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Editors’ Introduction

This special issue on Raphaël Lemkin is only possible through the hard work and contributions from our guest editors, Jeff Benvenuto and Ben Meiches. The editorial board wishes to thank the guest editors for their hard work and dedication to this issue. Lemkin scholarship has grown exponentially over the last five years, in large part because of a 2013 special issue of the Journal of Genocide Research. In the years since, international conferences have been held in honor of Lemkin in every continent of the world, books and substantial portions of books on Lemkin have been published, and Lemkin’s writings and theories of conflict and violence have been increasingly influential outside of “genocide studies.” This issue of GSP is intended to deepen the scholarly conversation on Lemkin, focusing on Lemkin as a subject of study rather than applying Lemkin’s thinking to analyzing cases of genocide or mass violence. We hope this issue of GSP can help color in some of the important gaps that still exist in the literature on this complicated figure, who stands at the center of the field of “genocide studies,” yet still remains largely unknown and shrouded in myth.

Christian Gudehus
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One or Several Lemkins

Raphaël Lemkin is the signature figure of genocide studies. From his invention of the term, to his fervent efforts to create the Genocide Convention, to his detailed historical analysis of mass atrocities, Lemkin’s status ensures that his writings and life will remain a source of continuing interest for the field. This collection of articles seeks to deepen the growing scholarship on Lemkin’s life, activism, and thought. While considerable time has been spent pouring over Lemkin’s lifework and his campaign for the Genocide Convention has captured popular attention, much of the scholarship on Lemkin tends to describe his writings and labors in one of three genres. First, Lemkin the hero. This genre of scholarship imagines Lemkin as a tireless, ever working man who, through self-sacrifice and great personal tragedy, fought for the improvement of the human condition. A champion of rights and freedoms, in this genre Lemkin’s work is lauded as a signature achievement of human compassion and international justice. A second genre, in contrast, emphasizes the role of Lemkin as a scholar. In this genre, Lemkin’s life, journey and activism are not placed at the narrative center, rather, Lemkin is envisioned as a kind of authentic intellectual. His insights were forged from an exposure to the vicissitudes of the refugee condition, he wrote and spoke in response to dark times and crafted new analytical tools for confronting mass violence. According to this scholarly interpretation of Lemkin, his writings develop new connections between different episodes and forms of violence and serve as a model for the future of genocide scholarship. A final major genre positions Lemkin as the obdurate critic of his time. In this perspective, Lemkin appears as a visionary who understood the dangers of the colonial and national experiments emerging at the end of the 19th century. A person of great perspective and self-reflection, Lemkin foresaw the fascism of the colonial condition, or so the argument goes. He rejected the flimsy ideological excuses given for mass murder and the destruction of indigenous livelihoods or religious communities everywhere. Distinctly aware of modernity’s propensity to stoke social anxieties and enflame xenophobic hatreds, Lemkin emerges as a critical activist that grappled with the deep problem of the colonial predicament.

These genres do not describe all studies on Lemkin nor are they mutually exclusive. Each genre has been subject to doubt, criticism, debate, contradiction and confusion. Each genre presents important, if contestable, features of Lemkin’s life and work. However, all too often these genres impede scholarship on Lemkin and mass atrocities more generally. In specific, genres provide readily identifiable tropes or patterns of narrative that, by definition, both support and limit what scholars can say about a particular topic. In this case, the dominance of the genres surrounding Lemkin potentially precludes a more thorough investigation of his life and the benefits and drawbacks of his conceptual schemas.

These genres do serve an important function by providing an anchor point for the discipline of genocide studies, which ensures that scholars speak a common language and refer to similar set of problems. In an interdisciplinary pursuit like genocide studies, this function is vital to connecting scholars that work across different regions, languages, societies, historical periods, and methodologies. Nonetheless, by codifying genres for interpreting Lemkin’s work, genocide scholars run the risk of minimizing disagreements and overlooking other resources and approaches

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to the study of genocide. Indeed, the problem with each of the existing genres on Lemkin’s work is not that they are historically inaccurate or rhetorically unpersuasive. Lemkin’s life was filled with moments of a certain kind of tenacity and courage, he did write voluminous descriptions of mass violence; he did criticize forms of nationalism, colonialism and modernity. At the same time, these genres are well known at this point in the study of genocide. Remarkably again and again on Lemkin’s prophetic character, deep intellect, or critical faculties amounts to a refresher, to a proclamation: “once more with feeling” in response to the problems of an ever-changing world grappling with an ever-changing problem. It is our belief that if the discipline of genocide studies is to persist and to create valuable new insights and, moreover, if Raphaël Lemkin is to remain an important figure, then his work must be understood in new ways, received where it is useful and abandoned when it becomes an obstacle to further scholarship. While it is difficult to render any final judgment, we believe that the genres of Lemkin have become cliché and that sometimes impede rather than produce new scholarship in genocide studies.

The articles in this special issue both engage in the different genres of Lemkin studies (heroic, scholarly, and critical), but also provide excellent insights into the constraints of these genres. They challenge the image of Lemkin as a heroic figure, that he, through sheer force of will (or famous obstinacy) compelled others to listen, that he was an excellent or even novel scholar, that he gazed at the violence of the world with a fresh eye. To the contrary, the Lemkin described in this issue is sometimes a marginal figure in the birth of ideas, the construction of international law, or the popularization of genocide discourse. In others, he appears almost as the villain, dissuading and undermining appeals for racial justice. Still others read his interpretation of mass violence and historical methodology as too limited for a valuable examination of mass violence or view the genocide studies community as emphasizing the wrong pieces of his oeuvre. Yet, Lemkin’s work still emerges as an inspiration, as a provocation to explore different modes of violence or legacies of domination as cases of genocide. In this respect, the volume deepens the critical scholarship (in both positive and negative senses) on Raphaël Lemkin’s life and work. In doing so, it moves past the common tropes of Lemkin scholarship. In making these observations, the articles do the work of continuing to make Lemkin a useful figure for contemporary scholars in new and different ways.

Three different themes emerge across the writings in this volume. Each theme at minimum challenges received interpretations of Lemkin’s writings, if not calling for a larger reconsideration of his work or role in the development of antigenocide regimes. The first theme articulated in the special issue concerns the problem of situating Lemkin’s work in historical context. What political conditions, forces or variables impacted Lemkin’s process? Which actors changed the rhetoric of genocide? Who was responsible for the development of the first judicial judgments after Nuremberg? Was Lemkin as sensitive and honest about his life as his now famous autobiography implies? These questions have significant implications for the study of genocide because they concern not only how we situate Lemkin’s life and work, but the formative period for law and genocide analysis. The articles in this piece thus reestablish the historical conditions of possibility for modern uses of genocide in scholarship, international law, and political activism.

The second theme that emerges in these pieces is the danger of constructing a hagiography of Lemkin’s life and intellect. Indeed, Lemkin appears in many of these works less as the tireless advocate or genius activist and more like the pragmatist willing to sacrifice principle or a cunning sophist willing to spin a good story rather than stick to the facts. Lemkin’s account of key dynamics in his homeland, his recollection of his role in the Nuremberg tribunals, and even the values that led him to create the concept of genocide emerge in a new light.

Finally, many of the articles outline key elements of Lemkin’s scholarship, which could advance specific areas of genocide research such as the use of narcotics or the importance of territory to the preservation of community life. Here, Lemkin remains a valuable, if compromised, source for genocide research especially as a foil for contemporary interpretations of genocide that often deviate significantly from his original concept.

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Each article in this issue addresses one or more of these themes. They expand the historical context of Lemkin’s works, challenge his position as the intellectual and moral compass for genocide studies, and propose new ways of addressing his work. As a set, they offer a brilliant advancement for the study of genocide as it reexamines the writings and life of its signature figure.

**History, Hagiography, Dehiscence**

Many of the pieces in this special issue explore into Lemkin’s historical context and the different actors and agents that shaped the emergence of international law. As Anton Weiss-Wendt argues in his article “When the End Justifies the Means: Raphaël Lemkin and the Shaping of a Popular Discourse on Genocide,” the appeal of Lemkin is, in this sense, easy to explain: “the world … needs heroes.” Weiss-Wendt contends that Lemkin is the right archetype for the twentieth century hero. He is a private citizen, a refugee from the Nazis who struggled to forge idealistic humanitarian norms and fought to create the first humanitarian treaty of the United Nations era. However, Weiss-Wendt argues that Lemkin should not be made into a saintly figure because doing so would obscure the questions of why and how the Genocide Convention became an imperfect instrument of international criminal law. Weiss-Wendt’s article raises several pointed research questions: could the failure of the Genocide Convention be attributed to the way Lemkin had approached it? How do we retrospectively understand the advocacy and outcomes surrounding the Convention? The answer Weiss-Wendt proposes is that Lemkin should be credited with the adoption of a highly problematic and oftentimes counterproductive treaty as well as self-consciously oversimplify his own concept for mass consumption.

Mark Klamberg’s “Raphaël Lemkin in Stockholm – Significance of his work on Axis Rule in Occupied Europe,” similarly examines Lemkin’s life and complicates our narratives of the creation of the concept of genocide. In this piece, Klamberg addresses Lemkin’s brief time in Sweden, prior to escaping occupied Europe, and long before Lemkin moved to the US, authored Axis Rule, or joined the allied prosecutors at Nuremberg. This history is crucial, Klamberg argues, because a significant part of the material for Axis Rule was collected when Lemkin lived in Stockholm between 1940 and 1941. Klamberg’s article presents new information on how Lemkin was allowed to enter Sweden, his time as a lecturer at Stockholm University, and the people who helped Lemkin during his time in Sweden, including the lawyer and politician Karl Schlyter, and Professor Gösta Eberstein. The study also raises the question of whether the Swedish businessmen who travelled to Warsaw and helped Lemkin collect documents about the Nazi occupation were the same Swedish businessmen who helped the Polish resistance smuggle documents about the holocaust to London through Stockholm. Klamberg’s piece poses serious questions about the different influences that helped to frame the questions and events that interested Lemkin over the course of his study.

Turning to Lemkin’s experience at the International Military Tribunal at Nuremberg, Alexa Stiller reassesses Lemkin’s impact on the war crimes tribunal. According to Stiller’s contribution, “The Mass Murder of the European Jews and the Concept of ‘Genocide’ in the Nuremberg Trials: Reassessing Raphaël Lemkin’s Impact,” Lemkin had basically no influence on the course of these processes, but the concept of ‘genocide’ did. It was the Nuremberg proceedings that narrowed the concept down to the crime of direct and planned mass murder, Stiller argues, not the United Nations drafting process. Obviously, Stiller points out, the final definition of “genocide” was established with the Genocide Convention. Yet, Stiller continues to explore the contingencies in this history of Lemkin and the genocide idea and further contends that the extermination of Europe’s Jews and the concept of ‘genocide’ were not used congruently in the Nuremberg trials and, in fact, this association between the ‘Holocaust’ and ‘genocide’—which scholars often cite to explain the success of the word ‘genocide’ at the UN—could not have developed between 1945 and 1948.

Thomas Earl Porter’s article, “In Defense of Peace: Aron Trainin’s Contribution to the IMT,” contributes to recent research on the relationship between Lemkin and the diplomatic history of the UN Genocide Convention. Porter argues that the UN Convention was not the result of a world-moral undertaking, but a compromise with Soviet legal theorists. Porter focuses on the towering Soviet legal theorist Aron Trainin, who is recognized by legal historians as one of the preeminent figures in the 20th century history of international criminal law. Trainin’s contributions to the concept of genocide during the Nuremberg Tribunals and at the United Nations, Porter contends, have been
virtually ignored by scholars in the field of genocide studies, yet remain critical to understanding the origins and scope of international law. Porter delves into the significant influence of the Soviet delegation to the Nuremberg tribunals, a subject which is also largely overlooked by scholars of genocide. Along with Stiller’s article, Porter’s argument places far greater emphasis on lawmakers beyond Lemkin’s context as crucial to the popularization of the concept of genocide.

Steven L. Jacobs, in contrast, addresses Lemkin’s autobiographical presentation of the trials of Soghomon Tehlirian and Samuel Schwartzbard. In a brilliant excavation, “The Complicated Cases of Soghomon Tehlirian and Sholem Schwartzbard and Their Influences on Raphaël Lemkin’s thinking about Genocide,” Jacobs shows that both of these trials were widely known during Lemkin’s life, but, more importantly, also involved critical issues, such as the status of anarchism, that Lemkin consistently fails to address in his oeuvre. Documenting the competing legal, social, and political factors at stake in these trials, Jacobs raises important questions about the status or function of Lemkin’s scholarship and memory. This history raises troubling questions about how to read Lemkin. How do contemporary scholars situate and narrate the history of his life when he offers only partial explanations of the events and incidents that supposedly inspired him? By raising these questions, Jacobs subtly questions the hagiographic attention frequently devoted to Lemkin.

Daniel Solomon takes a different approach to the question of historical context by examining the historical use of genocide discourse as part of ant-racist and black liberation struggles in the United States. In his “The Black Freedom Movement and the Politics of the Anti-Genocide Norm in the United States, 1951-1967,” Solomon traces invocations of genocide from the Civil Rights Congress’ We Charge Genocide petition to the writings and speeches of Dr. Martin Luther King Jr., advocacy of Stokley Carmichael, political struggles in the state of Mississippi and elsewhere, Solomon provides an overview of an alternative history of the mobilizations surrounding genocide. In this version, the language of genocide served as a rich resource in the struggle for freedom amongst black Americans who easily drew the connection between Lemkin’s vision and the practices of slavery and segregation. Largely unknown to contemporary audiences, Solomon demonstrates that the language of genocide played an important function for many political struggles beyond international humanitarian law. By doing so, Solomon opens a path to reread anti-genocide politics of the 1940s, 50s, and 60s as active and vibrant in arenas far afield from the core concerns of Lemkin and international law. Interwoven throughout Weiss-Wendt, Klamber, Stiller, Porter and Solomon’s pieces is a dedication to unpacking the historical context surrounding postwar international law. Each challenges the traditional genres of narrative and scholarship that envision Lemkin as essential to the ascendance of international humanitarian law.

In contrast, other scholars seek to delve further into Lemkin’s writings in order to present a previously unconsidered image of Lemkin’s thought. For example, Charlotte Keichel’s article, “Legible Testimony: Lemkin,” turns our attention to three undertheorized dimensions of Lemkin’s scholarship: his emphasis on testimonials, his focus on the global scale of mass violence and political life, and his concern for the psychological dimensions of violence. By foregrounding these elements of Lemkin’s writings, Keichel contends that a richer understanding of genocide, one more closely attuned to contemporary conditions, will emerge. Lemkin consequently appears as a precursor to insights about global politics that have only recently taken hold in the social sciences. This move, while celebrating Lemkin’s foresight, also supplies us with a new image of Lemkin, one where Lemkin pushes not only the political, but theoretical boundaries of his time in an effort to grapple with the problem of mass violence. Keichel thus brings into relief how the hagiography of Lemkin may actually overlook otherwise important aspects of Lemkin’s scholarship.

Elena Lesley’s piece takes up a similar issue by analyzing the problematic practice of distributing alcohol as a technique of genocide. Starting with Lemkin’s work, “Cultural Impairment and the Genocidal Potential of Intoxicants: Alcohol Use in Colonial North America,” reveals Lemkin’s sensitivity to the distribution of alcohol (and other substances aimed at the body’s well-being) as a crucial technique of genocide. Lesley then connects these observations to the widespread use of alcohol as a technique of domination, assimilation and genocide in the context of indigenous North America. Emphasizing Lemkin’s attunement to the porous or multiple character of violence, Lesley offers an image of Lemkin as sensitive to the multiplicity of practices that contribute to mass
violence. Here, Lemkin appears as a figure highly concerned with marginalized or invisible cases of genocide and with a novel approach to understanding mass violence.

In “Raphaël Lemkin’s Derivation of Genocide from His Analysis of Nazi-Occupied Europe,” Raffael Scheck re-examines the creation of the term genocide, arguing that Lemkin derived the concept from an analysis of a wide variety of Nazi occupation regimes. Lemkin’s writings reveal, for instance, that he thought the Nazi war effort, by waging a war on foreign peoples rather than states, was calculating that even a militarily defeated Germany would dominate a decimated Europe after the war. German aggression in Lemkin’s analysis, Scheck argues, was not only a war of conquest, but also an attempt to carry out a demographic revolution. Scheck also argues that Lemkin’s thinking on genocide was influenced by the U.S. government agency for which he worked at the time, the Board of Economic Warfare (BEW). By identifying German violations of the international law on occupations, Scheck contends, Lemkin could argue for the introduction of new international laws on genocide and on military occupations, which were orientated not only towards military campaigns and violent conflict, but also significant social and economic objectives.

Jonathan Hobson, in “Three Theoretical Approaches to Lemkin’s definition of genocide,” the first of two articles in this issue, places Lemkin’s theories of genocide, mass violence, and conflict into conversation with the seminal figure in Peace Studies, Johan Galtung. In addition to charting a way for Lemkin’s work to be relevant to Peace Studies, Hobson also attempts to elucidate the way Galtung’s concepts of direct, structural, and cultural violence—and his broader phenomenology of violence—offers an important tool for illustrating how genocide is a deliberate, long term and multifaceted process as Lemkin described, replete with many forms of social manipulation, victimization, repression, and oppression across all realms of social life. Also important for Hobson are the ways Galtung’s and Lemkin’s ideas overlap in their assessment of the role of power, in the act of direct violence and in the cultural and structural violence that often proceed direct widespread violence. Hobson subsequently turns to Greg Stanton’s well-established 10 stages of genocide model to offer a guide the pervasive processes that Lemkin and Galtung identify in their respective works.

Hobson, in the second article in this issue, “Lemkin and Prosecuting Genocide: Successes and Controversies,” adopts the social theory of genocide derived from the overlay of Galtung and Lemkin established in the previous article. Hobson’s goal is to use this theoretical framework to examine the history of genocide legislation, detail the extent of genocide prosecutions to date with novel primary source materials and, finally, illustrate the politics involved in genocide prosecutions using a case study of the International Criminal Court’s involvement in Africa and the failed extradition of Sudanese president Omar Al Bashir. The paper argues that the international community has not been able to stop what Lemkin described as genocide and has not seen a reduction in the kinds of cultural and structural violence that Lemkin and Galtung were both saw as a significant impediment to true and just peace. In each of these arguments, the rereading of Lemkin also is accompanied by a call to revisit central premises of genocide studies. Rather than return again and again to the same propositions about Lemkin, they offer a break or dehiscence that turns Lemkin’s writings into a resource for excavating previously unthought dimensions of mass violence.

Revisiting the Lemkin We All Know (and Love?)
Where does this leave us in our relationship to Lemkin’s life and work? At the outset, we outlined three genres of Lemkin studies. While the articles in this issue add complexity to these images of Lemkin they also raise further questions for the future of the discipline. For instance, has Lemkin become something of a fetish figure? Biographical, critical and popular histories of Lemkin’s work have become a regular feature of writing about the problem of genocide. The basic history of Lemkin’s creation of the language of genocide and his role in the creation of the Genocide Convention is so well-known that this journal, Genocide Studies and Prevention, explicitly asks contributing authors not to review this history because it is assumed to be common knowledge. Yet, Lemkin’s
writings in *Axis Rule* remain collective references in publications on genocide despite serving as a touchstone for nearly four decades of scholarship. Given the politicized, inconsistent and partial nature of these records, the question emerges why have scholars (including ourselves) remained so driven to outline, rehash, and recapitulate commentary on Lemkin’s work. Put differently, what is at stake in the practice of “repeating Lemkin?” Why does his work command such utter fascination relative to his peers and to the many important efforts of later genocide scholars?

One potential answer is that Lemkin’s role in the creation of the concept of genocide and the campaign for the Genocide Convention is relatively well established and part of a recent, reasonably well documented historical moment. Unlike many disciplinary origins and, beyond that, narratives of historical individuals, Lemkin’s life is available for comment in broad strokes and especially in relation to the problem of genocide. This history provides a compelling narrative for scholars, one that reflects the conditions of genocide scholars and activists. Indeed, Lemkin’s fervent, self-sacrificial effort to establish the Genocide Convention, his dedication to writing at the cost of his personal and social life, his apparent willingness to go to all lengths, including subterfuge, stand in stark contrast to the defeat of his agenda, his dramatic disappearance from public attention, and ultimate demise. In short, Lemkin’s figure is one of a certain melodrama that combines the drive for social justice with a battle against an entrenched opposition of far greater power and resources. His story is one of an intellectual and writer, a thinker and an activist, a sojourner and inventor who lived at a moment of “world-historical” importance who faced almost certain defeat in spite of the apparent rightness of his moral position. This story resonates with the palpable sense of tragedy or defeat that advocates face when they call for more powerful responses to mass violence. In this regard, Lemkin’s life and work potentially provides an anchor point for many genocide scholars, one that does affective and emotional work by providing a role model for intellectual courage in the face of near certain neglect.

Another potential answer is simpler. Lemkin is the only point in common for genocide scholars. His work and history are, in brief, what holds us all together. The discursive pin, the name of ‘Lemkin,’ the narratives surrounding Lemkin, bind together disparate scholars that address the problem of mass violence in highly variable ways. Consider, for example, that genocide scholars do not agree on the precise cases that constitute genocide, they do not agree on the normative value of the term genocide, they do not agree on the best methods for studying mass violence, they do not have a consensus on the role of international law, they share few philosophical principles, and they have not come to any lasting consensus on the nature of the discipline itself. While every discipline is contestable and undergoes reinvention, the majority have the illusion of a common history and set of problems that define the objects and questions at stake for the field. In contrast, genocide studies is a nascent field with contestable boundaries that combines academic and non-academic scholars that, with limited exceptions, do not exclusively study the problem of genocide in their home fields. In this condition, Lemkin’s story, his life and work, provide the most obvious point of discursive reference for scholars working across difference. The historical availability of Lemkin’s archive and the popularity of his narrative certainly aid in this process, but Lemkin’s

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7 For instance, Jennifer Carlson and Kathleen Stuart describe how mood magnetizes or draws scholars to particular sensibilities, social circles, and forms of writing. See Jennifer D. Carlson and Kathleen C. Stewart, “The Legibilities of Mood Work,” *New Formations* 82, no. 3 (2014), 114-133.
work, his invocation, enables scholars to speak to one another, to establish a common language that facilitates the intelligible sharing of insights across boundaries. As a result, Lemkin’s work may be marshalled for any of a variety of activists, analytical or critical purposes. Michel Foucault once described the “author function” in relation to figures such as Karl Marx to indicate how a specific figure emerges to consolidate and legitimate subsequent statements or expressions of truth within an academic discourse. The author-function encapsulates how a particular name, in this case Lemkin’s, grounds subsequent debates about the problems she or he introduced, the legitimacy of his or her different texts, the signature works versus the more unfinished musings. In the context of genocide studies, the author-function enables scholars that embrace deconstruction, quantitative measurements, agent-based modeling, linguistic anthropology, non-Western history, and normative advocacy within international law to speak to one another through their different problematizations. Lemkin is, in this respect, a kind of suture point that holds the field of genocide studies together despite disagreements and divergences. Many scholars might argue that it is the events or episodes of mass violence that draw the discipline together. However, this raises the question of whether such an agreement truly exists among scholars about which episodes are legitimate points for discussion. The potent reaction of different divisions with genocide studies indicates that far from a settled, constant response to mass violence, we experience affective responses to different rhetorical invocations of the term. The discipline’s interests in Lemkin are thus motivated by more than a concern about mass violence, they concern the identity or self-definition of genocide studies.

The status of Lemkin in genocide studies raises several different questions for contemporary genocide scholars. First, has the discipline arrived at a limit with respect to what studies of Lemkin offer in terms of new ideas and insights? Put differently, is there a sense that Lemkin has had his moment or do Lemkin’s writings continue to offer a resource for genocide scholars? This question addresses the broad emergence of a field of “Lemkin studies?” Beyond questions regarding whether Lemkin’s comparatively small number of writings support the creation of such a field, does his writing sustain rich enough conflicts over meaning or intent, method or analysis, history or impact to sustain an ongoing dialogue? These questions do not have any clear answers. Nonetheless, it is important to raise them in the context of Lemkin’s work precisely because the gestures of deifying, criticizing, and rescuing Lemkin have, in different forms, already been carried out. Is there more to say on the life and work of Lemkin or should we be looking elsewhere? Clearly, these are not mutually exclusive options, nor do we counsel any final direction, but raising the question is important to taking self-inventory as a field of scholars concerned with their common history.

Second, what is at stake in the return to Lemkin in relation to the politics of the study of genocide? If Lemkin provides an inspiration, model or guide for scholar activists what does this say about the political commitments and methods of genocide scholars? Does the popularization of Lemkin signal that genocide studies has reached an impasse with respect to the question of how to pursue the goals of ending mass atrocities or mobilizing efforts to redress histories of mass violence? Could Lemkin’s work and life serve as an alibi for not addressing the more fundamental problem facing genocide scholarship, the absence of a model for politically achieving a different outcome despite many decades of innovation in international law, political organization and disciplinary insight? As the political theorist Wendy Brown discusses, returning again and again to the same figure or episode often constitutes a “wounded attachment.” In this case, does Lemkin’s lifework constitute the “wounded attachment” for genocide scholars without a place to express dissatisfaction with the state of the relationship between scholarship, activism and political change?

Finally, does Lemkin’s work, as a common reference for scholars of genocide, substitute for a more active discussion about the principles and values that guide the study of genocide? Lemkin certainly offers a model of scholarship and politics, but there are other modalities available. Is the desire to return and reiterate the lessons of Lemkin also a movement against the more difficult challenge of addressing the future of this area of scholarship? To put the point differently, the


Leninist question “what is to be done?” places a timely pressure on the burgeoning field of Lemkin studies. We pose this question without a definitive answer. It may not even be the right question to pose in the first place. However, the consistent interest in Lemkin, both supportive and critical, works against the more arduous, contestable process of deciding, collectively, what the ethical and political ambitions of genocide studies are to become. Indeed, unlike other disciplines, genocide studies lacks an epistemological center capable of providing the illusion of a stable historical foundation. As such, the discipline should be far more open to transformative and exploratory work.

The articles in this volume both implicitly and explicitly address these questions and problems. They highlight the need for further critical scrutiny of Lemkin’s place in history and in the discipline of genocide studies more specifically. Many of the authors would likely disagree with the above characterization of Lemkin or offer their own variations on these themes. Nevertheless, the problems outlined here remain germane both to the study of Lemkin’s legacy and to the location of Lemkin’s writings in the future of genocide studies. These are issues without obvious or clear direction and where the predicative ability to assess the importance of Lemkin’s work for the future. One thing, however, is quite clear. Lemkin will remain a formidable figure for studies of genocide well into the future.

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Bibliography


Three Theoretical Approaches to Lemkin’s Definition of Genocide

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Introduction

Lemkin devised the term genocide as a response to the organized, mechanized, and institutionalized killings that were part of the Nazi Regime during the Second World War. In his 1944 work defining genocide and its processes, Lemkin identified genocide occurring across a range of different spheres of human and social life, including the political, social, cultural, economic, biological, physical, religious and moral.1 There are many good works that offer interpretations of genocide in the social and political forms and in its legal definitions. For example, Irvin-Erickson2 gives a significant account of Lemkin’s life and work, including the genus of genocide as a concept, its application as a set of principles in human behavior, and Lemkin’s efforts to see the act outlawed. Goldsmith’s3 review of the United Nations Genocide Convention, the first real legislation to directly address genocide, offers a valuable analysis on the difficulties such definitions of Genocide have created for achieving successful convictions. Others, such as Abdul Tejan-Cole,4 Barria and Roper,5 Hyearn and Simmonds,6 and Keppler7 discuss the efficacy of the international bodies subsequently established to prosecute genocide, arguing on their impact and on wider socio-political issues that have arisen in the context of pursuing prosecutions.

This article seeks to add to this body of work by examining three constituent parts of Lemkin’s concept of genocide: the intent of the act, the aim of the act, and the techniques used to deliver the act. It does this by utilizing three different theoretical tools not previously applied together in this way. First, it employs Totten and Bartrop’s8 genocide typologies to examine the dolus specialis (particular intent) of genocide to enact the “destruction of a nation or ethnic group.”9 Second, it uses Galtung’s10 concepts of direct, cultural, and structural violence to conceptualize the destruction of a group in its “essential foundations of life.”11 Third, it applies Stanton’s12 ten-step chronology of genocide to detail how “techniques of genocide”13 are built upon in order to mobilize a group or nation to commit, or at least to allow, such an act to take place. Through these three interpretations the article aims to offer further understanding on what it is that makes genocide a unique crime in human nature, and, as Lemkin puts it, “a coordinated plan of different actions aiming at the

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6 Jo Hyeran and Beth Simmons, “Can the International Criminal Court Deter Atrocity?,” International Organization 70, no. 3 (2016), 443-475.
9 Lemkin, Axis, 79.
11 Lemkin, Axis, 44.
13 Lemkin, Axis, 90.

destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves.”

The Dolus Specialis (particular intent) of Genocide: Totten and Bartrop’s Genocide Typology

There is debate over the use of dolus specialis (particular intent) in the modern legislation on genocide. Goldsmith, for instance, contends that such a requirement is unsuitable because “regardless of an individual’s expressed intentions, he/she is still actively involved in genocide and plays a crucial part.” Similarly, Irvin-Erickson argues that Lemkin’s original conception of genocide regarded the motives behind the act as irrelevant to an international law as “every individual who participated in a program to destroy a nation would have different reasons for doing so.” Both Goldsmith and Irvin-Erickson contend that placing an emphasis on the dolus specialis (particular intent) behind Genocide is unhelpful to definitions of genocide as the reasons why people participate in such an act vary greatly. For example, it may be driven not by an ideological hatred for another group but for the “benefits gained through genocide” such as resource or economic gain.

In contrast to Goldsmith and Irvin-Erickson the international professor of law William Schabas advocates for the inclusion of intent, which he argues is a vital portion of the international legislation that elevates “the stigmatization of genocide as the ‘crime of crimes’ for which the highest level of evil and malicious intent is presumed.” Kai Ambos in his paper on the legal meaning and application of intent in international genocide prosecutions presents these debates as a conflict between a particular intent, dolus specialis, versus a wider concept of conditional intention, dolus eventualis, that does not require the same burden of proof but regards genocide as a group act in which different perpetrators might be aware of the event as a whole but would necessarily share the particular intent of group destruction. Nevertheless, the legislation as instituted by the international community holds specific intent to be a key dimension in constituting genocide as an intentional act to destroy a group.

Understanding the intent of genocide as a wholly destructive act is important not just sociologically and historically, but for the legal consequences of prosecution. Totten and Bartrop argue that, “rather than being simply an expression of passion, genocide is a rational instrument to achieve an end.” They classify five types of genocide, discussing the rationale that might drive the particular intent to destroy in different circumstances. The first of Totten and Bartrop’s types is “retributive genocide,” where revenge and punishment are used as the key justification for an attack. Common to much genocide throughout history, Totten and Bartrop argue that retribution is a “way of blaming the victim” that “flows from the dehumanization that has been fastened to the victims before they are attacked.” As an example of this, we could consider elements of the genocide in the Rwandan conflict as retributive Genocide. The post-colonial collapse of unequal power structures meant the once politically and socially dominant Tutsi minority were targeted by members of the Hutu group partly in retaliation for the inequality they felt they had suffered during colonial rule.

The second of Totten and Bartrop’s classifications is “institutional genocide,” where genocide is used as a tool of the state or attacking organization to “manage” a target population. Totten and Bartrop argue that this form of genocide was a “universal aspect of conquest” in the ancient and medieval worlds, so much so that it was “embedded in the very notion of warfare.” Often used in lieu of political solutions that were more resource-heavy and less likely to provide long-term

14 Ibid., 79.
15 Goldsmith, Intent, 252.
16 Irvin-Erickson, Lemkin, 241.
17 Ibid., 243.
20 Totten and Bartrop, Genocide, 40.
21 Ibid., 41.
22 Ibid.
solutions, this driver for genocide is reflected in some of the bloody conquests during the crusades.

The third type, “utilitarian genocide,” Totten and Bartrop argue is evident in the processes of colonialism and imperialism. Describing it as “a combination of ethnocentrism and simple greed.”23 Utilitarian genocide often involves restriction, subjugation or killing of indigenous groups to simplify the acquisition of land and resources. One such example comes from British involvement in the invasion and subjugation of North America. Jones describes how systematic violence and the often deliberately induced spread of disease during the colonization of North America reduced indigenous populations from an estimated 7-10 million (possibly up to 18 million according to some estimates) to around 275,000. He recounts incidents of this as a deliberate (what we would now term as genocidal) process, for example in 1763 when British commander Lord Jeffery Amherst ordered that “You will Do well to try to Inoculate the Indians [with smallpox] by means of Blankets, as well as to try Every other method that can serve to extirpate this Execrable Race.” 24

Where many earlier genocides were external to the perpetrating country and focused on acquisition of land and/or resources, Totten and Bartrop argue that modern genocides are more likely to occur as part of internal, domestic issues. They describe this as monopolistic genocide, their fourth category. “Monopolistic genocide” is about social ordering and it often reflected in internal power struggles and the and the enforcement of a perceived national identity. Examples of this form of genocide are common in the twentieth century. For instance, the Khmer Rouge in Cambodia undertook massacres within the country as part of the socio-political reordering of the state; and in the Balkans, the aftermath of the break-up of the Soviet bloc brought in its wake the violent persecution of different populations most notably in the former Yugoslavia.

The final of genocide Totten and Bartrop’s typologies is genocide driven by ideological justification. This motive, they argue, is much more likely to incorporate extreme methods of extermination during a genocide. For instance, whilst the invasion and occupation of South America was clearly part of an imperial project, the religious ideology used to justify the treatment of the indigenous population meant that they were routinely dehumanized, brutalized, and condemned to lives of labor, sexual servitude, or simply put to death. The American studies writer David Stannard25 describes the conquest of South America as “the worst series of human disease disasters, combined with the most extensive and most violent program of human eradication that this world has ever seen.” Jones26 gives the example of Hispaniola, modern-day Haiti and the Dominican Republic, using a contemporary eyewitness account to describe how the Spanish “forced their way into native settlements... slaughtering everyone they found there, including small children, old men, [and] pregnant women.” Over three decades of Spanish control Jones claims that the population of the continent was reduced from an estimated 8 million to around 20,000.

Totten and Bartrop’s typologies of genocide illustrate how genocide is driven through different forces, be they institutional, utilitarian, monopolistic, ideological, or a combination therein. Regardless of the drivers and the justifications used for genocide, however, the end of the process is the same: the destruction of a target group. In this sense, whether a dolus specialis (particular intent) or a dolus eventualis (conditional intention) is present does not impact on the event, although it may impact on the legal outcomes given the language used in international legislation. Totten and Bartrop ultimately tie their typologies together:

Genocide is a sustained purposeful action by a perpetrator to physically destroy a collective directly or indirectly, through interdiction of the biological and social reproduction of group members, sustained regardless of the surrender or lack of threat offered by the victim.27

23 Ibid., 42.
26 Jones, Genocide, 108-110.
27 Totten and Bartrop, Genocide, 54.
The next section illustrates how the destruction of a group in a genocide is part of a complex act that involves more than just mass persecution and/or killings, but entails an embedded social machinery and a cultural acceptance of violence.

The Destruction of a Group in its Essential Foundations of Life: Galtung’s Direct, Cultural and Structural Violence

The second element of genocide this paper considers is the concept of destruction of a group in its entirety, what Lemkin describes as the removal of “the essential foundations of the life of national groups, with the aim of annihilating the groups themselves.”28 For Irvin-Erickson, “genocide in Lemkin’s thought, was a social and political process of attempting to destroy human groups, not an act of mass killing.”29 In this way, we can understand genocide as more than mass murder or extensive and extreme violence, as terrible as those events may be. Rather, genocide is the attempt to annihilate a cultural, ethnic (“racial”), or national group in its entirety, so that group, its history, and its social constructs no longer exist. Lemkin,30 with reference to the Nazi occupations in World War Two, describes this a “composite of different acts of persecution or destruction”31 that spans the political, social, cultural, economic, biological, physical, religious, and moral spheres.

Although not specifically a descriptor of genocide, the work of Johan Galtung offers a way to articulate the encompassing destructive processes genocide entails, and in doing so help to better understand what it is that makes something a genocidal event. Galtung developed a “phenomenology of violence, useful as a paradigm generating a wide variety of hypotheses.”32 Within this phenomenology of violence Galtung uses concepts of “direct, structural and cultural violence” to explain how different societal processes might exclude and victimize certain groups in society. 33 For instance, we might consider gender inequality to variously involve direct violence against women, a structural restriction in opportunity and life chances, and a cultural approach to patriarchy that ingrains this behavior as “normal” in that societal context. In other words, it describes a process that spans all spheres of an individual’s existence within a society. Applying Galtung’s concepts of violence can also help to articulate genocide as the deliberate institutionalization of violence against a specific group, with the end-goal of their disintegration. In doing so, it helps to take Galtung’s concepts of direct, structural, and cultural violence in reverse order.

Firstly, genocide is an act of cultural violence in the sense that it is a crime committed by one group identifying as against another. Although individuals may commit the individual acts of violence, genocide as a crime involves significant organization and, frequently, the convincing of a population, force, or army that this form of violence is the solution. In this sense, genocide needs to exist as a cultural concept before it can exist as a physical act. Using Galtung’s34 words, we can see how it is “Cultural violence [that] makes direct and structural violence look and feel right.” Genocide involves embedding ideas of superiority and legitimate violence into cultural discourse, and for Galtung it is “the study of cultural violence [that] highlights the ways in which the acts of direct and structural violence are legitimizid, internalized, and thus rendered acceptable in society.”35

Secondly, genocide requires a form of structural violence against the target group. Once a population has accepted a degree of cultural violence, then it is easier for a state or body to enact structural violence against the target group. Galtung36 describes this type of violence as a system of “structurally built-in alienation and repression,” and in the case of genocide this might involve

28 Lemkin, Axis, 79.
29 Irvin-Erickson, Lemkin, 7.
30 Lemkin, Axis, 82-89.
31 Ibid., 92.
34 Ibid., 39.
35 Ibid.
36 Ibid., 38.
the organization of punitive and discriminatory legislation. For instance, in Nazi Germany a long process of anti-Jewish laws, victimization, and public discrimination preceded the holocaust. As with Nazi Germany, Galtung describes how structural violence can become an essential part of some states, either as a tool to manage resources or as a broader structure of social power. Such violence is no accident; it is embedded “within complex structures and at the end of long, highly ramified causal chains and cycles.” Galtung’s characterization of structural violence fits further with Lemkin’s concept of Genocide as an act targeting a group in their essential foundations of life, for such violent structures as Galtung describes “leaves marks not only on the human body but also on the mind and the spirit.”

Finally, Genocide involves direct violence against a target population. Galtung regards direct violence as the most conspicuous form of in his phenomenology “visible to the unguided eye and to barefoot empiricism, is the stratum of direct violence with the whole record of direct cruelty perpetrated by human beings against each other and against other forms of life and nature in general.” In terms of genocide, direct violence takes many forms and the international legislation for the crimes lists several of these, including killing members of a group or creating other actions designed to inflict on the group “conditions of life calculated to bring about its physical destruction in whole or in part.” Galtung’s definition associated as it is with the other forms of structural and cultural violence can also give a broader interpretation to direct violence to include actions against individuals, homes and business premises, and cultural spaces to name but a few. This is because direct violence is the manifestation of the longer term and often hidden or less visible processes of cultural conditioning to exclusion and violence. Direct violence is the conspicuous pinnacle of a process in which a “steady flow through time of cultural violence” is overlain with the “rhythms of structural violence” so as to create a situation in which “patterns of exploitation are building up, wearing out, or torn down, with the protective accompaniment of penetration-segmentation preventing consciousness formation, and fragmentation- marginalization preventing organization against exploitation and repression.” In such a connection, genocide is the culmination of a complex socio-political, often psychological, process of acclimatization to exclusion and violence.

Galtung’s three concepts offer an important perspective on genocide. The dimensions of violence are interlinked processes, as Galtung describes: “Direct violence is an event; structural violence is a process with ups and downs; cultural violence is an invariant, ‘permanence’.” Taken together they illustrate the development of persecution that takes places as a society moves from exclusion, to incitement, and finally to direct and violent action. The following section uses Stanton’s phased model to develop this concept of a chronology of genocide.

The Techniques of Genocide: Stanton’s Stages of Genocide

For Lemkin, genocide is “a composite of different acts of persecution or destruction” that includes, as examples of acts that were committed by the Nazi forces against the Jewish and other populations of occupied Europe, “infringement upon honor and rights... transgression against life, property and religion, or science and art...[acts that] encroach unduly in the fields of taxation and personal services... those which cause humiliations, debilitation and understanding, and danger to health... measures for weakening or destroying political, social, and cultural elements in national groups.” These examples serve to illustrate the orchestrated and interrelated program of acts designed, as the previous two sections have shown, to intentionally destroy a group in essential foundations. The nature of the acts, however, vary depending on a great many factors, including the social and

37 Galtung, Violence, 293.
38 Ibid., 294.
39 Ibid., 295.
41 Galtung, Violence, 294.
42 Ibid., 294.
43 Lemkin, Axis, 92.
cultural characteristics of the perpetrating and victim groups, the power relationships between the groups, and other underlying ideological positions that may be employed as part of the ‘justification’ for genocide.

Recognizing this “composite of different acts” and the sequences they could follow is an important dimension to understanding genocide; both in the build-up and possible intervention, and in analyzing events post factum. In trying to establish a chronology to genocide, Gregory Stanton has developed a phased approach with a “stages of genocide” model that considered genocide as a process or a series of techniques similar to Lemkin’s description. Stanton established and is president of the organization “Genocide Watch,” which aims to “predict, prevent, stop, and punish genocide.” The model devised by Stanton and Genocide Watch initially comprised of eight, then ten, then 12 stages of genocide, and aims to highlight the processes a society goes through as part of a genocidal event. Here, the ten-stage version model is used as an example.

Stanton’s Ten Stages of Genocide can be categorized into four groups. The first group contains those stages that are concerned with the identification and othering of the target group to establish them as deviant, different, and dangerous. For Stanton, this is achieved through “Classification” and “Symbolization,” which is the use of both physical symbols and cultural knowledge to create the concept of difference. This is important in identifying the target group, but also in creating for the perpetrators a collective identity that can later be manipulated into genocidal intent. In their work, Adorno and Horkheimer describe how such othering is a key ingredient in creating the groundwork for discrimination and violence. Focusing on the Nazi treatment of Jews in and around the Second World War, they described how “the fascists do not view the Jews as a minority but as an opposing race, the embodiment of the negative principle.”

The second broad category of Stanton’s typology relates to a process of organized state-sanctioned inequality and division: what he terms “Discrimination” and “Dehumanization.” This is the application of the principles of othering to social and cultural institutions and to the life of the target group. For Zygmunt Bauman this is a key aspect of the group-crime that is genocide, it is the physical expression of othering and racism, which is “a form of social engineering.”

The third grouping of Stanton’s stages incorporate “Organization,” “Polarization,” “Preparation,” and “Persecution.” Collectively, these relate to intensified discrimination, increased use of violence, and preparation for the removal and/or destruction of a target population. As a group act, genocide requires a high degree of organization and management, and these stages of Stanton’s work emphasize the deliberate and orchestrated nature of the crime and the shift from violence to disintegration and extermination of the target group. For instance, Bauman cites Joseph Goebbels (Minister of Propaganda for Nazi Germany) speaking on the escalating levels of violence required to manage the Jewish population of Europe: “there is no hope of leading the Jews back into the fold of civilized humanity by exceptional punishments. They will forever remain Jews, just as we are forever members of the Aryan Race.”

The final grouping comprises stages nine and ten of Stanton’s process, and deals with “Genocide” and “Denial” in its aftermath. Here we can see some of the complexity of categorizing genocidal acts as the focus on the “destruction of the group themselves” means that there is often the chance for perpetrators to deny such intent. This, along with the requirement to prove

44 Ibid., 82.
46 Stanton, Stages.
48 Ibid., 271.
49 Stanton, Stages.
51 Ibid., 285.
52 Lemkin, Axis, 79.
the intent and focus of the act, means that it is often particularly difficult to prosecute genocide, as subsequent legal cases have borne out.

Conclusion
Lemkin’s original definition of genocide reflected a series of crimes so great that they necessitated a new concept. This article seeks to add to the discussion, dividing Lemkin’s concept of genocide into three interconnected parts and examining each in turn. In the first instance, debates around the specific intent of genocide illustrate the restrictive nature of dolus specialis (particular intent) in international legislation. This is more than just semantics; it reaches to the heart of genocide as a crime and as a prosecutable offence. The emphasis placed on motive in international legislation has, on the one hand served to elevate genocide as the “crime of crimes,”53 distinguished from other internationally legislated acts of extreme violence. It has also, however, made it difficult to successfully prosecute genocide as is illustrated in the relatively low levels of genocide prosecution achieved by the International Criminal Court to date.54 It also, according to Irvin-Erickson, moves us away from the “broad conceptions of national and national belonging”55 that Lemkin sought as a basis to a genocide law that was broad in its applicability. Totten and Bartrop’s genocide typologies help with this discussion, illustrating how different combinations of institutional, utilitarian, monopolistic, and ideological drivers have been used to justify genocide and galvanize populations into action. The typologies help to set up genocide as a complex socio-political act, which is expanded upon using Galtung’s concepts of direct, structural, and cultural violence.

Galtung’s work has not, to my research, been used as an analytical tool in genocide studies to date. His phenomenology of violence structured around a triangle of direct, cultural and structural violence offers an important tool for illustrating how genocide is a deliberate, long term and multifaceted process of social manipulation and victimization across all realms of social life. Galtung’s work also illustrates the role of power imbalance within genocide, both in the act of direct violence and in the more pervasive but less visible constructions of cultural and structural violence that often precede the widespread violence of a genocidal event. This complexity is illustrated in the final section, which groups Stanton’s well-established phased stages of genocide to offer a useful guide to some of the pervasive processes that Galtung identifies. Stanton’s work is a very practical and empirical account of genocide processes, applying Galtung’s work to it here can help to illustrate how such techniques of genocide mobilize a group or nation to commit, or at least to allow, such an act to take place. Through these three different interpretations, this paper hopefully offers further understanding to what it is that makes genocide a unique crime in human nature.

Bibliography

53 Schabas, Genocide, 227.
55 Irvin-Erickson, Lemkin, 241.


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Prosecuting Lemkin’s Concept of Genocide: Successes and Controversies

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Introduction
As a term, genocide is a relatively recent concept devised by the lawyer Raphaël Lemkin in 1944 as a response to the organized, mechanized, and institutionalized killings that were an integral part of the Nazi regime during the Second World War. For Lemkin, Genocide was “an old practice in its modern development.” It was not that the killings were necessarily greater in number than previous events of mass murder, or that the cultural imperialism they reflected was a new phenomenon in Europe. Rather, that the systems, structures, and technologies of modernity enabled the Nazis to undertake a process of isolation, denigration, and destruction in a more organized and orchestrated way that had happened previously. The destruction, not limited to but particularly targeted at the Jewish population of occupied Europe saw systematic abuse, disempowerment, cultural destruction and the murder of millions, many in purpose-built death camps. For Lemkin, this industrialization of the processes of discrimination and killing required a new language:

New conceptions require new terms. By genocide we mean the destruction of a nation or ethnic group … a coordinated plan of different actions aimed at the destruction of essential foundations of life of national groups, with the aim of the destruction of the group themselves.3

Genocide is more than mass murder and cultural and economic domination: it is the biological, cultural, and social disintegration of a targeted group. In his work detailing the new terminology of genocide, Lemkin describes the “techniques of genocide” in different spheres of human existence, and particularly in relation to the conditions of life brought to bear on Jews in Nazi Germany. For Lemkin, the Nazi genocide was a planned and deliberate attempt to undermine and then destroy the Jewish population in all aspects of life: political, social, cultural, economic, biological, physical, religious, and moral. It was, as he described it, “an elaborate, almost scientific system, developed to an extent never before achieved by any nation.”4

Subsequently codified by the United Nations in 1951, Genocide has become the focus of several international courts including the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993, the International criminal tribunal for Rwanda (ICTR) in 1994, and the International Criminal Court (ICC) founded in 1998. These legal bodies represent a voice for the international community and a statement of intent when it comes to collective action on the continued perpetration of a crime that should “shock the conscience of humanity.”5

The international bodies responsible for prosecuting genocide are not without their critics. For instance, the professor of international Law, William Schabas, identifies issues with the definitions of genocide used in international legislation. Barria and Roper are skeptical on the impact of the early international tribunals in both prosecuting individuals and in contributing to more lasting peace in the regions. There are also critiques on the role that the International Criminal Court in

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2 Ibid., 79.

3 Ibid., 83.

4 Ibid., 84.


sovereign states, particularly in Africa, where Abdul Tejan-Cole⁸ argues that the work of the ICC in Africa has opened it up to criticisms of neo-colonialism on that continent. This is a position taken by the African Union, who have persistently criticized the ICCs involvement in African Affairs and have gone as far as to recommend that its member states do not comply with ICC arrest warrants. Nevertheless, many argue that the international tribunals and the ICC have had a significant and positive impact. For instance, Hyeran and Simmons,⁹ Bassiouni and Hansen,¹⁰ and Hillebrecht¹¹ all see the prosecutions and the wider work of the international tribunals and courts as an opportunity to establish international norms around prosecuting genocide, changing habits and deterring, or at least dampening the extent of future genocidal events. This paper examines the impact of international efforts towards prosecuting genocide, considering the legislative journey the crime has been through, the prosecutions for genocide to date, and the difficulties around the politicization of the international courts.

Structure and Data
The paper is in three parts. The first part examines the history of genocide legislation, in particular the international legal frameworks established since Lemkin first devised the term in 1944. The second part details the extent of genocide prosecutions to date, employing material from various international criminal tribunals, the ICC, national courts, and, where necessary, media accounts contemporary with the events. The final part illustrates the politics involved in genocide prosecutions through a case study of ICC involvement in Africa and the failed extradition of Sudanese president Omar Al Bashir. The case study uses a range of secondary sources, including documents from the ICC, the African Union, National Governments, and other contemporary accounts.

Legislating Genocide: From Lemkin to the ICC
The first significant appearance of the term genocide after Lemkin’s inception of the term in 1944 was during the trials in Nuremburg and Tokyo after the Second World War. These trials were based on two important pieces of legislation: the “Charter of the International Military Tribunal”, which was presented in June 1945 and formed the basis for the trials of Nazi party members at Nuremburg,¹² and in September 1945, the “International Military Tribunal for the Far East Charter,” which was the basis for trials of Japanese prisoners in Tokyo. The subsequent prosecutions were in part the realization of the “Moscow Declaration” (and subsequent “London agreement,” both more commonly associated with the establishment of the United Nations) signed on October 30, 1943, on behalf of the Governments of the United Kingdom, United States, Soviet Union, and Nationalist China. These declarations promised a “rapid and orderly transition from war to peace and of establishing and maintaining international peace and security.”¹³

The legislation adopted as part of the trials at Nuremburg and Tokyo were important for several reasons. Common to both trials was a list of three crimes: crimes against peace, war crimes, and crimes against humanity,¹⁴ one of the first occasions on which such serious acts of widespread violence, aggression, and destruction were codified at an international level. Although the term genocide was not listed as a crime at either trial, it was referred to during the hearings. More broadly, both trials contributed to the concept of achievable international justice and standards.

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⁹ Jo Hyeran and Beth Simmons, “Can the International Criminal Court Deter Atrocity?” International Organization 70, no. 3 (2016), 443-475.
¹⁴ United Nations, Charter.
around serious crimes that constituted violations of individual and collective liberties. The Charter and judgment of the Nuremberg Tribunal included a series of “Principles of International Law” that were subsequently adopted by the International Law Commission of the United Nations, in 1950.\textsuperscript{15} This codified the three crimes considered at Nuremburg and Tokyo into international statute and set out the criteria for holding to account those responsible. It also sought to determine several questions of international criminal jurisdiction, including for the crime of “genocide,” specifically:

> …the desirability and possibility of establishing an international judicial organ for the trial of persons, charged with genocide or other crimes over which jurisdiction will be conferred upon that organ by international convention.\textsuperscript{16}

The inclusion of the term genocide in the text from the International Law Commission was a significant milestone in the recognition and management of the crime. At the same time as Nuremburg, in Tokyo the United Nations was running a parallel conference debating Lemkin’s term genocide in relation to the crimes committed in the Far East during the Second World War. This conference culminated in the “Convention for the Prevention and Punishment of the Crime of Genocide,” which was adopted by the United Nations General Assembly on December 9, 1948, and enacted in law 12 January 1951.\textsuperscript{17} This legislation, based on the work of Lemkin, defined Genocide in legal terms 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;
> (e) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
> (f) Imposing measures intended to prevent births within the group;
> (e) Forcibly transferring children of the group to another group.\textsuperscript{18}

The Convention for the Prevention and Punishment of Genocide was the first human rights treaty adopted by the United Nations General assembly. It uses much of the same language and precedents set out in the “Principles of International Law” recognized in the Charter of the Nuremberg Tribunal, particularly around the culpability of perpetrators and the responsibility of the international community in prosecuting the crime.

Although there is some evidence to show that the term genocide was used in at least one successful prosecution before 1990, in Equatorial Guinea (as detailed in next section of this paper), it is generally accepted that the legislation governing genocide was not acted upon, certainly at an international level, until the early 1990s when the United Nations used the Genocide Convention to establish the International Criminal Tribunals for the former Yugoslavia and for Rwanda (ICTY and ICTR). There are several reasons for this period of inactivity, chief among them was the international paralysis caused by the Cold War, lack of consensus across the UN, and, as Schabas\textsuperscript{19} points out, a practical difficulty in that “the Genocide Convention does not establish a monitoring mechanism.” Nevertheless, in 1993 the United Nations established the International


\textsuperscript{16} Ibid., 378.

\textsuperscript{17} United Nations, \textit{General Assembly Resolution 260, Convention on the Prevention and Punishment of the Crime of Genocide, December 9, 1948} (UN Doc. A/RES/260(III)).

\textsuperscript{18} United Nations, \textit{Convention}, 278.

\textsuperscript{19} Schabas, \textit{Convention}, 5.
Criminal Tribunal for the Former Yugoslavia\textsuperscript{20} with a mandate to prosecute those responsible for serious violations of international humanitarian law during the break-up of the former Yugoslavia, including grave breaches of the Geneva Conventions, violations of the laws or customs of war, crimes against humanity, and genocide. Then, in 1994 following the brutal and violent civil war, the United Nations established the International Criminal Tribunal for Rwanda, charged with prosecuting a similar range of crimes (UNHCR 2016). The ICTR ended its work on December 25, 2015, whilst that of the ICTY continues.

Although the ICTY and ICTR were the first international use of the genocide conventions, Schabas\textsuperscript{21} is somewhat circumspect about the application of the legislation in these courts, describing “a restrictive approach to interpretation of the definition of genocide, which was made evident in the two ad hoc tribunals for the former Yugoslavia and Rwanda.” This critique is supported by Barria and Roper, who identify a range of difficulties with ICTY and ICTR, for example that some of the “problems of the tribunals are due to the nature of international humanitarian law and their broad mandate.”\textsuperscript{22} This is not to say that these tribunals were without merit; it is important to note that they did signify a willingness on the part of the international community to focus on some of the most extreme cases of state-sanctioned and organized violence. Nevertheless, it was some of the perceived failings of the ICTY and ICTR that were part of the “primary justifications for the creation of an International Criminal Court”\textsuperscript{23} as a more permanent body to oversee the prosecution of the crime of genocide.

Enacted on July 1, 2002, the Rome Statute established the International Criminal Court (ICC) with jurisdiction over Genocide, Crimes against Humanity, and War Crimes, “the most serious crimes of concern to the international community.”\textsuperscript{24} The ICC is funded on a similar model to the UN, where contributions are based roughly on member states’ GDP. 18 judges are elected by the Assembly of States Parties for nine years, currently: Argentina, Dominican Republic, Trinidad and Tobago, Kenya, Botswana, Democratic Republic of Congo, Nigeria, Belgium, Italy, United Kingdom, Czech Republic, France, Poland, Germany, Hungary, Japan, and Republic of Korea, the Philippines.\textsuperscript{25} Investigations are initiated based on a referral from the UN Security Council, from a petition by a State, or through an ICC investigation initiated by the Office of the Prosecutor.\textsuperscript{26}

The next section of this paper details the successes of genocide prosecution worldwide, providing the sum of prosecutions to date and the organizations or bodies responsible for those prosecutions.

\textbf{Prosecuting Genocide: Contested Success}

As of January 1, 2018, there have been 150 identifiable prosecutions for genocide, although in 7 cases those found guilty were subsequently acquitted. These are prosecutions that have listed genocide as at least one of the offenses for which an individual has been found guilty. In many cases there are other offenses alongside genocide convictions, most commonly Crimes against Humanity or grave breaches of the international laws governing war (i.e. serious breaches of the Geneva Convention), however these are not detailed in the following lists. The convictions for genocide are organized into three groups: those pursuant to the war in the Rwanda (Table 1); those pursuant to the war in the former Yugoslavia (Table 2); cases across the rest of the world, including those from the ICC (Table 3). In the first two groups many of the convictions came through the work of the ICTY and ICTY. Despite the criticisms of these courts, they both have successfully prosecuted individuals for


\textsuperscript{22} Barria and Roper, \textit{Effective}, 364.

\textsuperscript{23} Ibid., 349.

\textsuperscript{24} United Nations, \textit{Rome Statute}, 2.

\textsuperscript{25} International Criminal Court, “Current Judges,” Judicial Divisions, accessed October 6, 2018, \url{https://www.icc-cpi.int/about/judicial-divisions/biographies}.

the crime of genocide, with the ICTR is responsible for the largest number of individual genocide trials, and for 59 convictions.

Each table lists convictions in that group by prosecuting body and in chronological order, combining convictions together where prosecuting bodies have done so. The tables identify the specific crime for which individuals were convicted, the sentence they received, and whether that sentence was reduced, commuted or overturned on appeal. Each table is followed by some discussion on issues of importance. Where sentences are listed as “Life” this reflects the term given by the specific court and may vary depending on the legislation used in each case.

Table 1. Genocide Prosecutions Pursuant to the War in Rwanda

<table>
<thead>
<tr>
<th>Date</th>
<th>Name(s)</th>
<th>Conviction</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sept 1998</td>
<td>Jean-Paul Akayesu</td>
<td>(i) (iii)</td>
<td>Life</td>
</tr>
<tr>
<td>Sept 1998</td>
<td>Jean Kambanda</td>
<td>(i) (ii) (iii) (iv)</td>
<td>Life</td>
</tr>
<tr>
<td>Feb 1999</td>
<td>Omar Serushago</td>
<td>(i)</td>
<td>15 years</td>
</tr>
<tr>
<td>May 1999</td>
<td>Clément Kayishema ; Obed Ruzindana</td>
<td>(i)</td>
<td>Life; 25 years (respectively)</td>
</tr>
<tr>
<td>Dec 1999</td>
<td>Georges Rutaganda</td>
<td>(i)</td>
<td>Life</td>
</tr>
<tr>
<td>Jan 2000</td>
<td>Alfred Musema</td>
<td>(i)</td>
<td>Life</td>
</tr>
<tr>
<td>June 2000</td>
<td>Georges Ruggiu</td>
<td>(iii)</td>
<td>12 years</td>
</tr>
<tr>
<td>Feb 2003</td>
<td>Elizaphan Ntakirutimana ; Gérard Ntakirutimana</td>
<td>(i)</td>
<td>10 years and 25 years (respectively)</td>
</tr>
<tr>
<td>May 2003</td>
<td>Elézé Niyitegeka</td>
<td>(i) (ii) (iii)</td>
<td>Life</td>
</tr>
<tr>
<td>May 2003</td>
<td>Laurent Semanza</td>
<td>(iv)</td>
<td>35 years</td>
</tr>
<tr>
<td>Dec 2003</td>
<td>Jean-Bosco Barayagwiza ; Ferdinand Nahimana ; Hassan Ngeze</td>
<td>(i) (ii) (iii) (iv)</td>
<td>32 ; 30 ; 35 years (respectively)</td>
</tr>
<tr>
<td>Dec 2003</td>
<td>Juvénal Kajelijeli</td>
<td>(i) (iii)</td>
<td>45 years</td>
</tr>
<tr>
<td>Jan 2004</td>
<td>Jean de Dieu Kamuhanda</td>
<td>(i) (iii)</td>
<td>Life</td>
</tr>
<tr>
<td>Feb 2004</td>
<td>Samuel Imanishimw</td>
<td>(i)</td>
<td>12 years</td>
</tr>
<tr>
<td>June 2004</td>
<td>Sylvestre Gacumbitsi</td>
<td>(i)</td>
<td>30 years</td>
</tr>
<tr>
<td>July 2004</td>
<td>Emmanuel Ndindabahizi</td>
<td>(i)</td>
<td>Life</td>
</tr>
<tr>
<td>April 2005</td>
<td>Mikaeli Muhimana</td>
<td>(i)</td>
<td>Life</td>
</tr>
<tr>
<td>Dec 2005</td>
<td>Aloys Simba</td>
<td>(i)</td>
<td>25 years</td>
</tr>
<tr>
<td>Dec 2006</td>
<td>Athanase Seromba</td>
<td>(i)</td>
<td>Life</td>
</tr>
<tr>
<td>Dec 2007</td>
<td>François Karera</td>
<td>(i)</td>
<td>Life</td>
</tr>
<tr>
<td>Nov 2008</td>
<td>Siméon Nchamihigo</td>
<td>(i)</td>
<td>40 years</td>
</tr>
<tr>
<td>Dec 2008</td>
<td>Théoneste Bagosora ; Aloys Ntabakuze ; Anatole Nsengiyumva</td>
<td>(i)</td>
<td>35 years each (Nsengiyumva reduced to 15 years on appeal)</td>
</tr>
<tr>
<td>Dec 2008</td>
<td>Simon Bikindi</td>
<td>(iii)</td>
<td>15 years</td>
</tr>
</tbody>
</table>
Table 1. continued.

