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The Devil in the Details: “Life Force Atrocities” and the Assault on the Family in Times of Conflict

Elisa von Joeden-Forgey
University of Pennsylvania

This article introduces the idea of “life force atrocities” and investigates the role they have played in twentieth-century genocides, arguing that genocide is a gendered crime intimately associated with institutions of reproduction. Using examples from established cases of genocide, such as the Armenian genocide, the Holocaust, Bosnia, and Rwanda, as well as from conflicts not generally understood as genocides, such as Sierra Leone and the Democratic Republic of Congo (DRC), the article outlines two types of life force atrocities that have been common features of these conflicts: inversion rituals and ritual desecrations. Each of these instances of ritualized atrocity targets the family unit within victim groups and betrays a preoccupation with the group’s life force in its physical and symbolic dimensions. Since life force atrocities play on gender roles and hierarchies to torture family members, this article focuses on the relational way in which genocidaires instrumentalize gendered violence to destroy the sacred realm of the family as part of the larger effort to destroy a group. The presence of life force atrocities during a conflict can therefore function as an early warning sign of a genocidal logic at some level of the political or military hierarchy. They also offer us insight into the state of mind of the perpetrators who, I argue, see themselves as engaged in a battle with the generative force of the victim group. In some cases, as in Sierra Leone and the DRC, this battle becomes generalized, and soldiers target the life force as such, attempting to destroy (via families) the civilian world in its totality.

Key words: gender, rape, family, reproduction, genocide, prevention, life force atrocity

“Our family tree was obliterated by the genocide. That’s where our family begins.” This is how Art Tonoyan, a graduate student of religious studies and grandson of survivors of the Armenian genocide, described the genocide’s impact on his family. Speaking to the *Waco Tribune-Herald* in 2005, he told of how his grandfather and grandmother were orphaned by the genocide. His grandmother was too young to remember the details of her orphaning; his grandfather, as a little boy of eight, was forced to watch as Turkish soldiers raped, tortured, and killed his parents and siblings in front of him. The soldiers told him that they would leave him alive so that, in their words, he could “see what we are capable of.” He later witnessed the entire village being herded into a church and burned alive. “I will never forget my grandfather’s eyes,” Art Tonoyan told the reporter. “He was a very sad person. I rarely remember him smiling. He never got over seeing his family murdered.”¹

As Tonoyan’s family story shows, genocide, while directed at the destruction of larger groups, is a crime that is inextricably tied to families. What we hear repeatedly

in the stories of survivors of twentieth-century genocides is the terrible way in which genocidal violence is embedded in the most sacred aspects of their family lives. This embedding is not just a matter of individual memory or of the transgenerational trauma that genocide can cause. It begins with genocide itself, with the intimate ways in which *génocidaires* target their victims. This is so much so that the perpetrators often become woven into the origin stories of survivors' families. We are acquainted with the two Turkish killers of Tonoyan's family, for example, because they addressed their young victim personally; they chose him to be the audience to their performance of genocidal violence, raping his mother and his sister in front of him before killing them. Embedded in this dramatization of their concept of power was a message—a message they were sending to him, as an Armenian child in 1915 Anatolia, and to the rest of the world; a message we are still receiving up to this day.

Unfortunately, the message witnessed by Tonoyan's grandfather is one that countless numbers of people have been forced to witness in the twentieth century alone. The scenario of power that the perpetrators enacted in front of the terrified little boy and their decision to let him live as a witness to their spectacle are characteristic of genocidal violence across widely disparate times and cultures. In this article I wish to examine this and other genocidal scenarios and the messages they are meant to send by looking at the integral role played by family institutions in genocidal patterns of violence. I argue that the crimes committed against Art Tonoyan's family members are examples of a specific kind of crime that can be called *life force atrocity*. For the purpose of definition, life force atrocity is a ritualized pattern of violence that targets the life force of a group by destroying both the physical symbols of its life force as well as its most basic institutions of reproduction, especially the family unit. It exists alongside and in conjunction with other, more frequently discussed, genocidal patterns of violence, and with them can act as evidence of an emerging genocidal logic during times of conflict.

The violent acts I will examine are often the most difficult to discuss, much less fathom. They involve two interrelated types of rituals: first, violent inversion rituals that seek to reverse proper hierarchies and relationships within families and thereby irrevocably to break sacred bonds. Such acts include forcing family members to watch the rape, torture, and murder of their loved ones and forcing them to participate in the perpetration of such crimes. The second type of ritual involved in genocidal violence against families is the ritual mutilation and desecration of symbols of group reproduction, including male and female reproductive organs, women's breasts as the sites of lactation, pregnant women as the loci of generative powers, and infants and small children as the sacred symbols of the group's future.²

This article will make the argument that understanding life force atrocities is crucial to understanding the genocidal process and how it differs from other instances of mass murder, most notably war. It treats life force atrocities outside of the frameworks of atrocity and rape in which they have long languished. Life force atrocities are not generic in nature, and they are not synonymous with "rape" or with "sexual violence," although they may involve both. They are directed at men as well as women, boys as well as girls, using each to inflict maximum damage to the spiritual core of those generative and foundational units we call families. They betray a specific state of mind among perpetrators, who are not merely engaged in killing but also in a subjective metaphysical struggle with the life force itself. When viewed from the perspective of life force atrocities, genocide appears to be a crime whose perpetrators are uniquely preoccupied with wresting power from that mysteri-

ous force that accounts for human life on this planet, a violent appropriation that they demonstrate in the highly symbolic ways in which they kill.

The Ritual Performance of Genocide

The types of atrocities that I am calling life force atrocities are often cited as incontrovertible evidence of perpetrator perversity—and they are certainly that. But our understanding of them should not be left at this, or we risk treating patterned violence as incidental and, in the process, making invisible a key feature of genocide. Instead, when we single out these acts for sustained analysis, we are able to offer another means of identifying genocidal intent in the absence of documentary proof. Just as the US Atrocities Documentation Team recently has identified village razing, cattle slaughtering, mass rape, and the use of racist epithets during killing in Darfur as *de facto* evidence of genocidal intent on the part of Janjaweed militias and the Government of Sudan,³ the presence of specific acts of violence directed at families can also serve to alert us to the dangerous presence of genocidal logic in conflict situations—potentially at a very early stage in a conflict, before a full-blown root and branch genocide is in the works. Life force atrocities may signal—and act as evidence of—intent on the part of the state authorities in control of the conflict region, or they may offer a warning that a certain militia or cadre within an armed force is behaving genocidally.

Scholars have only recently begun to treat the ritual cruelties that characterize the “interim stage” of genocide as subjects in their own right that are in need of classification and clarification. The dismal and timeless character of genocidal cruelty has made it appear to be little more than an inchoate reminder of humanity’s endless capacity for evil. When we consider that certain cruelties are repeated from one genocide to the next, however, and that they seem to share a deep symbolism, there suddenly appears to be a method to the madness. Much of the analytical work being done on the particularities of genocidal cruelty is going on within the framework of gender studies.⁴ The reason for this is because when one breaks victims down by biological sex, patterns of cruelty immediately suggest themselves and demand explanation. While the majority of this important work has focused on the different experiences of men and women during genocide, I intend to focus on how genocidal cruelty aims precisely at the ties that bind men and women together. The experiences of men and women within a victim group are inextricably related to one another by virtue of the perpetrator’s intent.

A harrowing example from Rwanda shows how genocidal cruelty is relational, and how perpetrators use both inversion rituals and ritual desecration simultaneously to destroy family bonds in the process of targeting a defined group. The UN Secretary General’s Special Representative to Rwanda in 1994, Shaharyar Khan, tells us that during the genocide,

the Interahamwe made a habit of killing young Tutsi children, in front of their parents, by first cutting off one arm, then the other. They would then gash the neck with a machete to bleed the child slowly to death but, while they were still alive, they would cut off the private parts and throw them at the faces of the terrified parents, who would then be murdered with slightly greater dispatch.⁵

The horrendous spectacle Khan describes is not simply an example of the evil of some very extreme sadists, though it is certainly that too. It was, as he notes, a “habit” among members of the Hutu killing squads, a kind of ritual practice. Thus, like rituals, it can be analyzed for the insights it offers us into the “culture” of the

killers, insights generally not available in documents or in perpetrators' accounts of their own behavior.

Also, a similar preoccupation with generative symbols structured much of "interim stage" violence of the Holocaust. In fact, the Nazi death camp system was perhaps the most sustained and involved inversion ritual and ritual desecration in the history of genocide. The camp system was organized around the purpose not just of mass killing but also of turning life on its head, of creating a living world of death that was to be witnessed by the Nazis' victims before their own murder.⁶ Emblematic of this inverted world is the Nazis' treatment of Jewish children. As Daniel Goldhagen has put it, "Children, as a rule, were not allowed to stay alive in German camps (except ghettos) because, among other reasons, they symbolized the renewal and continuation of the Jewish people, a future which the Germans sought to obliterate emotionally and in deed."⁷ Jewish children were usually sent with their mothers or grandparents straight to the gas chambers, or, when the crematoria were overburdened, to open pits of fire. Babies born in the camps were immediately destroyed, along with their mothers.⁸

A shocking example of symbolic cruelty from this death-affirming world is the little ten-year-old Jewish boy who was personally trained to kill other Jewish inmates by Christian Wirth, the commander of the notorious "Clothing Works" camp near the Lublin ghetto. One survivor remembered:

I have personally seen that this SS commander led a Jewish boy, who was about 10 years old, whom he kept and whom he fed chocolate and other goodies, to kill with a machine gun here and there 2 or 3 Jews at a time. I myself stood about 10 meters away when this boy carried out such shootings. The SS commander, who rode a white horse and who had given a horse to the boy, joined in the shooting. These two human beings together killed—in my presence—among the several occasions some 50 to 60 Jews. Among the victims were also women.⁹

Other survivors reported that the boy had been made to kill his own parents. As Goldhagen notes, "Nothing could have driven home the point more painfully: the world had been turned upside down, and this was for the Jews a surreal place of pain and misery from which they were unlikely to emerge alive."¹⁰

These three examples of life force atrocity—from the Armenian genocide, Rwanda, and the Holocaust—each demonstrate how genocidal cruelty can be ritualized and aimed at symbols of generative powers and narratives of family integrity. In the Armenian case, a little boy was forced to watch the desecration of his mother and sister as well as their murder and that of his entire family and town. In the Rwandan case, ultimate symbols of the life force, little children, were singled out for unspeakable brutalities that focused on their generative organs while their own parents were forced to watch helplessly. In the case of the Clothing Works during the Holocaust, a little boy—the heartbreaking symbol of the Jewish community's future—was trained to kill that very community from which he came, possibly including his own parents. In each of these cases the inversion and desecration of sacred familial hierarchies are the primary organizing principles of the violence; they are the method to the madness.

Rituals, even genocidal ones, are, in the words of anthropologist Stanley Tambiah, "medium(s) for transmitting meaning, constructing social reality ... [and] for that matter, creating and bringing to life the cosmological scheme itself."¹¹ They are also powerful means of communication and of the production and reproduction of power.¹² In peacetime, public rituals are generally aimed at the reaffirmation of

long-standing collective values and structures.¹³ Genocidal ritual, in contrast, is aimed not at the reaffirmation but at the transgression of long-standing cultural truths. The cosmological scheme that it brings to life is an anti-cosmos, the embracing of an inverted world based on death and transgression rather than the maintenance of and respect for life.

Ordinary *génocidaires* often allude to this space of the anti-cosmos themselves when they refer to the time of killing as a separate universe, a madness, or a diabolic inspiration. During the genocide in the Nyamata district of Rwanda, for example, regular religious rituals were suspended and replaced with killing and festivities related to it. “During the killings,” one *génocidaire* told the journalist Jean Hatzfeld, “we had not one wedding, not one baptism, not one soccer match, not one religious service like Easter. We did not find that kind of celebration interesting anymore. We did not care spit for that Sunday silliness. We were dead tired from work, we were getting greedy, we celebrated whenever we felt like it, we drank as much as we wanted.”¹⁴

The atrocities that result from this performance of the anti-cosmos are dramatizations of a particularly genocidal “scenario of power,” according to which the perpetrators as doing battle not only with the individual lives of members of a targeted group but also with the very life force that brings them into being. This ultimate offense—not just of killing people, but of killing the very life force responsible for their existence—may account for some of the ecstasy of transgression that has been documented to exist among perpetrators at the time of the commission of such acts.¹⁵ Unlike staged public rituals, genocidal ritual is often not well organized or hierarchical, nor is it always ordered (or condoned) by the command structure of an army and state committing genocide. Many genocidal rituals are the innovations of well-trained killers and zealous militias, who then spread them through their charismatic leadership within the violence. The innovative nature of life force atrocity within specific genocidal processes makes it all the more interesting that we can find such similarities within the logic of genocidal cruelty across time and space.

As Christopher Browning has shown, the repeated performance of transgression—a performance that often includes mind-altering substances—can facilitate surprisingly quickly the normalization of atrocity by constructing new social realities and new values to go along with them.¹⁶ In this way, genocidal rituals are formally very similar to non-genocidal and even normatively legitimate desensitization processes involved in training people to kill, whether they be ordinary soldiers or professional assassins. What distinguishes genocidal violence from other types of collective killing and brutality is the obsession it shows for the life force in all of its worldly manifestations. If we look at the details of the atrocities committed by the Hutu Interahamwe against young children, for example, the focused assault on several different aspects of the life force become clear: children as physical proof of the community’s future, parental love and protectiveness as the bond that promotes family and communal unity, and sexual organs as the biological conduits of life-giving powers. This hostility towards symbolic and physical manifestations of the life force is a theme running through many if not most of the forms of torture used by *génocidaires* in the process of killing.

If genocidal rituals institutionalize the transgression of mundane social norms, they do so for the specific purpose of the destruction of a “national, ethnical, racial or religious group,” to use the language of Article II of the UN Convention on the Crime of Genocide. The fact that perpetrators see their victims as part of a larger organic community explains why so much of the violence committed during genocides

is deeply preoccupied with generative symbols. For perpetrators, these symbols—whether they are people of a specific status (such as mothers, “battle-age men,” or religious figures) or relationships (such as marital, parental, or filial bonds)—are points of access to the ultimate threat, which is that power that continues to give birth to the community in the first place. This deeply metaphysical aspect of the crime of genocide makes it rare to find among perpetrators well-articulated definitions of the victim group (the Nazis being a notable exception) or clearly articulated plans to destroy it in whole or in part. Instead, perpetrators will understand generative power in culturally and historically specific ways, and in many cases their understanding of it will be so deeply ingrained and taken for granted that it will never be made explicit, at least not in words.

One way in which perpetrators’ understanding of and plans for their victims do emerge rather clearly is in the way they torment them. When the torment appears to seek to destroy not only the individual human being but also that power that made him/her and what he/she (in the perpetrators’ mind) *essentially is*, then I would argue a genocidal logic is at work at some level of the conflict. By looking at the devil that is clearly in the details of genocidal cruelty, we can better separate genocide from other crimes with which they share a superficial similarity.

The Family Theater of Genocidal Violence

The fact that the family takes such center stage in the enactment of genocidal cruelty can be explained in a variety of ways. The family is the social institution that organizes the life force of groups, so exploiting the family is one way that perpetrators express genocidal rage.¹⁷ Families focus, channel, and organize the life force of groups in several ways. They organize, of course, the basic reproduction of human life—the bringing of children in to the world. They also are the central sites of cultural and ethical or religious education, especially in children’s early years. Furthermore, they are the creative centers of emotional and spiritual life; in families, children (ideally at least) first learn love, tenderness, loyalty, and responsibility. All of this creation is founded upon certain norms and taboos, which *génocidaires* target as a core locus of their obsessions. Furthermore, members of a targeted group are frequently found in households at the time of the attack, so the family unit also becomes a convenient site for the performance of genocidal rage.

When we look at genocide through the lens of a perpetrator’s obsession with family life and generative power, we see clearly the central importance of what Michael Sells has called “desecration” to the crime itself. In all of the cases of inversion ritual and ritual desecration I have discussed thus far, the killers showed a diabolical creativity in the ways they tortured their victims in excess of—and, in some cases, instead of—physically killing them. These tortures were, I believe, intended to demonstrate to the victims the radical, annihilatory nature of the perpetrators’ designs. The desecration of families and family life in genocides therefore demonstrates a deep level of intent on the part of the perpetrators, a commitment to destruction so total that it exceeds physical killing. Psychologists have pointed out the extent to which genocidal violence is patterned and linked to psychological processes. Alan Jacobs, for example, has written about perpetrators’ obsession with and dependence on mass graves for their own sense of well-being. Mass graves become a necessary symbol of their power over death, of their “onliness.”¹⁸ In a similar fashion, I would propose that violence against family bonds and institutions, as well as against the physical symbols of generative powers, works to express a particularly genocidal

rage against the life force, a zero-sum battle against creation that is fought through the institutions that respect and nurture it.

Because of the multiple ways in which the family organizes the reproduction of the group, people are often singled out for gendered forms of torture based on their perceived and actual family roles. This was perhaps most clear during the genocide in Bosnia, where inversion rituals, mutilations of generative symbols, and genocidal rape were used with particular frequency and ubiquity. While the majority of Bosniaks killed were “battle age” men, and the majority of Bosniaks raped and expelled were women and children, the atrocities that accompanied this gendered division struck at the very heart of what ties men and women together, the family. Thus, fathers were forced to watch their daughters raped, husbands to watch their pregnant wives’ bellies eviscerated, mothers had sons wrenched from their arms to be killed. The importance that the Serbs placed on the male role in reproduction seems in fact to have led to a particular frequency of sexual torture of men, including brutal castrations and coerced father–son rapes. According to one Croatian psychiatrist and survivor of a Serb concentration camp, men were beaten on the genitals while being told “You are never going to give birth to any more little Croats [or Muslims].”¹⁹

The Bosnian case shows how important it is that we look beyond gender and ethnicity when assessing the nature of political violence and consider the victims’ families and reproductive status. A clear example of a reproductive group that is singled out for particularly gruesome tortures during genocide is pregnant women, who are targeted because they are the living, breathing carriers of the life force inside of them. Pregnant women—commonly viewed as the most harmless of civilians—are, for *génocidaires*, a direct and double threat: they are themselves agents of creation rather than destruction, and as creators they threaten the goal of annihilation of the targeted group. In all genocides it appears that pregnant women have faced immediate death by evisceration, and their unborn children and infants have been killed in unimaginably brutal ways, often being smashed against the ground or rocks or used for target practice.²⁰ This is frequently done in front of the restrained husbands and fathers.

In her pathbreaking article on the Bosnian genocide, “Turning Rape into Pornography,” Catharine MacKinnon reports that a Bosnian Muslim soldier, whom she calls “Haris,” told her that

he watched a man and a woman—who appeared to be seven or eight months pregnant—being taken to a clearing in the woods. The woman was tied vertically to a cross, legs pressed together and arms extended. They ripped her pregnant belly open with a knife. “It was alive ... it moved.” The woman took about 15 minutes to die. The man, apparently her husband and the father of the baby, was bound to a nearby tree and forced to watch. The attackers attempted to force him to eat the baby’s arm. Then “they hacked him up, cut the flesh on him so that he would bleed to death.” While they were doing this, they were laughing ... “We’re going to slaughter all of you. This is our Serbia.”²¹

The following is a description of Janjaweed atrocities in Darfur, from the photographer and former US Marine Brian Steidle, whose story has been told in the recent documentary *The Devil Came on Horseback*. His description of the violence is a description of widespread inversion rituals and ritual desecrations, which should settle once and for all the debate about whether or not the Sudanese counterinsurgency constitutes genocide:

The Janjaweed militias don't distinguish at all between whether it's a baby, a woman or whether it's a man. The difference is what they do to them. If it's a man they're often castrated and then executed. Sometimes sexually assaulted before being executed.

They take kids and throw them in the air and catch them on bayonets. They smash little kids' faces in. They will take the children from the mothers and throw them into the huts while they're burning so that [the mothers] can hear the children screaming. There have been stories of women who have been pregnant and have been cut open and had the babies taken out.²²

These are just a few examples from thousands that highlight the similarities in the treatment of pregnant women and babies during genocides. They show that because genocide is a crime targeting the life force of groups, in discussing it, we must look at more than the individual, on the one hand, and the larger ethnic, religious, or national group, on the other. In between the two stands the family unit, and for *génocidaires*, it is a major theatre for enacting their ultimate preoccupations. Because the family plays such an important role in the genocidal process, we risk missing one of the most agonizing aspects of victims' experiences of genocide when we categorize victims individually, solely based on sex, age, profession, or ethnicity rather than familial status. We also risk overlooking key markers of genocidal violence.

Given the importance of the destruction of families in the lives of genocide survivors, it is hard to explain why the perpetrators' treatment of the family unit at times of genocide has received such little sustained scholarly attention.²³ Perhaps we simply assume violence against families during times of genocide because the family is a core institution of the groups targeted by the crime of genocide. Families reproduce groups—so, in studying the destruction of “national, ethnical, racial, and religious” groups as such, we are studying families by default. Another factor is that the social sciences have not paid a great deal of attention to families. More interested in the organization of production than reproduction, social scientists by and large were “inclined to see [reproduction] as responding, like everything else, to the material forces reshaping our world.”²⁴ The process of reproduction was not, in and of itself, an important line of inquiry, and the family therefore tended to be assumed in studies of genocide as other historical phenomena.

Another reason that genocidal violence against families goes unrecognized as a discernable type of atrocity is that families are largely absent from the international legal documents relevant to genocide. Raphael Lemkin's oft-quoted definition of genocide, from *Axis Rule in Occupied Europe*, does not mention the family. There he defines genocide in the following way:

Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group.²⁵

Here we have individuals, on the one hand, and the national group on the other. The family unit is perhaps assumed under the rubric of “social institutions,” though

Lemkin does not mention it in his subsequent discussion. In this understanding, which has structured our concept of genocide both legally and sociologically, inversion rituals and mutilations of symbols of generation are to be understood according to their individual or their larger group attributes—in other words, they fall under the definition of torture of individual persons and the attempted genocide of a group. Neither of these frameworks is sufficient to fully recognize and understand the motivated assault on people’s most cherished personal bonds and relationships.

The fact is that much genocidal violence is committed *through* the small-scale institution of the family. *Génocidaires* often find their targets in family situations and take advantage of this to inflict the most severe tortures imaginable, essentially using the individual family as a symbolic stand-in for the group to be destroyed. But, despite the family-based location of much life force atrocity, the identification of genocides still tends to focus solely on the large-scale violence directed at the group.²⁶ This makes early identification of a potential genocide almost impossible and the final determination of genocide contingent upon large numbers or percentages of dead. One consequence of this is that cases in which a genocide was halted—such as in the case of the NATO intervention in Kosovo—there is little means of establishing empirically the presence of a specifically genocidal logic without access to clear statements of genocidal intent from the highest state and military authorities.

Focusing on families as the immediate representatives of the victim group can help us identify genocidal elements early on in conflicts, within smaller-scale massacres, before they reach the enormous proportions usually necessary to claim genocide. If we have a term like “life force atrocity” that we can use when we hear of the presence of inversion rituals and ritual desecrations within the context of war and occupation, we will have a powerful policy tool for identifying early-stage genocides. In the case of Serb aggression in Kosovo, testimonies of women survivors of gang rapes are full of examples of genocidal inversion rituals. Two examples gathered by Human Rights Watch show how the presence of inversion rituals can help us identify the presence of a genocidal logic targeting a group’s generative powers through the exploitation of family relationships and symbols of reproduction.²⁷ In one, a woman was raped in a room adjacent to her other family members, including several children, and then brought back into the room and killed at point-blank range in front of them:

They took my sister-in-law into the front room, and they were hitting her and telling her to shut up. The children were screaming, and they also screamed at the children. She was with the paramilitary for one half- hour. She was resisting, and they beat her, and the children could hear her screaming. I could only hear what was going on. I heard them slapping her. The children did not understand that they were raping her. After they raped my sister-in-law, they put her in line with us and shot her.

In another, a pregnant woman was taken from her mother and young child and raped, in the course of which her tormenters attempted to force the abortion of her child while mocking the sexual bond between husband and wife:

Because I was pregnant, they asked me where my husband was . . . One of them said to another soldier, “Kick her and make the baby abort.” They did this to me four times—they took me outside to the other place. Three men took me one by one. Then they asked me, “Are you desperate for your husband?” and said, “Here we are instead of him.”

Inversion rituals and violence against symbols of generation like these formed a pattern of attack in Kosovo alongside gang rapes, and, like gang rapes, they also “were used deliberately as an instrument to terrorize the civilian population, extort money from families, and push people to flee their homes.”²⁸ Because they make explicit an intention on the part of the immediate perpetrators to destroy the generative powers and institutions of their victims, they can stand as powerful indicators of genocidal intent, especially in the context of a clear policy of ethnic cleansing.

Women, Sexual Violence, and Life Force Atrocity

As suggested by the two examples from Kosovo, when inversion rituals and ritual mutilations are reported, they most often appear in the record of women victims. This, too, may explain why violence against families has been so little highlighted as a subject for study in its own right. Women’s experiences in general have not yet been fully mined for the insights they offer into genocidal processes. There are many reasons that women’s experiences and testimonies might involve more violence against people specifically as members of families. Women are universal symbols of generation, and their bodies are therefore potent theatres for genocidal expressions of rage against the life force. Women also are universally accorded primary caretaking responsibilities for children, the elderly, and the household, roles that are culturally defined; therefore, their testimonies will tend to highlight the painful transgressions and betrayals of these roles by their tormenters. Moreover, as Adam Jones has shown, one early phase in most genocides is the separation of military-age men from the rest of the community, so the inversion rituals associated with genocidal violence will often involve women, their children, and elderly members of the household.²⁹ Also, male family members are more likely to leave home before violence reaches their communities to attempt to secure exit visas for family members, to join resistance forces, or to escape persecution, in the erroneous assumption that the women and children they leave behind will be spared.³⁰

Whatever the reasons, women’s testimonials offer deep insight into the logic of genocide. The testimonies of women survivors of Auschwitz, for example, are woven around the theme of family ties and familial loss. The survivor Isabella Leither explicitly draws the connection between the Nazis’ violence against families and their genocidal aims throughout her memoir, *Fragments of Isabella*. Perhaps her most direct identification of Auschwitz with the murder of life force itself is in her description of the birth—and murder—of a baby in the camp:

The little baby born yesterday, whose mother remained alive because her pregnancy was not noticed, is off now to the crematorium. She was born only to die immediately. What was your hurry, little baby? Couldn’t you have waited until the house painter was dead, so you could have lived? Couldn’t the gods have arranged for a longer pregnancy so that evil, not life, would be murdered? For a moment, for just a moment, we had a real smell of a real life, and we touched the dear little one before she was wrapped in a piece of paper and quickly handed to the Blockelteste so the SS wouldn’t discover who the mother was, because then she, too, would have had to accompany the baby to the ovens. Are we ever to know what life-giving feels like? Not here. Perhaps out there, where they have diapers, and formulas, and baby carriages—and life.³¹

Later in her memoir, Leitner laments the death of a young girl by highlighting the loss of future children that her death signifies:

Rest in peace, young girl. The flickering stars above must be the weeping children of your womb. The womb, the glorious womb, the house that celebrates life, where life is alive, where the bodies of young girls are not carried out into the night.³²

And, finally, Leitner locates her own resistance to the Nazis’ final solution in her birth-giving powers:

Mama, Mama, I’m pregnant!

Isn’t that a miracle, Mama? Isn’t it incredible, Mama?

I stood in front of the crematorium, and now there is another heart beating within that very body that was condemned to ashes. Two lives in one, Mama—I’m pregnant!

Mama, we’ve named him Peter. You know how much I like that name. It translates into stone, or rock. You were the rock, Mama. You laid the foundation. Peter has started the birth of the new six million.

*Mama, you did not die!*³³

Like other women Holocaust survivors, Leitner writes about the Holocaust from the perspective of a person who is closely tied to the life-giving powers both of the European Jewish communities that were targeted by the Nazis and to the future of all humanity. This perspective offers us an important insight into what genocide is. From the point of view of a young Jewish woman in Auschwitz, the genocidal process emerges as a specific kind of violence that targets a group’s generative powers in the process of seeking their wholesale annihilation. The ritualized violence against symbols of group reproduction appears here as an integral part of the genocidal process rather than the ancillary consequences of a genocidal policy.

Because of the close association of women with reproduction and with families, and because women are so often caring for children and the elderly at times of genocide, the body of scholarly work on genocide that has brought the most attention to family violence is the recent focus on the crimes that are most frequently committed against women, especially genocidal rape. The genocides in Bosnia and Rwanda, where sexual torture was such a central component of the violence, brought international attention to rape as a war crime. These genocides also raised awareness of a specifically genocidal type of rape, which includes sexual torture and mutilation, forced impregnation, and the attempt to compromise the reproductive capacity of male and female survivors.³⁴ Almost always embedded within stories of genocidal rape are instances of ritual inversions and desecrations. So, for example, atrocities listed as instances of sexual violence by the US State Department’s Atrocities Documentation Team in Darfur have included the following acts:³⁵

- the killing of young children
- the use of infants as weapons against their parents
- the slashing of pregnant women’s bellies and the murder of their babies
- the rape of people in front of other family members
- the mutilation of women’s reproductive organs, including their breasts

In many cases, these acts were performed concomitantly with rapes; in others, they were performed without rape but were still understood under the rubric of rape.

The problem with embedding reports of life force atrocities within studies of sexual violence against women is that although life force atrocities may include rape, they are not derivative of this crime. Their origin lies in the genocidal mentality of the killers, who seek to destroy a group by targeting its life force. Further-

more, when human rights watchdog groups associate these atrocities solely with the rape of women, they miss the way that evidence of genocide is embedded within cultural understandings of the family and the relationships that sustain it. So, if we were to treat such crimes solely as part of the rape of women, we run the risk of not fully appreciating the significance of this violence to our broader understanding of the nature of genocide as principally a crime preoccupied with generation, involving the entire community and its institutions of reproduction. It must be noted that the inversion rituals that characterize genocidal killing include many kinds of torture that involve and often single out men and boys, including their rape and sexual mutilation, the forced intercourse between family members, and the coerced killing of children by parents, or parents by children, in addition to a host of predatory tortures that involve a similar logic.³⁶

Life Force Atrocities and Cultural Beliefs about Reproduction

Looking at genocide through the lens of life force atrocity exposes the important role played by culture in the ultimate form taken by genocidal policy. *Génocidaires* pursue annihilation in different ways that are inextricably linked to deeply held beliefs about social and biological reproduction. In other words, while the methods used by perpetrators to kill and torment their victims prey on universally cherished values and relationships, the exact form of the acts involved in such violence will differ according to cultural understandings of reproduction. This means that numbers of dead may not be the best evidence of genocide, since perpetrators may use means other than mass death to pursue the annihilation of the group, focusing instead on those institutions of reproduction that guarantee the groups' future.

In Bosnia, for example, women were often singled out for genocidal rape rather than outright murder because Serbian forces believed men were the defining element in ethnic reproduction. The bodies of Bosniak (and Croatian) women were seen as vehicles for the reproduction of future Serbian nationals and their reproductive powers were co-opted by *génocidaires* for use in the genocidal process.³⁷ Forcible impregnation, alongside the incarceration of impregnated women up to their third trimester, was believed to be a means of destroying the group. In Nazi Germany, on the other hand, reproduction was understood according to the racist interpretation of biology, in which women contributed to the "racial composition" of children. Accordingly, Jewish women and girls were believed to be important carriers of the "Jewish race" and were therefore targeted for indiscriminate slaughter along with Jewish men and boys.³⁸ In the case of Rwanda, women had a double status; on the one hand, the essentialism of Hutu Power ideology determined that Tutsi women were considered to be innately, and sometimes quintessentially, Tutsi, even if they were married to Hutu men; Hutu perpetrators were therefore instructed to kill all Tutsi, male and female. On the other hand, given that women had taken their husbands' social identity at marriage, Tutsi women were sometimes understood to be "less Tutsi" than Tutsi men and frequently targeted for direct killing only after all the men in a community had been hunted down and killed.³⁹

The presence of these rituals across genocides shows that while *génocidaires* physically target individual bodies for torture and killing, they do so in the context of targeting families as reproductive units by assaulting directly the bonds of love, trust, and tenderness that tie individuals to one another. Similarly, although men and women face sex-specific types of treatment during genocides, this gendered violence is often simultaneously aimed at other family members. In some cases, this logic has been expressed explicitly by *génocidaires*. So, for example, the famous

RAM plan that was crafted by Serb officers in the Yugoslav army before the war framed terror and ethnic destruction in terms of family structures. According to Beverly Allen, one version of the RAM plan reasoned:

Our analysis of the behavior of the Muslim communities demonstrates that the morale, will, and bellicose nature of their groups can be undermined *only if we aim our action at the point where the religious and social structure is most fragile. We refer to the women, especially adolescents, and to the children.* Decisive intervention on these social figures would spread confusion . . . thus causing first of all fear and then panic, leading to a probable retreat from the territories involved in war activity.⁴⁰

Separating and killing “battle-aged men” in this context is a way of decapitating the family basis of the religious and social structure, much as the targeting of intellectuals is aimed at decapitating the institutional basis of the public life of a group. Men are killed to expose women and children, women are raped to humiliate men, children are tortured to destroy parents—this relational logic is the core of genocidal violence against families.

In stating this, I do not mean to erase the importance of sex-selective killing, of “gendercide,” during genocides.⁴¹ I simply mean to point out that sex selection in and of itself can be also a way of torturing family members. As R. Charli Carpenter has recently noted, “Men and women are also indirectly victimized by harm to loved ones of the opposite sex, a point which should not be invalidated in attempting to define who the ‘true victims’ are.”⁴² She quotes Anne Goldstein, who, in writing about genocidal rape, notes that

men too are injured by the sexual assault of women for reasons untainted by offensive, antiquated notions of chivalry and ownership. To watch helplessly as someone you love is tortured may be as bad or worse than being tortured yourself, and international law should be able to reach and punish such crimes.⁴³

Equally, women are victimized by harm done to the men in their lives. This is true because women love the men in their lives; it is true because women pride themselves on nurturing and protecting those around them; and it is true because in most societies, women gain rights, enjoy protection, and find economic security only or principally through the men in their lives.

Perpetrators know this and count on it. This may be an obvious point, but the implications of it have been underanalyzed. Perpetrators use the sacrosanct status of family relationships, and the tenderness and protectiveness that family members feel for one another, as a way to destroy their victims emotionally, spiritually, and psychically before engaging in their physical destruction in whole or in part. They know this and they appear to derive great satisfaction from doing this.

Life Force Atrocities without Genocide?

By way of conclusion, I would like to note that the particular forms of violence that I single out here as inherently genocidal are not necessarily confined to commonly recognized, root and branch, genocides. Inversion rituals and the ritual mutilation and desecration of sacred symbols of generation have been key features of recent wars in the Democratic Republic of Congo and Sierra Leone, to cite two examples from Africa.⁴⁴ They also played a significant role in Japan’s occupation of East Asia in World War II and were particularly evident in Japan’s Imperial Army’s sex slavery system.⁴⁵ What does this mean about such violence being in and of itself evidence of genocidal intent?

One way to look at this question is to place life force atrocities within the longer-term reproductive process. Life force atrocities aim to compress total annihilation, which occurs over time, into one moment of ultimate destruction in which a group is destroyed in its past, present, and future tenses through targeting its temporal symbols—pregnant women, infants, the elderly—and undermining the bonds necessary for group cohesion and therefore for biological and cultural reproduction. Because life force atrocities are committed in immediate and clearly circumscribed social and political spaces—in a household, a front yard, a village square, a military encampment, and so forth—they become, for the perpetrators, microcosms of the potentially massive crime itself. The perpetrators of these crimes may or may not be acting according from directives received from higher authorities. Genocidal intent need not be institutionalized in a state or military in order for it to exit. Generally speaking, however, such institutionalization is necessary for the crime to reach the mass proportions that we associate with it.

As the above discussion suggests, I believe that life force atrocities suggest that genocidal intent can be inferred before mass death. It can sometimes form rather quickly within the context of warfare or civil strife, and can be expressed in “limited” ways during these processes. Whether or not it becomes the main purpose of warfare will depend on many factors, including the nature of the regimes engaged in hostilities. Genocidal intent can appear and thrive on the peripheries of an armed force without having been ordered or organized by a particular state or military leadership. When the ethos of destruction exceeds the pragmatic task of defeating the enemy armed forces, and instead begins to form a military culture that sets itself up against civilian life, eschewing as effeminate the relations and institutions of affection that are the key to human survival, then it is easy for genocidal thinking to creep in. What we recognize as atrocities against civilians can be a sign of an emerging genocidal logic within small units of soldiers or an entire army—whether directed from above or not—if such atrocities show a patterned obsession with symbols of family integrity and generative power. In such cases, the existence of such violence suggests that perpetrators have begun to form a concept of the victim group that has the same logic as those historical group categories identified by the Genocide Convention, even in those cases where the victim group does not easily conform to any of the common definitions of a “national, ethnical, racial, or religious” group.

