


# The Plot to Overthrow Genocide: State Laws Mandating Education About the Foulest Crime of All

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# THE PLOT TO OVERTHROW GENOCIDE: STATE LAWS MANDATING EDUCATION ABOUT THE FOULEST CRIME OF ALL

SUSAN H. BITENSKY\*

Teach your children well  
Their father's hell did slowly go by[,]  
And feed them on your dreams.<sup>1</sup>

There's something happening here

\*\*\*\*

Children, what's that sound?  
Everybody look – what's going down?<sup>2</sup>

*This Article shines a light on a little noticed phenomenon in American law: the promulgation of ten state statutes and one state regulation, each requiring education about genocide in elementary and/or secondary schools. The mandates, adopted from 1989 through 2018, appear to be only the beginning inasmuch as in 2017 another nineteen states publicly pledged to pass such mandates as well.*

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It is probably well to disclose that this author has had some “skin in the game” vis-à-vis Michigan’s successful passage of a genocide–education mandate statute. *See infra* notes 8, 30 and accompanying text. In my capacity as director of the Talsky Center, I and MSU Law student volunteers at the Center drafted the initial bill that was submitted to the Michigan legislature on requiring genocide education. If enacted as first drafted, the law would have been one of the strongest in the United States. During the inevitable give and take among legislators and lobbyists, the bill’s content changed considerably and ultimately became a much weaker statute. Nevertheless, I am very grateful that the Michigan legislature passed the statute, thereby joining a growing and righteous vanguard of states.

I dedicate this Article to Lori E. Talsky and Alan S. Zekelman, without whom neither the Center nor the Michigan mandate would exist. In particular, I wish to acknowledge Lori’s invaluable leadership, counsel, and other support in making the bill into law.

1. CROSBY, STILLS, NASH & YOUNG, TEACH YOUR CHILDREN (Atlantic Records 1970).
2. BUFFALO SPRINGFIELD, FOR WHAT IT’S WORTH (Atco Records 1966).

*The Article describes each of the existing mandates and compares them to each other, including an analysis of the laws' respective strong and weak points. This exposition, of interest in itself, also sets the stage for proposals to improve the mandates regarding inclusiveness of peoples, comprehensiveness of subject matter, and range of pedagogical impacts.*

*Additionally, the question is taken up as why the mandates have gotten a foothold in the United States. One reason may be that experts deem them to be the most effective means of preventing genocide. Second, the mandates are consistent with the American legal system, and have posed no conceptual obstacles for lawmakers. And third, genocide is so inherently appalling as to inspire political pressure and legislative countermeasures against it.*

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## I. INTRODUCTION

Something good is afoot in America. A collective insight is emerging that Americans have a responsibility to prevent genocide, a goal that requires educating schoolchildren about this epitome of barbarity—what jurists have come to call the “crime of crimes.”<sup>3</sup>

Evidence of the insight is palpable. As of this writing, ten states have passed legislation expressly mandating schools to teach their charges about

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3. *E.g.*, WILLIAM A. SCHABAS, GENOCIDE IN INTERNATIONAL LAW: THE CRIMES OF CRIMES 9 (2000).

genocide<sup>4</sup> and an eleventh state has implicitly done the same via administrative rules.<sup>5</sup> The first of the mandates made its debut in 1989.<sup>6</sup> By 2010, six more had materialized,<sup>7</sup> and then, between 2014 and 2018, a crowning four were added.<sup>8</sup> In 2017, another nineteen states also publicly pledged to pass such statutes<sup>9</sup> while four members of the U.S. House of Representatives introduced a resolution voicing support for the mandate states and encouraging other states to impose the genocide curriculum.<sup>10</sup> This was followed in 2018 by a House bill intended to create a fund receiving donations for furthering Holocaust education.<sup>11</sup> The timeline from 1989 through 2018 thus shows an irregular but

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4. CAL. EDUC. CODE § 51220(b)(1)–(2) (West 2015); CONN. GEN. STAT. § 10-16b (2018); FLA. STAT. ANN. § 1003.42(2)(g) (West 2014); 105 ILL. COMP. STAT. ANN. § 5/27-20.3 (West 2005); IND. CODE § 20-30-5-7 (2018); MICH. COMP. LAWS ANN. § 380.1168(1) (West 2016); N.J. STAT. ANN. § 18A:35-28 (West 1994); N.Y. EDUC. LAW § 801(1), (3) (McKinney 2001); 24 PA. STAT. AND CONS. STAT. ANN. § 15-1554(a)(1)–(2), (b)(1)(i)–(iv), (f)(1)–(2) (West 2014); 16 R.I. GEN. LAWS ANN. § 16-93-3(2) (West 2016); Press Release, The Office of Gov. Dannel P. Malloy, Governor Malloy Signs Law Requiring Holocaust and Genocide Education in Connecticut Schools (May 10, 2018), <https://portal.ct.gov/Office-of-the-Governor/Press-Room/Press-Releases/2018/05-2018/Gov-Malloy-Signs-Law-Requiring-Holocaust-and-Genocide-Education-in-Connecticut-Schools> [<https://perma.cc/MQ3X-E43E>].

5. 19 TEX. ADMIN. CODE §§ 113.42(c)(12), 113.42(c)(22)(C)–(D), 113.43(c)(18)(B) (2010).

6. See 105 ILL. COMP. STAT. ANN. § 5/27-20.3 (West 2005) (originally legislated by Act of Sept. 6, 1989, Pub. Act No. 86-780, 1989 Ill. Laws 4166–67).

7. See N.Y. EDUC. LAW § 801(1), (3) (McKinney 2001) (originally legislated by Act of July 20, 1994, ch. 390, 1994 N.Y. Laws 2671); N.J. STAT. ANN. § 18A:35-28 (West 1994) (originally legislated by Act of April 7, 1994, ch. 13, 1994 N.J. Laws 48–49); FLA. STAT. ANN. § 1003.42(2)(g) (West 2014) (originally legislated by Act of May 16, 2002, ch. 387, 2002 Fla. Laws 198–99); CAL. EDUC. CODE § 51220(b)(1)–(2) (West 2015) (originally legislated by Act of Sept. 19, 1992, ch. 763, 1992 Cal. Stat. 3681); 2017 Ind. Legis. Serv. P.L. 231-2017 (S.E.A. 337) § 1.1C20-30-5-7(a)(3) (West) (originally legislated by Act of July 1, 2007, P.L. 86-2007, 2007 Ind. Legis. Serv. 1362 (West)); 19 TEX. ADMIN. CODE §§ 113.42(c)(12), 113.42(c)(22)(C)–(D), 113.43(c)(18)(B) (2010).

8. MICH. COMP. LAWS ANN. § 380.1168(1) (West 2016) (originally legislated by Act of June 14, 2016, § 1168, 2016 Mich. Pub. Acts 86); 16 R.I. GEN. LAWS ANN. § 16-93-3(2) (West 2016) (originally legislated by Act of June 17, 2016, ch. 104 § 2, 2016 R.I. Pub. Laws 375); 24 PA. STAT. AND CONS. STAT. ANN. § 15-1554(a)(1)–(2), (b)(1)(i)–(iv), (f)(1)–(2) (West 2014) (originally legislated by Act of June 26, 2014, Pub. L. No. 2014-70, 2014 Pa. Laws 776); CONN. GEN. STAT. § 10-16(b) (2018).

9. *Legislators in 20 U.S. States to Introduce Legislation on Holocaust and Other Genocide Awareness and Prevention*, PR NEWSWIRE (Apr. 24, 2017), <https://www.prnewswire.com/news-releases/legislators-in-20-us-states-to-introduce-legislation-on-holocaust-and-other-genocide-awareness-and-prevention-300443932.html> [<https://perma.cc/9YVA-63UC>]; *Lawmakers from 20 States Pledge to Mandate Holocaust Education*, ARUTZ SHEVA 7 (Apr. 24, 2017), <https://www.israelnationalnews.com/News/News.aspx/228542> [<https://perma.cc/3Q4V-S563>].

10. See Press Release, Brendan F. Boyle, Congressman, U.S. House of Representatives, Representatives Boyle, Ros-Lehtinen, Deutch, and Fitzpatrick Introduce Bipartisan Legislation Supporting Holocaust Education Nationwide (Apr. 25, 2017), <https://boyle.house.gov/media-center/press-releases/reps-boyle-ros-lehtinen-deutch-and-fitzpatrick-introduce-bipartisan> [<https://perma.cc/S2CM-QCFL>].

11. Never Again Education Act of 2018, H.R. 5460, 115th Cong. (2018), CONGRESS.GOV, <https://www.congress.gov/bill/115th-congress/house-bill/5460> [<https://perma.cc/8RQY-88JN>].

ongoing legislative activism on the genocide–education issue, and therefore presumably represents a growing popular attitude supporting the enactments and pledges.<sup>12</sup>

But, is it accurate to say that the timing and rate of such lawmaking signify something astir across the nation? I think so. Consider that the mandates (express and implied) currently come from 22% of the fifty states and that the pledges represent another 38% of states. Ergo, over a twenty-nine-year span, the total percentage of states which either have or promise to have mandates is a robust 60%. The country and especially state lawmakers seem to be slowly but surely coming alive to the exigency of taking steps toward ending genocide,<sup>13</sup> an obvious good in itself and an opportune stiffening of society's shared moral backbone.

This Article focuses on the history, main aspects, and ramifications of the state laws mandating genocide education of schoolchildren. Part II describes the mandates, comparing them to each other so as to convey the scope of their substance and whom they affect.<sup>14</sup> This Part additionally describes the related state pledges and federal bills.<sup>15</sup> Part III divines, from the historical timeline of the mandates' passage, likely explanations for why state genocide–education mandates have come into existence during the last twenty-nine years and offers a hypothesis as to why the trend is apt to continue.<sup>16</sup> Part IV discusses what makes the mandates the most dependable adjuvant in helping to prevent future genocides over the long haul.<sup>17</sup> Part V provides a discourse on how the mandates dovetail with the American legal culture and system.<sup>18</sup> And, Part VI considers how the current mandates may be improved to achieve their acknowledged and potential objectives.<sup>19</sup>

No less deliberately, this Article carries a subtext with analgesic and hope-inducing aspirations. It is being written during an era of bitter political

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12. *See supra* notes 4, 5, 9, 10 and accompanying text.

13. *See supra* notes 9, 10 and accompanying text.

14. *See infra* notes 23–52 and accompanying text.

15. *See infra* notes 53–58 and accompanying text.

16. *See infra* notes 59–91 and accompanying text.

17. *See infra* notes 92–112 and accompanying text.

18. *See infra* notes 113–54 and accompanying text.

19. *See infra* notes 155–92 and accompanying text.

polarization,<sup>20</sup> disclosure of unremitting sexual misconduct against women,<sup>21</sup> and inflamed bigotry toward minority racial and religious groups.<sup>22</sup> That the genocide–education trend stands revealed in times like these may, it is anticipated, serve as a bit of tonic for those of us despondent over the lack of social harmony and mutual respect.

## II. WHAT THEY SAY: STATE GENOCIDE–EDUCATION MANDATE LAWS AND PLEDGES, AND THE FEDERAL BILLS

### A. *State Genocide–Education Mandates*

The ten states which have thus far enacted statutes mandating genocide education of schoolchildren are, in chronological order: Illinois (1989),<sup>23</sup> California (1992),<sup>24</sup> New Jersey (April 1994),<sup>25</sup> New York (July 1994),<sup>26</sup>

20. See Pew Research Ctr., *The Partisan Divide on Political Values Grows Even Wider*, U.S. POL. & POL'Y (Oct. 5, 2017), <http://www.people-press.org/2017/10/05/the-partisan-divide-on-political-values-grows-even-wider/> [<https://perma.cc/DH36-J5JN>] (finding that political disagreements between Republicans and Democrats have reached an all-time high during the Trump administration); Kenneth T. Walsh, *Polarization Deepens in American Politics*, U.S. NEWS & WORLD REP. (Oct. 3, 2017), <https://www.usnews.com/news/ken-walshs-washington/articles/2017-10-03/polarization-deepens-in-american-politics> (opining that the “most important political trend in U.S. public opinion is . . . polarization”).

