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To cite this article: Jeffrey Ostler (2016) ‘Just and lawful war’ as genocidal war in the (United States) Northwest Ordinance and Northwest Territory, 1787–1832, Journal of Genocide Research, 18:1, 1-20, DOI: 10.1080/14623528.2016.1120460

To link to this article: http://dx.doi.org/10.1080/14623528.2016.1120460

Published online: 03 Feb 2016.

Article views: 40

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ABSTRACT
This article focuses on the United States Northwest Ordinance of 1787’s profession of ‘utmost good faith’ towards Indians and its provision for ‘just and lawful wars’ against them. As interpreted by US officials as they authorized and practised war against native communities in the Northwest Territory from 1787 to 1832, the ‘just and lawful wars’ clause legalized wars of ‘extirpation’ or ‘extermination’, terms synonymous with genocide by most definitions, against native people who resisted US demands that they cede their lands. Although US military operations seldom achieved extirpation, this was due to their ineptness and the success of indigenous strategies rather than an absence of intention. When US military forces did succeed in achieving their objective, the result was massacre, as revealed in the Black Hawk War of 1832. US policy did not call for genocide in the first instance, preferring that Indians embrace the gift of civilization in exchange for their lands. Should Indians reject this display of ‘utmost good faith’, however, US policy legalized genocidal war against them.

Introduction
Did the United States establish a formal policy of genocide against American Indians? In his magisterial The great father: the United States government and the American Indians, published in 1984, Francis Paul Prucha wrote that ‘[t]he United States, of course, absolutely rejected a war of extermination against the Indians’. Prucha’s ‘of course’ reflected a well-founded confidence that his judgement reflected a scholarly consensus. In recent decades, scholars have become more critical of US Indian policy than Prucha, although most continue to argue that the US did not adopt a policy of genocide. Gary Clayton Anderson’s recent Ethnic cleansing and the Indian: the crime that should haunt America makes a strong distinction between ethnic cleansing and genocide and acquits the US of the latter, arguing that the government never embarked on a ‘concerted effort to kill large numbers of people or indeed to annihilate a given people’.¹

Scholars in genocide studies have been only partially effective in countering the thesis that the US never established a policy of genocide against American Indians. Arguments for the pervasiveness of genocide in the western hemisphere first became prominent at the time of the Columbus Quincentennial. David Stannard’s American holocaust: the
conquest of the New World and Ward Churchill's A little matter of genocide: holocaust and denial in the Americas, 1492 to the present argued that Europeans in the western hemisphere consistently committed genocide against indigenous people. As their titles announced, the narrative strategy in these works was to relate horrific event after horrific event (massacres, enslavements, epidemics), indict Europeans in the Americas for their greed, racism and bloodlust, and link these to the drastic decline of indigenous populations in the Americas, thus depicting an unrelenting and intentional process that closely resembled the Nazis’ systematic annihilation of Jews. Although Stannard and Churchill did not provide a detailed analysis of policy, their works conveyed the strong impression that Spain, Britain and the United States intended as a matter of policy to physically eliminate all American Indians. In part because of a generally conservative disposition among academic specialists in colonial American and US history, but also because of its excessive polemics, empirical overreaches and reductionism, the Quincentennial literature has never gained much traction among scholars of US relations with Native Americans. If the question is whether the United States pursued a policy of physically killing all Indians in the first instance, as the Quincentennial writers argued, Prucha and Anderson have the better of the debate, since the US government did not adopt such an overarching policy. US policymakers generally preferred that Indians cede their lands and go away (through assimilation, voluntary removal or a ‘natural’ process of disappearance) without having to kill them. It was cheaper that way and it gave less trouble to the consciences of men devoted to a project they wished to see and be seen as honourable.

But policy was not limited to policymakers’ statements of what they ideally wished to happen. What if Indians refused the gift of ‘civilization’ in exchange for their lands? What if they defended their lands against settler invasions? Recent scholarship in genocide studies is more capable of accounting for these contingencies. Ben Kiernan observes that ‘US policies towards Indians did not mandate genocide, but it was practiced when considered necessary’, while Michael Mann points out that '[t]he effect of Indian resistance on even enlightened presidents drove to them to accept a Plan C, threatening genocide if they did not accept deportation'. Similarly, in a discussion of the Australian case with theoretical implications for settler colonial situations in general (the US included), A. Dirk Moses outlines a process of ‘policy radicalization’ related to the ‘intensity of Indigenous resistance’ that could lead to ‘genocidal moments’. Nonetheless, genocide studies’ move from an intentionalist to a structuralist approach and accompanying concepts such as ‘society-led’ (instead of ‘state-led’) genocides, ‘relations of genocide’ and ‘logic of elimination’ turns attention away from formally constructed policy, leaving the impression that wars of extermination and massacres were often improvised responses to policy breakdown rather than the result of legislation and formal decisions by policymakers that called for and sanctioned acts of genocide under certain conditions. Benjamin Madley’s recent documentation of state and federal government policies such as establishing scalp bounties and funding exterminatory militias returns attention to policy and suggests the need for further analysis of the location of genocide in US policy.