Incorporating the concept of life force atrocity into our understanding of the crime of genocide will allow us to approach the plain language of the Genocide Convention in an historically informed way, thereby better capturing the intended meaning of the convention’s recognized victim groups than is offered by overly literal and ahistorical interpretations that seek to determine whether a victim group is indeed, by virtue of some social-scientific criteria, “national, ethnical, racial, or religious” in nature. When killers begin to incorporate life force atrocities into their repertoire of killing techniques, we can be on the alert for a genocide-in-the-works, even in cases where the victims appear from the outside to constitute a political or social group, or an economic class. If the perpetrators, by engaging in inversion rituals and ritual desecrations, demonstrate that they are targeting victims’ generative forces, I think we can be fairly safe in assuming that they have developed, at some level of their organizational hierarchy, a concept of the victim group as an “organic collectivity,” to use Scott Straus’s very useful formulation.⁴⁶

In the case of Sierra Leone, where inversion rituals were widespread, the implications for the twenty-first century are very serious. In this case, the rebel militias committed genocidal violence against civilians frequently without regard to ethnicity.

Indeed, the identities that seemed most formative of the violence distinguished between members of the fighting cadres on the one hand, and everyone else on the other. Revolutionary United Front (RUF) soldiers therefore targeted families for unspeakable cruelties regardless of their affiliation with any specific group recognized by the Genocide Convention. The presence of inversion rituals and ritual mutilations and desecrations here can be seen as a kind of omnicide, to use the term coined by Israel Charny to refer to a nuclear holocaust and other such threats to human life. In other words, life force atrocities have the potential to constitute an assault on generative powers *as such*, which means that the violence will become universalized, destroying anybody outside of the perpetrator cadre.⁴⁷ So, in the case of Sierra Leone, the children who were forced to kill their own parents before being kidnapped to serve as RUF members were given this hideous task not simply to create cold-blooded murderers out of them in the name of enhancing the RUF’s chances of achieving certain political and economic ends, but also to initiate them into the genocidal violence that was the core feature, and in some cases the core purpose, of RUF fighting. A similar logic seems to be behind the life force atrocities documented in the eastern regions of the Democratic Republic of Congo. In these cases, the ritual repetition of life force atrocity becomes, for some soldiers, a primary goal of the fighting itself.

This suggests that genocide always threatens omnicide, and that, perhaps, within the particular group crime of genocide lies the more universal crime of what Nuremberg prosecutor François de Menthon called “crimes against the human status.”⁴⁸ In other words, genocide, a crime focused against the human status of specific groups, is simultaneously, because of the universality of our generative process, a crime against the continuation of the human species as such. Certainly we know that perpetrators’ definitions of target groups are capacious and consequently able to expand to include entirely new sets of victims. In this way, the intent to destroy the life force of one group can spread to destructive actions aimed against the life force more generally, a tendency that has expressed itself in scenarios like the warfare in Sierra Leone and the DRC and in state attempts to coercively manipulate reproduction within its supposedly “favored” groups. Indeed, perpetrators’ hostility to the life force may, in fact, predate the implementation of genocidal strategies against specific groups.

This latter possibility was raised by Hannah Arendt in her analysis of the trial of Adolf Eichmann. She wrote that

[h]ad the court in Jerusalem understood that there were distinctions between discrimination, expulsion, and genocide, it would immediately have become clear that the supreme crime it was confronted with, the physical extermination of the Jewish people, was a crime against humanity, perpetrated upon the body of the Jewish people, and that *only the choice of victims, not the nature of the crime, could be derived from the long history of Jew-hatred and anti-Semitism.*⁴⁹

While historical categories and processes will determine how genocide plays itself out in the here and now, the crime itself predates all historical category formation and is bound up with a rejection of the human status as such. The way in which this linkage between the particular and the general works in the perpetrators’ conceptualization and commission of genocide is something that needs to be researched in much greater depth.

Whatever the final analysis about the relationship between genocide and more generalized, omnicidal tendencies, outlying cases suggest the possibility that, in the

twenty-first century, more and more genocidal violence will be the product of quasi-state and non-state actors. This means that genocide has the potential to proliferate much more rapidly than in a system where states are the principal agents. There is growing evidence that today's *génocidaires* are sharing knowledge and strategies, an issue that is vital to global security given the astronomical increase in the presence of mercenaries in conflict situations. The original Janjaweed militias in Darfur, for example, share a Libyan connection with the former president of Liberia, Charles Taylor, who terrorized the Liberian population and backed RUF leader Foday Sankoh, whom Taylor had met in a Libyan training camp in the 1970s.⁵⁰ Serbian mercenaries are reported to have committed atrocities in the Democratic Republic of Congo.⁵¹

Because genocide is rarely self-limiting, it is imperative that we learn to recognize genocidal patterns outside of state-sponsored genocides before we are presented with large numbers of dead. Life force atrocities offer one way of identifying evidence of possible genocide in the absence of clear statements on the parts of belligerents, and it can help analysts overcome accusations that the use of the term "genocide" is nothing more than a (highly politicized) matter of semantics. Precisely because of its destructive engagement with life forces, genocide tends to spread out from an initial target group and become an end in itself, a lifestyle, even, eventually causing massive suffering and regional instability. Because life force atrocities are the cause of such indescribable suffering and life-long trauma to survivors and their descendants, they demand swift intervention once they have been shown to constitute a pattern of warfare and communal violence.

Acknowledgments

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Notes

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On the Timing of Genocide

Deborah Mayersen
The University of Queensland

This article offers new insights as to the timing of genocide. Current models of the preconditions of genocide offer valuable information as to its antecedents, but do not adequately explain how these factors develop and coalesce over time. The present article follows the temporal development of the risk of genocide in both the Ottoman Empire prior to the Armenian genocide of 1915 and Rwanda prior to the 1994 genocide. Through analyzing these case studies, it suggests that there are substantial commonalities in the progression of risk of genocide over time. A new model is proposed that incorporates temporal progression as an integral component of understanding the factors that lead to genocide.

Key words: genocide, genocide prevention, timing of genocide, causes of genocide, Armenia, Rwanda

It is a paradox that the eruption of genocide is unpredictable, yet never seems to occur without prior warning. Two different observers of the Armenians in Turkey, for example, accused the Ottoman government of a “policy of extermination” toward the Armenians in 1880; in 1895, a third observer declared “the extermination of the Armenians” imminent.¹ In 1962, a United Nations commissioner accused the ruling party in Rwanda of “a social policy apparently designed to eliminate . . . the Tutsi minority”: according to this commissioner, the Tutsi were at serious risk of imminent extermination.² All these observers were ultimately correct, as the Armenian and Rwandan genocides of 1915 and 1994 testify. Yet their dire predictions were wrong in one crucial aspect: the timing of when genocide would occur. In both cases, the predictions were wrong not by weeks or months, but decades. These examples highlight the difficulty of attempts to plot the path that leads to genocide. Despite widespread acknowledgement that societies at risk of genocide can be recognized as such, there remains an inability to predict accurately when the risk of genocide is likely to be realized. Yet understanding why genocide occurs *when* it does is a crucial component of understanding the nature of this heinous crime. Furthermore, attempts to prevent genocide are contingent upon the ability to accurately predict its onset.

This article, therefore, will offer new insights into the timing of genocide through the presentation of an explanatory model. Developed through research tracing the progression of risk over time in the case studies of the Armenian and Rwandan genocides, it extends previous models of the preconditions for genocide, to elucidate a model that includes temporal progression as an inherent component. The eight stages of the “temporal model” are briefly outlined below, prior to a fuller discussion of its development and components:

1. The presence of an out-group. This can be defined as a relatively powerless minority, with whom relations are politicized, and which is subject to legal discrimination.

2. Significant internal strife. Significant, ongoing destabilization that affects the dominant group and the out-group, and for which there is no clear solution.
3. The perception of the out-group as posing some kind of existential threat to the dominant power.
4. Local precipitants and constraints determine the nature and time of the dominant group's response. A violent response is typical, with the onset of massacres quite likely.
5. A process of retreat from the intensity of the circumstance, or further escalation. While the process is commonly one of retreat, repeated cycles of escalation through the preceding stages followed by retreat ultimately facilitates further escalation.
6. The emergence of a genocidal ideology within the dominant power, typically accompanied by concerted efforts by the dominant group to further augment their power, and a deepening perception of the out-group as posing an existential threat.
7. An extensive propaganda campaign, a key component of which features attempts to present the victim group as a grave threat to the dominant power.
8. Case-specific precipitants and constraints determine the precise timing of an outbreak of genocide.

This model focuses on genocide as a specific crime, rather than a broader discussion of mass atrocities or crimes against humanity. There are very real challenges associated with the prediction and prevention of all of these crimes, and many commonalities in their antecedents. It is also recognized, however, that genocide is a unique and distinct crime, and it is on this specific phenomena that the present article is focused.

“A genocide is a poisonous bush that grows not from two or three roots but from a tangle of roots that has mouldered underground where no-one notices it,” remarked one survivor of the crime.³ In the last three decades, genocide scholars have made great progress in exploring those roots. Several models have been proposed that seek to identify and define the preconditions of genocide. The groundbreaking model of the sociologist Helen Fein, for example, outlines four factors that together constitute the “necessary and sufficient” preconditions for genocide.⁴ According to Fein, these key factors are that “the victims have previously been defined outside the universe of obligation of the dominant group,” that “the status of the state has been reduced by defeat in war and/or internal strife,” the rise to power of “an elite that adopts a new political formula to justify the nation’s domination and/or expansion, idealising the singular rights of the dominant group,” and finally “the calculus of costs of exterminating the victim . . . changes as the perpetrators instigate or join a (temporarily) successful coalition at war against antagonists who have earlier protested and/or might conceivably be expected to protest persecution of the victim.”⁵ Complementary to Fein’s model is that of Florence Mazian. Mazian’s six-stage model identifies as additional key factors “destructive uses of communication”—both “that supporting the superiority of the dominant group, and that of reducing the inhibitions of the masses and justifying the genocidal goals”—and “failure of multidimensional levels of social control”—including the failure of religious institutions and other nations to intervene on behalf of the victim group.⁶

Other models have focused primarily on societal rather than political risk factors in attempting to analyze the antecedents of genocide. The psychologist Ervin Staub, for example, identified “difficult life conditions,” “cultural-societal characteristics,” and a progression along a “continuum of destruction” as key preconditions for genocide. According to Staub, initial acts that cause limited harm result in psychological changes that make further destructive actions possible.⁷ In contrast, the psychologist Israel Charny chose not to focus upon inherently pathological processes in his ten “Genocide Early Warning Processes,” but rather “a series of natural psychocultural processes . . . [that] may be turned by society toward support of life, or they may be turned toward momentums of increasing violence toward human life, culminating in genocide.”⁸ The ten major early warning processes include such general factors as how a society values human life, more specific processes such as the machinery for managing escalations of threat, and finally processes more typically connected with risk for genocide, such as dehumanization of the victim group. The model also includes an interesting process largely omitted elsewhere: namely, “perception of victim groups as dangerous.” Similarly, Greg Stanton’s model “The Eight Stages of Genocide” has sought to traverse the spectrum from potentially genocidal features of normal societies, such as the tendency to classify social groups with names, symbols, and a conception of “us versus them,” through to polarization, organization, and extermination, with denial as the last stage of genocide.⁹ Finally, political scientists such as Matthew Krain and Barbara Harff have conducted quantitative analyses of potential risk factors for genocide—although utilizing a much broader definition and larger numbers of cases of genocide than typically considered elsewhere.¹⁰

Such models offer valuable insight into the factors that lead to genocide. Each presents a unique contribution to our understanding of the etiology of the crime; together they form a largely complementary corpus of knowledge. Yet individually and collectively they offer surprisingly little information as to the time periods over which the identified preconditions might be operative. Mazian, for example, suggested only that “earlier stages . . . combine according to a certain pattern before the next stage can contribute its particular value . . . As different components enter into the . . . process, the range of possible outcomes becomes progressively limited.”¹¹ Similarly, Stanton has proposed that “Genocide is a process that develops in eight stages that are predictable but not inexorable . . . The later stages must be preceded by the earlier stages, though earlier stages continue to operate throughout the process.”¹² Beyond providing an approximate order in which risk factors for genocide may become operable, there is little that specifically considers their temporal progression. The few quantitative analyses in this area offer some enticing hints as to what may be gleaned from further investigations—such as Krain’s findings that war, civil war, and decolonization leading to civil war are all significant predictors of genocide.¹³ Similarly, Harff’s findings indicate that it may be possible to empirically anticipate the escalation of a high-risk situation into genocide in the year preceding the eruption of violence.¹⁴

There are also several valuable studies that focus on the dynamics that lead to the decision to adopt genocidal policies, and the triggers for the eruption of genocide. The political scientist Manus Midlarsky, for example, has proposed genocide as an elite reaction to loss. According to Midlarsky, in states with a vulnerable target group, socioeconomic shrinkage (which can incorporate loss of physical territory, economic loss, and/or loss of relative status) “is the single most important long-term progenitor of genocide.”¹⁵ The political scientist Benjamin Valentino has suggested a “strategic” perspective is most useful for understanding the causes of mass kill-

ing.¹⁶ Valentino has contended “mass killing occurs when powerful groups come to believe it is the best available means to accomplish certain radical goals, counter specific types of threats, or solve military problems.”¹⁷ However, both theories contribute more to evaluating why genocides and mass killings occur than when. The political scientist Scott Straus has more specifically explored how the regional, national, and local dynamics affected the timing of the Rwandan genocide both as a whole and in specific regions of Rwanda.¹⁸ As Straus himself has acknowledged, however, there remains a need for further investigation of the timing of genocide.¹⁹

Crucial questions surrounding the timing of genocide merit further research. Can a society progress from a low risk of genocide to a high risk of genocide rapidly, for example, or is it a process more likely to take decades? Is the progression necessarily a linear one, or can there be stagnation at particular levels of risk, or even a regression? What triggers risk escalation? And, most importantly, could improved knowledge in this area inform future efforts at genocide prevention?

The present study considers these important questions through a historical inquiry into the events that culminated in two of the major genocides of the twentieth century—the Armenian genocide of 1915, in which approximately one million Ottoman Armenians perished; and the Rwandan genocide of 1994, in which approximately one million Tutsi and moderate Hutu were slaughtered. In each case, there was a lengthy period prior to the ultimate genocide in which the minority can clearly be identified as vulnerable and at risk of being targeted. This study will consider how that risk emerged and developed. It will consider when, in each case, particular risk factors became operable, and if they remained consistently operable thereafter. It will investigate the triggers that led to an escalation of risk, as well as the presence and effectiveness of any constraints that may have been operable. Rather than adopting a singular model of the preconditions for genocide as a guide, the wisdom of multiple models will be utilized, enabling the investigation of individual risk factors as they become salient in each case study. This approach allows for maximum flexibility in identifying those factors of most impact upon the temporal progression of risk of genocide; it also allows for the identification of new factors that may influence risk modulation processes. Through a close focus on how risk factors for genocide developed over time in both Ottoman Turkey and Rwanda, potentially common features of the risk escalation process may be identified. These could provide an important new contribution to our understanding of why genocide occurs when it does.

Even retrospectively, it is challenging to identify a precise “beginning” of the processes that lead to genocide. Features we commonly associate with risk of genocide, such as the presence of a pariah minority group, or a stratified society, may also be features of non-genocidal societies. Fein, for example, has remarked that “[f]or over a millennium preceding their annihilation, both Jews and Armenians had been decreed by the dominant group that was to perpetrate the crime to be outside the sanctified universe of obligation.”²⁰ The presence of an out-group, while commonly considered the first precondition of genocide, does not always provide useful insight as to the likelihood of its incidence in a foreseeable time period. In order to determine an appropriate period from which to commence this investigation, therefore, the time period during which minority identity first emerged as a significant political issue for both the Tutsi in Rwanda and the Armenians in Ottoman Turkey was chosen. This subtly different “beginning” may offer a more precise conception of the risk of genocide.

In considering the Armenian case, as Fein has noted, in some ways Armenians were regarded as an out-group within the Ottoman Empire for centuries prior to the 1915 genocide. Under Ottoman rule, the Armenian people were considered *giaours*, or infidels, subject to official discrimination. They had to pay special taxes, were forbidden from bearing arms, and Christian evidence was inadmissible in Ottoman courts of law. The Armenian minority was subject to long-standing oppression and discrimination.²¹ In comparison to the subsequent mass outbreaks of violence, however, this period might be considered as relatively peaceful.²² There was a recognized place for the Armenian minority as a *millet*, or national community, and relative stability. It was through the course of the nineteenth century that conditions considerably worsened.²³ The reasons for this appear to be twofold: the increasing politicization of relations between the Ottoman government and society and the Armenian community, and the increasing strain under which the empire labored as the nineteenth century progressed.

In contrast, Hutu-Tutsi sub-group identity can be considered as a significant feature of Rwandan society well before the Tutsi can be identified as an out-group. In at least some parts of precolonial Rwanda, sub-group identification became linked with the stratification of society.²⁴ Cattle, owned and managed by Tutsi pastoralists, became the central symbol of wealth and status within the society. Tutsi also dominated positions of political power. Hutu were generally agriculturalists, and considered to be of a lower status than Tutsi. Intergroup relations were characterized by patron-client relationships. Yet, while the historical existence of the Hutu and Tutsi identities must be acknowledged, it must equally be acknowledged that societal stratification was strongest only in central Rwanda, where the authority of the Rwandan kingdom was at its greatest strength. Even there, relations were tempered by a range of other sub-group identities, such as those of lineage and clan, and a number of other mitigating factors. It took more than a half-century of colonial rule to augment and harden sub-group identity, and a massive reversal of colonial policy at its conclusion to leave the historically privileged Tutsi as an out-group following decolonization.

Together these histories suggest that there are three key components to identifying an out-group as one at some risk of genocide. First, the group must be relatively powerless to effect change regarding its status within wider society, and it is often vulnerable more generally. Second, the group, or its members, face legal discrimination because of their group identity. Third, relations between the group and mainstream society and/or government are politicized to some extent. That is, intergroup relations are commonly discussed in the media, are regularly an issue in political circles, and differences of opinion on other issues tend to align with intergroup identity. Together, these three markers appear to distinguish between an out-group vulnerable to a process of risk escalation that might potentially culminate in genocide and a group that might have some pariah features, but nevertheless is able to exist stably within a society.

Utilizing this definition of an out-group, the Armenian minority in the Ottoman Empire can be classified as such from around the middle of the nineteenth century—and most certainly by 1878. The 1878 Treaty of Berlin, by seeking to mandate better conditions for the Armenian minority through Articles 61 and 62, effectively ensured the politicization of Armeno-Turkish relations. Ironically, the resentment of the Ottoman government at these provisions meant they led to deterioration—rather than improvement—in conditions for the Armenians. In the Rwandan case, Hutu-Tutsi relations were heavily politicized in the fractious decolonization process in the

late 1950s and early 1960s. Following Rwandan independence in 1962, the Tutsi minority could be clearly defined as a relatively vulnerable out-group. In both cases, the classification of these minorities as out-groups remained salient through to the genocides of 1915 and 1994. Yet in both cases, several decades passed between the societies meeting this first precondition and the eventual outbreak of genocide. Given that this suggests that out-groups can and do exist for long periods quite stably within societies, it then becomes salient to question what might trigger the escalation of risk beyond this point.

A number of models of the preconditions for genocide, including those of Fein and Mazian, identify significant internal strife as a key risk factor. For the present purpose, internal strife is defined as significant, ongoing destabilization that affects both the dominant group(s) and the out-group, and for which there is no clear solution. It may be economic, political, or involve threats to territorial integrity. For example, the Ottoman Empire's dire economic position in its final decades or the repeated incursions of Tutsi refugees into Rwanda following independence both constitute internal strife. In both the Armenian and Rwandan cases, periods of significant internal strife were repeatedly associated with a marked increase in out-group vulnerability. The internal strife was not always related in any way to the presence of the out-group, nor did it necessarily lead to any immediate deterioration in conditions specifically affecting it. Yet the out-group, relatively powerless and already subject to discrimination, appears extremely vulnerable to being targeted at such a time of national stress. In Rwanda, that is precisely what happened. In periods of internal strife between late 1963 and early 1964, in 1972–1973, and again during the late 1980s and the early 1990s, the Tutsi minority in Rwanda became markedly more vulnerable to violence. Similarly, as the Ottoman Empire declined through the last decades of the nineteenth century, so too did the security and safety of the Armenian minority. In each group, there was a much greater awareness of their vulnerability, and the potential danger of their circumstances, than when only the first precondition was present. For example, in the Rwandan case these times of increased risk are closely aligned with surges in Tutsi refugees fleeing the country. There was a clear perception of an escalation of risk.

There is, of course, a tension between the assertion that internal strife leads to a marked increase in out-group vulnerability and that it does not necessarily lead to an immediate deterioration in conditions of life for the out-group. Yet internal strife appears singularly insufficient to provoke violence directed toward the pariah minority. Rather, it seems to facilitate a cascade of events that culminates in outbursts of violence. In particular, there is a distinct intervening factor likely to become operative at this juncture, destabilizing the already precarious situation, and dramatically increasing the risk profile of the out-group. That is, the out-group comes to be perceived as posing, or at the very least associated with, an existential threat to the dominant group. It is perceived as posing a threat to the very existence of the dominant group or power structure, at least as it is presently constituted. Such a perception, it is important to note, is always a construction of the dominant power.²⁵ There may be a real and serious threat to the dominant power or the mainstream society; however, the link between such a threat and the out-group as a whole is typically tenuous and manipulated by political power-brokers. More often, such a threat may have some factual basis but is distorted, exaggerated, or otherwise manipulated by the relevant powers, if not wholly manufactured. Indeed, the role of the dominant power in the characterization of the out-group as an existential threat is crucial. Intellectuals and politicians in a society with an out-group may at times view this

group as a threat; however, it is only when the genuine power brokers of the nation embrace such a view that it becomes dangerously toxic. The presence of significant internal strife often facilitates such circumstances, as powers seek a convenient scapegoat for wider troubles.

Some examples from the Rwandan case study provide further clarity. In Rwanda, there were multiple instances when the Tutsi as a group—for varying reasons—came to be perceived as an existential threat. The Bugesera Invasion in Rwanda in December 1963, for example, when a few hundred lightly armed Tutsi refugees crossed into Rwanda from Burundi, and were joined by several hundred more internally displaced Tutsi, led to *all* Tutsi being perceived as threatening to the survival of Rwanda as a Hutu nation, at least temporarily.²⁶ Thus the prefect of the Gikongoro region responded to the attacks: “We are expected to defend ourselves. The only way to go about it is to paralyse the Tutsi. How? They must be killed.”²⁷ This sparked an indiscriminate massacre of Tutsi men, women, and children.²⁸ In 1972–1973, Rwandan Tutsi were again perceived as an existential threat, this time in response to the massacres of Hutu by (mostly) Tutsi soldiers in neighboring Burundi. The Rwandan Patriotic Front (RPF) invasion by second generation Ugandan Tutsi refugees in October 1990 also led to further perceptions of Rwandan Tutsi as posing an existential threat to the nation. Thus, according to the infamous “Hutu Ten Commandments” published in December 1990, “*all* the Tutsi . . . only work for the supremacy of their ethnic group.”²⁹ In each of these cases, there was a sizeable leap between the actual threat and the resulting manipulation and distortion of the circumstance to characterize the Tutsi out-group as a whole as posing an existential threat. That happened in each of these cases, and signified a considerable and dangerous escalation of the risk of violence and a dramatic destabilization of conditions.

At this stage, the roles of precipitants and constraints become crucial. By nature, an existential threat to the dominant group is one that requires a concerted response if that group is to maintain its position of power. The case studies suggest that the result will typically be violent, with the onset of massacres quite likely. Several factors can influence the strength and timing of the dominant group’s response: the potency and immediacy of the existential threat, and how directly the threat is or can be linked to the out-group. At this juncture, however, on the precipice of violence, precipitants and constraints specific to the local circumstance are likely to be the most important determinants. The diversity of accelerants that can be operable, combined with any constraint needing to override the strong motivation of the dominant power to deal with the perceived or proclaimed threat, makes endeavors to prevent violent outbreaks at this point fraught with difficulty.³⁰

Consideration of the circumstances surrounding the outbreaks of violence in Ottoman Turkey in both 1894 and 1895, for example, aids in understanding the central role of precipitants and constraints. By 1894, Sultan Abdul Hamid II had long characterized the Armenians as an existential threat to his crumbling empire. In 1878, following Ottoman defeat in the Russo–Turkish war, the San Stefano Treaty had made Russian withdrawal from Ottoman Armenian territories it had occupied conditional upon reforms to improve the conditions for the Armenian population.³¹ While the Treaty of Berlin adopted a softer approach, Article 62 effectively granted the Armenians civic equality—inimical to the *millet* system that formed the basis of the empire.³² The severe constraints against violent retaliation toward the Armenian population operable then—including the weakness of the empire after its wartime defeat, and the very real threat of further European intervention—had prevented

major violence. However, as these constraints weakened by the early 1890s, the stipulations of the Berlin Treaty remained valid, but never realized, and the perceived existential threat of the Armenians remained. The government, apparently looking for a pretext, allowed a number of minor incidents in Sassoun to trigger a retaliatory massacre out of all proportion to any actual threat. In response, the European powers renewed many of the demands of the Berlin Treaty in a new memorandum—effectively reigniting Ottoman perceptions of the Armenians as an existential threat.³³ According to the missionary to Ottoman Armenia and Secretary of the National Relief Committee Frederick Greene:

These reforms, though partial in application, involved, in principle, the civic equality of Christian and Moslem, and this, from the Turkish standpoint, would imperil the foundation of the State. The mere asking of such reforms and the intrusting their execution to the Turks, was a stultification on the part of the diplomats who demanded them; for it does not lie within the power of Abdul Hamid, as the Caliph of Islam and the successor of the Prophet, to grant them.³⁴

In response to international pressure to sign the memorandum, another minor incident—this time a protest march—was used as a convenient trigger to launch a much more intense and widespread burst of massacres. In each case, once the predisposing factors were in place, it was precipitants and constraints specific to the particular circumstance that influenced the onset of a violent response to resolve the perceived existential threat.

Thus far, therefore, we have seen that the presence of an out-group in a society can be a long-term and relatively stable feature of that society. The advent of significant internal strife, however, leads to a marked increase in out-group vulnerability. Internal strife, while insufficient as a singular causative factor, is likely to provoke a cascade of events that result in violent outbursts targeted toward the vulnerable out-group in the short to medium term. This analysis informs our grasp of the triggers that lead to an out-group becoming at increased risk of massacre and/or pre-genocidal violence.

The next stage, however, is perhaps the most crucial to determining the timing of genocide. It can be described as a process of review requiring either retreat or escalation. First, the more common process of retreat—that is, to a lower level of risk—will be discussed. Two separate drivers can determine a path of retreat. One is that a level of resolution of the existential threat that is deemed acceptable to the dominant power may remove the need for continued violence—a factor that can often coincide with a desire to restore some stability to the nation through the restoration of peace. Alternatively, the process of retreat may be driven by the authority's relative lack of power, that is, an inability to realistically contemplate escalation. Very often, some combination of the two factors will influence the outcome in a given circumstance.

If we consider once again the example of the Armenian massacres in the 1890s, this process can be seen clearly. The massacres of 1895, for example, were precipitated by the perceived dual threats of Armenian pressure for greater rights and security (expressed in this case through an Armenian rally protesting the lack of a concerted response to the Sassoun massacre a year earlier) and international pressure in support of their cause. The British Ambassador Sir Phillip Currie who was stationed at Constantinople demonstrated a keen grasp of these pressures and their potential danger. In November 1894, he reported:

The Sultan, I am told, declared quite recently to a foreign Representative that nothing would induce him to introduce reforms into his Asiatic provinces, and it is not likely that he would yield without the employment of force. If the attempt were made without being carried through to a successful issue, the position of the Armenians would become even worse than it is at present.³⁵

To a considerable extent, the massacres from October to December 1895 can be regarded as functionally effective in dealing with these threats to the empire. The Armenians were terrified into submission—at least temporarily. The bluff of the international powers was called and found wanting—weakening their position and credibility.

At the same time, however, it was not clear that the international powers would not intervene in the event of a more global or deadly campaign against the Armenian minority. In 1896, for example, when violence broke out in Constantinople—witnessed by European diplomats—for a short time, at least, there appeared to be a real threat of international intervention.³⁶ The British *chargé d'affaires* told the sultan he would land British sailors.³⁷ According to Viscount James Bryce, British parliamentarian and keen observer of Armenian affairs:

The perpetration of this massacre under the very eyes of the Ambassadors and the European residents, and the reign of terror which followed it, roused the attention of Europe in a way which the even more frightful and far more extensive massacres of the preceding autumn and winter, carried out in the cities of the interior, had not done. A cry of horror arose in England . . . [Sultan] Abdul Hamid . . . recoiled in terror from his own act, and the Turkish population expected the immediate appearance of European fleets to punish or depose him.³⁸

Undoubtedly, the threat of intervention was a decisive factor determining the cessation of the massacre in Constantinople, and likely contributed to the cessation of the massacres of that period generally. Ultimately, the Ottoman sultan chose a process of retreat rather than escalation. The solution was a limited one: the existential threat posed by the Armenians had been resolved to the maximum extent possible, given the relative powerlessness of the sultan with respect to the international powers.

The extent of the retreat seems to vary according to the particular circumstance. The more substantial the retreat, however, the more stable it will be, and interestingly, the more the dominant power will have an investment in that retreat. Consider, for example, the anti-Tutsi massacres in Rwanda in December 1963–January 1964, in the wake of the Bugesera invasion. Quite rapidly following these events, it became clear that there would not be a Tutsi-led coup attempt in Rwanda. The precondition of internal strife was no longer operable, and the nation returned to a lower-risk profile for genocide, in which only the continuing presence of the Tutsi out-group may be noted. As this occurred, the Rwandan government actively called for tolerance. The Ministry of Foreign Affairs declared in a statement: “Rwanda wants to be a tolerant and peaceful nation. This is the will of all the people, and this is the will of all its leaders.”³⁹ In this document, furthermore, the government clearly differentiated between the *petit* Tutsi refugees, whom they explicitly stated were not responsible for the “terrorist attack,” and the “great feudal criminals” who were.⁴⁰ President Kayibanda did not homogenize, dehumanize, or vilify the Tutsi out-group and actively sought at least some level of rapprochement.⁴¹

In circumstances where the retreat is more limited, by contrast, with two or more risk factors remaining operable, such reconciliation is less likely to be sought,

and the situation is inherently less stable. In the Ottoman Empire, for example, dire economic pressures and ongoing territorial threats constituted continuing internal strife in the wake of the 1890s massacres. Thus, conditions for Ottoman Armenians remained far more hostile and uncertain. Missionary Reverend Edwin Bliss commented in late 1896, "Massacre has been followed by persistent persecution, less prominent, perhaps, but not less effective."⁴² One European resident of Constantinople recorded:

The massacre of the Armenians came to an end . . . but the persecution of them which went on for months was worse than the massacre. Their business was destroyed, they were plundered and blackmailed without mercy, they were hunted like wild beasts, they were imprisoned, tortured, killed, deported . . . The poverty and distress of those left alive in Constantinople was often heartrending, and many women and children died of slow starvation . . . this persecution still continues in a milder form.⁴³

A vital element in understanding the development of risk of genocide over time is to consider the cyclic pattern that emerges at this stage of retreat/escalation. In both the Armenian and Rwandan cases, one can plot the risk profile reaching this stage multiple times and then retreating to an earlier stage, in a cyclic process that lasted (in each case) for several decades. In Rwanda, for example, the risk profile escalated to this stage in 1963–1964, 1972–1973, and 1990. The repeated cycles of progression and then retreat in both case studies suggest the importance of the entrenchment of this process prior to further escalation. As previously mentioned, Staub has explored the role of a "continuum of destruction" as a precondition for genocide, whereby initially limited acts of harm psychologically facilitate subsequent, more destructive actions. Gradually, feelings of responsibility for others' welfare and inhibitions against killing break down.⁴⁴ The cyclic process that preceded both the Armenian and Rwandan genocides seems to have greatly facilitated the normalization of ethnic violence within Ottoman and Rwandan societies, and the dehumanization of the out-group as vilified "Other." Similar cycles of escalation and retreat can be observed prior to the Holocaust and the genocide in Darfur. Over time, a lasting suspicion or distrust of the out-group comes to permeate the society, even in the absence of a specific cause for distrust at a particular point. Thus, even when the Young Turk regime had officially granted Ottoman Armenians citizenship, it continued to refer to them by the derogatory descriptor *giaours* (infidels).⁴⁵ This entrenched distrust can later be of great significance, as would-be perpetrators seek to impose their own interpretation of the history of majority–out-group relations onto a society. In particular, they can be manipulated by authorities to link the out-group to an existential threat. During times of internal strife or crisis, vilification of the out-group is thus a readily available strategy for the political elite. The longer the period over which these cycles occur, and the more often they do, the more available and "normal" such a strategy becomes.

Three profound effects of this cycle facilitate further escalation to potential genocide. The first is that the strategy of utilizing the out-group as a convenient scapegoat in times of national crisis can be quite effective at rallying the majority in the desired political direction, while decreasing the focus on any more awkward issues for the political elite. As the strategy is used repeatedly at times of internal strife, the out-group can become inextricably linked to the nation's difficulties. It can appear that the authorities are always trying to resolve the "same" issue—for which the out-group is held responsible. In such circumstances, the temptation for "final" escalating violence is clear—although far from inevitable. The second effect of this

cycle is that the risk to which the out-group is exposed is not limited to the tenure of any particular ruling power. The repeated politicization of ethnic issues, the repeated scapegoating of the out-group, and the distrust and suspicion toward this minority become embedded features of the society. The out-group remains vulnerable to political manipulation by successive regimes. Thus, the Armenian massacres of the 1890s took place under the rule of Sultan Hamid II, while the genocide was engineered by the Young Turks who overthrew him. The third effect of this cycle is what Vahakn Dadrian has termed the “legacy of impunity.”⁴⁶ That is, as ruling powers discover that they can provoke ethnic violence, and even massacres with little consequence, they are emboldened to act increasingly recklessly. For example, the lack of a concerted international response to the Sassoun massacre of Armenians in 1894 facilitated the subsequent massacres; similarly, the lack of an international outcry at the limited anti-Tutsi massacres in Rwanda in the early 1990s encouraged further violent outbreaks.

Such outcomes may influence regimes to contemplate further escalation, rather than retreat, at this critical juncture. In the Armenian and Rwandan case studies, each ruling group ultimately preferred a process of escalation—placing the nation at grave risk of genocide. Instead of a retreat, the emergence of an ideology that could be used to legitimize genocide—or at least its emergence from the radical fringes—came to be a feature of each society. Moreover, in each case the presence of such an ideology proved conducive to the formation of a genocidal plan; once such a plan developed, the ideology in turn became increasingly radical and more specifically about justifying genocidal goals. In Ottoman Turkey, this ideology was that of pan-Turkism. A nation, according to Turkish ideologue Ziya Gökalp, who joined the inner sanctum of the Young Turk party in 1911, was “a society . . . of people who speak the same language . . . and are united in their religious and aesthetic ideals.”⁴⁷ What emerged as an ideology that excluded the Armenian minority from membership in the newly conceived concept of “Turkish society,” led quite rapidly to a plan for their physical elimination from that society. In a dialectical process, as the plan was formulated, justifying it required further ideological radicalization. The Armenian minority was no longer simply excluded; rather, it was seen as actively and dangerously threatening. In just six short years, the Young Turk leader Enver Pasha went from declaring the Armenians “brothers” to declaring “they will have to be destroyed.”⁴⁸

Critical to escalation at this stage are the dual drivers of the entrenched power of the dominant authority and deepening perceptions of the out-group as an existential threat to the nation. Evidence from the Armenian and Rwandan case studies has indicated that a regime without sufficient resources to contemplate genocide realistically will not attempt or threaten to do so. For example, consider Rwanda in 1963–1964. In many respects, this appears as a society at far greater risk of genocide than Rwanda in the late 1980s. Hutu powers had not only just secured independence for the nation but also managed to secure almost all organs of power under their own leadership in the process. Victory had resulted from a fierce, racially driven campaign, which pitted Tutsi as foreign invaders and oppressors, “who imposed their rule . . . by cunning and cruelty.”⁴⁹ Then, after eighteen months of quite peaceful nation building, the Bugesera invasion shook the country deeply. Superficially at least, the risk of the emergence of a genocidal ideology at this point seems great. The Kayibanda government, however, simply did not have the resources or sufficient control of the country to contemplate such a course of action. Its army was woefully inadequate; its leadership only just grasping the rudiments of running a country.

Thus the rhetoric very quickly returned to themes of unity and cooperation. “Rwanda wants to be a tolerant and peaceful nation,” declared Kayibanda.⁵⁰ A quarter of a century later, by contrast, Habyarimana and the *akuzu* had a far tighter grip on the nation as they contemplated genocide.

