a reputation he used to recruit men committed to slaying as many Natives as possible. Calling themselves the Thugs, they fell upon a dozen Humboldt County villages in a week's time and killed at least 250.[21]

William Kibbe, the adjutant general of California's state militia, led the Pit River Expedition of 1859, named for a tributary of the Sacramento River that flows through the volcanic uplands east of Redding and Red Bluff. At the head of a column of ninety militiamen, Kibbe razed one village after another and either killed or captured many of the Native people inhabiting the area from Butte Creek north to the Pit. Kibbe received a payout worth nearly $2 million in today's money.[22]

Then there was Walter S. Jarboe, who assembled the Eel River Rangers in Mendocino County. A stockman himself, Jarboe was out to protect not only his own horses and cattle but also the herds of the wealthy and powerful Serranus C. Hastings, who had served as the California Supreme Court's first chief justice and later as the state's attorney general.

Hastings promised to pay Jarboe and his men should the state refuse their bills. In less than three months, the Eel River Rangers killed over four hundred Natives and force-marched some six hundred more onto abysmal reservations. Jarboe suffered only three men wounded and one killed—numbers that testify to slaughter, not battle.[23]

Ben Wright became the scourge of the Modoc nation in California's remote northeastern corner. When the first wagon train of immigrants rolled through their country in 1846, the Modocs, who numbered up to two thousand at the time, let them pass through. The following year, an epidemic, most likely of measles spread by the newcomers, killed 150 tribal members. As wagon trains continued to foul streams, kill game, trample meadows, and spread pathogens, the Modocs fought back. Wright recognized a business opportunity in bringing these attacks to an end.

An Indiana Quaker by upbringing, Wright had shed his religion's pacifism when he came west. He honed his scouting and hunting skills in the Oregon Territory's Cayuse War, then moved to California and made his living by killing Natives for the scalp bounties paid by towns and mining camps. Wright enlisted in a vigilante campaign against the Modocs, then organized and led his own raiding party later that same year. The next summer, he led a company of vigilantes back to Modoc country, seeking a high-profit, big-league kill. Wright claimed that he wanted to talk peace under a white flag, a stratagem that brought the Modocs in to parley. Overnight, Wright ordered his men to surround the Native camp before dawn and open fire at first light. As many as ninety were killed, women and children as well as men. Not a single vigilante was wounded. And when Wright and his men returned to their home base in Yreka, waving scalps and other ghoulish trophies, the town turned out to cheer and party.[24]

Epidemics and massacres whittled away at the Modocs. By 1864, when they signed a treaty and agreed to join the Klamaths and the Yahooskin Paiutes on the Klamath Reservation in south-central Oregon, they numbered fewer than 350.

Not that life proved any easier on the reservation. Congress failed to appropriate promised funds for years, resulting in meager food, paltry shelter, and nonexistent medical care. In early 1870, many of the Modocs abandoned the reservation to return to traditional village sites close to the north shore of Tule Lake, where they could fish to feed themselves. A U.S. Army cavalry raid to force them back onto the reservation triggered the Modoc War in late 1872. By the time the shooting ended in June 1873, more than one thousand soldiers and scouts were arrayed against a mere fifty-five to sixty Modoc fighters protecting approximately one hundred elders, women, and children, including at least one newborn. This was no conflict between equals; rather, an army set upon a refugee village.

Soon after the shooting ended, six Modoc fighters were convicted for war crimes in a military show trial. Four were hanged, and the other two were sentenced to life in prison on Alcatraz. The 153 surviving Modocs were exiled to Oklahoma. Poor food and bad housing fostered by corrupt Indian agents, combined with rampant tuberculosis and pneumonia, took one life after another. Although children continued to be born to the survivors, the census of Oklahoma Modocs fell to only eighty-eight by 1889.[25]

The Modocs' fate mirrored what was happening across California. By 1873, the California Indian population had dropped to thirty thousand, only 20 percent of what it had been

in 1846. The decline continued to fifteen thousand by 1900, primarily from purposeful neglect on reservations and by Indian agencies. In a little more than a half-century, nine of every ten Native Californians had been rubbed out.[26]

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Because the California genocide was hidden away in Euro-American denial, its reality was little known outside tribal communities. Yet even as scholars opened this terrible secret to the light, Native activists were moving to spread the word of what they had long known to be true.