<table>
<thead>
<tr>
<th>Date</th>
<th>Name(s) and prosecutor</th>
<th>Conviction</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dec 2008</td>
<td>Protais Zigiranyirazo</td>
<td>(i)</td>
<td>Life (subsequently acquitted)</td>
</tr>
<tr>
<td>Nov 2008</td>
<td>Siméon Nchamihigo</td>
<td>(i)</td>
<td>40 years</td>
</tr>
<tr>
<td>Feb 2009</td>
<td>Emmanuel Rukundo</td>
<td>(i)</td>
<td>23 years</td>
</tr>
<tr>
<td>June 2009</td>
<td>Callixte Kalimanzira</td>
<td>(i) (iii)</td>
<td>25 years</td>
</tr>
<tr>
<td>July 2009</td>
<td>Tharcisse Renzaho</td>
<td>(i)</td>
<td>Life</td>
</tr>
<tr>
<td>Sept 2009</td>
<td>Michel Bagaragaza</td>
<td>(iv)</td>
<td>8 years</td>
</tr>
<tr>
<td>Feb 2010</td>
<td>Tharcisse Muvunyi</td>
<td>(iii)</td>
<td>15 years</td>
</tr>
<tr>
<td>Feb 2010</td>
<td>Ephrem Setako</td>
<td>(i)</td>
<td>25 years</td>
</tr>
<tr>
<td>July 2010</td>
<td>Yusuf Munyakazi</td>
<td>(i)</td>
<td>25 years</td>
</tr>
<tr>
<td>Aug 2010</td>
<td>Dominique Ntawukulilyayo</td>
<td>(i)</td>
<td>20 years</td>
</tr>
<tr>
<td>Nov 2010</td>
<td>Gaspard Kanyarugika</td>
<td>(i)</td>
<td>30 years</td>
</tr>
<tr>
<td>Dec 2010</td>
<td>Ildéphonse Hategemana</td>
<td>(i)</td>
<td>Life</td>
</tr>
<tr>
<td>Mar 2011</td>
<td>Jean Baptiste Gatete</td>
<td>(i)</td>
<td>40 years</td>
</tr>
<tr>
<td>May 2011</td>
<td>Augustin Ndindilyiyanza; Augustin Bizimungu</td>
<td>(i)</td>
<td>11 years (subsequently acquitted); 30 years (respectively)</td>
</tr>
<tr>
<td>June 2011</td>
<td>Pauline Nyiramasuhuko; Arsène Shalom Ntahobali; Sylvain Nsabimana; Alphonse Nteziriyayo; Joseph kanyabashi; Elie Ndayambaje</td>
<td>(i)</td>
<td>Life, life, 25, 30, 35, life (subsequently acquitted) (respectively)</td>
</tr>
<tr>
<td>Sept 2011</td>
<td>Justin Mugenzi; Prosper Mugiraneza</td>
<td>(ii) (iii)</td>
<td>30 years each (both subsequently acquitted)</td>
</tr>
<tr>
<td>Dec 2011</td>
<td>Grégoire Ndahimana</td>
<td>(i)</td>
<td>25 years</td>
</tr>
<tr>
<td>Feb 2012</td>
<td>Édouard Karemera ; Matthieu Ngiumpats</td>
<td>(i) (ii) (iii)</td>
<td>Life</td>
</tr>
<tr>
<td>May 2012</td>
<td>Callixte Nzaboniman</td>
<td>(i) (ii) (iii)</td>
<td>Life</td>
</tr>
<tr>
<td>June 2012</td>
<td>Ildéphonse Nizeyimana</td>
<td>(i)</td>
<td>35 years</td>
</tr>
<tr>
<td>June 2012</td>
<td>Joseph Serugendo</td>
<td>(iii)</td>
<td>6 years</td>
</tr>
<tr>
<td>Dec 2012</td>
<td>Augustin Ngirobatware</td>
<td>(i) (iii)</td>
<td>30 years</td>
</tr>
</tbody>
</table>

**Other prosecutions for Genocide committed in Rwanda**

<table>
<thead>
<tr>
<th>Date</th>
<th>Name(s) and prosecutor</th>
<th>Conviction</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feb 1997</td>
<td>Froduald Karamira Court of First Instance of Kigali, Rwanda</td>
<td>(i)</td>
<td>Death</td>
</tr>
<tr>
<td>June 2001</td>
<td>Vincent Nteziman ; Iphorne Higaniro; Sister Gertrude (a.k.a. Consolata Mukangango); Sister Kisi (a.k.a. Julienne Mukabutera) Boutare Four trial: Assize Court, Belgium</td>
<td>(i)</td>
<td>12 years; 20 years; 15 years; 12 years (respectively)</td>
</tr>
<tr>
<td>Nov 2006</td>
<td>Wenceslas Munyeshyaka (tried in absentia) Rwandan Military Court, Kigali</td>
<td>(i)</td>
<td>Life</td>
</tr>
<tr>
<td>Mar 2009</td>
<td>Béatrice Nirere “Gagcaca” Court of Giporosa, Gasabo District, Rwanda</td>
<td>(i)</td>
<td>Life</td>
</tr>
<tr>
<td>Oct 2009</td>
<td>Désiré Munyaneza Superior Court, Criminal Division, Canada</td>
<td>(i)</td>
<td>Life</td>
</tr>
</tbody>
</table>
As table 1 shows, as well as a considerable number of trials conducted by the ICTR, the Rwandan Government in various courts also tried those responsible for Genocide. Although table 1 reflects the largest number of cases, this is by no means the sum of all trials relating to genocide in Rwanda. Between 1997 and 2004, 10,026 cases were tried by the national courts system under a new form of “Organic Law,” devised specifically to deal with the post-genocide trials. Organic law split cases into four categories, with the most serious, Category 1, referring directly to those “whose criminal acts or criminal participation place among planners, organizers, imitators, supervisors of the crime of genocide or crime against humanity,” some of these are captured in the table above. Categories 2, 3, and 4 include crimes where the accused are complicit, accomplices, or perpetrators of acts of violence associated to crimes that may include genocide.

Given the difficulties of trying the substantial number of those incarcerated and awaiting trial, in 2004 the Rwandan government developed the gacaca system of localized, community trials that were a “relatively informal, traditional Rwandan method of conflict resolution that was adapted to meet the discerned needs of the post-genocide environment.” The gacaca courts dealt predominantly with Category 2, 3 and 4 cases under Organic Law, and Nwoye describes the process as “a result of the domestic system’s inability to deal with the huge number of back-logged genocide cases promptly.” According to Human Rights Watch, of the roughly 818,000 individuals accused of crimes in the initial gacaca phase between 2004-5, 77,000 were initially placed in Organic Law Category 1 to be tried in the national court system, with the remainder of the cases sent to the gacaca courts. As of April 2012, approximately 1,951,388 cases had been tried in the gacaca system, with a conviction rate running around 65%. The trials of political and military leaders for acts of genocide are generally well documented and included in Table 1, however there are a multitude of other crimes associated with the genocide, such as the localized support, complicity, and/or conspiracy to commit genocide that are not included in official figures but were part of national or gacaca trials. Therefore, it is very difficult to provide a firm number of the broader set of convictions related to genocide that came from these processes, but it is certain that many individuals were convicted of such crimes.

As with the war in Rwanda, the conflict in the Former Yugoslavia resulted in convictions for crimes of genocide. Table 2 shows these convictions, including those rating to the ICTY and convictions from other courts.

---

29 Nwoye, Partners, 125.
30 Ibid., 183.
Table 2. Genocide Prosecutions Pursuant to the War in Former Yugoslavia.

Table Key: Description of genocide conviction
(i) Genocide
(ii) Conspiracy to commit genocide
(iii) Direct and public incitement to commit genocide
(iv) Complicity in genocide
(v) Aiding and abetting genocide

<table>
<thead>
<tr>
<th>Date</th>
<th>Name(s)</th>
<th>Conviction</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apr 2004</td>
<td>Radislav Krstić</td>
<td>(v)</td>
<td>35 years</td>
</tr>
<tr>
<td>June 2010</td>
<td>Vujadin Popović</td>
<td>(i) (ii)</td>
<td>Life</td>
</tr>
<tr>
<td>June 2010</td>
<td>Ljubiša Beara</td>
<td>(i)</td>
<td>Life</td>
</tr>
<tr>
<td>June 2010</td>
<td>Drago Nikolić</td>
<td>(v)</td>
<td>35 years</td>
</tr>
<tr>
<td>Dec 2012</td>
<td>Zdravko Tolimir</td>
<td>(i) (ii)</td>
<td>Life</td>
</tr>
<tr>
<td>Mar 2016</td>
<td>Radovan Karadžić</td>
<td>(i)</td>
<td>40 years</td>
</tr>
<tr>
<td>Nov 2017</td>
<td>Ratko Mladić</td>
<td>(i)</td>
<td>Life</td>
</tr>
</tbody>
</table>

Other Prosecution for Genocide Committed in the Former Yugoslavia

<table>
<thead>
<tr>
<th>Date</th>
<th>Name and prosecutor</th>
<th>Conviction</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sept 1997</td>
<td>Nikola Jorgić</td>
<td>(i)</td>
<td>Life</td>
</tr>
<tr>
<td>Mar 1993</td>
<td>Borislav Herak</td>
<td>(i)</td>
<td>Death (subsequently revised to 20 years)</td>
</tr>
<tr>
<td>Mar 1993</td>
<td>Sretko Đamjanović</td>
<td>(i)</td>
<td>Death (subsequently acquitted)</td>
</tr>
<tr>
<td>Nov 1999</td>
<td>Maksim Sokolović</td>
<td>(v)</td>
<td>9 years</td>
</tr>
<tr>
<td>Oct 2009</td>
<td>Milorad Trbić</td>
<td>(i)</td>
<td>30 years</td>
</tr>
</tbody>
</table>

Although the ICTR and ICTY are responsible for the largest number of identifiable genocide convictions, there have been convictions across the rest of the world. The first convictions for genocide are often credited to the ICTY and ICTR, however almost 20 years earlier, in 1979, there were several successful prosecutions for Genocide arising from the military coup in Equatorial Guinea. These prosecutions are often discounted over questions on the legality of the court and the legal basis used to define Genocide. The trial in Equatorial Guinea used a definition for genocide developed a few years earlier in a Spanish military court, and although the Spanish case was ultimately dismissed, the supreme military court of Equatorial Guinea used this definition as part of their prosecution of the former president and six other high-ranking officials in a set of trials after the coup. The sole international observer of the trial, Alejandro Artucio who was present on behalf of the International Commission of Jurists, cast doubt on the trial for “a series of irregularities” during the proceedings.32 He argues that the charges of genocide were not legally valid, as Equatorial Guinea had not ratified the 1948 convention on the prevention and punishment of genocide. Furthermore, he argues that the charges of genocide, particularly the intent to destroy a religious, national or racial group, were not proven in the case, but rather the terms “genocide and

mass murder were used synonymously.” Nevertheless, the neglect of the Equatorial Guinea case represents an unfair erasure; it was the first time in which a legally defined concept of genocide was successfully prosecuted. During the trials in Equatorial Guinea genocide was cited as a crime, with a definition based on the prior Spanish civil and military definition. Despite the irregularities identified by the Artucio, the convictions in Equatorial Guinea have a genuine case to be regarded as the first for genocide. These convictions are included in Table 3 along with cases from elsewhere in the world.

Table 3. Genocide Prosecutions Pursuant to Cases in the Rest of the World

<table>
<thead>
<tr>
<th>Date</th>
<th>Name(s) and prosecutor</th>
<th>Conviction</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sept 1979</td>
<td>Francisco Macías Guema (Former president Equatorial guinea); Pastor Nsue; Salvador Ondo Ela; Fortunate Nsogo; Eduardo Nguema Edu; Miguel Eyegue; Bienvenido Micha Nsue</td>
<td>(i)</td>
<td>Death</td>
</tr>
<tr>
<td></td>
<td>The Supreme Military Council of Editorial Guinea</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dec 2006</td>
<td>Mengistu Hailu Mariam (former President of Ethiopia); Legesse Asfaw, known as “the butcher of Tigre”; former vice-president Fisseha Desta; former prime minister Fikresellasie Wogderes; 51 other defendants</td>
<td>(i)</td>
<td>Death (a number of the co-defendants not named here had this sentence commuted later)</td>
</tr>
<tr>
<td></td>
<td>Ethiopian High Court</td>
<td></td>
<td></td>
</tr>
<tr>
<td>June 2007</td>
<td>Ali Hasan Al-Majid (a.k.a. “Chemical Ali”); Sultan Hashim Ahmad Al-Tai; Ahmad Al-Tai; Sabir Aziz Husayn-al-Duri; Husayn Rashid Muhammad; Farhan Mutlak Al-Juburi</td>
<td>(i)</td>
<td>Ali Hasan Al-Majid; Sultan Hashim Ahmad Al-Tai; Sabir Aziz Husayn-al-Duri; Husayn Rashid Muhammad - Death</td>
</tr>
<tr>
<td></td>
<td>Iraqi High Tribunal (Second Criminal Court)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>May 2013</td>
<td>Efrain Rios Montt (General and de facto President of Guatemala)</td>
<td>(i)</td>
<td>80 years in prison, fifty of which for Genocide (Trial and verdict nullified by Guatemalan Constitutional Court after 10 days)</td>
</tr>
<tr>
<td></td>
<td>High Risk Tribunal A, Guatemala</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Although there have been a number of successful trials, the relatively low number of convictions outside of the Rwanda context highlight the difficulty of achieving successful prosecution in a crime as complicated as genocide, where a *dolus specialis* (particular intent) of group destruction must be proven. This is not the only difficulty in genocide prosecution; the realpolitik of criminal justice, particularly at an international level, is such that the intentional bodies investigating and trying Genocide have come under considerable scrutiny and, at times, heavy criticism. The next

33 Ibid., 31.

section discusses some of difficulties in achieving prosecutions, using the work of ICC in Africa and the case of Sudanese present Omar Al Bashir as an example.

The Politics of Genocide Prosecution: A Case Study on the ICC in Africa
Of the 124 countries that are parties to the Rome Statute of the ICC, 34 are African states and many of these were “deeply involved in creating the Court and all its provisions.” Nevertheless, there has been a persistent critique of the ICC’s role in Africa, much of this from a number of African States claiming that the Court “has preoccupied itself with Africa and failed to investigate equally severe conflicts elsewhere.” Table 4 shows the history of ICC cases, illustrating a preponderance of cases in Africa. Although genocide is listed in several of the cases, convictions to date have been restricted to crimes against humanity and war crimes.

Table 4. ICC Cases up to January 2018

<table>
<thead>
<tr>
<th></th>
<th>Africa</th>
<th>Asia</th>
<th>Europe</th>
<th>North America</th>
<th>South America</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investigations not taken to preliminary examination</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Investigations taken to preliminary examination</td>
<td>4</td>
<td>2</td>
<td>3</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Situations currently under investigation</td>
<td>10</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>In Trial</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Acquitted or charges not confirmed</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Convicted</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Convicted but in Appeal</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: ICC, 2018b

There is a spectrum of positions on the ICCs role in Africa, ranging from accusations of western neo-colonialism to the application of legislation governing intervention. In the first instance, Abdul Tejan-Cole, Executive Director of the Open Society Initiative for West Africa, explains how some have gone so far as “to accuse the Court of being a neo-colonialist institution peddling a Western agenda that seeks to control African politics through ICC investigations and prosecutions.” For example, Courtenay Griffiths, the lead defense attorney for former Liberian President Charles Taylor, argued that rather than operating through a desire for international justice, the ICC is acts as “a vehicle for its primarily European funders, of which the UK is one of the largest, to exert their power and influence, particularly in Africa.”

Less critical, but still unfavorable interpretations of the ICCs role in Africa assert that the “Achilles heel of the ICC system revolves around the fairness of its selection process of its

36 Bassiouni and Hansen, Inevitable, 309.
37 Tejan-Cole, ICC, 365.
cases.” Such arguments claim that the ICC suffers from selectivism when deciding which cases to investigate and prosecute. There may be many reasons for this, but Imoedemhe argues that geopolitical pressures mean that “international crimes are ignored when it is considered politically expedient to do so,” and African cases are less likely to have the geopolitical influence to assert pressure to this extent.

Counter arguments to the claims of neo-colonialism and selectivism focus on the application of Complementarity in the Rome Statute, the principle that stipulates that it is first and foremost “the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.” Under the complementarity argument, the clustering of cases in Africa is not seen as deliberate, but a consequence of historical events such as colonialism, war, and “impunity that thrives in a lack of accountability and the rule of law.” For those that take this position, such as deGuzman, the ICC is simply doing its job, and “all of the Court’s actions to date have been based on plausible interpretations of the relevant law.”

One of the most persistent critics of the ICC is the African Union, and an example of this is the dispute over arrest warrants issued for heads of state of African Union Countries, particularly Sudanese present Omar Al Bashir. At its July 2010 summit, the African union responded to a second arrest warrant for Omar Al Bashir for Genocide, War Crimes, and Crimes against Humanity by requesting that its member states did not cooperate with the ICC.” This position was reinforced at an Extraordinary Session in Addis Ababa, Ethiopia, in October 2013, where the African Union stated its “concern on the politicization and misuse of indictments against African leaders” reaffirming its position that “no charges shall be commenced or continued before any International Court or Tribunal against any serving AU Head of State or Government.” In 2015, the African Union’s Committee of African Ministers on International Criminal Court again reiterated their commitment to terminate, suspend, or defer the proceedings against President Al Bashir of Sudan and Deputy President William Samoei Ruto of Kenya until the “concerns and proposals for amendments of the Rome Statute of the ICC are considered.” Since the initial arrest warrant in 2009, Al Bashir has visited eight African states that are signatories to the Rome Statute of the ICC without arrest: Chad, Kenya, Djibouti, Malawi, Nigeria, DRC, South Africa and Uganda. Boehme suggests this has effectively created a “non-cooperation norm” for exercising ICC warrants in Africa.

As well as the collective opposition from the African Union, individual African states have expressed concerns with the workings of ICC. On October 12, 2016, the Parliament of the Republic

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42 Ibid., 12.
of Burundi voted in favor of withdrawing from the Rome Statute of the ICC.\textsuperscript{49} They are not the only nation to have done so: South Africa, Kenya, and Gambia have all at some point indicated a desire to withdraw from the statute. On October 27, 2017, Burundi became the first signatory to the Rome Statue to leave the ICC.\textsuperscript{50}

Despite the disagreements between the African Union, individual states, and the ICC, there is still much support for the work of the court. For instance, Keppler\textsuperscript{51} claims that the African Union “does not reflect the range of positions that African governments have regarding the ICC.” This is supported by Boehme,\textsuperscript{52} who illustrates how the actions of the African Union created a loyalty conflict in South Africa, where the executive is torn between “its obligation to the African Union and its obligation to the ICC.” The South African government has been involved for several years in a series of legal challenged around its withdrawal from the ICC, which was eventually found by the high court to be “unconstitutional and invalid.”\textsuperscript{53} Furthermore, after South Africa’s 2016 proposed withdrawal from the ICC, Nigeria, DRC, Ivory Coast, Botswana, Tunisia, Ghana, Mali, Burkina Faso, Tanzania, Lesotho, and Uganda all publicly backed the Court and its work in Africa.

Although the ICC faces a difficult role in Africa, there are many who believe “the relationship is still salvageable and could be enhanced for the mutual benefit of both institutions with a view to achieving the goal of peace and security.”\textsuperscript{54} Despite an overbalance in ICC cases in Africa, Bassiouni and Hansen argues that this does not mean the ICC should cease investigations here, but that “it needs also to investigate and prosecute crimes elsewhere.”\textsuperscript{55} As table 4 shows, there is evidence that the ICC is increasingly focusing its work outside of the African context, with 6 of the 10 preliminary cases in other continents. The only current ICC case pursuant to genocide, however, is in Africa.

Summary

Since Lemkin’s inception of the crime, definitions for genocide have changed little. The subsequent use of Lemkin’s crime in legation was, in the words of the Rome Statute, an international response to the idea that there are some crimes so significant that they “shock the conscience of humanity.”\textsuperscript{56} Nevertheless, the legislation is relatively new and the international responses to genocide newer still. Although the ICC has yet to convict anyone for genocide, previous convictions in international, regional, and local courts, show that there is a desire to pursue those responsible or complicit in this most serious of crimes. Furthermore, bodies such as the ICTR, ICTY, and the ICC have a value that can be judged alongside the number of convictions for genocide and other serious crimes. Hyeran and Simmons argue that the work of the ICC is more nuanced than its record of prosecutions, identifying “multiple mechanisms—legal and social, international and domestic—associated with the ICC’s authority that can potentially deter law violation in countries prone to civil violence.”\textsuperscript{57} They identify two forms of mutually reinforcing deterrent: firstly, a prosecution deterrent that derives from both the ICCs investigatory powers and from the integration into national laws of the definitions on genocide and associated crimes used by the international courts; and secondly, a social deterrent that derives from the ICCs representation of a mobilization in the international


\textsuperscript{52} Ibid., 468.


\textsuperscript{54} Imoedemhe, Unpacking, 74.

\textsuperscript{55} Bassiouni and Hansen, Inevitable, 324.

\textsuperscript{56} United Nations, Rome Statute, 1.

\textsuperscript{57} Hyeran and Simmons, International, 444.
community and in domestic civil society. This is supported by Bassiouni and Hansen, who describe the ICC as “an institution with the capacity to change habits and outcomes” and by Hillebrecht who argues that “the ICC’s involvement in conflict does have a dampening effect on the level of mass atrocities committed.” Nevertheless, the presence of the ICC has not stopped what Lemkin described over 70 years ago as “an old practice in its modern development.”

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60 Hillebrecht, *Deterrent*, 616.


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Introduction

In 1955, four years before his death on August 24, 1959, of a massive heart attack in his publicist Milton H. Blow’s office in New York City, Raphaël Lemkin (1900-1959) finished his somewhat sanitized autobiography * Totally Unofficial Man *, an ironic indirect tribute to his lack of governmental and/or diplomatic status and credentials, but his nonetheless herculean effort to persuade forty-one member-states of the United Nations to sign the Convention on the Prevention and Punishment of the Crime of Genocide as presented to the General Assembly on December 9, 1948. Ratification would come later in 1951, including the United States under President Ronald Regan [1911-2004] November 5, 1988. That edited autobiography, with notes and commentary, would not be published until 2013, however, although a lengthy excerpt had already been published somewhat earlier. In * Totally Unofficial Man *, and referring to his student days at Lvov University, Ukraine, and shortly after receiving his Doctor of Law degree, he references the trials of both Soghomon Tehlirian (1896-1960) and Sholem-Shmuel (Samuel) Schwartzbard (1886-1938) within the same two pages.

The court in Berlin acquitted Tehlirian. It had decided that he had acted under ‘psychological compulsion.’ Tehlirian, *who upheld the moral order of mankind*, was classified as insane, incapable of discerning the moral nature of his act. He had acted as the self-appointed legal officer for the conscience of mankind. But can a man appoint himself to mete our justice? Will not passion sway such a form of justice and make a travesty of it? At that moment, my worries about the murder of the innocent became more meaningful to me. I didn’t know all the answers, but I felt that a law against this type of racial or religious murder must be adopted by the world

At Lwow University, where I enrolled for the study of law, I discussed this matter with my professors. They evoked the argument about sovereignty of states. ‘But sovereignty of states,’ I answered, ‘implies conducting an independent foreign and internal policy, building of schools, construction of roads, in brief, all types of activity directed toward the welfare of people.’ ‘Sovereignty,’ I argued, ‘cannot be conceived as the right to kill millions of innocent people.’

In 1926, after obtaining my Doctor of Law, another bomb exploded. In a rare moment of clarity that seething indignation instills, I further understood the concept of the crime I was trying to establish. In Paris, Shalom Schwartzbard ... shot the Ukrainian minister of war,

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2 Australia (11 December), Belarus (16 December 1949), Bolivia (11 December), Bosnia & Herzegovina (11 December), Brazil (11 December), Canada (28 November 1949), Chile (11 December), China (20 July 1949), Columbia (12 August 1949), Iceland (14 May 1949), India (29 November 1949), Iran (8 December 1949), Israel (17 August 1949), Lebanon (30 December 1949), Liberia (11 December), Mexico (14 December), Myanmar (30 December 1949), New Zealand (25 November 1949), Norway (11 December), Pakistan (11 December), United States (11 December), Uruguay (11 December).


5 He makes no further reference to either except an article which he does not cite on Schwartzbard, referring to the deed as a “beautiful crime” and that of Tehlirian as “upholding the moral order of mankind.”
Symon Petliura... The Paris jury found itself in the same moral dilemma as the court in Berlin. They could neither acquit Schwartzbard nor condemn him... but neither could it sanction the taking of the law in one's hands in order to uphold the moral standards of mankind...

Gradually, the decision was maturing in me that I had to act.6

To the degree that Lemkin’s memories of those days and those trials are seemingly accurate, however, he seems to have accepted whatever materials were at his disposal then—but not subsequently—primarily newspapers in the languages with which he was familiar (e.g. Polish, French, German, Yiddish). As he continued his intellectual and legal conceptualizations evolving into genocide, he makes little to no further reference to these two cases. Thus, they were seemingly foundational to his past, but apparently not to his present nor his future work.

Further compounding the initial irony noted above are three significant omissions: (1) he makes no references whatsoever to the case of Herschel (Feibel) Grynszpan (1921 – 1944/45?) who shot the Third Secretary to the German/Nazi Embassy in Paris, Ernst Eduard vom Rath (1909-1938), on November 9, 1938, immediately prior to the destructive events of Kristallnacht (November 9-10, 1938) throughout Germany, and seemingly resulting from the subsequent deportation of Polish Jews, including his parents Sendel (who would survive the Holocaust, immigrate to Israel, and testify at the trial of Adolf Eichmann [1906-1962] in 1961) and Riva and his sister Berta, as well as 15,000 others, an event which served the Nazis well as a false prelude to the Holocaust/Shoah, events with which Lemkin was also no doubt intimately familiar; (2) subsequent research has further revealed information about both Tehlirian and Schwartzbard, their associations, and their deeds, and thus calls into question not only the myths surrounding them and those same deeds, but their own biographies as well; (3) finally, Lemkin makes no mention whatsoever of the murder of Swiss Nazi leader Wilhelm Gustloff (1895-1936) by the Jewish medical student David Frankfurter (1909-1982), most obviously, perhaps, because, unlike Tehlirian and Schwartzbard, he was found guilty, sentenced to an eighteen-year prison term and expulsion. (Frankfurter served his sentence until 1945 when he was granted a pardon; left for pre-state Palestine/Israel where he later died.) Equally omitted from Lemkin’s writing was the 1923 assassination by Maurice Conradi (1896-1947), a White Russian military man most of whose family was either murdered or executed by the Bolsheviks, who murdered Vatslav Vorovsky (1871-1923) and wounded two others—Ivan Ariens and Maxim Divilkovsky—in Geneva to attend the Lausanne Conference in 1923 in the aftermath of the First World War, an event which the Soviet government labeled the work of “White fascists.” Conradi pled not guilty and was acquitted.

What, perhaps, is even more surprising is that, in his own articulations of these two political assassinations, evidently formative in his initial thinking about genocide, he does not even address even later, even in broad brushstrokes, the reality of the previous century when such acts were all-too-common and all-too-well-known. As Eric Bogosian notes:

The half-century prior to World War I was open season on world leaders. Three American presidents [Abraham] Lincoln (1809-1865), [James] Garfield (1831-1881), and [William] McKinley (1842-1901) were shot to death by assassins. A bullet would end the lives of Minister Juan Prim of Spain (1814-1870), King Umberto [I] of Italy (1844-1900), King Carlos of Portugal (1863-1908), King George [I] of Greece (1845-1913), and Naser al-Din Shah Quajar of Persia (1831-1976), Empress Elizabeth of Austria (1837-1898), President Sadi Carnot of France (1837-1894) and Richard Southwell Bourke, sixth Earl of Mayo (1822-1872), were stabbed to death. Gabriel Garcia Moreno (1821-1875), president of Ecuador, was hacked to death by machete. The killing spree against world leaders reached its climax in 1914, when Archduke Franz Ferdinand (1863-1914) of Austro-Hungary was gunned down by Gavrilo Princip (1894-1918), a Serbian nationalist, triggering World War I.8

The Complicated Case of Soghomon Tehlirian

This much is clear and was so to Lemkin as well and covered in the regular presses of Europe: Tehlirian was born on April 2, 1896 in the Turkish vilayet of Erzurum in the Ottoman Empire, when relations between other Turks and Armenians was already pre-genocidal under the failing regime of Sultan Abdul Hamid II (1842-1918; reigned 1876-1909) who would later be deposed by the Committee of Union and Progress (CUP). By the end of the Armenian Genocide (1915-1923), as could only be partially brought out due to the lack of data in his two-day trial in Berlin on June 2-3, 1921, approximately eighty-five members of his family would be murdered, including according to Tehlirian and his three lawyers, his mother, three sisters, one brother-in-law, two brothers, and a two-year-old niece; he himself having survived due to his mother’s shielding him with her body and falling over him. On the morning of March 15, 1921, Tehlirian shot and killed Grand Vizier Mehmed Talaat Pasha (1874-1921), the prime architect of the genocide itself, and someone whose contempt for the Armenians was already communicated to US Ambassador to Turkey Henry Morgenthau, Sr. (1856-1946) who recorded their conversations in his Ambassador Morgenthau’s Story, especially in Chapter 25, “Talaat Tells Why He ‘Deports’ the Armenians.”9

Tehlirian did not deny his deed but did not consider himself a murderer, but, rather, someone who had avenged the murders of his family and his people. His three attorneys—Adolf von Gordon, Johannes Werthauer, and Kurt Niemeyer—took great care to present him as someone deeply troubled, burdened by great traumas and unbearable stresses—early indications of Post-Traumatic Stress Disorder (PTSD), though the term itself was not yet in existence—and he was examined by several psychiatric medical professionals who testified regarding his mental state and difficulties and which certainly worked to Tehlirian’s advantage in his overall defense. He presented himself in a relatively composed and humble manner, but made it a point to relate a dream in which his mother told him, “You saw Talaat and you did not avenge your mother’s, father’s brothers’ and sisters’ murders? You are no longer my son.”10

The jury consisted of twelve men—a mason, a merchant, a jeweler, two landlords, a roofer, two locksmiths, a painter, a pharmacist, a painter, and an executive—who deliberated for a little more than one hour, and responded to the judge’s question, “Is the defendant, Soghomon Tehlirian, guilty of having intentionally killed a man, Talaat Pasha, on March 15, 1921, in Charlottenburg?” The foreman answered, “No!”

The Presiding Judge Dr. Lemberg (along with the two Associate Justices Dr. Bathe and Dr. Lachs) then proceeded, “I now sign the verdict and I ask to clerk to do the same and read the

9 Henry Morgenthau. Ambassador Morgenthau’s Story: A Personal Account of the Armenian Genocide (Ithaca: Cornell University Press, 2008). This reference has been republished numerous times by various publishers and available online as well.
10 For a full translated record of the court proceedings, together with supplementary materials see Vartkes Yeghiayan, The Case of Soghomon Tehlirian, 2nd ed. (Glendale: Center for Armenian Remebrance, 2006), especially “First Day of Trial” (3-121), “Second Day of Trial” (122-179), and “Verdict” (180).
verdict out loud...The defendant is acquitted at the expense of the state treasury...In accordance with the decision of the jury, the defendant is not guilty of the punishable act with which he has been charged...The order of imprisonment as regards the defendant is hereby annulled.”11

What Lemkin (and Others) Did Not Know or Did Not Follow
To be sure, Lemkin saw, internalized, and interpreted in both Tehlirian’s act and subsequent acquittal—and Schwartzbard as well—as he would evolve it, his rationale for an international law against genocide. What he did not know or did not follow were Tehlirian’s marriage to his wife Anahit, his fathering two sons, his move back to Serbia where he had lived before, his later move to Belgium with his family, and, finally, his move to San Francisco, CA, in 1945, and where he would later die of a brain tumor in 1960, one year after Lemkin.

In a somewhat startling and disturbing article entitled “My conversation with the son of Soghomon Tehlirian, the man who assassinated the organizer of the Armenian genocide” in the British newspaper *The Independent* on 20 June 2016, British writer, journalist and Middle East specialist Robert Fisk (b. 1946) wrote:

The family story is both gruesome and tragic and Soghomon Tehlirian’s younger son has changed his family name to distance himself from history—and from the Turks who still regard his father as the world’s most famous ‘terrorist.’

‘Later, I found out that he had also killed an Armenian Quizling in Istanbul who was spying for the Turks during the genocide.’ Indeed, in 1920, Tehlirian assassinated Hartyun Mkrtchian, who had helped Talaat round up the initial Armenian clergymen, journalists and lawyers for exile and death in April 1915.

Popular Armenian history would have it that Tehlirian’s entire family—his father, mother, sisters, and all three brothers—were murdered in front of him during the genocide. This is untrue. Soghomon Tehlirian was not in Armenia at the time.

He was in Serbia, having moved there quite by chance on the very day in June 1914 that Gavrillo Princip shot the Archduke Ferdinand in Sarajevo, setting off World War I.

‘My father never had a sister,’ his son says.’ He and two of his brothers were in Serbia. It was his mother—my grandmother—who was killed in the genocide, along with his older brother Vasken, who would have been my uncle and who would have been a medical student in Beirut.’12

What Lemkin and others did not know until relatively recently was the singularly important fact that Tehlirian had already joined “Operation Nemesis” earlier in 1920 and was very much involved in the process of assassinations of those responsible for the Armenian Genocide. His assassination of the traitorous Armenian Hartyun Mkrtchian took place in Constantinople that same year. “Operation Nemesis”, as is now more fully known, was a campaign of the Armenian Revolutionary Federation (ARF), played a significant part in the fund-raising efforts in the United States for Tehlirian’s trial, and was also responsible for the assassinations of Fatali Khan Khoyski (1875-1920; June 19, 1920), Bibud Khan Jivanshir (1877-1921; July 18, 1921), Said Halim Pasha (1875-1921; December 5, 1921), Behaeddin Shakir (1874-1922; April 17, 1922), Djemal Azmi (? -1922; April 17, 1922), Enver Pasha (1881-1922; August 4, 1922), Djemal Pasha (1872-1922; July 21, 1922), as well

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12 One of the enduring myths of Tehlirian’s survival and repeated in any number of online biographical accounts was that he was in the desert with his mother who protected him with her body from the bullets as they both fell to the ground.
as the Armenian traitor Vahe Ihssan (? -1920; March 27, 1920).  

The Complicated Case of Sholem-Shmuel Schwartzbard

Equally so, we must assume that Lemkin’s knowledge of Schwartzbard’s assassination and subsequent trial and acquittal as reported in those same multi-language newspapers during and immediately following his student days were also reported in the broadest of brushstrokes and offered somewhat hyper-dramatic accounts as was the norm in journalistic reporting in the 18th, 19th, and early 20th centuries.

However, and significantly, at least publicly, Schwartzbard was not perceived to be a naïve victim who chose to take matters into his own hands, but, rather, an already-known anarchist who had served in both the French Foreign Legion and the Soviet military as well as an accomplished Yiddish poet. Controversy has continued to surround his deed as to whether it was, in fact, a solo act of reprisal in defense of his victimized Jewish people by Ukrainian pogromchiks or part of an overall conspiracy initiated and organized by the Soviets who regarded Symon Petliura (1879-1926) as a serious threat to their overall political control. Additionally, and subsequently, the controversy is further fueled by the ongoing debate whether Petliura was, indeed, powerful enough to restrain the antisemitic troops under his command and direction and the fact that he remains something of a heroic figure in the overall story of Ukrainian nationalism and the desire for total political nation-state independence on the part of the Ukrainian people.

What was known then is the following: Schwartzbard was born August 18, 1886 in Izmail, Bessarabia, and grew up in the town of Balta, approximately thirty miles away. By age seventeen, during his apprenticeship to a watchmaker, he became fascinated with and embraced socialism as a political philosophy. Two years later, 1905, he would spend a brief stint in prison during the early revolutionary period. After his release, he would move to Austria-Hungary and now saw himself as an anarchist. By 1910, now age twenty-three, he relocated himself to Paris, joined the French Foreign Legion, was wounded in battle, awarded the Croix de Guerre and was demobilized in 1917. Moving back to Russia, he resumed his revolutionary-anarchist activities. During that same period, 1917-1919, at least fourteen members of his own family, including his own parents, were murdered by anti-Semitic pogromchiks in the Ukraine under the overall leadership of Symon Petliura. By 1920, he was back in Paris and disillusioned with the progress of Russian revolutionary activities and its consistent anti-Semitism.

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Petliura, now in exile himself after his failed attempt at independence, would first flee to Warsaw, Poland, then to Budapest and Vienna, Austro-Hungary, then to Geneva, Switzerland, finally arriving in Paris in 1924.

On May 25, 1926, Schwartzbard shot Petliura seven times at close range, chose not to flee, and when seized by the police reportedly said, “I have killed a great assassin.” Schwartzbard’s trial began on October 18, 1927, having pled “Not Guilty” to all charges; his defense team was led by Henri Torres (1891-1986), the flamboyant trial lawyer and politician and only thirty-six years old at the time of the trial. (Formerly both a Communist and journalist who fought for the French in World War I, Torres fled to South America and the United States after the Nazi invasion in 1940, returning after the Second World War, and was elected to the French Parliament as well as becoming the Vice President of the High Court of Justice.) Eight days after its beginning—October 26, 1927—after jury deliberations lasting a mere thirty-five minutes, Schwartzbard was acquitted with loud congratulations and cries of “Long live France!” erupting in the courtroom. Afterwards, he would attempt to relocate to British-held Palestine but was denied entry, would later die in Cape Town, South Africa, after contracting an illness. In 1967, his remains were reinterred in Israel.

At its successful conclusion, on par with Torres’ strategy, the trial itself was more about the murders of Jews during the pogroms rather than about Petliura’s death. (The trial of Tehlirian, too, could equally thus be assessed as employing the same tactic, i.e., the crime of the Armenian Genocide by the Turks rather than the murder of a single individual. Jews saw it as a vindication of their plight in Eastern Europe; Ukrainians saw it far more as condemnation of themselves. The French press itself, however, was divided in its own assessments, some positively supportive others highly critical and negative.

Two Post-Event Assessments
Attempting a “psychological read” of Schwartzbard, Felix and Miyoko Imonti in their book Violent Justice: How Three Assassins Fought to Free Europe’s Jews, and not unlike Tehlirian who himself was not without psychic difficulties, portray him as an “alienated outsider.”

If he was a hero to these survivors of the madness, he was something less heroic to others. As always, Schwartzbard was an outcast from the mainstream. He was a blend of unresolved contradictions that provided enough friction to alienate the majority…

As a young revolutionary in the Spark movement, he had aroused the hostility of the others who saw his clinging to Judaism as a rejection of Marxism. As an orthodox Jew, he had been denied by Jews, who considered his propensity for violence to be contrary to the principles of the faith.

His triumph in court did not end the alienation. In his memoirs, Schwartzbard denounced his friends for failing his cause.

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20 Whether or not Schwartzbard did so at the behest of his attorney Torres, consistently, he lied about his background, age, place of birth, previous imprisonments, and even his prior military service. His command of the French language, despite his past, was poor, and he asked that questions be repeated several times. He made it a point, however, to wear his Croix de Guerre, emblematic of his service to France in World War I, throughout his trial.
21 Many of Schwartzbard’s papers are today housed in the YIVO Institute for Jewish Research, Center for Jewish History, New York, NY, and consists of correspondence, newspaper clippings, manuscripts, and notes relating to the trial and later. Important as well is the book by David Engel, The Assassination of Symon Petliura and the Trial of Sholem Schwartzbard, 1926-1927: A Selection of Documents (Göttingen: Vandenhoek & Ruprecht, 2016).
22 The Israeli prosecution team likewise would make the Adolf Eichmann trial in Israel in 1961, ultimately more about the Holocaust against the Jewish people than about a singular culprit.
Schwartzbard, with or without the collusion of the Soviets, and with or without the support of the Jews of the Ukraine and elsewhere at the time of his assassination, remains somewhat shrouded in mystery as to his overall psychological and religious, not to mention political, motivations.24

As to Petliura, Saul S. Friedman in his book Pogromchik: The Assassination of Simon Petliura arrives at the following conclusions:

1. Simon Petliura was Chief of State, Ataman-in-Chief, with real power to act when he so desired.
2. Units of the Ukrainian Army directly under his supervision (the Clans of Death) committed numerous atrocities.
3. Insurgents depended upon Petliura for financial support and war material and committed pogroms in his name.
5. Petliura reneged on promises made to Jews as early as November 1917, that effective inquiries would be made into pogroms.
6. There is good reason to believe that Petliura may have ordered pogroms in Proskurov and Zhitomir in the early months of 1919, and that the Holovni Ataman was in the immediate vicinity of these towns when pogroms were raging.
7. Petliura’s famous orders of August 26 and 27, 1919, forbidding pogroms, were issued eight months too late, at a time when the Holovni Ataman had no real power.
8. What funds were authorized for the relief of pogrom victims were a trifle compared with how much was needed and how much had been stolen from the Jews.
9. Petliura’s Jewish Ministry was a mere façade and his last minister, Pinchas Krasny, a sycophant, was totally out of touch with his community, and reviled by Jews.
10. Even from afar, in Paris, Petlliura conducted a program, which infuriated Jews.25

Given the newly discovered information noted regarding Petliura, his attitudes and responses towards the Jews of the Ukraine remains further complicated, and thus makes Schwartzbard’s deed all that much more compounded as well.

Conclusions
As noted previously, for Lemkin, the trials and acquittals of both Tehlirian and Schwartzbard—as well as the publically- and, at times, overly-dramatic journalistic coverage—provided the underpinnings to his evolving concept of the need for an international convention forbidding genocide. Were more knowledge about both men and their associations available to him, it is conceivable that he might not have been able to make the virtual use of them as he records in his autobiography. Further, ever the pragmatist when it came to getting the necessary votes in 1948 for the passage of the Genocide Convention, the two trials and acquittals furthered his initial thinking about how to proceed. Having done so, there was little additional need to make use of these two cases—or any other political assassination as such—and seemingly little additional value after that. Sometimes history itself presents the necessary opportunities, which move processes forward. Other times, motivated and energized individuals are able to seize the moment and make fuller use of events than they themselves were originally intended and understood. The complicated cases of Soghomon Tehlirian and Samuel Schwartzbard are but two and not the only two whereby such factors intersect, and the upshot become a positive result even if built upon shaky and dubious foundations.

Bibliography


In the past fifteen years, Raphaël Lemkin has been reintroduced to us as a “historian of mass violence.” However, while recent works have emphasized the import of Lemkin’s historical writings, few have fully evaluated, or even defined, his historical methodology. Thus, while Raphaël-Lemkin-the-historian has recently come into view, we continue to know little of his position and craft as such.

Taking the entirety of Lemkin’s writings, correspondence, and source material for his work on the history and study of genocide as its archive, this article nuances recent characterizations of Lemkin-the-historian. It does so by drawing out three components of Lemkin’s historical approach. First, it argues that despite Lemkin’s relative amateurism in the historical profession, close readings of his writings suggest that he was highly attentive to the “Historian’s Craft.” Second, it contends that, in addition to being methodologically aware, Lemkin employed a psycho-cultural approach in writing History of Genocide and that this approach was particularly influential in shaping his use of testimony. And third, it considers how both Lemkin’s handling of testimony and calls for “psychological relativism” informed his writings on Western and non-Western instances of mass violence and genocide.

Recent scholarship has castigated Lemkin for his “persisting Eurocentricism.” However, we have yet to understand how exactly Lemkin’s perceived cultural chauvinism manifested itself methodologically. A comparison between his writings on mass violence in Europe and Africa and a close reading of his unpublished notebooks offer a means to do so. There, we come to recognize how Lemkin’s methodology shaped his depictions of African subjecthood and victimhood. And we come to recognize why these depictions, despite detailing the Congolese’s and Herero’s psychological and physical suffering, failed to present them as feeling, thinking, and acting individuals – who like their European counterparts worked to make sense of their persecution in its aftermath.

Nevertheless, if this article points to the limitations of Lemkin’s psycho-cultural approach in relation to his writings on colonial violence in Africa, it also reaffirms the import of his legacy amidst today’s “global turn.” In short, in investigating the causes and consequences of Lemkin’s differential approach to victim testimony, in accordance with the victim’s proximity to the Western world, we are called to consider how this differential treatment might have formed a broader set of methodological practices and historiographical conventions. We are also invited to consider how these conventions might continue to define our efforts to write histories of mass violence and genocide.

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1 I draw this phrase regarding Lemkin “as a historian of mass violence” from Dominick Schaller and Jürgen Zimmerer’s edited volume, The Origins of Genocide: Raphaël Lemkin as a Historian of Mass Violence (London: Routledge, 2009). This volume is the subsequent publication of a special issue of Journal of Genocide Research 7, no. 4 (2005), 443-559.


4 This article looks at Lemkin’s writings on mass violence in Poland, Serbia, Armenia, the Belgian Congo, and German Southwest Africa. To be clear, European observers did not perceive Armenia as part of Europe. Rather, it stood as part of the Near East. Here, for the sake of clarity, I frame my analysis as a comparison between mass violence in Europe and Africa.

5 David Bell, drawing upon Antoinette Burton’s work, defines the “global turn” as encompassing scholarship that “calls attention to the constitutive impact of global histories on local histories and, more specifically, a critical return to the connections between metropole and colony, race and nation.” David A. Bell, “Questioning the Global Turn: the Case for the French Revolution,” French Historical Studies 37, no. 1 (2014), 2. For discussions on the “imperial turn” and “turn talk” respectively, see Antoinette Burton, “Introduction: On the Inadequacy and the Indispensability of the Nation,” in After the Imperial Turn: Thinking with and through the Nation, ed. Antoinette Burton (Durham: Duke University Press, 2003), 1-23; Judith Surkis, “When Was the Linguistic Turn? A Genealogy,” American Historical Review 117, no. 3 (2012), 700-722.

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genocide on an ever more global scale – a project of increasing import given today’s call to “think globally.”

Raphaël Lemkin: Activist, Scholar, Lawyer...Historian?
Lemkin’s own biography explains, in part, why for so long we have had a partial view of his career. Indeed, as recent examinations of Lemkin’s historical oeuvre have noted, Lemkin came to the historical profession rather late in life. He was forty-seven years old when he submitted his first grant applications for History of Genocide. He did so only after fleeing Poland in 1939, coining the term genocide in 1944, and beginning his career as a law professor in the United States shortly thereafter.

In the last fifteen years, a resurgence of interest in Lemkin’s life and thought has compelled scholars to return to Lemkin’s unpublished writings. Many have turned their attention to Lemkin’s two-volume project, Introduction to the Study of Genocide and History of Genocide, which Lemkin intermittently worked on throughout the 1950s. In 2009, Dominick Schaller and Jürgen Zimmerer published the definitive volume on Lemkin as a historian of mass violence. Three years later, Steven L. Jacobs published a portion of Lemkin’s never published or completed two-part study. Along the way, A. Dirk Moses has provided multiple readings of Lemkin’s historical oeuvre.

Much of this recent interest in Lemkin’s two-part study stems from the particular frame that Lemkin used to examine the History of Genocide. Notably, in 1947, Lemkin set out to write the first history of genocide. But he also set out to write the first global history of genocide as well. History of Genocide’s three sections, which extend from “Antiquity,” to the “Middle Ages,” to “Modern Times,” capture Lemkin’s early impulse to “think globally” and over the longue durée. Moreover, within each section, we find that Lemkin was as attentive to instances of genocide perpetrated under colonial rule, as he was to ones perpetrated under totalitarian regimes. Scholars, working in the field of Holocaust and Genocide Studies, have increasingly sought to uncover the parallels

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7 Lemkin’s application to the Rockefeller Foundation in November 1947 for his “book on genocide” marks the earliest evidence I have found of his plans to study genocide from a historical perspective. “Roger F. Evans to Raphaël Lemkin,” November 6, 1947, Raphaël Lemkin Collection, P-154, American Jewish Historical Society (hereafter AJHS), Box 8, Folder 10, Note: AJHS has digitized most of its Lemkin collection. This letter, for example, is available online.

8 Tragic circumstances surround Lemkin’s work on the two volumes. As his letters to publishers make clear, Lemkin was hopeful that he would finish the project before the end of the decade. His declining financial, physical, and emotional health, however, soon made that all but impossible. For one quite harsh reading of Lemkin’s final years, see Michael Ignatieff, “The Unsung Hero Who Coined the Term ‘Genocide,’” The New Republic, September 22, 2013, accessed March 25, 2019, https://newrepublic.com/article/114424/raphael-lemin-unsung-hero-who-coined-genocide. I draw most of the biographical details relating to Lemkin’s life and career from two volumes: John Cooper, Raphaël Lemkin and the Struggle for the Genocide Convention (New York: Palgrave Macmillan, 2008); Douglas Irvin-Erickson, Raphaël Lemkin and the Concept of Genocide (Philadelphia: University of Pennsylvania Press, 2017).

9 The archives and respective collections consulted for this article are: Raphaël Lemkin Collection, P-154, AJHS; Raphaël Lemkin Papers, MS-69, Jacob Rader Marcus Center of the American Jewish Archives (hereafter AJA); Raphaël Lemkin Papers, Manuscripts and Archives Division, New York Public Library (hereafter NYPL). For details of the provenance of each collection, see Tanya Elder, “What You See Before Your Eyes: Documenting Raphaël Lemkin’s Life by Exploring his Archival Papers, 1900-1959,” in The Origins of Genocide, eds. Dominick Schaller and Jürgen Zimmerer (London: Routledge, 2009), 25-56. Note: when quoting from Lemkin’s unpublished writings, I have made minor orthographic changes when needed.

10 Schaller and Zimmerer, The Origins of Genocide.


and linkages between Nazi and colonial violence. And in this respect, Lemkin’s historical oeuvre, which places the Holocaust in a comparative and global framework, serves as a particularly fruitful point of examination.

Nevertheless, if scholars have recently acknowledged the significance of Lemkin’s historical writings for their early comparative impulses, they have yet to detail what type of history Lemkin actually practiced. An under-theorization of Lemkin’s position and craft as a historian characterizes recent investigations. For example, in introducing their volume on Lemkin as a “historian of mass violence,” Schaller and Zimmerer stress how important Lemkin’s historical writings are for our understandings of his work in international law. They do not, however, define Lemkin’s historical approach. Contributors to the volume, Tanya Elder, Moses, and Michael A. McDonnell, move one step past their editors’ introductory remarks. Moses and McDonnell describe Lemkin’s position as a researcher for his writings on colonial atrocities in the Americas, while Elder details the sources that Lemkin drew upon for many portions of his writings. Each article develops certain characteristics of Lemkin’s historical oeuvre. However, neither one investigates what type of historian Lemkin wished to be. Nor does either one interrogate what methodology Lemkin hoped to implement across his historical writings.

This under-theorization of Lemkin’s status and craft as a historian has been consequential for our understandings of Lemkin’s writings on the non-West. More specifically, it has led some readers to explain his one-dimensional portrayal of the victims of colonial violence to be, in part, a result of Lemkin’s methodological amateurism. For example, McDonnell and Moses, in their reading of Lemkin’s writings on Spanish atrocities in the Americas, take issue with his “uncritical use of sources.” They suggest that his use of pro-colonialist sources such as the testimony of sixteenth century Dominican friar Bartholomé Las Casas (1448-1566) was one of the reasons Lemkin came to deny a sense of agency and interiority to the Mayans, Incas, and Aztecs.16 A similar line of critique is present in Schaller’s essay on Lemkin’s writings on colonial violence in Africa, portions of which Lemkin relied upon many British sources. An assumption of Lemkin’s methodological crudeness,

13 For a discussion of how Holocaust historians have recently stressed the connections between Nazi and colonial violence, see Dan Stone, *Histories of the Holocaust* (Oxford: Oxford University Press, 2010), 203-244. The recent publication of parallel portraits of Lemkin and Arendt – who also, albeit in a different manner, drew connections between Nazi and colonial violence – is further evidence of how Lemkin’s oeuvre has served fruitful for this broader effort to place Nazi and colonial violence in parallel view. See Dan Stone, “Defending the Plural: Hannah Arendt and Genocide Studies,” *New Formations* 71, (2011), 46-57; Seyla Benhabib, “International Law and Human Plurality in the Shadow of Totalitarianism: Hannah Arendt and Raphael Lemkin,” *Constellations* 16, no. 2 (2009), 331–350. For a work that provides an even broader examination of how various postwar thinkers came to perceive Nazi and colonial violence as interconnected, see Michael Rothberg, *Multidirectional Memory: Remembering the Holocaust in the Age of Decolonization* (Stanford: Stanford University Press, 2009).


16 McDonnell and Moses, *Lemkin as Historian*, 71-73. To be clear, Las Casas was an early critic of colonial atrocities. His 1542 work, *A Short Account of the Destruction of the Indies*, stands as one of the earliest eyewitness accounts of the atrocities committed under the Spanish conquest of the Americas. However, for Las Casas to critique the violence of colonialism was not to critique its logic overall. Nor was it to attribute an equal degree of humanity to the indigenous populations. I should point out, as Moses and McDonnell rightly do, that Lemkin’s main source was not Las Casas’ writings, but rather subsequent English publications that drew heavily from Las Casas’ work, such as Marcel Brion, *Bartolomé de las Casas: Father of the Indians* (New York: E.P. Dutton, 1929).


18 Schaller has been the most vocal critic of Lemkin’s writings on colonial violence in Africa. He concludes his essay noting, “The way Lemkin has perceived Africans can only be described as racist.” Schaller addresses Lemkin’s use of British sources in relation to his problematic depictions of African subjechthood. He does not detail which sources Lemkin relied upon as extensively as McDonnell and Moses do. See Dominick Schaller, “Raphael Lemkin’s View of European Colonial Rule in Africa: Between Condemnation and Admiration,” in *The Origins of Genocide*, eds. Dominick Schaller and Jürgen Zimmerer (London: Routledge, 2009), 95-102. Also, see Dominick Schaller, “Colonialism and genocide – Raphael Lemkin’s concept of genocide and its application to European rule in Africa,” *Development Dialogue* 50 (2008), 75-94.
as a historian, joins these two articles together. Lemkin emerges as a methodologically unreflective and positivistic historian of mass violence, who was “blind” to the biases of his sources. And the reader is to assume that the most problematic portions of History of Genocide stem, in part, from Lemkin’s methodological amateurism.

**Lemkin’s Historical Methodology: a Psycho-Cultural Approach**

The archive of Lemkin’s global history project reveals the shortcomings of this characterization – that both posits Lemkin’s simplistic positivism and suggests that this positivism defined his writings on the non-West. With respect to the first of these assumptions, in returning to Lemkin’s unpublished writings, we find that Lemkin was highly attentive to the “Historian’s Craft.” His attention to the dynamics of historical thinking and writing is visible in his citation of Ernst Cassirer’s “On the Philosophy of History.” It is also visible in his comments on the superior writing style of some historians over others. Moreover, in returning to Lemkin’s drafts and correspondence, we find that Lemkin, in addition to being methodologically aware, was interested in, and in the process of developing, a very particular methodology to recount the History of Genocide. Namely, he was invested in employing a mode of historical inquiry that took psychology, as a force and consequence of history, seriously.

Evidence of Lemkin’s interest in psychology is visible throughout the archive. In his unpublished notes, we find an outline entitled, “Greater than Marx,” in which Lemkin listed out the names of sixteen writers and scholars, all of whom had offered an alternative reading of history to the historical materialism of Karl Marx (1818-1883). And his correspondence with psychologists further reflects this interest. In 1952, Irving Sarnoff (1912-2013), then a PhD candidate in the Psychology Department at University of Michigan, wrote to Lemkin. He remarked that he had met Lemkin in Chicago at the American Psychological Association conference one year earlier. Recalling how Lemkin then wished to “enlist the aid of social scientists in dealing with the problem of demonstrating the mental effects of genocide,” Sarnoff followed up with a research program on the topic.

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19 This assumption of Lemkin’s crudeness is particularly visible in Moses and McDonnell repeated use of the term “blind” to describe Lemkin’s reliance upon certain sources. See Moses and McDonnell, *Lemkin as Historian*, 59, 61, 73, 77.

20 The citation is from Ernst Cassirer, *An Essay on Man: An Introduction to a Philosophy of Human Culture* (New Haven: Yale University Press, 1944). On a page entitled “Cassirer” in his notebooks, Lemkin appears to have cited numerous essays from Raymond Klibansky and H.J. Paton’s edited volume, *Philosophy and History: Essays presented to Ernst Cassirer* (Oxford: Clarendon Press, 1936). Lemkin’s partial citation suggests that he read at least José Ortega’s *Y Gasset’s essay on Cassirer, “History as a System,” which is included in the volume, if not Cassirer’s original work. For the original note, see Raphaël Lemkin, “Notebooks,” n.d., Raphaël Lemkin Papers, Manuscripts and Archives Division, NYPL, Reel 5, Box 4, Folder 1.

21 See, for example, Lemkin’s comments on other historians’ “narrative style” in his chapter on the Huns. Raphaël Lemkin, “Huns,” n.d., Raphaël Lemkin Papers, Manuscripts and Archives Division, NYPL, Reel 3, Box 2, Folder 7, 16.

22 Scholars have well documented how important culture was in Lemkin’s conception of genocide. It is visible in his thinking on “cultural genocide,” in his readings of Enlightenment thinker Johann Gottfried Herder (1744-1803), and his engagement with the work of anthropologist and fellow Pole, Bronislaw Malinowski (1884-1942). Scholars have paid less attention to the import that psychology had in Lemkin’s historical studies. One exception is Irvin-Erickson, *Lemkin and the Concept of Genocide*, 215-218. For works focusing on Lemkin’s views on cultural destruction or cultural diffusion, see Balakin, *Lemkin, Cultural Destruction, and the Armenian Genocide*, 62-72; Moses, *Lemkin, Culture, and the Concept of Genocide*, 25-30. I should note that scholars have cast Lemkin’s readings of Herder in different lights. Moses and Irvin-Erickson suggest that while Lemkin admired Herder for the attention he devoted to cultural diversity, he remained wary of political dangers implicit in “groupism,” which we should read as a reaction against Herder’s subsequent uses in ethno-nationalist thought. Thomas Butler presents an alternative view. See Moses, Raphaël Lemkin, *Culture and the Concept of Genocide*, 23-24; Irvin-Erickson, *Raphaël Lemkin and the Concept of Genocide*, 67-68; Thomas M. Butler, “A ‘Synchronized Attack’: On Raphaël Lemkin’s Holistic Conception of Genocide,” *Journal of Genocide Research* 15, no. 3 (2013), 253-271.

In the letter, Sarnoff commented that Lemkin’s “immediate practical goal” was “the accumulation of data which might convince the Senate Foreign Relations Committee of the worthiness of the anti-genocide treaty.” This is not surprising. The early 1950s was a time of intensive political lobbying for Lemkin.\textsuperscript{25} However, Lemkin’s more immediate political concerns should not suggest that his interest in psychology was limited to its instrumental value.\textsuperscript{26} As the chapter outlines of History of Genocide make clear, while he was meeting Sarnoff, he was also researching the “mental effects of genocide” over the course of human history. Thus, in the majority of chapters in History of Genocide, he included specific sections discussing the psychological responses of the victims and “genocidists.”\textsuperscript{27} In his manuscript for Introduction to the Study of Genocide, he featured a sub-section on “The Concept of Genocide in Social and Individual Psychology.”\textsuperscript{28} Finally, in his various notes, we find that Lemkin was well acquainted with the scholarship of psychoanalysts Sigmund Freud (1856-1939), Karen Horney (1885-1952), and Erich Fromm (1900-1980).\textsuperscript{29}

Lemkin’s interest in psychology defined the content and scope of History of Genocide. However, it was particularly consequential in defining his use of sources and, more specifically, his use of testimonies or other documents penned by the victims and perpetrators of mass murder. In short, for Lemkin, testimony was the key to investigating perpetrators’ and victims’ psychological responses to mass murder. Without it, he could examine neither the psychological reactions of the victimized group, nor those of their perpetrators.\textsuperscript{30}

Lemkin’s comments on the “personal documents,” penned by the victims and survivors of the Nazi mass murder of European Jewry, capture the critical role he attributed to testimony in this regard. In a subsection on “The Concept of Genocide in Social and Individual Psychology”


\textsuperscript{25} For Lemkin’s work on behalf of the Genocide Convention, see Cooper, Lemkin and the Struggle for the Genocide Convention, 198-206.

\textsuperscript{26} Sarnoff was not the only psychoanalyst with whom Lemkin was in contact. In 1956 another scholar, trained in psychoanalysis, wrote to Lemkin. This time it was the more senior, New York-based, psychologist Augusta Alperta (1898-?). In the note, Alperta lamented the fact that during their last meeting they “didn’t have more time to talk about the parallels in individual psychology and social psychology.” Nonetheless, Alperta assured him that the included references – among them Sigmund Freud (1956-1939), Bruno Bettelheim (1903-1990), and Fritz Redl (1902-1988) – could prove helpful to Lemkin in his investigation. Augusta Alperta to Raphaël Lemkin, “General Correspondence, 1954-1959,” July 12, 1956, Raphaël Lemkin Papers, Manuscripts and Archives Division, NYPL, Reel 1, Box 1, Folder 2.

\textsuperscript{27} Sections which include a commentary on the victims’ “psychological responses” are: “Albigensians,” “Alva (The Netherlands)” “Chios (Turkish Persecution),” “The Germans in Africa,” “Greek (Ottoman Empire),” “Incas,” “Iraq under Hulagu (13th century),” “Mongols,” “Moravia under the Mongols,” “Moors and Moriscos,” “Jews in Poland,” “Parsis,” “Serbs,” “South Africa,” “Stedinger,” “Bohemia,” “Charlemagne,” “Spanish Treatment of South American Indians,” “Teutonic Knights.”

\textsuperscript{28} Raphaël Lemkin, “The Concept of Genocide in Social and Individual Psychology,” n.d., Raphaël Lemkin Papers, Manuscripts and Archives Division, NYPL, Reel 3, Box 2, Folder 2.

\textsuperscript{29} In addition to citing the “death drive” multiple times in his writings, Lemkin – in his notes on “The Concept of Genocide in Social and Individual Psychology” – references both Freud’s “The Ego and the Id” (1923), as well as his Civilization and its Discontents (1930). Within his discussion of the “emotional basis for genocide,” he draws upon Karen Horney’s Neurosis and Human Growth: The Struggle Toward Selfrealization (New York: Norton, 1950), as well as Erich Fromm’s concept of the “authoritarian personality,” as articulated in Fromm’s Escape from Freedom (New York: Farrar & Rinehart, 1941). Lemkin, The Concept of Genocide in Social and Individual Psychology. See especially Lemkin’s included bibliography.

\textsuperscript{30} Lemkin’s remarks regarding the “narrative way” in which “contemporary authors” had described the violence of the Huns encapsulates how Lemkin’s psychological analysis hinged on access to testimony. In his chapter on the Huns, he writes, “The contemporary authors who have described the expeditions of the Huns, have mostly written in a narrative way, excluding the psychological reactions of the victim in the conquered areas.” Later on, Lemkin returned to the topic. “The psychological reactions of the perpetrators and of the outside world are difficult to decide, depending on the narrative descriptions, which show the usual way of writing for the contemporary authors and chroniclers as mentioned above.” Lemkin, Huns.
for *Introduction to the Study of Genocide*, Lemkin expanded upon the analytical import of these “personal documents.” “There is abundant literature on responses of ethnic minorities to their social environment,” he wrote. “However, such analyses have stopped short of genocide, although the personal documents of recent genocide cases should encourage such investigation.” A few pages later Lemkin once again returned to the insights yielded by these documents: they would be key for studying the psychological effects of the concentration camp and, more specifically, its effects on “heroism, fear, psychosis and asocial behavior…” In Lemkin’s view, studying the psychological effects of the Nazi concentration camp was determined by our access to the letters, diaries, and memoirs, which had been written by those who had survived or had perished in them.

