

# Culture Clash

An International Legal Perspective  
on Ethnic Discrimination

ANNE-MARIE MOONEY COTTER

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on Ethnic Discrimination

ANNE-MARIE MOONEY COTTER  
*The Social Security Disability Law Firm, USA*



ASHGATE

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Published by  
Ashgate Publishing Limited  
Wey Court East  
Union Road  
Farnham  
Surrey, GU9 7PT  
England

Ashgate Publishing Company  
Suite 420  
101 Cherry Street  
Burlington  
VT 05401-4405  
USA

[www.ashgate.com](http://www.ashgate.com)

#### **British Library Cataloguing in Publication Data**

Cotter, Anne-Marie Mooney.

Culture clash : an international legal perspective on ethnic discrimination.

1. Race discrimination – Law and legislation – English-speaking countries. 2. Race discrimination – Law and legislation – Cross-cultural studies.

I. Title

342'.0873-dc22

#### **Library of Congress Cataloging-in-Publication Data**

Cotter, Anne-Marie Mooney.

Culture clash : an international legal perspective on ethnic discrimination /  
by Anne-Marie Mooney Cotter.

p. cm.

Includes bibliographical references and index.

ISBN 978-1-4094-1936-5 (hardback : alk. paper) – ISBN 978-1-4094-1937-2  
(ebook) 1. Discrimination – Law and legislation.

I. Title.

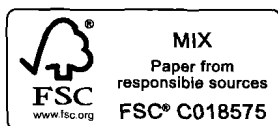
K3242.C678 2011

342.08'5-dc22

2010034091

ISBN 9781409419365 (hbk)

ISBN 9781409419372 (ebk)



Printed and bound in Great Britain by the  
MPG Books Group, UK

# Biography

Dr. Anne-Marie Mooney Cotter, Esq. is a Montrealer, fluent in both English and French. She earned her Bachelor's degree from McGill University at age 18, her Juris Doctor law degree from one of the leading civil rights institutions, Howard University School of Law, and her Doctorate degree (Ph.D.) from Concordia University, where she specialized in Political Economy International Law, particularly on the issue of equality. Her work experience has been extensive: Chief Advisor and later Administrative Law Judge appointed by the Prime Minister to the Veterans Review and Appeals Tribunal in Canada; Supervising Attorney and later Executive Director for the Legal Services Corporation in the United States; National Director for an environmental network in Canada; Faculty for Business Law at the Law School, Law Society of Ireland; Associate at the law firm of Blake Cassels and Graydon L.L.P. with a secondment as in-house counsel with Agrium Inc. in Canada; Attorney with the Disability Law Center of Alaska, and Solo Practitioner of the Social Security Disability Law Firm. She is also a gold medallist in figure skating. Dr. Cotter is the proud mother of Bill and Jill.

# Contents

<i>Biography</i>	<i>vii</i>
1 Introduction to Culture Clash	1
2 Culture Clash in Ethnic Discrimination	7
3 Culture Clash in the United Nations	45
4 Culture Clash in Australia and New Zealand	101
5 Culture Clash in Africa and South Africa	139
6 Culture Clash in Canada, Mexico and the United States	175
7 Culture Clash in the North American Free Trade Agreement	217
8 Culture Clash in the United Kingdom and Ireland	265
9 Culture Clash in the European Union	307
10 Conclusion to Culture Clash	367
<i>Bibliography</i>	<i>371</i>
<i>Index</i>	<i>379</i>

# Chapter 1

## Introduction to Culture Clash

So we come here today to dramatize a shameful condition. In a sense we've come to our nation's capital to cash a check. When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every [human] was to fall heir. This note was the promise that all ... would be guaranteed the unalienable rights of life, liberty, and the pursuit of happiness ... A check which has come back marked insufficient funds. We refuse to believe that there are insufficient funds in the great vaults of opportunity of this nation. And so we've come to cash this check, a check that will give us upon demand the riches of freedom and the security of justice.<sup>1</sup>