21. See Baxter Oliphant, *Women and Men in Both Parties Say Sexual Harassment Allegations Reflect “Widespread Problems in Society”*, PEW RES. CTR. (Dec. 7, 2017), [www.pewresearch.org/fact-tank/2017/12/07/americans-views-of-sexual-harassment-allegations/](http://www.pewresearch.org/fact-tank/2017/12/07/americans-views-of-sexual-harassment-allegations/) [<https://perma.cc/J8EH-KLUR>] (referring to a “recent flood of reports about sexual harassment and violence”).

22. See Alia E. Dastagir, *The State of Hate in America*, USA TODAY (July 10, 2017), <https://www.pressreader.com/usa/usa-today-us-edition/20170710/281612420437183> (reporting that as of 2015, there have been disturbing upticks in hate incidents based on race and religion); see also UN Rights Experts Criticize US Failure to Unequivocally Reject Racist Violent Events, UN NEWS CTR. (Aug. 23, 2017), <https://news.un.org/en/story/2017/08/563722-un-rights-experts-criticize-us-failure-unequivocally-reject-racist-violent> [<https://perma.cc/EJB2-3Y3N>] (calling on U.S. officials to reject and condemn racist hate speech and crimes throughout the nation, and also requesting the government to investigate “racial discrimination targeting” of “ethno-religious minorities” in particular).

23. 105 ILL. COMP. STAT. ANN. § 5/27-20.3 (West 2005) (originally legislated by Act of Sept. 6, 1989, Pub. Act No. 86-780, 1989 ILL. LAWS 4166–67).

24. CAL. EDUC. CODE § 51220(b)(1)–(2) (West 2015) (originally legislated by Act of Sept. 19, 1992, ch. 763, 1992 Cal. Stat. 3681).

25. N.J. STAT. ANN. § 18A:35-28 (West 1994) (originally legislated by Act of Apr. 7, 1994, ch. 13, 1994 N.J. Laws 48–49).

26. N.Y. EDUC. LAW § 801(1), (3) (McKinney 2001) (originally legislated by Act of July 20, 1994, ch. 390, 1994 N.Y. Laws 2671).

Florida (2002),<sup>27</sup> Indiana (2007),<sup>28</sup> Pennsylvania (2014),<sup>29</sup> Michigan (June 2016),<sup>30</sup> Rhode Island (September 2016),<sup>31</sup> and Connecticut (2018).<sup>32</sup> Each of these statutes expressly sets forth the mandate. Texas's 2010 mandate is neither a statute nor express, but it is still quite as preemptory. It consists of state administrative rules promulgated as part of the Texas Administrative Code<sup>33</sup> by the State Board of Education.<sup>34</sup> The rules direct that the Holocaust must be included in the world history curriculum<sup>35</sup> and genocide must be included in the world geography curriculum.<sup>36</sup>

As one would expect when ten state legislatures and one state administrative agency have each independently been at work formulating laws, even though on the same subject, the results vary considerably beyond the basic fact of establishing the mandate. For example, some of the statutes apply to both public and private schools<sup>37</sup> and some apply exclusively to the former.<sup>38</sup> The enactments and regulation also diverge on which grade levels are subject to the mandate as the following sections show. Illinois, Indiana, and New Jersey extend the mandate to all grade levels.<sup>39</sup> Texas and Michigan extend it solely to high school.<sup>40</sup> And, in-between are: California, extending it to grades seven to twelve;<sup>41</sup> Florida and Rhode Island, extending it to middle and high

27. FLA. STAT. ANN. § 1003.42(2)(g) (West 2014) (originally legislated by Act of May 16, 2002, ch. 387, 2002 Fla. Laws 198–99).

28. 2017 IND. LEGIS. SERV. P.L. 231-2017 (S.E.A. 337) § 1C20-30-5-7(a)(3) (West) (originally legislated by Act of July 1, 2007, 2007 IND. LEGIS. SERV. P.L. 86-2007 (H.E.A. 1059) (West)).

29. 24 PA. STAT. AND CONS. STAT. ANN. § 15-1554(a)(1)–(2), (b)(1)(i)–(iv), f(1)–(2) (West 2014) (originally legislated by Act of June 26, 2014, Pub. L. No. 2014-70, 2014 Pa. Laws 776).

30. MICH. COMP. LAWS ANN. § 380.1168(1) (West 2016) (originally legislated by Act of June 14, 2016, § 1168, 2016 Mich. Pub. Acts 86).

31. 16 R.I. GEN. LAWS ANN. § 16-93-3(2) (West 2016) (originally legislated by Act of June 17, 2016, ch. 104 § 2, 2016 R.I. Pub. Laws 375).

32. CONN. GEN. STAT. § 10-16b (2018).

33. 19 TEX. ADMIN. CODE §§ 113.42(c)(12), 113.42(c)(22)(C)–(D), 113.43(c)(18)(B) (2010).

34. *State Board of Education Rules-Texas Administrative Code*, TEX. EDUC. AGENCY, [tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/SBOE\\_Rules\\_\(TAC\)/State\\_Board\\_of\\_Education\\_Rules\\_-\\_Texas\\_Administrative\\_Code](http://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/State_Board_of_Education_Rules_-_Texas_Administrative_Code) [<https://perma.cc/Y2QG-JS5N>].

35. 19 TEX. ADMIN. CODE § 113.42(c)(12), (22)(C)–(D) (2010).

36. 19 TEX. ADMIN. CODE § 113.43(c)(18)(B) (2010).

37. *See, e.g.*, N.Y. EDUC. LAW § 801(1), (3) (McKinney 2001).

38. *See, e.g.*, MICH. COMP. LAWS ANN. § 380.1168(1) (West 2016); 2017 IND. LEGIS. SERV. P.L. 231-2017 (S.E.A. 337) § 1.1C20-30-5-7(a)(3) (West); IND. CODE ANN. § 20-18-2-16(a) (West 2018).

39. 105 ILL. COMP. STAT. ANN. § 5/27-20.3 (West 2005); 2017 IND. LEGIS. SERV. P.L. 231-2017 (S.E.A. 337) § 1C-20-30-5-7(a)(3) (West); N.J. STAT. ANN. § 18A:35-28 (West 1994).

40. MICH. COMP. LAWS ANN. § 380.1168(1) (West 2016); 19 TEX. ADMIN. CODE §§ 113.42(c)(12), 113.42(c)(22)(C)–(D), 113.43(c)(18)(B) (2010).

41. CAL. EDUC. CODE § 51220(b)(1)–(2) (West 2015).

school;<sup>42</sup> and New York where it applies to schoolchildren over eight years of age.<sup>43</sup>

On the substantive front, there is a similar disparity in terms of the subtopics or related topics covered under the mandates. Three statutes suffice to illustrate the point. The New York law generally requires teaching “human rights issues,”<sup>44</sup> and under that rubric specifies: “particular attention [must be paid] to the study of the inhumanity of genocide.”<sup>45</sup> Thus, New York requires a multifold human rights curriculum which prominently includes genocide.

In comparison, New Jersey’s mandate focuses predominantly on teaching psychological and sociological causes of genocide:

The [mandated] instruction shall enable pupils to identify and analyze applicable theories concerning human nature and behavior; to understand that genocide is a consequence of prejudice and discrimination; and to understand that issues of moral dilemma and conscience have a profound impact on life. The instruction shall further emphasize the personal responsibility that each citizen bears to fight racism and hatred whenever and wherever it happens.<sup>46</sup>

Illinois’ legislation takes a more historical approach including but not limited to certain enumerated occurrences of genocide:

Every public elementary school and high school shall include in its curriculum a unit of instruction studying the events of the Nazi atrocities of 1933 to 1945. This period in world history is known as the Holocaust, during which 6,000,000 Jews and millions of non-Jews were exterminated. One of the universal lessons of the Holocaust is that national, ethnic, racial, or religious hatred can overtake any nation or society, leading to calamitous consequences. To reinforce that lesson, such curriculum shall include an additional unit of instruction studying other acts of genocide across the globe. This unit shall include, but not be limited to, the Armenian Genocide, the Famine-Genocide in Ukraine, and more recent atrocities in Cambodia, Bosnia, Rwanda, and Sudan. The studying of this material is a reaffirmation of the commitment of free peoples from all nations to never again permit the occurrence of another Holocaust and a recognition that crimes of genocide

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42. FLA. STAT. ANN. § 1003.42(1)–(2)(g) (West 2014); 16 R.I. GEN. LAWS ANN. § 16-93-3(2) (West 2016).

43. N.Y. EDUC. LAW § 801(1) (McKinney 2001).

44. *Id.* § 801(3) (McKinney 2001).

45. *Id.*

46. N.J. STAT. ANN. § 18A:35-28(b) (West 1994).



continue to be perpetrated across the globe as they have been in the past and to deter indifference to crimes against humanity and human suffering whenever they may occur.<sup>47</sup>

It is important to clarify that, although 22% of states now have genocide–education mandates, that does not mean the remaining states have necessarily overlooked the issue. At least one non-mandate state has passed legislation explicitly making this type of education discretionary;<sup>48</sup> other states have, in effect, made genocide education discretionary by neither requiring nor forbidding it.<sup>49</sup> While, at first glance, laws merely permitting the instruction may appear innocuous, they are ultimately wanting. For, an educator operating under a discretionary regime may or may not decide to teach about genocide, while a teacher employed under a mandatory regime must teach about genocide in order to be in legal compliance.<sup>50</sup> Discretionary states consequently treat genocide education as a hit-or-miss proposition.<sup>51</sup> Yet, isn't genocide education as essential to maintaining a civilized social order, governed by the rule of law, as, say, literacy or other basic compulsory instruction in civics and social studies?<sup>52</sup> If we are truly serious in the endeavor to grow an adult populace knowledgeable about genocide and well positioned to prevent it, then state mandate statutes are the only real option.

#### B. State Pledges and Federal Bills

In April 2017, the Anne Frank Center for Mutual Respect embarked upon a nationwide Genocide Education Project to seek passage of genocide–education mandate statutes by the forty states (and District of Columbia) then remaining in the non-mandate category.<sup>53</sup> The Center reports that, thus far, twenty-six legislators representing twenty of those states have pledged to introduce bills requiring the curricula in public schools.<sup>54</sup> The list of pledging states reveals that they are located in every region of the country, and include Alaska, Arkansas, Colorado, Delaware, Georgia, Hawaii, Idaho, Kansas,

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47. 105 ILL. COMP. STAT. ANN. § 5/27-20.3 (West 2005).

48. *See, e.g.*, WASH. REV. CODE ANN. § 28A.300.115(1) (West 1992) (providing that “[e]very public school is encouraged to include in its curriculum instruction . . . on the Holocaust”).

49. My fifty-state Westlaw surveys of state statutes and regulations have shown that, beyond the ten states with express mandates and Washington’s express permission, other states have evidently not engaged in legislating or rule-making on school genocide education.

50. *See supra* notes 46, 47, 48 and accompanying text.

51. *See supra* note 48 and accompanying text.

52. 78A C.J.S. *Schools and School Districts* § 1076 (2008) (summarizing that the “state has the power to require that . . . studies plainly essential to good citizenship be taught,” which may include basic and diverse subjects).

53. *See supra* note 9 and accompanying text.

54. *See supra* note 9 and accompanying text.

Kentucky, Louisiana, Maryland, Massachusetts, Missouri, Nebraska, Ohio, South Carolina, Virginia, and Washington.<sup>55</sup> Moreover, since the list was issued, one of the pledgers—Connecticut—has made good on its promise.