This article argues that at the founding of the United States policymakers developed a clearly defined policy option for dealing with indigenous groups who resisted US demands that they cede their lands. This policy option called for the extirpation or extermination of such groups, terms that meant the intentional killing of a substantial portion of a group and so can be considered as genocidal under the ‘restrictive’ definition of the term
proposed by Frank Chalk and Kurt Jonassohn as ‘a form of one-sided mass killing in which a state or other authority intends to destroy a group’. In citing this definition, I am not arguing for it as authoritative for analysing genocide as a general phenomenon. For the purposes of this article, Chalk and Jonassohn’s definition is useful because there is considerable consensus, despite what Dan Stone refers to as a ‘merry-go-round of definitional debates’, that a government policy intentionally authorizing mass killing to destroy a group clearly qualifies as a policy of genocide.5

The Northwest Ordinance

The Northwest Ordinance of 1787 at first appears an unlikely document for identifying a foundational location for genocide in US Indian policy. Enacted in New York City by the Continental Congress as the Constitutional Convention was meeting in Philadelphia, the Northwest Ordinance was reaffirmed in 1789 during the first session of the US Congress.6 At one time, what Frederick Jackson Turner termed the ‘great Ordinance’ was commonly celebrated, in Bernard Bailyn’s words, for its ‘brilliantly imaginative provisions … for opening up new lands in the West and settling new governments within them’. This it did through a series of provisions allowing for an orderly creation of territories in the area north of the Ohio River into the Great Lakes and their admission to the Union on

Figure 1. Northwest Territory.
an ‘equal footing’ with existing states. The states created were Ohio (1803), Indiana (1816), Illinois (1818), Michigan (1837) and Wisconsin (1848). 7

In recent decades, scholars have continued to see the Ordinance as an effective means for reconciling the metropolitan priority to regulate the pace of US expansion with the frontier priority to resist the reestablishment of colonial rule, although they have more often registered the costs of US expansion for the region’s indigenous people. Writing at the time of the Ordinance’s bicentennial, Jack N. Rakove observed that the Ordinance ‘solved the problem of the frontier by offering a means both to extend the empire of liberty and to incorporate these liberated territories into [an] extended republic’. For the ‘original occupants of the Northwest Territory’, he added, ‘one people’s liberty was another people’s loss’. 8

Historians have also expressed considerable ambivalence about the Ordinance’s provision (in article 6) forbidding slavery in the Northwest Territory. Paul Finkleman acknowledges that ‘[t]he Ordinance certainly helped put slavery on the road to ultimate extinction in the area north of the Ohio River’, but, he argues, not only did slavery remain a ‘vigorously institution’ within the region for decades, by implicitly sanctioning slavery in new territories in the south, the Ordinance had the effect of clarifying a national commitment to the expansion of slavery in that region. Similarly, George William Van Cleve has shown that article 6 was part of a ‘western development bargain’ in which southern political leaders accepted the Ordinance’s anti-slavery provision (tempered by a fugitive slave clause and language respecting the property, presumably including slaves, of US citizens already residing in the territory) in exchange for northern states’ withdrawal of support for a commercial treaty with Spain that would have denied southern states access to the Mississippi River. This allowed the Constitutional Convention to avoid the very real possibility of sectional stalemate and meant that the US would be committed to the western expansion of plantation slavery. 9 Van Cleve’s analysis of the Ordinance’s role in the creation of the Constitution contributes an additional dimension to its implications for Indians. Had the Constitution failed and the weaker Articles of Confederation remained in effect, settlement of the Northwest would still have occurred and Indians would undoubtedly have been threatened by local militias. But Indians might not have faced sustained federal military invasions. Expansion under the Articles of Confederation might also have encouraged breakaway republics with the resulting decentralization allowing Indians greater room for manoeuvre. The adoption of the Constitution, however, meant that Indians would be subject to an empire with relatively strong central authority that assumed that Indian lands would be converted into private property owned by white US citizens.

Of the Northwest Ordinance’s 2,819 words, seventy-six concern Indians. Part of article 3, they read as follows:

The utmost good faith shall always be observed towards the Indians, their lands and property shall never be taken from them without their consent and in their property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorised by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

Although the most recent full-length study of the Ordinance ignores article 3 altogether, 10 scholars’ most common failing is to focus entirely on the ‘utmost good faith’ clause. Rakove sees this language as evidence of a ‘reassessment of the naive and unjust assumptions in
which Congress had first acted towards the defeated tribes’ in treating them as a ‘conquered people’ at the close of the Revolutionary War. Rakove goes on to say that unfortunately the ‘hopeful intentions’ of the Ordinance were undermined by ‘practical factors that operated along the frontier’ and so the Ordinance was unable to prevent the ‘further deterioration of relations that led to the brutal and violent frontier war of the early 1790s’. Similarly, Prucha treats the ‘utmost good faith’ clause as an expression of a ‘policy of justice toward the Indians’. Like Rakove, Prucha recognizes that because of an ‘undeclared war between the frontiersmen and the Indians’, the US eventually turned to ‘military force’ in the region, but neither he nor Rakove considers the structural relationship between article 3’s profession of ‘utmost good faith’ towards Indians and its provision for ‘just and lawful wars authorised by Congress’. The general impression is that article 3, including its anticipation of war (presumed to be both ‘lawful’ and ‘just’), was a straightforward expression of good intentions but that these were undermined by forces or events unanticipated by policymakers and beyond their control. Occasionally, critically minded authors have suggested some dissonance between expressions of good faith and war, as in Reginald Horsman’s sardonic remark that ‘it was hardly likely that the American and Indian concepts of “just and lawful war” would be identical’ or in the suggestion by Vine Deloria Jr. and David E. Wilkins that ‘Congress never did bother to examine whether the wars it waged against the tribes in the West were just or lawful’. Overall, however, treatments of the Northwest Ordinance’s article 3 exemplify what Patrick Wolfe calls ‘the intentional fallacy’, a mode of interpretation that ‘privileges expressions of intention, no matter how contrary to historical experience, over collective outcomes, no matter how emphatic their historical regularity’. Even critical accounts that register a gap between intention and outcome, Wolfe continues, provide ‘an ideological alibi for the negative outcomes of Indian administration’, explaining them as ‘policy failures or unintended consequences instead of systemic regularities’.11