In our universal quest for justice in general, and tolerance for ethnic differences in *Culture Clash*, we may learn from the immortal words of one of the greatest civil rights leaders and human rights activists Dr. Martin Luther King Jr. This book, *Culture Clash*, focuses on the goal of ethnic equality, and the importance of the law and legislation to combat ethnic discrimination in these troubling times. The aim of this book is to better understand the issue of inequality and to improve the likelihood of achieving ethnic equality in the future and ending ethnic inequality. *Culture Clash* examines the primary role of legislation, which has an impact on the court process, as well as the primary role of the judicial system, which has an impact on the fight for ethnic tolerance. This is the eighth book in a series of books on discrimination law. Other titles in the series are *Gender Injustice* dealing with gender discrimination, *Race Matters* dealing with race discrimination, *This Ability* dealing with disability discrimination, *Just A Number* dealing with age discrimination, *Heaven Forbid* dealing with religious discrimination, *Ask No Questions* dealing with sexual orientation discrimination, and *Pregnant Pause* dealing with maternity discrimination. A similar approach and structure is used throughout the series to illustrate comparisons and contradictions in discrimination law.

Fundamental rights are rights which either are inherent in a person by natural law or are instituted in the citizen by the State. The ascending view of the natural law of divine origin over human law involves moral expectations in human beings through a social contract, which includes minimum moral rights of which one may not be deprived by government or society. The competing view is that courts operating under the Constitution can enforce only those guarantees which are expressed. Thus, legislation has an impact on the court system and on society as

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1 King Jr., Dr. Martin Luther, *March on Washington*, 1963.

a whole. Internationally and nationally, attempts have been made to improve the situation of all ethnic groups and outlaw discrimination.

In looking at the relationship between ethnic inequality and the law, the book deals comprehensively with the issue of ethnic discrimination throughout its chapters by outlining important legislation in the area, with no particular position argued necessarily but with the intent to give the reader the knowledge to make up their own mind; also, for the most part, the countries examined were chosen because of their predominant common law background, because of their predominant use of the English language in legislation and case law, and because of their predominant role in the fight against discrimination: Chapter 1 introduces the reader to the core area of ethnic inequality; Chapter 2 covers ethnic inequality in ethnic relations around the world; Chapter 3 looks at the United Nations; Chapters 4 and 5 examine ethnic inequality in Australia and New Zealand, and Africa and South Africa, respectively; Chapters 6 and 7 examine ethnic inequality in Canada, Mexico and the United States, and the North American situation with the North American Free Trade Agreement as to its impact on ethnic inequality, respectively; Chapters 8 and 9 examine ethnic inequality in the United Kingdom and Ireland, and the European situation with the European Union Treaty as to its impact on ethnic inequality, respectively; and Chapter 10 concludes this overview of ethnic inequality.

The globalization process and the various economic agreements have a direct impact on people's lives as key players in the labor market today. This study seeks to comparatively analyze legislation impacting ethnic equality in various countries internationally. It also examines the two most important trade agreements of our day, namely the North American Free Trade Agreement and the European Union Treaty in a historical and compelling analysis of equality. Although an important trade agreement with implications for labor, the North American Free Trade Agreement has a different system from the European system in that it has no overseeing court with jurisdiction over the respective countries. Further, the provisions for non-discrimination in the labor process are contained in a separate document, the North American Agreement on Labor Cooperation. On the other hand, the European Union Treaty takes a different approach, by directly providing for non-discrimination, as well as an overseeing court, that is, the European Court of Justice, and the treaty is made part of the domestic law of every Member State, weakening past discriminatory laws and judgments. Further, the European process actively implements ethnic equality by way of European Union legislation.

North America, as the new world with its image of freedom and equality, is considered to have made great strides in civil rights. However, the American philosophy of survival of the fittest and the pursuit of materialism have slowed down the process. With the advent of the European Union, the coming together of nations has had a very positive influence on the enforcement of human rights, much more so than that of North America, because of the unique European approach.

All parties must cooperate, and governments need to work with businesses, trade unions and society as a whole; together, they can create an environment

where people of all ethnic groups can participate at all levels of political life and decision-making. Indeed, combating ethnic inequality and achieving ethnic equality requires a strong “ethnic matters” focus in constitutional, legal, judicial and electoral frameworks for people of all ethnic groups to be actively involved at the national and international levels.

According to liberal democracy, the rule of law is the foundation stone for the conduct of institutions. *Culture Clash* offers a defense of the notion that social reform is possible and plausible through key institutions, which include the legal system and its use of the law. For liberal democracy, the legislative system is the core for the governance of society in the way it functions toward social equality of opportunity. It is clear that if we reform our legislation and our laws, then there will be a change in the institutions of society and their functioning, which will be a major step forward in societal reform.