The second driver of the emergence of an ideology that facilitates genocide is a deepening perception of the out-group as posing an existential threat to mainstream society or the nation, or both. Such perceptions are themselves at least partially manipulated by the dominant power. Usually the threat is presented as intractable—somehow justifying the escalated approach being contemplated. “Who could tell the difference between the *inyenzi* who attacked in October 1990 and those of the 1960s?” asked Hutu propagandists in 1993.⁵¹ Indeed, characterizing the out-group in this way is crucial for the potential success of genocidal plans. Regime leaders possessed of a genocidal ideology appear to grasp that a particularly effective approach to reducing the natural inhibitions of humankind toward the mass murder of other humans is to present such actions as necessary self-defense. In order for this to be feasible, however, the out-group must be regarded as being dangerously threatening to the dominant group, irrespective of the reality. Thus, in the wake of the RPF invasion of Rwanda in October 1990, Habyarimana exaggerated the ongoing risk posed by the RPF rather than publicizing its very serious losses.⁵² As the 1990s progressed, official propaganda presented the RPF as posing a grave existential threat to Rwanda, refusing to acknowledge a more balanced view that might have recognized their willingness to share power under the auspices of the Broad-Based Transitional Government and participate in democratic elections. The reality of the situation mattered less than the potential for such threats to be considered real, grave, and pressing by the population.

The emergence of an ideology that facilitates genocide, usually shortly followed by the outlines of a genocidal plan, is further characterized by a huge drive for control by the potential perpetrators. This can take multiple and very diverse forms, but each with the central goal of ensuring sufficient power and means to conduct the contemplated actions. Thus, in the Committee of Union and Progress (CUP) in Ottoman Turkey, it initially took the form of factional jousting for seats on the Central Committee for the extremist faction. Later, as the genocide was imminent, tactics included the disarming of all Armenians, separation of men from their families, and specific strategies to deal with areas of previous resistance. In Rwanda, too, pro-genocidal parties maneuvered within government circles for sufficient political power to enact their plans; massive imports of arms were ordered; and there was a massive build up of troops.

Characteristic, too, of a society in which this precondition is operable is a number of “tests” of the power of the dominant group. Typically, these tests will be to gauge the support of the population, and/or test the international reaction to the proposed course of action—that of both allies and enemies. For example, as the genocidal ideology took root in Rwanda in the early 1990s, a number of massacres occurred. According to Twagilimana, at least one of the purposes of the Bugesera massacres in March 1992, in which approximately 277 people were killed, was “to verify the feasibility of massacres in the political south.”⁵³ Similarly, Prunier has remarked upon the Hutu government’s close attention to the reaction of their French ally to the massacres of the early 1990s. According to Prunier, after each massacre, the Habyarimana government “[w]atched to see how the French were going to react. The Hutu were pleased by France’s tolerance and understanding, and they began to raise the level of violence. Had the French made it clear that they did not support

this extremism, the situation might not have deteriorated so badly.”⁵⁴ While care must be taken not to let knowledge of the subsequent genocide influence our consideration of these massacres, they do provide some evidence of preparation for further violence.

The emergence of a genocidal ideology appears to be very rapidly followed by an extensive propaganda campaign, in both the Armenian and Rwandan cases. Extensive efforts were made to dehumanize the out-group, which might be labeled as dogs, cockroaches, devils, or any other derogatory classification. Hutu propaganda declared: “A cockroach gives birth to another cockroach . . . a Tutsi stays always exactly the same.”⁵⁵ The importance of such propaganda has already been elucidated by a number of scholars of the preconditions for genocide. Leo Kuper identified ideological legitimation as a necessary precondition for genocide to occur; Fein referred to the necessity of the elite adopting a political formula that justifies the nation’s domination and idealizes the singular rights of the dominant group.⁵⁶ Mazian’s model most clearly highlights the vital communicative aspect of this precondition. Termed “Destructive Uses of Communication,” Mazian’s precondition refers to both communications that support the superiority of the dominant group, and those that reduce the inhibitions of the masses and justify the genocidal goals.⁵⁷ Stanton, Richter, and others have also referred to “mass incitement” as a key warning sign of impending genocide.⁵⁸

By this stage, the situation is on the brink of disaster. The risk factors that predispose a nation to genocide are all present. As prior to the outbreak of massacres, case-specific precipitants and constraints now come to govern events. A striking feature of this stage in both the Armenian and Rwandan case studies is the “accelerant” role of a specific event that led to a sharply heightened perception of the out-group as an existential threat. In the Rwandan case, for example, the military superiority displayed by the RPF in early 1993 in the ongoing civil war, and their ability to return to the subsequent Arusha negotiations in a position of strength, was interpreted by the Hutu extremists to view the Tutsi as an ever more real and severe threat to Rwanda as they conceived of it. By mid-1993, for example, Hutu propagandists asserted, “We know that they have attacked us with the intention of massacring and exterminating 4.5 million Hutu and especially those who have gone to school.”⁵⁹ A similar picture had emerged in Turkey by 1914. There, Russian intervention had led to Turkey signing a new Armenian Reform Agreement under duress, which the Young Turks regarded as an attack on Ottoman sovereignty.⁶⁰ As Russian Minister for Foreign Affairs Serge Sazonov recalled, the Turkish attitude to the reforms was one of “undisguised ill-will,” as the Young Turks perceived them as “an attempt on Turkish independence.”⁶¹ The Armenians themselves were thus seen as highly threatening to the integrity of the Ottoman Empire. In both cases, these events heightened the existential threat these out-groups were perceived to pose. In both cases, this spike occurred almost exactly fourteen months prior to the onset of the subsequent genocides. This suggests the important role of the perception of the out-group as posing an existential threat in this final stage before the outbreak of genocide.

Beyond the key accelerant role of perceptions of the out-group as an existential threat in facilitating the onset of genocide, precipitants and constraints appear to be locally driven. They can vary widely. In Rwanda, for example, the prospect of there being no further way to delay the implementation of the Arusha Peace Accords—that is, the seeming imminence with which the Hutu power brokers would have had to cede their hegemony over the nation—played a precipitating role in the onset of

the genocide.⁶² Concerning Ottoman Turkey, numerous scholars have commented upon the crucial role of the start of the First World War in removing a powerful constraint against genocide—that of the threat of international intervention. By this stage of the process, ruling elites have invested heavily in the genocidal process. They are not simply reacting to circumstances as they arise, but actively attempting to manipulate those circumstances to their own advantage. Thus, they may be attempting to create triggers or remove constraints in order to facilitate the onset of genocide. For example, Dadrian has suggested that the desire to annihilate the Armenians may have played a role in influencing Turkey's decision to enter the war.⁶³ Similarly, while it has never been proven, scholars of the Rwandan genocide have suggested it is possible that Hutu extremist members of President Habyarimana's own entourage were somehow responsible for shooting down the presidential plane. Whether or not that really happened, the sharp variability of what can function as a precipitant or constraint at this stage, combined with the dominant authority's heavy investment in a genocidal strategy and desire to manipulate circumstances to its own advantage, make this stage inherently grossly unstable and unpredictable. The only possible caveat to the above is to note that, even for a regime that has invested heavily in a genocidal strategy and that may conceive it as the only route possible for the nation, actually making the decision to initiate genocide appears to be a significant hurdle. In both the Armenian and Rwandan cases, the situation remained poised on the brink of genocide for several months before the final leap was taken.

Tracking the development of risk of genocide over time in the case studies of the Armenian and Rwandan genocides suggests substantial commonalities in the temporal progression of such risk. The temporal model, presented earlier in this article, lays out these commonalities to incorporate temporal progression as an integral component of understanding risk of genocide. It is important, however, to clarify how this model improves our understanding of the progression of the risk of genocide.

A key finding is the identification of stage five, a cyclic process of retreat or escalation, in determining the short- to medium-term outcome in a particular circumstance. It is at this stage that we can clearly identify the paradox inherent in predicting genocide—that it can be fiendishly difficult to predict in any given time period, yet it is often clearly foreseeable, and indeed foreseen. Interestingly, while this stage of a cyclic process of retreat or escalation has never been elucidated previously in a model of the preconditions of genocide, it has instinctively been recognized by observers of specific instances. In an at-risk society, it is at this stage that genocide will often first be predicted. Observers of this stage may sense a very real risk of genocide, sufficient to express it officially in high-level warnings. Thus, to recall the paragraph with which this article commenced, when the observers of the Armenians in Ottoman Turkey in 1880 and 1895, and of Rwanda in 1962, spoke of the threat of the extermination of the Armenian and Tutsi minorities respectively, they unwittingly identified peak points in this cyclic process—points where escalation to further violence might well have been contemplated.

Yet this highlights one of the difficulties of attempting to track the path that leads to genocide—this is a critical juncture, but an early one that more often will lead to a process of retreat rather than escalation. Rulers at this stage must choose between a process of escalation, potentially leading to future genocide, or a process of retreat. It is here that the temporal model can offer some insight as to which choice is more likely in a given circumstance. First, the political elite in a nation that has reached this juncture previously and retreated to an earlier stage in the model—and

particularly a nation that has cycled through this process multiple times—may be more likely to consider escalation as a serious option. This is particularly so if previous cycles of more limited violence, as occur at stage four of the model, have been conducted with impunity. Further escalation may also be more likely if the out-group has repeatedly been made a scapegoat in times of national crisis. Alternatively, a dominant power without sufficient resources to conduct more massive violence will almost certainly prefer a process of retreat. This decision will also be influenced by the strength and intractability of the perceived existential threat posed by the out-group, or linked to the out-group. Paradoxically, this can be a somewhat dialectical process, as the dominant power at least partially manipulates this perception of threat, but then acts to counter it seemingly without consideration of its own role in the process.

The cyclical nature of the way in which risk of genocide fluctuates over time highlights the inherent difficulty of attempts to predict genocide. The most common process at stage five of the temporal model is a process of retreat—meaning nations can exhibit some risk factors for genocide for long periods. Indeed, this model confirms the generally long-term nature of these processes. Alternatively, however, if a regime opts for a process of further escalation at this stage, there can be quite a short time period between early and late stages of the model. For example, in Rwanda between the late 1980s and 1994 there was a very rapid and dramatic process of risk escalation. Such variability has contributed to a generally poor understanding of the development of risk for genocide over time. The temporal model, however, provides a logical lens through which to interpret such variability.

Beyond offering an explanation for the difficulties associated with early-stage or pre-crisis prediction of genocide, the temporal model offers valuable insight into the timing of genocide as it becomes increasingly likely. Indeed, it is a sign of strength of the temporal model that once a situation has escalated beyond the cyclic process of stage five, it begins to offer a very real timeline for the onset of genocide. Quite specifically, the Armenian and Rwandan cases suggest stages six to eight of the model cluster together very closely, and that there is a severe risk of genocide occurring between eighteen months and five years from the onset of stage six—that is, the emergence of a genocidal ideology in the dominant power. Considering the Armenian genocide, for example, even early estimates of the emergence of a genocidal ideology within the CUP in Ottoman Turkey, such as Dadrian's estimate of "the outlines of a genocidal scheme" being in place by the close of 1910, suggest a very short period between the emergence of this ideology and the onset of genocide.⁶⁴ In the Rwandan case study, the time periods under consideration are even shorter. Again, taking a relatively early estimate of the emergence of a genocidal ideology of late 1991 would still leave a period of only two and a half years until the onset of genocide—and there are competent arguments to suggest that date might be closer to late 1992.⁶⁵ Potentially, the time period between the emergence of a genocidal ideology and the onset of genocide therefore could be as short as eighteen months. The Holocaust suggests a slightly longer time period. While Hitler espoused his anti-Semitic ideology for some while prior to taking power, it is not until 1933 or even 1934 that the Nazi Party can be regarded as the dominant power in Germany. By mid-1941, the *Einsatzgruppen* mobile killing squads had commenced the "Final Solution." Together, these cases suggest that once this stage is reached, the society is at extreme risk of genocide, and the situation is inherently unstable.

Finally, beyond offering an improved understanding of how risk factors for genocide develop over time, the temporal model also provides a new perspective on

at-risk but non-genocidal societies. The model highlights the important role of constraints in impeding outbreaks of genocide, in a way that previous models have not. Indeed, the absence of constraints is as important as the presence of precipitants in determining the onset of genocide. Once the predisposing factors are in place, it is an interplay of precipitants and restraints that governs the outbreak of violence, both when that violence is somewhat limited, in stage four of the model, and when the nation is on the brink of genocide. Moreover, the type of constraints that are operable on a regime at stage five, as government leaders consider a process of retreat or escalation, are critical determinants of that choice. Evidence from the Armenian and Rwandan case studies suggests that regimes that do not realistically wield sufficient power and resources to conduct genocide at a particular time will not seriously contemplate doing so. Thus Sultan Hamid II, for example, constrained by the threat of European intervention in the Ottoman Empire, did not escalate the violence against the Armenians to a genocidal level. In seeking to understand the timing of genocide, the crucial role of constraints as contributors to the outcome must not be overlooked.

The quest to understand the timing of genocide highlights that it is a complex variable, with many contributing factors and case-specific determinants. One of the key challenges facing scholars in this field is to avoid the simplified conclusions hindsight renders all too tempting: that events were predictable, inevitable, and inexorable. Explanations, interpretations, and assumptions can gradually transform the often unpredictable reality into a seemingly foreordained series of events that belies the palpable uncertainty as they transpired.⁶⁶ At the same time, however, modeling that can offer some genuinely predictive capacity is a crucial component of efforts to prevent future outbreaks of genocide. There remains much further work to be done to explore the temporal progression of risk of genocide. The present model offers substantial insight, yet it is constrained by its reliance on two case studies. Further analysis is required. Nevertheless, the findings presented here contribute to a deeper appreciation of how—and when—particular factors are likely to converge to result in an outbreak of genocide.

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“Ethnic Cleansing” and Genocidal Intent: A Failure of Judicial Interpretation?

Douglas Singleterry
Dughi & Hewit, Cranford, NJ

This article analyzes the similarities and distinctions between “ethnic cleansing” and genocide in the context of both Bosnia’s and Croatia’s genocide claims against Serbia brought before the International Court of Justice (ICJ). It examines the institutional role of the ICJ and the criticisms on how the Court handled Bosnia and Herzegovina v. Serbia and Montenegro. The legal definition and elements of genocide as contained in the UN Convention on the Prevention and Punishment of the Crime of Genocide (UNCG) are discussed, with a particular emphasis on the required intent to “destroy” a protected group. The article reviews case law from other international tribunals and argues that evidence of “ethnic cleansing” may demonstrate the intent to “destroy” a protected group and support a finding of genocide.

Key words: Bosnian genocide, ethnic cleansing, International Court of Justice, Genocide Convention, Serbia, Croatia

On 18 November 2008, the International Court of Justice (ICJ) ruled that it had jurisdiction to examine Croatia’s allegation that Serbia committed genocide during the 1991–1995 Croatian War.¹ The country was seeking compensation for what it described as “a form of genocide which resulted in large numbers of Croatian citizens being displaced, killed, tortured, or illegally detained as well as extensive property destruction.”² This development carries important implications both for the adjudication of genocide and the role of the ICJ. Notably, it marks only the second time in the ICJ’s sixty-five-year history that the Court has agreed to review a claim arising from the UN Convention on the Prevention and Punishment of the Crime of Genocide (UNCG).³

Just a year and half earlier, the ICJ had decided similar claims in *Bosnia and Herzegovina v. Serbia and Montenegro*. (The Federal Republic of Yugoslavia became known as Serbia and Montenegro after 2001 and as Serbia following Montenegro’s succession in 2006.) On 26 February 2007, the ICJ found that Serbia did not commit genocide during the Bosnian War from 1992 to 1995. However, the Court did find that Serbia violated its obligations under the UNCG by failing to *prevent* genocide in the Bosnian community of Srebrenica in 1995. The Court further ruled that Serbia was liable for not fully cooperating with the International Criminal Tribunal for the former Yugoslavia (ICTY), including the failure to bring Ratko Mladic (Chief of Staff of the Army of the Republika Srpska) to the tribunal for trial. Furthermore, the Court held that Serbia should take steps to punish those responsible for the genocide but that it did not have to pay reparations.⁴ Consequently, this heralded the first time a nation-state was in any way deemed responsible for violating the UNCG.

This landmark ruling established that a nation-state, as opposed to individuals, could be held accountable for genocide under the Convention. The opinion also innovatively confirmed that nation-states must deploy “all means reasonably available to them, so as to prevent genocide so far as possible ...”⁵ Despite the import of this holding, the decision is limited by the finding that genocide only occurred in Srebrenica and that Serbia was not an active participant. Moreover, the Court has been roundly criticized for its reliance on the corresponding work of the ICTY, the standard of proof employed, and the methodology used to examine evidence.⁶ These factors could influence how similar claims, such as Croatia’s, are handled. They also expose the Court’s institutional limitations, prompting some to question whether the ICJ is even an appropriate forum to contest genocide claims.⁷

These deficiencies most likely contributed to the Court’s limited conclusions, despite widespread evidence of “ethnic cleansing” coupled with murder and other abuses. Further, the opinion raises questions over how evidence of “ethnic cleansing” should fit into the broader legal framework when evaluating claims of genocide. As we will see, genocide and “ethnic cleansing” are distinct concepts that share similar features. Specifically, how do the motivations behind “ethnic cleansing” elucidate contentions over the genocidal intent to “destroy” a particular group? As the Court assays Croatia’s allegations, it is worth reviewing the institutional role of the ICJ, the characteristics of “ethnic cleansing” and genocide, and the issues presented by both Bosnia and Croatia.

The World Court

Situated at the Peace Palace in The Hague, the ICJ, also commonly referred to as the World Court, is the principal judicial organ of the United Nations.⁸ The Court seats fifteen judges, who are nominated by nations and approved by the Security Council and General Assembly for nine-year terms and who are distributed by region.⁹ Like its predecessor, the Permanent Court of International Justice, the ICJ has a dual mandate: to decide contentious cases and render advisory opinions. Contentious cases involve disputes between nations and the Court’s judgement is considered binding. Only nations may be parties to contentious cases.¹⁰ Advisory opinions comprise legal questions submitted by other United Nations’ organs, including the General Assembly.¹¹ While technically non-binding, advisory opinions are regarded as authoritative. The ICJ may also issue provisional orders prior to a final decision to preserve the rights of a party.¹²

In contentious matters, the Court has jurisdiction¹³ in three instances: (1) by “special agreement” where parties to a dispute agree to submit their case to the court;¹⁴ (2) cases authorized by treaty establishing that future disputes emanating from the treaty will be adjudicated by the ICJ;¹⁵ and (3) cases between nations that have accepted the compulsory jurisdiction of the Court.¹⁶ Accordingly, jurisdiction is either consensual or compulsory based on prior agreement. Article 9 of the UNCG gives the ICJ jurisdiction over state disputes arising from the UNCG. The issue of jurisdiction over Bosnia’s claims was complicated by questions involving state succession and the status of Serbia’s membership in the UN following the dissolution of Yugoslavia. It was ultimately determined that the Court did have jurisdiction under the UNCG, which Yugoslavia ratified in 1950.¹⁷

If a nation refuses to comply with a final Court decision, the only recourse is for the prevailing party to petition the Security Council for “assistance” in obtaining compliance.¹⁸ Various studies suggest that, despite lack of a strong enforcement mechanism, compliance with ICJ rulings is relatively favorable. A 1987 study con-

cluded that compliance with final ICJ decisions was approximately 80%.¹⁹ An updated analysis found a 60% compliance rate from 1987–2004.²⁰ The apparent decline most likely reflects a stricter standard used to measure and define “compliance.”²¹

In an exhaustive study, *Compliance with Decisions of the International Court of Justice*, Constanze Schulte also concludes that overall compliance with final judgments is often realized.²² However, the author notes that compliance can be difficult to achieve when the dispute arises from a highly charged political situation.²³ Further, Schulte emphasizes the lack of compliance with provisional orders. This largely results from interim measures being “almost exclusively” requested in judicial proceedings launched unilaterally by a party when the Court’s jurisdiction is in question.²⁴ These compliance factors raise concerns specific to genocide cases, particularly in the context of ongoing armed conflict rooted in long-standing civil strife.

Prior to the 1990s, the Court had little experience with issues pertaining to human rights, let alone genocide and armed conflict. The ICJ has traditionally been regarded as a consent-based arbitrator of disputes between nation-states. During the Cold War (1947–1989), most contentious suits dealt with land, maritime, or fishing boundary disputes.²⁵ There were four that concerned self-determination in the context of decolonization,²⁶ while several other disputes did feature human rights issues such as apartheid,²⁷ political asylum,²⁸ unlawful detention of diplomats,²⁹ and prisoners of war.³⁰ Only two cases, both arising from the Contra war in Nicaragua, involved ongoing armed conflict.³¹ Likewise, most of the Court’s advisory opinions related to internal issues of the UN and other international bodies or nations.³² Four addressed the collective right of self-determination,³³ and only two others, adjudging reservations to the genocide treaty and the right of UN human rights rapporteurs to travel,³⁴ touched on human rights.

The period following the Cold War has been characterized, in part, by factually complex cases that encompassed highly charged political disputes, frequently in the context of human rights and armed conflict. Examples include the 1996 advisory opinion on the legality of nuclear weapons³⁵ and the controversial 2004 advisory opinion on the construction of Israel’s wall in the Occupied Territory.³⁶ The Court has entertained disputes involving the right to consular assistance in death penalty cases.³⁷ Additionally, Serbia sued members of NATO after the military intervention in Kosovo,³⁸ and Congo sued the Rwandese Republic for violations of human rights and international humanitarian law.³⁹ (In the NATO and Congo cases, the Court found it lacked jurisdiction.) In addition to Croatia’s current genocide claims, the ICJ has agreed to provide an advisory opinion on the status of Kosovo’s independence.⁴⁰ These chapters of the Court’s post–Cold War era began on 20 March 1993 when Bosnia and Herzegovina sued Yugoslavia for alleged genocide, which was docketed during the still early stages of the conflict.⁴¹

“A Problem from Hell”

The dissolution of Yugoslavia officially began in June 1991, when Croatia and Slovenia declared independence.⁴² Likewise, a proclamation of Bosnia and Herzegovina sovereignty in October 1991 was followed by a referendum for independence in March 1992, which was supported by the Muslim and Croatian population. The Bosnian Serbs (31% of the population) opposed succession and announced their own independent state of Republika Srpska.⁴³ War immediately broke out between the two entities and was divided along ethnic lines.⁴⁴ Efforts by the international community to broker a cease fire were futile.⁴⁵ Instances of organized massacres, rape, torture, and other serious abuses were reported.⁴⁶ A study undertaken by the UN’s Commis-

sion of Experts concluded that “ethnic cleansing” was being perpetrated, defining this term as “rendering an area ethnically homogenous by using force or intimidation to remove persons of given groups from the area.”⁴⁷

The first report of the Special Rapporteur, published under the auspices of the UN Commission on Human Rights, underscored the various methods used in “ethnic cleansing,” including

[r]eplacement by extremists of those elected representatives who refused to cooperate with ethnic cleansing, harassment, discrimination, beatings, torture, summary executions, expulsions, forced crossing of the confrontation line, confiscation of property, dismissal from work, intimidation, destruction of mosques, use of the siege and cutting off supplies of food and other essentials to civilian population centres. The report [of the Special Rapporteur] drew on the experience of the city and region of Bihac as well as Bosanska Dubica, Celinac, Sanski Most and Sarajevo.⁴⁸

The Special Rapporteur’s second report documented “ethnic cleansing” in and around Bosanski Novi, Prijedor, Doboj, Kotor Varos, Travnik, and Trnopolje.⁴⁹

The Special Rapporteur subsequently reported on

[a]ccounts and testimonies which are characteristic of the information which is increasingly becoming available from refugees regarding the systemic nature of ethnic cleansing as well as the human rights and humanitarian law violations. They show the methods by which violent change in the demographic map of Bosnia and Herzegovina has been achieved, leaving 810,000 people displaced internally and 700,000 refugees in other countries . . . not only Croats and Muslims are the victims of ethnic cleansing; Serbs who refuse to cooperate with this policy have also been victimized. There are reports of the arbitrary execution of such Serbs, for example in Teslic on 2 June 1992 when three Serbs were reportedly killed for refusing to cooperate with the Yugoslav national Peoples’ Army (JNA) and Serbian Democratic Party militia in persecuting Muslims and Croats.⁵⁰

It was further emphasized that “ethnic cleansing” was being perpetrated through the widespread use of rape:

Rape is an abuse of power and control in which the rapist seeks to humiliate, shame, degrade and terrify the victim. In all his reports, the Special Rapporteur has emphasized the variety of methods used to achieve ethnic cleansing. Rape is one of those methods, as has been stated from the outset. In this context, rape has been used not only as an attack on the individual victim, *but is used to humiliate, shame, degrade and terrify the entire ethnic group*. There are reliable reports of public rapes, for example, in front of a whole village, designed to terrorize the population and force ethnic groups to flee.⁵¹

Bosnia alleged that, pursuant to state policy, Serb forces encircled civilians to cut off supplies and starve the population. Additionally, Serb forces committed “cultural genocide” by destroying historical, religious, and cultural property.⁵² By the end of 1995, approximately 2.7 million refugees had been displaced in Bosnia and Herzegovina.⁵³ International organizations estimate that more than 100,000 people died from the conflict between 1992 and 1995, and two-thirds were Bosnian Muslims.⁵⁴

One particularly horrific incident was the massacre of Bosnian Muslims at Srebrenica in July 1995, when Serb forces overtook 370 lightly armed Dutch peacekeepers and killed almost 8,000 men and boys. The UN had declared this area a safe haven and had pledged to protect it.⁵⁵ Following a Serbian motor attack on the city market in Sarajevo in August 1995, NATO forces initiated air strikes against various Serbian military targets.⁵⁶ The NATO campaign resulted in negotiations that culmi-

nated in the Dayton Accords, signed in Paris on 14 December 1995, officially ending the war.⁵⁷

During the Court’s early proceedings, two provisional orders were issued, both in 1993, demanding that Serbia and Montenegro “immediately . . . take all measures within its power to prevent commission of the crime of genocide.”⁵⁸ These interim injunctions had little influence, as evidenced by Srebrenica. Meanwhile, concurrent with Bosnia’s petition to the ICJ, the UN passed a resolution in May 1993 that created the ICTY to prosecute claims of genocide, crimes against humanity, and war crimes committed in the former Yugoslavia.⁵⁹ The ICTY’s work is expected to conclude in 2013.⁶⁰

The two international courts had parallel, but distinct roles. The ICJ was limited to determining the state’s (Serbia’s) responsibility for alleged genocide.⁶¹ It did not have jurisdiction over related but separate allegations of war crimes and crimes against humanity; nor did the Court have jurisdiction over individuals.⁶² As noted, the ICJ only considers disputes between nation-states, and jurisdiction under the UNCG does not incorporate other humanitarian crimes. In contrast, the ICTY was charged with examining the alleged conduct of individuals, such as Serbian President Slobodan Milosevic, in committing any war crimes, crimes against humanity, and genocide.⁶³

Prior to the Bosnia case, genocide had not been substantially defined beyond the contours of the UNCG, and no international tribunal had ever previously considered such claims under the UNCG.⁶⁴ The Nuremberg Trials, while influential, commenced prior to the UNCG and dealt primarily with charges of war crimes and crimes against humanity.⁶⁵ The International Criminal Tribunal for Rwanda was subsequently created in 1994, and the Rome Statute establishing the International Criminal Court (ICC) was not effectuated until 2002, following the ratification by sixty countries.⁶⁶ Consequently, there was little precedential guidance available for the ICJ on how to proceed.

The Meaning of a Crime

Responding to the atrocities of the Holocaust, the UN General Assembly passed a resolution in 1946 defining genocide as “a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings.”⁶⁷ Two years later the UNCG was adopted and established genocide as a crime in violation of international law. Article 2 of the convention’s definition contains three primary elements: (1) prohibited acts that qualify as genocide (i.e., killing; causing serious bodily or mental harm; inflicting conditions of life calculated to physically destroy; measures imposed to prevent births; forcibly transferring children); (2) protected groups that must be targeted; and (3) the *mens rea* special intent to “destroy in whole or in part a national, ethnical, racial or religious group . . .”⁶⁸ It wasn’t until the 1990s that this document became the subject of substantial judicial interpretation defining these elements, particularly that of genocidal intent.

The word “genocide,” the crime of crimes, was first coined in the 1940s by Raphael Lemkin, a Polish attorney and advisor to the US War Ministry.⁶⁹ Following the 1939 German invasion of Poland, Lemkin fled and eventually relocated to the United States. In 1944, Lemkin’s *Axis Rule in Occupied Europe* was published, which contained a thorough account of German crimes committed in Europe. This book, coupled with Lemkin’s tireless advocacy, played a key role in the drafting and passage of the UNCG.⁷⁰

Lemkin's conception of genocide was broad, encompassing not just killings but also economic, political, intellectual, and cultural destruction. As outlined in *Axis Rule*, the Nazi genocide occurred

through a synchronized attack on different aspects of life of the captive peoples: in the political field (by destroying institutions of self-government and imposing a German pattern of administration, and through colonization by Germans); in the social field (by disrupting the social cohesion of the nation involved and killing or removing elements such as the intelligentsia . . .); in the cultural field (by promoting or destroying cultural institutions and cultural activities; by substituting vocational education for education in the liberal arts, in order to prevent humanistic thinking); in the economic field (by shifting wealth to Germans and by prohibiting the exercise of trades and occupations by people who do not promote Germanism "without reservations"); in the biological field (by a policy of depopulation and by promoting procreation by Germans in the occupied countries); and in the field of physical existence (by introducing a starvation rationing system for non-Germans and by mass killings, mainly of Jews, Poles, Slovenes and Russians); in the religious field (by interfering with the activities of the Church, which in many countries provides not just spiritual but also national leadership); in the field of morality (by attempts to create an atmosphere of moral debasement through promoting pornographic publications and motion pictures, and the excessive consumption of alcohol).⁷¹

According to the sociologist Martin Shaw, "This full explanation [of genocide] is important. It shows that genocide, for the term's inventor, was a comprehensive process in which a power 'attacked' and 'destroyed' the way of life and institutions of peoples."⁷² Notwithstanding, such a broad-based definition, including a category of "cultural genocide," was rejected in the final UNCG draft.⁷³ Shaw argues that, subsequently, the meaning of genocide has lost the broad sociological understanding articulated by Lemkins.⁷⁴ This tendency is exemplified by the "conceptual proliferation" of terms connoting only some functional aspect of genocide's original notion.⁷⁵

Perhaps the most well known "conceptual proliferation" is the phrase "ethnic cleansing." This term entered common parlance during the wars in Bosnia and Croatia. Providing an early description, Andrew Bell-Fialkoff wrote in 1993 that this usage

defies easy definition. At one end it is virtually indistinguishable from forced emigration and population exchange while at the other it merges with deportation and genocide. At the most general level, however, ethnic cleansing can be understood as the expulsion of an "undesirable" population from a given territory due to religious or ethnic discrimination, political, strategic or ideological considerations, or a combination of these.⁷⁶

In contrast, genocide has been described as "a form of one-sided *mass killing* in which a state or authority intends to destroy a group."⁷⁷ In other words, the term genocide is meant to convey "mass killing," whereas "ethnic cleansing" signifies the forced removal from a particular territory. The Rome Statute of the ICC recognizes the "deportation or forcible transfer of population" as a crime against humanity.⁷⁸

The word "genocide" carries compelling political and legal implications; perhaps contributing to a reluctance of the world community to invoke it. Critics argue that substituting the term "genocide" with "ethnic cleansing" communicates a lower level of alarm and responsibility to act.⁷⁹ The term itself is suspect:

Genocide has been the leading cause of preventable violent death in the 20th–21st century, taking even more lives than war. The term ethnic cleansing is used as a euphemism for genocide despite it having no legal status. Like *Judenrein* in Nazi Medicine, it expropriates pseudo-medical terminology to justify massacre. Use of the term dehumanizes the victims as a source of filth and disease, propagates the reversed social ethics of the perpetrators.⁸⁰

Shaw agrees: “‘Ethnic cleansing’ comes without genocide’s definite legal prohibition, but it also offers less of a theoretical challenge: it is a minimal, euphemistic term, often adopted for reasons of intellectual as well as political avoidance.”⁸¹

During the early 1990s, the term “ethnic cleansing” was frequently used interchangeably with genocide. The World Conference on Human Rights adopted a resolution in 1993 on Bosnia, which stated that “the practice of ethnic cleansing resulting from Serbian aggression against the Muslim and Croat population in the Republic of Bosnia and Herzegovina constitutes genocide in violation of the Convention . . .”⁸² The Commission of Experts appointed by the Security Council suggested that “ethnic cleansing” could violate the UNCG:

Based on the many reports describing the policy and practices conducted in the former Yugoslavia, “ethnic cleansing” has been carried out by means of murder, torture, arbitrary arrest and detention, extrajudicial executions, rape and sexual assault, confinement of civilian population in ghetto areas, forcible removal, displacement and deportation of civilian population, deliberate military attacks or threats of attacks on civilians and civilian areas, and wanton destruction of property. Those practices constitute crimes against humanity and can be assimilated to specific war crimes. Furthermore, *such acts could also fall within the meaning of the Genocide Convention.*⁸³

Similarly, a UN General Assembly resolution passed on 18 December 1992 denounced the “abhorrent policy of ‘ethnic cleansing,’ *which is a form of genocide.*”⁸⁴ When it was equating “ethnic cleansing” with genocide, the UN was clearly referring to

intensified aggressive acts by the Serbian and Montenegrin forces to acquire more territories by force, characterized by a consistent pattern of gross and systemic violations of human rights, a burgeoning refugee population resulting from mass expulsions of defenseless civilians from their homes and the existence in Serbian and Montenegrin controlled areas of concentration camps and detention centres . . .⁸⁵

This view is by no means universal. The eminent genocide scholar William Schabas opines that “ethnic cleansing” is not genocide because the intent is to remove a population, not physically destroy it.⁸⁶ He further concludes that “the drafters of the Convention quite deliberately resisted attempts to encompass the phenomenon of ethnic cleansing within the punishable acts.”⁸⁷ Interestingly, Schabas notes that Syria proposed an amendment incorporating a definition of genocide similar to the contemporary notion of “ethnic cleansing”: “Imposing measures intended to oblige members of a group to abandon their homes in order to escape the threat of subsequent ill-treatment.”⁸⁸ Yugoslavia supported the amendment, citing the Nazis’ removal of Slav populations from parts of Yugoslavia: “That action was tantamount to the deliberate destruction of a group . . . Genocide could be committed by forcing members of a group to abandon their homes . . .”⁸⁹

The Syrian amendment was defeated, incurring opposition from the United States. The US delegate argued that the Syrian concept “deviated too much from the original concept of genocide.”⁹⁰ In *Prosecutor v. Stakic*, the rejection of the Syrian proposal was cited by the ICTY Trial Chamber as evidence that “ethnic cleansing”

was deliberately excluded from the UNCG,⁹¹ although comments accompanying the Secretariat draft of the convention acknowledge that “[m]ass deportation of populations from one region to another also does not constitute genocide. It would, however, become genocide if the occupation were also attended by such circumstances as to lead to the death of the whole or part of the displaced population . . .”⁹² As Schabas pointedly cautions: “Ethnic cleansing is also a warning of genocide to come . . . Genocide is the last resort of the frustrated ethnic cleanser.”⁹³

Although he holds that genocide and “ethnic cleansing” are two different activities, the historian Norman Naimark concedes:

Further complicating the distinctions between ethnic cleansing and genocide is the fact that forced deportation seldom takes place without violence, often murderous violence. People do not leave their homes on their own . . . They resist . . . The result is that forced deportation often becomes genocidal, as people are violently ripped from their native towns and villages and killed when they try to stay. Even when forced deportation is not genocidal in its *intent*, it is often genocidal in its *effect*.⁹⁴

This raises the following questions: Can true “ethnic cleansing” really be achieved without resorting to mass violence and murder? Doesn’t “ethnic cleansing,” by its very nature, at least imply some *component* of genocide; such as the *mens rea* “intent to destroy in whole or in part a national, ethnical, racial or religious group . . .”? Is there really a meaningful distinction between intent to “destroy” versus the intent to “cleanse” a territory of a particular group? As Shaw concludes: “It is not just that ‘cleansing’ is sometimes genocidal, or that genocide is ‘extreme’ cleansing. Cleansing language invariably oozes genocidal intent, resonating with the idea of destroying, if not murdering, the groups to whom it is applied.”⁹⁵

Shaw suggests that “expulsion of populations” is a central feature of genocide.⁹⁶ He offers a definition of genocidal conduct as “action in which armed power organizations treat civilian social groups as enemies and aim to destroy their real or putative social power, by means of killing, violence and coercion against individuals whom they regard as members of the groups.”⁹⁷ Shaw’s emphasis isn’t narrowly focused on the murder of individual members but on destroying a group’s economic, political, and cultural power. “Destroying” is understood as inevitably violent, incorporating several power modalities, that is, killing, violence, and coercion.⁹⁸ Accordingly, Shaw’s illustration is reminiscent of Lemkin’s broader generic concept of genocide.