‘Extirpative war’ as ‘just and lawful’ against resisting Indians

The Northwest Ordinance’s provision for ‘just and lawful wars’ was not formulated as an abstract principle to be applied in some hypothetical future. It was a concrete option to deal with a formidable indigenous movement organized to resist US efforts to obtain Indian lands. Immediately after the US secured independence in the 1783 Treaty of Paris, Congress authorized a commission to inform Ohio Valley Indians of the US’s intention to ‘establish a boundary line between them and us’ running from the mouth of the Great Miami River northeast to Lake Erie, thus giving the US most of the present-day state of Ohio.12 In January 1785 when this commission informed Wyandots, Delawares, Ottawas and Ojibwes of this new boundary, native leaders objected that the land east of it was theirs. The commissioners bluntly replied, ‘we claim the country by conquest’.13 Although some Indians agreed to this new boundary in signing the 1785 Fort McIntosh Treaty, a larger number regarded this treaty as illegitimate and began organizing a multinational confederation to secure a boundary between the US and Indian country at the Ohio River. In late 1786, Mohawks, Wyandots, Delawares, Shawnees, Ottawas, Ojibwes, Potawatomis, Chickamauga Cherokees, Miamis, Weas and Piankashaws, calling themselves the United Indian Nations (UIN), informed the US Congress that any ‘cession of our lands should be made … by the united voice of the confederacy’ and called for a
peace conference. Should the US reject a reasonable settlement, the UIN was ‘obliged to defend those rights and privileges which have been transmitted to us by our ancestors’, a clear assertion of sovereignty and a right to self-defence.14

The message from the UIN reached Congress in July 1787. In response, Secretary of War Henry Knox recommended that Congress authorize a commission to negotiate a ‘general treaty … with the tribes of [I]ndians’. Knox rejected the alternative, war, for two reasons. First, to fail to respond to the UIN’s appeal would make it ‘appear that we preferred War to Peace’, thus placing a ‘stain on the national reputation of America’. Second, for a ‘small sum of money’ it would be possible to purchase land from Indians, whereas a war ‘may cost much blood and infinitely more money’. Congress accepted Knox’s recommendation and further advised that the commissioners negotiating a treaty should reject ‘a language of superiority and command’ and instead ‘treat with the Indians more on a footing of equality’ and ‘convince them of the Justice and humanity as well as the power of the United States’.15

Coming on the heels of the passage of the Northwest Ordinance, Congress’s acceptance of Knox’s recommendations has typically been seen as a repudiation of a policy of claiming Indian lands by right of conquest in favour of a new policy consistent with the ‘utmost good faith’ clause recognizing that Indian nations owned their lands and so requiring the US to purchase them.16 Pragmatically, US officials hoped that displays of ‘utmost good faith’ would encourage Indians to accept land cessions without costly war. An avowed commitment to ‘utmost good faith’ also followed from the United States’ paradoxical position as a postcolonial empire. Aziz Rana points out that the US was the ‘first example’ within European imperialism of a ‘successful settler revolt against metropolitan rule’. As such, US leaders needed to demonstrate to themselves and to a watching world a commitment to the highest principles of ‘civilization’; otherwise, an unprecedented experiment in constructing what Thomas Jefferson imagined as an ‘empire for liberty’ would fail.17 Despite the adoption of an ostensibly new policy, however, basic premises were unaltered. The US might begin with gentler tones when asking Indians to give up their lands and would provide compensation, but indigenous sovereignty remained severely circumscribed. Not only would the US claim a right of pre-emption and so deny an indigenous right to sell lands to parties other than the federal government, more importantly, the US would not recognize an indigenous right to refuse to sell when presented with reasonable terms as defined by the US. As Horsman observes for the period from 1787 to 1812, ‘[i]n many cases treaties were still imposed upon the Indians, but the United States was henceforth at least to go through the motions of formal purchase of Indian rights’.18 Nor would the US accept an indigenous right of self-defence.

In early 1788 the governor of the Northwest Territory, Arthur St. Clair, sent word to the UIN of his intention to negotiate. But before formal negotiations began, he made clear their parameters when he rejected a proposal by moderate confederationists for a compromise boundary between the US and Indian country on the Muskingum River (giving the US the eastern quarter of Ohio) and sent word that Indians must accept the Fort McIntosh Treaty boundary. Any departure from the earlier conquest policy would not entail a reconsideration of treaties dictated under that policy. St. Clair’s inflexibility caused many members of the UIN to decide against attending the treaty council. When the council convened at Fort Harmar in December 1788 some leaders thought St. Clair might be open to
reconsider his insistence on the Fort McIntosh Treaty boundary. After days of discussion, however, it became clear that St. Clair was unwilling to give an inch. ‘The United States … were much inclined to be at peace with all the Indians’, he said, ‘but if the Indians wanted war they should have war’. Utmost good faith had been shown. The consequence of rejecting US generosity was clear.19

Although some confederationists signed the Fort Harmar Treaty, most did not. In 1789 they turned to militancy to pressure the US to accept an Ohio River boundary, raiding colonial settlements and harassing military convoys and boats along the Ohio River. As Knox continued to receive reports of ‘depredations of the Indians’, in May 1790 he proposed a military expedition against ‘the banditti Shawanese and Cherokees, and some of the Wabash Indians’. President George Washington approved this expedition and in June Knox ordered General Josiah Harmar and Governor St. Clair to make plans to ‘extirpate, utterly, if possible, the said banditti’.20 Three years after the adoption of the Northwest Ordinance, then, Knox provided an official interpretation of the phrase ‘just and lawful wars’ to mean wars of extirpation. Knox’s statement, it is crucial to recognize, was not mere rhetoric; it was an official order.

On what basis did Knox consider a war of extirpation against ‘banditti’ Indians to be ‘just and lawful’? Knox did not provide a rationale, evidence that the legitimacy of extirpative war against the ‘merciless Indian savages’ Thomas Jefferson identified in the Declaration of Independence was axiomatic.21 Had Knox been asked to cite a legal authority, he would have turned to the Swiss jurist Emmerich de Vattel, author of Law of nations (1758) and widely regarded by US founders as the world’s pre-eminent authority on law and war.22 In the tradition of John Locke, whose 1690 Second treatise of government contrasted the ‘wild Woods and uncultivated waste of America left to Nature without any improvements, tillage, or husbandry’ with England’s ‘well Cultivated’ lands, Vattel made a strong distinction between agricultural/civilized peoples who cultivated and improved the land and ‘savage’ peoples who ostensibly did not. In writing about North America, Vattel argued that the ‘people of Europe, too closely pent up at home, finding land of which the savages stood in no particular need, and of which they made no actual and constant use, were lawfully entitled to take possession of it, and settle it with colonies’. From this legal grounding in the ‘doctrine of discovery’, Vattel further contended that ‘those nations that inhabit fertile countries but disdain to cultivate their lands and chuse rather to live by plunder … deserve to be extirpated as savage and pernicious beasts’ and that civilized nations had a ‘right to join a confederacy for the purpose of punishing and even exterminating … savage nations … who seem to delight in the ravages of war’.23 These formulations did not allow for extirpation of all Indians under all conditions, but they did provide a legal basis for extirpation under those Knox stipulated: against ‘banditti’ engaged in ‘depredations’.