The law is of central importance in the debate for change from ethnic inequality to ethnic equality. Actionable and enforceable rights are legal norms, which represent social facts demarcating areas of action linked with universalized freedom.<sup>2</sup> Law is a powerful tool, which can and must be used to better society. Associated with command, duty and sanction, and emanating from a determined source, law is a rule of conduct enforced by sanctions, and administered by a determinate locus of power concentrated in a sovereign or a surrogate, the court. Therefore, the justice system and the courts play a vital role in enforcing the law.

Legitimacy has subjective guarantees of internalization with the acceptance and belief in authority, and objective guarantees of enforcement with the expectation of reactions to the behavior.<sup>3</sup> Therefore, law must recognize equally all members of society, including minority women, in order for it to be effective. Further, in order for a law to be seen as legitimate from society’s point of view and accepted by the people in general to be followed, a process of inclusive interaction by all affected must first be realized. When creating laws, this means that input from diverse groups is critical.

Thus, laws have two components, namely, facts, which stabilize expectations and sustain the order of freedom, and norms, which provide a claim of approval by everyone. Law makes possible highly artificial communities whose integration is based simultaneously on the threat of internal sanctions and the supposition of a rationally motivated agreement.<sup>4</sup> Discrimination and injustice can be undercut through the effective use of both the law and the courts.

The facticity of the enforcement of law is intertwined with the legitimacy of a genesis of law that claims to be rational, because it guarantees liberty. Laws can go a long way in forbidding inequality and providing for equality; where one ends the other begins. There are two ranks of law, namely ordinary law of legislation, administration and adjudication, and higher constitutional law affecting rights and

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2 Habermas, Jürgen, *Between Facts and Norms*, 1998, p. xii.

3 Fried, Morton, *The Evolution of Political Society*, 1967, p. 23.

4 Habermas, Jürgen, *Between Facts and Norms*, 1998, p. 8.



liberties, which government must respect and protect. The latter encompasses the constitutions of the various nations as interpreted by the supreme courts. Law holds its legitimacy and validity by virtue of its coercive potential, its rational claim of acceptance as right. It is procedurally constructed to claim agreement by all citizens in a discursive process purported to be open to all equally for legitimacy and a presumption of fair results. The legitimate legal order is found in its reflexive process. Therefore, we must all believe that equality is a good and necessary thing, which is essential to the very growth of society.

Thus, conflict resolution is a process of reasoned agreement where, first, members assume the same meanings by the same words; secondly, members are rationally accountable for their actions; and third, mutually acceptable resolutions can be reached so that supporting arguments justify the confidence in the notion that the truth in justice will not be proven false.<sup>5</sup> Disenchantment with the law and the legal process only serves to undermine the stabilization of communities. By legitimizing the legal process and holding up the ideals of equality in the fight against ethnic discrimination, the law and the courts can bring about change.

People of all ethnicities have had to fight in the formulation of laws and in the enforcement of equality in the courts. Class rests on economic determination and historical change, like ethnicity. Inequality in the distribution of private property among different classes of people has been a characteristic of society. The ruling class loathes that which it is not, that which is foreign to it, and this has traditionally been minorities. The patriarchal system has freely fashioned laws and adjusted society to suit those in power, and this has traditionally been white Anglo-Saxon Protestant men. Ethnic discrimination takes race discrimination one step further; while race discrimination pits race against race, ethnic discrimination undercuts one's very own race.

Ethnic attributes, opportunities and relationships are socially constructed and are learned through socialization processes. They are context and time-specific but changeable, since ethnic determines what is expected, allowed and valued in a given situation. In most societies, there are differences and inequalities between ethnic groups in the assignment of responsibilities, undertaking of activities, access to and control over resources, and decision-making opportunities, with ethnicity part of the broader sociocultural context. There are important criteria for analysis, including ethnicity, race, gender, poverty and class, age, disability, religion and sexual orientation, and hence all these can, alone or combined, amount to discrimination.

The concept of equality is the ignoring of difference between individuals for a particular purpose in a particular context, or the deliberate indifference to specified differences in the acknowledgement of the existence of difference. It is important to note that assimilation is not equality. The notion of rights and of equality should be bound to the notion of justice and fairness. Legal freedom and rights must be seen as relationships not possessions, as doing, not having.