Of course, adopting too broad a definition of genocide creates the risk of trivializing the term. But “ethnic cleansing” can hardly be considered trivial, especially when accompanied by violence and murder. As Schabas admits, “[B]oth genocide and ethnic cleansing may share the same goal, which is to eliminate the persecuted group from a given area . . .”⁹⁹ Notwithstanding debate over if and when “ethnic cleansing” *is* genocide, both terms contain similar characteristics that need to be more thoroughly identified and established in the adjudication of genocide.

Adjudicating Genocide

For genocide to be proved, it must be demonstrated that the perpetrator had the “intent to destroy in whole or in part a national, ethnical, racial or religious group . . .”¹⁰⁰ The specific intent to destroy a protected group has been characterized as the distinguishing feature of genocide: “Thus, for an individual to be guilty of committing genocide, he or she must have an *aggravated* criminal intent in addition to having the criminal intent accompanying the underlying offense such as killing or causing serious bodily or mental harm to members of the protected group.”¹⁰¹ In

Prosecutor v. Akayesu, the ICTY Trial Chamber explained that “genocide is distinct from other crimes inasmuch as it embodies a special intent or *dolus specialis*. Special intent of a crime is the specific intention, required as a constitutive element of the crime, which demands that the perpetrator clearly seeks to produce the act charged.”¹⁰² The Trial Chamber further stressed in *Prosecutor v. Blagojevic & Jokic* that it is “not sufficient that the perpetrator simply knew that the underlying crime would inevitably or likely result in destruction of the group. *The destruction, in whole or in part, must be the aim of the underlying crime(s).*”¹⁰³

Dermot Groome, an ICTY senior prosecutor, contends that this *mens rea* requirement makes proving genocidal intent particularly difficult: “In many cases the *actus reus* of genocide may be virtually indistinguishable from the *actus reus* of other serious international crimes, such as some forms of persecution as a crime against humanity . . . Of special note in this context is the determination whether a discriminatory crime was perpetrated against victims because of their membership in a group or was also intended as part of an effort to destroy the group itself.”¹⁰⁴

This dilemma is further compounded by the collective nature of the crime, involving numerous individuals each with potentially differing motivations and intentions. “It may be that the direct perpetrators harbor genocidal intent, whereas state officials do not. Conversely, the state’s senior leaders may be the architects of a carefully calculated genocidal plan that employs a multitude of others as instrumentalities who themselves do not possess genocidal intent,” adds Groome.¹⁰⁵ Accordingly, to determine state culpability, the ICJ had to examine the conduct and motives of individual Serbian actors, and distinguish between genocide and other grievous violations, such as crimes against humanity. In other words, the ICJ had to make similar determinations that were congruently being made by the ICTY, but without the ICTY’s rules of procedure and evidence purposefully designed for such inquiry.

Similar to domestic criminal courts, the ICTY is uniquely structured to probe alleged criminal actions and intents of individuals. For example, one prominent feature of the ICTY Statute is the creation of an independent prosecutor’s office to fully investigate claims made by all parties.¹⁰⁶ In contrast, the ICJ has no independent fact finding entity and has to depend primarily upon party submissions. While the ICJ does have some authority to independently request production of evidence,¹⁰⁷ without the enforcement mechanisms of domestic courts, these provisions are rarely used. This deficiency proved especially daunting when evaluating individual acts of alleged genocide. For instance, the ICJ relied on witness testimony conducted during ICTY proceedings without the benefit of being able to pose questions directly at the deponent.¹⁰⁸ In short, although designed as a civil forum, the ICJ had to assess the alleged criminal conduct of multiple individuals and entities.

Consequently, this necessitated a dependence on the findings of individual criminal responsibility issued from the ICTY. The ICJ acknowledged this “unusual feature” whereby “[M]any of the allegations before it have already been the subject of the processes and decisions of the ICTY.”¹⁰⁹ The Court accepted the “fact-finding process of the ICTY” as “‘evidence obtained by examination of persons directly involved,’ tested by cross-examination, the credibility of which has not been challenged subsequently.”¹¹⁰ Indeed, Groome warns that having two international courts, with one resolving allegations of State culpability and the other “designed for adjudication of individual crimes,” creates separate judicial forums evaluating similar claims with potentially inconsistent results.¹¹¹ This could prove problematic within an international legal system that is horizontally structured. The upshot is

that the ICJ adopted nearly all factual and legal conclusions of the ICTY, even while applying different legal standards on particular findings.

The second issue is the standard of proof espoused by the Court. Rejecting Bosnia's request that acts of alleged genocide should be proven on the "balance of the probabilities," the Court pronounced that "claims against a State involving charges of exceptional gravity must be proved by evidence that is *fully conclusive*."¹¹² The ICJ has been critiqued for applying a standard of proof akin to those used in criminal proceedings to a suit that was civil in nature. The Court does not have criminal jurisdiction. Indeed, the ICJ's own opinion concedes that "international law does not recognize the criminal responsibility of the State, and the Genocide Convention does not provide a vehicle for the imposition of such criminal responsibility."¹¹³

Although, to assess claims of genocide, the Court did have to make findings that were criminal in nature. Further, the provisions of the UNCG are predominantly criminal, as opposed to the Geneva Conventions that are "mixed." However, while adopting a standard of proof equivalent to that of a criminal trial under these circumstances is arguably defensible, it raises a new set of difficulties. As Groome posits, "Given a standard of proof equivalent to that of a criminal trial for an inquiry that obliges the ICJ to examine the states of minds of individuals not before it, one wonders how an applicant could ever meet that burden."¹¹⁴ Stated differently, the ICJ had to ascertain the criminal intent of individuals over whom the Court had no jurisdiction while adhering to a high standard of proof.

Even more disconcerting, however, was that the ICJ did not evaluate all available evidence at its disposal. One oft-cited example was the Court's refusal to consider "redacted" sections of documents from the Supreme Defense Council of Serbia. During the ICTY trial of Slobodan Milosevic, hundreds of documents were produced marked "Defense. State Secret. Strictly Confidential."¹¹⁵ Described as "incriminating," these documents contained meeting minutes of Yugoslavia's political and military leaders promising "the best inside view of Serbia's role in the Bosnian war . . ."¹¹⁶ However, citing national security concerns, Serbia obtained permission to keep parts of these documents confidential.¹¹⁷

The New York Times reported that attorneys who reviewed these documents attested that they demonstrated how Belgrade financed the war.¹¹⁸ They reportedly contained evidence that the Bosnian Serb Army (VRS), though officially separate after 1992, remained a *de facto* extension of the Yugoslav Army, and that "the archives showed in verbatim records and summaries of meetings that Serbian forces, including secret police, played a role in the takeover of Srebrenica and in preparation of the massacre there."¹¹⁹ Notwithstanding, the ICJ declined to investigate these documents, reasoning that Bosnia already had "extensive documentation and other evidence available to it . . ."¹²⁰ This failure to examine what might have been the most available dispositive evidence of state culpability raises doubts about the Court's conclusion that Serbia did not commit genocide.

Concerns also stem from the criteria used in evaluating the admissible evidence of state complicity. Bosnia alleges that Serbia supplied the VRS with aid and assistance at a time when Serbian authorities were "clearly aware that genocide was about to take place or was underway."¹²¹ In order to hold Serbia liable for the actions of certain *non-de jure* organs, including the VRS and several paramilitary entities, some form of state control had to be demonstrated. The ICJ used the "effective control test" instead of the "overall control test" proposed by Bosnia and exercised by the ICTY. "Effective control" requires either that there be "complete dependence" on the controlling authority or that specific "instructions" be given for each operation

in which violations occur, as opposed to “generally in respect of the overall actions taken by the persons or groups of persons having committed the violations.”¹²² The ICJ’s justification for this higher standard, enunciated in *Nicaragua v. United States of America*,¹²³ was that “this is the state of customary international law” as reflected in article 8 of the International Law Commission Articles on State Responsibility.¹²⁴

However, as Brunell University law professor Ademola Abass points out, customary international law does not “cast the particular form of that control in stone . . . The jurisprudence of other international tribunals treats the required control with some degree of flexibility.”¹²⁵ For example, the ICTY has found that “the ‘overall control’ test could thus be fulfilled even if the armed forces acting on behalf of the ‘controlling state’ had autonomous choices and tactics although participating in a common strategy along with the controlling State.”¹²⁶

In *Tadic*, the ICTY Appeals Chamber endorsed the “overall control” test by explaining,

The requirement of international law for the attribution to States of acts performed by private individuals is that the State exercise control over the individual. The *degree* of control may, however, vary according to the factual circumstances of each case. The Appeals Chamber fails to see why in each and every circumstance international law should require a high threshold for the test of control.¹²⁷

While allowing that “overall control” may be the appropriate standard when examining international humanitarian law, the Court’s application of the more demanding “effective control” test used to apply a state’s responsibility colors the perception of how conclusions were drawn regarding Serbia’s role.

For instance, evidence documented from previous tribunal cases illustrate that in late 1993, over 1,800 officers and noncommissioned Yugoslav Army men were also serving in the Bosnian Serb Army while being deployed, paid, or promoted by Belgrade. Top military brass were given dual identities and Belgrade created the 30th Personnel Center described as “a secret office for dealing with officers listed in both armies.”¹²⁸ The Court even acknowledges that Serbia was “making its considerable military and financial support available to the Republika Srpska, and had it withdrawn that support, this would have greatly constrained the options that were available . . .”¹²⁹ Notwithstanding, the ICJ was only willing to find state liability if Belgrade gave direct “instructions” for specific actions or whenever Bosnian Serbs were “completely dependent” upon Belgrade.¹³⁰

As Ruth Wedgwood, an international law professor at Johns Hopkins University, exclaims, “This will be a surprise to scholars of ordinary tort law, who are accustomed to supposing that responsibility can be shared.”¹³¹ Wedgwood also notes that this requirement conflicts with United Nations Security Council Resolution 1373, passed in response to the 11 September 2001 terrorist attacks, confirming that no state can provide intelligence, logistics, or financing to terrorist activities.¹³² In a dissenting opinion, ICJ vice-president Al-Khasawneh concludes: “The inherent danger in such an approach is that it gives States the opportunity to carry out criminal policies through non-state actors or surrogates without incurring direct responsibility therefore.”¹³³

Further, the Court’s finding that Serbia did not “control” the relevant forces yet failed to *prevent* the Srebrenica genocide seems incongruent (implying that Serbia could have prevented the genocide despite not having sufficient control over pertinent actors). With a crime as vast and complex as genocide, it is unlikely that any one participant is going to have “effective control” over certain events. The crime of

genocide is compounded, requiring coordination and support from multiple sources. Accordingly, article 25(3)(a) of the ICC Statute recognizes the perpetration of a crime through four possible methods of control: direct perpetration; perpetration through another person or indirect perpetration; co-perpetration based on joint control; or indirect co-perpetration.¹³⁴

Indirect control is “applicable when some or all the co-perpetrators carry out their respective essential contributions to the common plan through another person.”¹³⁵ During the confirmation of charges in the *Lubanga* and *Katanga and Ngudjolo* cases, the ICC described complicity based on joint control:

The concept of co-perpetration based on joint control over the crime is rooted in the principle of division of essential tasks for the purpose of committing a crime between two or more persons acting in a concerted manner. Hence, *although none of the participants has overall control over the offence because they all depend on one another for its commission*, they all share control because each of them could frustrate the commission of the crime by not carrying out his or her task.¹³⁶

The more flexible “control” standards enumerated by both the ICC and the ICTY are in contrast to the ICJ’s rigid requirement of direct “instructions” or complete dependence on the controlling authority. Accordingly, the ICJ needs to recognize that “control” can be exercised within varying levels, degrees, and methods.

“Ethnic Cleansing” and Systemic Patterns of Abuse

Another shortcoming was the ICJ’s approach in appraising evidence of a “genocidal pattern.” Bosnia sought to demonstrate a consistent pattern of genocidal conduct adduced over a period of years. To do so, the intentions and actions of Serbian political and military leaders had to be assessed. The Court considered a document derived under the auspices of the Bosnian Serb Assembly entitled *Decision on the Strategic Goals of the Serbian People in Bosnia and Herzegovina*. Bosnia contended that this document indicated that both Radovan Karadzic (president of Republika Srpska from 1992 to 1996) and Milosevic supported the goal of separating Serbia from the “other two ethnic communities.”¹³⁷

The ICJ’s reason for rejecting this argument is twofold: first, the Court maintained that ethnic cleansing alone does not constitute genocide and Bosnia’s application failed to “come to terms with the fact that an essential motive of much of the Bosnian Serb leadership—to create a larger Serb State, by a war of conquest if necessary—did not necessarily require the destruction of the Bosnian Muslims and other communities, but their expulsion.”¹³⁸ The ICJ cited with approval the ICTY Trial Chamber’s holding that “a clear distinction must be drawn between physical destruction and mere dissolution of a group. The expulsion of a group or part of a group does not in itself suffice for genocide.”¹³⁹ While proposing a theoretical hypothesis, this explanation fails to explain what actually did transpire. As Abass inquired: “If the simple goal of Serbia was to simply establish a State of Serbia, as the Court claimed, how then does one account for all the killings that took place?”¹⁴⁰

In a separate opinion to the second 1993 provisional order, ad hoc Judge Elihu Lauterpacht reasonably asked, “Has genocide been committed?” He noted that

... the forced migration of civilians, more commonly known as “ethnic cleansing,” is, in truth, part of a deliberate campaign by the Serbs to eliminate Muslim control of, and presence in, substantial parts of Bosnia-Herzegovina ... it is difficult to regard the Serbian acts as other than acts of genocide ... they are clearly directed against

an ethnical or religious group as such, and they are *intended to destroy* that group, if not in whole certainly in part, to the extent necessary to ensure that the group no longer occupied the parts of Bosnia-Herzegovina coveted by the Serbs.¹⁴¹

However, this view was not embraced by the majority of the Court.

Citing a report from the UN Commission of Experts, which concluded that the blockage of humanitarian aid was used to assist the takeover of Sarajevo, the ICJ found that “civilian members of the protected group were deliberately targeted by Serb forces in Sarajevo and other cities ... UNHCR food and fuel convoys had been ‘obstructed or attacked by Bosnian Serb and Bosnian Croat forces and sometimes also by governmental forces’”¹⁴² Moreover, the ICJ highlighted other instances, for example,

... with regard to Gorazde, the Special Rapporteur found that the enclave was being shelled and had been denied convoys of humanitarian aid for two months. Although food was being air-dropped, it was insufficient ... In a later report, the Special Rapporteur noted that, as of Spring 1994, the town had been subject to a military offensive by Bosnian Serb forces, during which civilian objects including the hospital had been targeted and the water supply had been cut off ... Humanitarian convoys were harassed including by detention of UNPROFOR personnel and the theft of equipment ... Similar patterns occurred in Bihac, Tuzla, Cerska, and Maglaj.¹⁴³

Despite such evidence, the ICJ concluded that the perpetrators did not act with the specific intent to destroy the protected group. The Court placed particular emphasis on the fact that “[t]he Special Rapporteur of the United Nations Commission on Human Rights was of the view that the siege, including the shelling of population centres and the cutting off of supplies of food and other essential goods, is another tactic used to force Muslims and ethnic Croatians to *flee*.”¹⁴⁴ In other words, according to the ICJ, forcing a particular group to flee did not reflect the intent to destroy. The Court’s reasoning was recently cited by the ICC when the Pre-Trial Chamber found insufficient evidence to prosecute al-Bashir, the president of Sudan, for genocide in connection with Darfur.¹⁴⁵

Second, the ICJ noted that the ICTY made a similar ruling on the same claim, stating that Bosnia’s contention “is not consistent with the findings of the ICTY relating to genocide or with the actions of the Prosecutor, including decisions not to charge genocide offences in possibly relevant indictments, and to enter into plea agreements ...”¹⁴⁶ The problem with this rationale, however, is that the ICTY was not just settling claims of genocide, it was also resolving allegations of crimes against humanity and war crimes. A prosecutor may exercise discretion, based on various factors, to plea bargain and/or not charge a particular crime. In other words, unlike the ICJ, the ICTY had the option of convicting not just for genocide but also for overlapping violations. Prosecutors have a predilection for charges that will stick, and it is likely easier to obtain a conviction for war crimes or crimes against humanity than for genocide.

Notwithstanding, during the Rule 61 hearing¹⁴⁷ in *Karadzic and Mladic*, the ICTY prosecutor offered a description of “ethnic cleansing” that sounds eerily similar to genocide:

Well, ethnic cleansing is a practice which means that you act in such a way that in a given territory the members of a given ethnic group are eliminated. It means a practice that aims at such and such a territory be, as they meant, ethnically pure. So, in other words, the members of the other group are eliminated by different ways, by different methods. You have massacres. Everybody is not massacred, but I mean in

terms of numbers, you have massacres in order to scare these populations. Sometimes these massacres are selective, but they aim at eliminating the elite of a given population, but they are massacres. I mean, that is the point. So whenever you have massacres, naturally the other people are driven away. They are afraid. They try to run away and you find yourself with a high number of a given people that have been massacred, persecuted and, of course, in the end these people simply want to leave. They are also submitted to such pressures that they go away. They are driven away either on their own initiative or they are deported. But the basic point is for them to be out of that territory and some of them are sometimes locked up in camps. Some women are raped and, furthermore, often times what you have is destruction of the monuments which marked the presence of a given population in a given territory, for instance, religious places, Catholic churches or mosques are destroyed. So basically, this is how ethnic cleansing is practiced in the course of this war.¹⁴⁸

The prosecutor's summary of "ethnic cleansing" brings to mind Lemkin's broad-based concept of synchronized attacks "on different aspects of the life of the captive peoples ..."¹⁴⁹

While the prosecutor was hesitant to pursue charges of genocide, the ICTY recognized that "cleansing" could amount to genocide in certain cases:

The policy of "ethnic cleansing" ... presents, in its ultimate manifestation, genocidal characteristics. Furthermore, in this case, the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, which is specific to genocide, may be *inferred from the gravity of the "ethnic cleansing"* practiced in Srebrenica and its surrounding areas, i.e., principally the mass killings of Muslims which occurred after the fall of Srebrenica in July 1995, which were committed in circumstances manifesting an almost unparalleled cruelty.¹⁵⁰

The *Brdanin* Trial Chamber also acknowledged that "ethnic cleansing may under certain circumstances ultimately reach the level of genocide ..."¹⁵¹ However, the ICJ refused to find that "ethnic cleansing" reached the level of genocide in instances other than in Srebrenica.

Similarly, criticism has been directed at the Court's apparent neglect to properly weigh genocidal proofs in a cumulative manner. Judge Al-Khasawneh had observed that "genocide is definitionally a complex crime in the sense that unlike homicide it takes time to achieve, requires repetitiveness, and is committed by many persons and organs acting in concert. As such, it cannot be appreciated in a disconnected manner. Unfortunately, there are instances in the (Court's) judgment where this happens ..."¹⁵² In determining genocidal intent, the ICJ should have more collectively considered its own findings of ethnic cleansing coupled with "evidence of killings of members of the protected group in principal areas of Bosnia [Sarajevo, Drina River Valley, Prijedor, Banja Luka and Brcko] and in various detention camps."¹⁵³ In addition to Srebrenica, the Court acknowledged "*fully conclusive evidence* that members of the protected group were systematically victims of massive mistreatment, beatings, rape and torture causing serious bodily and mental harm, during the conflict and, in particular, in the detention camps."¹⁵⁴ This includes the 1992 killing of civilians in Brcko and the torture and execution of Muslims in Foca.¹⁵⁵

The Court appears to treat these as separate, isolated episodes rather than as systemic patterns of abuse. While granting that these acts may constitute war crimes and crimes against humanity, the ICJ failed to identify any specific intent to "destroy, in whole or in part, the (protected) group as such."¹⁵⁶ This narrow reading of the evidence conflicts with ICTY jurisprudence that suggests that proof of genocidal intent "may, in the absence of direct explicit evidence, be inferred from a

number of facts and circumstances, such as the general context, the scale of atrocities committed, the systematically targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts.”¹⁵⁷ Accordingly, a more holistic analysis might conclude that acts of genocide occurred in areas outside Srebrenica.

In the end, despite finding “overwhelming evidence that massive killings in specific areas and detention camps throughout the territory of Bosnia and Herzegovina were perpetrated during the conflict”¹⁵⁸ and that “evidence presented shows that the victims were in large majority members of the protected group, which suggests that they may have been systematically targeted by the killings,”¹⁵⁹ the only cognizable claim of genocide recognized by the Court was the Srebrenica slaughter. Further, this verdict was limited by the finding that Serbia only failed to prevent genocide, as opposed to it being an accomplice. Furthermore, the ICJ opinion failed to adequately expound upon why the Srebrenica carnage amounted to genocide while other documented instances of inhumanity and mass murder did not. Unfortunately, these defects overshadow an otherwise substantial holding that a nation-state can be held liable under the UNCG and that a state has a duty to prevent genocide.

“Ethnic Cleansing” Revisited

Croatia’s allegations against Serbia were remarkably similar to those of Bosnia. Docketed in 1999, Croatia is suing Serbia for “ethnic cleansing” described as “a form of genocide ...”¹⁶⁰ Croatia alleged that Belgrade supported a Croatian Serb insurgency following Croatia’s declaration of independence from Yugoslavia in 1991, resulting in killings and displacement of Croats from the Krajina (an area covering roughly a third of Croatia).¹⁶¹ Specifically, Croatia charges stated:

By directly controlling the activity of its armed forces, intelligence agents and various paramilitary detachments, on territory of the Republic of Croatia, in the Knin region, eastern and western Slavonia, and Dalmatia, the Federal Republic of Yugoslavia is liable for the “ethnic cleansing” of Croatian citizens from these areas—a form of genocide which resulted in large numbers of Croatian citizens being displaced, killed, tortured or illegally detained, as well as extensive property destruction—and is required to provide reparation for the resulting damages. In addition, by directing, encouraging, and urging Croatian citizens of Serb ethnicity in the Knin region to evacuate the area in 1995, as the Republic of Croatia reasserted its legitimate governmental authority (and in the face of clear reassurance emanating from the highest level of the Croatian government, including the President of the Republic of Croatia, Dr. Franjo Tudjman, that the local Serbs had nothing to fear and should stay), the Federal Republic of Yugoslavia engaged in conduct amounting to a second round of “ethnic cleansing” in violation of the Genocide Convention.¹⁶²

As a result of Yugoslavia aggression, Croatia alleged,

In Croatia, there were 20,000 dead and 55,000 wounded ... In 1992, the humanitarian crisis in Croatia was at its peak, with approximately 800,000 displaced persons and refugees ... Several thousand Croat civilians were taken prisoner and forcibly transferred to Serbia and other areas ... Of the 7,000 people later released, 60 percent had spent time in prisons or detention facilities ... 1,821 cultural monuments were destroyed or damaged ... 171,000 housing units ... were destroyed ... about 25 percent of Croatia’s total economic capacity ... was damaged or destroyed during 1991–1992 ...¹⁶³

Serbia initially threatened to countersue, primarily in connection with the Croatian offensive Operation Storm, launched in August 1995 to recapture the Krajina. Ac-

ording to Serbia, this resulted in over 200,000 refugees and the murder of civilians left behind.¹⁶⁴ The Helsinki Committee for Human Rights in Serbia estimated that there were 680 civilian victims. Veritas, a Serbian documentation center, put the figure at nearly 1,200.¹⁶⁵ According to the ICTY, 350 elderly or ill people were killed by Croat forces.¹⁶⁶ In February 2004, former Croatian generals Ivan Cermak and Mladen Markac were indicted for crimes against humanity and violations of the laws or customs of war committed in connection with Operation Storm.¹⁶⁷ They, along with former Croatian general Ante Gotovina, are currently being tried at the ICTY.¹⁶⁸ At the time of this writing, Serbia has been given until 22 March 2010 to file a response to Croatia's allegations.¹⁶⁹

A particularly revealing set of developments were the events that lead to the ICTY plea agreement reached with Milan Babic, former president of the self-proclaimed Serb Republic of Krajina (RSK) from 1991 to 1992. The RSK was founded in response to the Croatian declaration of independence. Babic believed that the Serbs in Krajina would become a minority and advocated for the creation of an independent Serbian state.¹⁷⁰ According to Babic's indictment, between August 1991 through at least June 1992:

Serb forces, comprised of JNA [Yugoslav People's Army], Local Serb TO units from Serbia and Montenegro, Local and Serbian MUP police units, including "Martic's Police," and paramilitary units, attacked and took control of towns, villages and settlements in the SAO [Serbian Autonomous Oblast] Krajina/RSK. After the takeover, Serb forces, in co-operation with the local Serb authorities, *established a regime of persecutions designed to drive the Croat and other non-Serb civilian populations from these territories* ... According to the 1991 census the total population of the SAO Krajina/RSK was 286,716. Croats amounted to 78,611 (27, 42%) of the total population. Only 1,932 (0, 67%) Muslims were registered at that time. Virtually the whole Croat, Muslim and non-Serb population of the SOA Krajina/RSK was forcibly removed, deported or killed.¹⁷¹

Babic and Slobodan Milosevic were originally allies, but had a falling out over a disagreement of the 1992 cease-fire between Croatia and the insurgency. As a result, Babic was "unceremoniously removed from office at the beginning of 1992 by Serbia's President."¹⁷² In September 2001, Babic was named as a co-perpetrator in the initial ICTY indictment issued against Milosevic.¹⁷³ The following year, Babic voluntarily testified during Milosevic's trial that the former Serbian president exercised political, financial, and military influence over the Serb minority in Croatia.¹⁷⁴ Whether out of vengeance or remorse, Babic was willing to provide self-incriminating testimony that was "of major significance to the Prosecution's case and substantially reduced its need for further in-depth investigations and presentation of evidence."¹⁷⁵

According to Babic, the Krajina area was underdeveloped and the RSK could not have been sustained without Serbia's financial support.¹⁷⁶ This testimony was corroborated by former US ambassador to Croatia, Peter Galbraith, who asserted that Krajina was "a completely impoverished region that could not exist even at the very low level that it existed without financial support from Serbia."¹⁷⁷ Babic further explained,

most of the commanding cadre, commanding staff [in the Croatian Serb Army] were active officers of the JNA who were on the JNA payroll. They were paid by the General Staff of the Yugoslav Army and appointed to those positions by the personnel department of the General Staff of the Yugoslav People's Army. The commanders of the army were appointed by ... Slobodan Milosevic-and it was financed, logistics support was given by Yugoslavia.¹⁷⁸

Babic’s indictment, issued in November 2003, contained charges of murder, forced deportation, prolonged and routine imprisonment, and destruction of localities, homes, and cultural institutions.¹⁷⁹ Pursuant to an agreed upon plea, Babic confessed to acting as a co-perpetrator. The prosecutor recommended a sentence of no more than eleven years, taking into consideration Babic’s cooperation in testifying against Milosevic.¹⁸⁰ Babic was subsequently sentenced to thirteen years, which was confirmed by the Appeals Chamber.¹⁸¹ On 5 March 2006 (six days before Milosevic’s death), Babic reportedly committed suicide in a prison cell.

Milosevic was ultimately charged on three separate ICTY indictments related to Kosovo,¹⁸² Bosnia and Herzegovina,¹⁸³ and Croatia.¹⁸⁴ The Croatia indictment contained thirty-two counts, including criminal responsibility for crimes against humanity, grave breaches of the Geneva Conventions, and violations of the laws and customs of war. (Unlike the Bosnian indictment,¹⁸⁵ the Croatian indictment did not contain specific charges of genocide.)¹⁸⁶ These acts consisted of a “joint criminal enterprise” calculated to bring about the “forcible removal of the Croat and other non-Serb population . . .”¹⁸⁷ The reference to a “joint criminal enterprise” indicates that the crimes alleged weren’t perpetrated by Milosevic alone but in concert with other entities and individuals.

Methods included murder, prolonged imprisonment, creating inhumane living conditions for Croat and other non-Serb civilians in detention centers, torture, the destruction of homes and cultural institutions, and the deportation of “at least 170,000 Croat and other non-Serb civilians . . .”¹⁸⁸ Although Milosevic died prior to the trial reaching a conclusion, the evidence against the defendant, buttressed by Babic’s testimony, will likely be offered to support Croatia’s claims against Serbia. Certainly, as president of Serbia during the period in question, Milosevic’s actions and motives were relevant to Croatia’s allegations.

Notably, pursuant to a Rule 98 hearing, the ICTY found there was sufficient evidence substantiating most counts challenged in the Croatian indictment so that the Trial Chamber could convict Milosevic.¹⁸⁹ These included charges of persecution, extermination, murder, and killing.¹⁹⁰ Similar to a summary judgement motion in domestic civil proceedings, a Rule 98*bis* requires the Court to determine if there is adequate evidence upon which the Trial Chamber *could* enter a conviction. While the ICJ has held that it doesn’t give weight to Rule 98 decisions since they don’t constitute a final judgement,¹⁹¹ the Court should be willing to independently examine the evidence relied upon by the ICTY.

Consequently, the ICTY also found sufficient evidence to convict Milosevic of genocide in relation to Bosnia’s claims.¹⁹² According to the Trial Chamber, the proofs indicated that the “[a]ccused was the dominant political figure in Serbia and he had profound influence over the Bosnia Serb political and military authorities.”¹⁹³ This includes evidence that “there was a basic level of support from Serbia to the Bosnian Serbs and in particular to the Bosnian Serb Military. The Bosnian Serb Military emphasized that the chain of command really ran to Belgrade.”¹⁹⁴ The Court cited testimony from key fact witnesses such as Babic and Galbraith.¹⁹⁵ The later asserted that Milosevic was “the architect of a policy of creating Greater Serbia and that little happened without his knowledge and involvement.”¹⁹⁶ Despite such potentially conclusive documentation, the ICJ neglected to independently evaluate evidence gleaned from the Milosevic trial.¹⁹⁷ As Groome concludes:

... the ICJ should have conducted its own examination of this evidence. Such a review was all the more compulsory in view of the Milosevic trial chamber's finding that the evidence could establish not only that Milosevic, by himself, could be convicted of the crime of genocide, but that he was a member of a joint criminal enterprise comprised of other senior members of the FRY government similarly engaged in genocidal crimes ...¹⁹⁸

On the surface, it's difficult to fathom the ICJ's arriving at a substantially different conclusion (from the holding reached in *Bosnia*) with the current Croatian litigation considering the similarities and overlaps between the Croatian and Bosnian claims (i.e., that Serbia committed genocide). At the risk of appearing inconsistent, the Court would need to examine previously overlooked evidence in a more connected fashion and conclude that it rises to the level of genocide. But Milosevic's actions as head of state and his relationship with Babic and other Serbian leaders and entities could be dispositive issues the ICJ will need to resolve in assessing Croatia's allegations. If and how the Court reviews evidence from the Milosevic trial may well influence the outcome.

The Intent to "Destroy"

Regardless of how the ICJ ultimately rules, the Court should use this opportunity to illuminate when and if evidence of "ethnic cleansing" can satisfy the *mens rea* intent to "destroy in whole or in part ..." a protected group. What seems paramount to the *Bosnia* holding is the insistence that the horrific acts described, both alleged and acknowledged, were not accompanied with the specific intent to destroy the protected group. The ICTY reached similar conclusions, writing that

the *dolus specialis* has not been proved in relation to "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part." The Trial Chamber recalls in this context that deporting a group or part of a group is insufficient if it is not accompanied by methods seeking the physical destruction of the group.¹⁹⁹

But must the "intent" element be required to correlate directly to the prohibited acts contained in article 2 of the UNCG, or should intent be interpreted more broadly to include motivation to destroy the protected group as a social unit?

As noted, the ICTY also did not find genocidal intent despite evidence of "ethnic cleansing."²⁰⁰ However, the ICTY Trial Chamber in *Prosecutor v. Krstic* instructively cited the Federal Constitutional Court of Germany, which stated that

the statutory definition of genocide defends a supra-individual object of legal protection, i.e., the *social* existence of the group ... the intent to destroy the group ... extends beyond physical and biological extermination ... The text of the law does not therefore compel the interpretation that the culprit's intent must be to exterminate physically at least a substantial number of the members of the group ...²⁰¹

While the Trial Chamber declined to fully endorse this approach, the Court acknowledged that "where there is physical or biological destruction there are often simultaneous attacks on the cultural and religious property and symbols of the targeted group as well, *attacks which may legitimately be considered as evidence of an intent to physically destroy the group.*"²⁰²

The Appeals Chamber in *Krstic* allowed that

[t]he fact that the forcible transfer does not constitute in and of itself a genocidal act does not preclude a Trial Chamber from relying on it as evidence of the intentions of members of the VRS Main Staff. The *genocidal intent* may be inferred, among other facts, from evidence of “other culpable acts systematically directed against the same group.”²⁰³

These dicta hint at a coherent method in evaluating genocidal intent: the perpetrator does not have to *intend* to commit genocide per se. Intention is satisfied when the goal is to “destroy” a protected group, broadly understood. While the complete definition of “genocide” may require physical or biological destruction (i.e., killing), methods aimed at “destroying” a protected group should not be so narrowly construed. There are multiple ways that a protected group can be destroyed as a social unit (i.e., “ethnic cleansing”). If, in the process, a prohibited act under the UNCG is carried out, then evidence of genocide is demonstrated.

A more expansive approach at analyzing intent was embraced by the European Court of Human Rights in *Jorgic v. Germany*.²⁰⁴ The Higher Regional Court at Dusseldorf convicted Nicolai Jorgic, a Bosnian Serb, of eleven counts of genocide, which included the murder of thirty people. The Court held that the “intent to destroy” did not “necessitate an intent to destroy that group in a physical or biological sense. It was sufficient that the perpetrator aimed at destroying the group in question as a social unit.”²⁰⁵ After the conviction was upheld on appeal, Jorgic pleaded to the European Court of Human Rights that the exercise of universal jurisdiction violated article 6 of the European Convention on Human Rights.

In rejecting the defendant’s application, the European Court examined the meaning of the phrase “intent to destroy” as contained in article 220a of Germany’s Criminal Code dealing with genocide. The Court noted that the wording of article 2 of the UNCG corresponds to article 220a of the Criminal Code, which interprets “the Genocide Convention so as to comprise the protection of a group as a social unit.”²⁰⁶ Accordingly, the Court concluded that

the domestic courts’ interpretation of “intent to destroy a group” as not necessitating a physical destruction of the group, which has also been adopted by a number of scholars . . . , is therefore covered by the wording, read in its context, of the crime of genocide in the Criminal Code and does not appear unreasonable.²⁰⁷

In contrast to the European Court, the ICJ postulated that

the intent that characterizes genocide is “to destroy, in whole or in part” a particular group, and deportation or displacement of the members of a group, even if effected by force, is not necessarily equivalent to destruction of that group, nor is destruction an automatic consequence of displacement. This is not to say that acts described as “ethnic cleansing” may never constitute genocide, if they are such as to be characterized as, for example, “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part,” contrary to Article II, paragraph c, of the Convention, provided such action is carried out with the necessary specific intent (*dolus specialis*), that is to say with a view to the destruction of the group, as distinct from its removal from the region.²⁰⁸

The Court’s interpretation is problematic. First, it appears to define “destruction of the group” as limited to physical destruction. Second, when “ethnic cleansing” gives rise to murder, the resultant killing is not happenstance. The “intent to destroy” (a “substantial” portion of)²⁰⁹ a protected group is only one component of genocide.

Committing a prohibited act, such as murder, completes the criminal definition. There are many ways a protected group can be “destroyed.” Interpretation of the UNCG should not require the intent to carry out “genocide” per se, but rather the intent to “destroy” the social unit of a protected group. If, in the process, a prohibited act such as murder is contemporaneously performed, then genocide can be inferred.