Lemkin’s research assistant Biffy held similar views concerning the interdependence of testimony and studying the psychology of genocide. In 1949 while gathering evidence for Lemkin at *Centre de documentation Juive Contemporaine* in Paris, Biffy wrote to Lemkin. In the letter, she remarked upon their joint investment in detailing the “psychology of the genocidists.” Yet, after emphasizing this common interest, Biffy noted the shortcomings of the transcript of the Nuremberg Doctors Trial in this respect. As the trial’s examinations and cross-examinations were largely concerned with “technical matters,” she concluded that “many of the pages of the trial were useless from our point of view.”

Neither Lemkin’s nor Biffy’s privileging of testimony was unique to them. In fact, it reflected the assumptions of other postwar scholars. In the decade following the Second World War, a larger body of literature investigating the psychological constitution of the “Nazi mind” was developing. Psychoanalytical theories regarding displacement, a father-fixation, or neurosis were common features of this canon. And some contributing authors, like Lemkin and Biffy, paid particular attention to how one could read the “personal documents” of Nazi officials to uncover their authors’ psychological motivations.

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33 I have yet to find Biffy’s full legal name. She signs all her correspondence to Lemkin with “Biffy.” The continued erasure of her full identity points to the degree to which we continue to know very little about the earliest female scholars of genocide. Lemkin employed many female researchers and scholars to write the first history of genocide. Their contribution to early studies on the Holocaust, in particular, and genocide, in general, has yet to be recognized. For two other letters from women detailing their work and research for Lemkin’s project, see “Anna May Barbour to Raphaël Lemkin,” August 29, 1949, Raphaël Lemkin Collection, P-154, AJHS, Box 1, Folder 6; “Trudy Sladek to Raphaël Lemkin,” September 18, 1947, Raphaël Lemkin Collection, P-154, AJHS, Box 1, Folder 18. Biffy was not the only one who had contact with the founders and researchers of the *Centre de documentation Juive Contemporaine* (CDJC). From Lemkin’s correspondence, it seems that Lemkin had also visited the Center – or at least met with its members – when he was in Paris in 1948. For his correspondence with leading members of the CDJC, see “Isaac Schneersohn to Lemkin,” May 13, 1949, Raphaël Lemkin Collection, P-154, AJHS, Box 1, Folder 7; “Léon Czertok to Raphaël Lemkin,” December 24, 1948, Raphaël Lemkin Collection, P-154, AJHS, Box 1, Folder 6. For more on the CDJC’s establishment and its significance vis-à-vis early postwar documentary efforts, see Laura Jockusch, *Collect and Record!: Jewish Holocaust Documentation in Postwar Europe* (Oxford: Oxford University Press, 2012), 46-83, 160-185.
34 For more on the Medical Trial at Nuremberg, see Paul Weindling, “From International to Zonal Trials: The Origins of the Nuremberg Medical Trial,” *Holocaust and Genocide Studies* 14, no. 3 (2000), 367-389.
35 The complete quote is: “These following are on other techniques, that is, other experiments, and particularly on Euthanasia and Sterilization, and also psychology of genocidist. Many of the pages of the trial were useless from our point of view, as they were detailed examinations and cross-examinations dealing with technical matters, but I have tried to sum up the main points of the pages that I skimmed through, with comments of my own.” “Biffy to Raphaël Lemkin,” February 5, 1949, Raphaël Lemkin Papers, MS-60, AJA, Box 1, Folder 8. Underlining in the original.
We find one example of this literature in the American Jewish Archives’ Lemkin collection in Cincinnati. There, included among Lemkin’s research materials is a copy of Joseph Tenenbaum’s 1953 *Auschwitz in Retrospect: the Self-Portrait of Rudolf Höss, Commander of Auschwitz.* 38 In it, Tenenbaum (1887-1961) contended that through mining the memoir of Auschwitz commander, Rudolf Höss (1900-1947), one could “penetrate into the psychological web of the executioners, the SS guards.” 39 Like Biffy and Lemkin, Tenenbaum viewed access to testimony to be critical to studying the psychological causes and consequences of genocide.

In *Auschwitz in Retrospect*, Tenenbaum focused exclusively on the psychology of “genocidists” who had perpetrated their crimes within Nazi-occupied Europe. In this respect, his project differed from Lemkin’s. As a historian whose frame was first and foremost global, Lemkin had to concern himself with the psychology of the victims and perpetrators, irrespective of their country of origin. However, as the chapters of *History of Genocide* attest, Lemkin perceived Tenenbaum’s insights vis-à-vis testimony to be applicable to a wide range of case studies. Lemkin’s reading of the poem of “Mohammad ben Mohammad aben Daud, the chief agitator of the Rebellion of Granada,” illustrates this point. In his discussion of the victims’ “psychological responses” in his chapter on the “Moors and Moriscos,” Lemkin cited the poem in full. Before he did so, Lemkin directed the reader to what she could glean from the document.

This is a highly interesting document not so much for its artistic value (which is probably largely lost in the translation anyway) but for the insight it gives the modern onlooker of this genocide spectacle into the human situation of the Morisco genocide. It portrays the methods of genocide and the types of responses of victims; it also conveys something of the physical and mental anguish of these Moslems, or their perhaps typical Moslem response to religious persecution – a strong contempt for the ‘infidel’ who is doing this to them and their sacred beliefs, and an enduring faith in these beliefs, despite their sufferings. 40

Lemkin’s commentary is illuminating on two fronts. First, it reaffirms the central function attributed to testimony in Lemkin’s psycho-cultural approach. And second, it points to his surprisingly capacious definition of what forms of testimony could fulfill such function. Both written and oral forms of testimony, published in an expository or literary capacity, could provide insight into victims’ and perpetrators’ psychological responses to mass murder; they could shed light on the victims’ “physical and mental anguish.” Irvin-Erickson has argued that Lemkin was in the process of developing a “victim centered” *History of Genocide*; his readings of testimony were key to its implementation. 41

The Limits of Lemkin’s Psycho-Cultural Approach: a Call for “Psychological Relativism”

At first glance, Lemkin’s use of testimony and embrace of a psycho-cultural approach bear no evidence of what some scholars have called his “persisting Eurocentricism.” As the above quote demonstrates, Lemkin read the testimonial recollections of Mohammad ben Mohammad aben Daud, a Muslim, as he would those of a Jew – that is, with their psychological dimensions in

38 Joseph Tenenbaum, *Auschwitz in Retrospect: the Self-Portrait of Rudolf Höss, Commander of Auschwitz* (New York: Conference on Jewish Relations, 1953). Tenenbaum’s work was originally published as an article in *Jewish Social Studies* 15, no. 3-4 (1953), 203-236. From the inscription in the book, it seems that Tenenbaum had gifted Lemkin this reprint. Lemkin’s copy includes copious notes. For the original copy among Lemkin’s archival collections, see: “Miscellaneous Publications,” n.d., Raphaël Lemkin Papers, MS-60, AJA, Box 6, Folder 2.


mind. Moreover, throughout *History of Genocide*, we find that when possible Lemkin incorporated examples of testimonies regardless of their authors’ national, racial, ethnic, or religious identities. Frequently he accorded to testimonies the two functions described above; they could describe the physical implementation of the genocide, as well as the victims’ and perpetrators’ psychological responses to it. A relative absence, or presence, of testimonies therefore does not separate his writings on mass violence occurring in Western and non-Western societies.

Nevertheless, while the incorporation of testimony stands as a repeated feature of Lemkin’s historical oeuvre, he did not treat all bodies of testimonies equally. Rather, Lemkin drew certain analytical distinctions in what value he and his readers should accord to some testimonies over others – with the largest distinctions developing along the fault lines of the “West and the Rest.”\(^\text{42}\) To fully understand how and why he did so, we first need to turn to Lemkin’s calls for “psychological relativism,” which he included in his discussion on the “Emotional Basis of Genocide” in *Introduction to the Study of Genocide*. In this section, Lemkin took up the indelible question: “why does a particular individual commit genocide?” In his response, Lemkin first argued that the “emotional basis of genocide” was universal; it was found both in the American South and in Nazi-Occupied Europe. Nevertheless while Lemkin stressed the universality of the “emotional basis of genocide,” he also emphasized the degree to which one’s psychology was culturally determined. In a section entitled “Psychological Relativism,” Lemkin stressed the import of this insight.

At this point it is of utmost importance to call attention again to the fact that genocide behavior must be analyzed in terms of the culture in which it occurs. In Western culture the genocidist may be considered as deviating from the social norm to a greater or lesser degree. Therefore certain psychological mechanisms which lead to anti-social behavior must be studied here. However, genocide may more nearly approach socially accepted behavior in certain other cultures where the individual has not been endowed with the high value that Western culture attributes to him and where a particularly intense ethnocentrism exists...\(^\text{43}\)

Besides his assumption that genocide might “approach socially accepted behavior” in non-Western societies, Lemkin’s recognition that culture defined one’s individual psychology is no great surprise. It reflects his belief that cultural differences – not biological ones – separated societies. And it also highlights the degree to which Lemkin frequently accorded a “high[er] value” to Western culture.\(^\text{44}\) Later on, Lemkin expanded upon what insights led him to such conclusions. “Contemporary psychiatrists and psychologists,” he noted, have increasingly “taken their cue from anthropology and sociology” and thus have challenged the perceived universality of psychology, as proposed by Sigmund Freud.

Notably, a wholly universal vision of human psychology, as defined by Freud, would have enabled Lemkin to study the psychological causes and consequences of genocide, irrespective of the genocidists’ backgrounds. However, as I have suggested, he was hesitant to do so. Thus, in face of this analytical impasse, Lemkin chose an option that we can characterize as a form of analytical conservatism. He concluded his note on “Psychological Relativism” with a disclaimer:

> The following discussion will be limited to those mechanisms which are known to operate in Western society and which have been intensively studied by social scientists and psychiatrists. These mechanisms may serve to explain the psychology of genocide in contemporary Europe and America but their application to genocide in other areas of the world is at best limited.”\(^\text{45}\)

Lemkin viewed this insight, this form of analytical conservatism, to reflect the more culturally sensitive work of anthropologists and sociologists. He saw it as an improvement to psychological

\(^{42}\) Scholars use this phrase of “West and the Rest” earnestly and pejoratively. For one example, see Niall Ferguson, *Civilization: The West and the Rest* (New York: Penguin Press, 2011).

\(^{43}\) Lemkin, *The Concept of Genocide in Social and Individual Psychology*.

\(^{44}\) Moses notes that Lemkin “seems to have equated national culture with high culture” and that he privileged elite culture. Moses, Raphael Lemkin, *Culture and the Concept of Genocide*, 29.

\(^{45}\) Lemkin, *The Concept of Genocide in Social and Individual Psychology*. 

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studies, which disregarded the importance of culture altogether. Nevertheless, despite the value that Lemkin attributed to this insight, its effect was the imposition of certain geographic restrictions on his studies of genocide. The world, in Lemkin’s eyes, was divided by relative degrees of psychological legibility. In investigating the psychology of genocide in “contemporary Europe and America,” the Western scholar could heed the insights of social scientific research. In studying instances of mass violence beyond these areas, he was limited in his capacity to do so.

**The Status of Victim Testimony in a Global History of Genocide**

How did this call for “psychological relativism” impact Lemkin’s efforts to write the history of genocide on a global scale? And how can we perceive its effects in his use and reading of victim testimony in *History of Genocide?* As his bibliographies for the chapters on the persecution of the Jews in Poland and Russia in “Modern Times” reveal, for his research on this topic, Lemkin had access to various sources, penned by members of the victimized group. These included Mendel Beilis’ 1926 memoir, *The Story of My Suffering,* in which Beilis recounted the false accusation against him and his subsequent prosecution for blood libel in 1911, as well as more synthetic histories written by notable Jewish historians, such as Heinrich Graetz (1817-1891) or Simon Dubnow (1860-1941). Both types of sources, albeit in different manners, offered insight into how members of the victimized group, which in this case was European Jewry, understood and responded to their victimization.

In his narration, Lemkin mined these sources for extracts of testimonies, which detailed Jews’ varied psychological and political responses. Thus, in citing the declaration of Rabbi Aaron, the Rosh Yeshivah of the town of Tulchyn, Lemkin demonstrated how a strong sense of religiosity and collective identity had defined the community’s response to its betrayal by its Polish neighbors. Or, by citing the memorandum that five representatives of the “Mosaic persuasion” submitted to the Sejm of the Duchy of Warsaw in March 1809, he emphasized how Polish Jews had advocated for their own political emancipation. 48

The result of these varied uses of testimonies and documents, penned by members of the victimized group, was the attribution of psychological complexity and agency to Polish Jewry. In his readings of these testimonies, Lemkin emphasized the degree to which Polish Jews – in

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47 Beilis was a Russian Jew and the protagonist of a well known blood libel case, the Beilis Affair. Beilis was tried in Kiev for murdering a Russian boy in 1911. He was acquitted in 1913. After that he immigrated to the United States, where he published his memoir. Cooper and Irvin-Erickson both note the import that the Beilis Affair had on Lemkin’s early thinking on prejudice and anti-Semitism. Cooper, Raphaël Lemkin and the Struggle for the Genocide Convention, 10-12; Irvin-Erickson, *Lemkin and the Concept of Genocide,* 23. For more on the Beilis Affair, see Robert Weinberg, *Blood libel in Late Imperial Russia: The Ritual Murder Trial of Mendel Beilis* (Bloomington: Indiana University Press, 2014). In regards to the relationship between Beilis’ memoir and Graetz’s and Dubnow’s historical accounts, I am not suggesting that they provided the same type of insight into the history of Jewish persecution. Rather, I am noting that all three authors had experienced anti-Jewish persecution first hand. Both Graetz and Dubnow were born into Jewish families in a century marked by rising anti-Semitism. Graetz was born in 1817 in Xionz, Prussia, while Dubnow was born in 1860 in the Belorussian sector of the Russian Pale of Settlement.


49 Ibid., page 21-21; conflicts between local Polish and imperial French politics made the process of emancipation for Polish Jewry under the Napoleon-created Duchy of Warsaw even more vexed. The 1807 Napoleonic Constitution of Duchy of Warsaw granted freedom and equality to all residents, irrespective of their religious faith or ethnic identity. Local legislation, however, soon undercut many of these promises. In the subsequent years, Jewish merchants and leaders petitioned the Duchy for their political and civil rights. For more on process, see John Stanley, “The Politics of the Jewish Question in the Duchy of Warsaw, 1807-1913,” *Jewish Social Studies* 44, no. 1 (1982), 47-62.
face of their persecution – had psychologically and politically responded on their own terms; they made political appeals, penned rabbinical liturgies, and wrote historical accounts. Moreover, these documents not only provided the future historian a means to document the victims’ “physical and mental anguish,” but also stood as evidence of the victims’ positions as thinking, feeling, and acting individuals.

We can detect a similar reading and use of testimony at play in Lemkin’s writings on the Armenian genocide, as well as in his chapter on the persecution of the Serbs by the Ottomans.\textsuperscript{50} In both portions of writing, Lemkin had access to source material written by members of the victimized group.\textsuperscript{51} Additionally, in both portions he used examples of relevant testimonies or literary productions as proof of the Armenians’ or Serbians’ cultural, psychological, and political agency. For example, while describing “psychological reactions of the victimized group” in his short manuscript on Armenia, Lemkin presented the Armenians as a psychologically defiant and culturally resolute people. Despite their centuries long suffering, the Armenians, in Lemkin’s eyes, had maintained a strong sense of faith and history. Moreover, in Lemkin’s view, it was precisely their strong sense of identity that had served as a psychological resource and that had allowed them to survive. To make this final point, Lemkin employed the testimonies of survivors. Thus, he concluded his short manuscript on Armenia with the account of “Dr. Artine, the Armenian surgeon of the American hospital at Marash” and that of a young Armenian girl. Lemkin introduced both testimonies as exemplifying the Armenian response to mass murder.\textsuperscript{52} Moreover, both served as evidence of how the Armenians had faced their own “meaning-making struggles” and developed their own meaning-making strategies during and after their victimization.\textsuperscript{53}

In his chapter on Serbia, Lemkin also presented the Serbs as a culturally and psychologically resolute people. However, here instead of turning to examples of survivor testimonies, he looked to various cultural and literary productions. These documents were the means through which he detailed the complexity of Serbians’ psychological and cultural responses. Serbian songs, poems, and sayings provided insight into how the Serbs had collectively come to understand their victimization. “Mournful songs” became evidence of how the Serbs had come to commemorate the battle of Kosovo.\textsuperscript{54} Darkly humorous sayings such as – “For long time God did not make Paradise, but after he saw the sufferings of the Serbs he made it” – illustrated how they had learned to laugh in the face of death.\textsuperscript{55} And finally, the famous Serbian song cycle, “the Lazaritza,” documented how

\textsuperscript{50} Lemkin’s writings on Armenia stood as a separate manuscript from his History of Genocide. For Lemkin’s writings on Armenia, see Raphaël Lemkin, “Turkish Massacre of Armenians - Book-Length Manuscript” and “Turkish Massacre of Armenians - Short Manuscript,” n.d., Raphaël Lemkin Collection, P-154, AJHS, Box 8, Folders 14 and 15, respectively. For his writings on mass violence against the Serbs, see Raphaël Lemkin, “Serbs/Slavs,” n.d., Raphaël Lemkin papers, Manuscripts and Archives Division, NYPL, Reel 3, Box 2, Folder 10.

\textsuperscript{51} In his bibliography on Serbia, we find sources penned by members of the victimized group, which in this case was the Serbs. These include: Nicholas Velimirovic, The Soul of Serbia (London: Faith Press, 1916); Prince Lazarovic-Hreljeljanovic, The Serbian People; its Past Glory and Destiny (New York: Creative Media Partners, 1910); Dušan Lončarević, Jugoslavens Entstehung (Vienna: Amalthea Verlag, 1929). All works placed the persecution of the Serbs in a broader nationalistic reading of their history. In his bibliography for his manuscript on Armenia, Lemkin seems to have had only one source penned by a member of the victimized group. This is Mugurdich Chojhauji Gabrielian, Armenia: a Martyr Nation: a Historical Sketch of the Armenian People from Traditional Times to the Present Tragic Days (New York: Fleming H. Revell Company, 1918). We do, however, find one example of a memoir, written by an Armenian, in his research materials. This source is Madame P. Captanian, Mémoires d’une Déportée arménienne (Paris: M. Flinikowski, 1919). His two main sources for his writings on Armenia are Henry Morgenthau, The Tragedy of Armenia (London: Spottiswoode and Co., 1918) and Viscount James Bryce and Arnold Toynbee, The Treatment of Armenians in the Ottoman Empire, 1915-1916. Documents Presented to Viscount Grey of Falladon, Secretary for Foreign Affairs, with a preface by Viscount Bryce (London: Hodder and Stoughton, 1916). For Lemkin’s copy of Captanian’s memoir, see “Turkey–Armenia Publications, 1915–1919, 1946–1948,” Raphaël Lemkin Collection, P-154, AJHS, Box 12, Folder 3.

\textsuperscript{52} Lemkin, Turkish Massacre of Armenians - Short Manuscript. In his testimony, Dr. Artine encourages the listener to remember the import of Armenian history, while the young girl describes how the memory of her dead mother provided her with the emotional support to resist conversion.

\textsuperscript{53} I draw this term of “meaning-making struggles” from Alexandra Garbarini’s work on Holocaust diaries, see Alexandra Garbarini, Numbered Days: Diaries and the Holocaust (New Haven: Yale University Press, 2006), 3.

\textsuperscript{54} Lemkin, Serbs/Slavs, 24.

\textsuperscript{55} Ibid., 25.
a “painful feeling” had come to inform the Serbian outlook of life.\textsuperscript{56} The cumulative effect of these examples is clear: they documented the manifold ways in which the Serbs had developed their own practices to respond to and make sense of their persecution – culturally, psychologically, and emotionally.

Of course, survivor testimonies or songs do not – on their own – yield any larger insights into victims’ psychological responses to mass murder. These insights depend on the historian reading them in such a light. For his writings on Poland, Armenia, and Serbia, Lemkin followed through with such a reading. However, in examining the status and function of victim testimony across Lemkin’s history, we find that this type of psychologically attentive reading of victim testimony is noticeably absent from his writings on colonial violence in Africa, which included his chapters on the “Germans in Africa,” the “Hereros,” and “the Belgian Congo.”\textsuperscript{57} In these chapters, not only did Lemkin have no sources penned by members of the victimized group, but he also failed to attribute a sense of psychological complexity or emotional interiority to the victims.

Lemkin’s section on “Psychological Reactions,” included in “Germans in Africa,” underscores the simplified manner with which Lemkin described the psychological reactions of the “natives.” “The result of the German rule,” he wrote, “left the natives completely cowed and those who did not rebel or escape to British territory become hopeless and apathetic.”\textsuperscript{58} Unlike Polish Jews who, in his narration had displayed a range of emotions – emotions such as courage, fear, and faith – the Herero operated within a much narrower range of emotions.

Many of the distinctions between Lemkin’s alternative portraits of subjecthood and victimhood – as they pertain to his writings on Armenia or the Belgian Congo, for example, – stem from the different ideological arguments he was marshaling in History of Genocide’s various sections. To be sure, in his writings on the Jews, Armenians, and Serbs, Lemkin was describing the history of genocide and mass violence against a minority group in Eastern Europe or the Near East. But he was also investigating how the experience of persecution related to the formation of a religious and ethnic minority’s national consciousness. His use of nationalist Armenian and Serbian histories, as well his description of the national question in “Jews in Poland,” support this type of reading.\textsuperscript{59} His ideological investments in his writings on Africa were of a different nature. His main goal was not to expose a budding national consciousness among a persecuted people. Rather, it was to critique the seemingly “less civilized” colonial rule of the Germans and Belgians. Indeed, as Moses has noted, “Lemkin, like Las Casas, did not oppose colonization or empire per se.”\textsuperscript{60} Rather, he was against its violent implementation by Imperial Germany or King Leopold II of Belgium. These were two European powers, which in Lemkin’s mind, had failed in their responsibilities as “civilizing powers.” That is, they had failed to “uplift” their subjects’ moral, cultural, and social standings, and thereby had failed in advancing the larger interests of civilization.\textsuperscript{61}

To develop his critique of the perverted form of colonial rule, as practiced by the Germans or Belgians, Lemkin’s task was threefold. First, he had to detail the physical brutality of their rule. Second, he had to detail how the “natives,” under the tutelage of the Germans and Belgians, had

\textsuperscript{56} Ibid., 26.

\textsuperscript{57} See Raphaël Lemkin “Belgian Congo,” n.d., Raphaël Lemkin Papers, Manuscripts and Archives Division, NYPL, Reel 3, Box 2, Folder 7; Raphaël Lemkin, n.d., “Germans in Africa” and “Hereros,” Raphaël Lemkin Papers, MS-60, AJA, Box 6, Folders 9 and 12, respectively.

\textsuperscript{58} Lemkin, \textit{Germans in Africa}, 48.

\textsuperscript{59} Scholars remain divided on the degree to which Zionist politics and thought informed Lemkin’s work on genocide. While Moses and Irvin-Erickson characterizes Lemkin’s political position as being close to a Bundist or a cosmopolitan universalist, James Loeffler has argued otherwise. He has recently emphasized the role that Polish Zionist politics had in Lemkin’s early political and intellectual formation. See James Loeffler, “Becoming Cleopatra: the forgotten Zionism of Raphaël Lemkin.” \textit{Journal of Genocide Research} 19, no. 3, (2017), 340-360.

\textsuperscript{60} Moses, \textit{Empire, Colony, and Genocide}, 11.

\textsuperscript{61} For more on the “civilizing mission,” or the French Empire’s \textit{la mission civilatrice}, see Alice L. Conklin, \textit{A Mission to Civilize: The Republican Idea of Empire in France and West Africa}, 1895-1930 (Stanford: Stanford University Press, 1997), 1-37. To be clear, the British and French held slightly different understandings of what defined the “civilizing mission.” However, two core assumptions of this ideology – one, an assumption of the “backwardness” of indigenous populations, and two an assumption of European power’s responsibilities to “uplift” these populations – were shared by both.
not reached a higher moral or social standing and thereby had not supported “civilization’s” advancement.” And third, he had to document how the Herero or the Congolese—under different circumstances—would have in fact willingly welcomed the benefits of being brought into the folds of civilization.

The inclusion of African testimonies played a key role in developing all three components of his argument. Therefore, across Lemkin’s writings on colonial violence in Africa, we find numerous examples of testimonies that describe the “physical and mental anguish” of the Herero or Congolese. Alongside these accounts, we find ones that emphasize these communities’ social and cultural “degradation” following their persecution. And we also find testimonies, in which their authors recount their sympathy for alternative forms of colonial rule, such as the “indirect rule,” as practiced by the British. In his chapter on the Herero, for instance, Lemkin introduced the petition that a number of Herero Chiefs had submitted to the “British Governor at the Cape” in 1876. Historically, the petition testifies to the presence of early resistance among the Herero against the imposition of German rule. In Lemkin’s narration, it certainly served this function. However, it also illuminated how the Chiefs had welcomed the extension of British rule. “We want to see our children grow up more civilized that we have any chance of being, and so, after many meetings among ourselves, we have agreed most humbly to ask Your Excellency to send something to rule us and be the head of our country,” Lemkin cited the petitioners writing.

While Lemkin was committed to using the voices of the Congolese or Herero as proof of their physical and psychological persecution and as a testament to the Belgians’ and Germans’ moral failings, he was uninterested in using them in the same manner as he had the testimonies of the Armenians, Serbs, or Jews. He did not read Congolese or Herero testimonies as evidence of how Congolese or Herero had, like the Armenians and Jews, faced their own “meaning-making circumstances—would have in fact willingly welcomed the benefits of being brought into the folds of civilization. Lemkin, Herero, 16. See sub-section entitled “Immorality and Degradation.”

In his republication of Lemkin’s manuscript, Jacobs cites the author as “Samuel Kamahero (1854-1923).” I assume that Jacobs was referring to Samuel Maharero (1856-1923), who was one of the leaders of the 1904 rebellion against the Germans. However, I believe that Lemkin here was referring to the petition that Chief Maharero, Samuel’s father, along with fifty-seven other chiefs, submitted to William Coates Palgrave (1833-1897) in 1876. Palgrave was then a special commissioner of the Cape government and Samuel Maharero did not gain chieftainship until 1890. For a partial republication of the petition, see Jeremy Silvester and Jan-Bart Gewalds, eds., Words Cannot Be Found: German Colonial Rule in Namibia: An Annotated Reprint of the 1918 Blue Book (Leiden: Brill, 2003), 25. For more on the succession of Herero chiefs, as well as Samuel Maharero’s political career, see Jan-Bart Gewalds, Herero Heroes: A Socio-political History of the Herero of Namibia, 1890-1923 (Athens: Ohio University Press, 1999).

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Chiefs,” which he included in his chapter on the “Germans in Africa.” Lemkin introduced and cited the document in the following manner:

The ‘Complaints of the Akwa Chiefs’ is too long to quote in full, but it contained statements about innumerable cases of flogging and ill treatment. The imprisonment of sixty chiefs and heads of families, the appropriation of tribal lands, forced labor, disregard of treaties, and the rape of native girls by high officials. The complaint concluded: ‘We beg most humbly for immediate help on the part of the illustrious German Reichstag; for such a continuance of abominable treatment of our King is a great and unendurable disgrace us."

In introducing the poem of Mohammad ben Mohammad aben Daud, Lemkin invited the reader to read the poem in full. Doing so, he argued, enabled the reader to confront the varied nuances that characterized the “typical Moslem response.” Here, a rather different set of goals defined Lemkin’s presentation style. In paraphrasing the Chiefs’ description of the violence, Lemkin further exposed the depravity of the Germans. And in quoting the Chiefs’ request he developed his depiction of Africans as being relatively compliant. Both characterizations supported Lemkin’s argument about the depravity of German rule and its moral failings as a “civilizing power.” However, neither one demonstrated the degree to which the Akwa Chiefs – like their European counterparts – had psychologically responded to their persecution on their own terms.

Scholars remain divided on what we should make of Lemkin’s writings on colonial violence in Africa and, more specifically, whether we should attribute them to Lemkin’s hand. While Schaller has taken the most overtly racist remarks visible in Lemkin’s manuscript – such as his introduction of the Hottentots as “half-breeds” – as evidence of Lemkin’s own prejudices, Irvin-Erickson has argued otherwise. Emphasizing the role that Lemkin’s research assistants played in the construction of History of Genocide, Irvin-Erickson has suggested that a hand – other than Lemkin’s – must have written the problematic sections of Lemkin’s global history. A great deal of ambiguity continues to characterize scholars’ reception of Lemkin’s writings on colonial violence in Africa. And Lemkin’s introduction and use of “The Complaints” demonstrates how this ambiguity stems, in part, from Lemkin’s own idiosyncrasies as a global historian of genocide. In his manuscript, Lemkin cited only the line – beginning with “We beg most humbly for immediate help…” – as coming from his source material, which in this case was a 1920 publication of the British Foreign Office entitled, Treatment of Natives in the German Colonies. However, upon further investigation, we find that his citation poorly reflects how extensive his reliance upon this source really was. Lemkin in fact

67 In his manuscript, Lemkin does not detail the provenance of “The Complaints of the Akwa Chiefs.” But I assume he and his sources were referring to a petition, which King Dika Mpondo Akwa and multiple other chieftains, submitted to the Reichstag in 1905. King Dika Mpondo Akwa presided over a territory in current day Cameroon. In the petition, he and his fellow petitioners demanded the dismissal of Governor Jesko von Puttkamer and his government on account of their brutality. For more on this petition, see John S. Lowry, “African Resistance and Center Party Recalcitrance in the Reichstag Colonial Debates of 1905/06,” Central European History 39, no. 2 (2006), 244-269.


69 Irvin-Erickson, Lemkin and the Concept of Genocide, 208, ft 65. In my own research, I have not come across any correspondence that suggests Lemkin’s research assistants specifically penned these chapters. All the writings I examine in this article I attribute to Lemkin. However, it is quite possible that his research assistants played a role in their construction. Irvin-Erickson has noted that Donna-Lee Frieze is “leading an effort to authenticate” these research essays on colonial violence in Africa. I reached out to Dr. Frieze with a detailed description of why I attribute all the typed and handwritten notes examined in this article to Lemkin.


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lifted the entire passage, including the comment regarding the document being “too long to quote in full,” from the Foreign Office’s publication.

How should we read Lemkin’s citation and use of “The Complaints” in light of the recognition some parts of this passage are not Lemkin’s original prose? And what should we make of its significance alongside Lemkin’s calls for “psychological relativism”? Three possible readings present themselves to the contemporary reader. The first suggests that in his introduction to this document Lemkin blindly followed the practices of his source and thus parroted the presentation style of African testimony as employed by the Foreign Office, as well as other British publications. The second contends that perhaps Lemkin agreed with the Foreign Office’s instrumental, yet dismissive, use of the “The Complaints” and that his calls for “psychological relativism” made him wary of reading any examples of African voices in a psychologically attentive manner. And the third invites us to consider the incompleteness of Lemkin’s manuscript overall. Lemkin’s three chapters on colonial violence in Africa offer us a roadmap of how Lemkin was preliminarily framing his investigations on the topic. They do not, however, represent the final version of what Lemkin wished to publish. In reading his presentation of “The Complaints,” we should consider why Lemkin did not introduce the political appeals of the Akwa Chiefs as he had those of the representatives of the “Mosaic persuasion.” We should also question how his depictions of African subjecthood reflected the ideological investments of his sources. Yet our conclusions regarding how these depictions reflected Lemkin’s final ambitions for History of Genocide will have to remain speculative.

Nevertheless, irrespective of which reading stands as the most compelling one, in examining the status and function of the victim’s voice across Lemkin’s History of Genocide we find that a certain unevenness characterizes Lemkin’s presentation and use of victim testimony. The voices of the Armenians, Jews, and Serbs often served as evidence of their authors’ psychological agency and emotional interiority. Those of the Congolese and Herero did not. Their voices, unlike those of their European counterparts, did not stand as evidence of a larger set of “meaning-making struggles” and strategies. This uneven attribution of emotional interiority – and thus humanity – stands as the central tension in the first History of Genocide.

Testimony and the “Perpetuation of the Psychological Scar”
In his reflections on Writing History, Writing Trauma, Dominick LaCapra has argued that two processes unite the victim and historian in her efforts to reconcile herself with the trauma of the past: the processes of “working through” and “acting out.” For LaCapra, the fundamental distinction between the two is the degree to which the historian and/or victim is able to “gain a critical distance” on her traumatic past; while the former encourages the development of such a distance, the latter prohibits it. These registers of “working through” or “acting out” serve as a useful means of evaluating Lemkin’s uneven approach to victim testimony beyond that of “persisting Eurocentricism.” Lemkin lost over forty family members during the Nazi genocide of European Jewry. As a refugee from and a historian of this persecution, he occupies both positions of the victim and historian that LaCapra describes. In this capacity, we can certainly see Lemkin’s


repeated – and failed – efforts to write this global history as part of his own efforts to gain a “critical
distance” on the phenomenon that caused such a profound personal and collective toll.

Lemkin’s unpublished notes further emphasize the close connection between his global
framing, psycho-cultural approach, and personal biography. For example, in one note entitled,
“This I Believe,” Lemkin recounts the moment in which he pronounced his life’s commitment to
outlawing and studying the crime of genocide.

In the forest, I pronounced to the dead and living that if I will survive, I will devote the rest
of my life exclusively to outlawing genocide. I reviewed my history through memories of my
eyes. I believe that memory stimulates conscience. Looking at the stars, I asked myself. The
same sun burned the bodies of the Moslems, and warms me. Shone over the gallows of the
Huguenots at St. Bartholomew’s night, and Catholics in Japan 17th century and shines over
Warsaw where neighbors from the frontier came to murder my people.74

Written in the late 1950s, the note undoubtedly stands as part of Lemkin’s efforts to document
genocide’s universality and transhistoricity, a task that served his larger lobbying work on behalf
of an anti-genocide law. However, while perhaps evidence of Lemkin’s strategic self-presentations,
the note also calls our attention to how both the topic and form of History of Genocide reflect the
burdens of his traumatic past. The murder of his neighbors in Warsaw and that of the Huguenots
in France are all part of one global history of mass persecution. Furthermore, Lemkin’s memories
are what led him to see these histories as connected histories. An additional note on “Memory”
similarly underscores how Lemkin’s personal memories and experiences relating to the
History of Genocide might have compelled the development of his particular form of historical exposition, a
form that gave voice to the “suffering of the victims” by way of the readings of their testimonies.75

Yet, if “This I Believe” and “Memory” offer insight into why Lemkin – beyond political reasons
– set out to tell the History of Genocide in a global frame and employed a psycho-cultural method
to do so, they do not account for his differential treatment of victim testimony. For this, we need
to turn to his essay on the “Perpetuation of the Psychological Scar,” which Lemkin penned in five
pages of handwritten prose and which is included in his unpublished notes.76 Overall, the essay is a
reflection on trauma, genocide, and more specifically, how the trauma of genocide is transmitted to
future generations of the victimized group. Lemkin’s central thesis is that the trauma of genocide
is hereditary; it is passed on to the future generations of the victimized group so that they come to
know the trauma of the genocide as if it were their very own.77

Many of the insights Lemkin develops in this essay – insights concerning a process that we
would now call the transgenerational transmission of trauma – confirm the practices that he
deployed in his global history. For example, Lemkin argues that the transmission of trauma occurs
in two forms: first, through “word of mouth between parents and children,” that is, through the
sharing of memories, and second, through the “media of song, literature, and music.” And he also
argues that this process – this “perpetuation of the psychological scar” – is a universal phenomenon.

74 Raphaël Lemkin, “Notes (unsorted),” n.d., Raphaël Lemkin papers, Manuscripts and Archives Division, NYPL, Reel 3,
Box 4, Folder 2. See note entitled “This I Believe.”

75 Under the title “Memory,” Lemkin writes: “Genocide is of such a nature that when we read history we must secure
through its pages the sufferings of the victims their implicit and silenced appeals for help and their best will
addressed to all mankind that these things should – never – happen again.” Lemkin, Notes (unsorted). See note entitled
“Memory.”

76 Raphaël Lemkin, “Perpetuation of the Psychological Scar,” n.d., Manuscripts and Archives Division, NYPL, Box 2,
Folder 4, Reel 3.

77 The prose that Lemkin uses to describe the pain entailed in this process suggests that he might have had experienced
it first hand. He writes: “The psychological impact of genocide on the victimized group is enormous. It permeates
every cell in the psychological fiber of the individual. Its psychological affect on the group is even bigger than on
every individual, because every individual being influenced by genocide conveys to members of his group his
feelings. Every collectivization of emotions is more than the mathematical sum of those emotions. It creates a new and
stronger emotional essence. To that must be added the refinement of pain, sorrow, perception of injustice, and above
all, the indescribable frustration of the impossibility of bringing back to life those who died. This collective grief is
hereditary.” Ibid., 1.
It is just as present among the descendants and survivors of the Armenian genocide, for example, as it is among the descendants of the survivors of the Spanish conquest of the New World.78

However, if Lemkin presents the trauma of genocide in universal form, as in *History of Genocide*, he also draws certain distinctions in the degree to which some communities of victims – over others – can respond to their persecution on their own terms. Notably, in “Perpetuation of the Psychological Scar,” Lemkin argues there is only one form of “psychological protection” that is available for the “survivors in generations to come.” It is found in the act of commemoration and history writing. Or, as Lemkin puts it, it is found in the vow: “lest we forget.” After describing this vow as a form of protection, Lemkin moves on to recount how both the Armenians and Jews have taken up the task of documenting and historicizing their persecutions in their aftermaths. “The Armenians have tried to assemble names and historic facts relating to every community where genocide took place,” while “the survivors of the massacres of Jews under the Nazis have been engaged since the end of the war in the same painstaking and pain perpetuating process of collecting data on the dead and obliterated communities.”79 To be clear, for Lemkin, this vow of history writing and remembrance came with its own pain. Refugees of Nazi persecution, living in the United States, he notes, are overwhelmed with the feelings of “shame and grief.” Still, in his account, this vow – “lest we forget” – is the only form of psychological protection available to the victims of genocide, and it is only available to the Armenians and Jews.

Of course, Lemkin’s reflections on the psychological scar do not alone explain why an unevenness came to characterize his use of victim testimony in *History of Genocide*. Nonetheless, they do call attention to how Lemkin’s personal biography might have shaped his readings of the victim’s voice and why he might have attributed a testimonial tradition as having more significance among some communities of survivors than others.

**Lemkin’s Legacy amidst the “Global Turn”**

In 2002, Moses called for an investigation into the “conceptual blockages and definitional dilemmas” within Holocaust and Genocide Studies’ disciplinary development.80 Central to Moses’s argument was his insight that the alternative parameters of studying and defining genocide, used by two groups of scholars, has ensured that the field finds itself in an “unproductive intellectual and moral stalemate,” and that within this stalemate the suffering of some victims of mass violence and genocide is perceived to be more recognized and thereby more valued than the suffering of others.81 Or, as Moses writes, some have argued that “the moral caché of indigenous survivors of colonialism is consequently diminished in comparison of that of Jews.”82

In noting the significance of this discourse over the competition of victimhood, Moses finds himself in good company. Many others have noted how – in both popular and academic circles –

78 To make this second point – regarding the universality of trauma – Lemkin references the work of Mexican composer and conductor Carlos Chávez (1899 –1978). Lemkin includes his description of Chávez’s work within his broader discussion of how the Armenian and Jewish communities have been caught in this process of the “perpetration of the psychological scar.” “Carlos Chávez, the famous Indian composer, would never be able to convey the refined and stirring feelings of grief,” Lemkin writes, “if he himself had not been an Indian, a great grandchild of those who perished from genocide.” For more in Carlos Chávez’s work and how contemporaries cast him as an essentially Mexican composer, see William Robin, “Carlos Chávez, Mexican Modernist,” *The New York Times*, July 30, 2015, accessed October 8, 2018, https://www.nytimes.com/2015/08/02/arts/music/carlos-chavez-mexican-modernist.html; Ibid., 1. Note: while Lemkin introduces Chávez as a descendant of the survivors of genocide, he does not specify which genocide. Lemkin might have assumed Chávez to be descended from the Aztecs.


81 Ibid., 10. Moses defines these two groups as “liberal” and “post-liberal.” In his account, the liberals emphasize the import of intent and the agency of the state in the implementation of genocide, while the “post-liberals” emphasize the significance of structural forces. In his view, the liberals focus on the Holocaust or other forms of totalitarian genocide, with some among them maintaining the Holocaust’s “uniqueness.” The “post-liberals,” in contrast, focus on colonial genocides taken against indigenous populations. For more on these two opposing groups, see A. Dirk Moses, “Toward a ‘Toward a Theory of Critical Genocide Studies,” *Online Encyclopedia of Mass Violence*, April 18, 2008, accessed October 8, 2018, www.sciencespo.fr/mass-violence-war-massacre-resistance/en/document/toward-theory-critical-genocide-studies.

the memory of the Holocaust is treated as a hegemonic force and thus as a force that obscures the recognition of indigenous or postcolonial forms of suffering. However, Moses’s centering of the field’s disciplinary conventions separates his analysis from those of his peers. In short, he made the field’s practices the object of his analysis and in doing so, revealed how intra-academic debates over definition or intent-versus-structure can, in fact, perpetuate a paradigm in which victimhood is characterized as a zero-sum game, as well as a conversation in which charges of Eurocentricism and diminished humanity run rampant.

Moses’s intervention is invaluable for the attention it gives to current disciplinary conventions and for its suggestion that they too have a played a role in constructing certain hierarchies of subjecthood and victimhood. And yet, if Moses’s focus on definitions and contemporary conventions is important, Lemkin’s History of Genocide reminds us they are only one part of the story. To fully investigate how scholarship penned in Holocaust and Genocide Studies might have implicitly valued some instances of suffering more than others, we also need to consider the broader historiographical conventions under which our histories of mass violence and genocide have been written and how they might have implicitly reaffirmed a hierarchical relationship between the “West and the Rest.”

By attending to Lemkin’s psycho-cultural approach and detailing his uneven handling of victim testimony, we recognize one example of such an occurrence. Yet, recent works in Jewish and colonial history caution us from concluding that Lemkin’s differential treatment of the victim’s voice to be an outlier to the norm. They document the manifold ways in which the logics of racial difference and civilizational hierarchies have defined the status and function of victim testimony over the twentieth century. And they also reveal how these logics have not been peripheral to these historiographical practices for documenting instances of mass violence and genocide, but rather central to their formation.


In different manners, J.P. Daughton’s and Alexandra Garbarini’s investigations on the interwar efforts to document atrocities in Europe’s colonies or in Armenia and/or the Ukraine, respectively, reveal how the logics of “civilization” informed victim testimony’s documentary functions and thus defined a broader set of practices for writing about and documenting instances of mass violence. Daughton makes this clear in his examination of the ILO Native Labor Section’s efforts to document the most egregious accusations of forced labor and colonial atrocities during the 1930s. As Daughton describes, while in theory the organization was humanitarian in its concern for instances of suffering abroad, in practice “liberal notions of ‘trusteehip’ and the rhetoric of ‘civilization’” defined the organization’s reports. First-hand accounts of colonial atrocities, offered by those who experienced them, frequently needed to be corroborated with testimonials of European experts. In her work on the interpublication of “Document Volumes,” Garbarini offers a different example of how the logics of race and civilization have defined victim testimony’s shifting documentary and historiographical functions. As Garbarini describes, in preparing their 1917 report on The Treatment of the Armenians in the Ottoman Empire, 1915-1916. Arnold Toynbee and Viscount James Bryce were attentive to victim testimony’s critical function. It “proved essential in order to inform, convince, and awaken sympathy among readers,” Garbarini writes. However, not all examples of testimony were of equal evidentiary value. Bryce voiced concerns over the reliability of “native testimony.” In short, while the testimonies of European eyewitnesses maintained their veneer of objectivity, those of the Armenians did not hold such a value. See J.P. Daughton, “ILO Expertise and Colonial Violence in the Interwar Years,” in Globalizing Social Rights: The International Labour Organization and Beyond, eds. Sandrine Kott and Joëlle Droux (New York: Palgrave Macmillan, 2013), 85-97; Alexandra Garbarini, “Document Volumes and the Status of Victim Testimony in the Era of the First World War and Its Aftermath,” Etudes arméniennes contemporaines 5 (2015), 113-138.
In recent years, the call to “think globally” has resounded throughout the historical profession. The publication of works on mass violence and genocide, which take a non-national frame, demonstrates that this call will be as fruitful for the field of Holocaust and Genocide Studies as it has been for the larger historical discipline. However, before proceeding with this worthy endeavor, we should carefully examine what biases or prejudices are woven into our historiographical practices. With respect to our studies on testimony, we should consider if and then how some groups of testimonies – and thus groups of victims – have been perceived to be more legible than others. Taking up this task is critical to developing a more empathetic and equitable historiographical practice, a prerequisite for writing histories in an ever more global frame. But first, we need to go beyond our reductionist visions of Raphaël Lemkin as a “father figure” of Holocaust and Genocide Studies, or as a “racist” historian of mass violence. And we need to take Raphaël Lemkin, as a historian, seriously.

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Legible Testimonies: Raphael Lemkin, the Victim’s Voice, and the Global History of Genocide


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Raphaël Lemkin in Stockholm – Significance for his Work on “Axis Rule in Occupied Europe”

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From Lwów to Stockholm

In 1944 Raphaël Lemkin coined the term “genocide” when he published his book *Axis Rule in Occupied Europe*. The term was derived from the Greek word *genos* (race, tribe) and the Latin *cide* (killing), thus corresponding in its formation to words such as homicide and infanticide etc. The book had an immediate impact and it was featured in the book review section of the New York Times in January 1945. Lemkin had successfully influenced the American delegation’s view on the concept of criminal organizations and joined the American prosecution team for the war crimes trials in Nuremberg where he became one of the legal advisors to United States Chief Prosecutor Jackson. However, he was not part of the prosecution team in the narrow sense. Initially, during the negotiations of the London Charter of the International Military Tribunal (IMT), Lemkin was stationed at the War Department, in close contact with, but not formally a member of, the Jackson project and staff. After the London agreement Lemkin arrived at and was nominally affiliated with the Jackson staff – Lemkin’s name was added in pencil to the Jackson staff roster, but he did not have an assigned office or a telephone number – he was largely unsupervised. During the winter of 1946, Lemkin was in Washington working on the International Military Tribunal in the Far East (IMTFE). Lemkin definitely was in Nuremberg, perhaps for the first time, during the late spring of 1946. Barrett notes that Lemkin was only marginally involved in the international diplomatic process and subsequently the Nuremberg trial during 1945 and 1946.

Even though the term genocide was not in the Charter of the International Military Tribunal in Nuremberg, the indictment charged the defendants with “deliberate and systematic genocide: viz., the extermination of racial and national groups, against the civilian population of certain occupied territories in order to destroy particular races and classes of people, and national, racial, or religious groups, particularly Jews, Poles, and Gypsies, as read out in Court on November 20, 1945.” The British Deputy prosecutor Maxwell Fyfe quoted Lemkin’s book when cross-examining Constantin von Neurath, Reichsprotektor of occupied Bohemia and Moravia. It was also included in the concluding speeches of the British, French and Soviet prosecutors. Lemkin’s collection, collation and translation of laws in occupied Europe also proved invaluable to the Nuremberg tribunal. Lemkin was also present and actively involved as a consultant to the Secretary-General.

6 Ibid., vol. XVII, 61: “in the Indictment in this Trial we are charging you and your fellow defendants, among many other things, with genocide, which we say is the extermination of racial and national groups, or, as it has been put in the well-known book of Professor Lemkin, ‘a co-ordinated 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’”; Philippe Sands, *East West Street: On the Origins of “Genocide” and “Crimes against Humanity*” (New York: Alfred A. Knopf, 2016), 324-325.
throughout the drafting of the Genocide Convention.7 In the preface to Axis Rule in Occupied Europe Lemkin explains that he began the preparation for and writing the book in 1940 in Sweden.8 This is a story which begins in the city where he studied – Lwów – and continues in Stockholm, where he lectured and collected material for Axis Rule in Occupied Europe.

Lemkin was born on June 24, 1900 in Bezwodne, then part of Imperial Russia and now Belarus. He was one of three children of a Jewish family. He came to Lwów (Russian: Lvov; Ukrainian: Lviv; German: Lemberg) in 1920 and enrolled at the University of Lwów (Jan Kazimierz University) where he studied philology.11 Once in Lwów, Lemkin became interested in the 1921 trial in Berlin against Soghomon Tehlirian, the alleged assassin of Talaat Pasha, the Turkish Minister of the Interior. Pasha is said to have been one of the main perpetrators of the massacre of Armenians. Lemkin asked one of his professors why the Armenians did not have the Turkish Minister Pasha arrested for the massacre. Lemkin expressed the view that it was Pasha - and not the assassin Tehlirian – who should stand before a court for the crime of mass murder. The professor answered that there was no law under which to charge the Turkish Minister. The Professor said: “Let us take the case of a man who owns some chickens… He kills them. Why not? It is not your business. If you interfere, it is trespass.” As described in his autobiography, Lemkin dismissed the analogy in the following way: “Sovereignty cannot be conceived as the right to kill millions of innocent people.”12

In 1926 Lemkin obtained a Doctorate in Law from the University of Lwów. Szawłowski has noted that doctoral degrees in law in Austria-Hungary (hence also at the universities of Cracow and Lwów) could only be obtained by passing some advanced examinations (so-called rigorosa), without presenting a doctoral thesis. Lemkin also studied in Germany, France and Italy, although it is not known for how long.13 By the 1930s Lemkin was known internationally as a scholar in international criminal law, participating in and contributing to conferences across Europe, notably conferences in Paris (1931), Madrid (1933), Budapest, Copenhagen (1935), Hague (1937), Paris (1937), Amsterdam and Cairo.14

For the 1933 Madrid conference, Lemkin prepared a draft report, which suggested outlawing the acts of “barbarism” and “vandalism” by identifying them as international crimes. He later used this as a basis for his proposal to outlaw genocide, made in Axis Rule in Occupied Europe.15 Lemkin had received information that, as a consequence of efforts of the anti-Semitic newspaper Gazeta Warszawska, the Polish Minister of Justice was opposed to him attending the Madrid conference.16

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10 Lemkin, Axis Rule, xiv; Lemkin writes: “Now I can introduce into my book the reference to the most important ratification, since, as you know, it was during me lecturing in the University of Stockholm that I started to write my first book on genocide,” “Letter from Raphaël Lemkin to Ulla Lindström, Swedish Ministry of Foreign Affairs,” March 22,1958, Manuscript Collection No. 60, The Jacob Rader Marcus Center, American Jewish Archives (hereafter AJA). The reference to a forthcoming book was probably to either of the unfinished drafts of Introduction to the Study of Genocide or History of Genocide, mentioned in Douglas Irvin-Erickson, Raphael Lemkin and the Concept of Genocide (Philadelphia: University of Pennsylvania Press, 2016), 216.

11 Samantha Power, A Problem from Hell (New York: Perennial, 2002), 17; Philippe Sands, “Memory of Justice: The Unexpected Place of Lviv in International Law - a Personal History,” Case Western Reserve Journal of International Law 43, no. 3 (2011), 748.

12 Lemkin, Totally Unofficial, 19-20; Power, A Problem from Hell, 17-19; Sands, Memory of Justice, 748; Sands, East West Street, 152.

13 Ryszard Szawłowski, “The Polish Lawyer Who Created the Concept of “Genocide”,” Polish Quarterly of International Affairs 14, no. 2 (2005), 104-105; Sands, Memory of Justice, 749.

14 Lemkin, Totally Unofficial, 68, 106; Power, A Problem from Hell, 19, 21-23; Szawłowski, The Polish Lawyer, 113; Segesser and Gessler, Raphaël Lemkin, 458; Schabas, Genocide in International Law, 29-30; Sands, East West Street, 177.

15 Lemkin, Totally Unofficial, 68 and 232; Segesser and Gessler, Raphaël Lemkin, 457; Vrdoljak, Human Rights and Genocide, 1176-1177, 1183.

From the official documents of the Madrid conference it seems that Lemkin was not personally present at the conference, which may explain why his report was dropped. The crime of barbarity consisted of “destroying a national or religious collectivity” and the crime of vandalism consisted of “destroying works of culture, which represented the specific genius of these national and religious groups”. Lemkin wanted to preserve both the physical existence and the spiritual life of these collectivities. The proposal on outlawing “barbarism” and “vandalism” were of relevance for genocide because of their focus on group protection. The basic idea of the proposal, as Lemkin subsequently formulated, was that “an international treaty should be negotiated declaring that attacks upon national, religious and ethnic groups should be made international crimes, and that perpetrators of such crimes should not only be liable for trial in their own countries but, in the event of escape, could also be tried in the place of refuge, or else extradited to the country where the crime was committed.” This proposal was developed further in Axis Rule in Occupied Europe: genocide should be prohibited in war and peace and universal repression of genocide should be included in an international multilateral treaty as well as in domestic criminal codes. Lemkin was as concerned with the loss of culture as with the loss of life. He argued that mass murder should not be confused with genocide, stating that, “mass-murder or extermination do not convey the elements of selection and do not indicate the losses in terms of culture represented by the nation’s victims.” Lemkin thus fused the concepts of “barbarism” - physical and biological destruction of a group - and “vandalism” - the destruction of cultural works - into genocide. Lemkin tried to get cultural genocide into the Genocide Convention and while it was in the 1947 draft presented by the UN Secretariat, it did not get support by the states and was subsequently excluded from the 1948 Genocide Convention. While the current definition of genocide covers barbarism and as such physical and biological genocide, vandalism and protection of property is instead part of the law of international humanitarian law and a war crime. The 1954 Hague Convention was the first international convention to exclusively address the subject of cultural property. Destruction of cultural property is a war crime under customary international law and the Rome Statute of the International Criminal Court.

In 1934 Lemkin was called to the Bar and started practicing law in Warsaw. The reason for entering into private practice has not been established. Lemkin’s law office was first based on Jerozolimskie Avenue and then in an elegant new building on Kredytowa Street. Lemkin’s private practice is relevant for this study because it was in this capacity that he came in contact with Swedish companies operating in Poland, contacts which he used during his work in Stockholm as explained below.

In a lecture on Lemkin, Philippe Sands makes the personal reflection that Lemkin, together with international law scholars such as Louis Sohn (member of the United States delegation to the San Francisco Conference 1945, professor Harvard Law School), Hersch Lauterpacht (member

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17 Segesser and Gessler, Raphaël Lemkin, 458.
18 Lemkin, Totally Unofficial, 22; Lemkin, Axis Rule, 91.
20 Lemkin, Axis Rule, xiii.
21 Ibid., 90-94, 139.
22 “Memorandum from Raphaël Lemkin to R. Kempner,” June 5, 1946. R. Kempner Papers, United States Holocaust Memorial Museum, RS 71.001, quoted in and discussed by Moses, Raphaël Lemkin, 28 and 34.
24 Schabas, Genocide in International Law, 61, 207-221 and 646; Moses, Raphaël Lemkin, 33, 37-38.
27 Szawłowski, The Polish Lawyer, 117.
of the ILC and ICJ judge) and Raphaël Lemkin, were either born in, had lived in or had parents from Lviv.28 Lviv’s role in international law might only be a coincidence. On the other hand the people of Lviv – of which many were Jews – had witnessed several catastrophic conflicts and were aware of the cultural differences in and around the Lemberg community as well as the threats to minorities.29 Against this background Lviv’s place in international law – human rights law and international criminal law in particular - becomes easier to rationalize. This study describes the period when Lemkin lived and worked in Stockholm focusing on four aspects; 1) Why Karl Schlyter - a prominent lawyer and politician – helped Lemkin to get a visa to Sweden. For that reason this study will discuss Schlyter’s political views; 2) Lemkin as a lecturer at the department of Law, Stockholm University College (since 1960 called Stockholm University);30 3) Lemkin’s interaction with the Jewish community in Stockholm and Sweden; and 4) what role and impact Lemkin’s stay from 1940 to 1941 in Stockholm had on his book *Axis Rule in Occupied Europe*, published 1944.31

Lemkin’s flight from Poland started six days after the Wehrmacht’s invasion of Poland. He took a train to eastern Poland (Wołkowysk, now in Belarus), where his brother and parents lived. Thereafter, in October 1939, he headed to Kaunas and later Vilnius, Lithuania. In Lithuania, Lemkin stayed loyal to the idea that there had to be some kind of redress after the war. In a conversation with the criminologist Wroblewski, Lemkin stated that “[i]n all periods of transition … moral standards break down. This does not mean that we should accept it passively – we must try to set the standards up again.” In another conversation Lemkin stated that “[k]illing an individual is a domestic crime – every nation deals with it through its courts and on its own initiative... But murder of a whole people must be recognized as an international crime, which should concern not just one nation but the entire world.” According to his autobiography Lemkin refers to the fact that he sent three telegrams, two telegrams – pleas of refuge – to his friend and former Minister of Justice Karl Schlyter and to Count Carton de Wiart, president of the International Association of Criminal Law and former president of the League of Nations. He asked whether they could arrange for temporary entry into Sweden and Belgium. Lemkin had worked with them for many years at international conferences. He sent a third telegram to Pédones, a mother and daughter who owned a publishing house in Paris, to inquire whether they had received the manuscript of the book *International Payments*, later to be published by the same publishing house: *La réglementation des paiements internationaux* (1939). He also wrote to Professor McDermott and it was clear already at this stage that he wanted to go the United States.32 The manuscript was at the time Lemkin’s only possession and he perceived it as a bridge to the future. It was published with great speed and Lemkin sent it to universities where he intended eventually to establish himself, including to Karl Schlyter in Sweden and Malcolm McDermott at Duke University. A month later Schlyter arranged for Lemkin to come to Sweden.33

Lemkin’s autobiography fails to mention correspondence that appears crucial for his escape from Lithuania to Sweden. In the archives one can read a letter from Lemkin to Hartvig Nissen – the director of the prison *Børsfengslet* (Oslo, Norway) and dated October 25, 1939 – where Lemkin asked for help getting a visa to Norway. Lemkin asked Nissen to query Schlyter for the same help if a visa to Norway was not possible. Lemkin explained that he only needed help with a visa as his tangible assets were adequate.34 Nissen made some enquires and on November 7, 1939 answered Lemkin that it was difficult to get a visa to Norway, it was only possible if one was traveling to

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28 Sands, *Memory of Justice*, 745. It just so happens that that my father’s birthplace of Borislav is in Lviv oblast (region). Thus I found it compelling to examine how Lemkin was – for a brief period – a lecturer at the department of Law in Stockholm – a second piece that we have in common.


30 Lemkin writes “Stockholm University” in his autobiography, see for example Lemkin, *Totally Unofficial*, 75.

31 On biographical studies as legal science, see Jan-Olof Sundell, *Karl Schlyter - En Biografi* (Norstedts Juridik AB, 1998), 12.


33 Ibid., 155.

34 “Letter from Raphäel Lemkin to Hartvig Nissen,” October 25, 1939, Centraldossier (Lemkin), Archives of Statens Utlänningskommission (State Commission on Foreigners), Kanslibyrån, Socialstyrelsen (National Board of Health and Welfare), Riksarkivet (Swedish National Archives), Vol. FIAC 12832, translated by the author of this article.

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another country and had a visa for that country prior to entry to Norway. Nissen explained that he would send a copy to Schlyter and that Norwegians were following the tragic events in Poland and expressed their sympathy to the Polish people.35

On November 8, 1939, Nissen sent a transcript of Lemkin’s letter and added his own letter to Schlyter where Nissen asked if Schlyter remembered Lemkin from the 1935 Copenhagen conference and the Paris conference of 1937. Nissen explained that he had corresponded with Lemkin after these conferences. Nissen described Lemkin as a very respectable person and well known in international criminal law circles. He mentioned Lemkin’s work on the Polish penal law commission and the overview that Lemkin had provided in Recueil, volume III, p. 127. Nissen found Lemkin’s contribution very interesting and mentioned it in his book “Øie for øie, tann for tann?” (1934). Considering that it would have taken time to get a visa for Norway, Nissen turned to Schlyter and asked him for help.36 Worth mention is that Nissen attended a lunch at Schlyter’s home on December 1, 1939,37 a few weeks after their correspondence concerning Lemkin. This suggests that Schlyter and Nissen had continuous contacts during this period. On November 11, 1939, Schlyter sent a letter with the correspondence from Lemkin and Nissen to the Director General of Socialstyrelsen (National board of Health and Welfare), using the letterhead of Scania and Blekinge Court of Appeal. He vouched for Lemkin, requested a visa for him and certified that the law journal Svensk Juristtidning (for which Schlyter was the chief editor) promised to stand as a guarantor (borgen) for Lemkin’s living expenses for a period of six months.38 This was important given that Sweden already in 1927 had started to raise barriers against immigration. Levine notes that throughout the 1930s Sweden was as restrictive, if not more so, than almost every other Western democracy in blocking the entry for Jews. This can be seen in contrast to Great Britain, which in 1939 allowed entry into the country of 40 000-50 000 refugees, Sweden tightening its restrictions even more following Kristallnacht. The only option for Jews subjected to the pressure of leaving Germany (and later Austria and annexed areas) was either to obtain an entry visa prior to departure, or hope to find a country willing at least to let them in awaiting onward transit. Sweden neither gave residency nor even transit to Jews in any significant numbers.39 This is illustrated by the creation from October 5, 1938 of the German “J”-passport for Jews at the request of Sweden and Switzerland whereby Swedish and Swiss customs officials could more easily stop Jews from entering their countries.40 By the end of 1938 Sweden had set a quota of 1,625 Jews to be allowed entry into the country, almost all with the condition that it was in transit.41 Although Lemkin found faults in Sweden’s foreign policy he admitted that he owed his life to Sweden’s neutrality.42

In Lemkin’s visa application dated January 3, 1940 it is stated that he was of Polish nationality

35 “Letter from Hartvig Nissen to Raphaël Lemkin,” November 7, 1939, Centraldossier (Lemkin), Riksarkivet (Swedish National Archives), translated by the author of this article.
36 “Letter from Hartvig Nissen to Karl Schlyter,” November 8, 1939, Centraldossier (Lemkin), Riksarkivet (Swedish National Archives), translated by the author of this article.
37 Seating chart December 1, 1939, personal archives kept by the Schlyter family, available through his granddaughter Lisa Dumoulin, kept on file by this author. Other attendees were Ivar Agge and Folke Wetter, both professors in criminal law which suggests that the dinner was centered around a common interest in this area.
38 “Letter from Karl Schlyter to the Director General of Socialstyrelsen (National board of Health and Welfare),” November 11, 1939, Centraldossier (Lemkin), Riksarkivet (Swedish National Archives), translated by the author of this article. Migration cases were transferred from the Ministry of Foreign affairs to the National board of Health and Welfare as consequence of the change in the migration law that entered into force January 1, 1938, Helmut Müssener, “Den Tysk-Judiska Emigrationen till Sverige efter 1933,” Nordisk judaistik/Scandinavian Jewish Studies 1, no. 1 (1975), 60.
41 Klas Åmark, Att Bo Granne med Onsdan, 2nd ed. (Stockholm: Albert Bonniers Förlag, 2016), 491-492, 502; Lomfors, Förlorad Barnom, 64.
42 Lemkin, Totally Unofficial, 73.
and Jewish religion. The reference person was Schlyter and the visa was to be retrieved at the Swedish consulate in Kaunas. The stated purpose was legal studies. There was an additional reference person - hand typed on the business card of Schlyter - who vouched for Lemkin, that person being Hartvig Nissen. On February 1, 1940, the Swedish Ministry of Foreign Affairs granted Lemkin’s application for a two months stay on the condition that he made a written undertaking that he would emigrate to another country when the circumstance allowed. Lemkin escaped Lithuania just in time, before the Baltic States were annexed by the Soviet Union and refugees were detained in camps. The escape route to Sweden (and the West) via Lithuania was used by thousands of Poles, mainly military men and government officials, sometimes accompanied by their families.