Four federal legislators also joined the chorus in 2017 by presenting a resolution in the House of Representatives “expressing congressional support for states that require Holocaust awareness curricula,” and urging other states to enact similar genocide–education mandate statutes.<sup>56</sup> In 2018, a bill with thirty-six cosponsors was also introduced in the House, which, if enacted, would establish a fund for receiving donations dedicated to aiding Holocaust education in middle and high schools.<sup>57</sup> To date, the resolution and bill are pending in committee.<sup>58</sup>

### III. REASONS FOR THE CONTINUING PROLIFERATION OF STATE GENOCIDE– EDUCATION MANDATE LAWS

Much of the time, it seems to take “forever” for humankind to make moral progress. Consider how long it took to outlaw slavery<sup>59</sup> or the millennia which passed before children were granted rights.<sup>60</sup> Relatively speaking, our species does not often appear to take the fast track to moral improvement.

55. See *supra* note 9 and accompanying text.

56. Congressman Brendan F. Boyle (Pennsylvania), joined by Representatives Ileana Ros-Lehtinen (Florida), Ted Deutch (Florida), and Brian K. Fitzpatrick (Pennsylvania), introduced the bill into the U.S. House of Representatives. See *supra* note 10 and accompanying text.

57. See *supra* note 11 and accompanying text; see also Michael Wilner, *US Jewish Groups Push for Legislation on Holocaust Education*, THE JERUSALEM POST (June 26, 2018), <https://www.jpost.com/Diaspora/US-Jewish-groups-push-for-legislation-on-Holocaust-education-560927> [<https://perma.cc/NWZ4-VLLS>] (describing which school levels the fund would benefit).

58. See *supra* note 11 and accompanying text.

59. American slavery got underway in 1619 when African slaves arrived in the colony of Jamestown, Virginia. *Slavery in America*, HISTORY, [www.history.com/topics/black-history/slavery](http://www.history.com/topics/black-history/slavery) [<https://perma.cc/8LK4-Z88J>]. It was not until January 1, 1863, that President Abraham Lincoln officially made the Emancipation Proclamation, freeing the slaves, the law of the land. *Id.* Of course, slavery’s origins long pre-dated the 17th century; the phenomenon is known to have existed in all ancient civilizations. *History of Slavery*, HIST. WORLD, [www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=ac41](http://www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=ac41) [<https://perma.cc/W56A-TQ4F>].

60. “It was not until the late nineteenth century that a nascent children’s rights protection movement countered the widely held view that children were mainly quasi-property and economic assets.” *Children’s Rights: International Laws*, L. LIBR. CONGRESS, <https://www.loc.gov/law/help/child-rights/international-law.php> [<https://perma.cc/6WJ9-SNJH>] (last visited Sept. 14, 2018). The League of Nations Declaration of 1924 articulated in a sketchy manner the notion that children have rights. *Id.* Then, in 1959, the United Nations promulgated a more developed instrument on children’s rights, the Declaration of the Rights of the Child. *Id.* Thirty years later, the United Nations issued the Convention on the Rights of the Child, a binding treaty. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

A particularly pertinent illustration of this deficit is the forty-four years which elapsed between the close of World War II in 1945<sup>61</sup> and the enactment by Illinois in 1989 of the United States' first state genocide–education mandate.<sup>62</sup> However, as if to make up for lost time and reclaim some moral high ground, that legislative first was soon followed by a continuing progression of state genocide–education mandates right up through 2018, e.g., one in 1992, two in 1994, one in 2002, one in 2007, one 2010, one in 2014, two in 2016,<sup>63</sup> and one in 2018.<sup>64</sup>

The lag between 1945 and 1989 and the ensuing spate of legislation from 1992 onward prompts the question of whether any potentially causative factors, besides the Holocaust's undoubtedly long-lasting and deep imprint, might also have come into play during the later period. It is revealing to line up the timing of the aforementioned state legislative and rule-making activities with the dates and sequence of certain historical events occurring in the United States and internationally. Indeed, Illinois' 1989 mandate may well have been prompted by more than the Holocaust; for, in 1988, the United States ratified the U.N. Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention),<sup>65</sup> a multilateral treaty making genocide a crime.<sup>66</sup> After this, a rough correlation obtains between the materialization of the state mandates and the occurrence of mass atrocities in other countries.<sup>67</sup> During 1991–1995, war ravaged the former Yugoslavia, including perpetration of genocide and other violations of international humanitarian law.<sup>68</sup> In 1994, the Rwandan genocide took hundreds of thousands of lives and maimed innumerable victims.<sup>69</sup> In 2004, the U.S. government acknowledged the

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61. Michelle Hall, *By the Numbers: End of World War II*, CNN, [www.cnn.com/2013/09/02/world/btn-end-of-wwii/index.html](http://www.cnn.com/2013/09/02/world/btn-end-of-wwii/index.html) [https://perma.cc/8A9J-FF35] (last updated Sept. 2, 2013, 4:05 PM).

62. See 105 ILL. COMP. STAT. ANN. 5/27-20.3 (West 2005) (originally legislated by Act of Sept. 6, 1989, Pub. Act No. 86-780, 1989 Ill. Laws 4166–67).

63. See *supra* notes 4, 5, 9 and accompanying text.

64. See *supra* notes 4, 32 and accompanying text.

65. Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention].

66. *Id.* at art. I. The United States ratified the Genocide Convention on Nov. 25, 1988. *Ratification of International Human Rights Treaties – USA*, U. MINN. HUM. RTS. LIBR., [hrlibrary.umn.edu/research/ratification-USA.html](http://hrlibrary.umn.edu/research/ratification-USA.html) [https://perma.cc/2KLB-J9YJ] (last visited Sept. 14, 2018).

67. See *infra* notes 72, 73, 74 and accompanying text.

68. *The Conflicts*, UNITED NATIONS INT'L CRIM. TRIBUNAL FOR THE FORMER YUGOSLAVIA, [www.icty.org/en/about/what-former-yugoslavia/conflicts](http://www.icty.org/en/about/what-former-yugoslavia/conflicts) [https://perma.cc/WHV6-FE3R] (last visited Sept. 14, 2018).

69. See *Rwandan Genocide*, HISTORY, [www.history.com/topics/rwandan-genocide](http://www.history.com/topics/rwandan-genocide) [https://perma.cc/AK9H-U3XH] (last visited Sept. 14, 2018).

continuing carnage in Darfur to be genocide.<sup>70</sup> And, in 2016, U.S. Secretary of State John Kerry declared that the Islamic State (ISIS) had been committing genocide in Iraq and Syria.<sup>71</sup>

Notice that, post-1989, the initial series of state mandates is aligned with the timing of the Balkan debacle and Rwandan genocide.<sup>72</sup> The next flurry of mandates, from 2002 to 2010, is more or less in sync with the unrelenting genocide in Darfur.<sup>73</sup> Afterwards, a string of mandates commencing in 2014 loosely parallels the period when ISIS's genocide was commanding the attention and anxiety of the American public.<sup>74</sup>

The correspondence detailed above does not, of course, prove that any one of the mentioned historical events actually caused any of the state genocide–education mandates. But, the symmetry is suggestive enough that it should not be ignored in trying to understand the genesis of state genocide–education mandates over the past three decades.

The case for linkage becomes still stronger in light of the evolving ubiquitousness of Internet access in people's homes and lives during the relevant years.<sup>75</sup> In 1955, there were a mere 250 computers in the world and those were not in residences.<sup>76</sup> By 1980, "more than one million personal computers had been sold and by the mid-1980's, this figure had risen to 30 million."<sup>77</sup> Furthermore, the 1990s marked a fast acceleration in Internet use, with the appearance of the World Wide Web in the mid-1990s making the Internet even more prevalent.<sup>78</sup>

The Internet has allowed rapid transmission of news around the globe. While television had introduced the brutality and decimation of war into

70. See Glenn Kessler & Colum Lynch, *U.S. Calls Killings in Sudan Genocide: Khartoum and Arab Militias are Responsible, Powell Says*, WASH. POST (Sept. 10, 2004), [www.washingtonpost.com/wp-dyn/articles/A8364-2004Sep9.html](http://www.washingtonpost.com/wp-dyn/articles/A8364-2004Sep9.html) [<https://perma.cc/QE7J-KKC6>].

71. See Amanda Holpuch et al., *John Kerry: ISIS is Committing Genocide in Syria and Iraq*, THE GUARDIAN (Mar. 17, 2016), <https://www.theguardian.com/world/2016/mar/17/john-kerry-isis-genocide-syria-iraq> [<https://perma.cc/22UM-3RX9>].

72. See *supra* notes 7, 24–26, 69 and accompanying text.

73. See *supra* notes 7, 27, 28 and accompanying text.

74. See *supra* notes 9, 10, 29–32, 71 and accompanying text.

75. See C N Trueman, *The Personal Computer*, HIST. LEARNING SITE (Mar. 17, 2015), <https://www.historylearningsite.co.uk/inventions-and-discoveries-of-the-twentieth-century/the-personal-computer> [<https://perma.cc/S4WJ-UY9P>].

76. *Id.*

77. *Id.*

78. See *Computer*, THE COLUMBIA ENCYCLOPEDIA (6TH ED.), ENCYCLOPEDIA.COM [www.encyclopedia.com/science-and-technology/computers-and-electrical-engineering/computers-and-computing/](http://www.encyclopedia.com/science-and-technology/computers-and-electrical-engineering/computers-and-computing/) [<https://perma.cc/5MPJ-QHPP>] (last visited Sept. 14, 2018).

Americans' living rooms for the first time during the 1960s,<sup>79</sup> the Web, in tandem with cable's twenty-four-hour news cycles,<sup>80</sup> also has brought foreign genocidal victimization to laptops and iPads<sup>81</sup> in record number.

It would be simplistic to claim that the above-described factors constitute the sole impetuses for genocide—education mandates. Genocide survivors, their families, descendants, and other sympathizers have lobbied for the legislation in some states; it would be incomprehensible if they had not done so.<sup>82</sup> A pining for remembrance of genocide's victims<sup>83</sup> or a determination to confront ugly truths gone by may have further mixed into legislators' motivations.<sup>84</sup> This is

79. See *Vietnam on Television*, MUSEUM BROAD. COMM., [www.museum.tv/eotv/vietnamonte.htm](http://www.museum.tv/eotv/vietnamonte.htm) [<https://perma.cc/5KT5-B8S6>] (last visited Sept. 14, 2018).

80. See Liane Hansen & David Folkenflik, *The Power of the 24-Hour News Cycle*, NAT'L PUB. RADIO (May 29, 2005, 12:00 AM), [www.npr.org/templates/story/story.php?storyId=4671485](http://www.npr.org/templates/story/story.php?storyId=4671485) [<https://perma.cc/7BKJ-H3VZ>].

81. Edward R. Giradet, *Reporting Humanitarianism: Are the New Electronic Media Making a Difference?*, in FROM MASSACRES TO GENOCIDE: THE MEDIA, PUBLIC POLICY, AND HUMANITARIAN CRISES 45, 56–57 (Robert I. Rotberg & Thomas G. Weiss eds., 1996) (reporting that, in less than a decade, “the world’s lines of communication to war zones have dramatically changed” for “all concerned” due, in part, to laptop computers and modems); David Andersen & Anna Moden, *Technology and the Prevention of Genocide*, in PROCEEDINGS OF THE FORTY-EIGHTH PUGWASH CONFERENCE ON SCIENCE AND WORLD AFFAIRS: THE LONG ROADS TO PEACE 179, 179 (Joseph Rotblat ed. 2001) (describing how the spread of the Internet has allowed “the immediate reporting of human rights abuses”).

82. See, e.g., Michele Alperin, *Holocaust Education Increasingly Expanded to Other Genocides on U.S. State Level*, JEWISH NEWS SYNDICATE (June 25, 2014), <https://www.jns.org/holocaust-education-increasingly-expanded-to-other-genocides-on-u-s-state-level/> [<https://perma.cc/Z9Z9-CG8T>].