As noted, the judicial inquiry raised is whether the required “intent to destroy” should be interpreted to strictly refer to the prohibited acts defined by the UNCG. As Schabas explains, “an important problem of interpretation arises as to whether the destruction that is part of the intent, in the first part of article II, must correspond to the physical or biological destruction defined in the second part of article II.”²¹⁰ Schabas points out that the International Law Commission considered this issue during the drafting of the Code of Crimes and concluded:

As clearly shown by the preparatory work for the Convention, the destruction in question is the material destruction of a group either by physical or biological means, not the destruction of the national, linguistic, religious, cultural or other identity of a particular group. The national or religious element and racial or ethnic element are to be taken into consideration in the definition of the word “destruction,” which must be taken only in its material sense, its physical or biological sense. It is true that the 1947 draft Convention prepared by the Secretary-General and the 1948 draft prepared by the *ad hoc* Committee on Genocide contained provisions on “cultural genocide” covering any deliberate act committed with the intent to destroy the language, religion or cultural of a group, such as prohibiting the use of language of a group in daily intercourse or in schools or the printing and circulation of publications in the language of the group or destroying or preventing the use of libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the group. However, the text of the Convention, as prepared by the Sixth Committee and adopted by the General Assembly, did not include the concept of ‘cultural genocide’ contained in the two drafts and simply listed acts which come within the category of “physical” or “biological” genocide.²¹¹

However, when physical or biological destruction is perpetrated in the context of “ethnic cleansing” or some type of “cultural genocide,” are courts to presume such destruction to be incidental? Does this interpretation make sense in the face of widespread violence, murder, and abuse? If so, can evidence of “ethnic cleansing” be used to actually *refute* genocide claims? (For example, the ICJ relying on the Special Rapporteur’s conclusion that cutting off food supplies was motivation enough to cause Muslims and Croats to *flee*.)²¹² These results certainly do not mirror the letter and spirit of the UNCG. As Schabas succinctly considers:

A court seeking to adopt the broader and more liberal view [of intent] could, however, rely on the text itself, the *objectives of the Convention*, the need for dynamic interpretation of legal instruments that protect human rights, and the principle established in the Vienna Convention on the Law of Treaties which authorizes resort to a convention’s preparatory work only when the ordinary meaning of the provision, taken in its context and in light of its object and purpose, leaves a provision “ambiguous or obscure.”²¹³

Absent careless negligence, the broader interpretation suggested in *Jorgic*, is the only logical application when the “intent to destroy” culminates in genocidal conduct.

Instructively, this is underscored in *Blagojevic*, where the ICTY Trial Chamber recognized the “ethnic cleansing” objective behind the Srebrenica massacre:

Immediately before and during these massacres, the remainder of the Bosnian Muslim population of Srebrenica was forcibly transferred to Bosnian Muslim-held territory. The forcible transfer of the women, children and elderly is a manifestation of the specific intent to rid the Srebrenica enclave of its Bosnian Muslim population. The manner in which the transfer was carried out—through force and coercion, by not registering those who were transferred, by burning the houses of some of the people, sending the clear message that they had nothing to return to, and significantly, through its targeting of literally the entire Bosnian Muslim population of Srebrenica, including the elderly and children—clearly indicates that it was a *means to eradicate the Bosnian Muslim population from the territory where they had lived*.²¹⁴

Further, it is unlikely that the architects of the UNCG could have anticipated all the subsequent conditions which have produced genocidal violence. Provocatively, Shaw questions whether changes in historical trends affect the very nature and perception of genocide: “Is the problem posed differently today compared with the period when the concept [of genocide] was developed? ... Are the forms of genocide changing? Are there significant patterns in these changes at the beginning of our new century? And has the conceptual proliferation [i.e., the term ‘ethnic cleansing’] represented attempts, confused perhaps, to register historical transformation?”²¹⁵

Shaw’s point is that the nature of genocide is not fixed or static. It is multifaceted, comprehensive, and variable. While it is unlikely that international courts will adopt a broader definition of *genocide* beyond the parameters of the UNCG, they need to articulate an understanding of genocidal *intent* that accounts for changing circumstances and methods. The “intent to destroy” can manifest in many ways. “Ethnic cleansing” might demonstrate such intent, and when accompanied by a prohibited act such as killing, a finding of genocide should be judicially permitted.

Conclusion

The Bosnian genocide case is arguably the most complex matter the ICJ has ever presided over. To determine state culpability, the ICJ had to assess individual criminal actions, a task for which it was ill-suited, ensuring a relationship of dependency with findings of the ICTY. Difficulties were further exacerbated by questionable methods over what and how to evaluate evidence. Furthermore, the context of ongoing civil strife presented explicit compliance problems that rendered provisional edicts ineffective. Since the ICJ is the only Court with jurisdiction over nation-states (the ICC and ICTY have jurisdiction over individuals), it is likely that state responsibility will continue to be contested in this forum when allegations of genocide arise. Accordingly, reform measures could bolster the Courts ability to analyze complex facts and better ascertain evidential findings.

Since the ICJ is a court of both first and last impression, it must make dual findings of fact and law. The Court would benefit from a separate fact-finding commission to evaluate evidential proofs “when the facts and their elucidation are paramount.”²¹⁶ If designed as a hybrid entity, this body can incorporate characteristics similar to both a domestic trial court and prosecutor’s office, with powers of subpoena and the ability to evaluate witness/expert testimony. The ICJ can then more appropriately concern itself with rendering legal opinions based on the facts presented by the commission. Susan SáCouto, director of the War Crimes Research Office at American University, suggests that such a commission might be useful in providing preliminary analysis of the best available evidence.²¹⁷

Similarly, an alternative proposal is to modify the Court’s rules to provide for a special master to assist with making factual findings.²¹⁸ The US Supreme Court has

a comparable *modus operandi* in matters of original jurisdiction. This might aid the Court with analyzing pertinent evidence in a more precise fashion. Such reforms could assist with identifying systemic patterns of abuse, adduced over a period of time, suggestive of genocidal intent. In addition, it might result in less dependency on the corresponding work of other courts.

Meanwhile, the significance of the ICJ's bold ruling establishing an affirmative duty for nation-states to prevent genocide, to the extent possible, must not be overlooked. Historically, genocide is virtually always carried out with implicit knowledge and/or assistance from state authority.²¹⁹ Providing a cause of action against these states could both discourage state complicity with genocidal acts and encourage measures to pro-actively prevent such acts from developing. This prospect is particularly noteworthy considering the apparent ineffectiveness of the ICJ's interim measures. The duty to prevent is an important legal principle that will continue to evolve in international law.²²⁰

As originally proposed, the term genocide conveyed not just mass killings but also methods designed to dilute a group's economic, political, and cultural power. The meaning of genocide has subsequently been more narrowly construed to denote only conduct calculated to bring about biological or physical destruction, as defined by the prohibited acts contained in article 2 of the UNCG. Given the many ways an unwanted group can be targeted, justice would be better served if courts considered the broader sociological concept advocated by Lemkin. This could be achieved, not by expanding the list of specific prohibited acts, but through interpreting the "intent to destroy" so that it includes measures aimed at disrupting the protected group as a social unit.

While conceived in the aftermath of the Nazi-driven Holocaust, the UNCG has been interpreted against the backdrop of changing international conditions and diverse methods of repression. Techniques and circumstances may vary, but the intent to "destroy" a particular group, broadly understood, remains the distinguishing feature of both genocide and related humanitarian crimes such as "ethnic cleansing." The role that this plays in adjudicating claims of genocide needs to be further established. In *Croatia*, the ICJ has another opportunity to elaborate on the nexus between "ethnic cleansing" and genocidal intent. Such a contribution will better reflect the realities of how genocide can unfold in the twenty-first century.

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Notes

1. *Croatia v. Serbia*, 2008 I.C.J. 118 (Judgment on Preliminary Objections), 18 November 2008.
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Genocidal Intentions: Social Death and the Ex-Gay Movement

Sue E. Spivey and Christine M. Robinson
James Madison University

In this article, the authors contribute to the literature on predicting and preventing genocide in an international context, focusing on social death practices elaborated in articles II(b)–(e) of the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide (UNCG). Analyzing ex-gay movement texts, the authors apply James Waller’s theoretical framework, which explains how ordinary people commit extraordinary acts of brutality, to the rhetoric and public policy advocacy of prominent ex-gay movement organizations and entrepreneurs. Further, they examine the extent to which this new religious movement promotes public policies in the United States and globally, and argue that these policies constitute social death as genocide of gay, lesbian, bisexual, and transgender peoples based on the UNCG definition. The authors conclude that emphasizing mass murder at the expense of social death constricts our view of genocide at an enormous human cost, including predicting and preventing mass murder, and accentuating the aftermath of genocide, leaving articles II(b)–(e) diminished, understudied, and, therefore, discounted in comparison. They suggest that revitalizing scholarship on social death will broadly enrich the field of genocide studies and enhance collective efforts to forecast and avert genocide in all of its manifestations.

Key words: genocide, religion, homosexuality, politics, social movements

Genocidal Intentions: The Ex-Gay Movement and Social Death

Rapidly proliferating since the 1990s, the cross-disciplinary study of genocide has been conceptualized and approached in vastly different ways. Since 1948, international law has defined the characteristics and forms of genocide. However, genocide scholars have identified a number of conceptual shortcomings in the United Nations’ criteria. Four of the most prominent are that: (1) the definition of genocide lacks clarity, (2) the definition fails to include political and social groups, (3) the meaning of “intent” (as in “intent to destroy”) is unclear, and (4) the scope of destruction (“in whole or in part”) is not clearly defined.¹ Given these concerns, scholars have invested considerable attention toward proposing alternative conceptualizations of genocide. In the end, however, international law recognizes only the official definition from the United Nations Convention on Prevention and Punishment of the Crime of Genocide (UNCG).

Article II of the UNCG defines genocide as “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/or (e) Forcibly transferring children of the group to another group.”²

In addition to these conceptual issues, scholars from different disciplines largely focus on separate sections of the UNCG. Researchers in political science, international relations, international law, history, and (some in) sociology typically conceptualize and examine genocide as mass murder, distinguishing it categorically from other human atrocities that constitute genocide.³ These researchers argue that mass murder, Article II(a), is a tangible, measurable entity compared to the forms of genocide listed in articles II(b) through II(e), the muddled social and cultural dimensions. Here scholars contend that limiting the definition to mass murder enhances its moral status. Further, they argue that expanding the definition reduces the moral opprobrium attached to the atrocity. While this emphasis has proven fruitful, it has also constricted our view, accentuating the aftermath of mass murder while neglecting other forms of genocide. Debates among these scholars have been limited to legal matters after the fact; including the role of diplomacy, sovereignty, failed states, intervention strategies, and punishment procedures. This emphasis on genocide as mass murder, postmortem, has left UNCG articles II(b) through II(e) diminished, understudied, and, as a result, discounted.

In contrast, anthropologists, social philosophers, social psychologists, and (prior to the early 1990s) sociologists predominantly emphasize the social and cultural processes which precede and accompany physical death, including those forms of genocide elaborated in UNCG articles II(b)–(e).⁴ These scholars conceptualize genocide as part of a continuum of oppression, violence, and inequality, locating mass murder at one end and social death and symbolic violence at the other. Building from Orlando Patterson's⁵ concept of social death, philosopher Claudia Card asserts that genocide is not, in its essence, physical death, since genocide involves physical and psychological torture, humiliation, and other forms of degradation.⁶ Rather, she argues, genocide is fundamentally about the destruction of a culture—the annihilation of cultural identity, heritage and intergenerational bonds, associations, and relations: “The very idea of selecting victims by social group identity suggests that it is not just the physical life of victims that is targeted but the social vitality behind that identity.”⁷ This is why the UNCG definition of genocide includes physical and psychological torture, the seizing of a group's children, or denying a group's capacity to reproduce. Thus, these scholars focus on these means of eradicating the cultural identity of a group for the next generation, or social death, as a primary issue in genocide research. Yet in comparison, the literature on mass murder is considerably more substantial. Regardless of the emphasis, scholars agree that genocide is a planned, coordinated, long-term process, not simply a spontaneous event. Further, scholars agree that the purpose of studying genocide is prediction and prevention.⁸ In this article, we seek to contribute to this objective by identifying the ideology and practices that constitute social death forms of genocide against lesbian, gay, bisexual, and transgender (LGBT) peoples, perpetrated by the ex-gay movement.

Prior to the development of genocide as a type of crime under international law, male and female homosexuals in European Christian nations were routinely put to death or tortured for the crime of sodomy from the fourteenth through the twentieth century.⁹ Significantly, genocidal acts committed by the Nazis against homosexuals¹⁰ were not recognized as such, because, as genocide scholar Jack Porter notes, “under the Nuremberg Laws in which genocide was defined after the war, the killing of homosexuals was not considered a crime against humanity or a war crime.”¹¹ Porter also notes that the anti-gay bias of major genocide scholars themselves has led them, at best, to dismiss considering whether gays and lesbians were victims of the Nazi genocide, and, at worst, to categorize them as “criminals, perverts, and deviants.”¹²

Today, five nations (Iran, Mauritania, Saudi Arabia, Sudan, Yemen, and parts of Nigeria and Somalia) punish homosexual acts with death, and another eighty countries criminalize homosexuality.¹³

Although the original UNCG classification of genocide did not include social (or political) groups, the recent International Criminal Tribunal for Rwanda established such a precedent by defining possible victims as a group sharing a common culture.¹⁴ Further, Mohammed Abed identifies the features that make social groups vulnerable to genocide, and articulates a compelling case for including gays and lesbians in genocide research.¹⁵ The United Nations has also begun to formally recognize human rights violations based on sexual orientation and gender identity. In 2008, sixty-six countries (including the United States) signed the United Nations' statement "Human Rights, Sexual Orientation, and Gender Identity" that condemns human rights violations based on sexual orientation and gender identity. Citing this UN statement, on 4 June 2009, the Organization of American States' General Assembly adopted Resolution 2504, which went much further than condemning such acts.¹⁶ Noting "with concern acts of violence and related human rights violations perpetrated against individuals because of their sexual orientation and gender identity," the OAS resolution urged states to ensure that such acts "are investigated and their perpetrators brought to justice." Finally, the Resolution called for the Committee on Juridical and Political Affairs to include this issue on its next agenda and for the Permanent Council to report to the General Assembly at its next session on its implementation.

Given these developments, an analysis of ex-gay movement ideology, discourse, and political strategy will lend clarity to our research questions: To what extent does ex-gay ideology constitute part of the genocidal continuum against LGBT peoples? To what extent does the ex-gay movement advocate genocide based on the 1948 UNCG definition? Analyzing movement texts, we use James Waller's¹⁷ social psychological theory to assess the extent to which this movement promotes public policies that constitute genocide and the social death of LGBT peoples.

The Ex-Gay Movement: Origin and Global Emergence

Social scientists have long established that social movements are powerful agents of social change. During the past forty years, conservative Christian political organizations in the United States have mobilized to counter social changes advanced by feminist and gay and lesbian liberation movements. During this same period, the ex-gay movement, a lesser-known phenomenon, has grown steadily from a handful of evangelical Christian ministries in the early 1970s into a global movement in the twenty-first century, seeking to advance an ambitious public policy agenda.¹⁸

The ex-gay movement is predominantly an evangelical Christian Right social movement which aims to purge society of homosexuality and transgenderism. It was formed in the early 1970s to counter the American Psychiatric Association's declassification of homosexuality as a mental disorder in 1973. The movement promotes the belief that same-sex attraction (SSA) is a developmental gender identity disorder; that homosexual identity and behavior are inherently sinful and destructive to society; and that "people with SSA" can be re-oriented to heterosexuality through religious and/or psychological interventions. In response, prominent medical and mental health associations in the United States have issued statements opposing "reparative" and "conversion" therapies, and have discouraged professionals from attempts to change sexual orientation.¹⁹ Today, the movement has grown into an international network of religious, scientific, and political organizations using the

existence of “ex-gays” to claim that homosexuals can change. This notion is fundamental to their political argument that unlike legal protections based on immutable traits such as race or sex those based on sexual orientation are not legitimate.²⁰

As we will show, in the public policy arena, and pertinent to the UNCG articles II(b)–(e), ex-gay organizations and advocates have sought to legitimize potentially harmful therapies; uphold the criminalization of private homosexual sexual relations between consenting adults; prevent legal family recognition of same-sex couples; and advocate legislation that would prevent gays and lesbians from adopting children, serving as foster parents, or having access to medical technologies that would enable them to become parents. In addition, they oppose including sexual orientation or gender identity in hate crime statutes and anti-discrimination policies.

For decades, the Christian Right has amassed recruits and resources in the United States through anti-gay politics.²¹ In the twenty-first century, it is using gender and sexuality as prime vehicles to consolidate power on a global scale. The ex-gay movement is a vital component of its domestic public policy strategy and its evangelical strategy abroad. The movement is rapidly globalizing, and has been imported to some of the most dangerous environments in the world for sexual and gender minorities.²² Recent scholarship illustrates that American Christianity is increasingly influencing policies and programs worldwide through the growth of support for missionaries and churches in other countries and in short-term volunteer efforts abroad.²³ Few are noticing this movement’s global proliferation, their use of “hate group” propaganda, their misuse of science, or the movement’s social impact.

Theoretical Framework

James Waller²⁴ synthesizes a large body of social and psychological scholarship, organized as a general model, to explain how ordinary people commit extraordinary acts of brutality. His model presents a wealth of empirical support for the proposition that perpetrators of cruelty are not exceptional, and that committing acts of genocide, like other atrocities, does not require evil personalities. Rather, the evidence demonstrates that a host of social forces and environmental factors influence such behavior. In Waller’s scheme, there are three major social processes that explain how individuals become capable of perpetrating brutality toward others: the cultural construction of a worldview, the psychological construction of the other, and the social construction of cruelty, each of which are further subdivided into additional social processes.

The “cultural construction of worldview” refers to the socially constructed framework that shapes individual perceptions of reality and subsequently influences behavior. The three components of worldview are: (1) collectivistic values based on a group identity (these include obedience, conformity, tradition, and order); (2) an “authority orientation” that promotes rigid, hierarchical relations of power; and (3) social dominance, which establishes the group’s belief in its own supremacy and its desired control over other groups.

In the second part of the model, “psychological construction of the other,” Waller outlines the social death processes that explain how perpetrators of brutality become capable of harming their victims, while distancing themselves from moral culpability for their actions. “It is the moral exclusions . . . that help us understand how victims move from person to nonperson and how perpetrators move from . . . coming to believe that it is not only right to harm their victims, but it would be wrong not to do so.”²⁵ Three social processes are involved: (1) us-them thinking, (2) moral disengagement, and (3) blaming the victim. Us-them thinking explains how perpetrators

engage in social distancing from their target. Here perpetrators use ethnocentrism and xenophobia to redefine victims from persons to nonpersons. Moral disengagement occurs when perpetrators distance themselves from the moral implications of their actions by behavioral justification, the dehumanization of the victims, and euphemistic labeling of their actions toward the target group. Blaming the victim involves attaching culpability to victims for their plight. Perpetrators avoid feelings of guilt since victims are presumed responsible for their own troubles.

The final component of Waller's model, "social construction of cruelty," explains how perpetrators are enveloped by a social context that encourages and rewards cruelty. There are three processes involved: (1) professional socialization, (2) ritual conduct, and (3) the binding factors of the group. Professional socialization refers to the process by which perpetrators assume social roles that encourage them to engage in outwardly small, escalating commitments which induce later obligations for further conformity. Ritual conduct aids in socializing perpetrators for their role and coping with their cruel behavior. The role begins to shape the individual and his/her behaviors toward others. Once the self merges with the role, perpetrators solidify their identities as group members. One's group identification enables an individual to repress his/her own conscience and diffuse individual responsibility. The final process explains how the desire for acceptance and group pressure to conform further binds the individual to group demands.

Methods

We use extensive content analysis of ex-gay movement organizational "texts," including the vast literature of printed, online, and audio materials created and promoted by ex-gay organizations. Overwhelmingly, these "texts" represent the views of movement entrepreneurs, and the official positions of four prominent ex-gay organizations are included in this analysis: Exodus International (hereafter referred to as EXODUS), the largest network of evangelical Christian ex-gay ministries, founded in 1976; its global counterpart, Exodus Global Alliance (hereafter referred to as EGA); the National Association of Research and Therapy of Homosexuality (hereafter referred to as NARTH), founded in 1992, which views homosexuality as a developmental disorder; and Focus on the Family (hereafter referred to as FOCUS), co-founded in 1977 by James Dobson, which seeks to impact public policy from an evangelical Christian perspective and sponsored (until 2009) the ex-gay "Love Won Out" (LWO) conferences.

The Ex-Gay Worldview: Collectivist Values, Authority Orientation, and Social Dominance

Our analysis will illustrate how ex-gay movement entrepreneurs and organizations fulfill the criteria of Waller's model. In the sections that follow, we explain how the movement constructs its collectivist worldview, psychologically constructs homosexuality and homosexuals, and encourages and rewards adherents to perpetrate cruelty against gays and lesbians.

The worldview promoted by the ex-gay movement is based primarily on one's identity as a Christian and the oft-repeated "values" that ostensibly distinguish Christians from non-Christians. The movement defines "Christian" as mutually exclusive from "gay." Further, anyone who embraces a LGBT identity is considered "non-Christian," regardless of that person's own religious identity, and such non-Christians are accused of embracing entirely different values and worldviews. Randy

Thomas, vice president of EXODUS, calls these two perspectives “warring world-views.”²⁶ From this perspective, Christians are defined by their belief in and obedience to the will of God, for which the Christian Bible is held to be the sole authority. This authority orientation requires believers to submit absolutely to what they believe to be the inerrant word of God, and to accept scriptural authority as supreme. Patricia Lawrence, former executive director of EGA, illustrates this point: “Listen, scripture is the authority of Christians, it is the way that God speaks to us, and we must stand firm next to the word of God, because if we don’t, then why are we Christians, because we have nothing . . . This tells us how to live.”²⁷ Alan Chambers, President of EXODUS, also establishes this view as supreme to any potentially competing authority:

[S]cience can never and should never trump the word of God . . . [which] is the final authority on this issue. The Bible . . . calls homosexuality . . . a sinful condition . . . our Christian worldview has to be separate from that of the world, from that of science . . . God wants us to live lives that are submitted to Him.²⁸

Waller explains that collectivist values define an in-group and an out-group, make extreme categorical judgments between groups, and police that boundary. Ex-gay leaders construct acute differences between Christians and gays, including holy/unholy; healthy/diseased; victim/predator; obedient/disobedient; penitent/unrepentant; and saved/condemned. From this worldview, being a “Christian” is the only divinely sanctioned identity and being “gay” is a selfish, corrupt, and a contemptuous affront to the will of God.

Finally, the ex-gay worldview promotes Christian supremacy and social dominance. Believers proclaim theirs is the one true God, and their biblical mandate is to manifest God’s Kingdom throughout the world, what they often refer to as the “Great Commission.” Michael Brown, author of *Revolution: The Call to Holy War*, a speaker for EXODUS and FOCUS, wrote:

We often conceal ours [Christian views and aims], trying to convince worldly people that our views are not really extreme, that our faith is completely reasonable, that our aims are not radical at all. Nonsense! As Christians, we believe that everyone who rejects our message will be sentenced to eternal punishment by God. That’s extreme! We believe that anyone who does not know the Lord, is a child of Satan. That’s extreme! . . . We believe it is our mission in life to reach the entire world with the gospel of Jesus, calling all people to believe in Him. That’s extreme! And we believe that God’s Word is the standard by which everyone will be judged, in which case, all who have not been born again are ungodly sinners. That’s extreme!²⁹

Constructing Gays: Us-Them Thinking, Moral Disengagement, and Blaming the Victim

In this section we apply the social psychological processes that explain how ex-gay movement leaders construct gays and lesbians as non-persons and thus become capable of harming them, while distancing themselves from moral culpability for their actions.

Us-Them Thinking

The ex-gay movement divides “us” and “them” into two basic groups: Christians and non-Christians, yet claims it is God who makes these distinctions and treats each accordingly. In addition, the movement claims, *people* choose sides; therefore, each

individual is responsible for his or her eternal fate. Patricia Lawrence, former executive director of EGA, illustrated this when she declared, “There are two identities in this world. We are either children of Satan, or children of God.”³⁰ Lawrence subsequently spelled out the consequences for those who choose to be “children of Satan”: “... let those homosexuals enjoy their life here on Earth, because they are going to spend an eternity in Hell.”³¹ Movement leaders see themselves as “God’s people” doing His will, which enables them to justify their conduct as righteous.

The primary way that ex-gay leaders socially distance themselves from their victims, as well as their own actions, is by denying that there are homosexual *people*, and thus denying the reality of a victim at all. They do this by defining homosexuality as sin, sickness, or a social threat. Homosexuality is variously described as behaviors, attractions, identities, or more insidiously, as a sinful “lifestyle,” a mental illness, or a menacing social “agenda,” thus denying the personhood, indeed the existence—and the victimization of gay and lesbian people. Constructing homosexuality as a disorder, Joseph Nicolosi, a NARTH co-founder, emphasizes:

There is no such thing as a homosexual. There is no such thing as a homosexual ... [A] father called me up a little while back. He said “Our 15 year old son just announced to us that he is homosexual and we are trying to find a psychologist that we can trust who can tell us is he homosexual or not.” I said “He is not.” They said “How do you know? You haven’t seen him yet.” I said “He is designed for a woman ... He is heterosexual but he may have a homosexual problem.”³²

In constructing homosexuality as a sinful condition and offering redemption, the ex-gay movement appears to encourage Christians to be compassionate toward homosexuals. Julie Harren Hamilton, current NARTH president, describes this process at an EXODUS conference:

It puts it in a different light instead of just seeing it as awful and ugly sin ... [I]t takes the focus off of the sin and puts it onto the person who is hurting and lets you see them in a new light. Instead of just “sinner” you now see “hurting person who needs God’s love.”³³

In these ways, ex-gay leaders deny there are any victims of their actions. If homosexuality is a condition, “treating” people with same-sex attractions is reconstructed euphemistically as compassionate and humane, not dehumanizing. However, once homosexuality is redefined as something non-human, it can be called anything or acted upon without recrimination. And it is.

Moral Disengagement. Once homosexuality is redefined as an object—a behavior, a condition, or an “agenda,” it is demonized and blamed for a variety of social evils. Alan Chambers, EXODUS president, along with others, repeats this catchphrase frequently at ex-gay conferences: “The opposite of homosexuality is not heterosexuality, it’s holiness.”³⁴ This is a euphemistic way to say homosexuality is evil. The Southern Poverty Law Center, which tracks “hate groups” in the United States, quoted Chambers thus: “We have to stand up against an evil agenda. It is an evil agenda and it will take anyone captive that is willing, or that is standing idly by.”³⁵ Note the rhetorical differences for distinct audiences. Chambers employs euphemism at ex-gay conferences and more explicit demonizing language at political strategizing meetings.

For Waller, there are three practices that enable people who commit brutality to morally disengage from their victims, which function to “make their reprehensible conduct acceptable and to distance them from the moral implications of their

actions.”³⁶ These are moral justification, dehumanization, and euphemistic labeling of evil actions. The ex-gay movement justifies its condemnation of homosexuality as a directive from God, which for them is scripturally validated (tautology notwithstanding). By claiming to follow God’s will rather than their own, they deny responsibility for their beliefs and actions. Additionally, the movement has developed a secular ideology that blames homosexuality for an assortment of social evils. Throughout the process of moral disengagement, movement leaders frequently rely on the propaganda of organizations designated as hate groups by the Southern Poverty Law Center to justify their secular claims.

Ex-gay proponents portray homosexuality and homosexuals as a *contagious* threat that spreads and unleashes all kinds of social ills in its wake. They repeatedly refer to homosexuality or its advocacy movement as a “threat to the family,” a “threat to traditional values,” a “threat to religious freedom,” and a threat to human civilization itself. They also claim that homosexuals themselves are a threat. James Dobson, FOCUS co-founder, condemns homosexuals as the ultimate social threat: “Homosexuals are not monogamous. They want to destroy the institution of marriage. It will destroy marriage. It will destroy the Earth.”³⁷ To counter such a grave danger, exterminating homosexuality is not only morally justified, it is a societal imperative.

Ex-gay leaders attempt to justify their genocidal intentions by portraying their actions as morally and socially necessary against the enormous threat posed by homosexuality, the “homosexual agenda,” and homosexuals themselves. In doing this, they both minimize and deny the systematic oppression and victimization of gays and lesbians and construct *themselves* as victims of a destructive and sinister “homosexual agenda.” In addition to “denying a victim” by constructing homosexuality as behavior, they minimize and deny anti-gay persecution and oppression, allege that homosexuals are privileged, and portray them as violent aggressors.

Denial of the Victim: The Myth of Gay Affluence. One way to diminish sympathy toward a group and lessen public support for protecting members from discrimination is to minimize their victimization and portray them as privileged. This is precisely how ex-gay groups use the claims made by Anton Marco. The claim that gays seek “special rights” is a well-worn rhetorical tactic of the Christian Right.³⁸ The ex-gay movement elevates this approach by promoting the belief that gays and lesbians are wealthier than the rest of society. Marco alleges that “[h]omosexuals have an average household income of \$55,340 versus \$32,144 for the general population and \$12,166 for disadvantaged African-American households.”³⁹ In 2008, EXODUS Vice-President Randy Thomas declared, “The gay identified community is the most prosperous, median salary wise, community in the country.”⁴⁰ Citing Marco, NARTH extensively treats this subject: “For decades homosexual activists have fostered the impression that gays are economically, educationally, and culturally disadvantaged. Yet recent marketing studies, done by gay-run marketing agencies . . . roundly refute those claims.”⁴¹ Economists disagree and refer to this rhetorical tactic as “The Myth of Gay Affluence.”⁴² Herman⁴³ notes this discourse evokes a familiar strategy used to demonize other groups.

While the ex-gay movement morally disengages from their victims by disavowing anti-gay oppression (especially their own culpability), they simultaneously portray themselves as victims of those they subjugate. Scholars⁴⁴ have documented a pervasive rhetoric of victimhood adopted by anti-gay Christian conservatives, who recast themselves as an oppressed minority. Stein notes that this enables them to feel rage and mobilize their members to act on their behalf against those they define as

the enemy. Ex-gay leaders brand “militant” gays as “anti-Christian” aggressors, reversing the victim-victimizer role, a stock dehumanization tactic.⁴⁵

Dehumanization and Demonization: How Victims Become Victimizers

By claiming to target homosexuality, and not people, as the object of annihilation—and defining that as sin, illness, or a perilous political agenda—is one way ex-gay movement leaders dissociate themselves from the harm they inflict on people. Despite this, the movement does indeed dehumanize and demonize gays. Perhaps the most malicious form in which this manifests is the stereotype that gays are prone to sexual predation, and are likely to molest children. Waller notes that dehumanization often involves “using categories of negatively evaluated unhuman creatures (such as demons and monsters).”⁴⁶ Michael Brown, a speaker at EXODUS and FOCUS ex-gay conferences, wrote about the “seductive” threat of homosexuality:

Satan certainly has his strategy, and it is multifaceted, multipronged, and bent on multiplication: One Satan touched life quickly touches another! [The superscript leads to this:] . . . [I]t has been noted that homosexuals cannot increase by reproduction but only by seduction. Thus many gays are not merely content with having the right to live the way they want to without “discrimination”; rather, they want to encourage others to join them in their lifestyle.⁴⁷

James Dobson invokes the specter of the homosexual pedophile in his parenting book: “Moms and Dads, are you listening? This movement is the greatest threat to your children. It is a particular danger to your wide-eyed boys, who have no idea what demoralization is planned for them.”⁴⁸ He cites the expertise of NARTH co-founder Joseph Nicolosi to substantiate claims about homosexuality and pedophilia. At a FOCUS 2007 LWO conference, Nicolosi told the audience:

Sexual abuse, man/boy sexual contact and homosexual outcome—one third of our clients were sexually abused by older boys or men. And in the personal histories of gay men we often see same-sex abuse. This is in the literature. And we know that those who abuse become abusers. Gay activists get very, very angry when we make these connections but the scientific evidence is there. In addition gay activists are more likely to lobby for lowering the age of sexual consent.⁴⁹

Finally, EXODUS board member Don Schmierer claims in his book on the prevention of homosexuality: “Sexual abuse, including molestation and/or rape, is a key factor in homosexuality. We will return to this repeatedly because it is so significant.”⁵⁰ Prominent movement figures, including Schmierer and Nicolosi, in EXODUS, EGA, NARTH, and FOCUS frequently cite the discredited research of Paul Cameron to demonize gays. Cameron was expelled from the American Psychological Association in 1983 for refusing to cooperate with an ethics investigation of his work. He was rebuked by the American Sociological Association in 1985 and 1986 for consistently misrepresenting sociological research on homosexuality, and for substantiating his anti-gay political advocacy with his distortions.⁵¹ The Southern Poverty Law Center designates his organization, the Family Research Institute, as an anti-gay “hate group.” Despite all this, Cameron’s publications, and those who reference them,⁵² continue to be cited by ex-gay representatives to support genocidal practices in court decisions and public policy.⁵³

Gays Are Violent

Another dehumanizing theme in the rhetoric and propaganda promoted by ex-gay organizations is that gays are violent. Paul Cameron’s essays are a chief source

for the claim that gays are more likely to sexually violate children. In addition, Cameron alleges that gays are more likely than heterosexuals to be mass murderers, serial killers, and abusive domestic partners.⁵⁴ Cameron is not the only anti-gay propagandist promoted and utilized by ex-gay organizations. In 2009, EXODUS was criticized because board member Don Schmierer was one of three American speakers to participate in an anti-gay conference in Kampala, Uganda. At the conference, the main organizer and anti-gay propagandist, US citizen Scott Lively, allegedly blamed the Rwandan genocide on gay men.⁵⁵ Lively co-authored *The Pink Swastika: Homosexuality and the Nazi Party*,⁵⁶ excerpts of which were linked to EXODUS' and NARTH's websites until 2009. The book's primary objective is to deny that homosexuals were "targeted for extinction by the Nazis" and to depict them instead as aggressors.⁵⁷ From the preface:

The Pink Swastika is a response to the "gay political agenda" and its strategy of portraying homosexuals as victims of societal and Nazi persecution ... there was far more brutality, rape, torture and murder committed against innocent people by Nazi deviants and homosexuals than there ever was against homosexuals ... *The Pink Swastika* will show clearly how the world the Nazis attempted to create is a world not of the past, but of the possible future ... given its present course and left unchallenged, America could easily become the Nazi Germany of 50 years ago.⁵⁸

The Southern Poverty Law Center regards Lively's organizations, Abiding Truth Ministries and Watchmen on the Walls, as anti-gay hate groups.⁵⁹ (Another Watchmen co-founder, Ken Hutcherson, was a keynote speaker at EXODUS' 2007 conference and at a 2008 FOCUS conference.) The Uganda People News reported that Uganda's Minister of Ethics and Integrity James Nsaba Buturo told conference attendees that he would submit a bill to parliament because the penal code criminalizing homosexuality is too weak. The article noted: "Scott Lively says it is good for the government of Uganda to criminalize homosexuality but the government should subject ... criminals ... to a therapy rather than imprisoning them."⁶⁰ Uganda's law allows for life imprisonment as a maximum sentence for homosexual sex, and a seven-year sentence for attempting to commit "unnatural offences."⁶¹ In 2007, Lively called homosexuality a "a very fast-growing social cancer" and urged Russia to "criminalize the public advocacy of homosexuality."⁶²

Blaming the Victim. The ex-gay movement morally disengages from its victims by minimizing and denying anti-gay oppression, and by stereotyping, demonizing, dehumanizing, and blaming "people living in homosexuality." When movement entrepreneurs acknowledge that gays and lesbians confront adversity, they attribute such hardships to "the homosexual lifestyle"—that is, to the people themselves. Blaming the victim is key to promoting moral disengagement. According to Waller,

If victims are to blame for their fate, then there is no reason for the perpetrators to feel guilty. The moral foundation of much evil doing rests on the principle that because of their damaging behaviors, certain individuals or target groups forfeit their rights to humane treatment and can be harmed without guilt or remorse.⁶³

If homosexuality is a sinful choice or a mental disorder, then anything that happens to those who choose this behavior or refuse the "change" that is offered by ex-gay organizations is their fault. The ex-gay movement uses this logic to blame gays for AIDS, along with mental health problems such as depression, suicide, and the hate violence targeting them, rather than anti-gay oppression.

Spokespersons of the ex-gay movement acknowledge that the advent of AIDS was a boon to them. Former EXODUS President Sy Rogers called its influence “profound.”⁶⁴ The movement capitalized on and continues to exploit AIDS as proof of the destructive nature of the “homosexual lifestyle.” Portraying homosexuality as a “culture of death” is the same victim-blaming tactic that was so effectively used by the phrase “culture of poverty” to blame the poor for their own indigence. Ex-gay leaders cite the “research” of Paul Cameron to allege that homosexuals have drastically shortened life spans. Cameron proposed tattooing and quarantining “sexually active homosexuals”⁶⁵ and AIDS patients,⁶⁶ and, at the 1985 Conservative Political Action Conference, political scientist Mark Pietrzyk quoted Cameron when he told the audience, “Unless we get medically lucky, in three or four years, one of the options discussed will be the extermination of homosexuals.”⁶⁷ According to an interview with former Surgeon General C. Everett Koop, “Cameron was recommending the extermination option as early as 1983.”⁶⁸ Movement entrepreneurs, such as NARTH board member Christopher Rosik,⁶⁹ blame the “homosexual lifestyle,” not oppression, for higher rates of stress-related psychiatric disorders and substance abuse, despite evidence that links these directly to “minority stress.”⁷⁰ According to the APA,

the evidence clearly supports the position that the social stigma, prejudice, discrimination, and violence ... and the hostile and stressful social environment created thereby adversely affects the psychological, physical, social and economic well-being lesbian, gay, and bisexual individuals.⁷¹

Even hate-motivated violence has been denied or blamed on gays themselves. Anthony Falzarano, founder of Parents and Friends of Ex-Gays and Gays (an EXODUS member organization until 2009), implied that gay men are attacked for preying on heterosexual men. He blamed Matthew Shepard, the gay college student from Wyoming, for his own murder: “. . . that poor unfortunate boy in, where was it? South Dakota? That man was a predator to heterosexual men.”⁷² In 2009 the *Matthew Shepard and James Byrd, Jr. Hate Crime Prevention Act* became law, adding sexual orientation and gender identity to federal hate crime statutes. Ex-gay leaders vigorously opposed this bill, alleging that it would be used to “silence Christians” and destroy religious freedoms.⁷³ In addition to blaming Shepard for his own death, some ex-gay advocates deny that sexual orientation bias played any role. At a LWO conference, Dick Carpenter attempted to reframe Shepard’s murder as a drug-related robbery:

Gay activists have been and continue to exploit the unfortunate death of this young man ... And we often hear that Matthew Shepard was killed because of his sexual orientation. Well some months ago a well-known news program revisited the story of Matthew Shepard and what they discovered was a different story ... that Matthew Shepard was not necessarily killed because of his sexual orientation but because of drugs and money. But that’s not what we hear now.⁷⁴

Portraying Shepard as a predator and/or drug user, and not a victim of an anti-gay hate crime, at best, fosters indifference and minimizes the reality of hate crimes based on sexual orientation; at worst, it reinforces horrific stereotypes of gays and suggests that Shepard got what he deserved.