On January 3, 1940, having applied for a visa from Kaunas, Lithuania (approved by the Swedish Ministry of Foreign Affairs on February 1), he arrived in Sweden on February 27, 1940 through Bromma by airplane and settled in Stockholm. His Polish passport was valid until August 16, 1941. On September 27, 1940 Lemkin applied for an alien’s passport from the Swedish authorities. It was very difficult to get housing. Consequently, Lemkin lived at various addresses in central Stockholm. His last documented contact with the Swedish authorities was March 1, 1941, when he applied for a return visa to Sweden, which was necessary in order to get transit visas for his journey to the United States. He left Sweden on March 20, 1941 with a flight to Moscow. He was desperate to leave Sweden and get to the United States, which he had idealized. He described himself as “powerless, caught in this pocket between Russia and Germany.” With the help of a professor at Duke University, Lemkin secured an appointment to the Duke Faculty to teach international law. From Moscow he took the Trans-Siberian railroad to Vladivostok and travelled by small boat to the Japanese port of Tsuruga. He then took a bigger boat from Yokohama to Vancouver and on to Seattle, where he landed on April 18, 1941. He later worked at Yale University.

**Assistance from Karl Schlyter**

It was Karl Schlyter (1879-1959) who made sure that Lemkin was granted a visa to Sweden. This assistance is interesting considering that Sweden, albeit neutral at the time, was somewhat leaning...
towards supporting Germany and that the Swedish upper class was Germanophilic, in some cases even sympathetic to Nazism (as a bulwark against Communism but also because of racism). Sweden responded to the Nazi persecution of Jews in the 1930s as many other democratic nations did - with closed doors. However, there were many voices in Sweden, particularly within Social Democratic circles, that called upon their nation to reject as ungenerous the response to the Nazi policies of expulsion.

Schlyter and Lemkin had collaborated at various international juridical conferences. Both had a broad European network during this period. Karl Schlyter was a lawyer and politician (Social Democrat). He was raised as a child in Lutheran pietism but was influenced by scientists such as Charles Darwin, Ernst Häckel and the philosopher Harald Höföding. He left his childhood faith when attending secondary school and as an adult he can be described as an agnostic. He was a minister without portfolio 1921-1923 and 1925-1926, Member of Parliament 1919-1920 and 1926-1949 and President of the Scania and Blekinge Court of Appeal 1929-1946. Together with Tore Almén, he founded the law journal Svensk Juristtidning and was editor between 1916 and 1951. In Sweden Schlyter was generally regarded as one of the most important Swedish lawyers of his time. As a politician he was involved in two great legal reforms. In 1911 he was appointed secretary in the Commission for the reform of procedural law (Processkommissionen), working on and off for this commission during the next 15 years. The new Procedural Code (Nya rättegångsbalken) was enacted by the Swedish Parliament in 1942 and became effective on January 1, 1948. Between 1938 and 1956 Schlyter was chairman of the Penal Law Commission (Strafflagberedningen - SLB), which submitted its final report in 1956. This Commission report became an important preparatory work for the new Criminal Code (Brottsbalken), that was passed by Parliament in 1962 and which became effective in 1965. In other words, Schlyter was responsible for both the Procedural and Penal codes of Sweden, which are still in force.

During the earlier part of his life Schlyter was something of a Germanophile, with most Swedish lawyers looking to Germany for scholarly and law reform ideas during the latter part of the nineteenth and the early part of the twentieth centuries. Later in life Schlyter changed his opinion to favor partial reforms in procedure and penal legislation following the Anglo-Saxon pattern as opposed to the German model. Other signs that Schlyter was a Germanophile is illustrated by his criticism of the Western powers that wanted to bring the German Kaiser to court for war crimes during the First World War. He stated that in England “they are certainly too intoxicated of the world spectacle that Kaiser Wilhelm is to be judged by a court composed of his enemies.” Schlyter’s view of Germany changed later as a consequence of Hitler and Nazism. He also appeared to be more positive to international tribunals and in 1943 argued that if Hitler was to be put before an international court where Schlyter was one of the judges, he would impose capital punishment (not because of vengeance but rather to protect society). He even became reluctant to use the German language as a consequence of Nazi rule in Germany, later on deliberately using French

57 Lewandowski, Knutpunkt Stockholm, 152.
58 Levine. From Indifference to Activism, 92-94.
59 Ibid., 95.
60 Lemkin, Totally Unofficial, 155. See also “Internationella Straffrätts- och Fängvärdskommissionens Verksamhet,” November 22, 1941, Archives of Svensk Juristtidning, Strafflagberedningen Karl Schlyter Part 2, F 5:7, YK 1822, 6 which states that Karl Schlyter participated in a conference in Berlin.
61 Sundell, Karl Schlyter – en biografi, 27.
63 Sundell, Karl Schlyter – A Swedish Lawyer, 509.
64 “Letter from Karl Schlyter to his cousin Johan Thyrrén,” July 6, 1919, Johan Thyrrén Collection, Lund University Library, volume 6, as cited in Sundell, Karl Schlyter – en biografi, 59, translated by the author of this article.
65 Ibid., 59.
66 “Letter from Karl Schlyter to Olof Kinberg,” March 28, 1943, Karl Schlyter Archives, volume 40, as cited in Sundell, Karl Schlyter – en biografi, 205, translated by the author of this article.
when writing to German colleagues. He also took a very clear stand against sterilization based on social considerations and racial hygiene. In 1921 Sweden had established the world’s first racial biological institute “Statens institut för rasbiologi” with broad political support from left to right. In an article from 1929, Schlyter argued against sterilization regardless of whether it was for social or racial hygienic purposes. However, a law on sterilization was adopted in 1934 when Schlyter was Minister of Justice. In the preparatory works he emphasized that public opinion displayed a consensus that this was an appropriate policy for the mentally retarded (in Swedish at the time called “sinnesslöa”). While sterilization of the intellectually disabled today may be perceived as immoral, at that time and taking into account the historical context, it arguably cannot be seen as evidence that Schlyter was leaning towards fascism or Nazism. Schlyter was in the middle of the Swedish debate on refugees when the migration law was set to be prolonged in 1937.

Returning to Schlyter’s international network, he successively established more and more international contacts with important persons abroad and he utilized these contacts in his work with his SLB committee. As indicated above, Lemkin and Schlyter knew one another at the time Lemkin needed to get a visa to Sweden, a matter which Schlyter assisted with.

Another indicia that Schlyter opposed anti-Semitism was his choice of co-workers. One of Schlyter’s close collaborators was the German born civil servant Dr. Gerhard Simson. As a Jew Simson fled to Sweden in 1939, where he obtained a position at the Ministry of Justice as a civil servant.

Following the proposal by Cuba, Panama and India for a resolution declaring genocide an international crime, in 1946 Lemkin wrote to Schlyter asking for his support for the initiative. In this correspondence Lemkin mentioned the Swedish female leader Hanna Rydh. Schlyter was later instrumental in Sweden’s signing of the Genocide Convention. On December 31, 1949, Lemkin wrote to Schlyter thanking him for his support and encouraging other Scandinavian countries to sign the convention. Lemkin also asked Schlyter to secure the ratification of Sweden and Denmark, and accession by Finland.

Contacts with the Jewish Community
Lemkin had a deep Jewish identity expressed in terms of how he described the world of the shtetl and the religious life of Jews. He knew how to read Hebrew and he received religious education. Cooper argues that Lemkin broadly sympathized with Zionist aspirations. However, contrary evidence suggests that Lemkin was rather a Bundist and influenced by Karl Renner, the non-Jewish Austro-Marxist. Lemkin appears to have believed in multiethnic states with minority protection

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68 Sundell, Karl Schlyter – en biografi, 102.
69 Swedish Ministry of Justice, Proposition Nr 103, 1934.
70 Åmark, Granne med Ondskan, 505 and 517.
71 Sundell, Karl Schlyter – A Swedish Lawyer, 510.
72 Ibid., 511.
73 “Telegram from Raphaël Lemkin to Karl Schlyter,” November 23, 1946, Karl Schlyter’s Archive, Riksarkivet (Swedish National Archives), Box 45; see also “Letter from Raphaël Lemkin to Karl Schlyter,” November 25, 1946, Karl Schlyter’s Archive, Riksarkivet (Swedish National Archives), Box 45.
74 “Letter from Raphaël Lemkin to Karl Schlyter,” December 31, 1949, Karl Schlyter’s Archive, Riksarkivet (Swedish National Archives), Box 56; Lemkin, Totally Unofficial, 243 n1. See also “Letter from Raphaël Lemkin to Alva Myrdal, UN Department of Social Affairs,” April 12, 1950, Manuscript Collection No. 60, The Jacob Rader Marcus Center, AJA, encouraging Sweden to ratify and “Letter from Raphaël Lemkin to Gerhard Simson, Swedish Ministry of Justice,” April 20, 1950, Manuscript Collection No. 60, The Jacob Rader Marcus Center, AJA, where the efforts of Karl Schlyter are mentioned.
75 Lemkin, Totally Unofficial, xxiv 48-51, chapters 1 and 2; Moses, Raphaël Lemkin, 23.
76 Lemkin, Totally Unofficial, 14-16.
rather than monocultural states based on a specific territory. Moreover, there are indications that Lemkin practiced religion as an adult. Regardless, it was his Jewish heritage that explained why he had to flee Poland and temporarily seek refuge in Sweden. Thus, it becomes interesting to determine whether he sought contact with the Jewish community in Sweden and how this relationship was characterized. This was a sensitive issue at the time when Lemkin was in Stockholm.

Several holocaust survivors have accused the Jewish community in Stockholm (Mosaiska församlingen) of not doing enough during and after the Second World War. Claims have been made that it was the fault of the community leaders that more Jews were not given protection in Sweden. Levine also notes that prior to the Second World War, the local Jewish population remained largely silent in the Swedish debate on immigration policy for fear that a substantial increase in Jewish immigration would incite even more anti-Semitism than they already experienced. However, this has been challenged by Hansson and Rudberg. Hansson’s conclusion is that the allegation that the Jewish community of Stockholm had been more restrictive than the Swedish Government is incorrect, although there were community officials like Rabbi Ehrenpreis who were more inclined to take part in sending relief to Jews abroad rather than to help refugees come to Sweden. Rudberg has studied Swedish Jews’ responses to the Nazi’s anti-Jewish measures and found that the aid activities of the Jewish community of Stockholm, which came to represent Swedish Jewry, had a broader and more inclusive base than was previously known. Furthermore, Jewish representatives in Sweden tried to influence the Swedish and United States governments to change their immigration policies and admit more Jewish refugees. Rudberg’s conclusion is that the form and limited extent of aid during different phases of the 1930s and the Second World War are ultimately attributable more to rigid governmental refugee policies, inadequate financial resources and international pressure than to the lack of effort or will on the part of Swedish Jews.

Statistics for the period from October 1940 show that the Jewish Community of Stockholm gave continuous monetary assistance to 185 persons over the age of 20. This covered only a small number of the refugees that at the time were in Sweden. The recipients were mainly from the middle class. A full monthly allowance was 100 kronor for a single household, for married couples 160 kronor and for couples with children there was an additional allowance of 20 kronor per child. The assistance was financed by a tax applied on the members of the Jewish Community of Stockholm (3% on top of general Swedish taxes), state subsidies (30 % of the total funding for 1941-1944), support from the American Jewish Joint Distribution Committee and other foreign organizations. In the autumn of 1940, financial aid was given to 1,500 refugees, while at the time there were 4,000 refugees in the country. The aid was geared towards refugees in transit to other countries, which was the policy of the Jewish Community of Stockholm as well as the state. As indicated above, the archives confirm that Lemkin received 100 kronor per month from the Jewish Community of Stockholm. However, there are no traces in the archives of the Jewish Community of Stockholm...
of any correspondence with Lemkin or that he was a member of the Jewish Community. 87 This is not surprising considering that up until 1952, Swedish law provided that only Jews with Swedish citizenship could be members of a Jewish community in Sweden. 88

Lecturing at Stockholm University College and Friendship with Gösta Eberstein
As indicated above, prejudice against Jews was widespread within Sweden’s intellectual and academic circles. Anti-Semitic feelings at the universities were made evident by widely publicized demonstrations in early 1939 at the three major Swedish universities: Uppsala University, Lund University and Stockholm University. Nazis in Stockholm managed to assemble students in meetings where slogans such as “protest against the Jew import” were displayed. The Student Union in Uppsala held meetings, most notably on February 17, 1939, where by a fraction gained the majority for a resolution denying 10 Jewish medical doctors entry into Sweden with the argument that it would risk the Swedish students’ future possibilities of getting employment (548 voted in favor of the resolution and 349 against). The students in Lund based their arguments on the Uppsala decision and stated that they wanted to work for all Jews to leave Europe. 89

There is nothing in the archives of the State Commission on Foreigners on Lemkin’s employment. He had no work permit as at the time it was difficult for foreigners to gain a work permit, especially in the scholarly field. However, if one had connections with an employer which offered work it was easier to obtain such a permit. 90 It should be noted that at the time there was a shortage of competent persons (i.e. with the research degrees juris licentiat or juris doktor) eligible to become law professors. 91 However, such positions were arguably impossible to obtain for a Jewish scholar with a temporary residence permit. Szawłowski reaches a similar conclusion, namely, that the kind of career that Lemkin later made in the United States in the 1940s would have been impossible in Sweden. 92

Lemkin studied the Swedish language, Swedish law and worked on publishing an edition of his books in Swedish. He was able to lecture in Swedish after just five months, something that he described as making him “rise spiritually from the ‘refugee’ fall of modern man.” 93

Lemkin’s book on international payments La réglementation des paiements internationaux (1939) was reported and reviewed by Professor Håkan Nial (civil law and conflicts of law at Stockholm University College) in the Swedish law journal Svensk Juristtidning. Nial placed the book in the context of stricter exchange controls with the outbreak of the Second World War. Nial praised the book, mentioned Lemkin’s Polish origin, ends the review by describing the “tragic fall of [Lemkin’s] motherland” and expressed hope that the author could contribute to the reconstruction of Europe. 94 The review of Nial appears important for Lemkin’s future stay in Sweden. Cooper notes that “Lemkin’s academic credentials were strengthened by the publication of the important

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87 The author has hecked the correspondence of chief rabbi Ehrenpreis, rabbi Kronheim, Jewish Community of Stockholm and its relief committee, list of members of the Jewish community in Stockholm, all at Riksarkivet (Swedish National Archives).
89 Müsener, Den Tysk-Judiska Emigrationen, 30-31; Koblik, The Stones Cry Out, 54; Levine, From Indifference to Activism, 94; Lomfors, Förlorad Barndom, 66; Åmark, Granne med Ondskan, 507.
90 Hansson, Flykt och Överlevnad, 197; Åmark, Granne med Ondskan, 493.
91 “Karl Levinsson (Minister without Portfolio), Reply to Gunnar Myrdal,” April 2, 1938, Archives of Svensk Juristtidning, Strafflagberedningen Karl Schlyter Part 2, F 5:6, Yk 1822.
92 Szawłowski, The Polish Lawyer, 120, note 87.
94 SvJT 1940 s. 625.
treatise on the law of exchange control in French.”95 It is also notable that Karl Schlyter was founder, chief editor and publisher of Svensk Juristtidning at the time of the review of Lemkin’s book.96 Under Schlyter, the journal had an explicit policy of not being dependent on contributors submitting texts, but rather the editors sought and asked distinct persons to contribute. Reviewing Schlyter’s time as the editor, Sundell concludes that Schlyter often used the journal to disseminate information about areas, which were of importance to him. The selections of contributors and themes were made accordingly in order to influence opinion in the legal community. Sundell has in the archives of Svensk Juristtidning found several examples where Schlyter’s selection of reviewers was made to influence the reception of a certain book.97 Against this background, one may ask whether Schlyter’s decision to publish a review of Lemkin’s book was a political stand at a time when Nazi-Germany was occupying Poland.

Lemkin mentions Nial’s review in his autobiography in the same sentence as he describes how Schlyter suggests that Lemkin should lecture on the topic of his book at Stockholm University College. As a result Lemkin went to see the Prorector (vice president) of the university, Gösta Eberstein (who was a law professor in private law and finance law, his main legacy in intellectual property law). They had a meeting of minds, and an invitation was extended. Eberstein asked “[i]n what language will you lecture?” to which Lemkin responded “[i]n what language would you want me to lecture? I know little Swedish – I study it every day.” Lemkin tried his Swedish on Eberstein but the latter was not satisfied with his pronunciation. Friends telephoned a former actress, who agreed to work with Lemkin on his diction several hours a week.98

The course was on international payments, foreign exchange and banking laws. Lemkin started preparing his lectures drawing extensively on his book La réglementation des paiements internationaux, from which excerpts were translated into Swedish. Thus, the book became a bridge to the future just as he had intended. Whenever a lecture was ready, Lemkin would read it aloud with his teacher. After five months in Sweden he could address an audience in Swedish. His first lecture was attended by three hundred persons, many of them members of faculty as well as Prorector Eberstein.99 The series had the title “International Payments: problems in international finance- and private law” (De internationella betalningarna: problem inom den internationella finans- och privaträtten) and the lectures were held on October 28, 1940 (Valuta- och clearingrättens allmänna drag, dess uppkomst och utveckling), October 31, 1940 (Valutarätt), November 4, 1940 (Clearingbestämmelser och betalningsöverenskommelser), 7 and November 7 and 11, 1940 (Valutarättsliga problem inom den internationella privaträtten) and November 14, 1940 (Clearingens privaträttsliga verkningar). Lemkin had the title Assistant Lecturer (assisterande föreläsare).100 Lemkin sent a letter to Eberstein after the first lecture on October 28, 1940 where he wrote “Yesterday, after the hardest and darkest year of my life, I have experienced a joyful and spirited evening. This could only happen due to your kindness and so deeply distinct typically Swedish human kindness.”101 However, Lemkin’s lectures during the autumn of 1940 were not included in the archives with course lists and registered students.102 Furthermore, there are no documents indicating that the course was subject to written

95 Cooper, Lemkin and the Struggle, 39
96 Sundell, Karl Schlyter – en biografi, 225.
97 Ibid., 226-227.
98 Lemkin, Totally Unofficial, 74-75, 155. Lemkin does not mention the name of the journal in his autobiography, he writes “professional Swedish press”. However, at the time SvJT was the only Swedish law journal that could fit Lemkin’s description. However, Lemkin specifically mentions Nial’s review in Raphaël Lemkin, Valutareglering och Clearing: Bearbetat efter Författarens Föreläsningar vid Stockholms Högskola Hösten 1940 (Stockholm: P. A. Norstedt & Söner, 1941), 168.
99 Lemkin, Totally Unofficial, 75. Lemkin consulted with Eberstein prior to the lectures, among other things the subtitle of lecture series, “Letter from Raphaël Lemkin to Gösta Eberstein,” October 19, 1940, Ebersteinska Släktarkivet (Eberstein Family Archive), Swedish National Archive, 1940 1A:28, translated from German by Filip Recsec.
100 “Letter from President Sven Tunberg,” December 21, 1940, Stockholm University College Archives, Volume B1:13, 416.
101 “Letter from Raphaël Lemkin to Gösta Eberstein,” October 29, 1940, Ebersteinska Släktarkivet (Eberstein Family Archive), Swedish National Archive, 1940 1A:28, translated from German by Filip Recsec.
examination. This suggests that his lectures were extracurricular, optional to attend, which makes sense since the course was only given once and Lemkin's stay was temporary from the outset.

Lemkin actively sought opportunities to hold lectures at other universities. He had a conversation with Professor Bertil Ohlin (at the time Professor at Stockholm School of Economics and Member of Parliament who later became leader of the Liberal Party and recipient of the Nobel Memorial Prize in Economic Sciences in 1977) who suggested that Lemkin should have a presentation at the Gothenburg School of Business. Lemkin asked Ohlin and Eberstein to introduce him to Rector Hadar Berglund at the Gothenburg School of Business. Berglund expressed interest for Lemkin's work. Rector Hadar Berglund explained in a letter that their Professor Ivar Sundbom had an interest in the same field but considering that his lectures would be printed in a book they would not send a representative to attend the lectures in Stockholm. However, they expressed their interest to invite Lemkin to hold one or two lectures.

Lemkin and Eberstein became friends and Lemkin was invited on at least two occasions to the latter's home for dinner, the first recorded in a letter dated April 4, 1940. When he was about to leave Sweden, the table was decorated with small red-and-white Polish flags. In a letter after the dinner Lemkin wrote (in Swedish) that Eberstein's friendship strengthened him morally. A few days after his arrival in the United States Lemkin wrote a dense six-page letter (in Swedish) to Eberstein from Duke University. The trip had been hard with the train taking 9 days through Siberia, but it had been worth it. Although he knew some Russian, he chose to speak in French and German since the Russian officials did not understand these languages. He found Moscow intense, filled with culture and music but also a lot of poverty. He did some sightseeing in Japan, a visit to Kyoto. In addition, he was very well received at Duke University. At the time he did not know if his book was printed yet. He asked Eberstein to contact the publisher Norstedts and to send a copy. He also asked Eberstein to write to and ask Professor Gunnar Myrdal whether the latter could write a review of Lemkin's book in the American journals on economics, At the time Myrdal, who was later to become the recipient of the Nobel Memorial Prize in Economic Sciences in 1974, was in the United States. Eberstein did as Lemkin asked. Myrdal wrote in a letter to Eberstein that he had not yet received Lemkin's book. Myrdal would certainly take a look at it but was not sure whether he would be able to take the time to review it.

Lemkin wrote a second letter (in Swedish) to Gösta Eberstein explaining how valuable their friendship was and which had helped him survive the tough times. He had received a copy of his book Valutareglering och clearing (Exchange Control and Clearing). He had received several letters from persons in Sweden who had appreciated the book. Lemkin wrote how his English was gradually improving and that his lectures were going well. It appears as though Lemkin was considering to translate his book—which was already published in French and Swedish as

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103 “Tentamenslistor Finansrätt, Internationell Privaträtt,” Nationalekonomi, Hösten 1940, Stockholms Högskola, Juridiska Fakulteten, Stockholm University College Archives, Volume F Ka:2-4, there were no lists for public international law (folkrätt) for the relevant period; see also “Dagbok, Hösten 1940.” Stockholms Högskola, Juridiska Fakulteten, Stockholm University College Archives, Volume IV Bb:1, where there are no documents mentioning Lemkin’s course.

104 “Stockholms Högskolas Katalog för Hösterminen 1940,” Stockholm University College Archives Volume, D 1 c:9.

105 “Letter from Raphaël Lemkin to Gösta Eberstein,” November 27, 1940, Ebersteinska Släktarkivet (Eberstein Family Archive), Swedish National Archive, 1A:29, translated from German by Filip Recsec.

106 “Letter from Hadar Berglund, the Rector (University Chancellor) of the Gothenburg School of Business to Gösta Eberstein,” December 3, 1940, Ebersteinska Släktarkivet (Eberstein Family Archive), Swedish National Archive, 1a:29.

107 “Letter from Raphaël Lemkin to Gösta Eberstein,” April 4, 1940, Ebersteinska Släktarkivet (Eberstein Family Archive), Swedish National Archive, 1A:28, translated from German by Filip Recsec.

108 Lemkin, Totally Unofficial, 82.

109 “Letter from Raphaël Lemkin to Gösta Eberstein,” March 15, 1941, Ebersteinska Släktarkivet (Eberstein Family Archive), Swedish National Archive, 1a:29, author’s translation.

110 “Letter from Raphaël Lemkin to Gösta Eberstein,” April 27, 1941, Ebersteinska Släktarkivet (Eberstein Family Archive), Swedish National Archive, 1a:29, author’s translation.

111 “Letter from Gunnar Myrdal to Gösta Eberstein,” August 13, 1941, Ebersteinska Släktarkivet (Eberstein Family Archive), Swedish National Archive, 1a:29.
explained above - to English taking into account legislation in South America. There is no mention or indication in the letter that he was working on what later became *Axis Rule in Occupied Europe*.

From other sources we know that in the summer of 1942, Lemkin was in contact with the Carnegie Foundation regarding the translation of the book from Swedish or French. He approached several expert translators to have the book translated to English from the Swedish version but did not succeed in finding one that would meet the Foundation’s requirements. It thus appears as Lemkin’s initial plan was to become established in the United States in the same manner as before he came to Sweden, i.e. by asking somebody to review his book – available both in French and Swedish – on exchange control and clearing and later translate it to English. Eberstein was in the thoughts of Lemkin for the coming years, with Lemkin, for example, sending him happy birthday greetings in 1942 and 1944. Lemkin wrote in a first letter from 1943 that he was on leave from Duke University and serving as “head consultant with a certain office in Washington.” From other subsequent sources, we know that it was the Board of Economic Warfare, which had the role of coordinating America’s war effort following the attack on Pearl Harbor and America’s entry into war. He also mentioned the difficult situation of his parents, brother, sister and nephew and asked whether the Swedish Foreign Office could do something for them. In a second letter from 1943, Lemkin described how satisfied he was with the success of his book *Valutareglering och clearing* and that he hoped that his forthcoming book that he was working on at the time, would have the same success. In a letter from 1945, Lemkin expressed interest in Eberstein’s pamphlet on “The Right of Artists,” which may be explained by Lemkin’s view that the destruction of culture could amount to genocide. In a letter from 1947 to Eberstein, Lemkin expressed sorrow that their correspondence had not continued as was intended but that their friendship was unaffected. He also mentioned that he had met Gunnar Myrdal in Lake Success and described how Myrdal had had great success in the United States with his book “An American dilemma: the Negro problem and modern Democracy,” a study commissioned by the Carnegie Corporation. Myrdal was commissioned because he was not American, Sweden had no background or tradition of imperialism and it was perceived that Myrdal could give a more unbiased opinion. The book was a study of race relations in the United States and was described as a “modern authority” in the landmark *Brown v. Board of Education* case.

Gösta Eberstein was committed to Nordic cooperation, he was an active member of the Swedish church, he was anti-Nazi and he had helped several Jewish refugees during the war. During the

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112 “Letter from Raphaël Lemkin to Gösta Eberstein,” June 5, 1941, Ebersteinska Släktarkivet (Eberstein Family Archive), Swedish National Archive, Ia:29, author’s translation.


117 “Letter from Raphaël Lemkin to Gösta Eberstein,” December 29, 1945, Ebersteinska Släktarkivet (Eberstein Family Archive), Swedish National Archive, 1A:34.

118 “Letter from Raphaël Lemkin to Gösta Eberstein,” October 5, 1947, Ebersteinska Släktarkivet (Eberstein Family Archive), Swedish National Archive, 1A:35.


121 Interviews with grandchildren jur. kand. Carl-Johan Eberstein, jur. kand. Gösta Eberstein and Christian Åhlund (executive director Legal Association Consortium – ILAC), August 23 and 24, 2016. One of the refugees that can be named is S. Siegel, German Jew and wine trader who lived in the home of Gösta Eberstein during the war. Glemme writes that Gösta’s wife Agnes had extraordinary organizational capacity which she used to help refugees, they used the Chapel in Djursholm for this purpose, Ingemar Glemme, *Stiftelsen och dess Ordförande, Djursholms
war, together with Myrdal, Eberstein had actively supported the Freie Deutsche Kulturbund, the most prominent German association in exile. In a discussion organized by student associations at Stockholm University College, Gösta Eberstein stated – in the context of the Second World War – that if what is just is not only made known but also internalized as a value it could stop violence, i.e. the war. The speech was made in May 1942 and he made several references to the ongoing war between Finland and the Soviet Union. Eberstein’s activism had the consequence that Swedish Nazis put him on the list of “traitors.” Eberstein’s commitment against Nazism is further evidenced by the medal that the Danish King award him in 1946 for his action during the years of the Nazi occupation of Denmark.

Herbert Tingsten, professor in political science at Stockholm University College between 1936 and 1946, initially a socialist but later a liberal who was fervently pro-West and an early opponent of Nazism, in his memoirs described Eberstein as a person who “personifies kindness, right-mindedness and honesty.” Riksmarskalk (marshal of the realm, permanent secretary of the King), during the war president of Svea Appeals Court and professor Birger Ekeberg wrote that during the war, Eberstein was a passionate defender of right-mindedness, which his Danish and Norwegian friends could testify to. Karl Schlyter was on the tabula gratulatoria in the liber amicorum dedicated to Gösta Eberstein which indicates that they were acquainted with each other. There is some correspondence between them, the letters relating to possible contributions for Gösta Eberstein in Svensk Juristtidning while no correspondence is found between Eberstein and Schlyter which relates to Lemkin.

Lemkin published the book Valutareglering och clearing (Exchange Control and Clearing) which is an edited text of his lectures at Stockholm University College during the autumn of 1940.

The book was dedicated to Gösta Eberstein. The archives reveal that Gösta Eberstein was involved

Kapell Restaurering (Djursholm: Stiftelsen Djursholms kapell, 1989), 43; see also letter Letter from Gustaf Borgström, Köpmannförbundet to Gösta Eberstein, April 24, 1944, Ebersteinska släktarkivet (Eberstein Family Archive) at Swedish National Archive, 1944 1A:32, where Borgström asks Eberstein to help with housing for the Danish refugee Stampe-Bendix who has to leave her present accommodation. The letter does not give the first name, but it is probably Karen Stampe Bendix. Her father was the Jewish composer Victor Bendix (and mother baronet and editor Rigmor Stampe Bendix). It was in October 1943, half a year before the letter 7 800 Jews fled from Denmark to Sweden to avoid deportation from Denmark by the Nazis. Karen Stampe Bendix is mentioned as a Danish refugee by the anti-nazi activist Amelie Posse (founder of the anti-nazi discussionclub “Tisdagsklubben” – the Tuesday club). They met May 4, 1945, presumably in Stockholm. to celebrate that the Germans had started to capitulate, Amelie Posse, Atskilligt kan nu Sägas (Stockholm: Natur och kultur, 1949), 410; On Eberstein’s commitment to Nordic cooperation, especially harmonization in the Nordic countries on intellectual property law, see Åke von Zweigberk, “Samverkan Rörande Industriellt Rättsskydd,” in Festskrift Tillägnad Gösta Eberstein, 255-279, ed. Birger Ekeberg (Stockholm: Norstedts, 1950), 279-279 and Jan Rosén, “Ekeberg, Eberstein, Ljungman Och Immateriälrätten,” in Juridiska Fakulteten 1907-2007: En Minneskrift, 412-421, ed. Claes Peterson (Stockholm: Juridiska fakulteten, Stockholms universitet, 2007), 416-417, 421. Eberstein was raised in a Christian tradition based on the philosophy of Emanuel Swedenborg, i.e. that trinity is one person and one God, not three persons. Eberstein was also inspired by Nataela Beskow (preacher and writer) and Nathan Söderblom (archbishop of Uppsala and recipient of the 1930 Nobel Peace Prize: he was one of the principal founders of the ecumenical movement) Glemme, Stiftelsen, 1990, 41-42; See also Åke von Zweigberk, “Gösta Eberstein 80 År,” Nordiskt Immateriellt Rättsskydd, no. 3-4 (1960) and Ulf Bernitz, “Minnesord över Gösta Eberstein,” Nordiskt Immateriellt Rättsskydd, no. 4 (1975).


124 Van är Vem i Folkfronten? Den Anglorska Propagandans Förgrundsgestalter i Sverige, (Stockholm1943), found as reference in Mattsson, Anteckningar, 137.

125 The medal was “Kong Christian den Tiendes Frihedsmedaille,” “Letter from Kgl. Dansk Gesandtskab, Stockholm, to Gösta Eberstein,” May 4, 1946, Ebersteinska släktarkivet (Eberstein family archive), Swedish National Archive, 1A:34, author’s translation.


129 Lemkin, Valutareglering, 1941; Power, A Problem from Hell, 26. It was reported in SvJT 1942 s. 240 by Christian Eberstein (lawyer secretary of the committee on clearing (1937-1945) and son of Gösta Eberstein).

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in printing the book by acting as an intermediary between financiers and Lemkin. The printing of the book was financed by the General Export Association of Sweden (Sveriges Allmänna Exportföreningen), which donated 2,000 kronor for 900 copies and the Swedish Bankers’ Association (Svenska Bankföreningen), which donated 600 kronor for 100 copies, the total circulation being 1,500 copies. The Bankers’ Association was the first to pledge financial support. Häradsräddning (judge) Dahlberg of the Bankers’ Association explained that his son had attended Lemkin’s lectures and found them easy to understand. However, a significant shortfall was the absence of any references to Swedish circumstances. Dahlberg forwarded his son’s suggestion that referencing Swedish circumstances would be beneficial. Eberstein wrote a letter to Lemkin (in Swedish) where he told him about the financial support from the Bankers’ Association and asked him to consider the proposal to include references to Swedish circumstances. Eberstein also wrote a letter to the General Export Association of Sweden where he informed them of the support from the Bankers’ Association, the quality of Lemkin’s lectures (based on the testimony of Dahlberg’s son) and asked them for their support, which proved to be successful. Lemkin completed the corrections on March 16, 1941, and submitted the manuscript to the printer (Norstedts) the following day. The contract on the final circulation was 1,500 copies.

Lemkin wrote that this “linguistic victory means a great deal.” It gave him intellectual self-assurance and it helped him to rise spiritually from the “refugee” fall of modern man. It appears as if Lemkin’s period as a lecturer at Stockholm University College and his book in Swedish left a lasting impression. Lars Hjerner – for a long time the Swedish authority on finance – has in the bibliography of the book Främmande Valutalag och Internationell Privaträtt included both of Lemkin’s books on foreign exchange and banking laws. Lemkin’s name appears already on page three of Hjerner’s book, which could be a sign of influence. Lemkin’s analysis and conclusions on foreign exchange and banking laws are also noted in more recent research by Michael Hellner, professor at Stockholm University.

When Lemkin arrived in Sweden he had approximately 150 kronor and he received 100 kronor per month from the Jewish community of Stockholm. Prior to the war he had deposited money in a bank in England, whereof he had successfully withdrawn 1,800 kronor, which he needed for his approaching journey to the United States. The relief committee of the Jewish Community of Stockholm was a small voluntary organization that was dependent on the state’s policies and decision-making.

Stockholm as an Information Junction for Polish Resistance and Evidence of the Holocaust

As a result of a combination of its geopolitical location and successful realpolitik, Sweden managed to maintain its official policy of neutrality and stay out of Second World War. One of the consequences was that Sweden functioned as a channel for the information between the resistance

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130 “Letter from General Export Association of Sweden (Sveriges Allmänna Exportföreningen) to Gösta Eberstein,” March 4, 1941, Ebersteinska släktarkivet (Eberstein family archive), Swedish National Archive, 1A:29; “Letter from Swedish Bankers’ Association (Svenska Bankföreningen) to Gösta Eberstein,” November 30, 1940, Ebersteinska släktarkivet (Eberstein family archive), Swedish National Archive, 1A:29.

131 “Letter from Gösta Eberstein to Raphaël Lemkin,” December 1, 1940, Ebersteinska Släktarkivet (Eberstein Family Archive), Swedish National Archive, 1a:29.

132 “Letter from Gösta Eberstein to Managing Director Erik Nylander, the General Export Association of Sweden,” December 1, 1940, Ebersteinska Släktarkivet (Eberstein Family Archive), Swedish National Archive, 1a:29.

133 Letter from Raphaël Lemkin to Gösta Eberstein, March 15, 1941.

134 Letter from Raphaël Lemkin to Gösta Eberstein, March 17, 1941.

135 Lemkin, Totally Unofficial, 75.

136 Lars A.E. Hjerner, Främmande Valutalag och Internationell Privaträtt (Uppsala: Appelbergs Boktryckeri, 1956), 3 and 628. Hjerner thanks Håkan Nial – who wrote the reviews on Lemkin’s books - for his interest and valuable support in the preface of the book.


138 Police report, September 9, 1940.

in Poland and the Government of the Republic of Poland in exile in London.\textsuperscript{140} This channel was used while Lemkin was in Stockholm and contained information that was highly relevant to the work he was collecting material on – did Lemkin have access to the information directly or did he rely upon intermediate channels?

The channel through Sweden increased in importance after the Soviet Union occupied the Baltic states in June 1940, closing the Baltic route of information. An alternative route of information through Budapest was closed when Germany, Hungary and Romania attacked the Soviet Union in the summer of 1941. The Swedish businessmen who remained in Warsaw and continued to do business in Poland after the invasion by Nazi Germany were key to the information route through Stockholm. One of them was Sven Norrman, manager in Poland of the subsidiary to the Swedish Industry company ASEA. Others were Carl Herslow (Svenska Tändsticks AB – STAB also referred to as Zündholzmonopol AG), Sigfrid Häggberg (L M Ericsson) and Harald Axell (Polish-American Bank, in Polish: Bank Polsko-Amerykanski S.A. BP-A, owned by the Wallenberg family). During 1940 Swedish businessmen in Warsaw, including Norrman, started to act as couriers via Stockholm between the Polish resistance and the Polish Government in exile in London.\textsuperscript{141} It was described as the most important information channel for the Polish resistance. At the end of 1940 the international communications of the Polish Home Army (Armia Krajowa) was primarily carried out by Swedes.\textsuperscript{142} The Swedish couriers did not only bring documents for the Polish organized resistance and intelligence, they also brought letters and messages for others, including private persons.\textsuperscript{143} Levine argues that although Holocaust historians have noted the role by Sweden as a conduit for information about the Final Solution (i.e. the Nazi plan for the extermination of the Jews during the Second World War), they have, apart from Steven Koblick, seriously underestimated its significance just how much information was made available via Sweden between 1939 and 1942.\textsuperscript{144}

Norrman visited the Warsaw ghetto to witness the situation personally and on May 21, 1942, brought the first large report about the Holocaust, which revealed that Hitler had already murdered 700,000 Jews and had started to use gas to murder Jews. The material reached London at the latest by May 29, 1942, and the story was first broadcasted by the BBC on June 2, 1942. One week later, on June 9, 1942, General Sikorski for the first time mentioned the mass murder of Poland’s Jews. At the same time, the Daily Telegraph published an article with the text “GERMANS MURDER 700,000 JEWS IN POLAND” and the headline “TRAVELLING GAS CHAMBERS.”\textsuperscript{145} The Nazi leaders perceived the media coverage as very dangerous, Himmler writing to von Ribbentrop about the Swedish businessmen in Warsaw:

\begin{quote}
[W]ithin the framework of the entire enemy intelligence operations directed against Germany, the intelligence of the Polish resistance movement assumed major significance… One of the most important lines ran via Stockholm… Subsequent discoveries led to the conclusion that a number of Swedish nationals domiciled in Warsaw, employees of the Warsaw branches of the Swedish companies, ASEA, Ericsson and STAB who frequently visited Sweden for business or personal reasons, should be considered likely intelligence couriers… the most important couriers’ route between the Polish resistance movement in the General-Government and the Polish Government-in-exile in London. Norrman is identified by Himmler as the central figure of the Swedish-Polish intelligence.\textsuperscript{146}
\end{quote}

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\bibitem{koblik} Koblik, \textit{The Stones Cry Out}, 57-58; Lewandowski, \textit{Knutpunkt Stockholm}, 175, 182; Thorsell, \textit{Warszawasvenskarna}, 158.

\bibitem{thorsell} Thorsell, \textit{Warszawasvenskarna}, 59.

\bibitem{levine} Levine, \textit{From Indifference to Activism}, 114; Koblik, \textit{The Stones Cry Out}.

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The Swedish businessmen acted without approval of their companies or the Swedish Government. The state policy at the time was the opposite, for example, on April 23, 1941, the State Council on Media (statliga Pressnämnden) gave new directives to Swedish media to avoid “detailed descriptions of atrocities connected to the war.” It is noted that the Swedish state at a later stage changed its policy and abandoned its neutrality, this, according to Levine, coinciding with the implementation by the Nazis of a racial ideology. The shift from indifference to activism by the Swedish state began in December 1942 as a response to the German transport on November 26, 1942, of 532 Jewish men, women and children on a ship from Norway to Stettin and then on to Auschwitz. Sweden consequently advised Germany that it was “prepared to accept all remaining Jews in Norway should they be subject to removal.”

The Polish exiled Government compiled the reports that came from occupied Poland in a series called the Account for the situation in Poland (hereinafter referred to as the Account) and from the winter of 1941 only 100 copies were disseminated to a selected group of prominent persons in a secret fashion. The exiled Polish Government in London used the material in the Account to inform the world what is happening in Poland and gain support. Mieczysław Thugutt, contact person of the Polish civil resistance in Stockholm, has stated that all documents in the Account from the start of the occupation until the summer of 1942 were smuggled from Poland by Norrman. The reports in the Account were used for several books on the situation in Poland, one of them being The Black Book of Poland which was translated to several languages, including a summary in a Swedish pamphlet. The first Swedish edition was published in 1942 after Lemkin had left Sweden. The first text in the Account contains German occupation laws in Poland, something of great interest to Lemkin. The Holocaust was not given priority and there is not much text on the matter in the first edition of the Account. It was treated at a secondary matter. On the other hand, Lewandowski argues that it is surprising that aggressive anti-Semitism was absent from first edition of the Account, considering the anti-Semitism that was present in various Polish groups at the time. In later editions one may find aggressive anti-Semitism. Even though the documents transited through Stockholm at the time Lemkin was a resident, there is no information that Lemkin had direct access to or knowledge about the Account or the Swedish couriers. However, Lemkin lists The Black Book of Poland as one of the works cited in Axis Rule in Occupied Europe. The bulk of the text in Lemkin’s book is a review of occupation laws and he explains in the section on Poland that the documents used could be found in The Black Book of Poland.

Work on Axis Rule in Occupied Europe

Lemkin wrote that “[a] refugee is, first of all, a state of mind… He becomes like a broken pencil and cannot reunite the lost values of the past with the confused and hostile values of his present state of dispossession. The refugee status is the… fall of the modern man, sometimes the giving up

147 Thorsell, Warszawsvenskarna, 65; Åmark, Granne med Ondskan, 227-2451; see also Thorsell, Warszawsvenskarna, 120-121, 117-119, 124-127 on the meeting August 21, 1942 between the Swedish diplomat Göran von Otter and Kurt Gerstein, where the later reveals what is happening in Treblinka and Belzeč. The Swedish Ministry for Foreign Affairs did not act on the information. The same encounter is described in Levine, From Indifference to Activism, 127-130.
148 Koblik, The Stones Cry Out, 59-61; Levine, From Indifference to Activism, 14-15, 136, 138-140. Rudberg states that “the Swedish policy towards Jewish refugees was restrictive until at least 1941” and notes that Levine’s hypothesis has been partly challenged and Rudberg, The Swedish Jews, 8 and 11. See also Åmark, Granne med Ondskan, 139-140.
150 En Polsk Snart Bok om den Tyckas “Nyordningen” i Polen, (Stockholm: Trots Allt!, 1942), the pamphlet read for this study has the red stamp “Konfiskerad” (Confiscated [by the State]). See Thorsell, Warszawsvenskarna, 67 and Åmark, Granne med Ondskan, 242 on the Government decision to confiscate the pamphlet.
151 Lewandowski, Knutpunkt Stockholm, 140-142, 229-235; Thorsell, Warszawsvenskarna, 64-67; Åmark, Granne med Ondskan, 242-244, 274.
152 Lewandowski, Knutpunkt Stockholm, 143-144, 229-230.
153 Lemkin, Axis Rule, 506 n 1, 641.
of spiritual life and creation.” As noted above, Lemkin stated that the possibility of lecturing in Stockholm made him “rise spiritually from the ‘refugee’ fall of modern man.”

While lecturing at the University College of Stockholm Lemkin collected material for *Axis Rule in Occupied Europe*: legal decrees the Nazis had issued in each of the countries they occupied. The major part of the book consisted of sources similar to those that Lemkin collected in Stockholm and brought with him to the United States. He relied upon the network that he once managed from Warsaw – including a Swedish corporation with offices in Warsaw for which he had sometimes acted as a lawyer and branches in occupied countries, Swedish embassies around Europe and the Red Cross delegations and German occupation radio – to gather official gazettes in the occupied countries. He also found official gazettes of the German Reich in library collections in Stockholm. He hoped to compile these laws to demonstrate the ways in which these laws propagated hate and incited murder. As a lawyer he placed great significance on official documents for understanding Nazi policy. He read the intentions of the Nazi Government from legal enactments such as decrees and ordinances. He perceived these decrees and ordinances as “objective and irrefutable evidence.” Lemkin claims in his memoir that from the documents he could deduce that the Nazi’s aimed for the “complete destruction” of the Jews. Cooper argues that it is far from certain whether Lemkin collected all this information from the decrees before his departure from Sweden. Until the German invasion of the Soviet Union in June 1941, there had been some arbitrary killings of Jews but no major massacre. Cooper cautions against the use of Lemkin’s memoirs as a source, arguing that Lemkin antedates the evolution of his prescient perception of murderous plans either to October 1939, when he was fleeing Poland, or his stay in Sweden, when he started collecting Nazi occupation decrees. Lemkin was probably aware of the ghettos, but it was less likely that he knew of the policy of starvation and the genocidal intent of the Nazis. Another consideration is whether Lemkin had additional sources? It is possible that Cooper does not consider the fact that Stockholm functioned as a channel of information. The city may have been one of the first points outside of Nazi occupied Europe where information about the Holocaust was spread both through documents but also verbally. Koblok writes that reports of Germany’s continued and stepped-up persecution of the Jews reached Stockholm in 1941, since Swedish businessmen, reporters and diplomats were able to move about in occupied Eastern Europe. The postal service continued to function and censored private letters traveled between Sweden and Poland. Although the censorship exercised by Germany eliminated specific details, it did not hide the increasingly harsh fate that awaited Jews. Sands notes that even after his arrival in the United States, Lemkin continued to receive documents from Stockholm.

The available material suggests that at the time when he was in Stockholm, Lemkin had early access to information on the situation in Poland. This was due to Swedish neutrality and Lemkin’s network in Poland. The fact that in his autobiography Lemkin mentioned that Swedish businessmen in Warsaw – who he had worked for as a lawyer before the war – helped him to get documents from Poland and parallel accounts of how Swedish businessmen such as Norrman, Herslow and Häggberg brought key documents from Poland to Stockholm, raises the question of just exactly who it was that helped Lemkin. One may ask why Lemkin did not identify by name the Swedish businessmen who helped him. It is also difficult to access any details on Lemkin’s private practice as a commercial lawyer before the war. Even though Norrman, Herslow and Häggberg today may be perceived as heroes, this was not necessarily the perception in Sweden during as well as after the war. The Swedish businessmen concealed their assistance for the Polish resistance from

158 Ibid., 98.
159 Koblik, *The Stones Cry Out*, 57.
160 Sands, *East West Street*, 179.
their superiors as they were afraid of being perceived as disloyal to their companies and country. To illustrate their silence, one may note that their work for the Polish resistance was unexplored by Swedish historians until 1976 when a Polish historian – Lewandowski – revealed the story.162 The question concerning when Lemkin got information about what was happening in Poland is important since some scholars contend that when Lemkin wrote *Axis rule in Occupied Europe* he “did not yet fully comprehend the total planned annihilation of the Jewish people in Europe.”163

As noted above, the Swedish couriers did not only bring documents for the Polish organized resistance and intelligence, they also brought letters and messages for others, including private persons.164 If Lemkin was in contact with Norrman, Herslow and/or Häggberg he might have had up to date access to reliable information about the Holocaust. Obviously, he did not have information about the Nazi extermination camps at the time he was in Stockholm since the camps had not yet been established. Lemkin appears to date the first reports and official knowledge in West about the mass executions to late 1942.165

Conclusion

To summarize, while in Stockholm Lemkin collected material for *Axis Rule in Occupied Europe* which mainly consisted of legal decrees that the Nazis had issued in each of the countries they occupied. Even though it is unlikely that Lemkin received direct access to confidential documents and written reports that Norman, Herslow and Häggberg smuggled from Poland on behalf of the Polish resistance, it is plausible that he got hold of verbal reports and accounts of the Holocaust that supplemented the decrees. This may in turn have provided him with the context necessary to understand the ongoing events.

As described in this study, Lemkin received valuable help from Karl Schlyter and Gösta Eberstein, who helped him to escape Nazi ruled Europe and re-establish himself as a scholar. It is also notable how other prominent Swedish scholars crossed paths with Lemkin, including Gunnar Myrdal and Bertil Ohlin, both recipients of the Nobel Memorial Prize in Economic Sciences. This study is not only a story about Lemkin, but also about how Swedish academia interacted with a Jewish refugee during the Second World War.

There are some additional, potential leads that may shed light on the connection between Lemkin and the Swedish businessmen, which would require the additional collection of material and research. The author of this study has been given access to the archives of STAB (Swedish Match) and L M Ericsson to check whether their Polish subsidiaries and BP-A (owned by Stockholms Enskilda Bank) had hired Lemkin as a lawyer or had been in contact with him. However, no response has been received in relation to repeated requests to access the archives of ASEA (ABB). In addition, documentation in Poland about Lemkin’s law firm could provide additional potential leads. Furthermore, this study has mainly examined archives in Sweden, which include correspondence sent by Lemkin to friends and colleagues, but not so much correspondence received by Lemkin. Potential depositaries of Lemkin’s correspondence in the United States have been contacted, however this has only resulted in access to fragments of the correspondence Lemkin received.

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During negotiations over the proposed UN Genocide Convention, a delegate from China suggested that the distribution of drugs be included as a method of genocide. He said that under Japanese occupation during World War II, the Japanese had “imposed mass consumption of drugs in order to disintegrate the minds of the Chinese population … and make them forget their national aspirations and their craving for national freedom,” Lemkin writes in his account of the negotiations. A Polish delegate concurred, adding that the Nazis had insisted on paying their non-German workers in alcohol in order to undermine Polish society. Lemkin himself raised the issue of psychological damage done to those in concentration camps by the Nazis and decided to focus on the “area of damage rather than the means of action.” This led to the inclusion in the Genocide Convention of the intent to cause “serious bodily or mental harm” to members of a group. Thus, although the convention does not make explicit reference to intoxicants, they served as inspiration for one of its main clauses. Moreover, in Lemkin’s writings on genocide, intoxicants certainly emerge as a subject of concern, and as a method of genocidal conquest. This may seem puzzling to many modern readers, raised with a conception of genocide as state-organized mass killing. But the man who coined the term “genocide” actually developed a conception of genocide that differs significantly from the UN Convention itself, and from the popular understanding that has been influenced by the convention. Notes related to his thinking on the subject are included in his unfinished work housed at the New York Public Library and the American Jewish Historical Society, where the author conducted research in relevant archives.

In his writings, Lemkin privileged the natural right of groups to exist, believing that certain forms of human collectivities -- national, racial, religious and ethnic – were especially valuable because they made unique contributions to broader human civilization. He paid particular attention to the importance of nations as “families of mind,” or “aspects of consciousness that took on a social reality … between individuals.” Drawing on the work of Frazer and Malinowski regarding cultural functionalism, he saw culture as the undergirding force that enabled nations to survive and provide for the basic needs of the individuals of which they were composed. Actions that undermined the cohesiveness of a group’s culture challenged the existence of the group itself – and by extension, of its members, which relied on the bonds of culture to fulfill both their basic and derived needs. As a result, genocide could take place without recourse to physical violence. Lemkin considered a broad range of acts genocidal, such as destroying cultural symbols, removing children from their group of origin and, as will be examined in this paper, the widespread distribution of intoxicants. For groups such as the Native Americans and Tasmanians, Lemkin believed that the introduction of new substances by colonists served as a disruptive influence on cultural functioning. Unaccustomed to the effects of alcohol, indigenous people would, “under the influence of intoxication … in a fit of unbridled frenzy, murder friend, kin and even wife or offspring without distinction,” Lemkin wrote. Alcohol led to internal social strife, a decrease in births and prohibited women from properly caring for their children, Lemkin believed. Moreover, intoxicants undermined the psychological stability of human groups and, “when the minds are destroyed, the cohesive force of the group, which is essentially of a mental quality, cannot be produced.”

2 Ibid.
6 Lemkin, Writings-Autobiography.
At the same time, even as Lemkin suggested that distribution of intoxicants constituted a form of genocide, his writings encounter several theoretical snags. He wrote that destruction of culture was genocidal only when undertaken with the intent to destroy the nation, or “family of mind.” While the archives show that Lemkin made significant note of the various ways in which intoxicants disrupted Native American communities, there is less material devoted to proving a specific intent to destroy native “families of mind” through these means. In addition, the historical material from which he drew sometimes falls into the trap of “intellectual colonialism,” characterizing Native Americans as inherently weak and undisciplined. Thus, while Lemkin’s work on the subject remains important as it highlights the multiple ways in which colonial oppression can operate, he fell short of making a holistic case for alcohol distribution as a specifically genocidal method of conquest.

Settler Colonialism and Genocide
Lemkin’s belief in the functional importance of culture for human groups informed his concern for conquered and oppressed peoples. While the Holocaust has emerged as the paradigmatic case of genocide in popular consciousness, numerous scholars in critical genocide studies have argued that colonialism was central to Lemkin’s definition of genocide. Starting in the early 2000s, genocide studies has taken “colonial turn,” as scholars found Lemkin’s original formulation of the concept a useful tool for examining the multiple ways in which genocide can operate. In his often-quoted passage from *Axis Rule in Occupied Europe*, Lemkin wrote that genocide has two phases: “one, destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor.” After such destruction, the national pattern could be imposed either on the natives, who were allowed to remain, or on the territory itself once the natives had been removed from the land. Thus, Lemkin’s conception of genocide involved conquest that “aimed to permanently tip the demographic balance in favour of the occupier.” As Moses writes, *Axis Rule* is less a meditation on genocide itself, and more a description of genocide as one of many tools of German occupation. Even if Germany were to be militarily defeated, the Nazis had set out to “destroy or cripple the subjugated peoples” so that post-war society would nevertheless be dominated by German culture, according to Lemkin. In the cases of indigenous peoples, Lemkin’s definition can help demonstrate how indigenous people became ensnared within a web of colonial settler policies, such as forced relocations and the placement of children in state-run boarding schools.

It should be noted, however, that Lemkin did not oppose all forms of imperialism. Like Malinowski, he believed that cultural diffusion in humanely governed empires could improve more “primitive” cultures, as “weaker societies adopt the institutions of more efficient ones or become absorbed by them because they better fulfill basic needs.” In this way, Lemkin was able to justify the disappearance of numerous civilizations over time, without labeling their decline as genocidal. For him, the main question was the extent to which a stronger culture was violently enforced from above; a more indirect diffusion, or “trickle down” effect, was perhaps regrettable in a nostalgic kind of way, but inevitable when weaker civilizations encountered more “advanced” and efficient cultures.

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7 Irvin-Erickson, Raphael Lemkin and the Concept of Genocide, 221.
13 Ibid., 32.
The process of permanently crippling a culture could be achieved through a variety of tactics. Killing members of the group was one potential method, Lemkin wrote, but so were preventing births, forcible relocations and destruction of cultural symbols. In recent years, genocide scholars have explored this idea of “genocide by attrition,” that genocide is a process that can unfold over time, appear more or less destructive at different stages, and encompass a wide range of methods. Silina writes that “there are more protracted, more ambiguously lethal means of extermination than machetes, guns or gas chambers. Many victims of historical genocides die from slower indirect and less immediately deadly methods of annihilation than outright murder.” She believes that this idea of genocide as process, which is rooted in Lemkin’s original concept of genocide, is actually more relevant to today’s human rights abuses than the state-centric, totalitarian model endorsed by many scholars during the Cold War. Recent events in countries such as Darfur and Bosnia reveal more protracted campaigns of elimination that are messy, complex and often do not include a purely passive victim group. Yet just because members of a persecuted group, over a number of years, attempt to organize resistance, does not mean that genocide has not been perpetrated, Silina writes. She believes there is room for this multi-stage, process-oriented understanding of genocide in the emerging framework of international human rights law.

During the European conquest of North America, disease was by far the greatest killer of native peoples. While specific intent to destroy the “family of mind” may have been present in certain acts of biological warfare – such as Lord Jeffrey Amherst’s instructions that smallpox-infected blankets be distributed among the Native Americans in order to “extirpate this Execrable Race” – Jones argues that more general intent could be applied to situations where natives were particularly vulnerable to disease due to overwork, malnutrition and forcible relocations. While, as mentioned before, Cold War understandings of genocide tended to be very state-centric, Tony Barta’s conception of a genocidal society can be useful in analyzing colonial genocide. He writes that in such societies, even while the bureaucratic apparatus might purport to protect innocent people, “a whole race is nevertheless subject to remorseless pressures of destruction inherent in the very nature of the society.” Thus, while authorities may have purported to undertake measures to safeguard Native Americans – and perhaps even harbored good intentions at times – the bottom line was that America’s indigenous people were an obstacle to achieving the colonial European vision for the New World.

European conquest in North America was guided by a belief that the dying out of less civilized peoples was an inevitable byproduct of progress. This led many settlers to view the demise of native peoples with callous indifference. A “discourse of extinction” underpinned the logic of many settlers, Jones writes, and “under the influence of the most modern scientific thinking of the age, world history was viewed as revolving around the inevitable, sometimes lamentable supplanting of primitive peoples by more advanced and civilized ones.” While not all settlers engaged in the outright killing of Native Americans, forcible relocation and increasing social marginalization prompted by settler society no doubt aided in the destruction of indigenous communities.

In Axis Rule, Lemkin outlined eight categories of genocidal strategies used by the Nazis, including “moral techniques.” He argued that actions such as the encouragement of alcoholism and pornography in Poland could “weaken the spiritual resistance of the national group.” Through moral genocidal techniques, “the desire for cheap individual pleasure (would) be substituted for the desire for collective feelings and ideals based upon a higher morality.” His concern with the moral and spiritual resources of social groups is apparent in his writings about conquered peoples.

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18 Ibid.
21 Jones, Genocide, 106.
22 Lemkin, Axis Rule in Occupied Europe, 90.
Cultural Impairment and the Genocidal Potential of Intoxicants: Alcohol Use in Colonial North America

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and intoxicants. Alcohol introduced to the Tasmanians by settlers caused widespread addiction and even prompted men to sell their women for liquor. It undermined “the morals and health of the natives” and the high mortality rate of those banished to Flinder’s Island “was partly due to their physical condition induced by drinking the liquor supplied them illicitly by the soldiers.”

Dutch colonists in South Africa often insisted on paying natives for their labor with alcohol and the introduction of liquor to these populations had a “deleterious effect upon them.” Yet, despite his concerns about moral debasement, Lemkin realized that such strategies would be difficult to enshrine in law. Morality is not universal and, with intoxicants, a certain amount of agency was required of the native populations. Settlers continued to supply indigenous peoples with alcohol – even though they were well aware of the harm it caused society – but native peoples also actively sought out liquor. Here, notions of group protection come into conflict with values of individual freedom and agency. As the case of the Native Americans will show, as long as indigenous peoples wanted alcohol, settlers were willing to provide them with it. Alcohol was a thriving business in early America, and the prospect of economic gain, combined with a general callous indifference toward the fate of Native Americans, led countless settlers to provide their indigenous neighbors with alcohol.

Lemkin and the Alcohol Question

According to Lemkin’s multifaceted conception of genocide, the sale of alcohol to Native Americans was but one of many genocidal techniques. The substance undermined social functioning in a number of ways – through creating internal strife and violence, upsetting previous authority structures, causing premature deaths and eroding pre-existing cultural practices. A culture of drinking had not developed in Native American societies before the arrival of Europeans, and the intoxicants that did exist were used primarily for ritual purposes and strictly regulated by cultural mandates. Widespread consumption of alcohol, then, in Lemkin’s view, would have certainly appeared part of the “imposition of the national pattern of the oppressor.” Yet, while Native Americans may have learned to drink from Europeans, the ways in which their societies absorbed this practice led to particularly detrimental results.

In Lemkin’s notes on alcohol and Native Americans, he emphasized the extent to which the substance undermined cultural functioning. Lemkin also focused on the amount of social strife alcohol caused. He drew much of his thinking from the 1825 work of John Halkett, “Historical Notes Respecting the Indians of North America: with remarks on the attempts to convert and civilize them,” very much a product of its time. Paraphrasing Halkett, he wrote that Native Americans, under the influence of intoxication will, in a fit of unbridled frenzy, murder friend, kin and even wife or offspring without distinction. (165). ‘When the fit of insanity has passed, and the unfortunate wretch has recovered his reason, he laments in vain the misery which his own fury has entailed upon him; but while justly ascribes to the Europeans the blame of having supplied him with what caused such desolation, he will not scruple to seize the first opportunity of again obtaining it, and plunging with headlong fascination into new scenes of riot and bloodshed.’ (165).