83. See, e.g., *Day of Remembrance of the Victims of the Rwanda Genocide*, TIME AND DATE, <https://www.timeanddate.com/holidays/un/remember-victims-rwanda-day> [<https://perma.cc/8KZ6-ASKT>] (last visited Sept. 15, 2018) (noting that the United Nations’ Day of Remembrance of the Victims of the Rwanda Genocide is held annually on April 7th); Amelia Hill, *Holocaust Memorial Day: Genocide Victims Remembered Across World*, THE GUARDIAN (Jan. 27, 2013), <https://www.theguardian.com/world/2013/jan/27/holocaust-memorial-day-victims-remembered> [<https://perma.cc/2QX8-32SE>] (relating that victims and survivors of the Holocaust and other genocides were remembered on Holocaust Memorial Day in 2013); *The Remembrance Day of the Armenian Genocide*, THE ARMENIAN GENOCIDE MUSEUM-INST., [www.genocide-museum-am/eng/remembrance\\_day.php](http://www.genocide-museum-am/eng/remembrance_day.php) [<https://perma.cc/62GA-N22G>] (last visited Sept. 15, 2018) (stating that April 24th is the date on which Armenians commemorate victims of the Armenian Genocide).

84. See, e.g., Michael Sontheimer, *Germany’s Nazi Past: Why Germans can Never Escape Hitler’s Shadow*, DER SPIEGEL INT’L, SPIEGEL ONLINE (Mar. 10, 2005), [www.spiegel.de/international/germany-s-nazi-past-why-germans-can-never-escape-hitler-s-shadow-a-345720.html](http://www.spiegel.de/international/germany-s-nazi-past-why-germans-can-never-escape-hitler-s-shadow-a-345720.html) [<https://perma.cc/643Y-57KL>] (pointing out that “[b]y the 1980s, recognition of Nazi crimes and the acceptance of the German duty to critically remember them had finally attained broad consensus”); *Harvard University Confronts Historical Ties to Slavery*, CBS NEWS (Mar. 3, 2017, 10:07 AM), <https://www.cbsnews.com/news/harvard-university-confronts-historical-ties-to-slavery-with-conference-ta-nehisi-coates/> [<https://perma.cc/L4F7-ACCD>] (chronicling that Harvard University and other American universities are seeking to acknowledge their past participation in slavery).

a period in which the urge to “never forget”<sup>85</sup> or to put things right, may have been intensified by the fact that Holocaust survivors are increasingly dying of old age, with fewer and fewer of them available to bear witness.<sup>86</sup> Requiring genocide education of schoolchildren is a rational response to mediating such voids. Moreover, post-2015 America has been experiencing an unnerving upsurge in the number of hate groups<sup>87</sup> and hate crimes.<sup>88</sup> Inasmuch as they are precursors to and mainstays of genocide, the public may instinctively be casting about for antidotes; state genocide–education mandates are, again, a logical response, though their ramifications may primarily be felt down the road.

Beyond showing the probable origins of state genocide–education mandates, the relationship between the foregoing circumstances and the mandates also may serve up a second round of subtextual tonic, this one to boost any sagging optimism about the viability of human rights norms in the United States.<sup>89</sup> It is an auspicious sign that the American public is evidently becoming gradually sensitized to and concerned about not only genocide itself, but, also and necessarily, about the heinous human rights transgressions which comprise and are constitutive of genocide, e.g., transgressions of the right to life, and of the right to be free of torture or cruel, inhuman, or degrading treatment or punishment.<sup>90</sup> After all, elected legislators do not usually pass bills which would offend or mystify a majority of voters—especially bills altering the education of voters’ children; it stands to reason that lawmakers are more

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85. Though there is no certainty on the issue, it is thought that the phrase “Never Forget” originated in reaction to the Holocaust. See Patricia T. O’Conner & Stewart Kellerman, *Never Forget! Never Again!*, GRAMMAPHOBIA (Dec. 26, 2012), <https://www.grammarphobia.com/blog/2012/12/never-forget.html> [<https://perma.cc/XL2Z-88SN>].

86. See Sarah Wildman, *After All the Survivors Have Died, the Holocaust Will Seem as Dry and Dusty as the Civil War*, WASH. POST (Oct. 30, 2014), [https://www.washingtonpost.com/posteverything/wp/2014/10/30/after-all-the-survivors-have-died-the-holocaust-will-seem-as-dry-and-dusty-as-the-civil-war/?utm\\_term=.1c08d5674432with](https://www.washingtonpost.com/posteverything/wp/2014/10/30/after-all-the-survivors-have-died-the-holocaust-will-seem-as-dry-and-dusty-as-the-civil-war/?utm_term=.1c08d5674432with): [<https://perma.cc/V3BB-53BE>] (remarking that Holocaust survivors are dying).

87. See *Hate Groups*, SOUTHERN POVERTY L. CTR., <https://www.splcenter.org/hate-map> [<https://perma.cc/XF8Z-4627>] (last visited Sept. 15, 2018) (documenting that since the presidential campaign of Donald J. Trump, the number of hate groups in the United States has been on the rise).

88. See Benjy Sarlin, *Trump Must Confront Hate Groups His Political Rise Energized, Experts Say*, NBC NEWS (Aug. 14, 2017), <https://www.nbcnews.com/politics/donald-trump/trump-must-confront-hate-groups-his-political-rise-energized-advocates-n792671> [<https://perma.cc/8FVT-DDJR>] (reporting “an uptick of hate crimes in major cities since the election”); Reuters, *U.S. Hate Crimes Up 20 Percent in 2016, Fueled by Election Campaign: Report*, NBC NEWS (Mar. 14, 2017), [www.nbcnews.com/news/us-news/u-s-hate-crimes-20-percent-2016-fueled-election-campaign-n733306](http://www.nbcnews.com/news/us-news/u-s-hate-crimes-20-percent-2016-fueled-election-campaign-n733306) [<https://perma.cc/FL4B-L895>] (same); Associated Press, *More Than Half of Hate Crimes Aren’t Reported to Police*, NBC NEWS (June 29, 2017), <https://www.nbcnews.com/news/us-news/more-half-hate-crimes-aren-t-reported-police-n777971> [<https://perma.cc/3RZP-CHCL>].

89. See *supra* notes 21, 22 and accompanying text.

90. See Susan H. Bitensky, *For Recognition of a Peoples’ Right to U.N. Authorized Armed Intervention to Stop Mass Atrocities*, 16 WASH. U. GLOBAL STUD. L. REV. 245, 265–67 (2017).

comfortable in legislating consonant with supportive sentiment from the man-or woman-in-the-street. Inasmuch as thirty states either have mandates or pledge to have them,<sup>91</sup> an inference may legitimately be drawn that many residents of those states harbor receptivity or even full-blown sympathy toward human rights agendas.

#### IV. GENOCIDE–EDUCATION MANDATE LAWS ARE THE MOST EFFECTIVE WAY TO HELP PREVENT GENOCIDE

It verges on the ridiculous to ask whether the genocide–education mandates are an effective way to help prevent genocide; to ask is to beg the question as to why we bother to educate children at all. We do this to, among other things, give them knowledge and teach them how to think, to cultivate and civilize them.<sup>92</sup> When competently taught, the result is children who should mature into responsible, rational adults with a sense of community and at least a modicum of individual autonomy.<sup>93</sup> Making genocide education a required part of every child’s schooling is an integral element of this overall mission, if the human community is to be genuinely civilized and at peace.<sup>94</sup> Given the persistent recurrence of genocide<sup>95</sup> and its ghastly effects,<sup>96</sup> genocide education is a sorely needed way of promoting an internally irenic society governed by the rule of law—a way, it bears repeating, that is quite as indispensable as literacy or required instruction in civics and social studies.<sup>97</sup>

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91. See *supra* notes 4, 5, 9 and accompanying text.

92. See JOHN DEWEY, *DEMOCRACY AND EDUCATION: AN INTRODUCTION TO THE PHILOSOPHY OF EDUCATION* 21 (The Floating Press 2009) (1916) (remarking that education is a “fostering, a nurturing, a cultivating process”); THOMAS LICKONA, *EDUCATING FOR CHARACTER: HOW OUR SCHOOLS CAN TEACH RESPECT AND RESPONSIBILITY* 35 (1991); Amy Gutman, *Preface to the Revised Edition* of AMY GUTMAN, *DEMOCRATIC EDUCATION* xiv (1987) (stressing the goal of education as teaching “the skills and virtues of democratic deliberation”).

93. AMY GUTMAN, *DEMOCRATIC EDUCATION* 51–52 (1987).

94. See Rosanna M. Gatens & Mary Johnson, *Holocaust, Genocide and Human Rights Education: Learning Political Competencies for 21st Century Citizenship*, 1 J. INT’L SOC. STUD. 35, 44 (2011), <http://www.iajiss.org/index.php/iajiss/article/viewFile/44/32> [<https://perma.cc/P4HZ-LB5N>] (concluding that genocide and human rights education is critical to “mak[ing] democracy function well for all members of the society as well as in the international struggle to achieve human rights for all people”); Suzanne D. Rutland, *Genocide or Holocaust Education: Exploring Different Australian Approaches for Muslim School Children*, in *AS THE WITNESSES FALL SILENT: 21ST CENTURY HOLOCAUST EDUCATION IN CURRICULUM, POLICY AND PRACTICE* 225, 237 (Zehavit Gross & E. Doyle Stevick eds., 2015) (characterizing education about the Holocaust and genocide as important to reducing racism and hate).

95. See *supra* notes 68, 70, 71, 72, 87 and accompanying text.

96. See, e.g., ROMÉO DALLAIRE, *SHAKE HANDS WITH THE DEVIL: THE FAILURE OF HUMANITY IN RWANDA* 279–80, 301–03 (2003) (recounting grisly episodes of the Rwandan genocide).

97. Schools in the United States are expected to teach reading and writing. See, e.g., MICH. COMP. LAWS ANN. § 380.1278(1), (2) (West 2016) (requiring, as a prerequisite to accreditation of all

This proposition has not been lost on the experts. International human rights specialists, educators, and eminent philosophers have earnestly advocated genocide education of children. As a previous Director General of the U.N. Educational, Scientific and Cultural Organization (UNESCO) memorably put it, “[t]he prevention of genocide starts on the benches of schools.”<sup>98</sup> During the 20th commemoration of the Rwandan genocide, then U.N. Secretary General Ban Ki-moon observed more generally:

We have learned important lessons. We know more keenly than ever that genocide is not a single event but a process that evolves over time, and requires planning and resources to carry out. As chilling as that sounds, it also means that with *adequate information*, mobilization, courage and political will, genocide can be prevented.<sup>99</sup>

The Secretary General’s reference to conveying “adequate information” as a means to prevent genocide naturally includes, as a linguistic matter, educating children about the phenomenon.<sup>100</sup>

Prominent pedagogues adhere to an even more categorical view. Scholars of genocide education see it as yielding big payoffs in reducing racism and hate, the engines of genocide, and ultimately in inhibiting perpetration of the crime.<sup>101</sup> The Stanford Research Institute (SRI), in a 2004 report on Holocaust

of the schools within a school district, provision to students of a core academic curriculum including reading and writing); DEL. CODE ANN. tit. 14, § 153(d) (West 2011) (demanding student proficiency on reading assessments and that shortfalls be addressed by certain “academic improvement activities”); OKLA. STAT. ANN. tit. 70, § 1210.508 (D)–(E) (West 2018) (compelling adoption of a statewide student assessment system on “English Language Arts,” among other subjects). Instruction in civics and social studies are conventional subjects in the required curriculum of American elementary and secondary schools. *See, e.g.*, MD. CODE REGS. 13A.04.08.01(A) (2015) (mandating social studies curriculum); N.Y. EDUC. LAW § 3204.3(a)(1)–(2) (McKinney 2008) (requiring instruction in civics); OR. REV. STAT. ANN. § 329.025(8) (West 2013) (imposing civics courses); *cf., e.g.*, COLO. REV. STAT. ANN. § 22-7-1006.3(1)(a)(III) (West 2017) (making social studies subject to state student assessments); MO. ANN. STAT. § 160.257.1 (West 1985) (making social studies and civics subject to school district student assessments). *See supra* note 52 and accompanying text.