‘Utmost good faith’, extirpation and US military operations, 1790–94

What exactly did Knox sanction in ordering extirpation? In the late eighteenth and early nineteenth centuries the term was used interchangeably with extermination, a word, as Ben Kiernan explains, that meant ‘utter destruction’ and expressed the modern ‘concept of genocide’.24 US officials did not author a manual on wars of extirpation and so to comprehend Knox’s intention in ordering a war of extirpation it is necessary to observe US
military forces at work in the Northwest Territory in the early 1790s. Doing so also reveals how US officials cultivated an image of themselves as exercising ‘utmost good faith’ before going to war, an image necessary to assure themselves, an eastern public and a sceptical Europe that US expansion was proceeding ‘with honor’. The military operation Knox authorized in 1790, commanded by Harmar, has seldom been considered in relation to genocide, but this is because historians have generally emphasized its failures at the expense of its intentions. Harmar’s force, 1,400 strong, departed Fort Washington (present-day Cincinnati) in late September towards Indian villages on the upper Maumee River, marching, in the words of Wiley Sword, like a ‘herd of elephants trampling through the underbrush’. In October, as Harmar approached his target, he received intelligence that Indians were preparing to abandon their towns. Obviously intending to kill people before they could find safety, he sent a detachment ‘to endeavor to surprise the Miami village’ of Kekionga, but by the time these troops arrived, its residents were gone. Harmar ordered a detachment to ‘reconnoitre the country’ and then proceeded to the nearby town of Chillicothe. It, too, had been evacuated and so, as one of the officers recorded, ‘the army all engaged burning and destroying everything that could be of use: corn, beans, pumpkins, stacks of hay, fencing and cabins, etc’. The army burned four other towns. Consistent with what John Grenier terms America’s ‘first way of war’, a tradition dating to the early seventeenth century of ‘extirpative war’ manifested not only by the destruction of Indians’ agricultural resources but also ‘the destruction of enemy noncombatants’, Harmar was not content with material destruction and so ordered another detachment to ‘surprise any parties’ that might return to Kekionga. Rather than surprising Indians, however, Harmar’s detachments provided targets for otherwise outnumbered Miamis, Potawatomis and Shawnees. On terrain they knew well, confederation fighters, led by Blue Jacket (Shawnee) and the Little Turtle (Miami), ambushed and overwhelmed both detachments, killing 178 US soldiers and militiamen in what became known as ‘Harmar’s Defeat’. Confederation losses were fewer (between ten and forty men killed in combat), but, as Barbara Alice Mann points out, small ‘fractal massacres’ had a devastating impact on Ohio Valley Indian nations with fairly small populations, especially when their cumulative impact over time is taken into account. Although a failure on its own terms, then, Harmar’s expedition did result in partial extirpation. The reason it did not achieve a more complete extirpation was not because of an absence of intent. Rather, the decisions of Indians to evacuate their towns rather than risk catastrophic violence and their capacity for effective counter-attack prevented the US from fulfilling its objective.

Soon after Harmar’s defeat, St. Clair began planning a new expedition, but it would take months for him to assemble the necessary men and supplies. As confederation fighters launched attacks on colonizers in eastern Ohio in early 1791, Washington and Knox felt pressure to take immediate action. In March they authorized a quick-strike force of 750 Kentucky militiamen to attack Indian towns north of the Ohio. Knox’s orders to the militia’s commander, Brigadier General Charles Scott, were more specific than those he gave to Harmar. Instead of general ‘extirpation’, Scott was to ‘assault the said towns, and the Indians therein … sparing all who may cease to resist, and capturing as many as possible, particularly women and children’. Captives would be used as hostages to ensure that Indians submitted to the terms of US expansion. But this did not mean that Scott’s expedition would avoid killing non-combatants. When Scott’s militia reached its
destination, the Wea town of Ouiatenon and satellite Wea and Kickapoo villages on the Wabash, he ‘discovered the enemy in great confusion, endeavoring to make their escape over the river in canoes’. The detachment he ordered to pursue them ‘destroyed all the savages with which five canoes were crowded’. Scott did not specify the age and sex of those killed, but almost certainly the canoes carried women, children and older men. In all, Scott burned several towns—mostly evacuated—and reported killing ‘thirty-two, chiefly warriors of size and figure’ and taking fifty-eight prisoners. Scott congratulated himself that ‘no act of inhumanity has marked the conduct of the volunteers of Kentucky on this occasion’, but his pursuit of people fleeing in canoes appears to have violated his orders to spare those not resisting. Higher officials did not question this action, indicating that they regarded non-combatant deaths as an acceptable aspect of extirpative war.31

Overall, Scott’s operation against Indians on the Wabash can be considered, like Harmar’s, as partially extirpative. It achieved significant destruction, including the killing of non-combatants, but the destruction was less than it would have been had Scott achieved total surprise and/or had Indians chosen military confrontation under conditions unfavourable to them.