“God’s Solution”: The Social Construction of Cruelty

In 2007, FOCUS board member Albert Mohler created a national controversy after stating,

The scientific evidence is mounting that human sexual orientation may be fixed by genetic and biological factors. Th[is] discovery ... would not change the Bible's moral verdict on homosexual behavior. Rather than excusing homosexual behavior, such a genetic discovery could lead to pre-natal ways to eliminate homosexual orientation and Christians should support such a development ... we should unapologetically support the use of any appropriate means to avoid sexual temptation and the inevitable effects of sin.⁷⁵

The final part of Waller's model, the social construction of cruelty, explains how perpetrators of genocide become enveloped by a context that encourages and rewards cruelty. We apply three processes: (1) professional socialization, (2) ritual conduct, and (3) binding factors of the group.

The Ex-Gay Role: Christian Missionaries on the Battlefield

The ex-gay movement socializes and trains disciples to internalize its religious, psychological, and political ideology of homosexuality, transforming them into Christian missionaries and warriors whose role is to convert non-believers, obliterate homosexuality, and usher in the Kingdom of God as they understand it. EGA board member Darryl Foster instructed: "All of us are ministers. You don't have to go to ... seminary."⁷⁶ Leaders train disciples to effectively evangelize, strategically using a rhetoric of love, which also helps them distance themselves from the perception that they are hateful.⁷⁷ Ex-gay conferences and publications also seek to equip followers to engage in the culture war. War rhetoric is a prominent feature of movement discourse, which is frequently cited as biblical.⁷⁸ Leaders are careful to disavow violence, although Michael Brown writes about the need for "holy hatred" as a motivating force.⁷⁹ In socializing believers to fulfill their roles as missionary-warriors, leaders emphasize biblical authority and obedience to God's will, which mandates imparting their beliefs. Brown encouraged his audience to imagine themselves as revolutionaries, as "God's solution" to the problem of homosexuality. He plainly asserted that the "cost" of following Jesus demands a readiness to die fighting for the cause and the risk of literal death:

The church needs to stand up ... If we don't become salt and light what happens next? We need to develop a revolutionary mentality ... This is how a revolutionary thinks ... Life as it is is not worth living but the cause is worth dying for ... This is not just an option. A revolutionary realizes that he is part of something bigger than himself. Revolutions don't happen ... at a tea party ... [they] come when people get to a breaking point, when they say "It's too late." "It's too far gone." "Life as it is is not worth living and I'd rather die fighting for what I believe in."⁸⁰

To bind followers to the demands of the group, leaders emphasize one's obligation to follow God's will, rather than their own, which absolves them of responsibility or guilt for their actions. Darryl Foster emphasizes absolute obedience, telling his audience: "We didn't write the Bible, but we are required to follow it."⁸¹ To induce compliance, leaders appeal to the fear and/or self interest of believers by using threats of hell and promises of heaven, and other forms of social power.⁸² In addition, leaders make emotional appeals to compassion, ritually reminding disciples that not only their own, but the eternal destiny of others is at stake in carrying out God's will.⁸³ Mobilizing believers is amplified by claims of the urgency of the situation, as Brown displays, and as Foster implores, claiming that Jesus will soon return: "This is the message we need to carry to the whole wide world ... [these are] perilous times ... these are the last days."⁸⁴ Since 1973, the ex-gay movement has developed a mas-

sive corporate infrastructure of religious, scientific, and political organizations in the United States and internationally. In addition to a global network of ex-gay ministries, the movement collaborates with most major Christian Right organizations, coordinates a network of churches and mental health counselors, manages an industry of ex-gay conferences and bookstores, and directs a variety of multimedia outlets to evangelize the ex-gay message and to advance genocidal policies at home and abroad.

Genocidal Intentions

We argue that the ex-gay movement organizations analyzed in this study advocate a genocidal ideology and public policy agenda targeting LGBT peoples on a global scale. Article II of the UNCG delineates several forms of conduct that constitute genocide. The ex-gay movement is actively pursuing public policies that would, if implemented, constitute state-sponsored genocidal practices in the United States and globally. The organizations analyzed in this study undeniably intend to purge society of homosexuality (whether by “prevention” or “treatment”) and are actively working to destroy LGBT cultures worldwide. In 1990, Poland’s president Lech Walesa promised in a televised speech that he would “eliminate from the country ‘moral undesirables’ including homosexuals.”⁸⁵ In 2004, ex-gay psychotherapist Richard Cohen (expelled in 2003 from the American Counseling Association on several ethical violations) was invited to speak to Poland’s parliament on “reparative” therapy, in response to a bill legalizing same-sex marriage. Cohen asked for \$10 million in funding to eradicate homosexuality in Poland and called for a bill to criminalize gay activism.⁸⁶

Ex-gay organizations are actively pursuing policy positions that would, if implemented, constitute genocide under each of the UNCG articles under discussion here. Article II(b) recognizes genocide as acts that cause “serious bodily or mental harm to members of the group.” Several prominent American medical and mental health associations have issued statements opposing therapies and treatments that are based on the assumption that homosexuality is a mental disorder, and discourage their members from attempting interventions aimed at changing sexual orientation, which they consider unethical and potentially harmful.⁸⁷ In 2005, a Memphis-based EXODUS residential ministry, Love in Action, came under investigation by the Tennessee Department of Health for allegedly dispersing psychotropic medication and treating minors without a license in their “Refuge” program for youths between the ages of thirteen and eighteen. National news coverage revealed that some children were being forced by their parents to undergo “treatment” at Love in Action. Both FOCUS and NARTH encourage parents to subject their children to “treatment” regardless of the consent of their children.⁸⁸ In 1997 the American Psychological Association issued a statement opposing attempts to change sexual orientation on several grounds, stating that “. . . children and youth often lack adequate legal protection from coercive treatment.”⁸⁹ In 2009, an APA task force published the most comprehensive analysis of attempts to change sexual orientation to date. Regarding children and adolescents, the report concluded that such attempts “can pose harm through increasing sexual stigma and providing inaccurate information. We further concluded that . . . involuntary or coercive residential or inpatient programs . . . may pose serious risk of harm.”⁹⁰ Forced therapy is also a concern where ex-gay organizations operate outside of the United States, as illustrated by the 2009 Uganda conference featuring hate group propagandist Scott Lively and EXODUS board member Don Schmierer. Although EXODUS claims to not condone forced treatment,

Schmierer allegedly never voiced opposition during the conference to “treating” homosexual prisoners or criminalizing homosexuality.⁹¹ Schmierer’s book, *An Ounce of Prevention: Preventing the Homosexual Condition in Today’s Youth*, flaunts this quote from gay activist Frank Kameny among the book’s *endorsements*: “We view your encouragement of prevention as tantamount to genocide . . .”⁹²

Article II(c) of the UNCG defines genocide as “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.” In addition to the explicit intention to eradicate homosexuality via treatment or prevention, several of the ex-gay organizations analyzed in this study advocated criminalizing consensual, adult homosexual relations, and some movement leaders urge criminalizing gay advocacy. Sixteen states had such “sodomy” laws prior to the 2003 *Lawrence v. Texas* Supreme Court decision. FOCUS and the Alliance Defense Fund jointly submitted an amicus curiae brief defending the legality of these statutes. James Dobson (co-founder of ADF and FOCUS) called the *Lawrence* ruling an “outrageous decision.”⁹³ Phil Burress, a 2005 EXODUS board member, wrote a letter in 2000 to the Republican National Convention Chair Jim Nicholson concerning the first speech ever given at the RNC by an openly gay man, Arizona legislator Jim Kolbe:

Mr. Kolbe as a self described homosexual means nothing except to say he engages in sodomy. Did you know that in Arizona, sodomy is against the law? Mr. Kolbe should be arrested when he returns to his home state for violating state law. Would you agree that all lawmakers should insist that all laws be enforced?⁹⁴

Paul Cameron and colleagues proposed: “State sodomy laws should be written . . . and enforced across the nation . . . Legal acceptance/toleration of sodomy is a symptom of a decadent society.”⁹⁵ EXODUS leaders also supported criminalizing homosexual conduct.⁹⁶ EGA sponsored a conference in Barbados, where homosexual sex is illegal. The flyer read: “Some say decriminalize homosexuality . . . we say let’s offer solutions.”⁹⁷

Articles II(d) and II(e) of the UNCG define genocide as “imposing measures intended to prevent births within the group” and “forcibly transferring children of the group to another group” respectively. Ex-gay organizations seek to deny reproductive technologies and adoption rights for homosexuals, and support policies and court decisions that have forcibly removed children from the custody of their parents solely based on their homosexuality. EXODUS’ official policy states:

Exodus International believes that the biblical design for the family and the best environment for raising a biological or adoptive child is one in which the child’s mother and father are married to one another and are present in the home. While legitimate and difficult circumstances often prevent this, the intentional deprivation of a mother or father through same-sex parenting and adoption, is not in the best interest of children . . . [S]ocial policy and adoption law should be governed by a desire to ensure the health and well being of future generations.⁹⁸

All the ex-gay organizations analyzed here are currently exhibiting the personal testimony of Canadian Dawn Stefanowicz, the daughter of a now-deceased gay man, who, citing Paul Cameron’s distortions, claims that her tormented childhood substantiates that gay people are unfit to raise children.⁹⁹ Stefanowicz, an accountant, appeals to her individual experiences and cites Cameron’s statistics in testimony before legislatures in both Canada and the United States to deny parenting rights and reproductive technologies to gays and lesbians.¹⁰⁰ Cameron and his colleagues

recommended: “States should prohibit homosexuals, prostitutes, and drug addicts from adopting children, being foster-care parents, and having custody of children.”¹⁰¹ Cameron’s allegations, and those who cite him, such as Lynn Wardle, continue to be cited as credible research in amicus briefs, court decisions, and policy hearings in the United States.¹⁰² “Judges have cited Wardle’s article to justify transferring child custody from lesbian to heterosexual parents.”¹⁰³

Using the courts to deny parents custody of their own children is the primary means through which children are forcibly removed from one group and transferred to another. In 1995, the Virginia Supreme Court used the state’s sodomy statute to justify forcibly transferring custody of Sharon Bottoms’ two-year-old son to her mother. Ex-gay organizations today work with Christian Right legal firms, such as the Alliance Defense Fund and Liberty Counsel, which routinely submit court briefs and litigate to prevent or deny gay people from conceiving, adopting, fostering, and rearing children, even their own offspring. Since 2004, Liberty Counsel founder Mat Staver, dean of Liberty University’s Law School, has represented Lisa Miller, an ex-gay woman who seeks to deny her co-parent’s visitation rights. Miller claims her former partner’s “lesbian lifestyle” results in a harmful environment for their daughter Isabella. Liberty Counsel and PFOX, an EXODUS ministry until 2009, co-sponsor the “Protect Isabella Coalition” to provide legal support for this case. NARTH, which portrays itself as a secular *mental health* organization, featured Staver at its 2009 conference. In 2002, Alabama Supreme Court Justice Roy Moore wrote a post-divorce custody opinion, which denied guardianship to a lesbian mother:

To disfavor practicing homosexuals in custody matters is not invidious discrimination, nor is it legislating personal morality. [It] . . . promotes the general welfare of the people of our State in accordance with our law, which is the duty of its public servants . . . the protection of the family is a responsibility of the State. Custody disputes involve . . . the State, within the limits of its sphere of authority, in a way that preserves the fundamental family structure. The State carries the power of the sword, that is, the power to prohibit conduct with physical penalties, such as confinement and even execution. It must use that power to prevent the subversion of children toward this lifestyle, to not encourage a criminal lifestyle.¹⁰⁴

Moore is running for governor of Alabama in 2010. James Dobson is quoted on Moore’s Web site: “Judge Moore is a man of courage and strong Christian character, and I have long admired him. Should he win the party primary, I will be pleased to endorse him for governor . . .”¹⁰⁵

Conclusion

If implemented, would the policies advocated by ex-gay movement organizations and representatives analyzed here constitute genocide? We have attempted to illustrate how the ideology, rhetoric, and practices of the ex-gay movement are congruent with Waller’s explanatory model of how ordinary people commit extraordinary acts of brutality, and to reveal how this movement promotes public policies that, we argue, would constitute social death forms of genocide according to UNCG articles II(b)–(e).¹⁰⁶ The ex-gay movement consciously desires the destruction of LGBT culture, and movement leaders have advocated upholding laws that would criminalize private consensual homosexual relations, allow potentially seriously harmful therapies, and deny parenthood to LGBT peoples. It promotes public policy, at home and abroad, designed to destroy the social vitality of LGBT peoples. According to Card, “Social vitality is destroyed when the social relations—organizations, practices,

institutions—of the members of a group are irreparably damaged or demolished.”¹⁰⁷ It is purposeful and sustained action with full knowledge of the consequences of and expectation of extermination.

The genocidal agents in this case do not involve constitutional rulers of a state, but emissaries of a religious movement vested with a belief in divine sanction for their cause, and divine absolution for their brutality. The ex-gay worldview is constructed on what its entrepreneurs imagine to be a moral universe. Constructing homosexuality as a dangerous social threat further legitimates its destruction, and justifies the movement’s foray into the public sphere. Its ideology leads to no other solution than annihilation. Denying that people are harmed by their actions is a form of ideological annihilation, a necessary short-term objective to establish credibility for their genocidal intentions and, ultimately, to summon state and medical intervention. By waging a culture war using hate propaganda and misusing scientific research to gain public legitimacy, the movement seeks to deploy state powers and the medical profession to perpetrate genocidal acts on its behalf. In the context of persistent stigmatization and increasing rates of hate crimes against sexual and gender minorities in the United States, escalating human rights violations against LGBT peoples worldwide, and the global proliferation of American evangelical Christianity, the ex-gay movement may potentially enable and facilitate the commission of genocide.

As an example of this movement’s potential to influence nation-states, the situation in Uganda has worsened significantly since the March 2009 conference featuring Scott Lively, Caleb Brundidge, and EXODUS board member Don Schmierer. In October of 2009, a draft of the “Anti-Homosexuality Bill”¹⁰⁸ was introduced to Uganda’s parliament. If passed, this law would mandate the death penalty for a range of different homosexual acts under the category “aggravated homosexuality,” including repeated consensual homosexual sexual activity or engaging in homosexual activity if HIV positive. Further, it would mandate life imprisonment for a person who “purports to contract a marriage” to a person of the same sex. Finally, it allows for life imprisonment for a single consensual homosexual act, a maximum penalty of seven years in prison for the “promotion of homosexuality,” and a maximum sentence of three years for anyone who does not report, within twenty-four hours, their knowledge of any offense committed under this act.

In response, government officials in the United States, France, and England have all issued public statements denouncing this bill, and have urged Uganda’s parliament to withdraw its consideration. The Organization of American States and the sixty-six signatories of the United Nations’ statement “Human Rights, Sexual Orientation, and Gender Identity” should use their individual and collective leverage to discourage support for this bill, which would send a message to the governments of other nations which might consider similar measures. In October of 2009, the United States offered \$246 million in new aid to Uganda.¹⁰⁹ To evince their commitment to human rights as expressed by the 2008 UN statement and the 2009 OAS resolution, the Obama administration and Congress should tether this offer to the vote by Uganda’s parliament on this proposed legislation.

Our research aims to contribute to the literature on predicting and preventing genocide, focusing on social death forms of genocide elaborated in the UNCG, articles II(b)–(e). We suggest that prioritizing research on genocide as mass murder may indeed enhance its moral opprobrium, but at an enormous human cost, *including* predicting and preventing mass murder. Further, given that international responses to genocide have been based primarily on *political*, and not moral, considerations, we

advocate a fuller consideration of the UNCG definition. Revitalizing scholarship on social death will broadly enrich the field of genocide studies and enhance our collective efforts to forecast and avert genocide in all of its manifestations.

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From Real Friend to Imagined Foe: The Medieval Roots of Anti-Semitism as a Precondition for the Holocaust

Christopher Tuckwood

Sentinel Project for Genocide Prevention, Toronto, ON

This study examines the medieval roots of European anti-Semitism as a precondition for the Holocaust. The twelfth century saw an important transition from Jews being viewed as the adherents of a competing religion to dangerous, inhuman threats to the broader Christian society for the first time. Northern France is used as a case study, examining several Jewish, Christian, and secular primary sources to understand the factors leading to gradual Jewish dehumanization. Growing Church influence and resulting restrictions forced some Jews into what would become their stereotypical occupation of moneylending. Lacking awareness of this broader process and as a result of Church propaganda, the Christian majority came to see Jews as a threat associated with foreign and supernatural enemies. Ultimately, both the people and rulers found the victimization of Jews desirable, culminating in the burning of the Jews of Blois and their expulsion from the French Royal Domains. These results help to explain the beginning of a centuries-long process which had already dehumanized Jews by the time that the Nazis redefined and racialized anti-Semitism in the early twentieth century.

Key words: anti-Semitism, Holocaust, medieval, Europe, preconditions

Introduction

It is often taken for granted in Holocaust studies that general European anti-Semitism was a convenient, and probably necessary, precondition for the Nazi assault upon European Jewry. Without this existing atmosphere of, at best, indifference and, at worst, violent hostility toward Jews throughout Europe, the Nazis would not have found such apathetic bystanders and enthusiastic collaborators during their campaign of extermination. This anti-Semitism did not always exist in Europe but its roots are rarely discussed, even though they extend back a millennium into the early medieval period when fundamental popular attitudes toward Jews underwent a major shift due to the interaction of social, economic, and religious factors. This very important change meant that Christian Europeans no longer saw Jews only as the misguided adherents of an outdated religion, but rather as innately threatening beings who could be subjugated, abused, and even eliminated en masse.

The purpose of this article is to shed some light upon these roots within the context of the larger genocidal process. This is not to say that the development of medieval anti-Semitism was intentional or part of a deliberate dehumanization process, or even that it was responsible in any way for the Holocaust. Rather, it is to say that this type of Jew-hatred did not always exist and that its origins must be considered in order to understand how the stage was set for successive pogroms and expulsions over the centuries and ultimately contributed as an enabling factor in

the Holocaust of the twentieth century. Understanding the medieval origins of anti-Semitism will ultimately contribute to a greater understanding of the preconditions for the Holocaust. These origins are complex and involve various religious, economic, political, and social factors that could each inspire much larger studies. However, as much detail as possible will be given in the space available, as well as a small case study focusing on northern France. While this study is in no way intended to provide a simple monocausal explanation of anti-Semitism, particular attention will be paid to the changing Jewish socioeconomic role and its interaction with Church teachings about Jews during the eleventh and twelfth centuries, which appear as the most salient factors of that period, and gave rise to the most enduring anti-Semitic myths.

Anti-Jewish hostility is a constantly evolving force which has taken various forms both today and in the past, even though its most commonly used label, anti-Semitism, has only existed in modern times¹ and only refers to a phenomenon about nine centuries old. Just as the emergence of racially based anti-Semitism during the early twentieth century was a major development in Jew-hatred, so too was the initial emergence of anti-Semitism during the eleventh century. Prior to that period, anti-Jewish hostility was religiously motivated and almost exclusively clerical, without any known associated violence. Because of its almost exclusively religious nature, scholars call this form anti-Judaism. However, between the ninth and twelfth centuries there was a gradual shift to often violent, popular, and political hostility: essentially, anti-Semitism. Medieval anti-Semitism was a precursor to the modern phenomenon of the same name and was characterized by an irrational fear and hatred of Jews as threatening subhumans that Gavin Langmuir has defined as “the hostility aroused by irrational thinking about ‘Jews’”² as the “Other.” By the late twelfth century, Jews were no longer protected subjects and social equals with whom one might disagree theologically, but a violently persecuted and marginalized minority. Although medieval Jews generally carried on peaceful lives and avoided the constant victimization that is sometimes associated with them, their history from the twelfth century on was punctuated and characterized by increasingly violent attacks.

To clarify, anti-Judaism is a semi-rational opposition to Judaism as a religion and Jews as its adherents based on theological judgments. This form found itself quite popular in clerical circles at all levels of the Roman Catholic Church, but failed to gain many, if any, adherents among the laity. It is perhaps characterized best as a “normal, albeit lamentable interreligious rivalry”³ caused by a perceived Jewish threat to Christianity. Differing from anti-Judaism is anti-Semitism, the irrational fear and hatred of Jews because they are perceived to be innately harmful and dangerous beings, both spiritually and physically.⁴ Anti-Semitism developed out of anti-Judaism but far surpassed the intent or control of the clergy and became popular among laypeople and rulers who developed quasi-religious, counterfactual beliefs about Jews.

Most scholars explain the transition from anti-Judaism to anti-Semitism exclusively in religious, economic, or social terms, with little effort to harmonize the three. In actual fact, the inter-relationship of these three areas cannot be ignored, because people do not operate in each of these roles separately but rather live a unified life. Essentially, religiously inspired economic and legal changes throughout the ninth, tenth, and eleventh centuries marginalized Jews in society and created an atmosphere in which existing religious ideas about them were popularly received and gradually became exaggerated to the point of occasional and extreme violence by the end of the twelfth century. During this period, an important political transition

also took place when the Carolingian Empire dissolved and the Capetian monarchs rose to power and began to shape what would become the kingdom of France. The experiences of Jews across Europe, though certainly sharing many common elements, were diverse at this time, and so it will be necessary to concentrate on a specific political region in order to coherently track the development of anti-Semitism. The northern area of modern France surrounding Paris will be ideal for this, as it was a prominent area in the landscape of the western Carolingian Empire, and then the Royal Domains under the direct control of the Capetians. The events that occurred there represented a pattern and process in the development of anti-Semitism common to other areas, though regional nuances were significant. As a result, the case examined is useful, but caution must be exercised not to over-generalize the conclusions drawn from this evidence and their implications for broader European anti-Semitism leading up to the Holocaust. Unfortunately, both primary and academic sources on the Jewish experience in this place and time are scant, so it will sometimes be necessary to deal with information of a more general nature, from neighboring regions, or from different times in order to extrapolate meaning for the places and events in question.

Jews in the Carolingian Empire: Tolerance and Integration

The Jews of early medieval Gaul living under the Frankish Merovingian dynasty could hardly have been further from the wretched state that their descendants would find themselves in five centuries later. They formed a secure and influential minority, with many friends and supporters at court and important economic, social, and political roles to play themselves, which guaranteed that they enjoyed a comfortable place in society.⁵ From the early seventh century onward, the Merovingian kings began to decline in power until they were mere figureheads and their mayors of the palace ruled instead. One such mayor, Charles “the Hammer” Martel, actually ruled for several years without a king, but upon his death his sons Carloman and Pippin attempted to stem rebellion by appointing the man who would be the last Merovingian, Childeric III, in 743.⁶ Carloman withdrew from public life in 747, taking the tonsure and retiring to a monastery near Rome.⁷ With all competition thus removed, Pippin had himself elected King of the Franks in 751 and deposed Childeric III, thus ending the Merovingian dynasty of “do-nothing kings,” replacing it with Carolingian rule.⁸

It is not clear what, if any, role that Jews played during the transition to Carolingian rule, but they were by no means a community of singular mind or action, and likely held varying positions depending upon their circumstances. Pippin made his Jewish policy clear only after 768, when he conquered Aquitaine and affirmed the personality of the law⁹ for Jews so that they could continue to live under their own laws and still enjoy the privileges previously given to them.¹⁰ It is clear from the sources that Carolingian Jews enjoyed a social status nearly, if not fully, equal to that of their Christian neighbors. One has to remember that the Carolingian Empire was an eclectic organization, and that Jews were just one of many small ethnic groups. Aside from their unique religion in a predominantly Christian society, little would have set the Jews apart, since they had the same occupations, wore the same clothes, spoke the same language, and enjoyed much of the same culture as their neighbors. Perhaps the greatest testament to the highly integrated social status of the Jews at the time was the writings of clerics and the efforts of the Church in general, urging segregation of Jews from Christians. In a letter to Louis the Pious about 826, Archbishop Agobard of Lyon urged for the separation of Jews and Christians, citing a long list of accusations, among them that “[the Jews] lie to simple Christians

and boast that they are dear to you [Louis] ... most excellent people desire [the Jews'] prayers and blessings ..." and "naïve Christians say that the Jews preach to them better than our priests."¹¹ Even leaving room for a preacher's hyperbole, one gets a real sense of fear from Agobard's writings. Certainly the Church would not have reacted so strongly to something that was not happening at all, and two of its main goals were to prevent Jewish-Christian intermarriage and conversions to Judaism. Other sources confirm that it was common at the time for Christians and Jews to dine together on kosher food, discuss religious ideas, and for Christians to adopt Jewish customs such as resting on Saturday and celebrating Jewish holidays while neglecting their own. Such practices likely even extended to the imperial court, and clerical alarm is thus not surprising.¹²

The Carolingians treated Jews as "Romans" and so they lived under Roman law in public matters but also had the privilege of being subject to Jewish law and courts in private matters internal to the Jewish community. The Byzantine Justinian's Code and the earlier Roman Theodosian Code were the two bodies of law used as a foundation for Jewish legislation in Carolingian Europe. Although both documents placed restrictions upon Jews, the Theodosian Code was by far the more lenient of the two and so it was the one most often enforced. Even some popes, such as Gregory I, seem to have preferred it. The laws of Theodosius were also more ambiguous in their declarations and so secular rulers were able to bend the rules in favor of Jews—whether the Church agreed to this practice or not—while still technically adhering to the letter of the law. A ruler's successors also often simply ignored or even overturned secular laws passed against the Jews. Most notably, rulers, in defiance of even the most permissive laws, often gave Jews high appointments in government and allowed them to own Christian slaves despite their prohibition from having authority over Christians.¹³

In addition to receiving near-equal treatment with their Christian neighbors, Carolingian Jews often enjoyed privileges unique to them. Jewish merchants frequently received exemptions from tolls and taxes, received official protection from the office of the *magister Iudeorum* and, most gallingly to Agobard of Lyon, had market days officially moved to Sunday so that the Jewish Sabbath would not be violated by business.¹⁴ In fact, the privileges granted to private Jewish merchants were at least as good as those given to non-Jewish traders in the service of the king.¹⁵ All of these special concessions to Jewish merchants indicate, without a doubt, that their economic importance must have been disproportionate to their small numbers. Jews were, in fact, the primary traders of (largely Christian) slaves captured during Charlemagne's campaigns¹⁶ and their great mobility, higher education, and connections across Europe and to the East meant that Jews were very useful to the king for foreign trade.¹⁷

Of course, as would be the case with moneylenders later on, merchants during the Carolingian period did not make up a majority of Jews and were in no way representative of the greater Jewish population. The Carolingian Empire was a primarily rural and forested place, with few towns in the west save for those built on old Roman town sites.¹⁸ Most Jews lived off the land as farmers, just as they had for most of their history. Some Jews, however, sought greater rewards for their generally higher level of education and literacy—as compared to most Christians—and elected to move into towns and take specialized, skilled jobs. Many local rulers realized the economic value of having a Jewish community and encouraged them to settle in their towns. The economic theory of path dependence indicates that shocks (stimuli) that influence changes in occupation will be permanent in the absence of

countervailing shocks. In the Jewish case, the initial shock that moved them into urban, skilled occupations was the increased education and literacy resulting from the extra emphasis placed on personal Torah study by the rise of Rabbinic Judaism in the first two centuries CE. The local rulers encouraging Jewish immigration used their new subjects as merchants, craftsmen, tax collectors, court bankers, and later moneylenders.¹⁹ With incentives drawing them to the towns and no countershock to change their occupational path, it was practically inevitable that Jews would gradually urbanize, especially since many Jews were merchants and towns were important stations along both local and international trade routes.

Money was not yet a major feature of the European economy in the ninth and tenth centuries, so finance and moneylending had not yet become major occupations for Jews, particularly since no other occupations had yet been completely closed to them. However, a “Capitulary for the Jews” by Charlemagne in 814 indicates that some did lend money to a degree, as it bans them from taking “in pledge or for any debt any of the goods of the Church” or “to take any Christian in pledge.”²⁰ It was common practice at the time for a borrower to offer his freedom as collateral and, if he defaulted on a loan, to be taken into the custody of his creditor either as a hostage or a slave. This law of Charlemagne was likely a Church-inspired attempt to reduce Jewish control over Christians. Soon after, the Jewish right to own even non-Christian slaves was limited, removing them from their earlier pre-eminence in the slave trade and severely limiting their ability to participate in large-scale agriculture. The loss of this right alone had major ramifications and caused later long-term implications for the economic lives of France’s Jews. Their decline had begun.

Religious Attitudes toward Carolingian Jews

Jews in the Carolingian Empire were not the social pariahs and financial specialists that they would later become in France, but neither were they universally tolerated. Hostility toward Jews at this time was anti-Judaism in the truest sense and appears to have emanated solely from the Church and its clerics. Unlike later irrational anti-Semitism, which had a veneer of religion about it but deeper social and economic causes, the predominantly religious hostility of anti-Judaism grew out of the competition between the two religions. The Church and clerics of the time seem to have viewed Judaism as a genuine threat to Christianity, fearing and hating it as such. This is all the more understandable when one remembers that the majority of Christians in Carolingian Europe at the time were relatively new, and presumably reluctant, converts. Christianity had found dedicated adherents among the ruling class but had yet to become a true mass religion among the general population. Evidence of popular anti-Jewish feeling at this time is minimal, and any resentment seems to have come predominantly from the bishops.²¹ The social affinity between many Jews and Christians made the situation even more alarming for the Church. The clergy’s serious concern indicates that the conversion of Christians to Judaism was not only a danger but also a reality which had already taken place, though it is impossible to know how many had converted. The Church’s constant and vehement reiteration over several centuries of its strongly negative position on Christian-Jewish social interaction also indicates that its efforts were largely unsuccessful.²²

Nowhere was the sense of alarm at the loss of Christians or potential Christians to Jewish proselytizers more evident than, once again, in the writings of Agobard of Lyon. Agobard made it clear in a letter to a few sympathetic courtiers of Louis the Pious around 823 that he was not satisfied that Jews had been rendered incapable of owning Christian slaves. He also pleaded on behalf of the potentially Christian

pagan slaves (no mention is made of Jewish ones) serving in Jewish households. His cause for concern was that ownership by a Jew could be a major obstacle to a pagan being baptized into the Christian faith, thereby giving Judaism another advantage in the perceived competition with Christianity. Although pagans probably made up only a small segment of the Carolingian slave population, Agobard tries to give the impression of a captive and subjected people crying out for baptism because “they are pricked by [Carolingian culture] towards the love of Christ ... They flee to the Church, asking for baptism ...”²³ Agobard indicates that pagan slaves desiring to be baptized legally needed the unlikely permission of their masters, and he cites the forced conversions of conquered peoples by Christian emperors as justification for doing so without permission. Of course, once a slave became a Christian, a Jew could no longer own him, and so laws were put in place to prevent unapproved baptisms. Although Agobard claims to support the compensation of Jews thus relieved of their legally owned human property, it apparently either was not put into practice or was not enough to satisfy the offended parties and prevent “human offense and the grievous wounding of our house [the church of Lyon].”²⁴

Although the clerical hostility toward Jews during the anti-Judaic period was mostly based on the fear of Judaism’s threat to Christianity as an organization, this was not enough to arouse the average early medieval layperson. They were more worried about the problems of day-to-day survival than the Church’s recruitment and retention concerns. Instead, most of the public diatribes against Jews at this time appealed to emotional issues, with the age-old accusations of past deicide based on the trumped-up role of some Jews in Christ’s crucifixion.²⁵ Most effective, though, was the spread of rumors about continued secret Jewish hostility toward Christ and Christians. Preachers called Jews every manner of insult for allegedly being in league with Satan to attack Christ and his followers both spiritually and physically.²⁶ Beliefs such as these were used as justifications for the restriction and subjugation of Jews throughout Europe. However, even where such arguments found sympathetic Christian ears, they were never translated into physical violence by the people. It must be remembered that the Church’s official policy and the sermons of even its most venomous clerics in the early medieval period advocated only the segregation and legal, systemic oppression of Jews, but *never* physical violence against them. Nor was the banishment of Jews ever encouraged. The Church actively discouraged harming Jews because of Augustine of Hippo’s fourth-century interpretation of the Cain and Abel story to mean that God had simultaneously cursed and protected the Jews for their “crime” against Christ in order for them to serve as exemplars of the consequences of perfidy. The continued misery of Jews was believed to bear witness to the truth of Christ’s message and divinity as eternal punishment for their crimes against God and disbelief in the Gospels.²⁷

Fortunately for the Jews of the time, however, it seems that the common people and their rulers in the Carolingian Empire were almost entirely unresponsive to the Church’s and clerics’ demands, thanks to the great divide between official Church teaching and what laypeople actually believed. Although the concept of separation of church and state did not exist at the time, secular rulers often allowed temporal rather than spiritual considerations to dictate policy. The common people were also more likely to be concerned with the exigencies of daily life than abstract theological accusations, especially when personal experience showed them that Jews were not evil demons but normal people. Part of the reason for tolerance of Jews by the Carolingian people was likely their relative newness to Christianity and the preservation in their religious attitudes of Germanic polytheistic tolerance, which expected every

people to have their own gods and rituals. Their warlike culture may also have identified better with the harshness of the Old Testament and the similarities between Jews and Christians than they did with the New Testament with its message of pacifism and Christian–Jewish antagonism.²⁸ Although Carolingian Jewish policy was inconsistent and varied across the reigns of many rulers, it remained relatively friendly, despite religious pressure from individuals such as Agobard. Since the people did not listen much to their preachers on this matter and formed no anti-Jewish ideas of their own, pogroms were unheard of at this time.

Charlemagne was the dominant figure in Carolingian history, but Louis the Pious and his other successors continued his pro-Jewish policies following his death. Louis even lifted some restrictions while resisting Church pressures to enhance them and actually enacted laws to protect Jews. Agobard of Lyon considered Louis' Jewish policies to be far too lenient and wrote many diatribes expressing his disapproval. This conflict culminated when the king humiliatingly rejected Agobard as he tried to raise his concerns at court after imperial officials denounced him for unlawfully baptizing a Jewish-owned slave in 822.²⁹ Even when the Carolingian Empire began to break up, pro-Jewish policies continued in all regions. Clearly, anti-Judaism had not found a popular following in any sector of lay society. Even the clerics who passionately professed it were a minority. Interestingly, some preachers who promoted the official line and attacked Judaism and Jews as a group from the pulpit were often on friendly terms with individual Jews on a personal level, even entering into religious discussions with them.³⁰

Carolingian Dissolution and the “Rise” of the Capetians

All things come to an end, and the Carolingian Empire was no exception when succession difficulties arose following the death of Louis the Pious in 840. In accordance with Frankish custom and the practice of his father Charlemagne, Louis had instructed that the empire was to be partitioned between his three sons, Lothar, Louis, and Charles. Although division of inheritance was an established Germanic principle, there was no way to ensure its implementation, so the three brothers fought and negotiated for dominion once their father had died.³¹ After three years of struggle, they signed the Treaty of Verdun in 843 and divided the empire into *Francia Occidentalis*, where Charles would reign, *Francia Orientalis*, where Louis would reign, and the Middle Kingdom, which Lothar would rule, keeping the imperial title.³² *Francia Occidentalis* in the west comprised most of the lands that make up modern France and will be the focus of this article from here on.

By the end of the tenth century, the descendants of Charles had suffered the same fate as the Merovingians two and a half centuries earlier and became inactive figurehead kings. They reigned, but did not rule. Instead, men who effectively held the post of “prime minister” conducted the work of government. Louis V was the last Carolingian king of France, and he reigned less than two years before dying, after which his chief administrator Hugh Capet, Duke of the Franks, took the throne in 987.³³ In so doing, Hugh founded a new dynasty that would bear his name: the Capetians.