Author holds that I. intemperance was the immediate cause of many I. wars. I. retaliated for the havoc caused to their kin by the effects of liquor. In that manner whole tribes destroyed each other

24 Ibid.
25 Moses, Raphaël Lemkin, 37-38.
While some of Lemkin’s language may appear hyperbolic, he was correct in his assertion that alcohol led to significant violence and death in Native American communities. This was one of the main ways in which the substance undermined cultural functioning. As Malinowski writes, culture is supposed to fulfill the needs of the individual members of a group, including the basic need of protection. Binge drinking among Native American populations made individuals vulnerable to a number of different kinds of harm. Unrau lists several ways drinking led to increased mortality rates: exposure to the elements while intoxicated, intra-tribal violence, accidental death, increased vulnerability to disease. Records show that several Native Americans died with symptoms of bleeding from the mouth after consuming alcohol white settlers had laced with strychnine; the chemical “if administered sparingly, could enhance the inebriating force of alcohol dramatically” but when ingested in excess caused fatalities. Although lacing alcohol sold to Native Americans was a relatively common practice, no whites were prosecuted for this offense. At times, inebriated Native Americans also fell prey to sadistic colonists, who “gave Indians liquor & wen we were drunk killed us.” In such cases of blatant homicide, colonial authorities often apologized to native communities and attempted to punish the perpetrators. Still, drinking continued to cause a great deal of violence, especially within Native American societies.

A foreign substance to Native Americans, alcohol by its very existence was a new pattern imposed on the New World by colonial settlers. The same was true of the ways in which alcohol was consumed. Because indigenous people had no significant experience with fermented beverages, and they were also largely unaccustomed to the effects of intoxication, they “learned about alcohol – specifically ‘how to drink’ – from scratch.” Native Americans had no pre-established cultural guidelines for drinking, and the transient foreigners that they generally encountered often exhibited problematic drinking behaviors. Alcohol was ubiquitous in early America and, because of their social marginality, “Indians were exposed to persistent modeling of antisocial behavior associated with frequent high-dose drinking by soldiers, coureurs des bois (fur traders) and subsequently cowboys and miners – notably, all self-selected communities of men, away from their families and from the reach of alcohol policies and other forms of social control.” Regular drinking of hard liquor was prevalent in early America and laborers and soldiers were often given regular rations of alcohol; in 1830, adults over the age of 15 drank over an estimated seven gallons of spirits annually.

While Native Americans may have initially learned patterns of heavy consumption from the whites they encountered, indigenous cultural beliefs about intoxicants may have also exacerbated destructive drinking practices in native communities. Before the introduction of alcohol, many communities of Native Americans had histories of attempting to reach mind-altered states in order to communicate with the spirit world. In pre-contact culture, “mind-altered states of the sort that presaged alcoholic inebriation post-contact were, in cultures such as that of the Plains Indians, associated with a quest for enlightenment, powers of healing, and the facilitation of war-making.” Native Americans, in attempting to adapt to the introduction of a powerful new substance, interpreted the effects of inebriation within a pre-existing framework related to mind-altered states. Thus, they related “the new phenomenon of intoxication and aberrant behavior to the old concepts of dreaming, communion with the spirit world, and the acquisition of power.”

28 Ibid., 86.
29 Peter Mancall, Deadly Medicine: Indians and Alcohol in Early America (Ithaca: Cornell University Press, 1995), 94.
31 Ames et al., Historical and Cultural Roots, 345.
32 Ibid., 348.
33 Unrau, White Man’s Wicked Water, 2.
34 Ames et al., Historical and Cultural Roots, 345.
This is one of the reasons they drank to the point of complete inebriation – the ultimate goal was to achieve an altered state of consciousness.\textsuperscript{36} Lemkin notes the ways in which colonial settlers used alcohol as a tool of conquest and manipulation. Fur traders soon learned that the indigenous people of the New World would trade even their most valuable possessions for rum, Lemkin writes.\textsuperscript{37} Again paraphrasing the work of Halkett, Lemkin describes the ways in which alcohol was used as a tool of influence during negotiations:

Similarly, the New England settlers, when welcomed by the great chief Massasoit in 1620, offered their host liquor of which ‘he dranke a great draught that made him sweate all the while after.’ (from a contemp.chronicle). It is assumed that Massasoit on this occasion acknowledged King James of Engl. as his sovereign. Similarly, the author supposes that when, in the following year, six other I. chiefs affixed their marks to a document – containing a like acknowledgement [sic], they did so under the influence of ‘strong water.’\textsuperscript{38}

Numerous historical accounts demonstrate that an ongoing public dialogue continued regarding the destructiveness of alcohol in Native American communities, but little was done to remedy the problem. Some of the attention paid to Native American drinking was self-serving, as whites voiced concern over how drunk and violent Indians might threaten their own settlements.\textsuperscript{39} Europeans such as Benjamin Franklin used “discourses of extinction” in his descriptions of Native Americans and alcohol: “If it be the design of Providence to extirpate these savages in order to make room for the cultivators of the earth, it seems not improbable that rum may be the appointed means. It has already annihilated all the tribes who formerly inhabited the seacoast.”\textsuperscript{40} As this passage shows, while Franklin was aware of the harm alcohol had inflicted on indigenous peoples, he thought their demise might be a historical inevitability, a sacrifice in the name of progress. America’s settler population continued to expand, and to demand more land for cultivation. Some settlers even used alcohol to justify their seizure of Indian lands – since Native Americans could not control their insatiable thirst for liquor, they argued, they should be relocated even further from white communities, where alcohol would be less prevalent.\textsuperscript{41} However, wherever the Native Americans went, alcohol traders soon followed.

Native American leaders themselves appealed to colonial officials to stop the flow of alcohol. Little Turtle of the Miamis requested the assistance of President Thomas Jefferson to stop the sale of alcohol in Indian lands. In his remarks, he claimed that “When our white brothers came to this land, our forefathers were numerous and happy; but, since their intercourse with the white people, and owing to the introduction of this fatal poison, we have become less numerous and less happy.”\textsuperscript{42} Native American religious leaders and prophets also tried to convince their people to abstain from alcohol. The Delaware Prophet (Neolin) ordered Native Americans to “‘abstain from drinking their deadly beson (medicine), which they have forced upon us, for the sake of increasingly their gains and diminishing our numbers.’”\textsuperscript{43} Some of these prophets found success, such as Kenekuk of the Kickapoos. As a young man, he had killed his uncle in a drunken rage, but was later exposed to Christian theology, which he mixed with native spiritual beliefs and brought back to members of his tribe. He focused on the evils of alcohol, appealing to his people to give it up entirely, and told

\textsuperscript{36} Ames et al., \textit{Historical and Cultural Roots}.
\textsuperscript{38} Ibid., Card 12.
\textsuperscript{39} Mancall, \textit{Deadly Medicine}, 26.
\textsuperscript{41} Unrau, \textit{White Man’s Wicked Water}, 38.
\textsuperscript{42} Ibid., 17.
\textsuperscript{43} Mancall, \textit{Deadly Medicine}, 116.
them those who didn’t “faced eternal damnation in the ‘burning pits of hell.’” After he began preaching, alcohol use declined considerably in his tribe and the community became more cohesive and productive. Authorities in America did indeed attempt to pass a number of laws restricting sale of alcohol to indigenous people, but they were consistently violated. The drive for profit, along with widespread settler beliefs that Native Americans were subhuman, prompted many whites to continue selling alcohol, no matter what the impact on indigenous communities. From the time of early contact with fur trappers, alcohol became a desirable trade good between whites and Native Americans. It could be transported long distances and was always seemingly in demand. Unlike a blanket, which would be bought once and not replaced for many years, quickly-consumed alcohol was always in need of replenishment.

Even once massive relocations of Native Americans began, alcohol continued to impact their communities. Hard-drinking frontier whites, living on the margins of society, willingly sold alcohol and “the white populace residing closest to the Indians and the tribal lands they so greatly coveted played the dominant role in supplying the Indians.” Of course, it is hard to retroactively prove their motives, but along with economic profit, is it not possible that such settlers saw the destruction of Native Americans as a beneficial inevitability? The disappearance of this “inferior race” would open up more land for civilization and cultivation. The annuity payments made to relocated Native Americans led to increased access to alcohol. Traders made their way to the most remote reaches of Indian country and, as one regional authority reported back to Washington, “alcohol was ‘as destructive and more constant than disease’ in the depopulation of the western Indians. … Whenever money is around it soon finds its way into the hands of the whiskey dealers, who swarm like birds of evil omen around the place where annuities are paid.” Traders eagerly opened up lines of credit to Native Americans, and many became severely indebted. Few attempts were made to prosecute whites who illegally sold alcohol to Native Americans. (A similar situation existed in Australia, where whites were rarely held accountable for breaking laws prohibiting alcohol sales to aborigines, but aborigines were punished for drinking.) American courts showed so little concern for the wellbeing of indigenous people that a Native American could maim or even kill another Native American in a drunken attack and face no fear of legal reprisal. However, the same situation did not hold for whites. In addition to aiding in the deterioration of native populations while financially profiting the colonial settlers, “the liquor trade became a crucible of culture in North America. Its persistence signaled a victory of British American values over those of Indian country.” Ultimately, a profit-driven European institution contributed to the dismantling of indigenous society. It seems this is very much what Lemkin had in mind when he referred to genocidal tactics that destroy “the national pattern of the oppressed group” and impose “the national pattern of the oppressor.”

“Intent” and the Problem of the “Drunk Indian”

While the notes Lemkin assembled related to alcohol and indigenous people did indicate a strong argument for disruption of cultural functioning, two major problems arise with classifying distribution of intoxicants to natives of North America as “genocide” as he conceptualized the term. The first involves the question of intent, and the second the circulation of colonial discourses surrounding the figure of the “drunk Indian.” In Lemkin’s mind, while colonial settlers may not have initially understood the impact of alcohol on native populations, once its harmful effects became apparent, Europeans should have stopped its sale. According to Lemkin:

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44 Unrau, White Man’s Wicked Water, 23.
46 Ibid., 10.
47 Ibid., 52.
49 Mancall, Deadly Medicine, 171.
Later, when the full horrible effects of liquor on the Indian became widely known, when missionaries and secular disinterested whites tried to stop traffic, it continued unabated. Selfish greed and a cynical indifference to I. welfare, and in some cases perhaps the actual intent of sponsoring Indian self-destruction by such men as those who advocated the selling of infectious blankets to I. (see cards of genocidists) must be imputed as motives of the guilty.\textsuperscript{50}

Here, Lemkin ties alcohol sales to Lord Jeffrey Amherst’s directive to distribute smallpox-infected blankets to Native Americans. While, given the widespread knowledge about the impact of alcohol on native communities, intentional destruction may have been the motive of some settlers; this would be exceedingly difficult to prove. If genocide, as defined by Lemkin, involves the disruption of culture with intent to destroy the national “family of mind,” distribution of alcohol to native peoples remains an ambiguous case. Did settlers continue selling alcohol to natives with such an aim in mind? Or were they more driven by profit and a callous indifference to the harmful byproducts of their sales? Moreover, unlike actions such as forced relocations or the removal of children from their families, the alcohol trade flourished in Indian Country partly because Native Americans themselves sought out the product. Thus any harmful effects arose from actions on both the part of the settlers and members of the native communities.

Moreover, Lemkin’s thinking on the subject may have been informed by colonial discourses that stereotyped the figure of the “drunk Indian.” Quintero writes that colonialism controls not only physical space, but also the way we see others and how they perceive themselves. He acknowledges the destructive powers of alcohol, “how traders deliberately plied Indians with alcohol to facilitate exchange” or when “colonial officials made it a matter of policy to provide Indians with alcohol as part of a larger pogrom and assimilation campaigns.”\textsuperscript{51} At the same time, he argues that discourses surrounding Native Americans and alcohol are a form of “intellectual colonialism.” In early America, depictions of immoderate drinking among Native Americans indexed a supposedly decaying culture, and a people unable to cope with the modern world. To this day, the emphasis on drinking in Native American communities as problematic can cast indigenous people as weak or pathological.\textsuperscript{52} Lemkin may have had noble intentions in highlighting historical records that documented problematic drinking among Native Americans, but their focus on the inability of indigenous people to control themselves around the substance does potentially point to a form of intellectual colonialism that cast the oppressed as inherently weak.

**A Way Forward?**

While Lemkin’s notes regarding Native Americans and alcohol did attempt to highlight one destructive strain of the colonial experience, he may not have given enough consideration to cultural adaptation and hybridity. He and others in the World War II period portrayed indigenous peoples as passive victims, completely overtaken by conquering cultures. Use of the term genocide, with “its implication of cultural or racial destruction and the connotation of finality do not sit well with current trends in the social history of indigenous peoples in the Americas that stress Native American persistence and continuity.”\textsuperscript{53} Debates continue regarding the use of the word genocide to describe various aspects of the colonization of North America. The term has tremendous rhetorical power and has thus often been seized by communities in order to lobby for official recognition of past suffering and reparations. At the same time, Gone contends that the continued emphasis on historical trauma and genocide may not actually be productive for the future of native peoples. He argues for the restriction of the word genocide, solely to instances of mass killing, worried that too broad of an application diffuses the power of its meaning.\textsuperscript{54}

\textsuperscript{51} Quintero, *Making the Indian*, 6.
\textsuperscript{52} Ibid.
\textsuperscript{53} McDonnell, *Raphaël Lemkin as Historian*, 520.
While it is important to note the resilience of native peoples, various acts of adaptation and defiance must be weighed against the far stronger forces of conquest – of a society that forced Native Americans from their land, extracted children from their homes and viewed their communities’ decline with an air of inevitability. Alcohol played a significant role in this broader pattern of destruction, whether or not those who facilitated its distribution specifically intended to harm Native American communities or not. In addition to highlighting the physical destruction caused by the substance, it is imperative that scholars also engage with the myths surrounding its place in indigenous cultures. Continued problems with alcohol use in native communities are entangled with intellectual colonialism, as well as perceptions of historical use and biological susceptibility. It is only through confronting these legacies head-on that we can address continued patterns of detrimental alcohol use among native peoples of North America.

Bibliography


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The Soviet Union played a major role in the establishment of the International Military Tribunal (IMT) by resolutely promoting the idea of an international trial of Nazi Germany’s leaders for the criminal actions perpetrated by its forces upon both civilians and prisoners of war during its invasion and occupation of the Soviet Union during the Second World War. Moreover, only a handful of Western scholars have noted that the Soviets were also early proponents of the use of the legal principle of conspiracy (the term used by Soviet jurists was “complicity,” this “new” legal concept was used in Stalin’s infamous “show trials” but had no place in continental European jurisprudence) and had also played an instrumental role in contributing to the precept that held aggressive war in and of itself could be legally construed as a criminal act.² While many historians are familiar with Andrei Vyshinskii from his role as chief prosecutor of Stalin’s Moscow trials in the late 1930s, in his capacity as head of the Institute of State and Law of the Russian Academy of Sciences Vyshinskii came to rely on the expertise of one Aron Naumovich Trainin.

Trainin was one of the founders of Soviet criminal justice law and was well known in international legal circles not only from his voluminous legal writings (many of which were translated) but also from his participation in international conferences. Along with Vyshinskii, he was responsible for elucidating the Soviet concept of international law (which, as Trotsky opined, would not even have been necessary if the worldwide proletariat had but recognized the historical task set before it). His contributions would include not only the idea of “crimes against peace” which would be incorporated into the Charter of the International Military Tribunal (IMT) at Nuremberg, thus “becoming a part of the recognized body of contemporary international law,” but also the use of the theory of complicity to try the Nazi leadership for yet another innovative twist, the formulation of the principle of the criminality of “aggressive war.”³ Vyshinskii supported Trainin in his intellectual pursuits and that Stalin trusted him as well can be seen in the fact that Trainin was one of but two Soviet signatories of the London Conference charter in 1945 and then served as legal advisor to the Soviet prosecution team at Nuremberg. Despite working for these malevolent individuals, his Western colleagues respected and admired him, considering him “a distinguished legal academician” who was “an agreeable man to do business with.”⁴

Aron Naumovich Trainin was born into a working-class family in Vitebsk on July 9, 1883. At age 10 he left home and enrolled in school in Kaluga where by the age of 12 he was supporting himself by giving lessons. He graduated first in his class (as evidenced by his receiving the gold medal) and in 1903 matriculated at Moscow State’s Juridical School.⁵ As a member of the pre-revolutionary students’ movement he was thrice arrested by the tsarist regime but these youthful indiscretions evidently did not prevent him from graduating on time in 1908 upon the somewhat puzzling acceptance of his thesis entitled “The Class Struggle and Punishment in the History of Russian Law.”⁶ He was immediately seconded to the University’s Department of Criminal Law in preparation for a career as an academic where he set to work writing several basic textbooks on criminal law, criminology, and the criminal justice system. According to his biographical sketches, however, he abruptly left in 1911 when the reactionary Kasso became Minister of Education. Along with many other scholars he sought employment at the Shaniavskii People’s University where he

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² Ginsburg, Moscow’s Road, 26.

³ Hirsch, The Soviets at Nuremberg, 713.


⁵ Ibid.

taught until after the October Revolution. Returning to Moscow State he resumed his research and teaching duties and by 1921 was accorded the rank of professor. Ultimately, he would become a member of the prestigious USSR Academy of Sciences in 1946.

Trainin spent much of his early scholarly career writing academic textbooks as well as legal treatises that would lay the foundations for Soviet criminal law. Included among these works was Obshchee uchenie o sostave prestupleniia (A General Theory of the Structure of Criminality), Khoziaistvennye prestuplenia (Economic Crime) and most important of all from the Soviet standpoint, Uchenie o soukhastii (The Theory of Complicity). But his biographer notes that at the end of the 1920s and beginning of the 1930s his scholarly attention “turned toward a completely new, little known and extraordinary sphere of interest – toward international criminal law.” In his first major work Ugolovnaia interventsiia (Criminal intervention) Trainin analyzed the “numerous resolutions of the League of Nations” as well as the proceedings of its “symposia, conferences and commissions which examined questions concerning the codification of international criminal law.” Although, as his most recent Russian biographer (2007) admits, as opposed to his biographer during the late Soviet period (1969), Trainin’s work had significant “ideological baggage” (for example, much of the work was devoted to a critique of “bourgeois intervention against the USSR” during the Civil War), Trainin’s treatise was the first time in Russian literature that “research was begun into the recognition of responsibility for international crimes.” Trainin forcefully “advanced the idea of individual responsibility for international crimes…the realization of which was established during the course of the Nuremberg deliberations.” The Soviet leadership would use this novel concept to call for the prosecution of the Nazi leadership for conspiracy to commit aggressive war.

Of course, the concept of aggressive war itself was not entirely novel as the General Treaty for the Renunciation of War (also known as the Kellogg-Briand Pact) which was signed by 15 nations (including Weimar Germany) on August 27, 1928 and registered as part of the League of Nations Treaty Series a week later, explicitly called for the renunciation of war between the contracting parties as a solution to any kind of conflict. Article II of the treaty stated that “the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be…shall never be sought except by pacific means.” Eventually, another 40 nations (including the Soviet Union just two days later, on August 29) indicated their intention to subscribe to the treaty’s provisions. The Soviet Union also concluded supplemental treaties with Latvia, Estonia, Poland and Romania (the so-called Litvinov Protocols) on February 9, 1929 which reiterated the Pact’s provisions and were signed separately since that treaty had not yet been ratified by enough states to come into legal force. The Soviet Union never formally signed the Pact but its entrance into the League of Nations in 1934 legally required the USSR’s assent to all Treaties that had been adopted by that body.

The Soviet Union also signed a series of non-aggression pacts with its neighbors in the 1930s (including, of course, the notorious Molotov-Ribbentrop Pact) which made the Soviet Union a leading advocate for the diplomatic principle of collective security. In addition, as Francine Hirsch has observed, Trainin had in 1937 published his The Defense of Peace and Criminal Law in which he castigated the League of Nations for failing to make aggressive war a criminal offense and not providing for any sort of international court to punish aggressors. Most notable in this regard was the fact that Andrei Vyshinskii, Stalin’s procurator general, wrote an introduction to the book in which he asserted that “criminal law must be utilized for defending peace, must be mobilized against war and against the instigators of war.”

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6 R.A. Rudenko, A.N. Trainin Izbrannye Proizvedenienia (Moscow: Gosizdat, 1969), 6. The Shaniavskii People’s University was established in 1908 by a retired general turned philanthropist who envisioned free university education for all regardless of nationality, class or gender. It ultimately was transformed into the well-known CPSU Higher School but after the collapse of the USSR became the Russian State University for the Humanities.

7 Bogush, A.N. Trainin, 168.

8 Ibid.


10 Quoted in Ibid., 706.
For Soviet jurists this principle was supposedly enshrined in “The Decree on Peace,” which was promulgated in 1917 when, “under the leadership of the Communist Party headed by the great leader V. I. Lenin the tsarist regime was overthrown… and the revolutionary people of Russia adopted the decree… leading the entire world into a new era of international relations.”11 The obvious Soviet verbiage aside, as is well known the decree called for a peace “without annexations or indemnities.” By “annexations” the Bolsheviks meant the “seizure by force and violence” of weak and small nations by the larger and more powerful. Aggressive war was thus to be considered a “crime against humanity” and Soviet assessments of Trainin’s works always linked his more than 200 scholarly treatises over the course of his stellar academic career to his consistent effort “to convert this national foreign policy law into the code of international law.” One biographer has gone so far as to assert, “law, in the service of peace, was the leitmotiv of the many works of A. N. Trainin, and as such was the motive wellspring of his social activity.”12

With the first of his four wartime notes on November 25, 1941, People’s Commissar for Foreign Affairs Molotov began the Soviet campaign to try the Nazi leadership for complicity in criminal activity. Molotov described the reprehensible treatment of Soviet prisoners of war and laid “all responsibility for these inhuman actions of the German military and civil authorities on the criminal Hitlerite government.”13 For their part the Germans asserted that they were not bound to adhere to such strictures since the Soviet Union had not been a signatory to international agreements such as The Hague Conventions of 1899 and 1907, and especially the Geneva Convention in 1929. This was immaterial since, unlike the Kellogg-Briand Pact that called for no force to be used between signatories in a dispute, the Geneva Convention’s stipulations relative to the treatment of POW’s were binding upon any state that acceded to the agreement so long as the opposing side accepts and applies the provisions. In point of fact, the Soviets insisted that they had de facto agreed to adhere to the rules governing the conduct of military forces vis-à-vis prisoners of war. In Molotov’s note of April 27, 1942, by which time the scope and enormity of Nazi crimes against Soviet prisoners was all too apparent, with over two million of them dead, he wrote

...Being true to the principles of humanity and respect for its international obligations, the Soviet government even in present circumstances does not intend to resort to reprisals against German war prisoners, and continues to abide by the undertakings as regards the regime of war prisoners, which the Soviet Union assumed under The Hague Conventions of 1907, which was signed, but is now treacherously violated in all its provisions, by Germany.14

Of course, the Soviet government had also completely disregarded these international laws concerning the treatment of POW’s during its campaigns against Finland and Poland in 1939 and 1940. And it has been irrefutably established and acknowledged by the Russian government that the Soviets executed over 25,000 Polish officers in the spring of 1940.15 But the Soviet government’s public pronouncements consistently demanded that the entire Nazi leadership be held accountable for war crimes committed by its forces. The Kremlin insisted that “severe punishment must

11 Rudenko, A.N. Trainin, 8.
12 Ibid., 50.
14 Ibid., 50 and Nota Narodnogo Komissara Inostrannykh Del Tow. V. M. Molotova O Chudovishchennykh Zloedinitsakh Zverstvakh i Nasiliakh Germanisskih Vlastei v Okkypirovannykh Sovetskikh Raionakh i ob Otvetstvennosti Germanisskih Vlastei Za Eti Preстupleniiia (People’s Commissar of Foreign Affairs Comrade V. M. Molotov’s Note Concerning the Monstrous Deeds, Atrocities and Acts of Violence of the German State in the Occupied Soviet Regions and About the Responsibility of the German State For These Crimes), April 27, 1942, (USHMM, RG-22.009.01.06), 13. Records Group (RG) 22.009 contains Soviet Ministry of Foreign Affairs archival records from the Molotov Secretariat which document early Soviet knowledge of the Holocaust and interaction with the Allies about a joint policy declaration, materials relating to the creation of the Extraordinary State Commission to Investigate German-Fascist Crimes Committed on Soviet Territory and miscellaneous reports of the SovInformBuro including articles prepared for the Soviet press. It also holds archival materials from the Central State Archive of the Ministry of Defense (TsGAMO) located in Podolsk which document atrocities perpetrated by the Nazis as does RG.04.050.
15 R.G. Pikhoia and V. P. Kozlov, eds., Katyn (Moscow: ROSSPEN, 1997).
overtake all who are guilty of these most atrocious crimes against culture and humanity, all the Hitlerite criminals without exception – from the lance-corporal in the army to the lance-corporal on the throne.”

The atrocities perpetrated by German forces upon the prisoners of war and the civilian population were seen by the Soviets as part of a criminal conspiracy to pursue a deliberate war of annihilation. In his second wartime note of January 6, 1942, Molotov delineated the “wholesale robbery, despoliation of population and monstrous atrocities” committed by the Germans in the Soviet Union and noted that “the inhuman regime which has been established by the German-Fascist authorities for prisoners of war has become the lot of the civilian population.” Molotov once again took pains to emphasize the criminal conspiracy that was at the heart of Nazi policies in the Soviet Union.

Irrefutable facts prove that the regime of plunder and bloody terror against the non-combatant population of occupied towns and villages constitutes not merely the excesses of individual German officers and soldiers, but a definite system previously planned and encouraged by the German Government and the German High Command...

These efforts were undertaken despite the fact the legal principle of a conspiracy to commit a criminal offense had no place in continental European law. Francine Hirsch notes that “the Soviets were keen proponents of this charge from early on, recognizing its great utility.” Most accounts do indeed wholly attribute the use of the conspiracy charge to American ingenuity and their persistence in overcoming the other Allies’ objections. Although the idea that political responsibility for waging a war of conquest resided with the aggressor state had been first adumbrated by the Kellogg-Briand Pact and, as Kristen Sellers has noted, had been advocated by legal scholars other than Trainin, his argument that criminal responsibility for such actions must necessarily lie with the state’s politicians was indeed unique.

According to Trainin, Hitler and his minions were guilty of “organizing and perpetrating the most heinous crime in the history of the human race, the perfidious attack on the Soviet Union accompanied by the flagrant violation of all human standards and all the canons and regulations of international law.” And in fact the Soviets began to lay the foundation for such a tribunal with the trial of three German prisoners of war in the city of Kharkov in December 1943. In his August 1943 article “The Responsibility for Nazi Crimes,” which was then broadcast (in English) two months prior to the meeting of the allies’ foreign ministers in Moscow (and then reprinted in Soviet Monitor, again, in English, and distributed to government agencies abroad by Soviet embassies) Trainin had reiterated his arguments on conspiracy and the criminal responsibility of the German political and business leadership.

The Kharkov trial featured three accused war criminals who confessed to atrocious crimes but more important was the statement made by one of them that the principal war criminals were Hitler, Himmler and Rosenberg. In addition, Trainin would later point to these proceedings and draw two more important conclusions. Although the Soviets were insisting that prisoners of war be treated in accordance with The Hague convention of 1907, Trainin was concerned lest war criminals use their status as prisoners to avoid their just punishment by being classified as both “bandit and as military personnel.” But in perhaps his most important observation he said that these criminals might well try to find “legal” methods to evade responsibility by claiming they were acting under orders. One defendant in the Kharkov trial had made just such an argument.

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17 Statements, 16.
18 Quoted in Ginsburgs, Moscow’s Road, 33.
19 Hirsch, Soviets at Nuremberg, 707.
21 Ibid., 51.
22 The Spectator, December 23, 1943, 1.
Trainin noted the defendants “were tried for the misdeeds they themselves committed, with their own hands, for the crimes they committed personally. And for these crimes a command is not a defense.” The “orders are orders” defense eventually used at Nuremberg would, of course, be inadmissible.

Trainin’s second major work “Ob ugolovnoi otvetstvennosti gitlerovtsev” (On the Criminal Responsibility of the Hitlerites, published in 1944) which had also been almost immediately translated into English had reiterated the argument that “peace is the greatest social value” and that war itself should be a punishable criminal act. Ginsburgs, called it “a pioneering attempt to gain recognition for the phenomenon of crimes against peace…” Since Soviet jurisprudence embraced the idea of conspiracy Trainin now put forward that legal principle as well by devoting a chapter to the concept of complicity, defining it as “a complex phenomenon” that “embraces various understandings among criminals” and can include “the dangerous form of participation in an organization…” Members of such organizations may not know each other “but should answer for all of their criminal activities.” Molotov thus continued to put forward the Soviet demand for a war crimes trial using the conspiracy principle. He argued that “in reporting all these atrocities committed by the German invaders to all governments with which the USSR has diplomatic agreements the Soviet government lays all the responsibility for these inhuman and rapacious acts committed by the German troops on the criminal Hitlerite government of Germany.” The principle that the entire political and military chain of command was just as guilty as the actual perpetrators in the field for any and all violations of the norms of war was already on its way to being established.

The Soviet Government had already collected countless battle reports, orders and other documents that clearly proved that the Nazis’ “bloody atrocities had been undertaken in accordance with the carefully compiled and elaborate plans of the German government and German High Command.” On April 27, 1942, ten months after Hitler’s invasion of the Soviet Union, Molotov had sent his third wartime note, a single-spaced, twenty-six page note to “all embassies and ambassadors with which the USSR has diplomatic relations.” The missive, “Concerning the Monstrous Crimes, Atrocities, and Acts of Violence of the German State in the Occupied Soviet Regions and the Responsibility of the German State for these Crimes” was a virtual indictment of the Nazi regime’s conduct in the Soviet Union. In this extremely detailed explication of the atrocities committed by German forces Molotov noted that these transgressions were not random but instead were calculated and “not manifested as the episodic excesses of undisciplined military units.”

This diplomatic note broke down the Nazis’ heinous transgressions in Russia into a half-dozen categories, including the methodical plunder of the country’s population, the destruction of cities and villages, the enslavement of her people and deportation of several million more to Germany for forced labor, the veritable extermination of the Soviet population and prisoners of war and the liquidation of Russian national culture and the cultures of other peoples of the USSR.

Molotov took pains to point out that the evidence presented “not only supports the assertions of the Soviet government of the planned nature of these evil doings as outlined in the notes of November 25, 1941 and January 6, 1942,” but also “shows that the Hitlerite government and its accomplices have reached the limits of cruelty and moral depravity in its bloody criminal attack on the freedom, welfare, culture and very life of the Soviet peoples.” The document went into explicit details of the myriad atrocities and crimes of German forces in Russia and connected the perpetration of those crimes with the military orders that had been captured, including several from Hitler and Goering. The grisly specifics of some of the many massacres of men, women

24 Sellers, Crimes Against Peace, 49.
25 Ginsburgs, Moscow’s Road, 78-79.
26 Quoted in Hirsch, Soviets at Nuremberg, 707.
27 Quoted in Ginsburgs, Moscow’s Road, 33-34.
28 Nota, USHMM, RG-22.009.01.06, 1.
29 Ibid., 2.
and children were presented, as well as detailed retellings of the numerous summary executions of citizens and the horrific treatment of Soviet prisoners. The wanton burning and looting of villages and destruction of equipment, buildings and entire cities was chronicled and the looting of property was also carefully catalogued. The idea that all these acts were not only criminal but committed as part of a plan determined by the highest civil and military authorities would become a key part of the Nuremberg trial. Molotov promised in conclusion that “Hitler’s government and its accomplices will not escape severe responsibility and deserved punishment for all their unparalleled crimes perpetrated against the peoples of the USSR and against all freedom loving peoples.”

Thus, the idea that the Nazi war effort was essentially a criminal undertaking and Germany’s leading political and military figures ought to be brought before the bar of justice was being advanced forcefully by the Soviets by early 1942. In September of that year, in a speech in the House of Commons, Winston Churchill seemingly supported the Soviet position when he pledged the support of Great Britain in ensuring that “those who are guilty of the Nazi crimes will have to stand up before tribunals in every land where their atrocities have been committed in order that an indelible warning may be given to future ages…” and Franklin Roosevelt declared that it would be United States policy “that the successful close of the war shall include provision for the surrender to the United Nations of war criminals. It was the Soviet government, however, that insisted upon an international tribunal, considering it

Essential to hand over without delay for trial before a special international tribunal, and to punish according to all severity of criminal law, any of the leaders of Fascist Germany who in the course of the war have fallen into the hands of states fighting against Hitlerite Germany.”

By 1942, the Soviets were already preparing for the day of reckoning with the Nazis leadership. In July 1942, a draft proposal by G. Aleksandrov, head of the Propaganda and Agitation section of the Central Committee of the Communist Party was circulated that called for the establishment of an “Extraordinary State Commission for the investigation of atrocities, violence and other crimes committed by the German army on the regions of Soviet territory temporarily occupied and an account of the damage inflicted by the German-Fascist forces on the population of the USSR and to the Soviet state.” Aleksandrov asserted that the “violence, mass murders, destruction of priceless material and cultural treasures of the Soviet people, and establishment of the forced labor regime…” were the result of “a systematic plan which had earlier been devised and authorized by the German government and the German High Command.” Therefore, the “Soviet people demand retribution for the crimes of the German Fascist forces…” and to that end it “was necessary to conduct an exact inventory of all the evil crimes of the Hitlerite army on the territory of the USSR, the violation of the norms of international law, of the rules and customs of the conduct of war…”

Aleksandrov, however, also noted the ad hoc nature of efforts to compile evidence for future use in war crimes trials. He wrote that “a series of organizations had taken it upon themselves to undertake such an inventory as well as the collection of materials concerning the crimes of the German army.” Such activities were “undertaken without a unified plan” and “organized poorly” therefore it was “necessary to provide for the formation of an Extraordinary State Commission which would be engaged in the investigation and inventory of crimes, atrocities, violence, and thievery of the German Fascist army and an accounting of this army’s material damage to the Soviet state and to Soviet citizens.” The commission would need to be invested with “special authority for the collection of all necessary materials…” and would be responsible to the Sovnarkom

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30 Ibid., 13.
31 Ibid., 54.
32 USHMM, RG 22.009.01.07, 12.
33 Ibid.
34 Ibid.
On October 28, Aleksandrov forwarded to Molotov a draft decree from the Presidium of the Supreme Soviet concerning the establishment of an “Extraordinary State Committee (sic) for the inventory of the German-Fascist invaders’ evildoings.” Molotov made extensive corrections on the proposal (including the name of the commission) and added that the principal purpose of the commission would be to oversee “the unification and conformity of the inventory already being conducted by Soviet state organs of the crimes and damage inflicted by the invaders…”

In addition to a full accounting of the damages inflicted upon the USSR, the commission would also be charged with “establishing, in all cases where circumstances permitted, the identity of the German-Fascist criminals, the guilty in organizations which have committed evildoings on occupied Soviet territory, with the goal of bringing these criminals to justice and to their most severe punishment.” Thus, on the basis of the October 1942 declaration the Soviets in November set up an “Extraordinary State Commission for ascertaining and investigating crimes perpetrated by the German-Fascist invaders and their accomplices, and the damage inflicted by them on citizens, collective farms, social organizations, State enterprises and institutions of the USSR.” Announced in Pravda as a decree of the Presidium of the Supreme Soviet and as a resolution from the Council of People’s Commissars, this body was charged with compiling the evidentiary materials for a future war crimes trial. A policy paper submitted to the commission by a Soviet jurist in February 1943, entitled “Organization of criminal prosecution for crimes connected with the war” called for the trial of Hitler and his minions on conspiracy charges before an international court in order to lay bare the evils of Nazism; the commission’s charter was formally approved in March 1943. The Western Allies, of course, were not nearly as far along since as we have seen they had not yet definitively agreed to the idea of a post-war international war crimes tribunal but had merely agreed that the German’s conduct of the war had in fact been criminal and that individuals could be tried at the scene of their crimes by the responsible authorities.

On April 3, 1943, a staff of 116 people with a budget of 2,669,000 rubles was approved. Nikolai Shvernik was appointed as head of the commission. Other notables included Andrei Zhdanov (both he and Shvernik were also members of the Politburo), Andrei Vyshinskii, Trofim Lysenko, the writer Aleksei Tolstoi, and Semyen Budennyi. A secretariat was established to coordinate the gathering and collation of the evidentiary materials to be used in future war crimes trials; P.I. Bogoavlenskii was appointed as its executive secretary. The secretariat included departments charged with recording the evidence of atrocities against Soviet citizens, damage to state and collective farms, damage to industry, transportation and communications, damage to cooperatives, trade unions and other civic organizations, damage to cultural, scientific and medical institutions, churches, etc., and finally a department to collect the evidence of damage to Soviet citizens. Much like the party and state apparatus, sub commissions were established at the republic and regional levels. Members always included the first secretary of the Central Committee of the Communist Party at each level (Nikita Khrushchev was head of the Ukrainian SSR’s, commission), as well as the chair or deputy chair of the Council of People’s commissars and representatives from the local political police.

Care was taken to ensure the participation in the commission’s work of a representative cross section of Soviet officials and citizens, and in fact more than 7 million people supposedly took part in the process. Instructions were adopted by the Commission on May 31, 1943, which required the staff of the Commission to travel around the recently liberated areas of the Soviet Union.

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36 Ibid., 17.
37 Ibid., 19.
38 Ibid.
40 Ginsburgs, Moscow’s Road, 38.
41 Ibid., 38-39; USHMM, RG 22.009.01.07, 25-31.
42 Ginsburgs, Moscow’s Road, 38.
and empower local committees to investigate Nazi crimes and atrocities. The statute required that these investigations be completed within one month of the area’s liberation. Dossiers were meticulously compiled listing the details of Nazi crimes, the units and persons that had committed them, accomplices, etc. along with forensic reports, statements by local citizens and captured German documents. The Commission ultimately collected more than a quarter million statements and estimated the damage to the regions surveyed at almost 700 billion rubles. Members of the commission reopened graves, exhumed bodies, and interrogated German prisoners of war. These prisoners went through a screening which divided officers from men, separated party and army SS troops, and Gestapo members from non-party men, and singled out individuals held accountable for specific atrocities, on the basis of evidence compiled by the ubiquitous War Crimes Commission, which had branches in every army division and every local soviet.43

In those areas that had seen enormous devastation, and where the local organs of government had not yet been reconstituted, special Red Army military intelligence units composed of officers and medical doctors investigated the crimes and drew up the protocols (akty), or findings of fact, which were then forwarded to the Main Political Administration of the Workers and Peasants Red Army (GLAVPURKKA) and from there sent on to the Extraordinary Commission.44 These particular documents have not yet been studied and offer interesting contrasts with the records filed by the civilian local and regional commissions. My research into these documents indicates that the military committees faithfully recorded the eyewitness testimony of the locals and were extremely diligent in revealing the human cost of the war (as compared with the protocols of the Extraordinary Commission which seemingly were more attentive to material damage, perhaps with an eye toward future reparations). Of special interest is the fact that many of these Red Army officers were Jewish, especially the medical staff.

Both the civil and military commissions took down the testimonies of the eyewitnesses at the scene of the crimes and atrocities. In those reports where the victims were Jews, the term was at first written down as these eyewitnesses clearly indicated that Jews had been the principal victims. Yitzhak Arad has shown that these testimonies were then often changed and the word Jews replaced with “Soviet citizens.” At the next level in many of the civilian akty the word Jew was found less frequently, and finally in the reports from the republic committee’s the word was almost never to be found. The fact that some reports were indeed edited can be seen through a simple comparison of the initial reports by Red Army committees with those ultimately forwarded to Moscow by the union republic committees. For example, one of the earliest protocols documenting Nazi atrocities was submitted by a “flying” military committee to GLAVPURKKA in January 1942 by senior political instructor (politruk, or politicheskii rukovoditel’) Kriuchkin, political instructor Fadeikin, and medical officer Gurvich which recorded the eyewitness testimony of several persons from the village of Alfer’evo, Volokolamsk district, Moscow region. In it the villagers recounted how “upon arrival in November 1941, the German soldiers and officers rounded up without exception all the Jews…they held them for hours in the cold after having taken from them all their warm clothing. Most of these people were women, old men and children. They shot these unfortunates and out of 100 persons 80 were killed and 20 were wounded. The Germans forbade the rendering of any kind of medical assistance to the wounded and the other 20 froze to death.”45 Other atrocities were also recounted in detail including the rape and “cruel treatment of our women and girls.” The corresponding report forwarded by the regional committee to Moscow in 1944 repeated this...

44 There were three to five of these committees assigned to each Red Army “front.” There were several dozen of these “fronts” and although they were usually identified with a geographic region (1st Baltic Front, 2nd Ukrainian front, Caucasus Front, etc.) they were in fact military formations unique to the Russian and Soviet military; composed of three to five armies and they should not be confused with the Western usage of the term which denotes a broad geographic area of military operations.
45 USHMM, RG 22.008M, 72-73.
information verbatim but simply read that “100 peaceful Soviet citizens” had been murdered. Interestingly, in all his writings about the victims of Nazi outrages Trainin, who was himself Jewish, often mentioned Jews and not once did he elect to employ the politically acceptable term of “peaceful Soviet citizens.”

Given the scope of these crimes as well as Churchill’s speech in Parliament and Roosevelt’s oft repeated expressions of moral outrage Stalin undoubtedly assumed that the Allies were on the same page insofar as the idea of convening a post-war international war crimes trial was concerned. But that was manifestly not the case. As Howard Ball has noted, as late as 1945, the Western Allies were largely agreed on a plan to summarily execute Nazi war criminals and tried to convince the Soviet Union to go along. Most scholars are aware of US Secretary of the Treasury Henry Morgenthau’s proposal drawn up in late 1944 essentially to turn Germany into a veritable potato farm after the war. Less well known, however, was the provision to distribute a list of 2,500 Nazi war criminals (including political and military leaders, police officials, industrialists, etc.) to the advancing Allied troops so that they could be summarily executed upon capture.

Winston Churchill had in fact agreed with this idea. Churchill would later claim that Stalin’s remark at the Tehran conference that fifty thousand of Hitler’s henchmen ought to be “rounded up and shot at the end of the war” was in fact indicative of Stalin’s “serious intent.” Considering the historical record clearly shows otherwise I would submit that Stalin was merely poking fun at the Prime Minister for his reluctance to endorse the idea of an international war crimes trial. Even ruthless dictators can have a sense of humor. Writing Roosevelt just a week before Hitler’s suicide and two weeks before Germany’s formal unconditional surrender, Churchill reiterated his unease with the Americans’ conversion to the Soviet idea of an international war crimes trial:

[His Majesty’s Government is] deeply impressed with the dangers and difficulties of this course [judicial proceedings], and they think that execution without trial is the preferable course (italics mine). [A trial] would be exceedingly long and elaborate, [many of the Nazis deeds] are not war crimes in the ordinary sense, nor is it at all clear that they can properly be described as crimes under international law.

Stalin’s determination for an international war crimes trial can be seen in the talking points ultimately agreed upon at the Moscow Conference in 1943. It was reported that

The Russians… insisted on a declaration concerning the punishment of those individuals responsible for German atrocities...[and] contended that the category of such war criminals embraced everyone from the Nazi higher-ups...down to the meanest Wehrmacht private...in the gruesome fulfillment of directives.

The joint resolution issued by the Allies at the behest of the Soviet Government had only agreed that major political and military figures whose crimes had “no particular localization” would be “punished by the joint decision of the Governments of the Allies.” Of course, this vague formulation was merely a sop to the Soviets who were still insisting on an international war crimes trial. It was, however, agreed that “petty associates” would be “brought back to the scene of their crimes and judged on the spot by the peoples they have outraged” and further pledged to “pursue them to the uttermost ends of the earth and...deliver them to their accusers in order that justice

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46 Soobščenija Chrezvychainoi Gosudarstvennoi Komissii po Ustanovleniiu i Rasledovaniiu Zločeianii Nemetsk-Fashističeskoj Okkupatsii i ikh posobnikov na Vremennom Okupirovsnoi Territorii SSSR, Moscow, 1944, tom 27, 864.
49 Quoted in Ibid.
50 Quoted in Ginsburgs, Moscow’s Road, 48.
be done.”51 The Soviets, however, continued to demonstrate their commitment to an international tribunal; just a week after the Moscow Conference Stalin said

...Together with our Allies, we must adopt measures to ensure that all the Fascist criminals responsible for the present war and the sufferings of the people should bear stern punishment and retribution for all the crimes perpetrated by them no matter in what country they may hide.52

U.S. Secretary of War Henry Stimson had disagreed with Morgenthau’s plan and had also believed all along that an international judicial proceeding was required.53 It was his Department that devised the outlines of the criminal indictment that ultimately would be utilized at Nuremberg. The plan charged the Nazi regime with a criminal conspiracy to wage aggressive war and commit crimes against humanity

The whole movement had been a deliberate, concerted effort to arm for war, forcibly seize the lands of other nations, steal their wealth, enslave and exploit their populations, and exterminate the...Jews of Europe.54

But as we have seen, these ideas had already been put forward by the Soviets in Trainin’s books published in 1937 and 1944. Francine Hirsch has made the persuasive argument that it was in fact these books, and especially the second that was translated immediately into English, French and German, that proved instrumental in preparing the groundwork for the legal justification for the charges leveled at Nazi leaders at the IMT. Using archival materials she showed how the book was discussed in October 1944, at a meeting of the United Nations War Crimes Commission and ultimately was reviewed by officials in both the State and War Departments of the United States. One of those officials was a War Department lawyer named Murray Bernays. It would be he who ultimately drew up the American plan to charge the German leadership with criminal conspiracy. Bernays even cited Trainin’s definition of a “crime against peace” in his memo to the White House. Robert Jackson, who would act as the United States’ chief prosecutor at Nuremberg, also agreed with Trainin’s argument.55 Trainin’s definition would essentially form the basis for the charges of “war crimes” and “crimes against humanity” lodged against the Nazi leadership at Nuremberg. And his definition of “complicity” was replicated in the conspiracy charge in the Nuremberg Charter that agreed that “leaders, organizers, instigators, and accomplices participating in the formulation or execution of a common plan or conspiracy to commit” war crimes “are responsible for all acts performed by any persons in execution of such plan.”56

Most histories credit the United States with the major legal innovations of the Nuremberg Trials; however, Hirsch rightly concludes that the Soviets played a major role in formulating the legal rationales for crimes against peace and complicity. Moreover, they insistently called for an international trial to bring the Nazi criminals to justice. This in face of the fact that Roosevelt and Churchill had met in Quebec in September 1944, and agreed with a proposal put forward by Lord Simon that called for the execution of Nazi war criminals. The Anglo-American duo further agreed “to put to Marshal Stalin Lord Simon’s proposal for dealing with the major war criminals, and to concert with him a list of names.”57 Roosevelt had not seriously entertained the idea of a post war trial and extra-judicial executions in keeping with Lord Simon’s and Morgenthau’s plans remained

51 Quoted in Ibid., 49.
52 Josef Stalin, War Speeches, Orders of the Day and Answers to Foreign Press Correspondents During the Great Patriotic War (London, n.d.), 82.
55 Ibid., 708.
56 Ibid., 709
the official policy until early 1945 when, after the massacre of captured American soldiers at Malmedy in Belgium on December 17, 1944, an enraged public demanded justice. The massacre of 70 American soldiers had finally galvanized public and official opinion as to the criminality of the Nazis. Although undoubtedly sympathetic to the reports of the millions upon millions of murdered Jews, Soviet prisoners of war and civilians that had taken place so far away, it was this event that led to the demand for the punishment of those responsible for such atrocities.

Even U.S. Attorney General Francis Biddle, who had opined that there should not be any prosecution of prewar acts or acts against German nationals and that the War Department’s idea of charging Nazi political and military leaders with conspiracy should be dropped, now wrote that Malmedy was just part of a “purposeful and systematic conspiracy to achieve domination of other peoples by deliberate violations of the rules of war as they have been accepted and adhered to by the nations of the world.”\(^\text{58}\) The fact that the massacre was perpetrated by the Waffen SS also led Biddle to agree with the plan (finally drawn up by Murray Bernays) to charge the German leadership with criminal conspiracy. He later wrote that it “was the shooting of American officers and soldiers after their surrender at Malmedy by an SS regiment, acting under orders…” that convinced him. Stimson and Secretary of State Cordell Hull seized on this opportunity to argue

While [executive action…arrest and execution] has the advantage of a sure and swift disposition, it would be violative of the most fundamental principles of justice, common to all the United Nations. This would encourage the Germans to turn these criminals into martyrs and in any event, only a few individuals could be reached in this way. Consequently, [although there are serious legal difficulties involved in a judicial proceeding], we think that the just and effective solution lies in the use of the judicial method…[which] will, in addition, make available for all mankind to study in future years an authentic record of Nazi crimes and criminality.\(^\text{59}\)

Roosevelt finally agreed and brought up the idea of an international war crimes trial with Churchill and Stalin at the Yalta Conference in February 1945. As we have seen, Stalin, whose nation had of course seen the worst of the Nazi atrocities, had been calling for precisely such a trial for several years now. But Churchill continued to insist on the summary execution of top Nazis through to the beginning of April 1945. It was only after the liberation of the Nazi concentration camps and extermination centers that the British grudgingly assented to the idea. Even then, as late as the summer of 1945 (this after Churchill’s departure from office and the London Conference had already convened in June to determine the procedures for the International Military Tribunal), the British asserted it would be far easier and save everybody time by simply shooting the defendants.

After hostilities were concluded the Americans were often able to dictate the particulars of the post war judicial proceedings, such as the trial being held in Nuremberg instead of Berlin as the Soviets wished; in part this was because they had the major Nazi war criminals in their custody.\(^\text{60}\) But it should be kept in mind that it was the Red Army that liberated the extermination camps of Auschwitz, Treblinka, Sobibor, Belzec, Chelmno and Majdanek. The photographs and films of the concentration camps in Germany itself were as close as most Americans or Britons came to the industrial murder carried out by the Nazis and, of course, they had not witnessed the wholesale industrial slaughter of millions of human beings in the East. Much of the documentation and evidence needed to convict the Nazi criminals would necessarily have to come from the Soviet investigations. The GPU “flying” military intelligence committees continued their work as the Red Army crossed Poland and entered Germany.

After Hitler’s suicide, the United Nations Conference on International Organization met in San Francisco on April 25, 1945, to establish a successor to the discredited League of Nations. Representatives of the Soviet Union, United States, Great Britain and France discussed a draft of a

\(^\text{58}\) Quoted in Smith, The Documentary Record, 117.


\(^\text{60}\) Though the opening session of the International Military Tribunal was in fact first convened at Soviet insistence in Berlin before being moved to Nuremberg.
proposal by the United States that an International Military Tribunal be convened to try Nazi war criminals. The following basic principles were agreed upon:

First, trial of major war criminals rather than political disposition; second, return of criminals whose crimes had fixed geographical localization to the countries where their crimes were committed; third, an international military tribunal to hear the cases of the major war criminals...

The Four Powers then met in London in June of 1945 to hammer out the framework for this process. The representatives agreed that the Nazi political and military leadership were to be charged not only with war crimes, crimes against humanity, and the violation of the rules of warfare, but also for launching a war of aggression.

Interestingly, both the Soviets and Americans argued that the treaties and conventions that had existed prior to the Second World War clearly showed that the world’s peoples had recognized aggressive war as being an international crime and that, unlike the new concept of genocide, the sanctions that might be levied against individuals for their participation in this crime would not be “ex post facto.” But while the Americans wanted to move forward and define “aggression,” the Soviets insisted that this was a task for the United Nations and Great Britain and France agreed with this position. Many general histories credit the United States with being in the forefront of the campaign to bring Nazi war criminals before the bar of justice, and as Francine Hirsch noted “conventional wisdom about the trials give little attention to the substantive role that the Soviets had in all aspects of the IMT.” But it was the Soviet Union that immediately recognized the uniquely criminal aspects of the German war of annihilation and insistently called for such a tribunal. Many of the voluminous eyewitness protocols that were compiled by the Extraordinary Commission would be admitted as evidence without further corroboration both at the IMT and at other war crimes trials. The countless official military documents, reports and orders, as well as the interrogation records of captured German POW’s and the official court records of war crimes trials held in the USSR prior to the Nuremberg trials were also accepted as evidence.

The nature of Nazi warfare on the Eastern front had been criminal from the outset. The Soviets had been subjected to inhuman and barbaric acts which the regime went to great lengths to chronicle. The murder of millions of prisoners of war in violation of international law, the wholesale slaughter of Jews and the deaths of millions of other civilians from famine and deprivation during the occupation, the plundering of Soviet resources as well as the still untold story of the suffering of millions more Soviet citizens abducted for forced labor in Germany were all monstrous crimes. These were all meticulously documented by the Soviets in an enormous effort, which was in marked contrast to the efforts undertaken by the United Nations War Crimes Commission. According to Telford Taylor, the Chief US prosecutor at Nuremberg, the commission “had no investigatory staff or, for that matter, adequate staff for any substantial undertaking.”

National histories generally tend to highlight the positive contributions of their subjects and it should come as no surprise that American narratives emphasize the leading role played by the US in bringing the Nazis to account for their heinous crimes. But it was the Soviet leadership that had consistently called for an international criminal trial with the Nazi ringleaders in the dock for criminal conspiracy to commit aggressive war. As Hirsch correctly asserts “there is compelling evidence that the Soviet Union made significant contributions to the legal framework of the IMT.”

The legal principles posited by Aron Trainin were in fact adumbrations of those which would undergird the entire IMT framework. Although he ended his career as head of the Department of Criminal Law at Moscow State University and served as editor of one the most prestigious

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61 Hirsch, Soviets at Nuremberg, 702.
62 For a complete discussion of the Soviet’s impressive effort at the compilation of evidence see Marina Sorokina, “People and Procedures: Toward a History of the Investigation of Nazi Crimes in the USSR,” Kritika: Explorations in Russian and Eurasian History 6, no. 4 (2005), 797-831.
63 Taylor, Nuremberg Trials, 27.
64 Hirsch, Soviets at Nuremberg, 703.
Soviet legal journals, *Sovetskoe Gosudarstvo i Pravo* (Soviet State and Law), his contributions to the jurisprudence employed at the IMT were in fact downplayed even in Russia for a time as, according to one biographer, he “became a victim of the so-called ‘struggle with cosmopolitanism.’” With Stalin’s campaign against “rootless cosmopolitanism” in full swing, the Jewish Trainin was removed from his position as head of the Department of Criminal Law at Moscow State University, although this was “ostensibly due to his [poor] health.”

He has since been the subject of well-deserved and laudatory biographical sketches in several Soviet and post-Soviet works. Not surprisingly, however, while Russian scholars and school children alike are made aware of the strenuous efforts made by the Soviet Union to see that justice was done for the victims of Nazi aggression, the important role played by Aron Trainin is less well known. In the West his seminal achievements were almost completely unnoticed until the works authored by Ginsburgs and Hirsch saw the light of day. The “master narrative” in the West posits that it was an American project to bring the Nazi leadership to justice. The most notable proponents of this viewpoint include Bradley Smith, who asserts that the “Nuremberg trial system was primarily developed in late 1944 and early 1945, almost exclusively by a group of American officials,” and David Luban who avers that Nuremberg “was the brainchild of the Americans, who urged it upon their more or less unwilling allies.” These asseverations have been proven demonstrably incorrect by both Hirsch and Kirsten Sellers.

Of course, we cannot know for certain that Murray Bernays was wholly indebted to Trainin’s idea; however, it was, in fact, the Soviets that had most consistently called for an international tribunal and they had also provided much of the necessary evidentiary documentation. And it was Aron Trainin who had elucidated the legal principles that would constitute the framework of the International Military Tribunal by calling for the prosecution of the entire top Nazi leadership as well as its financial and industrial minions for complicity in launching an aggressive, criminal war. But his important contributions to international jurisprudence did not stop there. Always an active and engaged participant in international legal conferences and other fora, he was heavily involved in the negotiations over the parameters of the legal definition of Genocide. Again, in the West the persistent and laudable campaign of Raphaël Lemkin (who, of course, coined the word genocide) to codify its definition and have its prohibition enshrined in international law is well known whereas Trainin’s (and Vyshinskii’s) important contributions towards these efforts are virtually ignored. The final product of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide was in fact largely a compromise based on the strictures raised by these Soviet jurists.

In 1948, Trainin penned an article in the journal he edited, *Sovetskoe gosudarstvo i pravo*, entitled “*Bor’ba s genotsidom kak mezhdunarodnym prestupleniem*” (The Struggle against Genocide as an International Crime). In this article he noted that it was indeed a unique kind of crime, different from any other, since it had as its aim the destruction of a whole group of people. Foreshadowing the definitional debates that have embroiled the field of Genocide Studies ever since its inception, Trainin differentiated between three forms of genocide. Physical genocide – the “direct physical extermination of people belonging to a certain race or nation;” Biological genocide – the “prevention of childbirth, sterilization, prohibition of marriage with the complete separation of sexes, forced abortions, etc.;” and “National and Cultural genocide aimed at destroying the national culture of persecuted peoples, its achievements and heritage.” Another important post-war work was his *Zaschita mira i bor’ba s prestupleniyami protiv chelovechestva* (Defense of Peace and the Fight against Crimes against Humanity). Published in 1956, it reflected the culmination of a lifetime thinking about the role of law in ordering human society. Trainin believed that the idea of “crimes against mankind” included “the whole range of criminal acts which threaten the peace and security

65 Bogush, A.N. Trainin, 173.
66 Ibid.
of nations.” Regardless of the fact that he worked for one of the worst mass murderers in history, Trainin’s life’s work was in defense of peace and he helped to assure some measure of justice for the victims of the Nazi tyranny. Thus, Aron Trainin’s contributions to international jurisprudence ought to be more widely known and recognized.

**Bibliography**


*Nota Narodnogo Komissara Inostrannykh Del Tov. V. M. Molotova O Chudovishchnyakh Zlodieniakh Zverstvakh i Nasiliakh Germanskikh Vlastei v Okkipirovannykh Sovetskih Raionakh i ob Otvetstvennosti Germanskikh Vlastei Za Eti Prestupleniia (People’s Commissar of Foreign Affairs Comrade V. M. Molotov’s Note Concerning the Monstrous Deeds, Atrocities and Acts of Violence of the German State in the Occupied Soviet Regions and About the Responsibility of the German State For These Crimes).* April 27, 1942. United States Holocaust Memorial Museum, RG-22.009.01.06.


Sellars, Kirsten. *Crimes Against Peace and International Law*. Cambridge, UK: Cambridge University Press, 2013. [https://doi.org/10.1017/CBO9781139236980](https://doi.org/10.1017/CBO9781139236980)


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70 Ibid.
Vneshnaiia politika Sovetskogo Soiuza v period otechestvennoi voiny. Moscow, 1946.
Popular understanding associates genocide with mass murder and connects it to the Holocaust, specifically the mass murder of Jews during the Second World War. As Martin Shaw states: “Just as Nazi anti-Jewish policy has been over-interpreted in terms of its final, exterminatory, phase, so genocide generally has been narrowed to extermination.” Lemkin, however, defined genocide much more broadly. In Axis Rule in Occupied Europe, he argued that the Nazi occupation destroyed practically all subjected national or ethnic groups by attacking their culture, impoverishing them, and lowering their birthrate, with physical destruction being only one possible course of action. The mass murder of the Jews plays a surprisingly small role in Axis Rule. Lemkin did mention violence against Jews, specifically in Poland, and he provided bits of information throughout the book indicating that he was aware of the murderous Nazi policies against Jews, but he devoted little analysis to the Europe-wide deportation and killing program. The breadth and complexity of Lemkin’s definition has confused historians and international lawyers and provoked the criticism that it is either too broad or too narrow. Raffael Scheck, in a double biography of Lemkin and Jan Karski, the Polish resister who testified to western governments about the mass murder of the Jews, French historian Annette Becker stresses Lemkin’s role in alerting a incredulous western public to Nazi atrocities.

Recent research has helped to clarify the sources of Lemkin’s thinking and the development of the genocide concept. A new biography by Douglas Irvin-Erickson traces the influence of the national cultural autonomy thinking of Austrian Marxist thinkers Otto Bauer and Karl Renner on Lemkin and shows that Lemkin’s concept of the nation as a “community of character” and “family of mind” was more flexible than had been assumed. Martin Shaw provides a cogent explanation for the confusion regarding the definition of genocide, showing that Lemkin’s original broader definition experienced a severe narrowing in the United Nations Genocide Convention (1948), which prompted many well-meaning but often confusing efforts by scholars to remedy the shortcomings of this definition. Anton Weiss-Wendt highlights the Soviet Union’s role in narrowing the definition of genocide during the negotiations, while also giving due attention to the motives of other states such as a United States still practicing segregation and a Britain still committed to its colonial empire. In a double biography of Lemkin and Jan Karski, the Polish resister who testified to western governments about the mass murder of the Jews, French historian Annette Becker stresses Lemkin’s role in alerting an incredulous western public to Nazi atrocities,

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5 Shaw, What is Genocide?, viii, 2-5, 8, and 13.

trying to overcome defensive reactions formed in response to the excesses of anti-German atrocity propaganda from the Great War.7

This article takes a fresh look at the creation of the term genocide. My basic point is that we need to keep in mind that Lemkin derived the concept from an analysis of a wide variety of Axis, especially German, occupation regimes.8 I argue that the development of the concept (probably between December 1942 and November 1943) was shaped by three factors. First, Lemkin shared a peculiar understanding of the Nazi regime’s motives in the Second World War, namely the idea that Hitler, by waging a war on foreign peoples rather than states, was cynically calculating that even a militarily defeated Germany would dominate an impoverished and decimated Europe after the war. German aggression was therefore for Lemkin not simply a war of conquest but more precisely an attempt to carry out a demographic revolution for which a German military victory was not absolutely necessary.9 Second, Lemkin’s thinking was influenced by the U.S. government agency for which he worked at the time, the Board of Economic Warfare (BEW), which was later integrated into the Foreign Economic Administration (FEA). This agency offered him great insights into the economic exploitation of occupied areas with an eye to future restitution efforts, but it did not focus on German atrocities. Third, Lemkin always remained focused on law, not policy. Resting his case on legal documents offered two advantages to him: it proved to a doubtful American public that Nazi cruelty and injustices were not war propaganda, and it provided the basis for the section of the book concerned with “Proposals for Redress,” the last part of the subtitle. By identifying German violations of the international law on occupations, mostly of the Hague Regulations (1907), Lemkin could make a case for the introduction of new international laws on genocide and on military occupations. On the other hand, the book’s legal focus obscured the most atrocious Nazi crimes, which rarely proceeded according to published laws and decrees.