By contrast, St. Clair’s much larger operation fell even farther short of its intention than Harmar’s. With a force of 2,000 men, St. Clair left Fort Washington in September 1791. His destination was the Miami villages on the upper Wabash. Once he arrived there, according to Knox’s orders, he was ‘to strike them with great severity’. Confederation scouts had little difficulty monitoring the progress of what Colin Calloway describes as ‘St. Clair’s ponderous, noisy, tree-felling army, with its camp followers, bellowing oxen, and lumbering wagons’. When St. Clair was about fifty miles from his target, confederation strategists decided that their force of 1,200 men could surprise the US army and so attacked on 4 November, killing over 600 soldiers. This was the largest number of Americans killed by Indians in any single battle, far exceeding the 268 fatalities in the much better known 1876 Battle of the Little Bighorn. St. Clair’s men did kill between twenty and thirty confederation fighters, but confederationists regarded these as acceptable losses in light of such an overwhelming victory. Judged by its impact, St. Clair’s expedition can hardly be considered even partially extirpative (it did not burn a single cornstalk), but he did intend extirpation. Had all gone according to plan, St. Clair would have fulfilled Knox’s orders to ‘strike with great severity’.32

US policymakers’ need to reconcile the practice of extirpative war with the humane disposition supposedly expressed in the Northwest Ordinance’s ‘utmost good faith’ clause required constant cultivation. Thus, in reviewing the events that led to St. Clair’s defeat, Knox assured Washington, and by extension metropolitan observers in the east and across the Atlantic, that the post-1783 treaties with Indians had been fairly conducted. The ‘Miami and Wabash Indians’ had been invited to come to Fort Harmar, Knox observed, but they had rejected the invitation. Instead, with other ‘banditti’ they ‘continued their depredations’. The US had made further peace overtures but these ‘were treated … with neglect’ and ‘outrages were renewed with still greater violence than ever’. Although Knox did not explicitly refer to the Northwest Ordinance, his account was obviously designed to establish that ‘utmost good faith’ had been shown and that Indians’ rejection of this good faith meant, as he phrased it, that it was ‘necessary to make an experiment of the effect of coercion’. The failure of this experiment meant that the ‘[p]ride of victory is too strong at present for [the confederation] to receive the offers of peace on reasonable
terms’. Since the confederation ‘would probably insist upon a relinquishment of territory’, for which they had ‘no just claim’ (a formulation which failed to recognize the various forms of coercion and lack of consensus undergirding the Fort Harmar and other treaties), Knox concluded that ‘adequate military force should be raised as soon as possible’.33 Just and lawful war was becoming endless war.

Before an army could be raised, however, Knox and Washington promoted several diplomatic initiatives, some involving efforts to make direct contact with the confederacy, others involving efforts to enlist Haudenousaunee (Iroquois) intermediaries. Consistent with a general tendency to take US policymakers’ expressions of their intentions at face value, historians have often represented these initiatives as a sincere and humanitarian ‘peace offensive’.34 Given that policymakers had already decreed that the confederacy’s position lacked the slightest legitimacy and were predicting that confederation leaders would reject US conditions for peace, however, diplomacy was guided less by a desire to avoid war than to create the appearance that war was consistent with principles of justice. Consider the most elaborate of the diplomatic initiatives the US pursued, a peace commission authorized in early 1793. Knox instructed the commissioners to gain confederation leaders’ consent to the Fort Harmar Treaty boundary, though if that failed, he authorized the commissioners to modify the boundary to allow Indians areas within this boundary that the federal government had not already granted to land companies. This, however, was a very modest concession and a repudiation not only of the confederation’s position but of a compromise, floated by Haudenousaunee leaders Joseph Brant and Red Jacket, for a revised boundary at the Muskingum River. Not surprisingly, the confederation continued to insist on an Ohio River boundary and the legitimacy of ‘defending our just rights against your invasions’. Knox, of course, would have preferred that confederationists accept his limited concession, thus avoiding the cost of fielding another army and risking another failure. But Secretary of State Thomas Jefferson observed that the cabinet’s approval of this commission was ‘merely to gratify the public opinion’ and ‘not from an expectation of success’, making the overriding purpose of diplomacy plain enough.35

By 1794, with policymakers satisfied that they had shown ‘utmost good faith’ and General Anthony Wayne’s Legion of the United States ready to march, US officials began the war that, given their premises, they had viewed as inevitable all along. Wayne proceeded cautiously along his route north from Fort Washington towards the confederation’s headquarters at the Glaize in northwestern Ohio, deploying rangers and Indian scouts (Chickasaws and Choctaws) to closely monitor confederation forces and so avoid the fate of Harmar and St. Clair. Wayne’s ultimate objective was to force the confederacy to agree to peace on US terms, or, in other words, to cease resisting US efforts to expropriate their lands. From US officials’ perspective, there were various scenarios under which this could be accomplished. It was possible that confederation leaders, perceiving that Wayne’s army could not be surprised and was in a position to inflict massive destruction, might sue for peace. In this case, little extirpation would occur. But should confederation resist, Wayne’s army would attempt to inflict, in Knox’s words, ‘severe strokes to make them sensible how necessary a solid and permanent peace would be to prevent their utter extirpation’. By this logic, continued resistance would eventually mandate total annihilation.36
As Wayne’s army drew near, an Ottawa named Kin-jo-i-no later recalled, ‘all was consternation and fright throughout the villages. They fled from the corn fields on the fertile bottom lands. … Old women, burdened with immense packs strapped to their shoulders, followed their retreating families with all the haste their aged limbs would permit’. A few days later on 20 August 1794, as US troops moved down the Maumee, confederation leaders decided to attack at a place called Fallen Timbers. Weaker than it was a few years earlier and facing a stronger, more disciplined force, the confederation army was unable to turn back Wayne’s. Indian casualties were significant (forty to sixty killed) but not in themselves devastating. Their inability to turn back Wayne’s army, however, gave Wayne’s men a free hand to continue the work of destruction already commenced, burning cabins and cornfields, uprooting gardens and despoiling graves along a fifty-mile stretch of the Maumee. After Fallen Timbers, confederation forces retreated to Fort Miami, a nearby British post. Expecting aid, they were stunned to find the gates closed in their faces, a betrayal they would remember for decades. The post’s commander feared that assisting Indians against a US military operation might drag the empire into war at a time when Britain was already fighting revolutionary France. Deprived of British assistance and with their towns in ruins, most confederation leaders decided to accept Wayne’s condition for peace—the cession of most of Ohio—rather than continue to fight. Their assent to the Greenville Treaty in 1795 brought to an end the war for Ohio.37