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5 Ibid., at p. xv.

While injustice involves a constraint of freedom and a violation of human dignity through a process of oppression and domination, justice involves the institutional conditions necessary for the development and exercise of individual capacities for collective communication and cooperation.<sup>6</sup> Discrimination is the withholding from the oppressed and subordinated what enables them to exercise private and public autonomy. The struggle must be continued to bring about psychological, sociological and institutional changes to allow all members of the human race to feel equal and to recognize one another as being so. Solidarity and cooperation are required for universal and global equality.

Though humans are mortal and civilizations come and go, from biblical times to our days, there has been a fixed pivot for the thoughts of all generations and for men of all continents, namely the equal dignity inherent in the human personality.<sup>7</sup> Even Pope John XXIII described the United Nations Declaration of Human Rights in his 1963 encyclical *Pacem in Terris*, as “one of the most important acts of the United Nations” and as “a step towards the politico-judicial organization of the world community”; “In social life, every right conferred on man by nature creates in others (individuals and collectivities) a duty, that of recognizing and respecting that right.”<sup>8</sup> Further, Pope John Paul II described the importance of work and of just remuneration in his 1981 encyclical *Laborem Exercens*:

Work bears a particular mark of ... humanity, the mark of a person operating within a community of persons ... While work, in all its many senses, is an obligation, that is to say a duty, it is also a source of rights on the part of the worker. These rights must be examined in the broad context of human rights as a whole, which are connatural with man, and many of which are proclaimed by various international organisations and increasingly guaranteed by the individual States for their citizens. Respect for this broad range of human rights constitutes the fundamental condition for peace in the modern world: peace both within individual countries and societies and in international relations ... The human rights that flow from work are part of the broader context of those fundamental rights of the person ... The key problem of social ethic ... is that of just remuneration for work done ... Hence, in every case, a just wage is the concrete means of verifying the justice of the whole socio-economic system and, in any case, of checking that it is functioning justly.<sup>9</sup>

An improvement in equality of opportunity is sought, rather than a utopian state of equality. No one should misunderstand this. Clearly, oppression exists. Rather, this book *Culture Clash* seeks to add to the list of inequalities to be considered, and does not rule out other forms of injustices besides ethnic inequality. Generalities

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6 Habermas, Jürgen, *Between Facts and Norms*, 1998, p. 419.

7 Cassin, René, *From the Ten Commandments to the Rights of Man*, France, 1969.

8 Pope John XXIII, *Pacem in Terris*, Rome, 1963.

9 Pope John Paul II, *Laborem Exercens*, Rome, 1981.

are not presumed nor are they made here, for this would detract from the very purpose of this book, to bring to the forefront of discussion the reality of injustice, not to create further injustice.

## Chapter 2

# Culture Clash in Ethnic Discrimination

### Introduction

In the quest for ethnic equality and in the fight against ethnic discrimination in *Culture Clash*, this chapter will begin by examining discrimination generally, and will go on to examine ethnic discrimination specifically, looking at the United Nations Millennium Declaration, the World Conference on Human Rights, and the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. All human rights, civil, cultural, economic, political and social, including the right to development, are universal, indivisible, interdependent and interrelated. Governments and others must not only refrain from violating human rights, but must work actively to promote and protect these rights. Human rights issues of racism and ethnocentrism continue to mar progress towards empowerment where minorities continue to be over-represented among the poor and face systemic barriers that prevent them from accessing the opportunities created for the achievement of equality.

### Discrimination Generally

In terms of discrimination, to discriminate is to make a distinction. Commonplace forms of invidious discrimination include distinctions by race, skin color, ethnicity, nationality, gender, marital status, religion, age, disability and socio-economic class. Invidious discrimination classifies people into different groups in which group members receive distinct and typically unequal treatments and rights without rational justification. Expectations and obligations of group members are also biased by invidious discrimination. If the justification is rational, then the discrimination is not invidious. By virtue of establishing nationalism, as opposed to globalism, every government has formalized and supported discrimination. However, many governments have attempted to control discrimination through civil rights legislation, equal opportunity laws and institutionalized policies of affirmative action.