The kingdom Hugh inherited had declined along with its kings and did not constitute a cohesive political unit. The king could expect only nominal fealty from the lords of the land, and his influence diminished significantly the further he was from any particular area. The only real and direct power enjoyed by the Capetians was limited to a small territory surrounding Paris known as the Royal Domains. Essentially, the king ruled as a baron with a royal title. In fact, the first century of Cape-

tian rule saw a decline in royal power throughout France, with a slow recovery beginning only around the end of Phillip I's reign (1060–1108).³⁴ Royal domination of France was nominal, with local barons exercising real power while the Capetians put most of their effort into consolidating their authority in the Royal Domains and expanding it outwards. Most attention will be paid to the experiences of Jews in the Royal Domains when discussing the rise of political anti-Semitism, and a slightly wider focus will be used when examining the growth of popular anti-Semitism.

For the first century of Capetian rule there is little, if anything, that is possible to say about the role of Jews on the political scene, as they were not much involved in the dynastic transition. As mentioned above, the first king to make any significant gains for Capetian power was Phillip I in the early twelfth century, as he built up relationships between minor lords and the crown.³⁵ Coinciding with the growth in Capetian power during the twelfth century was a change in the operation of the economy that began early in the eleventh century. The old bartering system was rapidly giving way to an increasingly commercial exchange economy. This explosion in the use and importance of money³⁶ was to have grave implications for Jews and their relationship with the rest of society and the crown.

Moneylending: A Jewish Niche and Its Consequences

At the same time that the Carolingians gave way to the Capetians around the turn of the first millennium, changes began which caused many Jews to shift into what would become their stereotypical occupation—moneylending. A combination of push and pull factors caused this shift. Jews had effectively been forced out of large-scale agriculture when their rights to own Christian slaves were taken away and, although they were still able to own land, it was legally insecure and useless to them for anything beyond subsistence farming. The gradual barring of Jews from the developing merchant and craft guilds on the grounds of their prohibition from holding authority over Christians also forced them out of the higher skilled trades.³⁷ At the same time, new financial opportunities arose due to the new monetary economy that required people to be able to borrow money on credit for growth and development. The Church, however, prohibited Christians from lending money to other Christians for the purpose of earning interest. This ban was based on an interpretation of a biblical passage, Deuteronomy 23:20: “You may charge a foreigner interest, but not a brother Israelite . . .” Since the Christian Church saw itself as the new Israel, this moneylending ban was extended to all members of Christendom. Jews, however, were exempt from Christian restrictions.

The same Deuteronomic commandment, naturally, applied to Jews as well, and rabbinic authorities frowned upon lending at first, whether to a fellow Jew or a Christian. The great rabbi and commentator Rashi himself declared in the late eleventh century, “He who loans money at interest to a foreigner will be destroyed.”³⁸ Less than a century later, necessity had softened rabbinic consensus: “no loans at interest must be made to the gentiles, if a livelihood can be earned in another manner,” but “when a Jew may possess neither fields nor vines permitting him to live, the lending of money at interest to non-Jews is necessary and consequently authorized.”³⁹ The potential to carve out a niche and gain a monopoly over a growing trade must have appealed deeply to many Jews, especially since their urbanization, historical experience as merchants, and higher standards of education suited them for it. However, attraction alone is not enough to explain the Jewish shift into moneylending. Most people will not opt to change occupation simply because they can. Instead, it was the external influence of occupational restrictions

that gradually forced Jews off their farms and out of their workshops. The principle that Jews must not control Christians was far more powerful in pushing them out of agriculture and the guilds than the rise of a capital economy, and the Church's ban on Christians charging interest to each other were in drawing them to the money table.

The majority of Jews still scratched out livings in low-level occupations, but the minority who did move into moneylending was a highly visible one. These Jewish financiers inadvertently formed the seed of the stereotype of the "money-loving Jew," which has found incredible longevity and fame. Medieval Christians found it especially easy to associate all Jews with moneylending since, relative to the Christian majority, a greater proportion of the Jewish community were moneylenders even when Christians made up the majority of lenders overall. This proportion must have appeared even larger, since virtually all moneylenders lived in towns and so comprised a sizeable percentage of urban Jews when their poorer co-religionists remained in the countryside. In this way the Jewish economic role in medieval France was disproportionate to Jewish numbers both in reality and even more so in the Christian imagination. This powerful association between Jews and moneylending remained pre-eminent even when Christians (particularly Italians) disobeyed the usury ban and began to make up a majority of the financial market overall.⁴⁰

In spite of the unrealistic representation of Jews as chronic moneylenders and the extremely negative stereotype that later grew out of it, Jewish lenders in the late eleventh and twelfth centuries actually provided an important and appreciated service in two ways. First, they helped to grow an increasingly money-based economy that Church policy otherwise hindered.⁴¹ Second, Jewish lenders contributed to the survival of many poor people who needed borrowed money in order to meet the necessities of day-to-day life.⁴² It is perhaps only natural however, considering human nature, that many Christians came to resent the Jews for their new role in spite of its benefits, whether because of jealousy, suspicion, or personal insecurities. The prejudice was all the more potent since Jews were already marked out as different from the rest of society. The Jewish writer Joseph Kimhi of Narbonne wrote in the mid-twelfth century of the double standard applied to Jewish and Christian lenders, despite the latter's higher interest rates and less-reputable business practices.⁴³ Jewish reactions to Christian hostility definitely indicate that envy was one likely motive for attacks on their communities. Jewish communities (*kehillot*) in northern France enacted laws placing self-imposed restrictions on the behavior of their members. Limits were set on the kinds of clothing that could be worn, the type and amount of jewelry, and the size and nature of banquets given. The leaders of the *kehillot* acknowledged that ostentatious shows of wealth such as these by a few Jews would arouse the jealousy and anger of Christian neighbors against the entire community if left unchecked.⁴⁴

The fact that only a minority of Jews were moneylenders and that fewer still had any great wealth did not seem to allay the Christian hostility against their entire community. The actions of the *kehillot* confirm that the economic status of a few Jews engendered the hostility of the Christian majority against all their co-religionists and initiated the formation of an enduring stereotype. Human beings have a tendency to form mental schemas, assuming that all members of a particular group share certain characteristics and may even be all the same. People usually draw these conclusions from direct observations of only a few members of the group in question or even from mere rumor and hearsay. These conclusions are then generalized to the entire group. In sociological terms, this phenomenon is called the *out-*

group homogeneity effect and has been used to establish “Otherness” and dehumanize victim groups many times throughout history.⁴⁵ Furthermore, humans are prone to the *accentuation effect*, which establishes a confirmation bias that remembers negative characteristics of an “Other” individual or group while ignoring positive qualities or characteristics that contradict presuppositions, even if those positive qualities are more numerous.⁴⁶ In medieval France, these two factors meant that all Jews quickly came to be associated with the financial activities of a few of their highly visible co-religionists.

Religious leaders of the time quickly realized that the new Jewish “offence” to Christendom could be very useful. They soon changed their angle of attack from the old, purely religious rhetoric to a new combined religious, economic, and social one that the laity was much more prepared to accept. Preachers started portraying moneylending as a weapon in the Jewish arsenal being used to attack and undermine Christendom either as part of a Jewish fifth column in alliance with the Muslims, or in the service of the Devil himself to prepare the way for the Antichrist.⁴⁷ Once the laity accepted this rhetoric, it was an easy progression to forming and believing other erroneous accusations against Jews. Political leaders, while finding Jews economically useful and protecting them for a time, also began to see the propaganda value of their new status and did not hesitate to exploit it.

Transition: The Blois Massacre and the First Expulsion

When Jews began to move into moneylending in sufficiently large numbers during the twelfth century, Christians began to see it as a “Jewish” occupation. At the same time, another change took place in European society. The old clerical, religious anti-Judaism that the laypeople and rulers of Europe had ignored for so long began to give way to a popular, irrational hostility which can be called true anti-Semitism for the first time. This change happened because the growing hostility and stereotypes surrounding Jewish moneylending psychologically prepared common Christians to accept rumors about the other harmful activities that Jews supposedly carried out in secret. In the minds of many Christians, Jews became financially parasitic “Others” who committed untold horrors in private. They had long been painted by clerics like Adhemar of Chabannes as the Devil’s agents sent to earth to attack Christ and Christians. Around the turn of the millennium, the preacher Ralph Glaber articulated “the wickedness of the Jews” which he alleged had led to the destruction of the Church of the Holy Sepulchre in Jerusalem⁴⁸ by their supposedly devilish Muslim allies under the Caliph al-Hakim. Common Christians never seem to have believed such accusations, of which they could see no evidence and which had such distant results. Now that the new “evil” of Jewish moneylending was present in everyday life for all to see, when Christians heard it denounced in church as an attack on their society, the association was easier to make.

Once the idea of the Jewish menace had been established and internalized, it was not much of a leap for poorly understood Jewish rituals and customs to also be accepted as part of an anti-Christian campaign. The average medieval Christian peasant had only the barest understanding of his/her own religion, let alone the alien practices of Jews that took place behind closed doors. Furthermore, the belief that Jewish religious and economic activities were actually spiritual attacks carried out in the name of the Devil naturally resulted in the acceptance of further accusations that Jews did actual physical harm to Christians in the course of their evil spiritual services. Christians began to accept such rumors, if for no other reason than that they had no concrete reason to disbelieve them.⁴⁹ Unexplained deaths, for

which the common people demanded answers and justice, could then be blamed on the Jews by troublemakers. Such accusers usually had the tacit (and sometimes enthusiastic) approval of the authorities, who knew the placement of guilt would be accepted by the people. As a marginalized, defenseless, and demonized minority, the Jews made very plausible scapegoats.

Violence, often on a large—though never truly exterminatory—scale, was the natural outcome of accusations against a dehumanized and feared group such as medieval French Jews, especially when there was not enough evidence for a legitimate trial and mob justice took over. Local authorities often approved of, and sometimes encouraged, the lynching of Jews in this way whether because of apathy, genuine hostility, or greed for confiscated Jewish wealth. This was certainly the case at the first French ritual murder accusation: the “trial” and burning of Jews at Blois in May 1171. Ephraim ben Jacob of Bonn, a German-Jewish Talmudist and poet, gave an account of the incident at Blois in his work “A Book of Historical Records.” No reason is known for the ritual murder accusation to have happened at that place and time, but it may have been an echo of the similar William of Norwich scandal in England in 1144. Ephraim recounts that about forty Jews lived in Blois at the time that one of them was accused of disposing of a Christian corpse. The man was watering his horse at the river when a soldier doing the same with his master’s horse claimed that the animal spooked at the sight of the Jew. Somehow, the soldier turned this episode into a story that he immediately told his master about a Jew whom he saw “throw a little Christian child, whom the Jews have killed, into the water.”⁵⁰ Remembering his hatred of “a certain Jewess influential in the city,” the master saw a chance for vengeance and immediately reported the “crime” to the ruler of Blois, Count Theobald V.⁵¹ Theobald believed the story and imprisoned all the Jews of Blois as a result. He had no evidence against them—not even a body—but saw an opportunity to profit by ransoming the entire Jewish community to Jews in the neighboring cities. Extremely outdated and misapplied methods of trial by ordeal were used to prove the “truth” of the accusation against the Jews, while the arrival of a hateful priest swayed Theobald’s mind from mercy and ransom to punishment. On 26 May, more than thirty of the forty Jews of Blois were burned alive.⁵² Their torment was the first episode of its kind in continental Europe and set a dangerous precedent. Both Theobald and his subjects enthusiastically accepted the ritual murder accusation and sought a gruesome vengeance at the urging of a simple priest. The whole episode lacked even the veneer of a legitimate legal case or sincere religious justification. Something had changed. These Christians hated Jews not as human members of an alien religion, but irrationally, as something they objectively were not: evil and secret murderers of the innocent. Anti-Semitism had arrived, and it was both popular and political.

It must be noted that ritual murder pogroms differed greatly from the massacres of Jews that took place during the First Crusade. The crusaders who slaughtered Jews in the Rhineland and at Rouen in France (the only place where the French king and bishops were unable to protect Jews) were not the aristocratic and officially state-sponsored soldiers sent to recapture the Holy Land. The people who so viciously attacked Jews during the crusade were almost universally commoners. They were non-professional soldiers and hangers-on, urged to unrestrained violence by grass-roots leaders on religious grounds.⁵³ Moreover, these renegade crusaders attacked Jews in a time of heightened religious sentiment when they had been gathered for the purpose of killing non-Christians to begin with. To these low-level crusaders an infidel was an infidel, and the distinction between Jew and Muslim

was a moot point since all were the enemies of Christ and thus deserved to die. Their behavior, however, was discouraged at the time by most rulers and by members of the Church hierarchy.⁵⁴

Much had changed seventy years after the First Crusade. The killings at Blois did not occur in an atmosphere of increased religious feeling by a community facing an external threat of any kind, but rather in a safe and peaceful town. Although, as Ephraim of Bonn notes, the final decision to burn the Jews of Blois came at the instigation of a priest, there was no religious motive in the initial acceptance of the accusation or decision to persecute them. Also, it was a political figure, Count Theobald, who provided the main impetus to attack the Jews, quite unlike his Crusader counterparts who discouraged such behavior. Lastly, the common men who carried out Theobald's sentence on the Jews massacred their neighbors, who clearly posed no threat to the community.

Interestingly, Louis VII was the king of France and Count Theobald's brother-in-law at the time of the Blois massacre. Louis strongly condemned the accusations against the Jews of Blois and renewed assurances of his protection to the Jewish community in his domains⁵⁵ (Blois being just outside the king's sphere of direct influence). Clearly, anti-Semitism had not yet become institutionalized at the highest levels of society, although Louis' words were probably motivated more by economic considerations than humanitarianism. Jews had become mere pawns for rulers due to their new economic role. The developing political anti-Semitism was more a phenomenon of abuse of power and realpolitik than of hatred, fear, or religious belief. Unlike the previous centuries when Jews were free and equal subjects who had a special partnership with kings, by the late twelfth century their survival was based entirely on their economic and political usefulness. The Jews were yet another point of contention, along with minting rights and authority over serfs, over which the Capetian monarchs battled their vassals during the long struggle to unite and dominate France. They were pieces of property around whom kings built very strong legal claims for the rights of the crown.⁵⁶

The Jews were an important source of money for the king even more than they were a source of legal leverage. Rulers always need money, especially those who are trying to build up their power base. The majority of loans that medieval Jews made were to such rulers, and the business relationship generally went smoothly. The Jews had several methods to ensure that they were repaid on time. Pawnbroking secured loans when enough physical collateral was available, as did royal grants of tax rights to the Jews, and Jewish threats of collective boycott should one of them be cheated.⁵⁷ Theoretically, no king would default on a loan if it meant that he would never get another one. Sometimes, though, rulers ignored the consequences and sought profit from the Jews by attacking rather than protecting them. The collective confiscation of property or repudiation of loans from *all* Jews could bring in a large one-time gain, while simultaneously removing the threat of boycott and neutralizing the Jewish community's source of leverage.⁵⁸ Kings found this option very attractive when another non-Jewish source of credit was available.

The young king Philip II Augustus was intent on expanding royal power as much as possible when he came to the French throne in 1179. Only fifteen years old, Philip was nonetheless a shrewd ruler and knew right away that he needed vast quantities of money in order to fight the feudal barons for power and win.⁵⁹ The best medieval source of information on Philip and France at this time comes from the book "Gesta Philippi Augusti" by the monk Rigord of St. Denis. Apparently, Philip immediately recognized that Jews were useful to his plans and he set to work persecuting them

within months of ascending the throne. Four months into his reign, Philip imprisoned every single Jew in the Royal Domains. He released them in 1180, only after receiving a large ransom. In 1181 Philip annulled all Jewish loans that had been made to Christians and retained 20% for the crown. Finally, in 1182, Philip issued the last blow to the Jews by confiscating their homes, buildings, and land, banishing them from the Royal Domains effective the feast of St. John the Baptist on 24 June.⁶⁰

Rigord justifies Philip's expulsion of the Jews of his lands in religious terms. He claims that Philip knew full well how "the Jews who dwelt in Paris were wont every year on Easter day... to go down secretly into underground vaults and kill a Christian as a sort of sacrifice in contempt of the Christian religion."⁶¹ Apparently, the final offence came when the Jews "used so vilely" some church vessels given to them as security on a loan.⁶² Whether or not Philip really believed such accusations will never be known, but he likely did not care about the truth, instead only wanting to use them as effective propaganda in his attacks. The confiscation and expulsion of 1182 did, however, serve several practical worldly purposes that Philip fully calculated and believed in. First, the financial revenues from taking over Jewish property and the claims on their debts hugely enriched the crown. Under former circumstances, Philip would have ruined any chances at future loans by thus impoverishing and alienating the Jewish community. However, Italian moneylenders had established a growing presence in France and were ready to fill the gap. A ruler in such a situation did not have to fear boycott, but did stand to make a substantial one-time gain while enjoying continued credit from a new source.⁶³ Second, the expulsion itself ensured the support of the French Church and the goodwill of the clergy. Official papal policy rejected the persecution and expulsion of Jews but, as has been seen, many lower-level clerics ignored this and would have welcomed the Jews' expulsion. Finally, even the most undemocratic tyrant still cares about public opinion to some degree and wants the support of his subjects. It was important for Philip to establish this popularity early in his reign, and the expulsion of what had become a feared and hated minority was an excellent way to do so. Philip's religious pretences for the expulsion would have made this public relations coup all the more effective because of his appearance to be cleansing Christian France of the Devil's Jewish servants.

The expulsion of 1182 was small in scope due to the limited geographical area to which it applied. It was also a temporary measure, for the king would allow Jews back into his lands by the end of the century. Philip Augustus' expulsion of the Jews, however, had significance beyond its scale. It was the first such expulsion anywhere in Europe, and signaled that the Jews had fully fallen from being protected and favored royal subjects to political pawns at the mercy of their rulers. Jews could now be used as tools to raise money, settle political disputes, or gain the support of the masses. The events of 1182 had set a dangerous and much-followed precedent for the rest of Europe, particularly the western half, which was entirely free of Jews three centuries later. Although the Jews were eventually allowed back into the French Royal Domains, they suffered repeated banishments until their last remnants were forced out in 1394. English Jews were expelled in 1290 due to complications related to moneylending, and those in Germany, Spain, and parts of Italy faced much harassment and violence before their own final expulsions in the fifteenth and early sixteenth centuries.⁶⁴ From a modern point of view, the most significant aspect of the 1182 expulsion is clearly that Philip Augustus had ushered in the age of political anti-Semitism at the highest levels of government and society.

Conclusion

Over the four centuries from the rise of the Carolingians to their first expulsion from France, the Jews under royal control occupied a steadily worsening position in society. By the end of that period they had lost their original acceptance and privileged place. Although intolerance of Jews was nothing new in Christendom, it definitely grew and morphed as the earlier clerical anti-Judaism gave way to an irrational popular and political anti-Semitism. The change in employment opportunities forced many Jews into taking on an economic role that was the main factor leading to their downfall. Without the restrictions which led to that change of occupation, and which consequently influenced popular attitudes toward Jews and religious accusations against them, the Jews of France would likely have continued living as a protected minority condemned from the pulpit but accepted by their neighbors. The growing hatred of Jews as a group was in no way inspired by their real behavior. Rather, Jewish moneylending simply provided a catalyst for the spread of false preconceived and generalized notions about Jews.⁶⁵ Without the adoption of moneylending as a major Jewish occupation, the common people would never have seen any “evidence” of Jews as a dangerous minority feeding off of Christian society and plotting its destruction. Instead, seeing Jewish “predators” financially “attacking” Christians through usury planted the idea in the average layperson’s mind that perhaps they were dangerous after all. The way was paved for anti-Semitism: if Jews did such terrible things publicly, many Christians likely reasoned, just imagine what they did in secret. Suddenly, all of the long-proposed but unpopular religious propaganda portraying Jews as demonic enemies seemed a little more realistic. Eventually ready to believe anything, laypeople accepted these ideas and a mob mentality carried them away into unthinking fear and hatred. The most baseless of accusations suddenly became legitimate grounds for the bloodiest of massacres.

State protection that normally would have stopped anti-Jewish violence not only disappeared but also turned into tacit approval and then active persecution as rulers realized the value of exploiting Jews. Whether as a means to indirectly tax the people, a source of wealth for confiscation, scapegoats for crimes and social problems, or tools to raise popular and clerical support by periodic “religious” persecutions, few things were more useful to a ruler than a helpless Jewish community. The period of transition from anti-Judaism started in 1171 with the Blois massacre and concluded with the expulsion of 1182. The former signaled the arrival of popular anti-Semitism and the latter the arrival of its political counterpart. Both set dangerous precedents that were repeated in France and all over Europe for centuries to come. Most importantly, these events marked a sinister transition in the treatment of Jews by all levels of society, often independently of religious cause. Anti-Semitism had arisen and established Jews as dehumanized enemies of the common good, though the phenomenon would continue to evolve for centuries.

Ultimately, when viewed in a much broader historical context, the events beginning in the twelfth century clearly helped to create the atmosphere that enabled another major reinvention of Jew-hatred with the Nazi racialization of anti-Semitism in the early twentieth century. The Nazis exploited many ancient myths about Jews, including the blood libel, demonological imagery, and especially the portrayal of Jews as parasitic internal enemies preying upon their non-Jewish neighbors, largely through economic means.⁶⁶ The vast span of history and the lack of medieval genocidal intent preclude a direct causal link between the rise of medieval anti-Semitism and the Holocaust. However, the fires of Blois were, without a doubt, important first

steps on the long road to the ultimate catastrophe of European Jewry almost eight centuries later.

Notes

1. Robert Chazan, *Medieval Stereotypes and Modern Antisemitism* (Berkeley: University of California Press, 1997), 126.
2. Gavin I. Langmuir, *History, Religion, and Antisemitism* (Berkeley: University of California Press, 1990), 275.
3. *Ibid.*, 128.
4. The terms *semi-rational* and *irrational* are used here to describe the different sources and natures of anti-Judaism and anti-Semitism. Anti-Judaism is considered to be semi-rational because its proponents appeared to engage in logical thought processes regarding the actual differences between Jewish and Christian beliefs and practices. They regarded Jews as equally human to themselves and believed that their wayward souls could be saved through conversion to Christianity. However, the prejudices which arose from these thought processes were no more valid due to their origin and are therefore not fully rational from an objective point of view. Anti-Semitism, on the other hand, is considered to be completely irrational in nature because it is based on emotional reactions to erroneous beliefs about the nature and often fictitious practices of Jews, who are themselves regarded as being either subhuman or supernatural beings. Anti-Semites viewed Jews as being evil not because of their actual actions or beliefs, but because of what they were believed to be.
5. Bernard S. Bachrach, *Early Medieval Jewish Policy in Western Europe* (Minneapolis: University of Minnesota Press, 1977), 65.
6. Pierre Riche, *The Carolingians: A Family Who Forged Europe*, trans. Michael Idomir Allen (Philadelphia: University of Pennsylvania Press, 1983), 52.
7. *Ibid.*, 59.
8. *Ibid.*, 68.
9. The “personality of the law” is a term referring to the early medieval legal principle that individuals were subject to the laws of their ethnic group or homeland at all times, even when traveling abroad or living as a minority in another culture. For example, a Frank accused of a crime while traveling in Visigothic lands would be tried for the offence under Frankish law, rather than Visigothic law.
10. Bachrach, *Early Medieval Jewish Policy*, 66.
11. Agobard of Lyon, “On the Insolence of the Jews to Louis the Pious (826/827),” in *The Internet Medieval Sourcebook*, <http://www.fordham.edu/halsall/source/agobard-insolence.html> (accessed 18 October 2009).
12. Bachrach, *Early Medieval Jewish Policy*, 97.
13. *Ibid.*, 35–36.
14. Agobard of Lyon, “On the Insolence of the Jews to Louis the Pious.”
15. Adriaan Verhulst, *The Carolingian Economy* (Cambridge: Cambridge University Press, 2002), 130–31.
16. *Ibid.*, 105.
17. *Ibid.*, 88, 131.
18. *Ibid.*, 21.
19. Maristella Botticini and Zvi Eckstein, “Path Dependence and Occupations,” in *The New Palgrave Dictionary of Economics Online*, ed. Lawrence Blume and Steven N. Durlauf (Houndmills, UK: Palgrave Macmillan, 2008), http://www.dictionaryofeconomics.com/article?id=pde2008_P000318 (accessed 21 January 2010).
20. Charlemagne, “Capitulary for the Jews, 814,” in *The Internet Medieval Sourcebook*, <http://www.fordham.edu/halsall/source/814capitul-jews.html> (accessed 18 October 2009).
21. Walter Laqueur, *The Changing Face of Anti-Semitism: From Ancient Times to the Present Day* (Oxford: Oxford University Press, 2006), 51.

22. Esther Benbassa, *The Jews of France: A History from Antiquity to the Present*, trans. M.B. DeBevoise (Princeton, NJ: Princeton University Press, 1999), 6–7.
23. Agobard of Lyon, “On the Baptism of Slaves Belonging to Jews (to Adalard, Wala, and Helisachar),” in *The Internet Medieval Sourcebook* <http://www.fordham.edu/halsall/source/agobard-baptism.html> (accessed 18 October 2009).
24. Ibid.
25. Steven T. Katz, *The Holocaust in Historical Context*, vol. 1, *The Holocaust and Mass Death before the Modern Age* (New York: Oxford University Press, 1994), 241–46.
26. Ibid., 259–61.
27. Ibid., 260–64.
28. Gavin I. Langmuir, *Toward a Definition of Antisemitism* (Berkeley: University of California Press, 1990), 78.
29. Bachrach, *Early Medieval Jewish Policy in Western Europe*, 99–100.
30. Michael Frassetto, “Heretics and Jews in the Writings of Ademar of Chabannes and the Origins of Medieval Antisemitism,” *Church History* 71 (2002): 1–15.
31. Riche, *The Carolingians*, 160.
32. Ibid., 165–66.
33. Elizabeth M. Hallam and Judith Everard, *Capetian France: 987–1328*, 2nd ed. (Harlow, UK: Pearson Education, 2001), 25.
34. Ibid., 119.
35. Ibid., 119–21.
36. Benbassa, *The Jews of France*, 14.
37. Langmuir, *Toward a Definition of Antisemitism*, 305.
38. Leon Poliakov, *The History of Antisemitism*, vol. 1, *From the Time of Christ to the Court Jews*, trans. Richard Howard (New York: Vanguard Press, 1965), 75.
39. Ibid.
40. Joseph Shatzmiller, *Shylock Reconsidered: Jews, Moneylending, and Medieval Society* (Berkeley: University of California Press, 1990), 93.
41. Yoram Barzel, “Confiscation by the Ruler: The Rise and Fall of Jewish Lending in the Middle Ages,” *Journal of Law and Economics* 35 (1992): 1–13.
42. Shatzmiller, *Shylock Reconsidered*, 80–82.
43. Ibid., 94.
44. Benbassa, *The Jews of France*, 30–31.
45. James Waller, *Becoming Evil: How Ordinary People Commit Genocide and Mass Killing* (New York: Oxford University Press, 2002), 240.
46. Ibid.
47. Christopher Ocker, “Ritual Murder and the Subjectivity of Christ: A Choice in Medieval Christianity,” *Harvard Theological Review* 91 (1998): 153–92.
48. Ralph Glaber, “On the First Millennium,” in *The Internet Medieval Sourcebook*, <http://www.fordham.edu/halsall/source/glaber-1000.html> (accessed 18 October 2009).
49. Langmuir, *Toward a Definition of Antisemitism*, 309.
50. Ephraim ben Jacob of Bonn, “The Ritual Murder Accusation at Blois, May, 1171,” from *A Book of Historical Records* (ca. late 12th c.), in *The Internet Medieval Sourcebook*, <http://www.fordham.edu/halsall/source/1171blois.html> (accessed 18 October 2009).
51. Ibid.
52. Ibid.
53. Katz, *The Holocaust and Mass Death before the Modern Age*, 330.
54. Ibid., 323–24.
55. Ibid., 356.
56. William Chester Jordan, “Jews, Regalian Rights, and the Constitution in Medieval France,” *AJS Review* 23 (1998): 1–16.
57. John M. Veitch, “Repudiations and Confiscations by the Medieval State,” *Journal of Economic History* 46 (March 1986): 31–36.
58. Ibid.

From Real Friend to Imagined Foe

59. Jacob R. Marcus, *The Jew in the Medieval World: A Source Book, 315–1791* (New York: Meridian Books, 1960), 24.
60. Rigord of St. Denis, “Gesta Phillippi Augusti,” excerpted in Jacob R. Marcus, *The Jew in the Medieval World: A Source Book, 315–1791* (New York: Meridian Books., 1960), 24–27.
61. Ibid.
62. Ibid.
63. John M. Veitch, “Repudiations and Confiscations,” 31–36.
64. Anna Foa, *The Jews of Europe after the Black Death* (Berkeley: University of California Press, 2000), 9–13.
65. Katz, *The Holocaust and Mass Death before the Modern Age*, 397.
66. Marvin Perry and Frederick M. Schweitzer, *Anti-Semitism: Myth and Hate from Antiquity to the Present* (New York: Palgrave Macmillan, 2002), 1–7.

Review Essay: Transforming R2P from Rhetoric to Reality

Damien Rogers

Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*. Washington DC: The Brookings Institution Press, 2008. Pp. 349, cloth. \$29.95 US.

Alex J. Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*. Cambridge: Polity Press, 2009. Pp. 249, paper. \$47.90 US.

Richard H. Cooper and Juliette Voïnov Kohler, eds., *Responsibility to Protect: The Global Moral Compact for the 21st Century*. London: Palgrave Macmillan, 2009. Pp. 271, cloth. £42.50.

Adopted in September 2005 by the UN General Assembly as part of the UN World Summit's Outcome Document, the "Responsibility to Protect" (R2P) principle has gained demonstrable traction during the first decade of the new millennium. It was first used and defined as the title for the 2001 report of the International Commission on Intervention and State Sovereignty (ICISS). R2P was also featured in the report of the UN Secretary-General's High-Level Panel on Threats, Challenges, and Change, entitled *A More Secure World: Our Shared Responsibility* (2004). Former UN Secretary-General Kofi Annan also embraced R2P in his own report, *In Larger Freedom: Toward Development, Security and Human Rights for All* (2005), and in 2006 the UN Security Council reaffirmed R2P in Resolution 1674.

The international community's widespread recognition of Responsibility to Protect poses serious practical challenges to state makers holding the view that sovereignty is, or at least ought to be, inviolable. At the same time, R2P also poses theoretical and conceptual challenges to those practitioners of disciplinary international relations trying to analyze and make sense of the contemporary world affairs unfolding around them. The source of these challenges lie in three interrelated presumptions underpinning R2P: first, that the state bears primary responsibility for protecting its own population from mass crime and conscience-shocking atrocity; second, that the international community is responsible for assisting states to meet these duties; and third, that UN member states are also responsible for protecting at-risk populations when the host state fails to provide the necessary protection. In addition to recognizing the international community's responsibility to react to atrocity crimes—which include, genocide, war crimes, ethnic cleansing, and crimes against humanity—R2P recognizes the international community's responsibility to help prevent those atrocities from occurring in the first place as well as its responsibility to help rebuild governments, economies, and societies in the aftermath of mass crime. The

logic of R2P therefore represents a radical departure from the highly controversial muscular humanitarian interventions of the 1990s.

This review briefly examines three recent works, each of which responds to the practical, conceptual, and theoretical challenges posed by the emergence of R2P. While the authors of these works rely upon various approaches to deal with their topic, a consensus emerges around the need to complete the transformation of R2P from words into deeds, from concept into norm, from rhetoric into reality.

Gareth Evans' *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (2008) provides an insider's account of the emergence of the R2P concept. He is well known internationally for his former role as Australian foreign minister, and for his current post as president and chief executive officer of the International Crisis Group (ICG). Evans played an integral part in developing and articulating the R2P concept, not only as co-chair of the International Convention on Intervention and State Sovereignty (ICISS) and as a member of the UN High-Level Panel but also, and more recently, as co-chair of the International Advisory Board for the Global Centre for the Responsibility to Protect, launched in early 2008. Indeed, Evans was so central to the development of this concept that the phrase he coined—the “Responsibility to Protect”—provided the title for the ICISS report, although the catchy acronym “R2P” was someone else's suggestion. Building on his personal involvement, the central purpose of Evans' latest book is to introduce, elaborate, and clarify the R2P concept for his readers, and to rectify some of the prevalent misunderstandings that accompany this concept which misinform much of the relevant discussion occurring within the academy, the media, and government circles. Evans writes that his book “is about understanding the responsibility to protect, how the concept emerged, and what it does and does not embrace . . . [it] is about what is necessary to operationalize the new norm, to make it work effectively in practice” (3). By educating his readership to that end, the book thereby seeks to mobilize a broad range of actors who are present on the international stage and who can help transform R2P from rhetoric into reality, enabling those actors to successfully navigate their way past key obstacles and overcome resistance to R2P's development and entrenchment.

Foregrounding both his own travels through Cambodia in the late 1960s, before Pol Pot's regime unleashed its genocidal nightmare on the Cambodian people, and his efforts to confront the aftermath of that atrocity during the late 1980s and early 1990s as Australian foreign minister, Evans reveals his own personal motivations for advocating R2P. This personal background provides a useful context in which to situate the urgent need for the world's policy makers to respond effectively to atrocity crimes irrespective of the locations in which they occur. While this highly personalized approach may well appeal to, and resonate strongly with, a wide readership—through either their own personal encounters with such atrocities or their reflection on, and repugnance for, conscience-shocking mass crime that occurs within an international culture of impunity—it tends to preclude the book's potential status as an authoritative account of the topic at hand. Put simply, the narrator is too close to the events he depicts. Yet even though Evans has first-hand insights into key personalities involved in developing R2P, such as former UN Secretary-General Kofi Annan and Mohamed Sahnoun, co-chair of the ICISS, the book does not dwell on them. Nor does the book read as the self-congratulatory vehicle I half expected it to be. To be sure, Evans does highlight, with some degree of regularity, his own role in recent and contemporary politico-historical trends and events. But the book is more than

part memoir and, if anything, his self-emphasis might prove useful as the basis for assessing Evan's potential role as a norm entrepreneur.

Writing from a unique and well-informed perspective, Evans organizes his argument into two main parts. Part one contains three chapters, the first of which provides useful legal and political definitions of mass atrocities before offering what is essentially a statement of the problem for which R2P is designed as a remedy. To do this, Evans traces the problem of atrocity crimes from the earliest moments of human history right up to the 1990s, ending with examples drawn from Somalia, Rwanda, Bosnia, and Kosovo, each of which ought to be familiar to his readership. The second chapter treats the reader to some very good background material covering the emergence of R2P, its first articulation in 2001, its subsequent evolution, as well as pointing out some major obstacles to its full development. The contention surrounding the precise status of R2P as a norm in international affairs, the lack of institutional preparedness, and the lack of political will to fully implement R2P are obstacles that, if left unchecked, could erode the consensus forming around R2P, perhaps foreshadowing the degree to which R2P's transformation from rhetoric to reality is resisted. Particularly useful here is Evans' treatment of humanitarian intervention within the broader, ongoing debate between muscular intervention and respect for the sovereign state's prerogative of non-interference. The final chapter of part one seeks to rectify several key misunderstandings of R2P—foremost of which is a misconception that R2P is another means justifying the coercive use of military force—and to clarify the situations to which R2P does and does not apply. Taken together, the chapters of part one will prove valuable to readers wanting to strengthen a basic appreciation of R2P or looking for a first-hand account of the kinds of thinking which influenced the emergence of this important concept.

Part two contains a total of seven chapters, the first four of which give focus to three major aspects of R2P: namely, the responsibility to prevent atrocity crimes from occurring; the responsibility to react to atrocity crimes when they occur; and the responsibility to rebuild in the aftermath of atrocity crimes. Using two chapters to examine the responsibility to react—one focusing on non-coercive means, the other on the circumstances necessary for the use of military force—demonstrates that the coercive use of force lies at the extreme end of a broad range of policy options available to the international community. Evans analyses each of the major aspects of R2P in terms of policy makers' conceptual toolboxes, which include various political/diplomatic measures, economic/social measures, constitutional/legal measures, and security sector measures. The analysis here is generally wide-ranging but, by corollary, somewhat cursory, though Evans emphasizes "that each situation has its own characteristics and that one-size spanners don't fit all, but that each situation is likely to require a complex combination of measures, with the balance between them bound to change, and to have to change, over time as circumstances evolve" (85).