From 1790 to 1794 US military forces killed between 150 and 200 Indians, a significant number as measured as a percentage of small populations. The majority were combatants, but some, like those killed trying to escape Scott’s attack in canoes, were non-combatants.38 US troops also routinely razed crops and villages and frequently plundered graves. But a narrative in which Indians twice rout the US army and finally surrender after a battle (not a massacre) scarcely corresponds to the one-sided massive killing ordinarily associated with genocide. As the foregoing analysis has shown, however, US officials intended the military operations they authorized to inflict overwhelming violence, including the killing of significant numbers of non-combatants, against targeted indigenous communities. That these military operations did not realize their full potential was not because of an absence of genocidal intent. Rather, the salient variable is the inability of US forces to surprise and destroy native population centres. This was due to logistical problems for US armies operating in foreign territory, the incompetence of US military leaders, the competence of Indian military leaders (including their capacity to gather intelligence) and the decisions of confederation leaders to protect non-combatants by evacuating villages when necessary. Ironically, then, US incompetence and native competence combined to ‘camouflage’39 the genocidal potential of US military operations during this period.

‘Just and lawful war’ in the Northwest Territory, 1800—32

After 1795, as the United States continued to dispossess Indians in the Northwest Territory, government officials repeated earlier assertions of the legitimacy of exterminatory warfare against Indians who resisted US efforts to gain their lands. In the first decade of the nineteenth century, Indiana Territorial Governor William Henry Harrison, described by Robert Owens as President Thomas Jefferson’s ‘hammer’, used a variety of tactics, including bribing, pitting leaders against each other, distributing whiskey and threatening to
withhold annuities, to secure a series of treaties that allowed the US to claim Indian lands in Michigan, Indiana and Illinois. As in the late 1780s, many Indians regarded these treaties as illegitimate. Under the leadership of two Shawnee brothers, Tenskwatawa (the Prophet) and Tecumseh, they organized a new confederacy.40

Faced with the re-emergence of indigenous resistance, in 1807 Jefferson instructed Michigan Territorial Governor William Hull to inform Potawatomis and Ojibwes near Detroit that ‘if ever we are constrained to lift the hatchet against any tribe, we will never lay it down till that tribe is exterminated, or driven beyond the Mississippi’. Hull was also to notify the Indians that should they go to war, ‘they will kill some of us; we shall destroy all of them’. Although a few scholars informed by genocide studies have quoted Jefferson’s words, historians of Jefferson’s Indian policy have generally ignored them, let alone seen them as a policy statement.41 As an official presidential communication, however, Jefferson’s threat of extermination was exactly that: an official reaffirmation of Knox’s interpretation of the Northwest Ordinance’s ‘just and lawful wars’ clause as legalizing exterminatory—that is, genocidal—warfare against resisting Indians. Again, Jefferson’s threat was not simply rhetoric; it both reflected and constituted policy.

As in the early 1790s, US officials expressed a preference for peace, but once again peace was contingent on compliance with US demands that Indians accept land cessions. When confederation leaders refused to recognize the legitimacy of Harrison’s treaties, in the autumn of 1811 Harrison marched on the confederation’s headquarters at Prophetstown, thus igniting a new phase in the long war for the Northwest Territory.42 Rather than rehearse the details of US military operations over the next several months, it is sufficient to say that, consistent with the patterns in the early 1790s, these operations intended to surprise Indian villages and so carried the potential for wholesale slaughter, but Indians thwarted this intention by evacuating their villages. US troops destroyed as many as two dozen villages in the region, including Prophetstown, rebuilt after Harrison razed it in November 1811 only to be torched again a year later by Kentucky militiamen. Indians suffered some casualties while defending their villages and fighting with their British allies during the war of 1812, but the total number directly killed was probably not much more than one hundred.43

Although US military operations in the 1790s and 1810s did not result in a major massacre of Indians, the potential for such operations to have precisely that result was eventually realized on the far western edge of the original Northwest Territory in the early 1830s. As before, the US went to war against a coalition of Indians—in this case, Sauks, Mesquakies (Foxes), Ho Chunks (Winnebagos), Potawatomis and Kickapoos—that objected to the legitimacy of a treaty containing a land cession. The treaty in question was signed in 1804 when Harrison, using veiled threats of war, convinced some Sauk and Mesquakie leaders to agree to cede lands in present-day northwestern Illinois and southwestern Wisconsin, while allowing occupancy of the ceded lands until an unspecified time when US citizens would require them. The majority of Sauks and Mesquakies did not sign the treaty and contended that those who did sign lacked authority to do so. In later years, some Sauks and Mesquakies, again under pressure, agreed to accept the 1804 treaty, though many, notably the Sauk leader Black Hawk, did not.44

In the late 1820s, when lead miners and agriculturalists invaded the region, US and Illinois officials declared that it was time to enforce the 1804 treaty and demanded that Indians on the east side of the Mississippi relocate west. Black Hawk and his allies refused. Though Black Hawk’s people spent the winter of 1830–31 hunting west of the
Mississippi, in the spring Black Hawk along with well over a thousand followers returned to Saukenuk, for decades the capital of the Sauk nation, on the eastern side of the Mississippi. In late May 1831 Illinois Governor John Reynolds, citing the need ‘to protect the Citizens of this State … from Indian invasion, and depredation’, called up a force of 700 militiamen to ‘remove [Black Hawk’s] band dead, or alive over to the west side of the Mississ[i]ippi’. To assert federal authority, General Edmund P. Gaines informed Reynolds that mobilizing the Illinois militia was neither ‘necessary’ nor ‘proper’ and immediately led regular troops from St. Louis to Fort Armstrong, not far from Saukenuk. In early June Gaines informed Black Hawk and his people that although the 1804 treaty required the Sauks to relinquish their lands east of the Mississippi, ‘the humane disposition of the United States’ and desire of ‘your great Father’ to ‘treat you as friends and brethren’ had led him to allow ‘you to remain on the lands you sold, till the present time’. Now, though, ‘[y]ou must therewithout delay move to the west side of the Mississippi’. After Black Hawk replied that ‘his Braves and People were unanimous in their desire to remain in their old fields’, Gaines stated that if Black Hawk’s band ‘did not move in a few days, they would visited by troops and driven off’. Gaines’s position reproduced the logic of the Northwest Ordinance: the US had demonstrated ‘utmost good faith’; should the Indians continue to resist, they would be subject to ‘just and lawful war’.