98. UNITED NATIONS EDUC., SCI. AND CULTURAL ORG., *Education as a Strategy to Prevent Genocide: Irina Bokova Participates in the Ministerial Side Event About the Prevention of Genocide* (Sept. 24, 2014), <https://en.unesco.org/news/education-strategy-prevent-genocide-irina-bokova-participates-ministerial-side-event-about> [<https://perma.cc/A7J4-6NN6>].

99. Ban Ki-moon, Secretary General, United Nations, Remarks at the New York Launch of Kwibuka20, the 20th Commemoration of the Rwanda Genocide, [www.un.org/en/preventgenocide/rwanda/about/bgpreventgenocide.shtml](http://www.un.org/en/preventgenocide/rwanda/about/bgpreventgenocide.shtml) [<https://perma.cc/J5HG-NWAM>] (last visited Sept. 15, 2018) (emphasis added).

100. *Id.*

101. *See* Gatens & Johnson, *supra* note 94, at 36–37 (enumerating various ways that genocide education positively motivates students toward genocide prevention); Barbara L. Hadzima, *Prejudice Elimination: An Analysis of the Effectiveness of the New Jersey State Mandate to Teach the*



education, urged that such instruction “is not merely an academic undertaking but the best hope for inoculating humankind against future instances of genocide.”<sup>102</sup> SRI, then, deems genocide education of children as much more than a proven instrumentality; it is, to reiterate, our “best hope” for abolishing all genocide.<sup>103</sup>

One of Germany’s great 20th century philosophers, Theodor Adorno,<sup>104</sup> published an essay on Holocaust education which goes still further conceptually than SRI.<sup>105</sup> Adorno argued that this type of education is the very *sine qua non* of humankind’s ascent from barbarity and therefore must be education’s preeminent charge: “The premier demand upon all education is that Auschwitz not happen again. Its priority before any other requirement is such that I believe I need not and should not justify it.”<sup>106</sup> (Incidentally, while both SRI and Adorno refer only to *Holocaust* education, there is no reason why their insights cannot apply more generically to *genocide* education. The Holocaust, after all, is one genocide among many.)<sup>107</sup>

When evaluation from so many quarters is that this type of schooling is the nonpareil for vanquishing genocide, we would clearly disserve our children and their future by failing to make it required education. Less obviously, the failure would also radically disserve present-day adults. The explicit statutory mandates, through their sheer existence, inevitably do double-duty by educating those beyond as well as within the schoolhouse gates.<sup>108</sup> The reason is because most law has an implicit expressive function, which operates

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*Holocaust and Genocide* (1999), SETON HALL U. DISSERTATIONS AND THESES, EREPOSITORY@SETON HALL, scholarship.shu.edu/cgi/viewcontent.cgi?article=2369&context=dissertations [https://perma.cc/4L5C-ZW6A] (finding constructive results of genocide education in reducing prejudice and in understanding the outcomes of “group hate”); Rutland, *supra* note 94, at 237 (characterizing education about the Holocaust and genocide as important to reducing racism and hate).

102. STANFORD RESEARCH INST. INT’L, *National Study of Secondary Teaching Practices in Holocaust Education, Final Report* (Aug. 20, 2004), www.policyweb.sri.com/cep/publications/SRI\_Natl-Study\_TeachingPractices.pdf; EDWARD MORTIMER & KAJA SHONICK GLAHN, THE GLOBAL PREVENTION OF GENOCIDE: LEARNING FROM THE HOLOCAUST 12, www.un.org/en/holocaustremembrance/docs/pdf/chapter2.pdf.

103. *National Study of Secondary Teaching Practices in Holocaust Education, Final Report*, *supra* note 102; MORTIMER & GLAHN, *supra* note 102.

104. *Theodor Adorno*, INTERNET ENCYCLOPEDIA PHILOSOPHY, www.iep.utm.edu/adorno/ [https://perma.cc/B8PT-HQM2] (last visited Sept. 15, 2018).

105. Theodor Adorno, *Education After Auschwitz*, in CRITICAL MODELS: INTERVENTIONS AND CATCHWORDS 191, 191 (Henry W. Pickford trans. 2005).

106. *Id.*

107. *National Study of Secondary Teaching Practices in Holocaust Education, Final Report*, *supra* note 102; Adorno, *supra* note 105, at 191.

108. See, e.g., Alex Geisinger, *A Belief Change Theory of Expressive Law*, 88 IOWA L. REV. 35, 63 (2002) (stating that laws affect beliefs by providing information).

regardless of or in tandem with the law's enforcement by financial penalty or other punitive consequences.<sup>109</sup> Laws express a moral or other policy judgment of government, backed by the state's authority and coercive power. In other words, laws' messages, by their very status as law, have a cogent pedagogical impact—whether or not the governed realize they are being educated.<sup>110</sup> Thus, explicit state genocide–education mandate statutes are bound to have a didactic effect on society at large, including adults. That legislators have considered this education so imperative that they made it part of the prescribed curricula, transmits a persuasive lesson to us all of the crying need to oppose and forestall genocide.<sup>111</sup>

Finally, and to avoid any misunderstanding, it should be stressed that recognizing genocide education's critical instrumentality in preventing future *Auschwitzes*, is not intended to tacitly assert that other helpful preventative measures do not exist or should not be used.<sup>112</sup> Instead, this Article takes the position that whatever tactics work or seem likely to work should be implemented as supplementary to genocide education of schoolchildren, provided, of course, that the tactics are consistent with international human rights law and international humanitarian law.

#### V. STATE GENOCIDE–EDUCATION MANDATE LAWS DOVETAIL WITH AMERICAN LEGAL CULTURE

People and nations everywhere have a vital interest in wiping out genocide. Genocide benefits absolutely no one and has killed or grievously hurt hundreds

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109. See, e.g., Patricia Funk, *Is There an Expressive Function of Law? An Empirical Analysis of Voting Laws with Symbolic Fines*, 9 AM. L. & ECON. REV. 135, 155 (2007) (discussing the “expressive” effect of a law that does not carry any formal sanctions).

110. There is a corpus of literature empirically verifying law's norm-creating effects. See, e.g., *id.* at 135, 146–56 (2007) (ascertaining that Swiss voting-duty laws positively affect voting behavior even though fines for violation verge on *de minimis*). For anecdotal evidence of these impacts see Geisinger, *supra* note 108, at 64, 68–69 (describing the expressive effects of laws requiring seatbelts, children's car seats, and helmets for motorbike riders). But see Matthew A. Christiansen, *A Great Schism: Social Norms and Marijuana Prohibition*, 4 HARV. L. & POL'Y REV. 229, 239–40 (2010) (opining that the expressive function of laws prohibiting marijuana had not, at that time, altered public acceptance of marijuana use).

111. See generally Geisinger, *supra* note 108, at 65 (drawing an analogy between the passage of a particular law and the likelihood that an individual would undertake certain behavior).

112. Other preventative theoretical or proven measures include, for example, averting armed conflict, protecting civilians during armed conflict, ending impunity of genocidaires, and establishing early-warning systems. See Outreach Programme on the Rwandan Genocide, *Background Information on Preventing Genocide*, UNITED NATIONS, [www.un.org/en/preventgenocide/rwanda/about/bgpreventgenocide.shtml](http://www.un.org/en/preventgenocide/rwanda/about/bgpreventgenocide.shtml) [https://perma.cc/J5HG-NWAM] (last visited Sept. 21, 2018) (conveying former U.N. Secretary General Kofi Annan's action plan for preventing genocide).

of millions.<sup>113</sup> Moreover, amid the bloodshed, genocide has upended the structure and stability of entire countries, i.e., by weakening or obliterating their institutions for delivering justice; suspending governments' ability to fulfill basic economic and social service functions; and even by sometimes eroding national sovereignty.<sup>114</sup>

Though there are other forms of mass atrocity—such as war crimes<sup>115</sup> and crimes against humanity<sup>116</sup>—genocide may truly be the “crime of crimes.”<sup>117</sup> A unique element of the crime of genocide, under treaty and implementing federal statute, is that it is committed with intent to partially or fully destroy a national, ethnic, racial, or religious group.<sup>118</sup> The Genocide Convention states, in relevant part:

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

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

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113. See *supra* notes 68–72, 96 and accompanying text.

114. See LARRY MAY, *GENOCIDE: A NORMATIVE ACCOUNT* 9 (2010). The 1994 Rwandan genocide provides a case study of how genocide's ripple effects may temporarily destabilize a nation. One Rwandan noted that his country's post-genocide “infrastructure was totally destroyed.” *Reflections on the Rwandan Genocide: Emmanuel Kamanzi*, PARTNERS IN HEALTH (Apr. 7, 2014), <https://www.pih.org/article/kamanzi-reflection-Rwanda-genocide> [https://perma.cc/S9NY-MLNZ]. Between 1994 and 1996, the Rwandan government was unable to commence legal proceedings against those who committed genocide because there were no domestic courts or jails left in existence. *Rwanda: A Brief History of the Country*, UNITED NATIONS, [www.un.org/en/preventgenocide/rwanda/education/rwandagenocide.shtml](http://www.un.org/en/preventgenocide/rwanda/education/rwandagenocide.shtml) [https://perma.cc/ATM4-8LU9]. “Hospitals and health centers had been destroyed, health care providers had lost their lives, and there was no medicine or medical equipment available.” *Reflections on the Rwandan Genocide: Peter Niyigena*, PARTNERS IN HEALTH (Apr. 11, 2014), <https://pih.org/article/reflections-on-the-rwanda-genocide-peter-niyigena> [https://perma.cc/R6Y8-DA3N]. This is not an exhaustive accounting of the ways that genocide may capsize nations.

115. See Rome Statute of the International Criminal Court, art. 5, ¶ 1(c), July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002).

116. See *id.* at art. 5, ¶ 1(b).

117. See *supra* note 3 and accompanying text.

118. See Genocide Convention, *supra* note 65, art. II, at 277.

group.<sup>119</sup>

Genocide's victims are thus selected according to their status as possessing the immutable biological attribute of a particular racial classification or of having been born into a particular national, ethnic, or religious group.<sup>120</sup> This persecutory element is arguably what makes genocide most iniquitous.<sup>121</sup> The intent requirement makes genocide not just a physical assault on life and limb, but, simultaneously and singularly, a psychological annihilation of personal and group identity.<sup>122</sup>

The Genocide Convention, to which the United States is a party,<sup>123</sup> is integrated with and forms the most prominent part of an American juridical mosaic antithetical to genocide and to the crime's constitutive elements.<sup>124</sup> Indeed, the legal system is permeated with the spirit and letter of such laws,<sup>125</sup> making the aggregate a compatible home for more of the same, e.g., state genocide–education mandates.

Some of the system's most celebrated foundational precepts pay homage to egalitarianism.<sup>126</sup> Section 1 of the Fourteenth Amendment to the Constitution<sup>127</sup> is the nation's consummate commitment to equal protection, declaring that “[n]o State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws,”<sup>128</sup> a promise further binding the federal government via the Fifth Amendment's Due Process Clause.<sup>129</sup>

Judicial interpretation has expanded the equal protection guarantee into a veritable centerpiece of American jurisprudence.<sup>130</sup> The provision has generated volumes of U.S. Supreme Court rulings extending its significance and reach to remedy governmental discrimination against people especially on

119. *Id.*

120. *Id.*

121. *See id.* (recognizing that genocide inflicts great losses and mankind must be liberated from its “odious scourge”).