All of these factors colluded to create a very broad definition of genocide that contributed great insights on the exploitation and repression of Axis-occupied Europe but did not highlight the most atrocious Nazi policies and left confusion as to the general application of the new concept. When Lemkin distributed the book to U.N. delegations in his campaign for an international law banning genocide, some countries, for example the Soviet Union, therefore found it easy to interpret the U.N. Genocide Convention primarily as a law against a future Nazi movement.10

The Concept of Genocide in Axis Rule
It is important to keep in mind that the three parts of the book came into being in reverse chronological order. The oldest and by far largest component is Part III, which consists of translated laws and decrees from Axis-occupied Europe. Lemkin had begun to collect these documents during his appointment at the University of Stockholm, where he had found refuge in early 1940 following the German and Soviet conquest of Poland. When Lemkin received an invitation to teach at Duke University and a visa to the United States, he packed this collection into a suitcase and brought it with him in April 1941.11 His host at Duke, Professor Malcolm McDermott, took

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One would have to clarify, however, that Lemkin was a “messenger of disaster” in the sense that the disaster he communicated was the Axis occupation of Europe, not specifically the Holocaust. In his address to the North Carolina Bar Association in May 1942, for example, he focused on German manipulations of the courts in Poland and some other occupied countries. He did not mention the Jews at all: Raphaël Lemkin, “Law and Lawyers in the European Subjugated Countries,” in Proceedings of the Forty-Fourth Annual Session of the North Carolina Bar Association, ed. Allston Stubbs, 107-116 (Durham: Christian Printing, 1942).

8 Lemkin referred to Axis policies and duly analyzed Italian, Hungarian, Croatian, Slovak, Bulgarian, Romanian, and Vichy French laws and decrees, but he believed that these policies followed the “German pattern.” Lemkin, Axis Rule, 3-4 and, for an example, 188.

9 Most scholars have paid little attention to this fact. Irvin-Erickson mentions it but discusses it mostly in the context of Lemkin’s hopes to stop Nazi genocide during the war: Douglas Irvin-Erickson, Raphaël Lemkin and the Concept of Genocide (Philadelphia: University of Pennsylvania Press, 2017), 136. See also William Kory, An Epitaph for Raphaël Lemkin (New York: Jacob Blaustein Institute for the Advancement Human Rights of the American Jewish Committee, 2001), 16-17.

Lemkin to Washington D.C. and introduced him to John Vance, the law librarian of the Library of Congress, who helped him find more Axis orders and decrees.\textsuperscript{12} Through Vance, Lemkin also met Colonel Archibald King, who worked in the military government section of the War Department. King attended some of Lemkin’s classes at Duke and expressed interest in Lemkin’s document collection.\textsuperscript{13} Lemkin therefore translated his documents into English and used them as a loose-leaf collection entitled “Military Government in Europe” in his courses at Duke and also for a course at the War Department’s School of Military Government in Charlottesville, Virginia, in the summer of 1942. The collection, which is organized alphabetically by occupied country, includes no commentary and does not use the term genocide. Lemkin obviously understood it as a work in progress; the pages were numbered in a way that allowed for additional laws to be inserted. The collection includes some laws reprinted in Part III of \textit{Axis Rule}, but it is thinner than the material in Part III.\textsuperscript{14}

Thanks to his document collection, Lemkin came to the attention of U.S. Government officials. In June 1942, he was invited to work for the Board of Economic Warfare.\textsuperscript{15} While working at the BEW, Lemkin completed an expanded version of his collection under the title “Key Laws, Decrees, and Regulations Issued by the Axis in Europe” in December 1942. This version included brief introductions to the occupation regimes of specific countries that resemble the sections of Part II in \textit{Axis Rule}, where Lemkin surveys Axis laws and decrees in each occupied country. In the preface to this collection, Lemkin makes a distinction between countries where Germany tolerates some form of collaborating regime or administration (western and northern Europe), those countries where total subjugation is the aim (mostly Poland, the Soviet Union, and parts of Yugoslavia), and territories incorporated (illegally annexed) into the Reich, such as Alsace-Lorraine, Luxemburg, and western Poland. This collection contains more laws and decrees published in Part III of \textit{Axis Rule} and outlines of the analysis presented in Part II, but it still omits some occupied countries and does not use the term genocide. Lemkin presented this manuscript to George Finch, the director of the Carnegie Endowment for International Peace, who agreed to publish it.\textsuperscript{16} Finch therefore committed himself to publishing foremost an analysis and documentation of Axis occupation regimes, which may explain why he did not mention the term genocide in his foreword to \textit{Axis Rule}, dated August 18, 1944.\textsuperscript{17}

In the following eleven months, Lemkin finalized the manuscript for \textit{Axis Rule}. He signed the preface on November 15, 1943, and it appears that the manuscript was complete by that date (although Lemkin inserted some new information later on). Yet, disputes between Lemkin and his publisher delayed the publication of the book, so that it only came out a year later.\textsuperscript{18} To the manuscript he had compiled in December 1942, Lemkin added sections on Greece (he received detailed information on Greece only in the course of 1943 while working for the BEW), and he expanded the section on Yugoslavia, which had previously focused only on Serbia. Given that Greece and Yugoslavia were also subjected to non-German occupation regimes, Lemkin elaborated on Italian, Bulgarian, and Hungarian occupation practices, and he presented new material on the Romanian occupation of Soviet territory. He also expanded the legal discussion of the occupation


\textsuperscript{12} Lemkin, \textit{Totally Unofficial}, 106-108.

\textsuperscript{13} Ibid., 108-109.


\textsuperscript{15} Lemkin, \textit{Totally Unofficial}, 112.

\textsuperscript{16} Lemkin, \textit{Totally Unofficial}, 116. The loose-leaf collection is available in a few libraries (including the law library of the University of North Carolina) and in several record groups at the National Archives.

\textsuperscript{17} George A. Finch, \textit{Forward to Lemkin, Axis Rule}, vii-viii.

\textsuperscript{18} Irvin-Erickson, \textit{Lemkin}, 81. The latest reference I found in the book refers to the first trials against German war criminals in the Soviet Union in December 1943: Lemkin, \textit{Axis Rule}, 237.
regimes in Part II. The most important addition was Part I, the shortest section of the book. It focuses on German administration techniques and is organized by subject, not country. It synthesizes the occupation practices described in Part II and documented in Part III, although it also introduces some generic remarks about law in Nazi Germany and about measures applying to all occupied countries. The chapters of Part I cover topics such as administration, police, law, courts, property, finance, labor, and the legal status of the Jews. They draw from information Lemkin had compiled for the BEW. Chapter 9 of Part I works like a synthesis of the previous chapters and is entitled “Genocide;” it surveys eight different techniques of genocide and articulates recommendations for the future. This chapter comprises only 16 pages, but it is the most widely read – together with Lemkin’s Preface (7 pages), which introduces the term genocide.

The genocide chapter highlights Lemkin’s inclusive understanding of the term because it subsumes all of the acts surveyed in the preceding chapters under eight genocidal policies, ranging from political to social, cultural, economic, biological, physical, religious, and moral. Lemkin also frequently uses the terms “genocide” or “genocidal” in the second and third parts of the book, but only very rarely in connection to mass killings. For example, a section entitled “Genocide and Resistance” in Part II describes German censorship and anti-Czech cultural policies in the Protectorate of Bohemia and Moravia. The chapter on Greece states, “a real genocide policy was applied to the Greeks in the Aegean region” by the Bulgarian occupiers and explains: “Greek churches and schools were closed and the Bulgarian language was made the official language. These measures aimed at changes in the composition of the population in accordance with the German pattern.” The sections on Norway highlight laws giving German citizenship to the illegitimate children of German soldiers and Norwegian women. France is the focus of economic exploitation and Germanization policies in Alsace-Lorraine. Lemkin cites the anti-Jewish laws of the Vichy government and laws of the German Military Commander in France aiming to register and expropriate Jews.

In Part III, the collection of laws, Lemkin devotes four pages to a sub-chapter entitled “Genocide Legislation” in Luxemburg, listing various Germanization laws, ranging from compulsory name changes to the teaching of German in schools and decrees favoring the Lutheran church. By comparison, he devotes only three pages to genocide legislation in Poland (dealing only with certain privileges for ethnic Germans in the General Government) and none on the occupied Soviet territories. Lemkin often equates genocide with an assault on minority culture, as for example in the Croatian law banning the Cyrillic alphabet in Croatian-occupied Bosnia, the Magyarization policies in the Hungarian-occupied territories of Yugoslavia, and the German language policies in Alsace-Lorraine, Luxemburg, and the incorporated parts of Poland. Furthermore, he highlights examples of forced population movements through economic pressure or deportation, as for example in the parts of Greece incorporated by Bulgaria and, again, the German-annexed parts of Poland.

Lemkin includes all of these policies on the spectrum of genocide. His definition incorporates a range of policies from relatively harmless measures such as the inclusion of foreigners with German heritage into the German racial community to the physical destruction of unwanted populations, particularly Jews. Within this spectrum, genocide applies to the repression of the culture and language of occupied peoples and the imposition of the occupier’s culture and language.

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19 See, in particular, Raphäel Lemkin, “Civil Affairs Guides,” on the Nazi party, the courts, the police, and the SS, National Archives and Records Administration (hereafter NARA), RG 153 Judge Advocate General, Office of Economic Warfare, Boxes 2 and 5, L-99.

20 Ibid., 440-443, 552-555.

21 Mark Mazower argues that Lemkin remained wedded to the old principle of minority rights embedded in the Paris peace treaties of 1919 that meant foremost to protect the language and culture of minorities in the new multi-ethnic states of eastern central Europe. Mazower argues that Lemkin wanted to create an improved version of these treaties in the form of the UN Genocide Convention. The cited passages confirm this impression: Mark Mazower, No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations (Princeton: Princeton University Press, 2009), 129-130.

(a phenomenon later called “cultural genocide”\textsuperscript{24}); economic exploitation; forced labor; and the deportation of native populations and the encouragement of settlement in the newly occupied areas by members of the dominant nation (something we would call “ethnic cleansing” today and that Lemkin sometimes called “colonization” in \textit{Axis Rule}). Lemkin advocated a holistic view of genocide even though he soon recognized that his eight categories were too complicated and partly redundant, so that he reduced them to only three: physical, cultural, and biological.\textsuperscript{25} There is another factor, however, that holds together the eight genocidal policies: Lemkin’s view of Nazi goals in World War II.

### Genocide as Demographic Revolution Regardless of Military Outcome

For Lemkin, all genocidal policies he outlined emanated from an overarching German intention to massively change the demographic balance of Europe. He argued that all these policies were part of a cynical scheme by the Nazi regime to ensure that Germany would win the war demographically even if it lost militarily. As he writes in the preface to \textit{Axis Rule}:

> The picture of coordinated German techniques of occupation must lead to the conclusion that the German occupant has embarked upon a gigantic scheme to change, in favor of Germany, the balance of biological forces between it and the captive nations for many years to come. The objective of this scheme is to destroy or to cripple the subjugated peoples in their development so that, even in the case of Germany’s military defeat, it will be in a position to deal with other European nations from the vantage point of numerical, physical, and economic superiority. Despite the bombings of Germany, this German superiority will be fully evident after hostilities have ceased and for many years to follow, when, due to the present disastrous state of nourishment and health in the occupied countries, we shall see in such countries a stunted post-war generation, survivors of the ill-fed children of these war years.\textsuperscript{26}

Lemkin returns to the same idea in the chapter on genocide, claiming that the Nazi scheme was devised before the start of the war: “Thus the German people in the post-war period will be in a position to deal with other European peoples from the vantage point of biological superiority. […] In this respect genocide is a new technique of occupation aimed at winning the peace even though the war itself is lost.”\textsuperscript{27} One may assume that the actual course of the war, especially the dogged and very costly resistance of the German armed forces in the last months of the conflict, induced Lemkin to revise this idea of a demographic revolution as the ultimate Nazi war aim regardless of the military outcome. Yet, he repeated this notion in various papers and articles after the war.\textsuperscript{28}

The origins of this notion are hard to trace. If one can believe Lemkin’s autobiography, he mentioned it already in the spring of 1941 to Colonel Archibald King. After a discussion of German violations of the Hague Regulations, Lemkin explained:

\textsuperscript{24} Although “cultural genocide” corresponded quite well to Lemkin’s definition of cultural, moral, and religious genocide, he initially opposed using the term because he saw it as a plot of his enemies to squeeze out the destruction of cultures from the planned U.N. Genocide Convention and to reduce genocide to mass killing. That is more or less what ultimately happened, much to the chagrin of Lemkin: Irvin-Erickson, \textit{Lemkin}, 176 and 182-189.


\textsuperscript{26} Lemkin, \textit{Axis Rule}, xi.

\textsuperscript{27} Ibid., 81.

Hitler intends to change the whole population structure in Europe for a thousand years – which means virtually forever. Certain races or nations will disappear completely or be crippled indefinitely. Even in the case of German defeat, the Germans have it planned that these remaining nations will have to lean on Germany to stay alive. The Germans are trying to defeat and destroy not governments, but peoples.29

The reference to Hitler’s intention is based on a passage in the book Gespräche mit Hitler by former Danzig Senate President Hermann Rauschning, published in Zürich in 1940. In Axis Rule, Lemkin cites the English translation that appeared in New York the same year. The relevant passage reflects a statement by Hitler: “We shall have to develop a technique of depopulation. If you ask me what I mean by depopulation, I mean the removal of entire racial units.” Further down, Hitler allegedly explains that he would seek to decrease the high birth rate of Slavic populations through unbloody methods such as prolonged separation of men and women. Lemkin did not know this, but Rauschning is now considered a dubious source who exaggerated his closeness to Hitler and reported many expressions by Hitler as verbatim that he likely did not hear in personal conversation with him.30

The notion that Nazi occupation meant a deadly chokehold on European countries, and that Nazi Germany was using occupations to carry out a demographic revolution, was present in American public discourse during the war. For example, a New York Times article from March 10, 1942, entitled “Death under the New Order,” spells out some ideas that shape Axis Rule. Focusing on the civilian deaths resulting from the war, the article draws attention to the demographic loss created by the separation of men and women from occupied countries, implying what Lemkin would later call biological and economic genocide: “Hitler is just as surely murdering the French when he keeps more than 1,500,000 war prisoners away from their families as he is when he shoots hostages or takes milk and eggs away from children.” The article further observes: “‘Life-room’ [Lebensraum] for these Nazi gorillas means death-room for other people. Murder by starvation, by overwork, by deprivation of medical care, by systematic abuse would make a Nazi peace as destructive as a Nazi war – even more destructive, because the Nazis could then proceed without interruption.” After alluding to similar policies by Japan, the article concludes: “The Axis system may be precisely defined as a system of death.”31 The article also reflects the widespread notion in America that Jews were just one of many persecuted groups, an opinion that failed to grasp the viciousness and particularity of Nazi policies against the Jews.32

The idea that Nazi Germany would win the peace through a demographic victory regardless of the military outcome rests on two related implications that Lemkin never spelled out. First, it only made sense if German losses remained low in comparison to the losses inflicted by Germany on its enemies and on civilians in the occupied countries. Second, the defeat of Germany and the transition to peace would have to come in a relatively smooth manner that would not lead to the destruction of the German nation by the victorious Allies. In Axis Rule and in other wartime documents, Lemkin cites no numbers of German deaths and does not reveal how he expects the war to end. It was known that German losses had been relatively low before the attack on the Soviet Union, but they massively increased thereafter.33 In the American press, exaggerated Soviet figures

29 Lemkin, Totally Unofficial, 109. He wrote a very similar passage in his handwritten draft for the autobiography: New York Public Library, Manuscripts and Archives Division, Microfilm, Reel 2, Notebooks, 24a and 25.
31 “Death under the New Order,” New York Times (1923-Current file), March 10, 1942,18. My student Huan Bui brought this article to my attention.
of German deaths stood next to excessively low German estimates. Lemkin clearly did not foresee the extremely bloody last phase of the war, nor did he anticipate the large wave of retaliatory violence against German civilians and POWs in Soviet hands before and after the German surrender, which increased the German death toll. Even though more than half of the German losses occurred after Lemkin had completed the book manuscript (from mid-July 1944 to May 1945), it is surprising that he did not expect a bloodier end to the war. Lemkin professed to have read Mein Kampf and therefore knew about the fanaticism and Social Darwinism inherent in Hitler’s ideology, although his reading of Rauschning suggests that he might also have been influenced by a more nihilistic and opportunistic view of Hitler. As Dan Stone explains, Lemkin understood Hitler’s fanaticism but at the same time tended to see Hitler’s ideology, like Rauschning, as a way to a means, the forging of national unity, not as an end in itself.

Many German policies, in particular the Germanization measures, would certainly not have survived a German defeat. The forced resettlement policies could be (and were) turned back, and even during the war it proved difficult to motivate ethnic Germans to settle in the areas of Poland and Slovenia they were supposed to colonize. Yet, the notion that Nazi Germany was waging a demographic war regardless of the outcome of the military conflict explains why policies such as the granting of German citizenship to Norwegian babies or the ridiculous Germanization of names in Luxemburg occupy so much room in Axis Rule.

Lemkin’s Work in the Board of Economic Warfare

A second factor influencing the development of the concept “genocide” was Lemkin’s every-day work on the BEW. Nobody has analyzed yet what exactly Lemkin did inside the BEW and how his work may have influenced his understanding of Nazi occupation policies and genocide. The BEW, formed in April 1942 out of the Economic Defense Board, focused on import and export controls, aiming to maximize the allocation of resources for the U.S. and its allies while trying to prevent the Axis powers from acquiring resources in neutral countries. The young Arthur Schlesinger Jr., later an eminent historian, considered applying for a position on the BEW, whose work he believed to be attractive and exciting: “People were rushing around doing things – imposing blockades, buying up scarce raw metals, blacklisting Axis-controlled firms, plotting to deny the enemy strategic materials.” But other observers and historians have characterized the BEW as a toothless outgrowth of President Roosevelt’s misguided desire to create new war agencies with overlapping competencies. For political scientist Donald G. Stevens, the BEW was largely an attempt by its...
chairman, Vice President Henry A. Wallace, to create a stronger power base for the vice presidency. Embattled by competing agencies and conservative Congressmen who suspected Wallace of trying to project New Deal policies onto the global sphere, the BEW was dissolved in June 1943 by an executive order from Roosevelt.41 Its personnel and functions migrated to the Office of Economic Warfare, which was itself integrated into the Foreign Economic Administration (FEA) in September 1943.42

Given the institutional instability of the BEW and its successors, it is difficult to find Lemkin’s traces in these agencies despite a remarkable continuity of personnel.43 The archival documentation suggests that he occupied a rather low rung in the hierarchy of this agency. The BEW contained six principal offices, some of which were divided into so-called branches. The eleven branches were themselves sub-divided into divisions. Lemkin worked first in the British Empire division (until 9 December 1942) and then in the “Reoccupation Division” (sometimes listed as “Reoccupation and Reconstruction Division”) of the “Blockade and Supply” branch, which itself belonged to the “Office of Economic Warfare Analysis.” He did not head the “Reoccupation Division,” nor was he present at the top-level meetings of the BEW.45 Lemkin was hired as a per diem “chief consultant” with a pay of $18.05 per day (approximately $285 in 2018 value) not to exceed 180 days per year.46 In describing his work, a personnel manager at the BEW stated:

Dr. Lemkin is engaged in preparing an annotated collection of key laws (in translation) issued by the Axis in German-Occupied Europe. This collection... is essential for determination of laws to be cancelled or reviewed prior to Allied occupation. Dr. Lemkin, who is an outstanding international lawyer, is engaged in analysis of these laws and in recommending policy to be adopted with regard to them... His extensive knowledge of Europe and his very specialized knowledge of the problems of military government – he is a recognized authority on this subject – make him essential to the work of the Reoccupation and Reconstruction Division of the Board of Economic Warfare.47


47 Helton, Preliminary Inventory, 39. A complicating factor is that the National Archives integrated some of the BEW’s papers into other collections, such as the War Department and the OSS files. A folder entitled “Dr. Raphaël Lemkin’s Material” exists in the Records of the Office of the Judge Advocate General (Navy) RG 125, General Records, 1945-1949, Entry A1-13. NAID 16465283. It contains a memo by Lemkin from early 1946 in which he argues that the geopolitical ideas of Karl Haushofer formed the foundation of both Nazi and Japanese aggression and that Haushofer should therefore be tried in Tokyo. Although Lemkin’s superiors liked the idea, nothing came of it because Haushofer committed suicide in March 1946. Aside from the memo, the folder includes materials on the Riom Trials in Vichy France (1942), some materials on Japanese suspected war criminals, and a Civil Affairs Guide to Germany – all without listing Lemkin as the author.

48 “Recommendation to the Personnel Officer,” December 9, 1942, Raphaël Lemkin, personnel files of the BEW, National Personnel Records Center. Why Lemkin was assigned to the British Empire Division in the first months is totally unclear. He had no expertise on the British Empire and seems to have worked on his document collection and on guidebooks from the start.

49 Helton, Preliminary Inventory, vi and 52.

50 “Recommendation to the Personnel Officer,” December 9, 1942, and “Investigation A,” November 17, 1942, Raphaël Lemkin, personnel files of the BEW, National Personnel Records Center. For conversion of 1940s dollars to present value, see Scott Derks, The Value of A Dollar: Prices and Incomes in the United States from 1860 to 2009 (Armenia: Grey House Publishers, 2009), xix

51 “Request for Occupational Deferment,” late 1942/early 1943, Raphaël Lemkin, personnel files of the BEW, National Personnel Records Center. The request mentions a guidebook on France that Lemkin had just completed. There is a guidebook on occupied France dated March 31, 1944, in the files (NARA, RG 153, Judge Advocate General, Office of Economic Warfare, Box 5 L-99). However, the letter still refers to the BEW, indicating that it must have been written...
In the “Reoccupation Division,” which was renamed “Economic Institutions Staff” in 1944, Lemkin worked on questions of government, administration, economics, and law in Nazi Europe, with special attention to the occupied countries. His boss, Allen R. Rosenberg, requested reports on special themes every Monday (by noon), and these reports likely provided the information for guidebooks on Nazi-occupied Europe that the “Reoccupation Division” produced and updated every couple of months. The guidebooks then were sent to the military and to other agencies interested in the occupied or liberated territories.48 The archives of the “Reoccupation Division” contain studies on specific occupied countries, the so-called “Civil Affairs Guides,” as well as studies on generic aspects of the Axis-occupied areas. Most of the “Civil Affairs Guides” and thematic studies refer to laws and decrees that Lemkin had collected and that he published in Axis Rule. One guidebook, for example, analyzes the way in which the German police and the SS expanded their administrative power beyond the Reich and helped to control and exploit occupied Europe. This text mirrors the chapter on the German police and SS in Axis Rule.49 The guidebooks are all rigorously crafted and reflect great legal and economic expertise. Although they do not list an author, Lemkin’s authorship is extremely likely because the note from the personnel manager cited above mentions that he was charged with producing informational manuals on occupied Europe and because the guidebooks clearly draw from his source material and reflect his interpretations of German policies without, however, using the term genocide.50

The work of the Reoccupation Division had implications for other government services. As the Allied forces began to liberate occupied areas, the information on Nazi laws and exploitation mechanisms gathered by the Reoccupation Division became relevant for post-liberation administrations and for the restitution of robbed property, a major concern of the BEW/FEA and also of Axis Rule.51 The Reoccupation Division therefore cooperated with the Office of Strategic Services (OSS) and with the military agencies concerned with administering and reconstructing the former occupied territories.52 Lemkin’s work was also relevant for the agencies concerned with future war crimes trials because his documentation provided material for postwar trials and restitution arrangements. His collection of Axis laws and decrees from December 1942 wandered into the archives of the Judge Advocate General, the War Department, and the FEA. Lemkin produced a supplementary volume on Greece in June 1943, which he also integrated into Axis Rule.53

It was therefore not the case, as one of his biographers has suggested, that Lemkin turned to Axis Rule in the evenings after coming home from the office: Lemkin’s daily work consisted precisely of the study of Nazi occupation policies.54 His role as counselor in the BEW focused on legal and economic matters and appealed to two areas in which Lemkin was already an internationally recognized expert before the war: constitutional law and currency exchange. Lemkin had participated in the drafting of the Polish penal law code in the 1920s, and he had written book-
length analyses on the legal system of Fascist Italy and of the Soviet Union. As a financial expert, he had published a book in French and one in Swedish on currency exchange before traveling to America.\textsuperscript{59} Clearly, this knowledge helped him for example to explain how German currency policies in occupied France were draining the local economy, a phenomenon he also characterized as genocide.\textsuperscript{60} But while Lemkin was analyzing the myriad ways in which German policies helped to exploit occupied territories and violated the Hague Regulations, his work at the BEW only rarely touched on the mass deportations of Jews and the fate of the deported after arrival.

What did Lemkin know about the Europe-wide deportation and mass murder of the Jews? In \textit{Axis Rule}, he highlights the expropriation of Jews, which was more visible in decrees than the mass murder.\textsuperscript{57} Yet he clearly was aware of the Nazis’ murderous policies. For example, he points out starvation rations in the Polish ghettos and occasional massacres, and he mentions a Gestapo chief who “organized the liquidation of the ghettos in Polish towns, with the physical annihilation of half a million inhabitants of the Warsaw ghetto.” He mentions murder of Jews with the help of gas chambers, electrocution, and “death in the so-called death trains by the action of quick-lime.”\textsuperscript{58} He also refers to the deportation of Jews from France, Belgium, the Netherlands, and Norway to Poland, where they were treated in the same way as Polish Jews. In a footnote, he even acknowledges the escape of approximately one thousand Jews from Denmark to Sweden in August 1943.\textsuperscript{59} In the genocide chapter, he correctly sums up Hitler’s intentions (although not the fact that they had been largely realized): “Some groups – such as the Jews – have to be destroyed completely.”\textsuperscript{60} Lemkin’s information on these facts came predominantly from publications of the Polish government-in-exile in London, especially the periodical Polish Fortnightly Review. The Civil Affairs Guides Lemkin created for the BEW feature similar information. For example, the Civil Affairs Guide on Poland from November 11, 1943, mentions the liquidation of the ghettos and claims that of 1.75 million Jews in the General Government of Poland, at most 300,000 are estimated to be alive.\textsuperscript{61}

Lemkin therefore had a fairly accurate picture of Nazi policies on Jews. Unlike many contemporary commentators in America, he understood that the Nazis targeted the Jews in far more extreme ways than others (therefore he devoted a separate chapter to Jews). But he did not highlight the systematic extermination policy against the Jews. His official focus on economic and legal matters, as required by his daily work for the BEW, influenced his way of presenting the mechanics of Nazi-occupied Europe. In \textit{Axis Rule}, he consistently clung to an economic and legal emphasis in elucidating Nazi policies, a tendency that obscured the focus on mass murder. The economic and legal focus of the BEW clearly colors the bulk of \textit{Axis Rule}.

The Emphasis on the Law

In the third part of my argument, I would like to examine Lemkin’s focus on law.\textsuperscript{62} We know that his analysis of Nazi-occupied Europe rested on a collection of legal documents from Nazi Europe. These laws and decrees were issued mostly by German military commanders, governors, and civilian administrators in the occupied territories during the first months of the occupation. Using this collection for an analysis of Nazi-occupied Europe, as Lemkin did, involves two risks.


\textsuperscript{60} Lemkin, \textit{Axis Rule}, 50-66 and 176. See also Irvin-Erickson, \textit{Raphaël Lemkin and the Concept of Genocide}, 76 and 106-108.

\textsuperscript{61} Lemkin, \textit{Axis Rule}, 75-76.

\textsuperscript{58} Ibid., 22. For background on the (false) news of killing Jews with quick-lime, conveyed by Polish resister Jan Karski, see Becker, \textit{Messagers du désastre}, 85-86.

\textsuperscript{56} Lemkin, \textit{Axis Rule}, 75, including note 3.

\textsuperscript{62} Ibid., 81.

\textsuperscript{60} OSS, Research and Analysis Branch: “German Military Government Over Europe 1939-1943. Methods and Organization of Nazi Controls. General Government (Poland),” November 11, 1943, NARA, Judge Advocate General Law Library, 1944-1949, Entry 135, Box 5, 20-22. Lemkin cited the Polish Fortnightly Review in this guide, and he drew from a broad source base of German-language newspapers, including the Neue Zürcher Zeitung.

\textsuperscript{63} Dan Stone has stressed Lemkin’s focus on the law: Stone, \textit{Raphaël Lemkin on the Holocaust}, 541.
First, as every historian knows, normative texts may not be a good representation of actual practices. Although Lemkin did not write as a historian, he likely was aware of this pitfall because he had himself criticized a 1935 Nazi law on analogy – a law that stipulated that a person could be punished for an act that was not itself illegal but resembled an existing crime.\(^{63}\) Although Lemkin did not cite the book of German émigré Ernst Fraenkel, who defined the Nazi state as a “dual state” with a more traditional normative branch and an arbitrary prerogative branch,\(^{64}\) he knew that Nazi policies could go beyond stated legal practices. He devoted a special section in *Axis Rule* to the arbitrary terror of the SS and Gestapo in occupied countries.\(^{65}\)

Second, the bulk of the orders come from the first two years of the war and, generally, the beginning of the occupation regimes (for example most decrees for Yugoslavia date from the first three months of the occupation, April to July 1941\(^{66}\)). Although *Axis Rule* refers to events as late as December 1943, it contains very few orders and decrees issued later than the first trimester of 1942. These orders do not reflect the harsher practices of the later occupation years, when resistance activities and German need for manpower and raw materials had sharply increased. The survey in the magisterial *Germany and the Second World War*, edited by the German Military Research Institute, therefore devotes separate sections to the early and the late periods of occupation, 1939-1941 and 1942-1944/45, respectively.\(^{67}\)

Lemkin’s reliance on laws and decrees was likely reinforced by the difficulties he experienced in convincing his audiences and colleagues of German atrocities, as he suggests in the preface to *Axis Rule*.

For the outside world they [the laws and decrees] provide undeniable and objective evidence regarding the treatment of subjugated peoples of Europe by the Axis powers. The author feels that such evidence is especially necessary for the Anglo-Saxon reader, who, with his innate respect for human rights and human personality, may be inclined to believe that the Axis régime could not possibly be as cruel and ruthless as it has been hitherto described.\(^{68}\)

In his autobiography, Lemkin reports that his American audiences, to whom he revealed some of his ideas about Nazi practices, could not believe the ruthlessness of German occupation policies. He noted the same reaction inside the BEW; his colleagues did not outright deny the atrocities but doubted that the news would be believed and taken seriously. Some colleagues dismissively pointed to World War I atrocity propaganda. Although Lemkin received an audience with Vice President Wallace and talked to him again at a dinner party, he felt that he could not dent Wallace’s fundamental optimism about human nature that made it impossible for Wallace to understand Nazi cruelty.\(^{69}\)

Through a mediator, Lemkin even contacted Eleanor Roosevelt and received permission to submit a one-page memorandum to the President, in which he allegedly highlighted Nazi atrocities and encouraged Roosevelt to issue a stern warning to Hitler and to work for the adoption


\(^{66}\) Ibid., 569-635.


\(^{68}\) Lemkin, *Axis Rule*, ix.

\(^{69}\) Wallace’s diary reveals that he was meeting with many people working for the BEW in late 1942: Wallace, *Price of Vision*, diary entries of November 27 and December 3, 1942, 138 and 141. Lemkin, *Totally Unofficial*, 113-115. See also Sands, *East West Street*, 177-179.
of an international law against occupation crimes. But Lemkin claims to have received only a non-committal response, stating that Roosevelt was aware of the problems and that a warning would be forthcoming at the right time. In his autobiography, Lemkin points out that he therefore decided to bring the information he had to the American people by using his collection of Nazi laws and decrees for the occupied territories as incontrovertible evidence.70

Aside from proving genocidal occupation practices, Lemkin’s focus on the law also served his aim to improve international law. Axis Rule documents many violations of the Hague Regulations by Germany, and one of the two major proposals Lemkin made in the book is the creation of an international oversight mechanism similar to the Geneva Convention on Prisoners of War (1929).71 In analogy to the delegations from neutral countries visiting POW camps, Lemkin wanted neutral delegations to visit occupied areas and ensure a legal and humane treatment of their civilian populations. This proposal may sound promising, but Lemkin falsely implied that the POW regime in World War II was following international law – the Geneva Convention and, for those countries who had not ratified it, the Hague Regulations of 1907. He was oblivious to the atrocious treatment of Soviet POWs by Nazi Germany and never mentioned the harsh and illegal treatment of Polish POWs, which occurred despite the fact that Poland, unlike the Soviet Union, had ratified the Geneva Convention. While the Geneva Convention remained the basis for the German treatment of western POWs, Lemkin did not consider the many ways in which Nazi authorities stretched and abused some of its provisions.72

The demand for tighter legal provisions regarding occupations was related to Lemkin’s desire to see adoption of an international law against genocide in war and peace.73 He repeatedly pointed out that he had made a similar proposal without using the term genocide at the Fifth International Conference for the Unification of Penal Law in Madrid in October 1933. He had drafted a special report proposing the codification of two new crimes that he called “vandalism” and “barbarity” (originally in this order). Vandalism denoted the destruction of artworks and cultural institutions in peace and in war, and barbarity meant acts of aggression against a defenseless population, including massacres and pogroms, but also acts of humiliation and discrimination.74 Lemkin’s proposals included a clause on universal jurisdiction, the notion that perpetrators of these new crimes could be tried anywhere in the world and not just in the country where they had committed them, and he reminded readers in Axis Rule that the prosecution of Nazi war criminals would be much easier had his suggestions been adopted before the war.75

In a speech to the North Carolina Bar Association in May 1942, Lemkin even claimed that adoption of his Madrid proposals would have helped to prevent the war. He told his audience that he had read his proposals in Madrid and that the German delegation had left the room in protest.76 The minutes of the conference, however, do not list Lemkin, nor do they list a German delegation. In his autobiography, Lemkin admitted that he had not attended the conference, allegedly because he had received a phone call from the chairman of the Polish delegation who told him that the

70 Lemkin, Totally Unofficial, 115-116. I searched extensively in the FDR Library but could not find Lemkin’s memo. A later letter from Lemkin to Eleanor Roosevelt reveals that the mediator was Betty Hight, a friend of Eleanor Roosevelt who also worked for the BEW. Betty Hight seems to have communicated Roosevelt’s answer orally: Raphaël Lemkin, “Letter to Eleanor Roosevelt,” February 1, 1950, Raphaël Lemkin Papers, P-154, AJHS, Box 2, Folder 3. Betty Hight, as the letters to her family reveal, was a frequent dinner guest in the White House during the war, and the memo may have been discussed informally on one of these occasions. Betty Hight Papers, FDR Presidential Library.

71 Lemkin, Axis Rule, 94-95.


73 Lemkin, Axis Rule, 90-94.


76 Lemkin, Law and Lawyers in the European Subjugated Countries, 112.
Minister of Justice opposed Lemkin’s presence in Madrid. Lemkin hinted that an anti-Semitic paper had attacked his proposal as a selfish defense of the Jewish race and not as an initiative in the interest of the Polish state. Polish historian Ryszard Szawlowski casts doubt on this explanation and claims that there is no evidence for it in the archives of the Polish Foreign Ministry. In any case, Lemkin kept attending international law conferences after Madrid, although usually not as a member of the Polish delegation. For example, he presented a report on terrorism in Copenhagen in 1935 and a paper on the role of law in the protection of international peace in Paris in 1937, neither of which mentioned vandalism and barbarity. Lemkin’s idea to define vandalism and barbarity as new international crimes did not garner much attention at the time, and his thinking was still in flux. The breadth of policies that he defined as genocidal in Axis Rule indicates that genocide is more than just an amalgam of vandalism and barbarity. It is a matter of dispute whether Lemkin hoped that Axis Rule and an international law against genocide, adopted already during the war, would help to stop Nazi atrocities (my sense is that Lemkin may have shared this hope at some time but that it was not relevant any more when he finished the manuscript). But he certainly put high hopes in a postwar international treaty reviving his 1933 proposal, and Axis Rule was meant to be a legal resource informing negotiations to that end.

Conclusion

The breadth and complexity of Lemkin’s definition of “genocide” results from several influences during the time he developed the concept. One of them is a belief that Nazi Germany was engineering a demographic revolution that would leave Germany predominant in Europe regardless of the outcome of the military conflict. This notion facilitated the assumption of a coherent cynical motivation behind disparate policies, laws, and decrees. It ascribed a primarily demographic motivation to the exploitation of foreign labor, for example, while downplaying the need for labor in order to win the war. This notion also assumed that the cultural policies and population exchanges initiated by the Nazi regime would somehow survive the end of the war even if Germany lost and that the defeat of Nazi Germany would occur relatively smoothly and with little bloodshed for Germany. Second, Lemkin’s daily work at the BEW reinforced his focus on economic and legal matters and helps to explain why they occupy such a prominent place in Axis Rule. His job provided Lemkin with good access to information and encouraged a detailed analysis of Nazi occupation techniques, but it prioritized economic exploitation over atrocities, with a view to restitution after the liberation of the occupied territories. Third, Lemkin’s focus on the law and his belief in its curative effect, although already evident before the war, was reinforced by his

77 Lemkin, Totally Unofficial, 23. According to the minutes of the conference, the chairman of the Polish delegation was E.S. Rappaport, who had accompanied Lemkin to other international conferences. Szawlowski criticizes the representations of this story in the works of many western authors, defending the Polish government against anti-Semitic tendencies. He reveals that the anti-Semitic article appeared after the conference (and can therefore not have been a motive for preventing Lemkin’s attendance). Szawlowski, Lemkin’s Life Journey, 35. James Loeffler has demonstrated that Lemkin was an active and outspoken Zionist in the 1920s. Loeffler points out that Lemkin experienced an “immediate anti-Semitic backlash” to his ideas in Warsaw: James Loeffler, “Becoming Cleopatra: The Forgotten Zionism of Raphael Lemkin,” Journal of Genocide Research 19, no. 3 (2017), 340-60 (here 349).


79 It is a matter of debate whether genocide represents a radically new concept. Lemkin said in Axis Rule: “New conceptions require new terms.” (79). Yet, he also argued that genocide was an amalgam of barbarity and vandalism (91). For more specific information on this debate, see Irvin-Erickson, Lemkin, 82-84, and Anson Rabinbach, “The Challenge of the Unprecedented- Raphael Lemkin and the Concept of Genocide,” Simon Dubnow Institute Yearbook 4 (2005).

80 See Irvin-Erickson, Lemkin, who argues for this notion, whereas Korey argues against it in Korey, Short Titles, 17. In Totally Unofficial, Lemkin claimed that he hoped that an international treaty might still save at least “a part of the people,” but the date of this reflection is unclear, Raphaël Lemkin, Totally Unofficial: The Autobiography of Raphaël Lemkin, edited by Donna-Lee Frieze (New Haven and London: Yale University Press, 2013), 114. It likely was late 1942 – following Lemkin’s meetings with Wallace.
desire to prove German violations to a hesitant American public and by his hope to contribute to a
legal condemnation of genocide in all of its forms after the war. This focus favored Nazi violations
of international law that could be proven through legal texts and therefore encouraged a broad
definition of genocidal acts while obscuring the most heinous crimes.

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Introduction

Historians have documented well the contentious relationship between the normative architecture of international human rights and the politics of race in the postwar United States. The then-nascent anti-genocide norm, as articulated in the 1948 Genocide Convention, was an essential part of this historical drama. The American segregationist lobby, together with legal groups like the American Bar Association, played an important—perhaps the important—role in the US Senate’s initial failure to ratify the Convention in 1950. In 1951, after the ratification campaign concluded, a group of black activists coordinated by the left-wing Civil Rights Congress (CRC) petitioned the United Nations with evidence of a systematic campaign of genocidal violence by the US government against its black citizens. The report, titled We Charge Genocide: The Crime of Government against the Negro People, sought to demonstrate the US federal government’s criminal responsibility for a battery of abuses against black Americans, including mass lynching, material deprivation, and disenfranchisement. According to the petitioners, these abuses, taken together, amounted to genocide. The petition campaign set off a public relations crisis for anti-Communist advocates of new human rights norms, including officials at the US State Department and the National Association for the Advancement of Colored People (NAACP), the country’s leading civil rights organization.

In studies of We Charge Genocide, scholars of both genocide and the US black freedom movement tend to describe the petition as a failed attempt to capitalize on the new anti-genocide norm for political gain. Other scholars use the petition’s documentation of mass violence against black Americans to illustrate the analytic limits and possibilities of the concept of genocide. Historical depictions of the petition, however, either exclude a broader context of black mobilization around the anti-genocide norm, or attribute subsequent mobilization to a marginal fringe. This tendency leaves unanswered an important question for scholars seeking to understand Raphaël Lemkin’s legacy and the early genesis of the anti-genocide norm: how and why did members of the postwar US black freedom movement use the anti-genocide norm to advance their political goals, despite the spectacular failure of We Charge Genocide to elicit public and official support?

To answer this question, I analyze the political uses of the norm by black freedom activists in the United States between 1951 and 1967, when the topic of genocide returned to mainstream public debate with the beginning of Wisconsin Senator William Proxmire’s campaign in favor of US ratification of the Convention. My analysis consists of four parts. First, I describe how the We Charge Genocide campaign laid a foundation for the black freedom movement’s subsequent mobilization around the anti-genocide norm. Many of the post-petition uses of the anti-genocide norm were a consequence of civil rights lawyer and Communist Party leader William Patterson’s individual advocacy; others, however, took root with no evidence of his direct involvement. Like the We Charge Genocide campaign, later black freedom activists embraced a framework of sustained engagement with global norms and institutions to highlight ongoing abuses against black Americans. Black


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mobilization around the anti-genocide norm is an early example of the norm’s global character in practice.

Second, I use public speeches and pamphlets of the US black freedom movement, and private documentation by movement activists, to demonstrate how black freedom activists made use of the anti-genocide norm. I demonstrate that influential segments of the black freedom movement continued to embrace the anti-genocide norm despite the 1951 petition’s failure. During the 1960s, successive leaders of the Student Nonviolent Coordinating Committee (SNCC) used the anti-genocide norm as a framing device in public remarks, petition campaigns, and global coalition-building. In less explicit language, other movement leaders drew parallels between anti-black violence in the United States and the proximate memory of genocidal fascism in Hitler’s Europe.

Third, I demonstrate that members of the black freedom movement used the anti-genocide norm in two main ways: to critique the US government’s hypocrisy in establishing the postwar liberal international order amid ongoing mass violence against black Americans; and to express solidarity with global social movements against colonialism and Cold War-era imperialism. These critiques were a departure from Lemkin’s vision of the anti-genocide norm’s relationship with the postwar international order. Even before the establishment of the Genocide Convention, Lemkin viewed the anti-genocide norm as a pillar of an emerging international peacemaking regime, and saw the institutions that made up that regime as a bulwark against genocide’s recurrence. Black freedom activists who embraced the norm saw an apparent conflict between the redemptive promise of those institutions and the state-directed mass violence waged by and in their member states.

Lastly, I argue that the black freedom movement’s mobilization around the anti-genocide norm has important historical, historiographical, and methodological implications for genocide research. Black mobilization during the post-petition period demonstrates the divergent pathways of Lemkin’s legacy. The anti-genocide norm became a subject of contention beyond the narrow constraints of the Convention and its implementing bodies, and an animating force for groups whose claims to victimhood Lemkin himself rejected. A fuller intellectual history of genocide demands more focused attention to the ways in which diverse social movements understand their experiences of mass violence in relation to global anti-genocide norms.

In this paper, I define both the anti-genocide norm and the black freedom movement in broad terms. By “anti-genocide norm,” I refer to an individual or organization’s explicit or implicit expressions of opposition to the past, present, or future occurrence of genocide. Implicit expressions consist of analogies between instances of violence or repression and canonical genocidal events, in particular the Nazi Holocaust. In these contexts, a writer or speaker references the canonical event to convey the extreme scale, scope, or intentionality of their adversary’s violence.

By “black freedom movement,” I refer to the black protest groups, non-profit organizations, and activist networks that mobilized for political, social, and economic equality during the early postwar period. As Yohuru Williams argues, the category “black freedom struggle” acknowledges the fuzziness of the chronological, organizational, and ideological boundaries between the fight for civil rights and the more militant, anti-integrationist black power movement. Activists and organizations that participated in the postwar movement disagreed about the moral and tactical value of nonviolence versus violence, objectives of integration and civil rights versus black empowerment and nationalism, and other important matters of vision, strategy, and tactics. But despite these disagreements, the hope of black freedom remained common to all.

My aim in this paper is not to evaluate the extent to which the mass violence exacted on black Americans throughout the history of the United States does or does not conform to legal or historical definitions of genocide. This paper’s central premise is that the anti-genocide norm is a dynamic historical idea, rather than a set of rigid, unchanging criteria for analyzing historical and contemporary patterns of mass violence. That idea took on a life of its own once Lemkin transformed the anti-genocide norm from an academic concept, confined to the pages of Axis Rule in Occupied Europe, into a normative instrument of international criminal law and international norms.

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7 Yohuru Williams, Rethinking the Black Freedom Movement (New York: Routledge, 2015).
institutions. As black mobilization around the norm demonstrates, the social and political contexts from which the norm emerged are as important to its intellectual history as the ideas of its progenitor.

The Legacy of We Charge Genocide
The CRC was hardly the first black freedom organization to petition the United Nations for redress of US government abuses. A flurry of petition activity followed the establishment of the United Nations and its human rights bodies: in 1947, the NAACP’s *An Appeal to the World* provoked an impassioned debate about the scope of the new UN Human Rights Commission’s jurisdiction.\(^8\) With their petition, the NAACP hoped to pressure the Truman administration to make good on its postwar human rights talk amid multiple instances of mass lethal violence against black Americans. As Carol Anderson documents, NAACP leaders referred to the US government’s prosecution of Nazi war criminals at Nuremberg as evidence of a double standard: “[NAACP President Walter] White complained to [NAACP board member] Eleanor Roosevelt that, ‘Negro veterans...have been done to death or mutilated with savagery equalled only at Buchenwald.’”\(^9\) Neither the CRC’s petition strategy nor even the scope or scale of violence that *We Charge Genocide* described distinguished the 1951 petition from its predecessors. Instead, it was the left-wing affiliations of Patterson, the actor and activist Paul Robeson, W.E.B. Du Bois, and other leading petition signatories that the NAACP worried would damage the credibility of the broader push for black civil rights.

The State Department’s pressure campaign came at an inauspicious time for the *We Charge Genocide* petitioners. The anti-Communist “red scare”—championed by Wisconsin Senator Joseph McCarthy, but by no means limited to the activities of his House Un-American Activities Committee—had a chilling effect on the black freedom movement across the United States. Throughout the early 1950s, law enforcement officials and Congressional investigators targeted black activists despite scant evidence of criminal activity.\(^10\) In the *We Charge Genocide* case, the State Department and other US government agencies sought to make an example of the petition’s lead drafters. As the petition’s lead spokesman and a proud, public member of the US Communist Party with a long record of sympathy for the Soviet Union, Patterson was especially vulnerable. US authorities seized his passport upon his return to the United States. In later years, Patterson and the CRC faced new pressure from the anti-Communist Subversive Activities Control Board, leading to the CRC’s dissolution and Patterson’s brief imprisonment for non-compliance with the Congressional investigation. As historians have documented, the controversy and its Cold War politics dealt a heavy blow to the campaign to ratify the Convention.\(^11\)

Patterson and his colleagues—especially Marxist historian Oakley Johnson—continued their anti-genocide campaign despite these obstacles. In a June 20, 1953, fundraising letter to the CRC’s supporters, Patterson described the central goals of the organization’s continued mobilization around the norm: “CRC is now preparing another Petition. It will be presented to the UN this year as a sequel, together with ‘We Charge Genocide,’ if you will help us. We believe it is necessary in the strengthening of the fight against McCarthyism, and for democracy and peace.”\(^12\) The initial petition had centered on the confluence of acute violence—in particular, lynching—against black Americans, and their systematic marginalization and impoverishment as a matter of US domestic policy. In the new report, Patterson sought to expose a new facet of the US government’s genocidal

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9 Anderson, *Eyes Off the Prize*, 63.
11 LeBlanc, *The United States and the Genocide Convention*.
12 “Fundraising letter from William Patterson to supporters of the Civil Rights Congress,” June 20, 1953, William Patterson Papers (hereafter, “Patterson Papers”), Moorland Spingarn Research Center, Howard University, Box 208-17, Folder 17.
violence: the mass incarceration of black Americans by the US federal prison system. Patterson viewed the widespread abuse of black prisoners, as documented by the US Federal Bureau of Prisons itself, as evidence not just of mass harm, but of a systematic policy of violence orchestrated by all levels of the US federal government.

The second petition effort never bore fruit. In 1954-1955, Patterson spent ninety days in a Connecticut jail under charges of contempt of Congress after he failed to disclose his organizational affiliations and the CRC’s contributors to the SACB. Beyond Patterson’s individual efforts, the CRC was in no financial position to support a new petition campaign; in 1956, the organization filed for bankruptcy and dissolved. In the organization’s final years, Patterson continued to project the CRC as a credible champion of the anti-genocide norm despite its financial troubles. A 1955 report to the CRC’s national leadership conference identifies ratification of the Genocide Convention as one of the organization’s key legislative objectives:

Here it is not just necessary to defeat the additional restrictive legislation being urged by [US Attorney General] Brownell, who is making a shambles of the Constitution and the Bill of Rights he is sworn to uphold. It is necessary to take the offensive against anti-democratic legislation already on the books, and for the passage of legislation that will expand democracy...In the second category come such legislation as: ... 3. Ratification of the UN Conventions against Genocide and for Human Rights.

Unfortunately, the segregationist opposition among southern Democrats that had doomed the initial ratification push remained an obstacle to pro-Convention advocacy. The CRC was a lonely voice of support for US ratification; even Jewish organizations that had been outspoken in support of the Convention grew quiet as the 1950s wore on.

**SNCC, Black Internationalism, and the Anti-Genocide Norm**

The *Brown v. Board of Education* decision in 1954 shifted the black freedom movement’s attention in the mid-1950s towards the implementation of legal integration throughout the Jim Crow South. In theory, *Brown* made the integration of schools and other public institutions the letter of the law; in practice, integration required that groups like the NAACP and the Southern Christian Leadership Conference (SCLC) wage forceful resistance against intransigent southern segregationists. Although the force of CRC’s efforts evaporated with the organization’s dissolution, black Americans still found implicit relevance in the concept of genocide and opposition to it.

During the rise and consolidation of Nazi rule in Central and Eastern Europe, it was common for black newspapers to draw parallels between violence and discrimination against black Americans and the mounting threats against Jewish communities in Nazi-occupied Europe. In September 1940, for example, the *New York Amsterdam News* gave front-page coverage to a profile about Eugene Bullard, a black American aviator who had flown against German forces during World War I. Bullard described the Third Reich’s plans for the Aryan race: “‘Like your Senator Bilbo’—Senator Theodore Bilbo, a prominent segregationist from Mississippi—‘Adolf Hitler believes that the black race, all over the world, could best serve the white race’s purpose by remaining or going back to Africa.’” These publications were also early supporters of Lemkin’s own anti-genocide campaign: in a 21 September 1946 editorial, the *Chicago Defender* described genocide as a “much-needed new word” that would “give America the much needed weapon with which to combat the evil of lynching.” Comparisons between anti-black violence in the United States and the recent...
memory of Nazi genocide returned to the fore as local police across the United States ramped up their violent repression of black freedom protests, civil disobedience, and other forms of collective action. The front page of the 12 February 1960 Atlanta Daily World featured an interview with Rosey Pool, a Jewish Dutch resistance fighter during World War II, on the shared themes of Nazism and American racism: “Under the ‘form of mass insanity’ or ‘anti-otherisms’ which the Nazis espoused and which manifests itself in segregation, Dr. Pool warned that ‘it can happen here.’”18

Prominent displays of collective action during the early 1960s built on the civil disobedience campaigns that black freedom groups had spearheaded during the previous decade. Tactical innovations in black mobilization during the late 1950s led to the creation of new organizations. Official persecution of radical activists loosened as the McCarthy era of American anti-Communism subsided, although federal law enforcement continued to infiltrate and disrupt the activities of leading movement organizations. The CRC did not re-emerge, but newer organizations did that shared the group’s vision for black freedom.

One such organization was SNCC, an outgrowth of the student sit-in campaigns of the late 1950s. By the middle of the decade, SNCC would become the country’s largest and most prominent network of student and youth black freedom activists. SNCC and its founders, including SCLC executive secretary Ella Baker, made coherent the disparate, localized student sit-in campaigns, and aimed to give student activist tactical and strategic independence from “old-guard” black freedom groups like the NAACP and SCLC.19 From the outset, SNCC’s tactics were riskier and its vision for black freedom more radical than many of its movement counterparts. As Fanon Che Wilkins observes, internationalism distinguished SNCC’s politics from organizations focused exclusively on improving civil rights for black Americans.20 In the early 1960s, new intercultural exchange programs enabled students at American universities to spend time studying and traveling on the African continent, and exchange students from sub-Saharan Africa participated in SNCC chapters across the United States.21 These friendships and networks made their mark: from its early days, SNCC leaders described the black freedom movement as a node in the broader, global struggle against the systems and legacies of imperialism and colonialism.22

Although SNCC’s most prominent organizing efforts centered on the enfranchisement of black Americans in the South, the organization used its grassroots presence to draw attention to other forms of anti-black violence and repression. In the months leading up to their massive voter registration drive during the Mississippi Freedom Summer, SNCC activists seized on the anti-genocide norm to demonstrate the centrality of white supremacy to Mississippi’s Jim Crow regime. In the spring of 1964, the Mississippi state legislature passed House Bill No. 180, which made it a misdemeanor to parent a second child out of wedlock. Original versions of the bill classified the act as a felony, punishable by either sterilization of both parents or up to 5 years in the state’s brutal Parchman state prison. The legislation’s original penalties would have represented a significant expansion of Mississippi’s legal forced sterilization regime, which the state legislature authorized in 1928.23 The main official targets of Mississippi’s sterilization program were mentally disabled persons, but the deceptive, involuntary sterilization of black women by doctors and medical scientists in the state attracted such notoriety that they were nicknamed “Mississippi appendectomies.”24

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22 Wilkins, The Making of Black Internationalists.
SNCC released an advocacy pamphlet, *Genocide in Mississippi*, to protest the repressive racism of the state legislature’s actions. The first page of the pamphlet juxtaposes the Genocide Convention’s definition of the term with a quote from the segregated Mississippi Democratic Party’s 1960 platform, in which they opposed the Convention’s ratification. The short pamphlet accuses Mississippi’s state and federal elected officials of “designing and implementing a program of genocide against the Negroes of that state.” The original sterilization bill is the main focus of the pamphlet. SNCC cites evidence from Mississippi legislators’ public statements to demonstrate that “the intent of [House Bill No. 180] is to eliminate the population of Negroes from Mississippi... either by destroying their capacity to reproduce, or by driving them from the state.” The pamphlet concludes by calling on President Lyndon Johnson and Attorney General Robert Kennedy to intervene against Mississippi’s legislation, lest black Mississippians opt for drastic forms of resistance against potential genocide.

The Council of Federated Organizations (COFO), the umbrella coalition of groups responsible for the Freedom Summer voter registration campaign, described the bill in a Freedom Summer legislative guide as a repressive reaction to mass black mobilization in Mississippi: “Recent political organization among the Negroes makes [the Mississippi plantation class’] majority position threatening in the eyes of the Delta’s white community. There is therefore good reason, as the cotton kings of the Delta conceive it, for reducing the Negro population as rapidly as possible.” According to the COFO guide, state legislators viewed *Genocide in Mississippi* as a provocation: “... supporters or the bill prepared for a second round by distributing mimeographed copies of the SNCC pamphlet...to all members of the Senate and House. Supporters felt that they could sway votes by demonstrating that SNCC opposed the bill...Supporters of the bill were successful,” and the bill passed.

In the aftermath of the Freedom Summer, SNCC’s activism became more militant as southern white supremacists dug in against the Johnson administration’s new civil rights reforms, black freedom protests encountered nationwide repression, and the movement’s nationalist wing grew in strength. This second generation of SNCC activists saw a narrowing distinction between domestic repression and US violence abroad. In 1966, the new SNCC chair Stokely Carmichael (Kwame Ture) popularized the term “black power” to, in part, align the US black freedom movement with the global struggle for anti-colonial liberation. For activists like Carmichael, both the growing US war in Vietnam and the slow pace of black enfranchisement and integration reinforced the urgency of a global movement against US government violence. These observations were not unique to SNCC; most of the leading black freedom organizations contributed to and led large-scale protest actions against the war.

These twin crises also broadened use of the anti-genocide norm among black freedom campaigns. In a November 6, 1965 column in the *New York Amsterdam News*, Congress of Racial Equality director James Farmer lamented the “slow genocide that invests the lives of black men everywhere in this nation, laws or no laws, President or no President.” At a July 1965 press conference in Chicago, Martin Luther King, Jr. described segregation in northern cities as a form of genocidal subjugation: “Racism is genocide, based on the ontological affirmation...that God made an [sic] creative error.” King would later use a similar formulation in his famous 14 March

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27 Ibid., 4.
29 Ibid., 31.
30 Williams, *Rethinking the Black Freedom Movement*.
32 “King Shakes up Chicago: Thongs To Follow Him To City Hall,” *Chicago Defender*, July 24, 1965.

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In November 1966, SNCC activist Elizabeth (Betita Martinez) Sutherland wrote to William Patterson to express the organization’s interest in reprinting the We Charge Genocide petition for a contemporary audience. A Chicana activist and former UN researcher on decolonization in sub-Saharan Africa, Martinez had joined the New York Friends of SNCC in the early 1960s after a brief visit to post-revolutionary Cuba, followed by the prosecution of a North Carolina NAACP leader, sparked her interest in anti-racist organizing. SNCC never secured the funds for the publication—Patterson reprinted We Charge Genocide in 1970, by which point the SNCC of the 1960s campaigns had virtually ceased to exist. But Martinez and Patterson continued to correspond about SNCC’s interest in global black mobilization and the anti-genocide norm.

In June 1967, Martinez wrote to Patterson to notify him that SNCC had applied for observer status at the United Nations. In the letter, she enclosed an official statement that SNCC had shared with “Afro-Asian” UN missions in response to the imprisonment of SNCC voter registration activists—including Carmichael—in Prattville, Alabama. In the statement, SNCC chair H. Rap Brown condemns the detention of SNCC activists as “a part of America’s Gestapo tactics to destroy SNCC and to commit genocide against black people.” Martinez also shared with Patterson the text of Carmichael’s speech at the Spring Mobilization to End the War at Vietnam on April 15, one of the largest demonstrations in the history of the anti-Vietnam war movement. In the speech, Carmichael reminds the crowd of the moral example of the Nuremberg prosecutions. He then uses the title of the 1951 CRC petition to frame the sustained history of US violence against marginalized communities:

> When we look at the America which brought slaves here once in ships named Jesus, we charge genocide. When we look at the America which seized land from Mexico and practically destroyed the American Indians—we charge genocide. When we look at all the acts of racist exploitation which this nation has committed, whether in the name of manifest destiny or anti-Communism, we charge genocide.

Contesting Lemkin: The Anti-Genocide Norm and the Postwar International Order
From its inception, the anti-genocide norm has been a global concept in search of local resonance. International institutions established and validated the norm through the creation of the Genocide Convention, and victim groups have used the norm to attract global attention and intervention in support of their cause. For Lemkin, institutional opposition to genocide was an essential ingredient of the crime’s prevention. In “Genocide as a Crime under International Law,” Lemkin applauds the General Assembly’s initial declaration against genocide: “By declaring genocide a crime under international law and by making it a problem of international concern, the right of intervention on behalf of minorities slated for destruction has been established.” Even before the Convention’s creation, Lemkin viewed the UN’s affirmative support for the prevention of genocide as a fundamental transformation of international order, towards an expanded concept of state responsibility for the protection of minority populations. As the Nuremberg tribunals

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34 “Letter from Elizabeth (Betita Martinez) Sutherland to William Patterson,” November 10, 1966, Patterson Papers, Moorland Spingarn Research Center, Howard University, Box 208-2, Folder 4.
35 Holsaert et al., Hands on the Freedom Plow.

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had demonstrated, it was possible to enact this new anti-genocide norm through the force of international law.39 Lemkin was explicit about the concept’s limits, however: as We Charge Genocide stoked concerns about the Convention among pro-segregation Senators, Lemkin issued multiple public statements excluding lynching and other forms of anti-black violence from the Convention’s scope.40

Genocide was one of several concepts that black freedom activists used to characterize government-directed mass violence against black Americans during the postwar period. Its descriptive specificity, however, was not what distinguished Lemkin’s term from “tyranny,” “mass murder,” or other categories of intentional, large-scale violence against specific populations. Instead, it was the perceived weight of international criminal law that set the anti-genocide norm apart from the rest. Writing in 1947 in response to Lemkin’s campaign for the creation of the Convention, Chicago Defender columnist and labor leader Willard Townsend said of genocide, “the word is new but the music is old.” He cast the treaty’s mechanisms of redress as a boon to black efforts to secure accountability for white supremacist violence and segregation:

Genocide being an international crime, every country will be permitted to try in its own domestic courts any criminal who might be apprehended on its territory... Now the plot thickens. Will the Ku Klux Klan or any other hate-frenzied mob be guilty of genocide under the United Nations Convention for the Prevention of Genocide? Will the Rankins, Talmadges, and other white supremacists, with their genocidal ravings, be permitted to continue their violent outbursts against Negroes, Jews, and other minority groups?41

For black freedom activists and organizations, the intervention of the United Nations and broader postwar order in the cause of black freedom was in direct tension with the Cold War-era distribution of global power. These activists understood that the architects of international human rights—officials like Secretary of State and former South Carolina governor James Byrnes—also bore great responsibility for the slow march of black freedom at home. Du Bois, the NAACP’s lead delegate to the 1945 San Francisco conference that precipitated the United Nations’ establishment, was fervently opposed to the involvement of the southern, pro-segregation wing of the Democratic Party in the creation of postwar human rights norms and institutions. In a July 29, 1946 column in the Chicago Defender, Du Bois condemned the incongruence between his pro-segregation views and his anti-Communist democracy promotion agenda: “Neither South Carolina nor Mr. Byrnes can represent democracy before the world.”42 Despite these objections, the NAACP—whose leadership fired Du Bois from his post as director of special research in 1948—responded to the segregationists’ role in the new United Nations with a strategy of accommodation.43 They attempted to use their domestic political leverage and favorable relationship with the Democratic Party’s northern contingent to grant black Americans a say in the outcomes of UN negotiations. The accommodationist strategy yielded little in return: in the early years of the anti-genocide norm, the Democratic Party’s segregationist power base served as a constant check on the Truman administration’s already-limited embrace of the UN’s human rights agenda.44

Much to the NAACP’s frustration, the more radical activists who embraced the anti-genocide norm dismissed the organization’s attempts to accommodate the influence of the pro-segregation agenda at the United Nations. For Patterson’s part, he viewed the failure to ratify the Genocide

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43 Anderson, Eyes Off the Prize.
Convention — among other key human rights instruments — as proof positive of the US government’s hypocrisy in using the institutions of the postwar order to promote human rights and democracy. In an essay on the “monumental contributions of Bandung and Geneva,” Patterson described the normative failures of US support for human rights:

...Within the top ranks of that ruling clique in the USA and amongst the McCarthyites and the Dixiecrats of America the hatred for peace, while no longer blatantly expressed, is to be discerned by all who closely follow the maneuverings of those American diplomats as they mouth democratic phrases but cleverly fight against the ascendancy of peace.45

In an address to the CRC that the organization published in November 1951, Patterson described the black freedom movement’s mobilization around the anti-genocide norm as a step towards undermining the white-supremacist foundations of the postwar order: “When we have presented this proof [of genocide] to the opinion of the civilized world and the United Nation, we will not have ended our fight—for those who oppress us now control the activities of the United Nations.”46 Later, Patterson would recall for We Charge Genocide’s new audience the relationship between US imperialism, segregation, and the US interests at the heart of the United Nations’ creation: “It might be well to remind the reader who takes this Petition up that the American delegation sent to San Francisco in 1945 to establish the United Nations was headed by a noted imperialist, Edward R. Stettinius who was at the time the U.S. Secretary of State, and Tom Connally, a U.S. Senator from Texas who was an infamous racist.”47 For black freedom activists, the postwar order’s debt to the American segregationist lobby was insurmountable. By Patterson’s logic, the only way to undermine that lobby’s influence was to demonstrate the hypocrisy of the entire system.