For the moment, Gaines lacked sufficient force to compel Black Hawk to move, but a few weeks later, with the arrival of additional troops and an armed steamboat, Gaines prepared to attack Saukenuk. A massacre was avoided when Black Hawk’s scouts detected Gaines’s approach, allowing his people to escape across the Mississippi. Early in the following April, Black Hawk and several hundred Indians, confident of British support, recrossed the Mississippi and headed up the Rock River towards the village of an important ally, the Ho Chunk prophet Wabokiesheik. Some days later, General Henry Atkinson met with the accommodationist Sauk leader Keokuk at Fort Armstrong. Atkinson informed Keokuk that Black Hawk and his followers ‘can be easily crushed as a piece of dirt’ and that if his band ‘strikes one white man in a short time they will cease to exist’. Although Atkinson’s words potentially left room for Black Hawk to capitulate and so avoid being slaughtered, they revealed a strong inclination to wage genocidal warfare.

On 14 May 1832, a group of 280 Illinois militiamen commanded by Major Isaiah Stillman found Black Hawk’s encampment. Black Hawk sent emissaries to Stillman with word of his intention to return west of the Mississippi, but Stillman took three of the emissaries prisoner and then fired on a party backing them up, killing three. Indians returned fire and killed twelve of Stillman’s men. In the weeks after what became known as the Battle of Stillman’s Run (Stillman’s men had ‘run’ in panic), members of Black Hawk’s band and other Indians in the region who had previously tried to remain neutral conducted several attacks on colonial settlements and military posts, killing perhaps sixty civilians and militiamen. In late May Secretary of War Lewis Cass notified Atkinson that ‘[t]his commencement of hostilities, together with the previous conduct of the Black Hawk and his party, calls for the most prompt and efficient measures to chastise these Indians … ’. Consistent with his earlier message to Keokuk, Atkinson informed the Commanding General of the Army Alexander Macomb in mid June of his intentions. Should ‘the Sacs elude us and recross the Mississippi’, he wrote, ‘I will pursue them forthwith and never cease till they are anihilated [sic] or fully and severely punnished [sic] and subdued’.
Over the next several weeks, US forces attempted to find Black Hawk and his people as they fled north into Wisconsin and then west towards the Mississippi. On 21 July, Illinois and Michigan territorial militiamen commanded by Henry Dodge and James Henry and guided by Ho Chunks auxiliaries caught up to Black Hawk’s band on the Wisconsin River. In the Battle of Wisconsin Heights, Black Hawk’s men held off the militia long enough to allow women and children, in the words of Black Hawk’s autobiography, ‘sufficient time to reach the island in the Ouisconsin’, but militiamen killed several dozen of Black Hawk’s fighters.  

Black Hawk and his people continued to evade US forces until 1 August when the steamship Warrior intercepted them as they prepared to cross the Mississippi near the mouth of the Bad Axe River. Black Hawk raised a white flag, hoping to ‘save our women and children’, but the Warrior’s captain, Joseph Throckmorton, thought the white flag was a ‘decoy’ to trick him into bringing his vessel into range of Black Hawk’s weapons. Throckmorton opened cannon fire on Black Hawk’s band, killing twenty-three before departing to refuel.  

The next morning, Atkinson, Dodge and Henry, marching in from the east, attacked. The bulk of Black Hawk’s men tried to hold off the attackers and allow non-combatants to cross the river. Some made it, but after a few hours, the Warrior returned and along with regular troops, militiamen and Menominee auxiliaries fired at people as they swam the river or sought cover on two islands in the main channel. By the end of the day, US forces and native auxiliaries had killed about 260 of Black Hawk’s band, somewhere around half of its population, many of whom were non-combatants. Illinois militiamen did some of the killing, although it would be a mistake to conclude that they were more inclined than regular troops to fire indiscriminately at Black Hawk’s people. According to a laudatory report by future president Zachary Taylor, the Sixth Regiment ‘killed every Indian that presented himself on land, or who endeavored to seek safety by swimming the river’. Rather than have US troops pursue survivors as they made their way west into Iowa, Atkinson encouraged Ho Chunks, Menominees and Santee Dakotas to continue the work of extermination. By late August, they had presented to US officials several dozen prisoners and over one hundred scalps. Although native auxiliaries were acting in their own interests in the context of a separate ongoing war against the Sauks and Mesquakies, the United States’ use of them as a means of destruction was entirely consistent with the execution of a policy of using massive violence against resisting Indians.  