Prejudice is, as the name implies, the process of pre-judging something. In general, it implies coming to a judgment on the subject before learning where the preponderance of the evidence actually lies, or formation of a judgment without direct experience. When applied to social groups, prejudice generally refers to existing biases toward the members of such groups, often based on social stereotypes, and at its most extreme, becomes denying groups benefits and rights

unjustly or, conversely, unfairly showing unwarranted favor towards others. It may be a matter of early education; those taught that certain attitudes are the correct ones may form opinions without weighing the evidence on both sides of a given question. Many prejudicial behaviors are picked up at a young age by children emulating their elders' way of thinking and speaking, with no malice intended on the child's part. Overall, prejudice has been termed an "adaptive behavior" by sociologists.

Affirmative action or positive discrimination is a policy or a program providing access to systems for people of a minority group who have traditionally been discriminated against, with the aim of creating a more egalitarian society. This consists of access to education, employment, health care, or social welfare. The terms "affirmative action" and "positive discrimination" originate in law, where it is common for lawyers to speak of affirmative or positive remedies that command the wrongdoer to do something. In contrast, negative remedies command the wrongdoer to not do something or to stop doing something. In employment, affirmative action may also be known as "employment equity" or "preferential hiring". In this context, affirmative action requires that institutions increase hiring and promotion of candidates of mandated groups. Affirmative action originally began as a government remedy for past government and social injustices. Affirmative action exists to change the distribution of jobs, education, wealth, or other things, based on characteristics that usually include race, ethnicity, or gender.

Reverse racism is a controversial concept; it refers to a form of discrimination against a dominant group. In the United States, critics argue that such policies of affirmative action are an example of reverse racism. They point out that insofar as these policies provide preference to certain racial groups and not others, they are race-based discrimination. Supporters of affirmative action argue that affirmative action policies counteract a systemic and cultural racism by providing a balancing force, and that affirmative action does not qualify as racist. A certain minority group or gender may be less proportionately represented in an area, often employment or education, due predominantly, in the view of proponents, to past or ongoing discrimination against members of the group. The theory is that a simple adoption of meritocratic principles along the lines of race-blindness, ethnicity-blindness, gender-blindness, and so forth would not suffice to change the situation: regardless of overt principles, people already in positions of power were likely to hire people they already knew, and people from similar backgrounds; also, ostensible measures of merit might well be biased toward the same groups who were already empowered. In such a circumstance, proponents believe government action giving members of the minority group preferential treatment is necessary in order to achieve a proportionate distribution.

From its outset, affirmative action was seen as a transitional strategy, with the intent that, in a period variously estimated from a generation to a century, the effects of past discrimination would be sufficiently countered that such a strategy would no longer be necessary: the power elite would reflect the demographics of society at large. Though affirmative action in the United States is primarily

associated with racial issues, the American Civil Rights Movement originally gave as its purpose the correction of a history of oppression against all working-class and low-income people, and women have figured as prominently as ethnic minorities among its beneficiaries.

The initial successes of the civil rights movement brought about negative remedies that attempted to prevent majority ethnic or racial groups from discriminating against minorities. However, by the mid-1960s, when such prohibitions failed to ameliorate existing structural inequities, many began to argue that governments should actively intervene, or take affirmative action, to compensate for the lingering effects of past harms. In some countries which have laws on racial or ethnic equality, affirmative action is rendered illegal by a requirement to treat all humans equally. This approach of equal treatment is sometimes described as being race-blind or ethnicity-blind. It tends to act against both discrimination and reverse discrimination, and focuses on ensuring equal opportunity. The Johnson administration embraced affirmative action in 1965, by issuing US Executive Order 11246, later amended by Executive Order 11375. The Order, as amended, aims to correct the effects of past and present discrimination. It prohibits federal contractors and subcontractors from discriminating against any employee or applicant for employment because of race, skin color, religion, gender, or national origin. The Order requires that contractors take affirmative action to ensure that protected-class, under-utilized applicants are employed when available, and that employees are treated without negative discriminatory regard to their protected-class status. It specifically requires certain organizations accepting federal funds to take affirmative action to increase employment of members of preferred racial or ethnic groups and women. A written affirmative action plan must include goals and timetables for achieving full utilization of women and members of racial or ethnic minorities, in quotas based on an analysis of the current workforce compared to the availability in the general labor pool of women and members of racial or ethnic minorities.