Bound up in the critique of the postwar order was the black freedom movement’s internationalism. As a Communist Party member, Patterson saw the bonds between global liberation movements as an integral aspect of the black freedom struggle. The central premise of the We Charge Genocide petition was not that black-American victimhood is exceptional, but rather that genocidal violence is a ubiquitous feature of the postwar order. In his introduction to the 1970 edition, Patterson reiterated the importance of a collective anti-genocide cause: “To further expose the hypocrisy of the U.S. rulers it is historically necessary that the black nationals and freedom-loving American whites return again to the UN with the charge of genocide against black, brown, red and yellow, and a Prayer for relief.”48 For Patterson, there could be no restitution for black victims of genocide without a common struggle in support of native, Puerto Rican, and Chicano/a communities, in the United States, and Vietnamese victims of US military operations abroad.49

SNCC shared Patterson’s use of the anti-genocide norm in service of the international freedom struggle. The organization’s early interactions with global anti-colonial and anti-imperial movements redoubled under Carmichael’s leadership, marked by escalating nationwide opposition to the Vietnam War. Carmichael embraced Cuban President Fidel Castro’s doctrine of “tricontinentalism,” which “emphasized unity across Latin America, Africa, and Asia against racism, capitalism, and in particular, western imperialism spearheaded by the United States.”50 Carmichael was a controversial participant in the International War Crimes Tribunal, a Stockholm-

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46 Civil Rights Congress, “We Demand Freedom! Two Addresses by William L. Patterson,” 1951, Patterson Papers, Moorland Spingarn Research Center, Howard University, Box 208-12, Folder 3.
48 Ibid.
based global convening of public intellectuals and activists in 1967, tasked with “preparing evidence in... the pursuit of genocidal policies, such as forced labour camps, mass burials and other techniques of extermination in the South.”51 (Arthur Klinghoffer notes that Carmichael “preferred fiery rhetoric to careful deliberations over evidence” during the Tribunal’s sessions, and had his vote stripped because of his non-attendance at tribunal testimonies.52) In March 1967, SNCC leaders traveled to Cambodia and North Vietnam to “[investigate] U.S. war crimes.”53 It was in this context that SNCC established its commitment to “positive non-alignment” in the ongoing Cold War, a reference to the Non-Aligned Movement’s commitment to decolonization and anti-racism.54

Towards a New Intellectual History of Genocide

The anti-genocide norm’s salience for black freedom activists during the 1950s and ‘60s has important implications for genocide research. The first of these implications is historical. It is true that the We Charge Genocide petition and the black freedom movement’s continued mobilization around the anti-genocide norm created political obstacles to Lemkin’s ratification campaign. It became increasingly difficult for Lemkin to dismiss segregationist anxieties about the Convention’s potential jurisdiction over anti-black violence in the United States given prominent calls for accountability from black freedom activists. In the narrow lens of Cold War politics, that such a prominent public defender of Communists’ civil liberties—in the form of the CRC—led the We Charge Genocide campaign, only made more challenging the domestic politics of securing US government support for the Convention.

These obstacles to US ratification, however should not also be interpreted as obstacles to the diffusion of the anti-genocide norm. As I have demonstrated, black freedom organizations gave the anti-genocide norm a vibrant adolescence. From the CRC to SNCC, black freedom activists used the norm to critique the emerging postwar order and its institutions, and to build strong bonds with anti-colonial and anti-imperialist movements on the basis of mutual opposition to genocide and other forms of large-scale violence. As a fervent advocate for the UN system and its new regime of international criminal institutions, Lemkin hardly anticipated that black freedom activists would put the new anti-genocide norm to such use. But the black freedom movement’s example demonstrates the non-linear progress of the anti-genocide norm, in particular, and of international norms, in general: once Lemkin made the word a subject of public discussion and debate, it took on many different meanings, only some of which aligned with his original intentions.

The black freedom movement’s mobilization during the early postwar period points to the possibility of an intellectual history of genocide “from below.” Aside from the black freedom movement, other American social movements have found rhetorical and strategic uses for the anti-genocide norm since the Convention’s creation. The American Indian Movement and subsequent native rights movements, for example, used and continue to use the term to describe centuries-old patterns of US government-directed violence, deprivation, and cultural destruction against native nations.55 In her collection of essays on the Chicano/a labor movement, Elizabeth Martinez linked the Chicano/a struggle to the history of US genocide against native populations: “[America’s origin] myth’s omissions are grotesque. It ignores three major pillars of our nationhood: genocide, enslavement and imperialist expansion.”56 For disability rights activists, the rhetorical and visual

54 SNCC New York Office, Statement to Afro-Asian Missions.
imagery of Nazi violence against disabled persons appears as a common analogue for procedures of sterilization and institutionalization. As Martinez’s involvement in both SNCC and the Chicano/a rights movement exemplifies, inter-movement collaboration and coordination are a common feature of social-movement culture in the United States. Studying the varied uses of the anti-genocide norm for different American social movements can provide rich insight into the processes by which the norm became salient in the American public discourse.

As in the case of the black freedom movement, whether these movement claims to genocide are or are not legitimate is inconsequential. In attempting to litigate their legitimacy, historians have overlooked the full intellectual history of the anti-genocide norm: that is, how it has evolved despite the narrow scope of the international legal institutions devoted to its preservation. By focusing on the ways in which these social movements have understood the concept of genocide, genocide scholars will be better able to understand Lemkin’s intellectual, political, and historical legacy. And beyond the context of genocide, a greater understanding of how these social movements respond to new international norms can clarify important processes of socialization, contention, and mobilization.

I conclude my analysis in the year 1967, when William Proxmire’s pro-ratification campaign gradually returned the anti-genocide norm to mainstream prominence. It is important to note, however, that the anti-genocide norm remained salient for black freedom activists after 1967. The black freedom movement’s embrace of the anti-genocide norm during the 1960s, combined with a gradual increase in elite-level support for the Convention, appeared to catalyze new uses for the norm among later generations of radical black activists. The Black Panther Party, which began as a community self-defense group in Oakland in 1966, embraced the anti-genocide norm as a rhetorical cudgel against the intensification of both US government suppression of radical black activism and the war in Vietnam during the late 1960s. Anti-genocide slogans also became integral to the rhetorical repertoire of pan-African solidarity that emerged with the US-based movement against South African apartheid during the 1970s and ‘80s. And the symbolic power of the initial We Charge Genocide petition has also endured into the present: in 2014, a group of Chicago-based anti-police brutality youth activists presented an updated version of the petition to a session of the UN Committee against Torture in Geneva.

In a fundraising video for the Geneva briefing, one activist explained the basis for renewing the We Charge Genocide campaign: “We are always unsafe, living in our skin in this country. It’s a permanent condition.”

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58 For example, see the Party’s “ten-point program,” which compared the restitution provided to the Jews after the Holocaust to the restitution that the Party felt black Americans deserved: “We believe that this racist government has robbed us, and now we are demanding the overdue debt of forty acres and two mules. Forty acres and two mules were promised 100 years ago as restitution for slave labor and mass murder of Black people. We will accept the payment in currency which will be distributed to our many communities. The Germans are now aiding the Jews in Israel for the genocide of the Jewish people. The Germans murdered six million Jews. The American racist has taken part in the slaughter of over fifty million Black people; therefore, we feel that this is a modest demand that we make.” Marxist History Archive, “The Ten-Point Program,” Black Panther Party, October 15, 1966, accessed August 31, 2018, https://www.marxists.org/history/usa/workers/black-panthers/1966/10/15.htm.
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Raphaël Lemkin invented the concept of genocide. The term was prominently used in the indictment before the International Military Tribunal (IMT). In the course of the Nuremberg trial, all four prosecution authorities employed Lemkin. In the twelve subsequent trials before the purely US-American Nuremberg Military Tribunals (NMT), the prosecution further defined and differentiated ‘genocide.’ In these tribunals, the term even made its way into a verdict. In all thirteen Nuremberg trials, the lawyers involved brought the persecution and extermination of European Jews to trial—sometimes explicitly the mass murder, sometimes persecution and exploitation measures, which resulted nevertheless in exclusion, expulsion, and death. Lemkin’s study of Nazi occupation policy became an essential reading for Nuremberg lawyers. He also corresponded with members of the American and British prosecution authorities during the IMT and NMT trials. But what impact did he have on the Nuremberg Trials?

Building on the research of recent years, my working hypothesis is that Lemkin had virtually no influence on the course of these processes—although the concept of ‘genocide’ did. The original concept was very broad and open to various interpretations, however, over the years of the Nuremberg proceedings the concept was narrowed down to the crime of direct and planned mass murder.1 A final definition of genocide was only given with the drafting of the Genocide Convention, which standardized the term (even though there are still problematic ambiguities, but this is another issue that is not to be dealt with here). What has not been sufficiently emphasized in research to date is the question of the interdependence of the concept of ‘genocide’ and the mass murder of the European Jews or the ‘Holocaust’ between 1944 and 1948. The assumption underlying this essay is that the extermination of Europe’s Jews and ‘genocide’ were not used congruently in the Nuremberg trials. To illustrate this, I will deal here with both the question of how the persecution and murder of the Jews was interpreted in the Nuremberg trials and how the concept of ‘genocide’ was used. At the same time, I will mention a few other persons next to Lemkin who influenced the historical interpretations of the past and the legal concepts in early postwar period. The aim of the paper is to unravel the nexus of the ‘Holocaust’ and ‘genocide’ during the years 1945 to 1948, i.e. in a pre-Genocide-Convention time (as an established norm) and a pre-singularity-of-the-Holocaust thesis time (as a narrative of memory politics).2

The historicization of the criminal prosecution for the persecution and mass murder of the Jews in the Nuremberg trials, on the one hand, and the historicization of the application of the concept of ‘genocide,’ on the other, is valuable for several reasons. First, the singularity of the Holocaust was controversially discussed in Holocaust and Genocide Studies for many years (without having led to an agreement),3 secondly, the use of the term ‘genocide’ in the Genocide Studies itself is increasingly being critically questioned; thirdly, the fields of Holocaust research, the comparative research on mass violence, and the research on Nazi Germany and its occupation policy are increasingly separating themselves from each other. Whereas anti-Semitism was related to Nazi racial theory and ideology and the anti-Jewish practice was a part of the whole policy of mass violence of the Nazi regime before and after 1939. There is the question of whether the mass murder of the Jews can thoroughly be investigated without the context of occupation policy, hunger policy, the exploitation of prisoners in the concentration camps, the murders of the

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3 However, the criticism of the thesis of the singularity of the Holocaust in research does not mean that peculiarities are not seen in comparison with other mass murders or persecution policies.

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mentally-ill patients, the Sinti and Roma, the Soviet prisoners of war, and so on. Was the Holocaust part of a more comprehensive extermination policy of the Nazi regime or an independent, separate program? These contextualization questions, which arise for research on the Nazi regime (and thus also for German history as a whole, but also for other national historiographies), have been less relevant for genocide research because of their methodological approach of comparing different mass violence phenomena. For comparative research, especially from a social science angle, other questions arose which aim to identify or typologize commonalities and differences before, during, and after the process of mass violence—and such a perspective is thus inevitably to a certain extent de-contextualized. Hence, scholars have been arguing about the question whether the Holocaust is comparable for decades with no end in sight. Obviously, this is because this is not only a question about historical events: Holocaust and genocide have long since become concepts of national self-assurance and political instrumentalization.4

This article deals with the first act of the history of the current discussion about the two terms Holocaust and genocide. It examines how the prosecutors and judges of the Nuremberg trials related the murder of the European Jews to Raphaël Lemkin’s concept of genocide. Nuremberg is seen and analyzed here as the earliest transnational social (and in this case also public) space for the negotiation of terms, concepts, interpretations, and narratives in international criminal law, moral and historical politics after the Second World War. I will begin with a brief explanation of the history of the terms, before first going into details of the trial before the International Military Tribunal (1945-1946) and then into the trials before the Nuremberg Military Tribunals (1946-1949). Conclusively, I will assess Lemkin’s influence on Nuremberg’s narratives of mass murder and violence.

A Short History of the Concepts
The Greek term ‘holókaustos’ literally means ‘completely burned’ and was used in the Greek Bible translation for animals sacrificed by fire on the altar. After a change in meaning in the Middle Ages, which associated the term with the burning of people—whether in the course of pogroms against Jews or the executions of alleged witches at the stake—it was established between the end of the 19th century and the 1940s for describing a large number of victims of natural disasters, massacres, and mass murders.5 The term was first comprehensively used for the extermination of a particular group in the case of the Armenians. In September 1895, the New York Times described several consecutive mass murders of Armenians as a “Holocaust.” A few years later an English book with the title The Young Turks and the Truth about the Holocaust in Asia Minor during April 1909 was published. In 1923, it was Winston Churchill who used the term for the mass murder of Armenians during the First World War.6

The term first appeared at the end of 1942 in connection with the murder of Polish Jews by the Nazis: A London newspaper described the mass murder as “Holocaust.” As a synonym for the extermination of the European Jews, the term only became established in everyday American language in the course of the Eichmann Trial.7 In Germany, the term became more common with the US television film of the same title from 1978 and gradually replaced Auschwitz as a synonym for the Nazi extermination policy from the mid-1990s onwards.8 Whether the term only included

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5 Anja Kurths, Shoahgedenken im israelischen Alltag: Der Umgang mit der Shoah in Israel seit 1948 am Beispiel der Gedenkstätten Beit Lohamei HaGetaot, Yad Vashem und Beit Terezin (Berlin: Frank & Timme, 2008), 17.


the Nazi persecution and extermination of Jews or also the murder of the mentally ill, of the Sinti & Roma and other persecution measures and mass murders, however, remained open in German research. Regarding the Nuremberg Trials, Holocaust is therefore not a historical-contemporary term. Instead, the terms extermination, destruction, and annihilation were used throughout the thirteen Nuremberg trials to describe the mass murder of the Jews.

The term genocide, on the other hand, is a term used at the time. Genocide was employed by the Nuremberg prosecutors. In the German edition of the minutes of the trial before the IMT the word was mostly translated as Völkermord but also simply as mass murder. The term was created by Polish-Jewish lawyer Raphaël Lemkin for a conceptual and juridical redefinition of mass crimes against civilians by the Nazis in the occupied territories. However, the term already existed in other languages: in French naticides⁹ and in German Völkermord. The latter German term originated from the time after the suppression of the national Polish November Uprising of 1830/31 by the Russian Empire. The German bourgeois-liberal movement expressed solidarity with the Polish insurgents who mostly went into exile in France via the German lands (as a sign of this solidarity, the German republican Black-Red-Golden flag and the Polish national flag were hoisted at the Hambach Festival in 1832). In the course of the glorification of the Polish uprising by the German national movement, more than 1,000 so-called Polish songs were written in which the oppression of the Polish nation by the Russian Empire was described as Völkermord.¹⁰ In other words, the term was originally a political word that denounced a repressive policy of assimilation and foreign rule. It was subsequently widely used in Germany, although it can be assumed that there were various shifts in meaning. Since 1914, war opponents in particular used the word to describe the First World War.¹¹ Whether Lemkin knew the German term Völkermord, his connotations or the historical context in which it originated, is not known. What is interesting, however, is that in his study Axis Rule in Occupied Europe Lemkin used the term partly in the original, more ethnationally meaning. The political, socio-economic and cultural extermination of a nation or group, however, coupled Lemkin in his definition of genocide with the actual biological and physical extermination of a nation or group. Lemkin’s original definition from 1944 was:

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 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.¹²

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¹¹ The history of the German term Völkermord cannot be further illustrated here. A short quantitative search in the digital library project Gutenberg-DE (consisting of classical German literature) has already resulted in 59 entries. Among others, the following persons used the term in their writings: Moritz Graf von Strachwitz (1850), Gustav Freytag (1864), Heinrich von Treitschke (1879), Bertha von Suttner (1889), Clara Zetkin (1914), Rosa Luxemburg (1914), Erich Mühsam (1914), Sigmund Freud (1915), Carl von Ossietzky (1920), Theodor Lessing (1925), and Joachim Ringelnatz (1928), search results accessed October 9, 2018, http://gutenberg.spiegel.de/suche?q=%Völkermord.
In *Axis Rule*, Lemkin terminologically and conceptually tried to grasp the new character of Nazi occupation policy and the committed crimes. He proposed the new term genocide to replace the older terms denationalization or specifically Germanization, etc., i.e. forced assimilations which had constituted a large part of the debate on international law in the interwar period, precisely because of the legislation on protecting minorities in Europe set by the League of Nations. He also recommended the new term because he realized that the Nazi regime’s occupation policy contained a new dimension of extermination. Clearly, he was not interested in synthesizing a historical-analytical concept, but in the creation of a new element of offense under international criminal law. On the one hand, it is not surprising that the prosecutors in the Nuremberg trials, in the absence of other adequate terminology for the Nazi extermination policy and in the course of emphasizing the novel character of Nazi crimes, rapidly took up the term ‘genocide’; on the other hand, due to its broad definition and the combination of very different criminal offenses, the concept also caused them difficulties.

It is true that the definitional difficulties were decimated (albeit not eliminated) by *The Convention on the Prevention and Punishment of Genocide* adopted by the United Nation’s General Assembly in December 1948. However, the codified text of the Genocide Convention stressed the intended mass murder as an essential feature—and as just shown, Lemkin’s original concept had not done so. The UN Convention defined in Article II:

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\text{[G]enocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.}^{14}
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The narrowing of the definition to physical or biological mass violence was due to legal pragmatism—after all, a law must be applicable—but also to political interests of the members of the United Nations at that time. Nonetheless, despite the reduction of the Convention to mass murder, some of Lemkin’s original concept has been remained, as evidenced by the criminalization of involuntary adoptions and forced assimilation of children of one group by another group. But this narrowing of the term also seems to reflect Lemkin’s own development in the post-war years.

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for he took an active part in the definition of genocide within the UN. At the same time, a similar development occurred in the course of the Nuremberg Trials.

Genocide and the Holocaust in the International Military Tribunal

**Indictment**

Charges were first brought against twenty-four defendants and six organizations on 6 October 1945. The Charter of the International Military Tribunal (IMT) formed the legal basis of this international criminal tribunal. It defined the offenses for which this temporary court was responsible: crimes against peace, war crimes, and crimes against humanity. The new category of crimes against humanity included “murder, extermination, enslavement, deportation, and other inhuman acts” and “persecutions on political, racial, or religious grounds” not only during the war but also before. However, it was only justiciable in connection with one of the other two offenses crimes against peace or war crimes. The conspiracy or common plan was later included as a fourth charge. The idea of making the policies of the Nazi regime criminally prosecutable by means of the legal construct of the conspiracy (and on the second level by means of organizational crime) emerged from the advocacy of US jurists—although the Soviet negotiating partner had proposed something similar, named complicity. Linked to the war of aggression, the legal construct of conspiracy was particularly intended to solve the legal-dogmatic problems of sovereignty and the indirectness of individuals under international law.

In the indictment, drawn up jointly by the four Allied prosecuting authorities, the persecution and extermination of the Jews were also listed under three of the four offenses. Firstly, under the charge of conspiracy and the common plan; anti-Semitism and Nazi race ideology were viewed as a means of incitement. Secondly, on the charge of war crimes, committed in general in the context of the execution of a wider program, called “genocide… particularly [against] Jews, Poles, Gypsies and others.” However, the following list of mass murders in ghettos, concentration camps, and the places of mass executions in Eastern Europe mostly named Soviet citizens as victims; only in two cases Jewish victims were explicitly mentioned: concerning the ghetto of Lemberg [Lviv] and the massacre in Kamienets-Podilsk [Kamianets-Podilskyi]. Thirdly, the persecution and extermination of the Jews was explicitly treated under the charge of crimes against humanity. Here, the tribunal charged the persecution of the Jewish Germans before the war and mass executions of Jews during the war from Latvia to the North Caucasus as well as the murder of 70,000 Jews in Yugoslavia.

The indictments reveal two different interpretations of the murder of the Jews. On the one hand, an emphasis of the crimes as a form of ‘genocide’ “They [the defendants] conducted deliberate and systematic genocide, viz., the extermination of racial and national groups, against the civilian populations of certain occupied territories in order to destroy particular races and classes of people and national, racial, or religious groups, particularly Jews, Poles, and Gypsies and others.” Put differently, Jewish victims were named among other groups of victims, all of whom were seen as equally affected by the extermination policy. On the other hand, the US prosecution sought to punish the persecution of the Jewish Germans before 1939 and interpreted the individual

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19 Indictment, 6 Oct 1945, IMT, I, 33.

20 Ibid., 43-44.

21 Ibid., 47-49. Place names are specified in the text in the same way as in the English IMT protocol.

22 Ibid., 67. Mentioned were mass executions of Jews in Kislovodsk (near Riga), Lutsk, Sarny, Kiev and Dnepropetrovsk [Dnipro].

23 Ibid., 43-44.
steps of the persecution of the Jewish Germans up to the extermination of the European Jews as a coherent, self-contained process. According to the corresponding section of the indictment, the extermination of Europe’s Jews had been planned by the accused together (the common plan) and for a long time (the conspiracy).24

Lemkin played an active role in including the term genocide in the indictment. On May 4, 1945, two days after Justice Robert H. Jackson’s appointment to the US Chief of Counsel, Lemkin wrote to Jackson and sent him a published article on his genocide concept. In addition, the Washington Post had prominently staged the new term genocide in two editorials in November 1944 and May 1945. Jackson read both Lemkin’s article and the book. From then on, the concept was widely discussed within the American delegation at the conference in London where the four allied powers negotiated the conditions of the International Military Tribunal. Jackson, however, did not invite Lemkin to join his team. Lemkin remained employed in the War Department, but was given the opportunity to join the Judge Advocate General (JAG). Through the JAG and an invitation from Murray C. Bernays, a co-worker of Jackson, Lemkin nevertheless came to London.25 Ten days after the London Agreement (including the Charter of the IMT) was signed, Lemkin submitted a proposal to the US prosecution to charge the prominent German geographer Karl Haushofer in the Nuremberg trial. He saw Haushofer’s geopolitical ideas as a link between the war of aggression and the Nazis’ conquest of ‘living space,’ which in his view was central to the following mass violence or ‘genocide.’26 In September 1945, Lemkin proposed to Telford Taylor, another member of Jackson’s team, that prosecutors should use his genocide concept.27 Another US staff member, Sidney S. Alderman, also recalled that Lemkin visited him frequently at his London office to ensure that the word ‘genocide’ was included in the indictment.28 Although personal cooperation with Lemkin was apparently unwelcomed,29 the new word found its way into the indictment and the American lawyers also recommended Axis Rule to the other delegations.30

Opening Statements and Argumentation of the Four Prosecution Teams

For practical reasons the four prosecution teams split up the responsibility of litigating the four charges. This meant that each prosecution did not address all of the crimes.31 The US prosecution, the Office of Chief of Counsel for the Prosecution of Axis Criminality (OCCPAC) under Jackson, presented the charge of conspiracy and the common plan. The British jurists drew up evidence of crimes against peace while the French and Soviet respectively presented indictments for war crimes of aggression, individual criminal responsibility, and crimes against humanity. The accused organizations were: the Reich Cabinet, the Leadership Corps of the Nazi Party, the SS including the SD (Sicherheitsdienst, Security Services), the Gestapo (Geheime Staatspolizei, Secret State Police), the SA, and the General Staff and the OKW (Oberkommando der Wehrmacht, High Command of the German Armed Forces).

24 Ibid., 33- 34, 66- 67.
28 See Barrett, Raphaël Lemkin, 44-45.
31 But they were able to do so in the course of the evidentiary process against the individual defendants and the organizations. The accused organizations were: the Reich Cabinet, the Leadership Corps of the Nazi Party, the SS including the SD (Sicherheitsdienst, Security Services), the Gestapo (Geheime Staatspolizei, Secret State Police), the SA, and the General Staff and the OKW (Oberkommando der Wehrmacht, High Command of the German Armed Forces).
crimes in the West and East to the trial. The reasoning of the charges of crimes against humanity was provided by all four prosecution authorities in conjunction with their respective other charges. This division of labor has so far received little attention in existing research literature, but it helps to clarify why the mass murder of the Jews was almost exclusively linked to the charge of conspiracy or the crime of aggressive war by the American and British prosecutors as well as why the mass murder was often secondary in the prosecution.

After the questioning the defendants about their plea of guilty, Jackson began his opening statement by arguing the charge of conspiracy. It was the morning of the second day of the trial, November 21, 1945, when Jackson declared: “It is my purpose to show a plan and design, to which all Nazis were fanatically committed, to annihilate all Jewish people.” Anti-Semitism, which he regarded as the basis of the persecution and extermination of the Jews, was not only directed against the Jews, but also against other nations in order to break resistance through division, he explained. Moreover, the practical experience of the extermination of the Jews had led the Nazis to implement “similar measures against Poles, Serbs, and Greeks.” However, Jackson also made clear his assumption that the mass murder was directed against the Jews as such. He stated: “The avowed purpose was the destruction of the Jewish people as a whole, as an end in itself, as a measure of preparation for war, as a discipline of conquered peoples.” Jackson also emphasized the seriousness of the crime: “History does not record a crime ever perpetrated against so many victims or one ever carried out with such calculated cruelty.” Jackson held not only the party leaders and the SS responsible for the extermination, but also the Wehrmacht, and ministry officials. He saw not only calculation, but intention behind the persecution and murder of the Jews. He thus attached a historical singularity to the mass murder of European Jews.

Michael Marrus has already referred to Jackson’s functional interpretation of anti-Semitism. Recent research has shown that the works of Franz L. Neumann, Otto Kirchheimer, and Herbert Marcuse influenced Jackson’s presentation. Neumann was a lawyer and political scientist, Kirchheimer a constitutional lawyer, Marcuse a philosopher and social scientist. The three German-Jewish emigrants had a similar background: they were politically social democratic or socialist. Before 1933, all had had close scientific ties to two important academics who later legitimized the Nazi regime: Neumann and Kirchheimer to Carl Schmitt, Marcuse to Martin Heidegger. All three left Germany early in 1933 and quickly came into contact with Max Horkheimer’s exiled Institute for Social Research. During the Second World War, all three contributed their scientific expertise to the Research & Analysis Branch of the Office for Strategic Services (OSS) and taught at various US universities. The papers of the OSS served Jackson’s team as important sources of information and interpretation. Neumann’s work *Behemoth* on the structures of the Nazi regime, first published in 1942, revised in 1944, served as a guide for the US prosecution in the IMT, but above all in the NMT trials to decipher the functioning of the Nazi rule. Neumann’s structural perspective on the

32 See Jackson, 21 Nov 1945, IMT, II, 119; Alderman, 3 Dec 1945, IMT, III, 35; Maxwell-Fyfe, 8 Jan 1946, IMT, IV, 527. See also Irina Schulmeister-André, *Internationale Strafgerichtsbarkeit unter sowjetischem Einfluss: Der Beitrag der UdSSR zum Nürnberger Hauptkriegsverbrecherprozess* (Berlin: Duncker & Humblot, 2016), 354.

33 Jackson, 21 Nov 1945, IMT, II, 118.

34 Ibid.

35 Ibid., 119.

36 Ibid.

37 Ibid., 118-127.


persecution and murder of Jews later found its way into early Holocaust research through his PhD student Raul Hilberg.41

On December 13, 1945, Major William F. Walsh, assistant prosecutor for the United States, introduced evidence of the extent to which the crimes against the Jews were connected with the planning, preparation, start, and conduct of wars of aggression, thereby linking the persecution and extermination of the Jews in the first two charges.42 Walsh presented only documents and did not call any witnesses, Jewish survivors or Jewish experts, who were present at Nuremberg. He brought the interpretation to court that the Europe-wide “annihilation of the Jewish people” had been the “ultimate objective of the Nazi Party” from the very beginning.43 The destruction of the Jews, so Walsh, was “carried out continuously, deliberately, intentionally, and methodically by the Nazis.”44 In the further course of the argument, he presented documents on the ghettoization of the Jewish population of Central Eastern Europe, on the intended starvation of the people in the ghettos, on the destruction of the Warsaw ghetto, on mass executions in the Baltic States, Belarus and Ukraine, on the use of gas vans, the deportation of Dutch Jews, and the mass murder of Jews in the extermination camps Auschwitz and Treblinka.45 Finally, Walsh put the number of Jewish victims at 6 million for the first time, following the statement of Wilhelm Höttl, a former employee of the Reich Security Main Office. Höttl stated in an affidavit that Adolf Eichmann had personally testified to him that 4 million Jews had been murdered in camps and 2 million Jews had been executed by mass shootings during the war.46

Walsh had received support from Jacob Robinson, director of the Institute of Jewish Affairs at the American Jewish Congress, in compiling the immense evidence.47 From Robinson’s perspective, Walsh had accurately and extensively presented the “Jewish Case” in court, and the president of the American Jewish Congress, Stephen S. Wise, thanked Walsh “in the name of American Jewry.”48 This cooperation between Walsh and Robinson was one of the strongest examples of the participation of Jewish institutions in the Nuremberg Trials, although not the only one. The French and Soviet prosecution also received evidence and legal support from Jewish organizations.

Sir David Maxwell-Fyfe made only brief remarks on the persecution of the Jews as part of British evidence on the second charge of crimes against peace. They all referred to the German Foreign Office, especially to the accused Joachim von Ribbentrop. He presented evidence of a forced emigration policy of Jews from Germany and Austria.49 He did not explicitly mention crimes against humanity during his opening statement. Although the UK Prosecution also had a very prominent

41 Raul Hilberg, *The Destruction of the European Jews* (New York: Harper & Row, 1961). At the same time Wolfgang Scheffler, PhD student of Ernst Fraenkel, who had worked together with Neumann in the early 1930s, developed a similar political science-based approach to Holocaust research. See Wolfgang Scheffler, *Die Judenverfolgung im Dritten Reich: 1933-1945* (Berlin: Colloquium Verlag, 1960). Hilberg and Scheffler were the most influential historians for newer Holocaust research since the 1990s. This political-structural perspective on the persecution and extermination of the European Jews is erroneously referred to today as ‘perpetrator research.’


43 Walsh, 14 Dec 1945, IMT, III, 551.

44 Ibid., 573.


46 Ibid., 634-644. See also Alexa Stiller, “Die Nürnberger Prozesse und der Holocaust. Frühe Interpretationen zur Verfolgung und Vernichtung der europäischen Juden,” *Einsicht* 14 (2015), 20. Höttl contacted the OSS before the end of the war and later worked for the Counter Intelligence Corps (CIC). It can be assumed that he was never charged for this reason and also did not have to appear personally in court in Nuremberg.


49 Maxwell-Fyfe, 9 Jan 1946, IMT, V, 18-19.
adviser at its side: Hersh Lauterpacht, Whewell Chair of International Law at the University of Cambridge. Lauterpacht’s influence on the triad of prosecutable crimes under the IMT Charter had been decisive: the division into crimes against peace, war crimes, and crimes against humanity was due to him. Lauterpacht was also the creator of the crimes against humanity. This raises a question: How did the British prosecution barely mention the extermination of the European Jews, as Donald Bloxham has pointed out, but have an eminent international jurist at its side? This was due to the already mentioned division of the four charges to the prosecution authorities, whereby the British was mainly responsible for proving the crimes against peace. Though all four teams of prosecutors had reserved the right to hold evidence parallel to the charges of crimes against humanity, the close cooperation of the British with the Americans meant that Sir Hartley Shawcross’ team’s opening statement did not go into depth in the course of Walsh’s presentation of evidence on the Jewish Case. On the other hand, it should not be forgotten that the entire concept of the new offense of crimes against humanity and its application in the IMT trial was primarily tailored to the persecution and extermination of the European Jews. Lauterpacht had created an element of offense under international criminal law that made it possible to prosecute violence against civilians far away from acts of war—without explicitly referring in the legal text to a national, ethnic, or religious group, even if the persecution and extermination of the Jews was the implicit object in 1945/1946. If one now follows Bloxham’s thesis that the British prosecution wanted to minimize the Jewish Case in Nuremberg, the originally broadly conceived and contextualizing concept of genocide by Lemkin offered an alternative to the crimes against humanity. I will elaborate further on this point by reference to Shawcross’s closing statement.

The French prosecution referred to the policy of extermination of European Jews as part of its evidence of the war crimes committed by the accused in Western Europe. The witness Marie Claude Vaillant-Couturier, who was imprisoned in the Auschwitz-Birkenau camp from January 1943 on, was the first survivor of a German concentration camp to give testimony during the Nuremberg trial. She had been brought to Auschwitz because of her membership in the Résistance, but she could nevertheless report in great detail about the conditions in the Birkenau camp, the treatment of Jewish women and children, the selection at the ramp of Jews from France, Greece, and Hungary, and the mass gassings of Jews and Sinti & Roma. She had also been transported to the women’s concentration camp in Ravensbrück in 1944 and could also speak about the human experiments on Polish women that took place there (which were later tried in the Nuremberg Medical trial), and on the executions and mass deaths of Hungarian Jewish women and children interned under extremely harsh conditions in Ravensbrück. Vaillant Couturier thus brought the persecution and murder of women and children in general and of Jewish women and children in particular to the public’s attention. The two other concentration camp survivors who were called to the stand by the French prosecution also reported particularly bad treatment of the Jewish camp inmates. A former prisoner of a POW camp near Lviv testified as an eyewitness to the existence of deportation trains with Jews from all over Europe and to the executions of Jews in Lemberg.

The French prosecutors, unlike the Americans and the British, had deliberately built their evidence on testimonies from victims. For reasons of time, therefore, they did not read out their evidence documents such as the Americans and the British in detail, but only named the numbers of the evidence.

51 Bloxham, Genocide on Trial, chapter 2.
52 They partly alternated in their argumentation and also spoke of a “joint presentation.” See Alderman, 3 Dec 1945, IMT, III, 35; Shawcross, 4 Dec 1945, IMT, III, 145; Alderman, 10 Dec 1945, IMT, III, 368.
53 Vaillant-Couturier, 28 Jan 1946, IMT, VI, 210-230.
54 Victor Dupont was in Buchenwald, IMT, VI, 242-260; François Boix in Mauthausen, IMT, VI, 270-278; Paul Roser was in a prison camp in Rawa-Ruska close to Lviv, IMT, VI, 288-301.
55 For reasons of time, therefore, they did not read out their evidence documents such as the Americans and the British in detail, but only named the numbers of the evidence.
extermination which Germany had pursued ever since the National Socialists seized power. This policy of extermination would lead, according to Hitler, to installing 250 million Germans in Europe in the territories adjoining Germany, which constituted her vital space.” He continued: “The organization of these camps was further intended to exterminate all unproductive forces which could no longer be exploited by German industry, and which in general might hinder Nazi expansion.” In line with its responsibility for bringing crimes against Jews from Western Europe to trial, the French prosecution also dealt with the circumstances of the deportations of Jews from Denmark, the Netherlands, and France to the ghettos, concentration and extermination camps in the East. Edgar Faure, another French counsel, came to the conclusion:

Such a large undertaking as the deportation of so many Jews required the intervention of many different administrative services, and we see here that the success of this enterprise depended on the reorganization of transport on the responsibility of the Reich Ministry of Transportation. It is certain that a ministerial department of this kind, which is above all a technical department, intervened to help carry out that general enterprise of deportation.

Although he had previously quoted a deportation order signed by Adolf Eichmann, Faure did not succumb to the temptation to identify a single person as the main culprit. How could it be that a French prosecutor presented such elaborate historical analysis in the courtroom? Quite simply, Faure had a historian at his side who had already started working on the documentation of Nazi crimes, especially those directed against Jews in France during the war, Léon Poliakov. As a child of a Jewish-Russian emigrant family that fled the Soviet Union after the October Revolution, Poliakov grew up in France. After being held as prisoner of war in 1940, he joined the Résistance and co-founded the Centre de Documentation Juive Contemporaine in 1943. The center collected documents on the persecution of the Jews in France. In 1945, Poliakov and one of his colleagues, Joseph Billig, were asked to accompany the French delegation to the IMT. There, Poliakov worked closely with Faure who was also a former member of the Résistance. Faure’s interpretation of the functioning of the Nazi extermination policy bore the hallmarks of Poliakov’s broader perspective on the structures of persecution.

The Soviet prosecution was of the opinion that the German population had been deliberately blinded by Nazi propaganda. The Soviet chief prosecutor General Roman A. Rudenko emphasized the “German fascist race theory” as the basis of the crimes. He viewed this as the fundamental justification for the war of aggression: “In such manner, the function of racism was to justify the conspiracy—to fulfill the predatory aims of the German imperialistic clique.” Instead of a “totalitarian system” like the Western allies, the Soviet representatives spoke of a “fascist system.” Instead of “expansion” and “colonization,” they spoke of “imperialism.” In the eyes of the Soviet prosecution, the aims of the Nazi regime had been primarily economic. Rudenko interpreted them in this fashion:

56 Dubost, 29 Jan 1946, IMT, VI, 324.
57 Ibid., 327.
58 See ibid., 321-328.
59 Faure, 5 Feb 1946, IMT, VII, 38.
60 See Alexa Stiller, “Historians Behind the Scenes: Léon Poliakov and the French Prosecution at the International Military Tribunal in Nuremberg,” (presentation, Amsterdam, November 30, 2016), NIOD Institute for War, Holocaust, and Genocide Studies.
63 Rudenko, 8 Feb 1946, IMT, VII, 152.
64 Ibid., 154.
As a result of fascist propaganda and the whole system of measures cultivated by the German State, the German mind was systematically poisoned by the fumes of chauvinism and hatred of mankind... The criminal conspiracy aimed at the establishment of a predatory New Order in Europe. This New Order was a regime of terror by which, in the countries seized by the Hitlerites, all democratic institutions were abolished and all civil rights of the population were abrogated, while the countries themselves were plundered and rapaciously exploited. The population of these countries, and of the Slav countries above all others—especially Russians, Ukrainians, Belarussians, Poles, Czechs, Serbians, Slovenes, Jews—were subjected to merciless persecution and mass extermination.\(^65\)

Although the French prosecution emphasized German economic interests as war objectives more strongly than the American and British, the Soviet prosecution, in contrast to the French, was initially less willing to consider Jewish persecution and extermination pressure as more intense than for the rest of the civilian population of Eastern Europe. I say “initially” because this was true for the chief prosecutor, but not for the entire Soviet prosecution, as will be shown. In his opening statement, Rudenko spoke generally of civilians when he discussed mass shootings from the Baltic countries to the Caucasus. He did not explicitly mention the fact that almost exclusively Jewish families were affected,\(^66\) and when he did, he set the murder of the “Slavic and Jewish peoples” on the same level.\(^67\) At one point, however, even Rudenko broke through this equalization of the victims: “The fascist conspirators planned the extermination to the last man of the Jewish population of the world and carried out this extermination throughout the whole of their conspiratorial activity from 1933 onwards.”\(^68\) Similarities to Jackson’s and Walsh’s intentionalist interpretation are clearly recognizable.

When the Soviet prosecution came to provide evidence of crimes against humanity, the picture changed with respect to the Jewish Case. Lev N. Smirnov dealt with the charges of “crimes against the peaceful population of the USSR, Czechoslovakia, Poland, and Yugoslavia” and in particular the murder of Jews east of Germany.\(^69\) Smirnov’s arguments on this point took four days at the court. He described in detail the murder of 3 million Polish Jews in the Generalgouvernement under the responsibility of Hans Frank (the mobile gas vans, the deportations from the ghettos to the extermination camps, and the murders by gas in Auschwitz, Treblinka and Sobibor).\(^70\) Smirnov said he would not read anti-Semitic remarks from Göring, Himmler or other Nazis in the courtroom because: “In the Eastern European countries all the anti-Semitism of the Hitlerites was put into full effect and mostly in one way only—in the physical extermination of innocent people.”\(^71\) Accordingly, as part of the evidence of the persecution and extermination of Jews in Eastern Europe, the Soviet prosecution called the following survivors to the witness stand: Abram Gerzевич Suzkever [Sutzkever], who survived the ghetto in Vilnius, the Polish woman Severina Shmaglevskaya, who survived the Auschwitz-Birkenau extermination camp, and Samuel Rajzman, Jewish-Polish survivor of the Treblinka extermination camp.\(^72\) Smirnov quoted the report of the Polish commission of inquiry, which cited the number of people murdered in Treblinka for the first time at 781,000. He also gave the results of the Polish commission of inquiry on the mass murder by gas vans in Kulmhof.\(^73\) Quoting from the Polish and Czechoslovak commission reports, he stated

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\(^65\) Ibid., 153. Of course, he did not mention Estonians, Latvians, and Lithuanians, the populations of countries that the USSR itself had annexed, lost, and re-annexed during and after the Second World War.

\(^66\) Ibid., 170-173.

\(^67\) Ibid., 191.

\(^68\) Ibid., 192.


\(^70\) Smirnov, 15 Feb 1946, IMT, VII, 470. In the IMT mistakenly “Sobibur” see Smirnov, 19 Feb 1946, IMT, VII, 576.

\(^71\) Smirnov, 26 Feb 1946, IMT, VIII, 294.

that the “Hitlerites” had murdered 3 million Polish Jews and 118,000 Czechoslovakian Jews. It was striking that the Soviet prosecutors did not explicitly name Soviet Jews as victims.

The Soviet prosecution chose the same strategy as the French one: instead of an extensive presentation of original German documents, they had survivors testify about the Nazi crimes. There was another similarity to the French prosecution: The Polish, Czechoslovak, and Yugoslav delegations assisted her in an advisory function. Among the members of the Polish delegation were also Holocaust survivors including historians Philip Friedman and Josef Wulf. Both of them worked for the Central Jewish Historical Commission in Poland. But also the Soviet writer, war propagandist, and early chronicler of the murder of Soviet Jews, Ilya Ehrenburg, came to Nuremberg for the IMT trial. What influence Ehrenburg, Friedman, Wulf, and the national delegations had in the elaboration of Soviet reasoning has not yet been sufficiently researched.

In conclusion, the Soviet prosecution dealt intensively with the persecution and extermination of Jews in Eastern Europe. It described the conditions in the ghettos, the deportations, the methods of murder, the extermination camps, and named many places of mass executions. As evidence, the jurists brought the reports of early commissions documenting the Nazi crimes and eyewitness accounts of the liberation of the camps. Crucially, the Soviet prosecution was the only one of the four prosecuting authorities to call Jewish Holocaust survivors to the stand. Despite the designation of Jewish victims in the occupied territories of the USSR as “Soviet citizens,” these findings indicate a need to reassess the narrative that the Soviet prosecution was not interested in addressing the mass murder of the Jews in Nuremberg.

Closing Statements of the Four Prosecutions
After the general line of argument on the four charges and against the individual defendants had been completed (and only the cases against the six organizations charged with criminality were still pending), the four main prosecutors gave their closing statements. Jackson began his speech on July 26, 1946, without mentioning Lemkin’s concept of genocide. His main focus—following the division of the charges among the four allies—was the conspiracy of the accused and their common plan to prepare and implement the war of aggression. Jackson explained five

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74 had murdered 3 million Polish Jews and 118,000 Czechoslovakian Jews. In the official German and English text Chełmno/Kulmhof is mistakenly referred to as Helmno. The Polish commission of inquiry estimated the number of persons murdered there at 340,000. See ibid., 330-331. Today, Alberti assumes that about 160,000 people were murdered there, see Michael Alberti, *Die Verfolgung und Vernichtung der Juden im Reichsgau Wartheland, 1939-1945* (Wiesbaden: Harrassowitz, 2006), 451.

75 Smirnow, 27 Feb 1946, IMT, VIII, 330. In the official German and English text Chełmno/Kulmhof is mistakenly referred to as Helmno. The Polish commission of inquiry estimated the number of persons murdered there at 340,000. See ibid., 330-331. Today, Alberti assumes that about 160,000 people were murdered there, see Michael Alberti, *Die Verfolgung und Vernichtung der Juden im Reichsgau Wartheland, 1939-1945* (Wiesbaden: Harrassowitz, 2006), 451.


79 See also Annette Weinke, *Die Nürnberger Prozesse* (Munich: C.H. Beck, 2006), 50. In the course of the evidence against the SS as a criminal organization, the witness of the British prosecution Izrael Eizenberg was later called. Eizenberg and only one other person survived a mass shooting of 1,000 people near the Lublin-Majdanek concentration camp in October 1942. The questioning took less than five minutes. See Eizenberg, 7 Aug 1946, IMT, XX, 484-485. See also Jockusch, *Justice at Nuremberg*, 15.
crime complexes related to his evidence: first, the seizure of power and the establishment of a “police state;” secondly, the “preparation and waging of wars of aggression;” thirdly, war crimes, in particular the murder of Western allied POWs and the civilian population of the Soviet Union; fourthly, the “enslavement and plunder of the population in the occupied countries;” and fifthly, the “persecution and extermination of Jews and Christians.”80 The crimes committed by the Nazis could not be considered individually, he said. At the same time, he made clear where his priority lay: “The central crime in this pattern of crimes, the kingpin which holds them all together, is the plot for aggressive wars.”81 The assumption of the “Nazi Master Plan,” which he did not explicitly mention here, but which appeared in his later report,82 was probably based on the work of Herbert Marcuse, who had written a memorandum entitled Nazi Plans for Domining Germany and Europe: The Nazi Master Plan in August 1945 as part of his work with the OSS.83

Nevertheless, Jackson also clearly included the mass murder of the Jews: “The Nazi movement will be of evil memory in history because of its persecution of the Jews, the most far-flung and terrible racial persecution of all time.”84 Jackson believed that an economic motive supported a fanatical anti-Semitism, which eliminated Jewish pacifism and robbed Jews of their assets in order to financing armament.85 He particularly emphasized one person as main perpetrator: “Adolf Eichmann, the sinister figure who had charge of the extermination program.”86 In this context he also named the Einsatzgruppen of the Security Police and the Security Service (SD) as responsible for the mass shootings of the Jews in the occupied territories of the Soviet Union. The contradictions in his statement can only be resolved if it is assumed that Jackson regarded the punishment of the war of aggression as the most important aspect of the Nuremburg trial from a legal and international criminal law standpoint and, at the same time, was personally and morally moved by the mass murder of the European Jews. What is still irritating is the focus on the SS and the SD as perpetrator organizations and on Eichmann as a kind of main perpetrator of the Holocaust—because the evidence presented in the course of the trial also supported other conclusions. The emergence of this narrative was due to the legal approach to organizational crime, as I will discuss later. The narrowing of the perpetrators of the extermination of the European Jews by the US prosecution should nevertheless have an impact on the subsequent NMT trials in Nuremberg.

The British prosecution had undergone different developments concerning the genocide concept over the months. Whether this was due to Lemkin meeting Maxwell Fyfe at the end of June 1946 and campaigning for his concept,87 or, as I have already indicated above, to the fact that the genocide concept was broader and more suitable for British politics, is difficult to say. Shawcross, the chief British prosecutor, dealt in his closing statement with both the mass violence against civilians during the Second World War and the extermination of Jews. In that setting, he used Lemkin’s concept. Instead of depicting the mass murder of the European Jews in its peculiarity, like Jackson, Shawcross included it in the overall crimes of the Nazi regime, which (according to the figures he presented) claimed at least 12 million victims, six million of them Jews. Nevertheless, he coined a memorable phrase for the murders in the gas chambers, which he defined as “some mass production industry.”88 He also assessed the perpetrators of the mass executions in the occupied territories of the Soviet Union differently from Jackson:

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80 Closing statement, Jackson, 26 July 1946, IMT, XIX, 400-406.
82 Jackson, Report of Robert H. Jackson, 48. The “master plan” assumption was used in the trial by Alderman, 23 Nov 1945, IMT, II, 248; Drexel A. Sprecher, 23 Jan 1946, IMT, VI, 72.
83 See Böhm and Huhle, Die wahre Klägerin, 46-47. For Marcuse’s functional understanding of anti-Semitism in Nazi Germany, see e.g. Herbert Marcuse, “Der Kampf gegen den Liberalismus in der totalitär Staatsaufassung,” in Faschismus und Kapitalismus. Theorien über die sozialen Ursprünge und die Funktion des Faschismus, ed. Wolfgang Abendroth (Frankfurt am Main: Europäische Verlagsanstalt, 1967), 39-74.
84 Closing statement, Jackson, 26 July 1946, IMT, XIX, 404.
85 Ibid., 404-405, 414.
86 Ibid., 405.
88 Shawcross, 26 July 1946, IMT, XIX, 433. On the classification of the mass murder of Jews in all war crimes against civilians and crimes against humanity, see also ibid., 466-467, 507.
These actions were not only the work of the SS and Himmler. They were carried out in cooperation with the army commanders with the full knowledge of Keitel and Jodl and, indeed, because every soldier fighting in the East must have known about them, with the knowledge also of every member of the Government and of the commanders of its Armed Forces.89

Shawcross regarded the extermination of the Jews as an important objective of the Nazi regime, which was, however, equally important with the aims of expansion and “European domination.”90 In doing so, Shawcross somewhat inconsistently emphasized the mass murder of the Jews as something unique, on the one hand, and, on the other, refrained from emphasizing any particular group of victims: “Nazi total war was also a war against civilian populations, against whole peoples.”91 Shawcross also ascribed other techniques of violence and oppression to the Nazis’ overarching goal of colonizing conquered territories with Germans as a new “living space.” Therefore, he explicitly used Lemkin’s original concept of genocide:

Genocide was not restricted to extermination of the Jewish people or of the gypsies. It was applied in different forms to Yugoslavia, to the non-German inhabitants of Alsace-Lorraine, to the people of the Low Countries and of Norway. The technique varied from nation to nation, from people to people. The long-term aim was the same in all cases. The methods followed a similar pattern: First a deliberate program of murder, of outright annihilation. This was the method applied to the Polish intelligentsia, to gypsies, and to Jews... The defendants and their confederates also used methods of protracted annihilation, the favorite being to work their victims to death... Another favorite technique of extermination was by starvation... The method applied in Alsace was deportation... The Nazis also used various biological devices, as they have been called, to achieve genocide. They deliberately decreased the birthrate in the occupied countries by sterilization, castration, and abortion, by separating husband from wife and men from women and obstructing marriage.92

He also described the murder of about 275,000 mentally ill persons as a crime within the framework of this “policy of genocide.”93 In his study on the Soviet position on the Genocide Convention, Anton Weiss-Wendt shows that even later in the negotiations on the content of the Convention, the British and Soviet delegations regarded genocide as a comprehensive crime against population groups, which they necessarily located in the context of the war of aggression. This shared view in 1947 came from the exchange the two prosecutions had during the IMT trial.94

The French prosecution also used the concept of “genocide.”95 With the “systematic extermination of millions of human beings,” Nazi Germany had pursued the goals of expanding and conquering “living space” and the “gigantic plan of world domination.”96 When Auguste Champetier de Ribes, the French chief prosecutor, spoke of “extermination” and “annihilation” he meant, however, unlike Shawcross, explicitly murder or measures leading to death such as starvation.97 Dubost made it clear that the pursuit of these objectives (and thus also the application of the method of destruction) had been based on broad cooperation:

89 Ibid., 503.
90 Ibid., 438.
91 Ibid., 494, see also 466-468.
92 Ibid., 497-498.
95 Champetier de Ribes, 29 July 1946, IMT, XIX, 531. See also Dubost, 29 July 1946, IMT, XIX, 550-551, 562, 564, 570. Cooper writes that Lemkin also knew the French judge Henri Donnedieu de Vabres from his time in Poland, see Cooper, Raphaël Lemkin, 17-18.
96 Champetier de Ribes, 29 July 1946, IMT, XIX, 531, 532-533.
97 Ibid. 533-534.
Everything kept steady, everything was indissolubly united because totalitarian policy, total war, the preparation and direction of the campaign of extermination of peoples for the conquest of living space, implied the closest co-ordination and liaison between all the parts of the machine, between Police and Army; Foreign Affairs and Police and Army; Justice and Police; Economics and Justice; Universities and Propaganda and Police.98

This shows Poliakov’s and Neumann’s structural or institutional approach, which was used to describe the functioning of the Nazi regime and support the criminal prosecution of the perpetrators. According to the legal opinion of the French prosecuting authority, the legal constructs of “conspiracy or complicity” were not necessary at all because a “solidarity and the equal culpability of all in the crime” could be proven for every accused on the basis of fact:

1) The defendant occupied within the machinery of the State and the Party a position of eminence which endowed him with authority over one entire office or several. 2) The defendant complied with, if he did not conceive, the doctrine of the regime: Conquest of space by any means. 3) He personally played an active part in the political development of this doctrine.99

The French jurists thus presented a continental European legal opinion that differed from the Anglo-American one and distanced themselves from the conspiracy charge. This was one of the rare moments in the first international criminal proceedings in history in which the problem of merging civil law and common law legal systems became apparent. The French prosecution’s view, both on the functioning of the Nazi regime and on the division of labor in implementing the extermination policy, can be seen as the most complex and elaborate interpretation on the mass violence of the Nazi regime put forward during the IMT trial. This interpretation was not intentionalist, for it neither needed a “plan” conceived at an early stage, nor a fanatical anti-Semitism, an order by Hitler (Führerbefehl) to murder the Jews, or the construction of a “main perpetrator” such as Eichmann.

The interpretations of the Soviet prosecution were quite different especially because of its linguistic style.100 Rudenko addressed the connection between the direct perpetrators and the defendants, i.e. the upper echelons, in his closing statement as follows:

The defendants are responsible for every murder, for every drop of innocent blood shed by Hitler’s hangmen, for between them and the direct perpetrators of the crimes, murders, tortures, there is a difference only in rank and scope of action. Those are the direct hangmen, and these are the principal hangmen, hangmen of a higher rank.101

The Soviet prosecution still sympathized with the Anglo-American legal construct of conspiracy, as it was able to declare the “fascist conspiracy” of the “criminal group” with “criminal aims.”102 The Soviet prosecution found a simple answer to the question of how anti-Semitic propaganda and the practice of the mass murder of the Jews had been connected:

One can consider Streicher as the actual ‘spiritual father’ of those who quartered the children of Treblinka. Had it not been for the Stürmer and its editor German fascism would not have

98 Dubost also explicitly mentioned the participation of industrialists. See Dubost, 29 July 1946, IMT, XIX, 543-544. Instead, camp commanders like Kramer and Höss saw the French prosecution as “those who merely carried out the orders of the National Socialist State, who only played the part of hangman.” Ibid., 568.
99 Ibid., 549-550, also 561-562.
100 Moreover, after the Iron Curtain speech by Churchill (5 March 1946), the German testimonies on the Katyn massacre (1 July 1946), and the apparently unsuccessful use of the IMT as a stage for Soviet ideology, the Soviet side was under strong pressure. See Claudia Weber, Krieg der Täter: die Massenerschießungen von Katyń (Hamburg: Hamburger Edition, 2015), 290-354, 496-497; Schulmeister-André, Internationale Strafgerichtsbarkeit, 448-456; Weiss-Wendt, The Soviet Union.
101 Rudenko, 29 July 1946, IMT, XIX, 573.
102 Ibid., 579.
been able to educate, at such short notice, those mass murder gangs who put into effect the criminal plans of Hitler and his thugs by murdering over 6 million European Jews.103

Contrary to popular opinion, Rudenko mentioned the persecution and extermination of the Jews in his closing remarks, very precisely and in detail in relation to the accused Ernst Kaltenbrunner. However, with regard to the victims of the mass murder of the Einsatzgruppen on Soviet soil, he again spoke indeterminately of “human beings,” Belarussian “peasants,” Belarussian “women and children,” and “Soviet citizens” —but not of Jews.104

The Soviet prosecution tended to link Nazi “extermination of peoples” and “genocide” as well as economic “enslavement of nations” with fascism, capitalism, and imperialism.105 Rudenko reiterated these themes during his concluding statement on the charges against the organizations: “In reality the German fascists are not nationalists but imperialists, whose main and decisive aim was the seizure of foreign land so as to further the expansion of militant German capitalism.”106 In Rudenko’s closing statement, the ideological overload and Stalinist paranoia of the Soviet prosecution leadership is obvious. Although there are good reasons to define the trial before the IMT as a political trial, as Otto Kirchheimer and Judith Shklar did in the 1960s,107 it was not a show trial following the example of the Moscow trials ten years earlier or the trial against anti-Communist Polish politicians and military officers led by Rudenko shortly before the beginning of the Nuremberg trial. Moreover, if a show trial was the intention of the Soviet prosecutors, they definitely did not succeed.

In summary, the four prosecutions emphasized different central motives and driving forces of the Nazi regime, had different definitions of the legal concepts of genocide and conspiracy, and understood the term extermination differently. At the same time, they agreed that the murder of European Jews during the war had been linked to the whole Nazi policy of violence and extermination. The decontextualization of the mass murder of the Jews and separation of this crime from the other Nazi crimes happened later.

Until then, the four prosecution representatives had mostly covered the perpetrators’ circle very broadly. However, with the exception of the French, they presented a different picture in their closing statements on the accused organizations. There, each offered a separate explanation and reduced the number of perpetrators of the Holocaust. For example, the British prosecutor Maxwell-Fyfe proposed a simplified formula: “The system of exterminating Jewry was handled by SS.”108 Thomas Dodd, a staff member of Jackson’s team, also outlined a simple chain of command of the Final Solution from Göring to Heydrich and Himmler, to the SS, the SD and the Gestapo (namely Adolf Eichmann). Similar to Maxwell-Fyfe, Dodd declared: “In his [Himmler’s] foul hands and those of his SS was placed the assignment for the complete destruction of the Jew.”109 Rudenko fully agreed with this view. He blamed the SS (specifically the Economic and Administrative Main Office of the SS) for the extermination camps Auschwitz and Majdanek and the Gestapo for Treblinka and Kulmhof: “Eichmann’s plan for the extermination of the Jews in Europe, with the help of special extermination camps... originated in the Gestapo.”110

103 Ibid., 611.
104 For example, ibid., 598-599. A direct mention of the Polish Jews, on the other hand, can be found in the prosecution’s explanations to Frank see ibid., 607-609.
105 Ibid., 570.
106 Rudenko, 30 Aug 1946, IMT, XXII, 313.
109 Dodd, 29 Aug 1946, IMT, XXII, 256.
110 Rudenko, 30 Aug 1946, IMT, XXII, 342. Eichmann’s activities during the war were mostly limited to the logistical aspects of deportations of Poles and Jews. In particular, he organized the deportations of Jews from Nazi occupied Western and Southeastern European countries to the Auschwitz-Birkenau extermination camp. He was neither
This narrowing of the perspective was directly related to the concept of the IMT. First, the emphasis on conspiracy was responsible for placing the leaders of the regime and personalized chains of command at the center of attention. Secondly, it resulted from the emphasis on organizational crime, which inevitably led in the trial to place the SS, SD and Gestapo (as opposed to the four other organizations accused) at the center of the responsibility for mass violence—while neglecting the responsibility of other institutions.

The Judgment of the IMT
In their verdict, the Allied judges stated that the prosecution had extensively demonstrated the main objective of the Nazi regime, which in their opinion was the conquest of “living space.” The atrocities and murders committed during the war were seen as consequences of this goal rather than aims in themselves. Despite this interpretation, which was close to Lemkin’s original one, they did not mention the term genocide in their judgment (to Lemkin’s disappointment). Instead, they said:

The foregoing crimes against the civilian population are sufficiently appalling, and yet the evidence shows that at any rate in the East, the mass murders and cruelties were not committed solely for the purpose of stamping out opposition or resistance to the German occupying forces. In Poland and the Soviet Union these crimes were part of a plan to get rid of whole native populations by expulsion and annihilation, in order that their territory could be used for colonization by Germans.

This makes it clear that the judges interpreted expulsion and extermination in the same context—just as Lemkin had done in his study *Axis Rule*. However, the IMT trial failed to set a precedent by charging these crimes as ‘genocide,’ a decision that would have led the concept in a different direction than the Genocide Convention would two years later.

The sentence dealt in great detail with the persecution and extermination of the Jews. Here, the judges developed their own interpretation of the events and followed neither the intentionalist perspective suggested by Jackson nor the structuralist/functionalist perspective of the French prosecution. In the judgment, the description read as follows: Although Hitler had “threatened” the “extermination of the Jews” in early 1939, the “final solution” had not been planned until summer 1941 “shortly after the attack on the Soviet Union.” The Einsatzgruppen were responsible for the murder of the Jewish population in the occupied territory of the Soviet Union. The tribunal was clear about the cooperation of the Einsatzgruppen with the Wehrmacht, but refrained from concrete accusations: “There is clear evidence that leaders of the Einsatzgruppen obtained the cooperation of Army commanders.” The judges assumed that almost every single accused and every accused organization had been proven to be involved in the persecution and extermination of the Jews. However, they declared the Gestapo, SD, and SS as the primary perpetrators. With regard to the mass murder of the Jews in the extermination camps, the court’s portrayal gradually overemphasized Eichmann’s role. The verdict stated, “Adolf Eichmann, who had been put in charge of this program by Hitler.” In the course of the IMT trial, Eichmann had thus not only become the key witness to the number of victims of 6 million Jews through Höttl’s affidavit, but also a direct recipient of Hitler’s order. This was a fatal error, which led directly to the Eichmann trial in Jerusalem in 1961, but ultimately positively to a revitalization of the debate about the extermination of European Jews in justice and history.

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111 See Barrett, Raphaël Lemkin, 51-52.
112 Judgment, 30 Sept 1946, IMT, I, 237.
113 Ibid., 250.
114 Ibid., 265, also 267, 270-272.
115 Ibid., 252, see also 250, 265.
Overall, the new concept of ‘genocide’ was used in the course of the IMT trial to describe a policy consisting of different crimes or ‘techniques’ and directed against different groups of victims. Defined in this way, the concept of ‘genocide’ was attributed to the motive of the conquest and colonization of ‘living space’ by the Germans rather than to the intention, later enshrined in the Genocide Convention, of destroying a national, ethnical or religious group per se. The prosecutors and judges had not seen the mass murder of the Jews as congruent with the concept of ‘genocide’ but as part of it.