122. *Id.*

123. *See supra* notes 65, 66 and accompanying text.

124. Genocide Convention, *supra* note 65, at 277.

125. *See infra* notes 129, 131, 132, 134, 137 and accompanying text.

126. *See, e.g.*, U.S. CONST. amends. XIII; XIV, § 1; XV; XIX; XXIV; XXVI.

127. U.S. CONST. amend. XIV, § 1.

128. *Id.*

129. U.S. CONST. amend. V. The Fifth Amendment does not contain an explicit equal protection clause. However, the U.S. Supreme Court has inferred the existence of that clause from the Amendment's Due Process Clause. *See Bolling v. Sharpe*, 347 U.S. 497, 498–99 (1954).

130. *See* Maureen Sweeney, *Shadow Immigration Enforcement and Its Constitutional Dangers*, 104 J. CRIM. L. & CRIMINOLOGY 227, 241–42 (2014) (referring to equal protection of laws as a “bedrock” American value and as “central to who we are as a nation”).

the basis of race and national origin,<sup>131</sup> two of the identical cohorts which the Genocide Convention and its federal implementing statute also single out for protection from genocide.<sup>132</sup> The Equal Protection Clause's special protection of these two categories is manifested in the high Court's designation of them as suspect classes justifying the judiciary in applying strict scrutiny to legislation trenching upon their interests.<sup>133</sup> Additionally, a host of federal and state statutes augment the Clause by prohibiting various kinds of private sector discrimination.<sup>134</sup>

While our country's laws express a strong commitment to norms inimical to genocide, the American experience on the ground has not always been so admirable. It is often said that the United States is a melting pot.<sup>135</sup> The appellation fits insofar as the present inhabitants or their ancestors all hail from somewhere else.<sup>136</sup> The result has been and still is a fantastically diverse world of people living under one national roof—a population comprised of every race, ethnicity, nationality, and religion imaginable.<sup>137</sup> This cosmopolitanism should

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131. Under the Equal Protection Clause, race and nationality are designated as suspect classifications and receive the special protection of strict scrutiny against governmental discrimination. 16B AM. JUR. 2D, *Constitutional Law* § 862 (2009) (describing that strict scrutiny is applicable when legislative classifications are “suspect”); 3 RONALD D. ROTUNDA & JOHN E. NOWAK, *TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE* § 18.5, at 438 (5th ed.) (averring that the U.S. Supreme Court has held classifications by race or national origin to be “suspect” and to warrant strict scrutiny).

132. Genocide Convention, *supra* note 65, art. II, at 277.

133. See ROTUNDA & NOWAK, *supra* note 131, at 438.

134. See, e.g., 42 U.S.C. § 1981 (2012) (providing, in part, that all persons within U.S. jurisdiction shall have the same right “to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens”); N.J. STAT. ANN. § 10:1-3 (West 1970) (making unlawful private sector exclusions based on race, color, creed, national origin, ancestry, marital status, or sex).

135. See Kevin Wm. Wildes, *The Great Melting Pot*, THE BLOG, HUFFPOST (Oct. 4, 2016, 6:13 PM), [https://www.huffingtonpost.com/rev-kevin-wm-wildes-sj-phd/the-great-melting-pot\\_b\\_12340856.html](https://www.huffingtonpost.com/rev-kevin-wm-wildes-sj-phd/the-great-melting-pot_b_12340856.html) [<https://perma.cc/T8HA-HEWN>] (referring to the “great melting pot” as an enduring American myth).

136. See KYLE WARD, *NOT WRITTEN IN STONE: LEARNING AND UNLEARNING AMERICAN HISTORY THROUGH 200 YEARS OF TEXTBOOKS* 243 (2010); Dale Steiner, *Excerpts from “Of Thee We Sing”: Immigrants and American History*, in *COMING TO AMERICA: A NEW LIFE IN A NEW LAND* 7, 7 (Katharine Emsden ed., 1993). There are no exceptions to the factual proposition that Americans are all immigrants or immigrants' descendants since even American Indians originally came to this country from other lands. *Id.*

137. See William H. Frey, *In the U.S., Diversity Is the New Majority*, L.A. TIMES (Mar. 6, 2015, 9:41 PM), [www.latimes.com/opinion/op-ed/la-oe-0310-frey-no-racial-majority-america-20150310-story.html](http://www.latimes.com/opinion/op-ed/la-oe-0310-frey-no-racial-majority-america-20150310-story.html) [<https://perma.cc/JY7P-TBVD>] (advising that the United States is currently racially diverse and is headed toward a “no racial majority scenario”); D’Vera Cohn & Andrea Caumont, *10 Demographic Trends That Are Shaping the U.S. and the World*, PEW RES. CTR. (Mar. 31, 2016), [www.pewresearch.org/fact-tank/2016/03/31/10-demographic-trends-that-are-shaping-the-u-s-and-the-world/](http://www.pewresearch.org/fact-tank/2016/03/31/10-demographic-trends-that-are-shaping-the-u-s-and-the-world/) [<https://perma.cc/W8L4-35QF>] (finding that “Americans are more racially and

be a point of pride in the American story. However, the growing diversity has also spurred ugly retrogressive reactions among some.<sup>138</sup> Virtually every wave of new immigrants to the United States has had to struggle against discrimination and intolerance,<sup>139</sup> and their progeny continue to encounter antipathy on the basis not only of ancestry, but also due to race, religion, and other physiological or cultural characteristics.<sup>140</sup> With this seedbed having been laid, so too is the minatory potential of sliding into outright genocide.<sup>141</sup> (It has been maintained by some experts that genocide actually has already occurred here, against the indigenous population as white Europeans converged upon and occupied North America.<sup>142</sup>)

Bigotry is all the more worrisome given that, wherever it crops up, socio-economic inequities and deprivations tend to exacerbate it.<sup>143</sup> The inequities

ethnically diverse than in the past,” and that “Christians are declining as a share of the U.S. population” while the religiously unaffiliated are currently the second-largest “religious” group).

138. See *supra* notes 21, 22 and accompanying text.

139. See Catherine Rampell, *America Has Always Been Hostile to Immigrants*, WASH. POST, OPINIONS (Aug. 27, 2015), [https://www.washingtonpost.com/opinions/from-benjamin-franklin-to-trump-the-history-of-americas-nativist-streak/2015/08/27/d41f9f26-4cf9-11e5-84df-923b3ef1a64b\\_story.html?utm\\_term=.6c002eac0546](https://www.washingtonpost.com/opinions/from-benjamin-franklin-to-trump-the-history-of-americas-nativist-streak/2015/08/27/d41f9f26-4cf9-11e5-84df-923b3ef1a64b_story.html?utm_term=.6c002eac0546) [<https://perma.cc/8HS8-VJSY>] (tracing the history of discrimination against each new influx of immigrant groups to America); Jamelle Bouie, *When People Flee to America's Shores*, SLATE (Nov. 17, 2015), [https://www.slate.com/articles/news\\_and\\_politics/history/2015/11/america\\_s\\_long\\_tradition\\_of\\_fearing\\_refugees\\_the\\_united\\_states\\_has\\_always.html](https://www.slate.com/articles/news_and_politics/history/2015/11/america_s_long_tradition_of_fearing_refugees_the_united_states_has_always.html) [<https://perma.cc/5R6Z-NGLB>] (showing that “the United States is a nation that *fears* immigrants and refugees”); Drew Desilver, *U.S. Public Seldom Has Welcomed Refugees into Country*, PEW RES. CTR. (Nov. 19, 2015), [www.pewresearch.org/fact-tank/2015/11/19/u-s-public-seldom-has-welcomed-refugees-into-country/](http://www.pewresearch.org/fact-tank/2015/11/19/u-s-public-seldom-has-welcomed-refugees-into-country/) [<https://perma.cc/VVN9-4V24>].

140. Rampell, *supra* note 139; Bouie, *supra* note 139.

141. See Chris McMorran & Norman Schultz, *Genocide*, BEYOND INTRACTABILITY (Aug. 2003), [https://www.beyondintractability.org/essay/war\\_crimes\\_genocide](https://www.beyondintractability.org/essay/war_crimes_genocide) [<https://perma.cc/32SU-HCXH>] (pointing to ethnic, racial and other prejudices as causative factors of genocide); STEPHEN MCLOUGHLIN, THE STRUCTURAL PREVENTION OF MASS ATROCITIES, 34, 50–53 (2014); JANE SPRINGER, GENOCIDE: A GROUNDWORK GUIDE, 46 (2006) (stating that discrimination as well as group hatreds and cleavages can eventually produce genocide); Ernest Harsch, *The World Reflects on Rwanda Genocide*, UNITED NATIONS (Apr. 2004), <https://www.un.org/africarenewal/magazine/april-2004/world-reflects-rwanda-genocide> [<https://perma.cc/L8AX-BFQB>] (quoting a statement by Kofi Annan mentioning intolerance and racism as roots of genocide).

142. There is considerable controversy about whether the devastation suffered by Indians in the Americas after 1492 amounted to genocide. See Jeffrey Ostler, *Genocide and American Indian History*, OXFORD RES. ENCYCLOPEDIA AM. HIST., [americanhistory.oxfordre.com/view/10.1093/acrefore/9780199329175.001.0001/acrefore-9780199329175-e-3](http://americanhistory.oxfordre.com/view/10.1093/acrefore/9780199329175.001.0001/acrefore-9780199329175-e-3) [<https://perma.cc/7B4W-JVX9>] (last visited Sept. 16, 2018) (laying out the controversy).

143. See Anke Hoeffler, *Development and the Risk of Mass Atrocities: An Assessment of the Empirical Literature*, in ECONOMIC ASPECTS OF GENOCIDES, OTHER MASS ATROCITIES, AND THEIR PREVENTION 244 (Charles H. Anderton & Jurgen Brauer eds., 2016) (discussing economic inequality as increasing the risk of genocide); Frances Stewart, *Inequality, Conflict, and Policy: A Review of Some MICROCON Findings*, in A MICRO-LEVEL PERSPECTIVE ON THE DYNAMICS OF CONFLICT,

have today reached extreme proportions in the United States.<sup>144</sup> In its total wealth, this is the richest nation on earth,<sup>145</sup> but in tandem with the widening wealth gap between the privileged 1% and everyone else,<sup>146</sup> most Americans have, to one degree or another, also been experiencing stagnant upward mobility.<sup>147</sup> So, though America's laws are concordant with an anti-genocide stance, there has been a disquieting counterpoint in daily life.

The counterpoint, sad to say, is amplified by the fact that the U.S. record in helping to prevent and stop specific genocides in other countries has been absolutely abysmal.<sup>148</sup> As the former U.S. Ambassador to the United Nations, Samantha Power, has bluntly written: "The U.S. government not only abstains from sending its troops, but it takes very few steps along a continuum of intervention to deter genocide."<sup>149</sup> In relation to genocide, ours is a nation

VIOLENCE, AND DEVELOPMENT 118 (Patricia Justino et al. eds., 2013) (positing that economic inequalities may aggravate other factors, such as political exclusion, so as to cause genocide); DAVID A. HAMBURG, PREVENTING GENOCIDE: PRACTICAL STEPS TOWARD EARLY DETECTION AND EFFECTIVE ACTION 141 (2010) (remarking that "grossly unequal economic distribution" may help lead to genocide).

144. See G. William Domhoff, *Power in America: Wealth, Income, and Power*, WHO RULES AMERICA?, [www2.ucsc.edu/whorulesamerica/power/wealth.html](http://www2.ucsc.edu/whorulesamerica/power/wealth.html) [<https://perma.cc/L7QH-G6UM>] (last visited Aug. 14, 2018) (detailing that, as of 2013 when the most recent statistics were available on the subject, wealth inequality in America had reached unprecedented levels, i.e., 36.7% of all privately held wealth was in the top 1% of households and another 52.2% were in the next lower stratum of 19%, thereby leaving a mere 11% of the wealth for the bottom 80%); Richard Fry & Rakesh Kochhar, *America's Wealth Gap Between Middle-Income and Upper-Income Families is Widest on Record*, PEW RES. CTR. (Dec. 17, 2014), [www.pewresearch.org/fact-tank/2014/12/17/wealth-gap-upper-middle-income/](http://www.pewresearch.org/fact-tank/2014/12/17/wealth-gap-upper-middle-income/) [<https://perma.cc/EDS4-7ALZ>] (stating that the "wealth gap between America's high income group and everyone else has reached record high levels . . . with a clear trajectory of increasing wealth for the upper-income families and no wealth growth" for anyone else).