Opponents of affirmative action regard it as government-sanctioned racial discrimination, and also believe that it is demeaning to members of minority groups, in that affirmative action wrongly sends a condescending message to minorities that they are not capable enough to be considered on their own merits. Critics often object to the use of racial quotas and gender quotas in affirmative action. Quotas are illegal in the United States, except when a judge issues an order for a specific institution to make up for extreme past discrimination. There is dispute over whether this *de jure* illegality prevents *de facto* quotas, and attempts have been made to show that these goals are not quotas. However, some believe eradicating affirmative action will further deepen economic disparity between whites and under-represented minorities.

Affirmative action in the United States was originally conceived as a means to compensate African Americans for centuries of slavery, as newly granted legal equality was considered insufficient to redress African-American grievances. However, the initiative quickly ballooned to encompass various other racial

minorities that had never suffered from slavery. In addition, newly immigrated Africans without any enslaved ancestors benefit. Thus the original justification, which the potential victims of affirmative action were initially compelled to accept, has been abandoned. Supporters of affirmative action argue that it benefits society as a whole, given that affirmative action is effective, creating a diverse culture increases the quality of the society.

Free market libertarians believe any form of unjustified discrimination is likely to lead to inefficiencies, and that a rational person would therefore be unlikely to seek to discriminate one way or another and should therefore be free to decide who to select. Therefore, libertarians generally do not advocate anti-discrimination laws, as they reportedly distort the situation. They believe that inefficient, over-regulated, non-competitive industries enable unjustified discrimination, as said industries need not compete and hire on credentials relevant to the job. In terms of policy, libertarians favor repealing all affirmative action legislation and regulation, so that the government has no official stance on the practice, leaving the decision to uphold and maintain such a policy up to the individual institutions.

Equal opportunity refers to the idea that all people should start out in life from the same platform, in that all should have equal opportunities in life, regardless of where they were born or who their parents were. Egalitarianism is the moral doctrine that equality ought to prevail throughout society, and according to legal egalitarianism, everyone ought to be considered equal under the law. The United States Declaration of Independence included moral and legal egalitarianism. Because “all men are created equal”, the State is under an obligation to treat each person equally under the law. Originally this statement excluded women, slaves and other minority groups, but over time this kind of egalitarianism has won wide adherence and is a core component of modern civil rights policies.

### **Ethnic Discrimination Specifically**

The word ethnic comes from the Latin “ethnicus”, from the Greek “ethnikos” meaning “national”, “gentile”, from “ethnos” meaning “nation”, “people”, akin to the Greek “ēthos” meaning custom. Ethnic discrimination can display itself in many ways. Xenophobia is an anxiety disorder characterized by a pervasive, irrational fear or uneasiness in the presence of strangers, especially foreigners, or in new surroundings.<sup>1</sup> It comes from the Greek words “xenos”, meaning “stranger”, “foreigner”, and “phobos”, meaning “fear”. Xenophobia can manifest itself in many ways involving the relations and perceptions of an ingroup towards an outgroup, a deep antipathy toward foreigners. Further, xenoglossophobia is a fear of foreign languages, and comes from the Greek word “xenos”, meaning “stranger” or “foreigner”, “glosso” meaning “language” or “tongue”, and “phobos” meaning “fear”, or xenolinguaphobia, using Latinate “lingua” meaning “language”.

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1 Mosby's Medical Dictionary, 8th edition.

In terms of genocide, the United Nations Convention on the Prevention and Punishment of the Crime of Genocide was adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948. Article 2 defines genocide to mean 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; and (e) Forcibly transferring children of the group to another group.<sup>2</sup>

The Rwandan Genocide was the 1994 mass murder of an estimated 800,000 people, or as much as 20% of the country's total population. The Rwandan Civil War, fought between the Hutu regime, with support from Francophone nations of Africa and France itself, and the Tutsis (the Rwandan Patriotic Front (RPF)), with support from Uganda, vastly increased the ethnic tensions in the country, and led to the genocide of Tutsis by Hutus. Further, the Bosnian Genocide is the genocide committed by Bosnian Serb forces in Srebrenica in 1995, and to ethnic cleansing that took place during the 1992–95 Bosnian War. In the 2004 unanimous ruling of *Prosecutor v. Radislav Krstic*, the International Criminal Tribunal for the former Yugoslavia (ICTY), reaffirmed that the Srebrenica massacre was genocide by the Bosnian Serb forces which sought to eliminate a part of the Bosnian Muslims.<sup>3</sup> They targeted for extinction the 40,000 Bosnian Muslims living in Srebrenica, stripping all the male Muslim prisoners, military and civilian, elderly and young, of their personal belongings and identification, and deliberately and methodically killing them solely on the basis of their identity.