In late 1969, American Indian activists occupied the shuttered federal prison on Alcatraz. Although the occupation foundered after nineteen months, it cast a new light on the grievances of California's Indians. Beginning in the late 1980s, that light focused on the Catholic Church's campaign to make Junípero Serra, founder of California's oppressive mission system, into a saint. A loud public outcry, which proclaimed the word *genocide* and was driven by Native voices, grew even louder in 2015 when Pope Francis made Serra a saint anyway. This mounting, well-publicized effort to tell the truth about California's history resulted in the state legislature's passage of AB 738, which requires the development of "a model curriculum in Native American studies" for grades 9–12 with the consultation of California tribal communities. Governor Jerry Brown, who early in his first term had already established the Office of Tribal Adviser to improve relations between the state and the tribes, signed the bill into law on October 9, 2017.[27]

Only a few months earlier, Brown had read *An American Genocide* and phoned author Benjamin Madley at UCLA to discuss it. In April 2017, he invited Madley to the state capitol to address tribal leaders and state officials. Later, Brown became the first governor in U.S. history to publicly acknowledge a genocide in his or her state's past by writing an endorsement of *An American Genocide* that appeared on the book's paperback edition and the Yale University Press website: "Madley corrects the record with his gripping story of what really happened: the actual genocide of a vibrant civilization thousands of years in the making." These events helped set the stage for Newsom's admission and apology on June 18. As *New York Times* correspondent Tim Arango sees it, "Madley . . . has been instrumental in sparking the conversation . . . that led to Mr. Newsom's apology."[28]

Yet, even as California's genocide emerges from the shadows, the state's built landscape continues to honor the perpetrators with streets, buildings, and institutions named after them. A sampling includes Peter Burnett Middle School in San Jose, Burnett and Jarboe Avenues in San Francisco, Kibbe Road in Marysville, Hastings College of the Law, the town of Kelseyville, Kelsey Court in Pleasant Hill, and Larabee Creek.

In addition, California has largely erased Native names from the natural landscape. Yosemite National Park is a prominent example. Yosemite sounds Native to Anglophones, and it is, sort of. Lafayette Bunnell, a militiaman in the Mariposa Battalion that invaded the valley to kill and run off its Native inhabitants in 1851, proposed the name, claiming it was a Miwuk word meaning "grizzly." That was a mistranslation, but no matter. It served the purpose of stripping away the Native names for the valley and its inhabitants—Ahwanhee and Ahwahnechee—both erasing the people long indigenous to this landscape and turning them into objects of romantic nostalgia.[29]

Erasure continues. However, even as some non-Native people continue to look past them as vanishing relics, California's indigenous citizens have been building to a comeback. Today there are 110 federally recognized tribes in the state, and approximately 81 other communities are working to win or regain recognition. And, as of the 2010 census, 723,225 residents identified as Native American or Alaska Native. Many of these people originated in tribal nations outside California and moved to the state. As a result, California once again has the largest Native population of any U.S. state or territory.[30]

Native Americans in California are making their presence felt in a rising cultural wave. *There There*, the acclaimed first novel by Tommy Orange (Cheyenne and Arapaho Tribes of Oklahoma), about Oakland's urban Indians, won the $25,000 PEN/Hemingway Award for a Debut Novel in 2019. In 2018, Tommy Pico (Viejas Band of Kumeyaay Indians) won a $50,000 Whiting Award for emerging writers with his iconoclastic, Twitter-infused, book-length *Nature Poem*. Another poet, Natalie Diaz (Gila River Indian Community), addresses the ongoing oppression of Native Americans in *When My Brother Was an Aztec*, which won its author a $650,000 MacArthur Foundation "genius grant" in 2018. *How a Mountain Was Made*, the most recent book from tribal chair, novelist, HBO producer, and professor Greg Sarris (Federated Indians of Graton Rancheria), reshapes Coastal Miwok and Southern Pomo creation tales into contemporary stories that contemplate how we humans can all come home again. It won the bronze medal for multicultural fiction in the 2019 Independent Publisher Book Awards.[31]

Still, California's Native citizens continue to endure numerous indignities: remote reservations beset by unemployment, substandard housing, and poor services; employment discrimination; cultural insensitivity in public schools; challenges to tribal authority and sovereignty; and violation of tribal lands by illegal hunters, off-roaders, and rock art collectors.[32] There remains a great deal to be done, from unraveling those genocidal names to remedying the social injustice of erasure.

The California Truth and Healing Council created under Newsom's Executive Order N-15-19 will take on this task. Fashioned after the South African and Canadian truth and reconciliation commissions, the council will be headed by Governor's Tribal Advisor Christina Snider (Dry Creek Rancheria of Pomo Indians), who also chairs the state's Native American Heritage Commission. The council will comprise tribal representatives and may also include leaders from government plus other stakeholders. Charged with exploring and documenting the relationship between the State of California and its tribal citizens, the council will produce a report annually beginning on January 1, 2020, and issue a summary report in 2025.

The Truth and Healing Council will hardly be the last word on the California genocide's fraught, dark, and long-standing legacy. But, like Governor Newsom's apology, it is a step forward, a bend in the moral universe's long arc toward justice, the first chapter in a new history of hope.

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