145. See *The Richest Countries in the World*, BUSINESSTECH (Oct. 28, 2015), <https://businesstech.co.za/news/wealth/102461/the-richest-countries-in-the-world/> [<https://perma.cc/Y9ZS-ERMA>]; *10 Richest Countries Ranked in 2016 List*, GULF NEWS MONEY (Aug. 23, 2016, 3:12 PM), [gulfnews.com/business/money/10-richest-countries-ranked-in-2016-list-1.1883810](http://gulfnews.com/business/money/10-richest-countries-ranked-in-2016-list-1.1883810) [<https://perma.cc/SUYP-H4XX>].

146. See Eduardo Porter, *Tax Cuts May Be a Stimulus, for Inequality*, N.Y. TIMES, Oct. 4, 2017, at B1 (stating that "[t]oday, 1 percent of the [American] population is taking in more than 20 percent of the nation's income" and twice as much as in 1974).

147. See *Despite Falling Unemployment, U.S. Wages Stay Stagnant*, NAT'L PUB. RADIO (June 13, 2017, 4:31 PM), [www.npr.org/2017/06/13/532816915/despite-falling-unemployment-u-s-wages-stay-stagnant](http://www.npr.org/2017/06/13/532816915/despite-falling-unemployment-u-s-wages-stay-stagnant) [<https://perma.cc/42LT-YNYF>]; Paul R. La Monica, *Where's My Raise? Wage Growth Still Sluggish*, CNN MONEY (Aug. 4, 2017, 12:29 PM), [money.cnn.com/2017/08/04/investing/jobs-report-wage-growth/index.html](http://money.cnn.com/2017/08/04/investing/jobs-report-wage-growth/index.html) [<https://perma.cc/2THV-HTD4>].

148. See Samantha Power, *Preface* to SAMANTHA POWER, "A PROBLEM FROM HELL": AMERICA AND THE AGE OF GENOCIDE, at xiv–xvi (2002) (surveying the United States' record of inaction in relation to genocides).

149. *Id.* at xviii.

metaphorically fastened to two antipodes and tautly suspended in-between.<sup>150</sup> The antipodes are, at one end, burgeoning activism and sentiment among the people and states against genocide,<sup>151</sup> and, at the other end, federal governmental inertia allowing genocide to happen although the United States has the prestige and military resources to contribute significantly toward impeding it.<sup>152</sup>

The advent of state genocide–education mandate statutes and regulatory obligations points the way out of these disgraceful and inhumane antecedents. Dovetailing seamlessly with the American legal system and yet bringing a new message of militancy against genocide, the mandates should imperceptibly act as a political pressure against the national government’s quiescence.<sup>153</sup> The statutes and regulations give cause to prognosticate, too, that future generations educated under the mandates, are apt to have little patience for chronic official apathy or inertia.<sup>154</sup>

#### VI. RECOMMENDATIONS FOR STRENGTHENING STATE GENOCIDE– EDUCATION MANDATE LAWS

Each of the present state genocide–education mandates is a major achievement and sets an example for the rest of the country.<sup>155</sup> Each will make children, as they grow up, increasingly aware of genocide—more alert to its warning signs and more knowledgeable about its preventable causes and unacceptable effects.<sup>156</sup> And, each will necessarily fulfill law’s subtler but inevitable function of spreading these lessons among the broader population.<sup>157</sup>

Nonetheless, and despite these contributions, the mandates generally could and should go further than they do. Here follow several recommendations for making the statutes stronger as well as more comprehensive respecting the content to be taught and the grade levels and types of schools covered.

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150. *Id.* at xiv–xvi.

151. *See supra* notes 4, 5, 9 and accompanying text.

152. *See supra* note 148 and accompanying text.

153. *See POWER, supra* note 148, at xxi (noting the United States’ history of inaction and the lack of political consequences).

154. *See Anne Frank Center for Mutual Respect Announces 50 State Genocide Education Project: Legislators in 20 U.S. States to Introduce Legislation on Holocaust and Other Genocide Awareness and Prevention*, ANNE FRANK CTR. FOR MUTUAL RESPECT (Apr. 24, 2017), <http://annefrank.com/50-state-genocide-education-project/>; Ellen J. Kennedy, *Redefining Genocide Education* 2–3, GENOCIDE WATCH, [genocidewatch.net/genocide-2/articles-on-genocide](http://genocidewatch.net/genocide-2/articles-on-genocide) [<https://perma.cc/KFQ8-E7HM>] (last visited Sept. 16, 2018).

155. *See supra* notes 9, 11 and accompanying text.

156. *See supra* note 101 and accompanying text.

157. *See supra* note 102 and accompanying text.



To make the mandates maximally authoritative, this Article prefers embodying them in state statutes rather than in regulations.<sup>158</sup> This is not to sniff at Texas's regulation on genocide education, a milestone of no small importance.<sup>159</sup> But, there is a hierarchy of laws in the American legal system, which, among other things, ranks statutes as superior to regulations.<sup>160</sup> It is reasonable to hypothesize that more preeminent forms of law will act more powerfully in fulfilling their endogenous pedagogical or expressive functions than laws lower down in the echelons,<sup>161</sup> e.g., statutes will ordinarily demonstrate more competence in the dissemination of their normative content against genocide than regulations with the same content.<sup>162</sup>

Turning to that content, all of the existing statutes mandate instructing schoolchildren *about* genocide.<sup>163</sup> There is a certain peculiarity about this. Why not mandate education *against*, or, alternatively and redundantly, *about and against* genocide?<sup>164</sup> It is, of course, extremely unlikely that, even under the prevailing neutral language, a teacher in the United States would present a pro-genocide lecture or assignment. Yet, and especially in a statute, why not say what we really mean on a matter of such gravity? Only then can the statute make crystal clear to students and the community that the legislature is staunchly against genocide and that they should be too.<sup>165</sup> The clearer directive should also make teachers more confident about using appropriate advocacy against genocide in the classroom.<sup>166</sup>

Again, in connection with content, it is well, I think, to take a cue from the current New York and New Jersey statutes.<sup>167</sup> The former embodies an advantageous macro perspective by prescribing courses in “human rights issues, with particular attention to the study of genocide, . . . [including] the

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158. See *infra* note 163 and accompanying text.

159. See *supra* note 5 and accompanying text.

160. See BETH WALSTON-DUNHAM, INTRODUCTION TO LAW 21, 23–24 (2d ed. 1994) (positing a hierarchy of types of laws in the American legal system and ranking administrative regulations below statutes); SONJA LARSEN & JOHN BOURDEAU, LEGAL RESEARCH FOR BEGINNERS 8 (1997) (stating that “statutes carry more clout than regulations”).

161. SONJA LARSEN & JOHN BOURDEAU, LEGAL RESEARCH FOR BEGINNERS 8 (1997).

162. *Id.*

163. See *supra* notes 4, 6 and accompanying text.

164. See Ellen J. Kennedy, *Holocaust Education Should Strive to Prevent Future Genocides*, MPR NEWS (Apr. 16, 2010), <https://www.mprnews.org/story/2010/04/16/kennedy> [<https://perma.cc/Q75C-M3KU>] (last visited Sept. 16, 2018) (urging education about and against genocide); Kennedy, *supra* note 154 (the same).

165. See Alex Geisinger, *supra* note 108, at 64–65 (explaining that the legislative process affects attitudes).

166. Kennedy, *supra* note 154 (detailing how teachers should educate against genocide).

167. See *supra* notes 25, 26 and accompanying text.

Holocaust.”<sup>168</sup> Though genocide be “the crime of all crimes,”<sup>169</sup> its legal prohibition is undergirded by many of the same principles as those giving rise to other crimes under international humanitarian law and to heinous violations of international human rights law.<sup>170</sup> These are principles of protecting human beings from unnecessary suffering and injustice; or, to put their gist in affirmative terms, they are principles which embody the credo of promoting human decency and human flourishing.<sup>171</sup> Accordingly, it makes policy and pedagogical sense to amend existing genocide–education mandates and to enact new ones with the more sweeping scope enunciated in the New York statute.<sup>172</sup>

The New Jersey enactment is also edifying, but from a micro perspective.<sup>173</sup> This law has genocide education turn inward so as to focus chiefly on the crime’s mainsprings. The statute dictates teaching the causative dynamics leading to genocide including human psychology and the social dimensions of each individual’s morality and conscience.<sup>174</sup> If education concerning genocide is to be more than lip service, i.e., more meaningful than a recitation of events, dates, places, and leading personages, then lessons must delve more deeply into both societal and individual causes and effects of genocide.<sup>175</sup> An ideal statute therefore should combine the macro and micro approaches, described above, in order to ensure that mandated genocide education is not superficial and never a sham.<sup>176</sup>

The mandates should also avoid limiting the required education exclusively to the Holocaust.<sup>177</sup> Instead, the approach should be to describe such instruction

168. N.Y. EDUC. LAW § 801(3) (McKinney 2001).

169. *See supra* note 3 and accompanying text.

170. *See* Bitensky, *supra* note 90, at 265–68, 279–28.

171. *See id.*

172. *See supra* note 168 and accompanying text.

173. N.J. STAT. ANN. § 18A:35-28 (West 1994).

174. *Id.*

175. *See Guidelines for Teaching About Genocide*, U.S. HOLOCAUST MEMORIAL MUSEUM <https://www.ushmm.org/educators/teaching-about-the-holocaust/teaching-about-genocide> [<https://perma.cc/4C32-M5W7>] (last visited Sept. 16, 2018) (encouraging teachers to explore with their students the “context and dynamics” leading to genocide); UNITED NATIONS EDUC., SCI. AND CULTURAL ORG., EDUCATION ABOUT THE HOLOCAUST AND PREVENTING GENOCIDE: A POLICY GUIDE 39, 41 (2017), [unesdoc.unesco.org/images/0024/002480/248071E.pdf](https://unesdoc.unesco.org/images/0024/002480/248071E.pdf) [<https://perma.cc/28KU-AMHU>] (recommending education about genocide’s causes); Samuel Totten, *Genocide Education*, in *TEACHING AND STUDYING SOCIAL ISSUES: MAJOR PROGRAMS AND APPROACHES* 341, 367 (Samuel Totten & Jon E. Pedersen eds., 2010) (asserting that “at a minimum, educators must . . . avail their students of the fact that genocide is . . . a very real horror that continues to engulf the lives of millions in its horrific maw”).

176. *See supra* notes 172, 173 and accompanying text.

177. For an example of a statute focused entirely on teaching the Holocaust, see 2017 IND. LEGIS. SER. P.L. 231-2017 (S.E.A. 337) § 1.1C20-30-5-7(a)(3) (West). Likewise, a bill introduced in

as education on “genocide” or some similarly inclusive and equivalent formulation.<sup>178</sup> It is true that the Holocaust is one of the worst—if not the worst—genocides in history.<sup>179</sup> And, study of the Holocaust should certainly be a central part of all genocide education. But, to frame the mandated curriculum as pertaining only to the Holocaust is counterproductive.<sup>180</sup> Since the ultimate aim of the mandate statutes is to prevent future instances of genocide, dwelling solely on the Holocaust, to the exclusion of studying about other genocides, is not respectful toward the latter’s victims and the groups to which they belong. It implicitly imports the wrong ideas of disregard, discrimination and even ostracism.<sup>181</sup>

By the same token, I would like to see remembrance of genocides’ victims explicitly stated in the mandate statutes as a pedagogical goal.<sup>182</sup> None of the

the U.S. House of Representatives in 2018, is designed to bolster solely “Holocaust” education. *See supra* note 11 and accompanying text.