Ethnic cleansing is rendering an area ethnically homogeneous by using force or intimidation to remove from a given area persons of another ethnic or religious group.<sup>4</sup> It has come to be used broadly to describe all forms of ethnically motivated violence, ranging from murder, rape and torture, to the forcible removal of populations, and has been used to refer to the events in Bosnia and Herzegovina. General Assembly Resolution 47/121 on Bosnia and Herzegovina referred in its Preamble to “the abhorrent policy of ‘ethnic cleansing’, which is a form of genocide”.<sup>5</sup>

Racism is the prejudice that members of one race are intrinsically superior to members of other races, and is the root of discriminatory or abusive behavior towards members of another race. The injustices suffered by victims of racial and ethnic discrimination and related intolerance are well-known, namely limited employment opportunities, segregation and endemic poverty. Racism refers to beliefs and practices that assume inherent and significant differences exist between

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2 Convention on the Prevention and Punishment of the Crime of Genocide, at Article 2.

3 *Prosecutor v. Radislav Krstic* (Appeal Judgment), IT-98-33-A.

4 Robert M. Hayden, “Schindler’s Fate: Genocide, Ethnic Cleansing, and Population Transfers”, *Slavic Review* 55 (4), 1996, 727–48.

5 United Nations, General Assembly resolution 47/121.



the genetics of various groups of human beings; that assume these differences can be measured on a scale of superior to inferior, and that result in the social, political and economic advantage of one group in relation to others. In general, a racist considers one's own race the most valuable and others less valuable. The belief that the character and abilities of individuals are correlated with their race is not necessarily racism, since this can be asserted without implying an inequality in value. The application of this belief in dealing with members of that race, especially with little regard for variations within races, is known as racial prejudice. Granting or withholding rights or privileges based on race or refusing to associate with persons based on race is racial discrimination.

The division of people into discrete groups, usually based on external anatomical features or assumed geographic origin, and theories about how many races there were, and theories of how to rank these races against each other, existed long before they acquired any sort of distinct stigma against them. During the late nineteenth century, a number of thinkers emphasized that these views were morally and ethically unjust, but this was a significantly minority opinion. Even those who opposed institutions such as slavery often did so not on the basis of equality of races, but on overall equality in the treatment of humankind.

In the twentieth century, there began a growth of thought that theories of racial superiority and inferiority were inherently problematic and wrong. Much of the discourse relating to racial theory of this sort came out of the United States in the years after the American Civil War, while European thinkers began to think of people more in terms of linguistic nations than races. The term "racism" emerged in the early 1930s as distinct from the theories of race which had existed for at least a hundred years before that. A turning point in racial or ethnic thinking came with the rise of Nazism (Nationalsozialismus, National Socialism), which was a form of fascism that involved biological racism and anti-Semitism, in that the Nazis believed in the supremacy of an Aryan master race, and accused communism and capitalism of being associated with Jewish influences and interests.

Notions of race and racism often have played central roles in such conflicts. Historically, when an adversary is identified as "other" based on notions of race or ethnicity, particularly when "other" is construed to mean inferior, the means employed by the self-presumed superior party to appropriate territory, human chattel, or material wealth often have been more ruthless, more brutal and less constrained by moral or ethical considerations. Indeed, based on such racist presumptions, the political or moral decision to enter into armed conflict can be made less weighty when one's potential adversaries are "other", because their lives are perceived as having lesser importance, lesser value. In the western world, racism evolved, twinned with the doctrine of white supremacy, and helped fuel the European exploration, conquest and colonization of much of the rest of the world.

Racism may be expressed individually and consciously, through explicit thoughts, feelings, or acts, or socially and unconsciously, through institutions that promote inequalities among races. Racism may be divided into three major subcategories: individual racism, structural racism and ideological racism.