Building upon the analysis mentioned above, the remaining three chapters of part two examine the extent to which existing organizations can play a role in transforming R2P from rhetoric into reality, what is required to build the diplomatic, military, and civilian capabilities needed to assist this transformation, and how the prerequisite political will might be mustered and sustained. Evans favors a survey approach to these chapters instead of a formal analytic framework, focusing his argument on a range of pragmatic concerns. In his chapter on promoting and mobilizing political will, for instance, Evans writes that it "is not a missing ingredient, waiting in each case to be found if we only had the key to the right cupboard or lifted the right stone. It has to be painfully and laboriously constructed, case by case, con-

text by context” (224). The elements required for constructing sufficient political will—namely, disseminating knowledge of mass atrocity, building compelling arguments, generating a strong desire for action, demonstrating that taking action can make a significant difference, highlighting those processes which can help manage that action, and searching for, or supporting, leadership appropriate to this challenge—are each in turn explored in this final chapter. He continues to express this pragmatic approach to the book’s very end when he remarks, “You don’t get to change the world simply by observing it” (241). The last third of the book, then, is a call to action to operationalize R2P’s concepts and to further strengthen its status as an emerging norm. To that end, Evans’ book includes a couple of additional features that warrant brief mention here: appendices containing apt excerpts of instruments of international law that define genocide, crimes against humanity, and war crimes; references for a selection of works that will interest the general reader; and various Web site addresses of advocacy groups sufficiently concerned by the R2P issue to take action in some way.

Inspiring as this call to action might be, the book is not without fault. The most immediate deficiencies concern the organization of the argument and its uncritical approach to the topic. Given that part two contains seven of the book’s ten chapters, and that the subject matter of the first four chapters of part two are closely interrelated, the reader would be forgiven for thinking that these four chapters would have been better placed in their own part. This would have almost certainly given the argument greater analytic clarity. More problematic than the book’s structure, however, is Evan’s uncritical approach, which characterizes R2P as part of a problem-solving paradigm. Evans writes, for instance, that for “all its problems, the UN system—with the Security Council at its heart on issues of war and peace and civilian protection—is the only credible international institution we have, or are ever likely to have, with the necessary combination of legitimacy and authority. The task is not to replace or bypass what we have but to make it work better” (180). Passages such as these left me wondering if the argument would have been stronger had it seriously considered systemic reform. However, it is likely such reform would be unattractive to Evans due to its potential to undermine not only his own role in helping implement R2P but also ICG’s future role and status. Evans draws heavily upon ICG reports for evidence to support his general narrative and arguments. However, by the time the reader reaches the end of this book, the heavy reliance on ICG reporting is unimportant since the ICG reports, generally speaking, contain information, analysis, and conclusion of a high standard.

Overall, this is a unique, well-informed, and fairly comprehensive account of the R2P concept. The book demonstrates an excellent understanding of its topic and conveys that to its reader in an easy-to-comprehend manner. Despite the minor issues mentioned above, the reader is provided with solid information about R2P and the history surrounding its evolution, as well as some of the critical strengths and weaknesses of the concept. Given the moral power of his argument and the passionate prose of the text, it will be difficult for the uncritical reader to not share Evan’s “fairly unquenchable sense of optimism; a belief that even the most horrible and intractable problems are soluble; that rational solutions for which there are good, principled arguments will prevail” (7).

Based at the University of Queensland, Australia, Alex J. Bellamy is a professor of Peace and Conflict Studies and has an impressive breadth and depth of expertise in international security matters. His recent book, entitled *Responsibility to Protect: The Global Effort to End Mass Atrocities* (2009), is well researched and well organ-

ized, and presents a compelling argument. Unlike Evans, who draws heavily on his personal experiences as ICISS co-chair and member of the UN High-Level Panel, Bellamy writes from a perspective one step removed from the emergence of R2P at the international level although he acknowledges that he enjoyed close contact with those who were “actively involved in creating, selling, and operationalizing the R2P” (viii). The fact that Bellamy writes from a distance about R2P provides him with the opportunity to critically approach the topic, which he does well. This is not to say that Bellamy is unconcerned with transforming R2P from rhetoric into reality; in addition to this book and scholarly articles on the topic, he is also editor of the new journal *Global Responsibility to Protect* and executive director of the Asia-Pacific Centre for the Responsibility to Protect. Rather, Bellamy’s book does not exhibit the same level of optimism and enthusiasm as Evans’ does. It is, first and foremost, a scholarly contribution to the existing pool of knowledge on what he describes as the “single most important recent development” (2) in the world’s response to atrocity crimes.

Bellamy’s book begins by introducing a useful analytic framework that illustrates how R2P first took shape as a concept before evolving into a principle that can guide collective action. This distinction matters, as “it determines whether the R2P is subordinate to traditional principles of sovereignty and non-intervention or whether—as a principle in its own right—it has the effect of altering the meaning of sovereignty itself” (6). At the same time, but not as part of this continuum, R2P also develops as an emerging norm.

The book is divided into six main chapters, the first of which provides a sophisticated discussion of sovereignty and intervention. Bellamy suggests that sovereignty was never absolute and has never acted as a forceful barrier to intervention, but instead has always included a right to intervene in the domestic affairs of other states and was grounded in, and sustained by, human rights, particularly the right for people to determine their preferred form of government. He dismisses the dichotomy of sovereignty and human rights, which is commonly understood as the rights to non-intervention, territorial integrity, and political independence enjoyed by modern states. The latter, human rights, are described as “the idea that individuals ought to enjoy certain fundamental freedoms by virtue of their humanity” (8), Bellamy demonstrates the “need to move beyond thinking in terms of a struggle between sovereignty and human rights” (14). The opening chapter also surveys the ongoing public policy debate that set the scene for the Canadian government to establish the ICISS, recasting the debate so that “the whole concept of the R2P rests on the idea that sovereignty and human rights are two sides of the same coin, and not opposing principles locked in interminable struggle, as is often portrayed” (33).

The second chapter provides an excellent account of the emergence of R2P as a concept within the work of the ICISS, including insightful passages dealing with the commission’s abandonment of humanitarian intervention rhetoric, its adoption of the victim’s perspective, its broadening of intervention beyond the scope of the coercive use of force, and its emulation of the Brundtland Commission report of 1987, which conceived the notion of sustainable utilization as a way of resolving the tension between the seemingly irreconcilable impulse for commercial exploitation and conservationists’ concern for natural resources. Significantly, Bellamy notes that:

The commission’s adoption of language focusing on the rights of endangered civilians rather than on the rights of potential interveners help to illuminate a broad constituency of states and civil society actors prepared to acknowledge that sovereignty entailed responsibilities and the legitimacy of the international involvement in protecting people from genocide and mass atrocities. (65)

The chapter also introduces and explains the key aspects of the ICISS concept of R2P, and engages the main contemporary responses to that report.

The third chapter focuses at length on the 2005 World Summit, and to the various efforts to generate a consensus on R2P among the international community. Bellamy notes that, at certain times, the R2P concept looked like it might never reach the international security agenda. He also points out that, despite its common name, the principle of R2P adopted by the UN General Assembly differed in some key respects from the concept advanced by the ICISS. For example, “tying non-consensual force under the banner of the R2P *exclusively* with Security Council authorization—rather than *primarily*, as proposed by the ICISS—became a key part of the R2P [principle] and was an essential component of the 2005 consensus” (73; emphasis in original). This difference reasserted the Security Council’s claim to be the only legitimate body authorizing the use of force in international affairs, distanced R2P from the stigma attached to the unlawful US interventions in Kosovo and Iraq (both of which were without Security Council authorization), and probably helped ease some of the concerns surrounding R2P’s potential to justify or disguise neocolonial interference in the developing world. Also provided is an intriguing description of the tactics deployed by US Permanent Representative to the UN John Bolton in an attempt to disrupt and derail the negotiation process leading up to the World Summit—an attempt that was ultimately unsuccessful. As with the previous chapter which focused on the ICISS report, Bellamy considers the major responses to the Outcome Document. Taken together, chapters two and three present a well-researched and thoughtful narrative conveying this very recent history, giving focus to the evolution of R2P from concept to principle and to important dimensions that have changed as a result of that evolution. It will be of interest to those readers concerned with the diplomatic processes and structures used for developing norms or advancing a novel concept on the international community’s security agenda.

A close reading of chapters two and three reveals that one of the book’s key strengths lies in its critical approach. As Bellamy traces the development of R2P from concept to principle, he points to where the evolution of R2P has resulted in important weaknesses. For example, he argues that

the [ICISS] report is conceptually confused about the nature, scope and place of prevention and adds little new to the way we think about the practice of prevention. Much the same can be said of the commission’s finding on rebuilding. There is a vast gulf between the commission’s sophisticated and nuanced treatment of intervention and its brief, confused and unoriginal take on prevention and rebuilding. (52–53)

He also notes that, despite claims that prevention is the key aspect of R2P, the report devotes only nine of its eighty-five pages to it. In fact, “the responsibilities to prevent and rebuild received only sixteen pages, compared with thirty-two pages on the question of intervention” (64). So while Bellamy’s book covers much the same ground as Evans’, it offers wide-ranging insight of R2P’s emergence, and the reader is left with a more analytically sophisticated, critical understanding of the principle. This important difference will appeal to advanced undergraduate and postgraduate students as well as to scholars and researchers wishing to keep abreast of important recent developments within the field of international security.

In turn, the three remaining chapters examine the main aspects of R2P. Focus is given, first, to identifying the circumstances in which the responsibility to prevent ought to apply, and the practical steps, measures, and initiatives that will need to be considered if that responsibility is to be fulfilled by the international community.

Next, a range of measures short of the coercive use of force are discussed in the context of the responsibility to react before the coercive use of force is discussed, including the conditions that ought to exist and the practical steps, measures, and initiatives required to offer immediate protection to those at risk on the ground. Bellamy frequently stresses, correctly, the importance of having a broad range of options, extending from total inaction to dispatching armed forces. Finally, Bellamy examines different approaches to post-conflict rebuilding, focusing on the Peacebuilding Commission as a key initiative in this respect. Throughout his detailed treatment of these major aspects of R2P, Bellamy is mindful of the conceptual and practical difficulties of implementation. Too many passages, however, left me wondering if the discussion, which was very interesting, had entered a level of detail that could be considered “off topic,” particularly during the discussions of sanction regimes and of peacekeeping operations. The space used here might have been better used on providing a statement of the problem to which R2P is a response, which struck me as a significant omission in this book. Nevertheless, Bellamy’s was my pick of the three books subject to review here. It is well researched and informative, written in lucid prose, and compellingly argued, and its bibliography will prove a useful guide to the key literature concerning R2P.

Edited by Richard H. Cooper and Juliette Voïnov Kohler, *Responsibility to Protect: The Global Moral Compact for the 21st Century* (2009) is a volume of fourteen essays that will appeal to advanced undergraduate and graduate students as well as university-level teachers, although the inclusion of a consolidated bibliography would have further enhanced its scholarly appeal and value as a teaching aid. The foreword by Samantha Power sets an appropriately sober tone for the essays that follow by warning that “[s]upporters of R2P should expect more, not less, pushback in the international system as they try to mobilize support for diplomatic, economic, or military intervention” (xi). The essays are divided into three sections, the first explaining the roots and rationale of R2P, the second exploring conflict situations in Iraq, Northern Uganda, Darfur, and the Democratic Republic of Congo in light of R2P, while the final section examines some of the experiences of, and practical concerns confronting, members of the international community seeking to implement R2P.

However, this collection of essays offers a mixed bag, some stronger and better written than others. The best among them are David Scheffer’s essay, which gives greater clarity to defining “atrocities crimes” by examining various sources of international law, a broad-ranging essay on philanthropy by Adele Simmons and April Donnellan, and the editors’ own contribution describing the urgent need for an International Marshals Service to support the international justice system. The case studies are worthwhile reads in and of themselves, particularly Herbert F. Weiss and Mary Page on the DRC and Northern Uganda, respectively. The more disappointing contributions include Evans’ essay, which covers much the same ground as his 2008 book, while Kenneth Roth, executive director of Human Rights Watch, could have focused his essay more closely on the topic at hand, rather than arguing that “the invasion of Iraq fails the test for a humanitarian intervention” (110).

Despite offering various perspectives and approaches, the inclusion of more voices of those directly impacted by mass atrocity or of more marginalized perspectives on the R2P topic would have significantly improved the entire collection. Page’s essay, for example, does capture children’s perspectives on the Lord’s Resistance Army to disturbing effect, but more of this kind of writing would have made the collection’s arguments even more engaging in human terms. While the essay by Aaron

Dorfman and Ruth Messinger, which gives focus to R2P in light of the Jewish tradition, produces some interesting insights, it also begs the question of how other important sacral vantage points and analytic frameworks, such as those belonging to Islam, Buddhism, or Hinduism, might complement the more mainstream commentaries and analysis provided in this volume. However, this collection of essays does give sharp focus to powerful states and their pursuit of self-serving interests.

Each of the books reviewed here recognize that powerful states are prone to intervening in the domestic affairs of less powerful states when it is in their vital interests to do so: Kosovo and Iraq are common, recurring examples. Each of the books, moreover, describes various ways in which powerful states have impeded multilateral discussions seeking to further develop the rhetoric of R2P. John Bolton's attempts to frustrate the UN's machinery receives treatment, as do Russian and Chinese diplomatic maneuverings. The collected essays, however, go further by giving sustained analytic treatment to the practical means of curtailing the options available to powerful state makers wishing to prevent R2P's realization. In particular, a very good essay by Lee Feinstein and Erica De Briun traces recent US foreign policy in this respect before providing a range of practical recommendations that will enable the US government to act in accordance with, rather than merely agree to, the R2P principle. The lack of sustained analysis of the realpolitik dimension among these texts is not so much a limitation as it is an opportunity for future scholarly research.

Notwithstanding the significant differences among the three works reviewed above, each demonstrates an emerging consensus around R2P as a key policy response for the international community to confront the ugly existence of atrocity crimes. They all highlight the important, though in some cases nascent, links among sanction regimes, peacekeeping operations, and the international criminal court. An even stronger consensus emerges in these books over the need to build on the traction achieved over the past decade in order to traverse the difficult terrain of transforming R2P from rhetoric into reality. As Evans points out in *The Responsibility to Protect*,

The immediate objective must be to get to the point where, when the next conscience-shocking case of large-scale killing, or ethnic cleansing, or other war crimes, or crimes against humanity comes along—as is all too unhappily likely—the immediate reflex response of the whole international community will be not to ask whether action is necessary but rather what action is required, by whom, when, and where. (53)

It will be highly regrettable and a condemning indictment of humanity if the world's policy makers need to bear witness to yet another mass atrocity in order to enable this much-needed transformation.

Book Review

Grigoris Balakian, *Armenian Golgotha*. New York: Alfred A. Knopf, 2009. Pp. 509, cloth. \$35.00 US.

Reviewed by Robert Melson, Professor Emeritus, Purdue University, and Cohen-Lasry Distinguished Professor, Strassler Center for Holocaust and Genocide Studies, Clark University

The twenty-fourth of April 1915 is the date that marks the commencement of the Armenian Genocide. On that day, Grigoris Balakian, a high-ranking Armenian priest, was among the 250 Armenian religious, political, and cultural leaders who were arrested in Constantinople and sent 200 miles east to Chankiri to await their fate. While most of his companions were killed or died during the genocide, Balakian survived both the genocide and World War I. When the war ended in 1918, he started to write *Armenian Golgotha*. This is an astonishing memoir and meditation on his survival and on the course of the mass murder that destroyed more than half of the Armenian population of the Ottoman Empire. It is first-hand testimony from a terrible time by a knowledgeable and historically informed witness who was intent not only on recalling his experiences but also on leaving a documented record behind. The book was translated by the gifted poet and historian Peter Balakian—Grigoris Balakian was Peter's great-uncle—with the able assistance of Aris Sevag. Peter Balakian supplies an important and illuminating introductory essay that helps the reader navigate the text.

Grigoris Balakian had studied at German universities and spoke fluent German by the time he returned to Constantinople in September 1914, on the eve of World War I, when he was thirty-eight years old. His command of German saved his life when later he went into hiding, and it gave him a perspective on the role of Germans and Germany—Turkey's ally—during the genocide. He was also well-connected to the establishment of the Armenian Apostolic Church and a well-known figure in Armenian affairs. He arrived in Constantinople two months before Turkey joined Germany and the Central Powers against the Entente, and left it in 1919 as part of the Armenian delegation to the Paris Peace Conference. In those five years he experienced the Armenian Genocide first hand.

When he lived in Berlin, he had been alarmed by the ferocity of German nationalism and the millenarian expectations aroused by the coming of the war. He discovered similar emotions raging among Turks as well as Armenians when he returned to Constantinople. He believed that a rabid form of Turkish nationalism and Pan-Turkism motivated the Committee of Union and Progress, which seized the opportunity of the war to destroy the Armenians and to transform Turkey into a homogenous Muslim and Turkic state. He was critical of the role of the German military and foreign office as well, which he accused of collaborating in the destruction of the Armenians. During his escape, when he posed as a German soldier, he was shocked to overhear ordinary Germans refer to Armenians as “Christian Jews and as blood-sucking usurers,” accusing Armenians of economically exploiting Turkey (281).

Balakian was a fervent Armenian patriot, but he was also quite critical of his own people's attitudes on the eve of the war. Thus, upon returning from Germany, he found Armenian enthusiasm for the coming war and what it might mean for an independent Armenia both alarming and naïve. He feared that it would play into the xenophobia of the Turks. Referring to the massacres of 1894–1896, he noted that “the bloody experiences of the last thirty years had not made the Armenians any more prudent” (28). In a later passage he said, “In this way we provoked the Turks, who had for a long time been looking for an excuse . . . [to annihilate] the entire Armenian population of Turkey” (32). Balakian could not be aware in 1918 that those who would deny the Armenian genocide decades later would argue that it was the Armenians who had provoked the Turks into committing mass murder.

After spending ten months in prisonlike conditions in Chankiri, in February 1916, Balakian was made to join a forced march toward Chroum and Yozgat, stations on the way to the killing fields in Der-Zor in Syria. It was during this deportation that he documented his extraordinary conversation—amounting to a prolonged interview over many days—with Captain Shukri, the sixty-five-year-old commander in charge of the police soldiers, the unit guarding Balakian and the other deportees. Because of his high status and a well-placed bribe, Balakian was allowed to ride on horseback next to Shukri, who was quite open and unapologetic—even proud—about his participation in the deportation and mass murder. This conversation–interview between a victim and a perpetrator must be unique in the annals of the Armenian Genocide and clarifies the process of destruction as well as the attitudes of the “ordinary men” who both killed and supervised the killing.

In this connection he retells Captain Shukri's account of the destruction of the Armenian women of Yozgat (141–50). Not knowing that their husbands and other male relatives had already been killed, the women were told to bring their children and their valuables, because they would be deported to Aleppo to join their relatives. Captain Shukri headed the detachment of police soldiers that guarded the caravan of deportees, but the women and their children were not destined for Aleppo. On orders from his superiors in Yozgat, the Captain led the women and their children to an isolated valley, where they were first stripped of their possessions and then massacred by villagers from the surrounding hills. Their valuables were then shipped to the authorities in town, with Captain Shukri getting his cut (144).

On hearing this account, Balakian could not contain himself and asked the good Captain how he, a believing Muslim, could participate in the massacre of innocent women and children. Shukri explained his motivations in religious and political terms:

The Sheikh-ul-Islam [the highest Suni religious authority in Turkey] had issued a *fatwa* to annihilate the Armenians as traitors to our state, and the caliph, in turn . . . had ordered its execution . . . And I, as a military officer, carried out the order of my king . . . killing people during war is not considered a crime, now is it? (146)

Balakian reports, “I fell silent because there was nothing I could say in reply to an executioner who had likened the merciless massacre of unarmed, defenseless women and infants to killing people in war. In total he was responsible for the murder of 42,000 innocent people” (146). Balakian suggests that the leaders of the Committee of Union and Progress, like Talaat and Enver, might have been impelled by Turkish nationalism and Pan-Turkism, but the ordinary men and women who were the followers and executioners of the genocide were just as likely to respond to religious exhortation and legitimation. Balakian could not know in 1916 that following orders

in wartime would be a recurring rationalization by the perpetrators of genocides, including the Holocaust during World War II and the Rwandan Genocide in 1994.

When he realized that deportation meant certain death, Balakian joined two other Armenian men and escaped on 2 April 1916. He shaved his beard, changed his clothes, and began his life as a fugitive from Turkish authorities. His successful flight lasted until the end of the war. During his extraordinary odyssey, he demonstrated exceptional courage, and ingenuity, at various times impersonating a German railroad worker; a German Jew(!), Herr Bernstein; a German engineer; a railway administrator; a German soldier; and a Greek vineyard worker.

His comment on his transformation tells us much about his boldness and his zest for life:

My transformation . . . had made me a new man, bold and fearless; clothing can change one's disposition and spiritual power in ways I had not realized. A peace-loving and meek servant of the church had abruptly been transformed into a young adventurer ready to employ all of his physical, intellectual, and moral energies to save his life. But any misjudgment would result in death. (263)

Although the memoir records a dark and brutal period, which brought Balakian to moments of despair, he did not shut his eyes to human kindness and courage. His story is punctuated by episodes of Turks rescuing Armenians, of endangered Armenians risking their lives to save him and other victims, and decent Germans, appalled by their country's policies, willing to extend him a hand. During the most wrenching moments of his flight, he was sustained by his faith in a compassionate Christian God and in the patriotic hope that, after the ordeal, Armenia would rise as a free and independent state. He was also sustained by personal optimism, self-confidence, and zest for adventure that cannot easily be taught or duplicated.

Grigoris Balakian speaks up for the Armenian survivors who had much to say about the course of the genocide and about their own experiences during that horrifying period. *Armenian Golgotha* promises to become an important primary document about the Armenian Genocide. Moreover, because of its freshness and immediacy—in parts it reads like daily reports from the front lines of mass murder—it is likely to become a major addition to the literature of witness and testimony describing the violent upheavals and crimes of the twentieth and twenty-first centuries.

Book Review

Nicholas A. Jones, *The Courts of Genocide: Politics and the Rule of Law in Rwanda and Arusha*. New York: Routledge, 2010. Pp. 229, cloth. \$130.00 US.

Reviewed by Gerald Caplan, Independent Scholar, Toronto, ON

Countries emerging from the dark night of conflict and oppression into the light of a new dawn face an almost limitless number of seemingly intractable problems. Think of Cambodia after the Khmer, South Africa after apartheid, Rwanda after the genocide. The economy, unemployment, infrastructure, governance, public service, schooling, health care, reconciliation, justice, trauma—all need to be dealt with, and all simultaneously. Yet over the last two decades, of all these daunting challenges it has been issues related to post-conflict justice and reconciliation that have received most public attention. An entire industry of professionals and institutions who claim to be expert in guiding such societies in transition to new levels of justice and harmonious living has grown up in response to this. In tandem, a related academic discipline of scholars studying these experiments and evaluating them has sprung up.

We need to hope these specialists can deliver on their promises, for issues related to justice are extraordinarily complex, far more than is often assumed. The subject includes its own multitude of sub-concepts, many of them entirely contradictory of and conflicting with others. For some time after South Africa escaped from apartheid, its Truth and Reconciliation Commission was the best-known example of a dramatic attempt to deal with the issue. The very title implied that the truth about apartheid would lead to reconciliation between white and black South Africans. This reflected the idealistic notion of restorative as opposed to retributive justice, a concept embraced by Bishop Tutu but not the mothers of Africans who discovered how the apartheid intelligence services had tortured and murdered their children. The truth can make you bitter.

In recent years, among those who pursue the elusive goal of transitional justice, South Africa has been replaced as the center of attention by Rwanda. This has reflected both the number of Rwandan institutions involved in the apparent search for post-genocide justice and their inherent fascination—the regular Rwandan justice system, which had been almost entirely destroyed during the genocide; the International Criminal Tribunal for Rwanda (ICTR) set up in Arusha, Tanzania, by a guilt-ridden Security Council; and the *gacaca* courts, a unique institution developed in Rwanda by Rwandans to deal with the vast number of accused who could not be accommodated at either of the other two judicial levels.

Naturally, scholars have been racing to observe and study this remarkable phenomenon for several years already, and now that *gacaca* is over and the ICTR is winding down, we can expect the number of books and articles to explode as a result. Some of these contributions have been welcome and enlightening; for example, Timothy Longman's essay in the latest *Peace Review* and Clark and Kaufman's recent collection of edited essays, *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond*. (See my review in *Pambazuka*

News.) That Longman, Clark, and Kaufman reach substantially different conclusions about the *gacaca* process merely underlines the complexity of the issues involved and the need for rigorous scholarship at all times.

Nicholas Jones's book, which is the subject of this review, has a daunting title, *The Courts of Genocide: Politics and the Rule of Law in Rwanda and Arusha*, and is yet another contribution to the subject. But it is not, I fear, up to the standards the subject demands.

There are several problems. First, Jones is a very awkward writer, apparently unaware at times of common syntax, grammar, and word meaning. For example, he writes of "a part of Rwanda history that people do not contend," by which he means that experts don't dispute this aspect of Rwandan history. He states that the "racist underpinnings of the Hutu social revolution became the moniker for the future ethnic divide," although 'moniker' is simply an informal word for 'name'. He quotes another author, making the statement "justice becomes the causality of a political calculation," when it is clear that the original author had written "casualty." Plus we are told, "The capacity for achieving reconciliation will be argued to be associated with the type of justice . . ." There's really no excuse for such clumsiness and so many errors of literacy.

There are also too many errors of fact, some of them perhaps of only minor consequence. Even so, can we not expect that the names of his sources be spelled correctly? I was not thrilled to find my own name misspelled as "Kaplan" in several places, even though it was spelled correctly elsewhere. Scott Straus' name is also frequently misspelled. It suggests a certain sloppiness about the work in general, and calls the author's credibility into question.

More consequential errors include the following examples. The RPF did not "force the Hutu army and militias west, past the French lines of Operation Turquoise and into the DRC." The French army, on its own initiative, allowed the *génocidaires* to escape into Congo, setting the stage for the appalling tragedy that has befallen the eastern part of that country in the last fifteen years. The French establishment must not be let off the hook by the assertion that the RPF was responsible for France's brazen negligence and their complicity with genocidal killers.

Jones seems confused, and certainly confuses us about the number of Hutu who participated in the genocide. On page 28 he says "recent estimates . . . suggest that projections place the number between 760,000 and one million," and cites his interview with J.B. Mutangana. But he fails to explain who J.B. Mutangana is. (In fact, there is no appendix listing his interviewees and giving their backgrounds, a serious omission in this kind of study.) Then in footnote 22 on page 103, he introduces the "Scott Strauss" (*sic*) estimate of 200,000 perpetrators. But he never reconciles these impossibly different estimates, even though the number of alleged perpetrators directly affected the functioning of the justice system.

On page 39 he refers to a person with the last name of "Morgenthau," who is never identified and is not named in the index. A paragraph later he refers to another individual called "Stimson" who is in the index but about whom not a word of description is offered. Who are these people, and what is their expertise with relation to Rwandan history?

On page 67 he refers to the massacres of the 1960s as "early trial runs of genocide." This is a very problematic assertion and can't be stated in such an absolute way. But it's possible he is simply reporting what a source said; this is a problem we run into on several important occasions in the book, where it's not clear whether Jones is agreeing with a source or merely reporting an individual's statement. He

does this again on the same page, where he cites Kigabo as saying that “the Catholic Church was not strong enough to prevent these people [Hutu] from going to kill those people [Tutsi] because basically they [Church and state] had become one body.” Does Jones agree with this statement? And who is Kigabo? This is yet another interviewee about whom we know absolutely nothing. As to the statement, it lets the Catholic Church off far too easily. The church had whatever agency it chose to exercise, even if it was the virtually official state church of Rwanda, and those within the hierarchy might even have been able to stop the genocide in its tracks. Not only did the Church never come close to trying, it at least implicitly condoned the killings, along with offering critical legitimacy to the government.

Some of these errors are related to the central issues of the Rwandan genocide, which means they undermine the reader’s confidence in Jones’s grasp of the subject. One of the worst examples is his description of the tension caused by the “lack of concordance in the sentencing practices of the ICTR and the Rwandan courts.” Jones basically states that the instigators and leaders of the genocide convicted in Arusha would be sentenced to life imprisonment while those who played smaller, more localized roles “are liable to receive the death penalty from Rwandan courts.” This is an unacceptably distorted statement.

The post-genocide government hasn’t executed anyone since 1998, when twenty-two convicted *génocidaires* were hanged in public. The hangings resulted in outrage from the international public, even though, nations such as the United States and China still perform executions for less far-reaching and society-damaging crimes than what were committed in Rwanda. The RPF government claims to disdain international opinion, having been betrayed by virtually the entire world during the genocide. Yet it doesn’t always ignore its critics. By the time I got to Rwanda in 1999, it was already believed that the executions had caused the government too much unnecessary damage. At that time, it was widely expected that while criminals might still be sentenced to death, they were unlikely to be hanged. As each year passed and no death sentences were carried out, it became increasingly apparent that none ever would be. Rwanda was abolitionist in practice.

This did not stop the ICTR or foreign governments from refusing to send accused *génocidaires* to Rwanda for trial on the grounds that the death penalty was still in existence. In 2007, Rwanda formally abolished what it had informally stopped practicing years before. (Jones notes this in an entirely different part of the book, referring to “the recent decision” to abolish the death penalty.) Uganda and DRC have still not eliminated the death penalty. Kenya has abolished it in practice, but not legally. Fifty-eight countries around the world still retain the death sentence. Yet the Kagame government can rightly argue that their practice of a decade ago receives greater criticism today than those countries that still retain the death penalty. And Jones’s book will not assist in alleviating that sentiment.

Jones’s discussion of the ICTR adds little to what others have said long ago, including my own report nine years ago for the Organization of African Unity’s international panel on the genocide. The tribunal cost too much, and should have prosecuted more defendants than it did, but it has produced highly valuable, path-breaking jurisprudence in the area of genocide on which the International Criminal Court can build. It should also be noted that for a book dated 2010, Jones’s data on the number of convictions, acquittals, and appeals are already outdated.

On the *gacaca* trials, Jones has little to offer. He did most of his field research just as the system was being fully launched. As a result, he was only able to watch the preliminary trials. One wonders why he didn’t go back and see how the actual

system worked in practice before he offered the world his observations. In fact, in many ways the book already seems predominately out of date. Most of his written sources are several years old. It is clear that the bulk of the writing was done several years ago, along with the majority of his interviews. In a case like Rwanda's, where change is a constant and new developments are forever emerging, far more immediacy is fundamental to a proper understanding of the situation.

Jones's major contribution to the subject is to remind us of the unfairly high standards that critics of the Rwandan justice system have demanded since the moment the genocide ended. In fact, a double standard seems often to apply when outsiders criticize Rwanda. My own view is that these critics somehow expect the victims of genocide to live up to a higher morality than other mortals. Human rights organizations have relentlessly demanded of Rwanda international legal standards that are not only absent in many Africa countries but also are not fully practiced in rich countries. Jones describes the utter devastation of the system during the 100 days and the long, difficult task of rebuilding—only one of the huge challenges facing the neophyte government. To expect ideal Western or international standards under such circumstances has never made sense, and the contempt of the Rwanda government for many international organizations—duly earned during and immediately after the genocide, when the Hutu escapees in the Kivus received far more attention than the country itself—has only been strengthened by these persistent and unbalanced criticisms.

Jones's conclusions are typically confusing. On page 100 he argues that “there remains evidence that the Rwandan government is seeking to create an environment conducive to the realization of a justice system worthy of its name.” Yet on the following page he concludes that “victor's justice continues to be ever present [in Rwanda], thereby continuing to severely undermine the government's efforts in operating fair trials. The perceived and real operation of fair trials is crucial in progressing towards national reconciliation” (101).

This last sentence is wholly speculative. Whether in Rwanda or elsewhere, there is in fact no way of knowing, other than through intuition, whether fair trials impact reconciliation one way or another, and Jones never discusses this important reality. As for the victor's justice, this refers to the high-profile failure of any jurisdiction dealing with the genocide—ICTR, national courts, or *gacaca*—to prosecute the war crimes of the ruling RPF. Jones refers to this deeply controversial issue many times, as is appropriate, but without really examining the issue critically. It is true that the RPF was guilty of war crimes before, during, and after the genocide; an entire chapter of my report is dedicated to this matter. And from the first, the new government's critics, including major human rights organizations, have repeatedly demanded that the RPF accused must be tried, just as *génocidaires* were. But there are issues of common sense, morality, and triage here.

When has anything other than the victor's justice prevailed anywhere? Did anyone advocate that the Allied bombers who firebombed German cities in World War II be tried at Nuremberg alongside Nazi war criminals? Should the pilots who dropped the atom bombs on Hiroshima and Nagasaki—or their commanding officers—have been put in the dock at the Tokyo war crimes trials? Even today, one would be crucified for raising these issues. Is genocide not the crime of crimes? Is it not arguing for the moral equivalence of the *génocidaires* and those who defeated them to demand the prosecution of the RPF well before most of the leading *génocidaires* have been tried?

And then there are the simple, practical issues of logistics and capacity. If the ICTR cannot work its way through all the cases on its roster, how can we demand that a whole new category be added? The same can be argued about the courts in Rwanda. But those demanding the prosecutions of the RPF have shown little sympathy for these practical realities.

Still, it is true that Rwanda pays a potentially severe penalty for the failure to go after anyone but *génocidaires*. To use language that is now situationally banned in Rwanda, what has happened at every judicial level is that, with few exceptions, only Hutu are being tried. Tutsi hardly ever are. Everyone knows this. That means that the vast majority of Rwandans, who are of course Hutu, know it. It means that the members of the Tutsi minority consider themselves the innocent victims of dastardly crimes of which only Hutu are guilty. When the slogan for the annual commemoration rituals includes only the genocide of the Tutsi, it is too easy to conclude that all and only Tutsi were victims, and all and only Hutu were perpetrators. This does not appear to be a formula for solidifying reconciliation, though few Rwandans in the elite seem able to grasp this fairly obvious contradiction.

The complex world of justice is still in its long transitional phase in Rwanda. We must hope for some penetrating new scholarship that illuminates the process and offers useful directions for the future. Both the scholarship and the directions are much needed.

Contributors

Dr. **Deborah Mayersen** is currently Program Leader—Prevention of Genocide and Mass Atrocities at the Asia-Pacific Centre for the Responsibility to Protect, School of Political Science and International Relations, the University of Queensland, Australia. Previously, she lectured in the School of Historical Studies at the University of Melbourne. She holds a PhD from the School of Historical Studies at the University of Melbourne. Her current research interests include genocide prevention and the role of political will in international responses to genocide.

Christine M. Robinson, PhD, is Associate Professor of Sociology and Interdisciplinary Liberal Studies at James Madison University. Her current research pertains to new religious movements and social control. She is the author of *The Web: Social Control in a Lesbian Community* (2008), and her recent work appears in *Deviant Behavior* and *WorkingUSA: The Journal of Labor and Society*.

Damien Rogers holds a PhD in Political Science and International Relations from the Australian National University, and post-graduate degrees from Victoria University of Wellington and the University of Canterbury, New Zealand. He is the author of *Postinternationalism and Small Arms Control: Theory, Politics, Security* (Ashgate, 2009).

Douglas Singleterry is a civil litigation attorney at Dughi & Hewit, located in Cranford, New Jersey. He received a BA from Drew University in 1997 and a JD from New York Law School in 2002. Following law school, Singleterry clerked for the New Jersey Superior Court. He has published numerous articles in the *New Jersey Law Journal* and *New Jersey Lawyer*. Singleterry serves on the North Plainfield Borough Council and is vice president of the Somerset County Governing Officials' Association and chapter chair of the Tri-County Red Cross. He received the Service to the Community Award from the New Jersey State Bar Association Young Lawyers' Division in 2007.

Robert Skloot is Professor Emeritus of Theatre and Drama and Jewish Studies at the University of Wisconsin—Madison, where he served for forty years as teacher, theatre director, and administrator. He is the editor of the two-volume anthology *The Theatre of the Holocaust* and of *The Theatre of Genocide*. His play *If the Whole Body Dies: Raphael Lemkin and the Treaty against Genocide* has been seen around the world. Skloot is the author of many essays on theatre and the Holocaust and genocide, and has served as Fulbright Professor in Israel, Austria, Chile, and the Netherlands. He lives in Madison, Wisconsin, and travels widely with his play to conferences and classrooms.

Sue E. Spivey, PhD, is Professor of Justice Studies at James Madison University. Her teaching and research interests focus on gender, class, race, and sexual inequalities, with specific interests in structural violence and discrimination. Her most recent work has appeared in *Gender & Society* and *Deviant Behavior: An Interdisciplinary Journal*.

Christopher Tuckwood studied medieval history and Jewish studies at the University of Waterloo. His research interests include the interaction of religion and genocide, victim resistance and self-defense, early warning, prevention, and intervention. He currently resides in Toronto, Ontario, and is the co-founder and executive director of the Sentinel Project for Genocide Prevention, a nonprofit organization that seeks to predict and prevent genocide through cooperation with targeted peoples and the innovative use of technology.

Elisa von Joeden-Forgey teaches history at the University of Pennsylvania. She is the author of articles and book chapters on genocide, as well as on race and colonialism in German history. Her chapter on gender and genocide will appear in the forthcoming *Oxford Handbook of Genocide Studies*, edited by Dirk Moses and Donald Bloxham. She lives in Philadelphia, where she is currently writing a book on gender and genocide titled *Killing God: The Family Drama of Genocide*.