178. *See, e.g.*, MICH. COMP. LAWS ANN. § 380.1168(1) (West 2016); *see also* N.J. STAT. ANN. § 18A:35-28 (West 1994) (mandating “instruction on . . . genocides”); 105 ILL. COMP. STAT. ANN. § 5/27-20.3 (West 2005) (requiring “instruction studying . . . acts of genocide across the globe”); N.Y. EDUC. LAW § 801(3) (McKinney 2001) (requiring “study of the inhumanity of genocide”).

179. *See* THOMAS W. SIMON, GENOCIDE, TORTURE, AND TERRORISM: RANKING INTERNATIONAL CRIMES AND JUSTIFYING HUMANITARIAN INTERVENTION 39–40 (2016) (opining that while it is inappropriate to characterize the Holocaust as unique, it is also true to say that “in terms of the extent of the killings, the development of state policy, and the vulnerability of the victim group the Holocaust surely rank [sic] as the worst genocide so far”); Norman M. Naimark, *Stalin and the Question of Soviet Genocide*, in POLITICAL VIOLENCE: BELIEF, BEHAVIOR, AND LEGITIMATION 39, 39 (Paul Hollander ed., 2008) (viewing the Holocaust as the worst genocide in modern times).

180. Taly Krupkin, *UNESCO Head to Haaretz: Holocaust Education Should Include Teaching Other Genocides*, HAARETZ (Apr. 27, 2017, 1:09 AM), <https://www.haaretz.com/us-news/.premium-1.785788> [<https://perma.cc/WR3P-DP7K>].

181. *Cf. id.* (reporting that the UNESCO Director General stressed the importance of discussing “other genocides while educating about the Holocaust in schools”); *Education About the Holocaust and Preventing Genocide: A Policy Guide*, *supra* note 175, at 8 (discussing that education about the Holocaust and other genocides is rightly becoming increasingly interconnected); *An Overview of the Holocaust: Topics to Teach*, U.S. HOLOCAUST MEMORIAL MUSEUM, <https://encyclopedia.ushmm.org/content/en/article/an-overview-of-the-holocaust-topics-to-teach> [<https://perma.cc/34XR-EXZD>] (last visited Sept. 16, 2018) (identifying topic areas for teaching the Holocaust, including the murder of masses of non-Jewish victims).

182. *See* Beate Kosmala, Ctr. for the Study of Anti-Semitism, Tech. Univ. Berlin Ger., Holocaust Education-Research-Remembrance in Germany, in HOLOCAUST EDUCATION, REMEMBRANCE AND RESEARCH 805, 808, <https://fcit.usf.edu/holocaust/resource/assets/heac8.pdf> [<https://perma.cc/5P6R-FQSR>] (asserting as “a central goal” of Holocaust education that “those whose lives were devalued should not be nameless and undefined”); Sophie Ernst, *Entangled Memories: Holocaust Education in Contemporary France*, in HOLOCAUST EDUCATION IN A GLOBAL CONTEXT 40, 54 (Karel Fracapane & Matthias Haß eds., 2014) (calling “Holocaust remembrance” educational); Daniel Rafecas, *National Memories in the Prism of Holocaust History: Projections of Holocaust Remembrance on the Recent Past of Argentina*, in HOLOCAUST EDUCATION IN A GLOBAL CONTEXT 121, 128 (Karel Fracapane & Matthias Haß eds., 2014) (stating that Holocaust remembrance has been a “source of knowledge and essential studies for a better comprehension of what happened to Argentina as a society”).

current statutes mention remembrance.<sup>183</sup> Yet, commemoration of the victims is essential to bringing home to us that the masses of casualties were comprised of real, breathing individuals, and that human lives should never be held this cheap.<sup>184</sup> In addition, omitting remembrance may promote and be a guise for Holocaust (or other genocide) denial.<sup>185</sup>

Worthwhile mandatory genocide–education statutes should, furthermore, guarantee that the education reaches enough students and for substantial durations. To date, there is wild variation among the statutes with regard to these matters. For example, at the optimal end of the spectrum, the Illinois and New Jersey statutes direct that genocide education must be provided at both elementary and secondary school levels.<sup>186</sup> At the other extreme, Michigan requires that the education occur solely in high school.<sup>187</sup> And, while New York’s statute applies across-the-board to both public and private schools,<sup>188</sup> Michigan’s and Indiana’s statutes apply to public schools but omit private ones.<sup>189</sup>

In sum, if state legislators go to the trouble of negotiating, drafting, and enacting a genocide–education mandate, something I vigorously urge them to do, I would also urge them to set the bar very high on all counts. They should establish mandates encompassing both macro and micro aspects of the

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183. See *supra* notes 4, 5 and accompanying text.

184. Cf. European Commission Press Release STATEMENT/17/2241, Statement by First Vice-President Timmermans and Commissioner Jourová on Roma Holocaust Memorial Day (Aug. 1, 2017), [europa.eu/rapid/press-release\\_STATEMENT-17-2241\\_en.htm](https://perma.cc/3ZM4-DHKT) [https://perma.cc/3ZM4-DHKT] (proclaiming remembrance of victims of Roma genocide as necessary to restore dignity to Roma communities); Patrick Desbois, *The Holocaust by Bullets*, THE HOLOCAUST AND THE UNITED NATIONS OUTREACH PROGRAMME, REMEMBRANCE AND BEYOND, [www.un.org/en/holocaustremembrance/docs/paper16.shtml](https://www.un.org/en/holocaustremembrance/docs/paper16.shtml) [https://perma.cc/2VX2-YDG2] (last visited Sept. 16, 2018) (averring that remembrance restores dignity and respect to Holocaust victims).

185. See DEBORAH E. LIPSTADT, DENYING THE HOLOCAUST: THE GROWING ASSAULT ON TRUTH AND MEMORY 210–11 (1993) (demonstrating that German repudiation of remembrance of the Holocaust, fueled the forces of genocide denial); cf. Emanuela Fronza, *The Criminal Protection of Memory: Some Observations About the Offense of Holocaust Denial*, in GENOCIDE DENIALS AND THE LAW 155–56 (Ludovic Hennebel & Thomas Hochmann eds., 2011) (positing remembrance of genocide’s victims as a means of combating genocide denial); Frances Kraft, *Holocaust Remembrance More Effective Than Legal Recourse: Law Society Panelist*, THE CANADIAN JEWISH NEWS (May 9, 2017), [www.cjnews.com/news/canada/knowledge-best-way-combat-holocaust-denial](https://perma.cc/Z5QH-2Z7S) [https://perma.cc/Z5QH-2Z7S] (describing remembrance as a remedy for Holocaust denial).

186. 105 ILL. COMP. STAT. ANN. § 5/27-20.3 (West 2005); N.J. STAT. ANN. § 18A:35-28(a) (West 1994).

187. MICH. COMP. LAWS ANN. § 380.1168(1) (West 2016).

188. N.Y. EDUC. LAW § 801(1) (McKinney 2001).

189. MICH. COMP. LAWS ANN. § 380.1168(1) (West 2016); 2017 IND. LEGIS. SERV. P.L. 231-2017 (S.E.A. 337) § 1.1C20-30-5-7(a)(3) (West); IND. CODE ANN. § 20-18-2-16 (West 2018).

subject<sup>190</sup> and extend the mandates' reach, in an age-appropriate manner, to all grade levels and all types of schools.<sup>191</sup> And, for quality and quantity control purposes, student knowledge about genocide should concomitantly be subject to examination on statewide student assessment tests.<sup>192</sup> That will be lawmakers' and the public's insurance policy that students study genocide with the concentrated seriousness it deserves.

## VII. CONCLUSION

As the song lyrics recited above say, “something [is] happening here,” something our children should heed well.<sup>193</sup> Though we live in acrimonious and disquieting times,<sup>194</sup> it is equally true that a spirit of humanity and social responsibility has been wafting over the land and into the halls of state and local governments. It has been discreetly surfacing here and there, now and then, on a variety of issues,<sup>195</sup> but has manifested with startling longevity in the proliferation of state genocide–education mandate statutes and pledges.<sup>196</sup> In

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190. See *supra* notes 172, 173 and accompanying text.

191. See *supra* notes 39, 40 and accompanying text.

192. See *supra* note 175 and accompanying text.

193. See *supra* notes 1, 2 and accompanying text.

194. See Eric Schnurer, *Government, Untethered: Can People Opt-Out of Governments that They Disagree with?*, U.S. NEWS & WORLD REPORT, OPINION (July 26, 2017), [www.usnews.com/opinion/thomas-jefferson-street/articles/2017-07-26/the-state-of-the-divide-over-government](http://www.usnews.com/opinion/thomas-jefferson-street/articles/2017-07-26/the-state-of-the-divide-over-government) (positing that “centripetal forces” are tearing America apart, including a “simmering quasi-secession of the liberal cities and states from the federal framework” and a “nascent cold war” between blue and red states); Janet Hook, *Political Divisions in U.S. Are Widening, Long-Lasting, Poll Shows*, WALL ST. J. (Sept. 6, 2017, 8:39 AM), <https://www.wsj.com/articles/political-divisions-in-u-s-are-widening-long-lasting-poll-shows-1504670461> [<https://perma.cc/5GCP-5S79>] (reporting poll demonstrating divisions in the United States' culture, economy, politics, and social fabric, including on climate change, support for the National Rifle Association, and between residents of rural and urban areas).

195. See, e.g., Steven Mufson & Brady Dennis, *As Trump Halts Federal Action on Climate Change, Cities and States Push On*, WASH. POST (Mar. 28, 2017), [https://www.washingtonpost.com/national/health-science/as-trump-halts-federal-action-on-climate-change-cities-and-states-push-on/2017/03/27/8d093b8c-1319-11e7-ada0-1489b735b3a3\\_story.html?utm\\_term=.2a3ea51ee882](https://www.washingtonpost.com/national/health-science/as-trump-halts-federal-action-on-climate-change-cities-and-states-push-on/2017/03/27/8d093b8c-1319-11e7-ada0-1489b735b3a3_story.html?utm_term=.2a3ea51ee882) [<https://perma.cc/GN4D-PHMF>] (detailing plans by U.S. governors, mayors, and business leaders to reduce carbon emissions, among other moves to protect the environment from climate change in spite of Trump's hostility to protection); Liz Robbins, *“Sanctuary City” Mayors Vow to Defy Trump’s Immigration Order*, N.Y. TIMES (Jan. 25, 2017), <https://www.nytimes.com/2017/01/25/nyregion/outraged-mayors-vow-to-defy-trumps-immigration-order.html> [<https://perma.cc/N3PM-EH3S>] (chronicling that “sanctuary cities” refuse to comply with federal directives to detain undocumented immigrants, arrested on charges unrelated to immigration status, so as to turn them over to the federal government for possible deportation); Dan Avery, *The Governor of Connecticut Just Signed an Order to Defy Trump’s Transgender Ban*, LOGO, NEW NOW NEXT (July 26, 2017), [www.newnownext.com/connecticut-order-transgender-ban-military/07/2017/](http://www.newnownext.com/connecticut-order-transgender-ban-military/07/2017/) [<https://perma.cc/BF8V-LBS8>] (relating that, after President Trump proclaimed a ban on transgender armed services members, the Connecticut governor ordered the state's military department not to discriminate against transgender members of the state's armed forces).

196. See *supra* notes 4, 5, 9 and accompanying text.

this form, it is credibly the most promising chance for finally overthrowing genocide. And, should the overthrow seem still too distant a star, note that we can easily come closer. The means are tried, true and undaring: just swiftly legislate and then educate, for all we are worth.