During what became known as the Black Hawk War, regular troops, volunteers and native auxiliaries killed well over 300 of Black Hawk’s people, including a significant number of non-combatants. In so doing, they fulfilled an intention frequently expressed by General Atkinson, the officer in charge of the campaign, to annihilate Black Hawk’s people. Higher officials were aware of Atkinson’s intention and clearly approved of it as the campaign progressed. Importantly, too, once the war was over, higher officials ratified what had happened. Secretary of War Cass had nothing but praise for US actions against Black Hawk, observing in his November 1832 annual report that the ‘campaign terminated in the unqualified submission of the hostile party, and in the adoption of measures for the permanent security of the frontier’. The following month when he addressed Congress, President Jackson endorsed Cass’s conclusions, adding that ‘[t]he Indians were entirely defeated, and the disaffected band dispersed or destroyed …’.
Severe as is the lesson to the Indians, it was rendered necessary by their unprovoked aggressions.\textsuperscript{53} Some historians have offered ‘balanced’ interpretations of the war, holding the US and Black Hawk equally responsible for the conflict and emphasizing that the war could have been avoided had it not been for ‘misunderstandings’ or actions of ‘rash members of both sides’.\textsuperscript{54} Others have focused on Atkinson’s ‘blunder’ in relying on Stillman’s poorly disciplined militiamen, a perspective that assigns responsibility for the conflict to the US rather than Black Hawk’s people but only in a very narrow sense while reinforcing a tendency to see the war as ‘accidental’.\textsuperscript{55} Like all eruptions of violence, the Black Hawk War and Bad Axe Massacre, of course, were not inevitable, but an excessive emphasis on contingency elides larger contexts and provides US imperialism with an alibi. More critically minded historians reject ‘balanced’ interpretations and, while allowing for some contingencies, see the outbreak of the conflict and the resulting massacre as expressing basic tendencies in US history. Cecil Eby focuses on ‘The People’ (frontiersmen/local militiamen), indicting them for characteristic actions of ‘trespass[ing] on Sauk land’ and ‘open[ing] fire on the Sauk while they were advancing under a white flag’. At this and similar moments throughout US history, Eby adds, the ‘professional army was called in’, but ‘often against its wishes’ and only because ‘The People demanded’ it, thus separating frontier from metropole, society from policy. Similarly, drawing on Richard Drinnon’s analysis of the ‘metaphysics of Indian hating’, Kerry A. Trask attributes Bad Axe to the ‘revolutionary rage that created the nation’ and resulted in ‘a love of freedom and a glorification of violence’. While Trask’s identification of a deeply rooted frontier mentality establishes an important context for Bad Axe and other cases of US violence against Indians, this line of interpretation also overlooks the congruity of metropolitan and frontier intentions and the expression of these intentions in policy.\textsuperscript{56} There is no question that frontiersmen had genocidal intentions towards Black Hawk’s people, but it is equally true that US officials did as well, especially after Black Hawk crossed the Mississippi River in April 1832. To be clear, officials did not intend to destroy all Indians, as evidenced by their recruitment of Ho Chunks, Menominees and Dakotas as well as their non-violence to accommodationist Sauks. Once they categorized Black Hawk as deserving of punishment and a threat to the frontier, however, they fully intended to destroy his people. The slaughter at Bad Axe is clearly encompassed by Chalk and Jonassohn’s definition of genocide as ‘a form of one-sided mass killing in which a state or other authority intends to destroy a group.’

\textbf{Conclusion}

Genocidal violence against indigenous people on the western edge of the Northwest Territory in 1832 was an intended consequence of a policy option that had been codified in New York City forty-five years earlier. From the 1780s into the 1830s, as they sought to transform Indian country into grids containing propertied citizens, US officials preferred that Native Americans accept dispossession with gratitude. This would allow US Americans to enjoy the benefits of territorial expansion at minimal expense, their consciences soothed and their sense of themselves as exceptional nourished by the fantasy that Indians endorsed their claim to have acted with ‘utmost good faith’. If,
however, Indians spurned civilization’s generosity, if Indians sought to retain and defend their ancestral lands from invasion, they would be subject to war, self-defined as ‘just and lawful’. When war came, as it frequently did, US officials authorized military forces to practise a particular kind of war, one they termed extirpative or exterminatory. In most instances, US military forces were unable to fully accomplish their intention. But just as US expressions of ‘utmost good faith’ towards Indians should not deflect attention from war as a policy option, Indians’ frequent success in blunting genocidal violence should not obscure the fact that when genocidal violence did occur it was not an aberration. Despite its spatial and temporal distance from the Northwest Ordinance, the slaughter at Bad Axe revealed the meaning of ‘just and lawful war’.

Notes


18. Horsman, *Expansion and American Indian policy*, p. 42. Banner, *How the Indians lost their land*, p. 135, argues that government officials’ statements that Indians had ‘the right to refuse to sell’ recognize ownership. The practice of US treaty making, however, consistently revealed an unwillingness to allow Indians to exercise that right in any permanent sense. A particular indigenous nation might refuse to agree to a particular offer and so might defer a land cession, but US officials would always return with a new proposal and would eventually categorize sustained opposition as unreasonable, thus sanctioning threats ranging from withdrawal of protection against settler aggression to war.


29. Harmar to Knox, 4 November 1790, American state papers: Indian affairs, 1: p. 104, claimed that ‘not less than 100 or 120 warriors were slain’. A more accurate consideration of Indian casualties is provided by Leroy V. Eid, “The slaughter was reciprocal”: Josiah Harmar’s two defeats, 1790, Northwest Ohio Quarterly, Vol. 65, No. 2, 1993, p. 62.
32. Henry Knox, ‘Instructions to Major General Arthur S. Clair’, 21 March 1791, American state papers: Indian affairs, 1: p. 172; Calloway, Victory with no name, p. 111. The events can be followed in Calloway, Victory with no name, pp. 76–128; Sword, President Washington’s Indian war, pp. 159–191.
34. Prucha, Great father, 1: p. 65; Nichols, Red gentlemen and white savages, p. 140.
38. This figure includes those provided above for military operations of Harmar, Scott, St. Clair and Wayne and another ten Weas, including two women and a child, killed in an attack by James Wilkinson in August 1790, as noted in Mann, ‘Fractal massacres’, p. 176.
42. These military operations can be followed in Grenier, First way of war, pp. 207–213.
45. ‘Fort Armstrong council’, 13 April 1832, in Whitney, Black Hawk War, p. 251. The events can be followed in Trask, Black Hawk, pp. 144–153, 159–162; Jung, Black Hawk War, pp. 65–67, 73–79.


**Disclosure statement**

No potential conflict of interest was reported by the author.

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