The Effects of the IMT on the NMT
The concept of genocide was applied in several of the twelve subsequent trials before the solely American-led Nuremberg Military Tribunals (NMT). Aspects of the persecution and extermination of the Jews were addressed in all of these proceedings. Unlike the IMT trial, the NMT trials were based on Control Council Law No. 10 (CCL 10), in which the Charter of the IMT had been further developed and the category of crimes against humanity was redefined and gained independence; the causal nexus to crimes against peace or war crimes was dissolved. Crimes against humanity were now defined as: “Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.” Therefore, CCL 10 also made mass rape justiciable in international criminal law for the first time.

The Office of the Chief of Counsel of War Crimes (OCCWC), headed by Telford Taylor, applied a new concept called the ‘institutional approach’ during the NMT. It defined the twelve cases not by crime complexes (by which I mean, for example, forced labor, Aryanization, expulsion, etc.), but by crimes committed by certain institutions. There were two cases against the Wehrmacht, three against SS offices, three against industrial companies, one against a ministerial authority, two cases that concerned both the ministries and the SS or Wehrmacht, and one case, the Ministries trial, which consisted of groups of defendants thrown together, representatives of financial institutions, the Foreign Office and other ministries, but also of the SS. Neumann’s analysis was unmistakably the guiding force structuring these processes.

I will go in more detail by examining four cases: The Medical trial (Case 1) and the RuSHA trial (Case 8), which employed a broad definition of the concept of genocide; the Einsatzgruppen trial (Case 9), which was the only trial where the main focus was the mass murder of Jews, but specifically the mass shootings in the Baltic States, Eastern Poland, and the occupied territories of the Soviet Union; and the Ministries trial (Case 11), the last trial before the NMT, in which the interpretation of the mass murder of the Jews as a coherent enterprise limited to one group of perpetrators was elaborated most strongly.

Although the ‘genocide’ concept was used more prominently in the NMT than the IMT, Lemkin did not play a role; at the time, he focused on the UN Convention on Genocide. In the planning phase of the subsequent Nuremberg trials, however, he wrote two letters on 10 and 13 January 1946 to a member of Taylor’s team, Col. David Marcus, and made detailed suggestions for the application of his concept in the coming trials. First, he emphasized the usability of the ‘genocide’ concept for the case of medical experiments, which he understood as “techniques of

119 See fn. 40.
120 On the application of genocide in all trials, see Stiller, Semantics of Extermination.
Secondly, he considered it also suitable to undermine the strategy of the defendants in the planned IG Farben trial. If the managers of IG Farben could be proven to be cooperative with their subsidiary Degesch, which had produced Zyklon B for the gassing of the Jews in Auschwitz-Birkenau, Lemkin believed that the defendants could be charged using the concept of genocide.121

In the Medical trial, the prosecution followed Lemkin’s suggestion and described human experiments, sterilization, castrations, and “euthanasia” in sanatoriums and concentration camps as “techniques of genocide.”122 In addition, the prosecutors established a close connection to the Nazi extermination policy in the occupied territories: “The thanatological knowledge [the science of producing death], derived in part from these [human] experiments, supplied the techniques for genocide, a policy of the Third Reich, exemplified in the ‘euthanasia’ program in the widespread slaughter of Jews, Gypsies, Poles, and Russians.”123 Deputy Chief Counsel James M. McHaney repeatedly emphasized the heterogeneity of the victims of medical crimes.124 In their verdict, the judges followed the prosecution to the extent that they regarded human experiments and sterilization as an integral part of Nazi policy—although they did not call this policy ‘genocide.’125

In the RuSHA trial, high-ranking employees of four selected SS offices, all of whom had worked under the institutional umbrella of the Reich Commissioner for the Strengthening of Germandom (Reichskommissar für die Festigung deutschen Volkstums, RKFDV), were accused. The charges comprised deportations, forced Germanization, forced recruitment, forced abortions, the abduction of children, the prevention of marriages, executions as a result of racially prohibited sexual intercourse, looting, and participation in the persecution and extermination of the Jews.126 The prosecution assumed that the fourteen accused had played leading roles in the implementation of the comprehensive and “coordinated plan” of destroying the “national groups” in the territories occupied by Germany. The prosecutors explicitly relied on Lemkin’s original concept:

These techniques of genocide, while neither so quick nor perhaps so simple as outright mass extermination, are by the very nature of things far more cruel and equally effective. If crimes such as these are allowed to go unpunished, the future of humanity is in far more danger than if an occasional murderer goes free. It is the enormity and far-reaching effects of these crimes that give this case its significance.127

In his closing statement, the main prosecutor—again McHaney—said that the Nazi policy of strengthening Germandom (or Volkstum policy) had been a program of “genocide,” composed of two intertwined elements:

Genocide, as practiced by the Nazis, was a two-edged sword, both aspects of which were equally criminal. The positive side, according to the German concept, was the Germanization program by which they sought to strengthen themselves by adding to their population large

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123 Medical Case, Opening Statement of the prosecution, 9 Dec 1946, TWC, I, 38.
124 Ibid., 48.
125 Medical Case, Opinion and Judgment, 19 Aug 1947, TWC, II, 181, 183, 197, 278.
groups of people selected from among the populations of the conquered territories, and by forcing the German language, culture, citizenship, and ideals upon those so selected. The negative side of this program, through which the so-called positive side was in equal measure accomplished, was the deliberate extermination and enslavement of the remaining population of these conquered territories. Thus, Germany would be strengthened by adding to its population, and its neighbors would be weakened by subtracting from their population, and the strength of Germany would thereby be proportionately increased.128

Again, the judges approved of the claim that the accused had produced a “Germanization program,” but did not call it genocide.129 With regard to the persecution and extermination of Jews, they concluded that crimes against the Jewish population were comparable to crimes against the Polish population.130 Ironically, Lemkin had no relation to Case 8, which deployed the original genocide most elaborately of all Nuremberg trials. Lemkin ultimately did not learn how it had come that his original concept was used in the RuSHA trial until February 1949 when he discovered that it had been Léon Poliakov who had proposed it to the American prosecutors for conducting this trial.131

The Einsatzgruppen trial took place at the same time as the RuSHA trial. Here, the prosecution also accused the defendants of a “plan of genocide”: “they [the Einsatzgruppen] were to destroy all those denounced Jew, political official, gypsy, and those other thousands called ‘asocial’ by the self-styled Nazi superman.”132 The Nazi motive for this “crime of genocide” had been racial ideology, but the Jews were not the only group to be destroyed, the prosecutors emphasized again and again.133 The judges stated in their judgment that the fundamental crime that had been tried in this case could simply be called murder.134 In other words, in their view, mass murder did not really require a separate element of an offense. At the same time, however, the judges pointed out that the Einsatzgruppen murders had been committed in a special way, calling them “ultra-modern executions.”135 In their judgment, they called the extermination of the Jews a “genocide program” and meant more than just the technique.136

While the judgments in the RuSHA and Einsatzgruppen trials did not completely incorporate the concept of genocide, judge Michael Musmanno, who was involved in the Milch, the Pohl, and the Einsatzgruppen trials, finally decided to use Lemkin’s term in his concurring opinion in the Pohl trial (the third SS case focusing the Economic and Administrative Main Office which was in charge of the concentration camps). He wrote: “[T]he trend of modernity toward mechanization and assembly line methods was not overlooked even in this most modern of achievements—genocide—abusiveness so novel that a new name had to be coined for it. Genocide [is] the scientific extermination of a race.”137 Paraphrasing Lemkin, ‘genocide’ in Musmanno’s conceptualization stood for industrial mass killings.

The RuSHA’s failure to endorse the concept of genocide and the multiple, sporadic, and vague uses of genocide in connection with mass murder in the other SS trials, further changed the trajectory of the concept. All three sentences were passed after the UN resolution of 11 December 1946 on the concept of genocide. In contrast to the later Convention for the Prevention of Genocide

129 RuSHA Case, Opinion and Judgment, 10 March 1948, TWC, V, 90.
130 Ibid., 152.
133 Einsatzgruppen Case, Opening Statement of the Prosecution, 29 Sept 1947, TWC, IV, 32-33.
134 Einsatzgruppen Case, Opinion and Judgment, 8-9 April 1948, TWC, IV, 411.
135 Ibid., 450.
136 Ibid., 469-470.
137 Pohl Case, Concurring Opinion by Judge Musmanno, 3 Nov 1947, TWC, V, 1135. See also Earl, Prosecuting Genocide, 333.
of December 1948, the 1946 resolution was not clearly limited to mass murder and still contained the cultural extermination of groups. At the same time, however, the aspect of forced resettlement and forced assimilation—unlike Lemkin’s original concept—had already disappeared. The UN resolution declared, “genocide is 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.” The resolution also stated: “such denial of the right of existence...results in great losses to humanity in the form of cultural and other contributions represented by these human groups...” It was Lemkin who had written the first version of this resolution.

Following the SS proceedings within the NMT trial series, the role of the SS (including the SD) in the persecution and extermination of the Jews had finally been established. As Jan Erik Schulte emphasized, the SS had thus become the “alibi” of West German society. The interpretation that one organization within the Nazi regime was primarily responsible for all violent crimes should have far-reaching consequences in the early Federal Republic of Germany. Although the administration was cleaned up of former SS members, other members of the Nazi party and high-ranking officials in the former Nazi ministries were able to continue working unhindered in the public service of the young democracy. Apart from these consequences for West German society, however, the American prosecution had also recognized in 1947 on the basis of the Einsatzgruppen trial that conducting “atrocity cases,” i.e. cases that focused on violent crimes and direct offenders, resulted in a more straightforward determination of the defendants’ guilt and thus promised quick, cost-effective proceedings. After all, on the basis of international criminal law, it was easier to prove individual guilt in mass murders than participation in a criminal state policy.

The Ministries trial, which began on November 1, 1947 and lasted until April 14, 1949, reflected this interpretation. In these proceeding, the non-SS defendants were only accused of complicity and connivance in the murder of the Jews. (The same applied to the High Command trial. The outcome there was that the Wehrmacht came out with ‘clean hands’ from the Nuremberg trials.) The Ministries trial changed from a trial primarily focused on the high-ranking personnel of the Foreign Office into a trial focusing on the two former full-time SS employees among the defendants, Walter Schellenberg and Gottlob Berger. The latter received a sentence of 25 years imprisonment—the most severe sentence delivered in this case. Although the prosecutors at the beginning of the trial, as in previous proceedings, still interpreted the term genocide in such a way that it not only meant the murder of one group, but also of different groups, different techniques, or even complementary Germanization, this broad term was completely lost in the course of the trial. In its closing statement, the prosecution authority only used the term genocide once—but defined it exclusively as mass murder of the Jews.

Consequently, the judges no longer used the concept of genocide in their judgment in Case 11 either, although some of the defendants were explicitly found guilty of Germanization and

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138 Stiller, Semantics of Extermination.
140 Lemkin, Genocide, 148-150. See also Schabas, Genocide; Cooper, Raphaël Lemkin.
141 Schulte, The SS.
142 The literature is numerous and due to the current research on ministries in the early Federal Republic of Germany, a comprehensive assessment of the extent of the old Nazis’ network is taking place. See e.g. Norbert Frei, Adenauer’s Germany and the Nazi Past: The Politics of Amnesty and Integration (New York: Columbia University Press, 2002).
143 Douglas, From IMT to NMT.
146 Ministries Case, Indictment, 4 Nov 1947, TWC, XII, 44.
147 Ministries Case, Closing Statement of the Prosecution, 9 Nov 1948, TWC, XIV, 41.
connected expulsion crimes.\textsuperscript{148} In contrast to the RuSHA trial, the judges did not see any linkage between forced population removals, forced assimilation procedures, and the murder of the Jews. The anti-Semitic policy was regarded by the judges as central for the dictator: “Hitler made the Jewish persecution one of the primary subjects of his policy to gain and retain power.”\textsuperscript{149} The judges also simplified and personalized the implementation of the mass murder: “It was Goering who on 31 July 1941 ordered Himmler, as Reich Leader SS, and Heydrich as Chief of the RSHA [Reichssicherheitshauptamt, Reich Security Main Office], to plan and execute the Final Solution of the Jewish Question within the spheres of German influence in Europe.”\textsuperscript{150} In conclusion, the mass murder of European Jews was no longer defined as a process based on the division of labor within the criminal state, but rather as a sole SS undertaking. Judge Powers even claimed in his dissenting verdict: “The evidence by those who were on the inside of this terrible extermination program strongly tends to show that not over 100 people in all were informed about the matter.”\textsuperscript{151} From today’s perspective, one can only assume that Judge Powers was unable to cope with the scale of the mass crimes to be prosecuted and the perpetrators to be punished—or wanted to close the chapter quickly.

At this point it can be summarized that by 1949 a coherent interpretation of the persecution and extermination of the Jews had finally emerged, which was composed of the following partial aspects: First, the mass murder of the Jews was considered distinct from other crimes. Secondly, the organization of the SS (including the SD and the Gestapo), or rather only a small group of persons within it, were primarily responsible for these crimes. Thirdly, it was the intention and anti-Semitism of the leading Nazis, above all Hitler, which structured the extermination from an early stage. This interpretation was perfectly suited to the changing political conditions of the coming Cold War, the emergence of two German states, and the planned western alliance of West Germany. From 1947 onwards, these political factors generated pressure from both sides of the Atlantic to end the trials. There is no doubt that the political interests of the Cold War affected the judges. The efforts of the US lawyers around Taylor to work out the connections between economy, party, Wehrmacht, and ministries were a sophisticated approach for an international criminal procedure, but not successful in its implementation. The structures of the Nazi regime’s policy of division of labor between persecution and extermination were lost in the NMT’s institutional approach. The focus on the SS as the dominant perpetrator organization involuntarily helped to support exculpatory narratives of entrepreneurs, ministry officials, and the military.

Conclusions
The correlation of the concept of genocide and the Holocaust was, as shown, complex in the years 1945 to 1949. Above all, the relationship was marked by contradictions and ambiguities. As long as Axis Rule served as the basis for the definition of genocide, there was room for maneuver in applications of the concept. As laid out in Lemkin’s book, the Nazi regime’s entire policy of persecution and extermination could be described and interpreted as a means of stabilizing and expanding Nazi rule in Germany and the occupied territories, of conquering new “living space,” and supporting Germany’s economic and national supremacy. In this interpretation, the mass murder of European Jews was one of many Nazi techniques for achieving these objectives. This view was expressed in particular by the French, but also by the British and Soviet prosecutions at the IMT. But even at the first Nuremberg trial, there were also doubts about this view. Jackson was the first and most prominent of the prosecutors who understood the particular character of the extermination of European Jews as an unprecedented crime, but neither he nor the US prosecution


\textsuperscript{149} Ministries Case, Judgment, 11-13 Apr 1949, TWC, XIV, 470.

\textsuperscript{150} Ibid., 865.

\textsuperscript{151} Ministries Case, Dissenting Opinion of Judge Powers, 13 April 1949, TWC, XIV, 910. For that reason, Powers found von Weizsäcker, Woermann, Steengracht von Moyland, Veesenmayer, Dietrich, Schwerin von Krosigk and Puhl not guilty for taking part in the extermination of the Jews. See ibid., 909-931.
The trial’s pointed emphasis on the role of the persecution and extermination of the Jews as part of the charge of crimes against humanity led to a broad presentation of the complex of the Holocaust with all the various temporal and spatial developments, with the different murder methods of the Jewish population groups in Western, Eastern, and Southeastern Europe, and with the organized labor division of extermination. This picture of the destruction of Europe’s Jewry presented in court was very comprehensive and almost complete. However, the lawyers did not clearly identify the motives behind these actions. Limiting the circle of indicted perpetrators proved to be a dead end. At the same time, by conflating the crimes against humanity with the Jewish Case, the IMT adopted the use of the genocide concept as an alternative interpretation of events—possibly in order to avoid emphasizing the Jewish Case too strongly.

Lauterpacht’s idea to focus the IMT trial on the persecution and extermination of European Jews with the new statutory offense of crimes against humanity was apparently not enough to make the world aware of attacks against Jews as a group. Turning to a different concept, which explicitly emphasized groups and centered on mass murder was a logical consequence, probably not only for Lemkin. Whether this possibly explains Lemkin’s own development from his initial broad concept of genocide to the pointed concept in the Genocide Convention, however, still has to be decisively clarified. Further studies on interpretations of the connection between the Holocaust and other forms of Nazi violence in the first years after the end of the war, especially from contemporary Jewish perspectives, are also necessary. In Harvest of Hate, from 1951, Poliakov saw the destruction of Europe’s Jews as part of a larger Nazi project—even if he interpreted the Holocaust as unique:

The plans the Nazis entertained for the conquered peoples, or so-called ‘inferior races,’ were not so utterly unprecedented as their attempt to exterminate out of hand the entire Jewish people;... Nevertheless, though this kind of persecution [of the ‘inferior peoples’] had a more rational point of departure and resorted to more subtle techniques, in the final analysis it led to the same goal: the physical suppression of other peoples. The same word ‘genocide’ applies to the persecution of the ‘inferior peoples,’ even if this was sometimes a ‘delayed’ genocide... As soon as one surveys the whole ensemble of Nazi racial policy and practice, one perceives the true significance of the extermination of the Jews: as a warning sign of greater and more general holocausts to come.152

Especially the RuSHA case in the NMT trials, which had closely followed Lemkin’s original genocide concept, was unable to convince either the judges, the world public, or the later historiography, not even Lemkin himself of the importance of this broader concept. Lemkin turned away from Nuremberg after the judgment of the IMT. The United Nations resolution on the “Crime of Genocide,“ in the preparation of which he played a major role, already went in a different direction with the elimination of expulsions as part of the genocide. The Nuremberg trials also took a different trajectory shortly thereafter. With the conviction of the SS, the SD, and the Gestapo as criminal organizations in the IMT trial, the focus on Eichmann and the “institutional approach” of Taylor’s prosecution, the narrative that these organizations were solely responsible for the persecution and extermination of European Jews was fully established in the NMT trials.153

Parallel to the last two trials before the NMT, in which the Wehrmacht, the Foreign Office, and the other ministries were assigned only subordinate roles in the extermination of the European Jews, the process of unifying the concept of genocide at the UN also reduced the complexity of the original one. These two developments went hand in hand: on the one hand, the separation of the Holocaust from the rest of the Nazi policy of extermination, carried out by a supposedly monolithic group of the SS, took place in the course of international criminal law practice; on the

152 Poliakov, Harvest of Hate, 263-264.

153 Hannah Arendt also placed the SS at the center of the extermination policy, in contrast to Raul Hilberg a few years later, who followed Neumann’s and Poliakov’s approach of an administrative division of labor. Cf. Hannah Arendt, The Origins of Totalitarianism (New York: Harcourt, Brace, 1951); Hilberg, Destruction.
other, the final legal definition of genocide, as an intended mass murder of a distinct national, ethnical, or religious group, was adopted by the UN. These developments made genocide, rather than crimes against humanity, synonymous with the Holocaust.

Why Lemkin approved of the reduction of his original concept will probably never be fully clarified. Whether it was a response to the fate of his family in the Nazi mass murder, whether he only became aware of the dimension of the Holocaust after the war, whether he wanted to emphasize the special character of the destruction of the European Jews, or whether there were other reasons, remains uncertain. Nonetheless, one thing is certain: Lemkin did recognize the possibility of political instrumentalization of the Genocide Convention and resisted its widespread application. In 1951, he rejected the petition We Charge Genocide: The Crime of the Government against the Negro People to the UN. The US government had not and would not commit ‘genocide’ against the African American population, he declared. That is, racist legislation and the social practice of lynching had nothing to do with his concept of ‘genocide’ in Lemkin’s view. Worse still, he accused the authors of the petition of communist and “un-American” motives.154

One does not have to agree with the verdict of some OCCPAC or OCCWC staff members who more or less called Lemkin “crazy.”155 But Lemkin’s refusal to endorse the black activists in the USA weighs heavily in today’s assessment of the “man on a mission.”156 After all, it is questionable for whom he was actually on this mission of creating the genocide offense. Ultimately, the 1948 Convention was so gutted by all the crucial prior circumstances of mass violence, particularly discrimination and the expulsion of determined groups, that it is hardly a political instrument for the persecuted and those condemned to extermination. Even genocide scholars and lawyers find it difficult to declare mass violent crimes as genocide. Historians also do themselves no favors when they use the term, which is legally standardized today, because it rarely (if at all) fits with the empirical findings and is usually an interpretative reduction of historical processes.157

As far as the Nuremberg trials are concerned, the use of the genocide concept relates to Lemkin, because he designed the concept. Genocide was a strong term at a time when there was no other concept for the Nazi policy of violence and extermination. The breadth of the concept also left plenty of room for interpretation, which the Nuremberg lawyers were quite pleased to embrace. However, Lemkin himself had little influence on the design and application of his concept in the Nuremberg trials. Behind the scenes in Nuremberg, Lauterpacht, Sheldon Glueck, and other international lawyers were much more important than Lemkin.158 With Neumann, Kirchheimer, Marcuse, and others, the US prosecutors had constitutional lawyers and political scientists at their side who had analyzed Nazi rule more precisely than Lemkin had in Axis Rule. With Poliakov, Friedman, Wulf, and others, Jewish activists and historians participated in the processes, drawing both on their own experiences of persecution and extermination in their studies and on the testimonies of other survivors collected by them. Lemkin did not belong to any of these epistemic communities. He was a lone wolf with a mission, which was to write his concept of genocide into international criminal law and perhaps even himself into the annals of world history. In that respect, he succeeded impressively. In the end, the outcome of the correlation of Lemkin, his concept of genocide, and its interdependence to the Holocaust, with all the interpretative changes between 1944 and 1951, is a good example of contingency in historical processes.

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155 Ferencz cited from Earl, Prosecuting Genocide, 323; see fn. 29.

156 Earl, Prosecuting Genocide, 317.


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Everyone has an opinion when being asked what is genocide. More recently, the word *genocide* was used with regard to the sluggish reaction of British authorities to the Grenfell Tower fire, to the European handling of the refugee crisis, the intensified logging in the Amazon rainforest, Ukraine’s conduct in Donbass, and so on. Even those who might have heard the name of Raphaël Lemkin in conjunction with the Genocide Convention would not necessarily identify him as the one who had shaped a popular discourse on genocide.

Raphaël Lemkin is a fascinating case study in its own right. It rarely happens than an individual who had been cast into oblivion not only makes a powerful comeback but also posthumously shapes his self-image. The appeal of Lemkin is easy to explain. The world, which appears to be hanging in the balance, desperately needs heroes. Lemkin represents just the right archetype—a private citizen and refugee from the Nazis who, despite all odds, persevered in seeing through a major international treaty. This is how Lemkin presented his story in numerous articles, statements, and last but not least an unfinished autobiography (which is now available as proper book). What followed also neatly fit into a standard discursive thread: unrecognized by his contemporaries, Lemkin has cemented his place in history as an idealistic humanitarian. The story as told by Lemkin has been serialized in numerous accounts, both academic and popular. The heroic image of Lemkin has certain variations, depends on the author. Thus, we have the Lemkin as a founding father of genocide studies (Adam Jones), the Lemkin as a central figure in the development of international humanitarian law (William Korey, Steven Jacobs, Philippe Sands), the Lemkin as the noble Pole (Ryszard Szawłowski, Marek Kornat), the Lemkin as a Jewish prodigal son (John Cooper), and the Lemkin as the crusader for the rights of the suppressed minorities (Roman Serbyn, Colin Tatz). Whatever perspective these and other authors take, they all agree that, in essence, no Raphaël Lemkin—no Genocide Convention. This view is shared also by the present author. What I object to is making Lemkin, wittingly or unwittingly, into a saintly figure.

The lack of critical perspectives is easy to understand, too. Lemkin’s credentials as the de facto creator of the Genocide Convention seem to give him special status. Lemkin’s life story, as narrated by the protagonist himself, makes for an animated classroom discussion. What works well for educators, however, is hard to challenge by academics. Sure enough, subjecting Lemkin, his ideas and actions, to critical examination is never a goal in itself, particularly if we recognize that iconoclasm is effectively a mirror image of sanctification. The intention is to merely move away from hagiography. Moreover, we should keep in mind that the issue at stake is not so much Lemkin’s personality but his role in shaping the Genocide Convention. It is a common wisdom that the Genocide Convention is an imperfect instrument of international criminal law. Consequently, the real question is what went wrong and why. In that case, the question can be reformulated as follows: can the success or failure of the Genocide Convention—if we choose to speak in absolute terms—be attributed to the way Lemkin had approached it. As we have learned a lot about the “success” in the past twenty or so years, it is about time we talk about the “failure.”

In this article I chose to tackle one specific aspect of the Genocide Convention, namely the mechanisms via which the word *genocide*, in the late 1940s and early 1950s, entered public discourse. The general answer to that question I have already provided: Raphaël Lemkin should be credited not only with the adoption of the genocide treaty but also with bringing the genocide discourse to the masses, consciously simplifying it in the process. This oversimplification, as I have argued earlier, has largely to do with the Cold War. The Cold War superimposed a dichotomy. International law, by definition, supersedes the black-and-white division of the world into two ideological camps. Lemkin, as an individual and legal scholar, was bound by personal and professional ethics. In both

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cases, it proved an ideal situation, which did not pass reality check. The result we know, sadly: eventual disappointment, if not despair, in the case of Lemkin, and a hollowed out international humanitarian treaty in the case of the Genocide Convention. None of this is visible to the naked eye, of course. What we routinely encounter, though, is the rhetorical use of genocide, which refers back to the Cold War, and Raphaël Lemkin.

The article is based on my recent research on the Genocide Convention. Lemkin had left behind a significant paper trail. His personal papers are complimented by the American and British governmental records. Former Soviet archives hold essentially nothing on Lemkin, for the simple reason that he, the self-described “unofficial man,” was not backed by the power of the state—the only kind the Soviets respected. Due to space constraints, I will illustrate Lemkin’s embrace of rhetoric as an argumentative devise on the following four examples: pushing for the deletion of political groups from the wording of the Genocide Convention, seeking the prerequisite twenty ratification to make the treaty fully operational, discussing “Soviet genocide,” and fighting off the notion that the treatment of black Americans constituted a genocide.

Erasing Political Groups from the Draft Genocide Convention

First order of the day is to state that the idea of an international genocide convention, backed by the newly established United Nations, occurred to Lemkin first in 1946, after he had failed to convince the American and British prosecutors at Nuremberg to charge major Nazi war criminals, among other crimes, with genocide. Indeed, the path to the Genocide Convention was not as straightforward as Lemkin wanted everyone to believe. Mark Lewis was perhaps the first scholar to point out that the new delicts of barbarism and vandalism that Lemkin had proposed in 1933 were in conjunction with the Convention for the Prevention and Punishment of Terrorism presently in the works. Lewis, and more recently Douglas Irvin-Erickson, have emphasized that the codification of international criminal law (of which the future Genocide Convention is but one example) developed simultaneously along several tracks and involved many a scholar.

Neither does Lemkin’s 1944 book, Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress, strike as extremely original when seen from a comparative perspective. Certainly, it was among the first, but not only, such analyses of the criminal Nazi regime. After all is said and done, the chapter on genocide—which Axis Rule in Occupied Europe is mainly known for today—takes up a mere 16 pages in a book of 671 pages. Put into a perspective, Lemkin’s ultimate tragedy was that, following the publication of his book, he built his life exclusively around the concept of genocide. As Lemkin had moved toward the self-imposed goal of making the Genocide Convention a reality, he progressively compromised and cut lose even his closest associates whose opinions might be just slightly different from his. A person, a scholar, a lobbyist, and/or an amateur diplomat—in whatever capacity Lemkin had appeared, it was all subordinated to a single goal.

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6 Given the fact that Lemkin had meticulously organized and preserved his papers, it is remarkable that almost none of the available documents can be classified as personal.
In retrospect, the last fourteen years of Lemkin’s life, 1946 to 1959, epitomize the different stages in the struggle for the Genocide Convention: seeing the draft convention through the United Nations, 1946–48; securing the prerequisite twenty ratifications to make the convention operational, 1949–51; and influencing the United States to ratify the convention, 1951–59 (actually, from 1949). I date the beginning of a slippery path of compromise for Lemkin by summer of 1947.

From that time onward, Lemkin had showed again and again that he was willing to cast overboard, well, not everything but certainly a lot in order to reach his ultimate objective. It all began with the original clause in the draft Genocide Convention that extended protection, among others, to political groups.

The original suggestion to omit political groups from the Genocide Convention reportedly came from the World Jewish Congress, an umbrella organization comprising Jewish agencies in fifty-seven countries. This recommendation was made, according to Lemkin, to eliminate the source of contention caused by differences of opinion as to what constitutes a political group and ultimately to secure adoption of the treaty. In fact, this initiative belonged to Lemkin himself. Lemkin’s dissenting opinion was entered in the UN Secretariat draft Genocide Convention of June 26, 1947: “One of the experts consulted, Professor Lemkin, voiced some doubts, however, on the advisability of including political groups. He pointed out, on the one hand, that political groups have not the permanency and the specific characteristics of the other groups referred to and, on the other hand, that the Convention on Genocide being of general interest, it should not run the risk of failure by introducing ideas on which the world is deeply divided.”

On July 8, 1947, he further argued in a letter to Hartley Shawcross, member of the UK delegation to the United Nations, that “political groups do not belong here organically.” The decision of the World Jewish Congress to lobby for exclusion of political groups was made on the behest of Lemkin two weeks earlier. According to John Cooper, by striking down political groups Lemkin sought to appease the Soviets and their affiliates. And he did, at least indirectly. In May 1948 Aron Trainin, top Soviet expert on genocide, specifically referred to Lemkin when arguing that political groups were fluid and therefore persecution on political grounds did not constitute genocide. With regard to political groups, even Lemkin’s closest associates were astonished that he was “willing to throw anything and everything overboard in order to save a ship.” Consistent backpedaling on the issue of political groups began in late May 1948. The stark opposition to the inclusion of political groups voiced by Britain, Latin American countries, and the Soviet Union—pinpointed James N. Rosenberg, chairman of the American Committee for an International Genocide Convention—might kill the entire project as it was about to be considered by the Economic and Social Council (ECOSOC) and later by the General Assembly. So serious were the objections by certain delegations that obtaining a two-thirds majority in the Assembly appeared unlikely. The committee therefore reversed its earlier position regarding political groups and set out to persuade the US State Department to do the same.


9 United Nations, Draft Convention on the Crime of Genocide, June 26, 1947 (UN Doc. E/447). See also Lemkin, Totally Unofficial, 161–162. Lemkin differed on this issue with the two other outside experts, Henri Donnedieu de Vabres and Vespasian Pella, together with whom he had prepared the Secretariat draft. Donnedieu de Vabres expressed himself resolutely against the exclusion of political groups, while Pella diplomatically delegated this “very delicate question” to the General Assembly. Then and later, Lemkin displayed antagonism toward both scholars. See Anton Weiss-Wendt, ed., Documents on the Genocide Convention from the American, British, and Russian Archives (London: Bloomsbury, 2018), document nos. 27, 73, 114, 115, 146, 281, 288, 293.

10 John Cooper, Raphaël Lemkin and the Struggle for the Genocide Convention (Houndmills: Palgrave, 2008), 94–97, 154.


Lemkin and his front organization, the US Committee for a UN Genocide Convention, continued pressing the State Department to drop the ball on political groups throughout 1948. By omitting this “controversial issue,” according to Lemkin, governments would demonstrate “true statesmanship.” Eventually, Lemkin (along with the Communist bloc and Latin American delegations) had succeeded in sticking down political groups from the wording of the Genocide Convention. Subsequently, the absence of political groups among those protected by the convention proved a major stumbling block to US ratification, which Lemkin had tirelessly urged.

**Ratification of the Genocide Convention at Any Cost**

Once Lemkin reneged on one core element of the Genocide Convention, it became easier to misinterpret the others, whenever it fit his purposes. In accordance with article XIII of the Genocide Convention, it would come into force after twenty instruments of ratification or accession will have been deposited. Lemkin took it upon himself to secure those twenty ratifications/accessions, by all means possible. His modus operandi was simple, as it was effective: to tell foreign diplomats, state officials, public figures, or just anyone who was willing to listen what they wanted to hear. Essentially, it means designating this or that particular case as genocide, depends on the respondent. And so Lemkin canvassed the world history, the twentieth century in particular, as a history of genocide.

It should probably be mentioned that, from Lemkin’s perspective, on a conceptual level, it was not even that big of a sin, since in his 1944 book he defined genocide rather broadly. It is just that, from early on, it was obvious to both UN officials and state representatives engaged in negotiations around the Genocide Convention in 1947–48 that the initial draft—broadly painted after *Axis Rule in Occupied Europe*—had to be scaled down to even approach the contours of an international convention. In other words, the text of the Genocide Convention was not identical to chapter 9 in Lemkin’s book. Lemkin knew it, and yet went ahead and interpreted the former as if it was the latter. In moral terms, it may be called self-righteous deception.

Lemkin was once quoted as saying: “I study my men and I use the approach that fits them best. I might flatter them or I might argue with them. If they like music, I talk about music but we always get around to genocide in the end. If it will accomplish the purpose, I’m even willing to bore them until they say yes just to get rid of me.” The way Lemkin operated was common knowledge. As a newspaper reporter once remarked, “most of Professor Lemkin’s work has been the behind-the-scenes and off-the-record kind.” In December 1948 Lemkin sought additional details from Pakistan’s Foreign Minister concerning the charge of genocide the latter’s country made against India in the United Nations back in February. Fourteen months later Lemkin was trying to convince the permanent representative of India to the United Nations that his country should ratify the genocide treaty, for “obviously there can be no success of this convention without the leadership of India.” Finland was well aware of the problem of genocide, stated Lemkin, because it had to absorb ethnic Finns from the Soviet-acquired Karelia in 1940. Japan must ratify the Genocide Convention in view of the plight of Japanese prisoners of war kept captive in China shortly changed its name to the US Committee for a UN Genocide Convention and functioned as a front for Lemkin’s ideas and strategies.

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15 For instance, Lemkin regarded as genocide Nazi linguistic policies in occupied Luxemburg and Alsace-Lorraine and the promotion of sexual promiscuity in occupied Poland. See Lemkin, *Axis Rule in Occupied Europe*, 82–84, 90.
17 Quoted in Herbert Maza, “Raphaël Lemkin,” draft article, November 1950, Raphaël Lemkin Papers, Manuscript Collection 60, American Jewish Archives (hereafter AJA), Box 5, Folder 7.
and the Soviet Union, he insisted.22 In his letter to the newly elected Lord Mayor of Dublin, Lemkin evoked the Irish Potato Famine of 1845–52.23 Following a phone conversation with Lemkin in January 1952, James Mandalian related “latest genocidal developments in Soviet Armenia” to the executive committee of the organization he had represented, the Hairenik Association.24 When trying to convince Turkish diplomats that their country should ratify the convention, however, Lemkin carefully avoided mentioning the Armenians.25

Lemkin must have been pleased that Yugoslavia, though nominally a socialist country, in August 1950 ratified the Genocide Convention. Remarkably, since the Stalin-Tito split in 1948, Yugoslav authorities, both at home and in the United Nations, had consistently accused the Soviet Union of genocide, evoking specifically ethnic deportations.26 The fact that the Yugoslavs went after the Soviets, however, proved immaterial to Lemkin. Shortly after Yugoslavia’s ratification, he swiftly rallied Italian émigré organizations in the United States. Acting on his behest, the Order of Sons of Italy urged US President Harry Truman using the “civilizing purpose” of the treaty to help out the peoples behind the iron curtain. As to the specific interest of Italy and ethnic Italians in the convention, the latter was said to be the only legal tool for the protection of the Italian minority in Yugoslavia. If Italy ratified the Genocide Convention, in accordance with Article VIII, it could bring charges against Yugoslavia without being a member of the United Nations. In reference to Catholicism, Lemkin inserted passages on the “Christian idea” and the “treaty devoted to God.” The Order of Sons of Italy conveyed Lemkin’s idea of the convention becoming an integral part of American foreign policy as an excellent instrument in the fight against communism.27

Along the way, Lemkin turned the anti-colonial argument on its head. In the case of Italy, it was no longer the crimes committed by the colonial power against the indigenous population of Eritrea, but the eminent threat to the Italian minority there following the withdrawal of the British troops. Naturally, argued Lemkin, the only “international law protecting the Italian minorities from the natives” was the Genocide Convention.28 When implying genocidal threat emanating from the indigenous North-African population, Lemkin was likely referring to crimes unimaginable attributed to them by...the Benito Mussolini regime, as a justification for the invasion of Abyssinia. A copy of the Italian government’s memorandum from 1935 is to be found among Lemkin’s papers. Apparently, he kept it because of the mention of “Abyssinan barbarism” (as a subtle affirmation of his proposed international crime of barbarism), which listed slavery, torture, cannibalism, and “deliberate and specific hostility towards Italy.”29

Talking about any given case, Lemkin might sound melodramatic at one time, and scholarly at another. Yugoslavia played a role also in the Greek civil war, which raged between 1946 and 1949, and in the postwar settlement. The issue at hand was the forced transfer of Greek children into Communist countries that the government in Athens, and Lemkin, had cultivated as a case of genocide.30 Lemkin had subsequently admitted that he used the story of children in the civil war as a means of achieving Greek ratification of the Genocide Convention.31 As he put it in a letter to one of his Greek respondents in July 1949, the transfer of Greek children was a good “illustration for Article II of the convention.” Writing to Helen Moschou, he said women should be particularly interested in the Genocide Convention “because of the family problems involved.” Moschou reacted most enthusiastically, praising Lemkin for his efforts to bring “those desperate

25 Cooper, Raphaël Lemkin, 184; Lemkin, Totally Unofficial, 200–201.
27 Order of Sons of Italy, “Letter to US President Harry Truman,” August 1, 1951, AJA, Box 2, Folder 1.
28 Raphaël Lemkin, “Letter to Salvatore Parisi, the Order of Sons of Italy,” February 17, 1950, AJHS, Box 2, Folder 3.
31 Lemkin, Totally Unofficial, 219.
young Greek children” back to their country and parents. Indeed, this treaty would provide a legal basis for the restoration of the Greek children and we do it together, Lemkin assured her.32

While playing on the maternal instincts of potential female supporters, Lemkin chose a more legalistic tone when appealing to the well-known Greek international lawyers Jean Spiropolous and Peter Vallindas. He let both men know that women’s organizations were eager to bring up the case of the Greek children in support of the Genocide Convention. The illegal retention of these children was criminal, highlighting genocide as a heinous crime, argued Lemkin. His letters inevitably ended with the request to expedite Greece’s ratification.33 The ratification might become the first act of the newly elected parliament, “dramatizing before the world the plight of the Greek mothers and Greek children.” This act would help to establish genocide as an international crime, Lemkin wrote to Archbishop Michael (Konstantinides), head of the Greek Orthodox Archdiocese of North and South America, “a crime which affected tragically the modern history of our beloved Greece, a crime under which now many children still suffer.”34 In an undated paper, Lemkin spoke of “wrenching children from their mothers’ bosoms” and of Greece appealing to the “criminals to disgorge their human loot.” He compared the sacrifice of some twenty-five thousand innocent Greek children to the Moloch of Communism to the Munich appeasement.35

The Notion of Soviet Genocide as a Means of Getting the Americans Onboard

Lemkin could never imagine he would stumble over something that initially appeared self-evident: ratification of the Genocide Convention by the United States. For over ten years, until he breathed his last, Lemkin was fighting an uphill battle. To win the argument, he put his integrity on the line. Eventually, he lost both.

The opposition to US ratification rested on two kinds of arguments, legal and political, bridged by a conspicuous Nativist element. The critics, including the influential American Bar Association, compared prospective ratification of the Genocide Convention to an imposition of a world government on the United States. International law would thus supersede state laws and eventually threaten constitutional freedoms enjoyed by American citizens. The act of ratification, they speculated, would enable the Communist bloc to formally charge the United States for genocide before the United Nations. That would be plain grotesque, since the only country presently committing genocide was reportedly the Soviet Union—unaccountable for its crimes thanks to the omission of political groups from the convention’s wording.36 To disarm the powerful opposition, Lemkin came to argue the exact opposite, namely that the Soviet Union can be indicted for genocide and that, reversely, no comparable crimes ever taken place in the United States. Regardless the charging situation, both domestically and internationally, Lemkin had refused to modify his argument, whose sole objective was to make the United States ratify the Genocide Convention and thus salvage it. He picked his words, and his allies, to fit his argument.

Since the Soviet Union occupied such a prominent role in the argumentation against US ratification of the Genocide Convention, Lemkin made it a centerpiece of his lobbying campaign. Until his death, Lemkin single-mindedly promoted the thesis that the Soviet/Imperial Russian state was inherently genocidal. For support, he turned to East European émigré organizations, which could be instrumental in indicting the Soviet Union for genocide. He played a pivotal role in recasting gross human rights violations and crimes against humanity, which had occurred with frightening persistency during the period of late Stalinism, in the light of genocide. By the time of the US Senate hearings on ratification in early 1950 Lemkin had annoyed a number of prominent politicians by his aggressive lobbying. As a result, despite his prominence in the field, Lemkin was

32 Raphäel Lemkin, “Correspondence with Helen Moschou,” July 6, August 10–11, and 16, 1949, AJA, Box 6, Folder 11.
35 Raphäel Lemkin, “Notes concerning the abduction of Greek children,” n.d., AJA, Box 6, Folder 11.
36 For details see Weiss-Wendt, The Soviet Union, 142–146.
not called to testify.37 Undeterred, he resorted to couching representatives of ethnic organizations who were expected to appear in the hearings. With remarkable candidness Lemkin stated that support for the Genocide Convention (which he had painstakingly cultivated) should appear spontaneous in the eyes of the Senators. As he explained: “The concept of genocide is very rich. Every angle—religion, economy, humanity, womanhood as victims, dictatorship, communism, Russia’s victims—all these should be brought to the attention of America and the world through these hearings.”38 To quote Mark Mazower, Lemkin “played more and more shamelessly to the anticommunist gallery.”39

Lemkin’s relationship with East European émigrés was that of give and take. He encouraged ethnic organizations to take the issue of “Soviet genocide” to the highest political level, the United Nations and the Senate, in order to make US politicians act on the Genocide Convention. The émigrés, for their part, appreciated an extra opportunity to rally under the guise of genocide against the continuous Soviet domination. The Lithuanian émigré organizations demonstrated remarkable cohesiveness and excellent lobbying skills, and thus quickly found a common language with Lemkin. Indeed, the two established a mutually beneficial partnership. Lemkin had received institutional and financial support from the Lithuanian émigrés, in return providing them with legal advice. As he noted in his unfinished autobiography: “I organize the Lithuanians in Chicago.”40

In June 1951 Lemkin opened an exhibition on genocide in Lithuania, organized by the Lithuanian American Council in Cleveland. When describing the “appalling material on extermination of the captive nations” (without mentioning that he had helped to write up the exhibition text), Lemkin related a nebulous story of Soviet authorities “importing” ethnic Kalmyks and Russians to replace Lithuanian deportees. Reportedly, those “imported persons” assumed not only the family name of the deportee but also the position of a husband and father of the distressed family. In conclusion, Lemkin urged to “include genocide as a concept carrying the highest moral condemnation in our cold war against the Soviet Union.”41 The exhibition was chronologically divided into three sections: the first Soviet occupation of 1940‒41, the Nazi occupation of 1941‒44, and the second Soviet occupation from 1944 onward. One element that was conspicuously missing in the exhibition was the mass murder of about 196,000 Jews by the Nazis and their Lithuanian collaborators.42 Lemkin, who lost forty-seven of his relatives in the Holocaust, apparently did not insist.

As with many other instances of Stalinist terror, the original idea to place the 1940 Katyn massacre in the specter of genocide came from Lemkin. In December 1949 he pitched reviving public attention to the Katyn case to the Polish American Congress. To entice the Poles, Lemkin casually mentioned that the Lithuanians had already settled on bringing up “genocide perpetrated now on the Lithuanian people by Soviet Russia” before the Senate subcommittee. If president of the organization agreed to participate in the forthcoming Senate hearings, Lemkin suggested, he might be able to incorporate the Katyn case in the proceedings.43 Consequently, a letter from the Polish American Congress that drew a parallel between “Nazi genocide in Auschwitz and Soviet genocide in Katyn” was entered as part of the official record.44

Lemkin’s engagement with the émigrés was not purely intellectual. The Ukrainians and the Lithuanians, in particular, regularly sent him checks. In fact, from the early 1950s onward, when

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38 Quoted in Cooper, Raphaël Lemkin, 195.
40 Lemkin, Totally Unofficial, 219.
43 “Lemkin to Charles Rozmarek, President of the Polish American Congress,” December 17, 1949, AJHS, Box 2, Folder 2.
Lemkin found himself increasingly in isolation, the financial support from the East European émigré organizations essentially remained his only source of income. Lemkin was due in taxes for the year 1948, and was given extension on his tax-return for the following five years. Whereas in 1951 close to 70 percent of Lemkin’s gross income came from two Jewish organizations—the Littauer Foundation and the American Jewish Congress—in 1952 the Lithuanian and Ukrainian émigré organizations—along with the National Committee for a Free Europe—contributed over 90 percent. Without unduly emphasizing the sense of obligation that Lemkin might have felt toward his donors, the much-needed cash injection made it difficult to end dependence. The money Lemkin had received effectively came from the CIA. Independent of that fact, he presented the National Committee for a Free Europe, the Voice of America, and the Crusade for Freedom—all propaganda spinoffs of the CIA—as the captive nations’ “symbol of hope for survival from genocide.”

Like many in the West at the time, Lemkin cultivated the Nazi-Soviet equation. He was keen on explaining to the American people that “genocide is what Hitler did to the Jews and what Stalin is doing in the Soviet-dominated countries.” Equipped with the anecdotal evidence of persecution of Jews in the Soviet Union, Lemkin spoke with conviction about a “unified plan and conspiracy to destroy the Jewish communities in all of Eastern Europe.” He insisted that Soviet policies went far beyond conventional anti-Semitism. Applying dubious logic, he argued that even the use of the expression Soviet anti-Semitism was incorrect: although anti-Semitism existed also in some democratic countries, it would be wrong to put them on the same level with Russia. Anti-Zionist and anti-Israeli disposition, according to Lemkin, was just one phase in the long-term Soviet policy of genocide that went back to 1941. He recalled the passivity of the international community in the face of the Nazi genocide, allowing Hitler to murder the Jews with impunity. “The world must not repeat this tragic mistake of the past,” he concluded, “the Soviet Union is waiting with great interest to observe the reaction of the world before it will proceed further.”

Lemkin described the Slánský trial, not utterly without a reason, a “judicial murder.” The fact that the indictment mentioned the ethnicity of the defendants made Lemkin speak of annihilation of the Jews. Although “genocide” had only affected individual Jews so far, Soviet propaganda—which according to Lemkin had assumed dimensions and techniques applied earlier by Julius Streicher and Joseph Goebbels—could prompt the destruction of the entire Jewry. Due to a tsarist “pogrom tradition” and the Bolshevik doctrine, Russian soil was saturated with Jewish blood, so that the local population could be easily aroused to participate in a large-scale genocide. The ongoing action against the Jews was not an isolated phenomenon, Lemkin insisted, since the Russians had already exterminated one-third of the Baltic population and the entire Muslim population of the Crimea.

To fit the moment, Lemkin constructed his case around Soviet satellites—Czechoslovakia, Rumania, and Hungary—which had allegedly set out to destroy their Jewish minorities. He charged

51 A reference to a public trial of the fourteen leaders of the Czech Communist Party staged in Prague in November 1952. Eleven of the suspects were Jewish, among them head of the party Rudolf Slánský. Known as a professed Stalinist and anti-Zionist, Slánský and his codefendants confessed to an alleged Israeli-American conspiracy to assassinate the president of Czechoslovakia and to restore capitalism in the country. Eleven defendants, including Slánský, were sentenced to death and three to life imprisonment.
the Czechoslovakian authorities with murdering innocent Jews placed on trial in Prague (without mentioning that they had occupied important positions in the Communist hierarchy). According to Lemkin, the defendants were administered drugs for the purpose of extorting confessions. He claimed that the communist rulers incited genocide by distributing posters that read “Hang the Jews!” From the proceedings of the Prague trial he inferred the intention to destroy the entire Jewish population of Czechoslovakia, and eventually all the Jewish communities behind the Iron Curtain. Ultimately, Lemkin wanted to take up the case of the “communist genocide campaign against the Jews and other victimized peoples” before the United Nations. Yet another time, Lemkin rallied support for the legal and political defense of Israel in the United Nations and other diplomatic settings. He implied that Jews living in the Middle East and Europe, and specifically Germany, were in mortal danger. The Genocide Convention was the only international tool for the protection of the Jews worldwide, Lemkin predictably concluded.

The idea of the immutability of the body politic is one of many flaws in totalitarianism theory (popularized through Hannah Arendt’s 1951 book). In the Soviet context, it meant that the comprehensive system of terror introduced under Stalin was constant. Lemkin had refused to recognize any changes in Soviet policy in the aftermath of Stalin’s death. Lemkin did not believe that Georgy Malenkov—who had won the leadership contest in Moscow—sought a new war any more than Stalin had, but ominously added that, “he will carry on the Russian practice of genocide which destroys nations.” For Lemkin’s life-long project, it seems, the existence of Soviet antipode was essential. During the college roundtable, “Genocide: The Newest Soviet Crime,” in late January 1953, Lemkin proposed establishing a special UN investigative committee that would look into that matter. According to Lemkin, “It will permit the United Nations to condemn the Communist leaders for the crime of genocide and render a verdict of which history will be proud…The great and historic importance of the Genocide Pact lies in the fact that it permits us to meet the present Communist barbarity not on the level of a discussion of “dialectical materialism” of Karl Marx but on the level of common criminality of an Al Capone and his like.”

As late as November 1956, Lemkin still held a singular explanation as to the Soviet plans for some one hundred million East Europeans. The Russians could not possibly “digest” such a large number of people belonging to a higher “civilization,” he reasoned. Therefore, they allegedly intended to destroy some 25 percent of the East European population, so that the rest should “surrender in passivity as an amorphous mass of slaves.” It had already happened, according to Lemkin, in Estonia, Latvia, and Lithuania. The Genocide Convention was the only international legal instrument capable of keeping the captive nations alive. Every parliament had to raise that issue in order to reveal the full scope of Soviet Genocide, Lemkin concluded.

What is particularly sticking is that the Soviets, who Lemkin had consistently taunted, had barely anything to say about him. A marginal note appeared in the Russian translation of We Charged Genocide: The Crime of Government Against the Negro People. A Petition to the United Nations originally published in 1951 by the far left Civil Rights Congress. Soviet critics dismissed Axis Rule in Occupied Europe for having failed to adequately present the scope of Nazi atrocities. They pinpointed that out of the 671 pages in the book only 15 addressed the Nazi crimes committed against the Soviet people. Lemkin’s biographical sketch was even less flattering: a Polish immigrant, Lemkin had settled down in the United States. Currently (i.e., 1947) he treads the boards as a legal expert in the UN Secretariat, while being an ardent supporter of American imperialist policies. Counterintuitively perhaps, the Soviets simply did not bother. One reason as to such apparent indifference I already outlined in the introduction. Concomitant explanation is that Stalin’s regime, once it essentially got its way on the Genocide Convention back in 1948, no longer regarded it a

55 Ibid.
55 Lemkin in conversation with Pauline Frederick.
58 My oboviniaem v genotside (Moscow: The Publishing House of Foreign Literature, 1952), 366.
major issue. Finally, the self-image of a diehard anticommunist that Lemkin had projected was simply not believable.

Lemkin was anticommunist for hire, and a composite picture of the communist regime that he had painted with the help of ethnic organizations in the United States resembled a caricature. Instead of pointing out specific elements of destruction within the narrower meaning of genocide (however heavily edited it had emerged from the UN floor), Lemkin and his supporters settled for emotional emphasis. Thus, they chose to speak of “destroying the soul of the Ukrainian nation” rather than to explore the circumstances of the 1932–33 famine; they were fascinated with the vicious rhetoric of the Moscow show trials, but failed to grasp the scope of the Great Terror; they focused on the high-profile Slánský trial in Czechoslovakia, but neglected the political undercurrent of Soviet anti-Semitism; they dwelled on ethnic mass deportations, but only used platitudes to describe the victims’ final destination—the Gulag.

Racial Discrimination in the United States as a Liability
As of the late 1940s, racial segregation was a part of everyday life in the American South, enforced by Jim Crow laws. It was almost inevitable that some commentators in the United States eventually raised the question whether any of the discriminatory practices could be framed as genocide. Lemkin became aware of this reading of the Genocide Convention shortly after it had been adopted. Could a country signatory to the convention bring charges of genocide against the members of a lynching mob, say, in Mississippi, was inquiring in February 1949 Emanuel Celler, Chairman of the House Judiciary Committee.59 When does homicide become genocide, another individual was asking Lemkin in January 1950. If a southern town of some two hundred inhabitants lynched every black in the town, could it be regarded as evidence of intent to destroy a group?60 Lemkin steadfastly rebuked such propositions. Those lawyers who thought that “two or three negroes walking in the street” constituted the sociological concept of a racial group were confused. “Two negroes” were not representative of the entire “racial negro group of America,” whereas discrimination was different from annihilation.61 This was a strong rebuttal from someone who just a year earlier had argued that the “killing of fifty persons is also genocide.”62 Writing to Gertrude Samuels of the New York Times, Lemkin went even further in his confutation. “For America, genocide is an outside crime,” he stated in June 1950, “it is like African leprosy.” According to Lemkin, the suggestion that the United States was committing genocide against the blacks amounted to slander.63 Curiously, in a speech before the American Jewish Congress some half a year later, Lemkin said in reference to the Korean War that “the present gigantic struggle in Asia carries in itself the seeds of genocide and its victim finally will be nobody else but the White Man.”64

Lemkin could barely contain his anger when he learned of We Charge Genocide: The Crime of Government against the Negro People. Available in both a book and a petition format, We Charge Genocide advanced a twofold thesis. On the one hand, it argued that the failure to ratify the Genocide Convention exposed genocide against the Negro people as a policy of the United States Government. On the other, it insisted that the obligation to implement the convention was not conditional upon ratification, superseding every state law in conflict with its provisions.65 Lemkin slammed the book/petition as erroneously titled, the result of confused thinking, or more likely a maladroit attempt to back up Soviet accusations concerning the US treatment of American Negroes. We Charge Genocide “wantonly misinterpreted and maliciously confused” civil rights of individuals with the destruction of entire groups as covered by the Genocide Convention, he fumed.66

61 Raphäel Lemkin, “Letter to Harold E. Stassen, President of the University of Pennsylvania,” December 31, 1949, AJHS, Box 2, Folder 3.
64 Weiss-Wendt, ed., Documents on the Genocide Convention, document no. 306.
65 For details see Weiss-Wendt, The Soviet Union, 228–243.
The Baltimore Afro-American bitterly remarked that the US press had passed the petition in silence, giving publicity exclusively to Lemkin.\textsuperscript{67} The latter suggested in the New York Times that the accusations leveled against the US Government was a “maneuver to divert attention from the crimes of genocide committed against Estonians, Latvians, Lithuanians, Poles, and other Soviet-subjugated peoples.” William L. Patterson, executive chairman of the Civil Rights Congress, retorted that “Dr. Lemkin was attempting to put the shoe he held on the wrong foot.\textsuperscript{68} This juxtaposition was not out of place. Unwittingly, Lemkin plunged himself into race politics.

The 1948 Displaced Persons Act authorized the admission into the United States of up to two hundred thousand people, including former citizens of the Baltic countries. By December 1951 some 48,000 displayed persons from Estonia and Latvia entered the United States. Many Latvians ended up working as cotton pickers in Dixieland, encouraged by white plantation owners. As Bernard J. Maegi has argued, planters chose Latvians primarily on racial grounds, to offset organized black labor. Arriving in the Mississippi Delta as victims of the totalitarian regimes, ethnic Latvians were effectively viewed as a racial bulwark. Their anticommunism fit well with the similar sentiment on the rise in the United States. When it came to civil rights movement, they found themselves on the opposite pole from blacks.\textsuperscript{69}

Lemkin’s position decisively pitched him against civil rights activists. In his June 1953 Op-ed in the New York Times, Lemkin disparagingly dismissed the suggestion that genocide might apply to the treatment of black Americans by white majority. Oakley C. Johnson, one of the signatories to the 1951 petition, accused Lemkin of playing down the scope of racial discrimination in the United States. White Americans were not just threatening one or several black persons, he wrote, but were terrorizing an entire racial minority. Johnson turned around the link between the Nazi and Soviet crimes that Lemkin had variously promoted. If genocide was a rare crime of great magnitude, as Lemkin insisted, then only the destruction of all members of a certain group would qualify as such. Would that mean that the Nazis did not commit genocide after all? Johnson asked rhetorically, since several million Jews were still alive? Lemkin argued in the Op-ed that American blacks were on the road to prosperity; but so were German Jews, contended Johnson. The consistent effort to superimpose white supremacy by means of laws, police, and courts had a potential element of genocide to it, he concluded.\textsuperscript{70} Lemkin, however, stuck to his earlier opinion that neither racial discrimination nor specifically lynching constituted genocide in the absence of the element of intent. “Only segregation with purposes similar to those motivating Nazi use of concentration and labor camps would violate the treaty agreement,” he contended somewhat intangibly.\textsuperscript{71}

Conclusion

What is normally called vanity, in the case of Lemkin was also a tragedy. He kept referring to the Genocide Convention as his child, and it effectively was, his one and only child. He burned his bridges behind himself; he could not fall back on what most of his peers could: family and close friends, ethnic community, and/or teaching career. In effect, Lemkin locked himself in an empty room with only, essentially, a flawed, difficult to apply international treaty for company. It did affect his state of mind. Thus, the concluding part of Lemkin’s unfinished autobiography spoke extensively of “opposition,” “enemies,” “retribution,” and so on.\textsuperscript{72}


\textsuperscript{67} “UN Asked to Act against Genocide in the United States,” Baltimore Afro-American, December 29, 1951.


\textsuperscript{70} Tanya Elder, “What You See Before Your Eyes: Documenting Raphaël Lemkin’s Life by Exploring His Archival Papers, 1900–1959,” Journal of Genocide Research 7, no. 4 (December 5), 487. Johnson was a teacher, writer, and founding member of the Communist Party USA.

\textsuperscript{71} Lemkin, Genocide: A Commentary, 1151–1152.

\textsuperscript{72} Lemkin, Totally Unofficial, 209–217.
By the 1950s Lemkin was no longer that idealist professor as some reporters tended to paint him. Notably, *Axis Rule in Occupied Europe* was also his last major academic work. Past the short article in *Yale Law Journal* in June of 1949 that affectionately summarized his findings in the book, Lemkin had not produced any scholarship. Meanwhile examples when Lemkin compromised his academic integrity are just too many to cite. Take, for example, Lemkin’s nomination for Nobel Peace Prize. Lemkin was nominated ten consecutive times, beginning in 1950, but never won the prize. According to the Nobel Prize Committee’s rules, individuals cannot nominate themselves for the prize, nor are they supposed to be told that they have been nominated. Lemkin flouted the rules by providing selected individuals with a template, suggesting them to insert the custom-tailored paragraphs into their respective nomination letters. Since the Nobel Peace Committee’s proceedings are classified, we will never know if anyone ever promoted his own candidacy as persistently as Lemkin did—probably not.

What Lemkin had written and said during his career, especially since 1945, was beseeched with contradictions. It is always possible to find corroboration to one’s ideas in Lemkin’s writings, for the simple reason that Lemkin had adjusted his vocabulary to meet the expectations of those he was talking to. Lemkin was opposed to any document of international human rights law that he regarded as contradicting or overlapping with the genocide treaty: the Universal Declaration of Human Rights, the draft Covenant on Social and Political Rights, the Convention Concerning the Abolition of Forced Labor, and the draft Code of Crimes against the Peace and Security of Mankind. The crux of the problem, as Mira L. Siegelberg has contended, was Lemkin’s commitment to group protection in a world that had decisively moved in the direction of individual rights. This conclusion let her pronounce Lemkin—too radically perhaps—as an “outdated remnant from the interwar period” and his strategy in preserving the purity of the Genocide Convention as “schizophrenic.” Lemkin’s original ideas and good intentions do not cancel out the legal and political process that had transformed them into the Genocide Convention. Chapter 9 in *Axis Rule in Occupied Europe* is by no means a canonical text. As William A. Schabas has recently argued: “Be that as it may, courts are no more interested in what Lemkin thought about the scope of the term genocide than they are in what Kant or Montesquieu or Augustine thought about murder and rape. It’s not really relevant. Legal terms are adopted by lawmakers. Preventing and prosecuting genocide is not about fidelity to the original vision of Raphaël Lemkin. His 1944 book is not our gospel.”

Certainly, the Soviet Union and the United States would have discovered the rhetorical power of genocide without any input from Lemkin. What Lemkin did was bringing the genocide discourse to the masses. The more people he addressed, the more amorphous became the term *genocide*. At some point, he simply lost track of the entire conversation. The issue at stake for Lemkin was no longer preventing and punishing genocide but identifying specific instance of mass violence anywhere to illustrate specific articles in the Genocide Convention and thus justify its existence. By the early 1950s, a popular conception of genocide incorporated anything and everything, from violation of human rights and forced assimilation to racial discrimination and infringement on the

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73 See, for example, “Mannen som skapte pakten mot folkemord: Møte med idealisten professor Lemkin,” *Aftenposten*, January 25, 1955. Lemkin’s article in *Yale Law Journal* also marked the last traces of his idealism. Hence, Lemkin concluded the article: “[T]he Convention might seem an instrument of pioneer justice; but these are pioneer days in world law. Perhaps this is the kind of quasi-law from which effective world law may be expected eventually to develop.” Lemkin, *Genocide: A Commentary*, 1157.

74 See examples from 1958 in Raphaël Lemkin Papers, Manuscript Collection 1730, Manuscript and Archives Division, NYPL, Reel 1.


76 The genocide scholars who do so invite an unfortunate comparison to religious fundamentalists who interpret sacred texts literally.

freedom of religion.\textsuperscript{78} I concur with Peter Novick, who has argued that “genocide was a generic category, and examples could be found to fit the needs of the moment.”\textsuperscript{79} The man who contributed most to making it happen is Raphaël Lemkin.

The heroic image of Lemkin requires a major corrective. Lemkin can hardly pose as a raw model, unless we consider contravening one’s principles and bending ethics a virtue. Lemkin’s crusade for the Genocide Convention entailed a self-destructing mechanism of a project delineated by ascribed significance. In a sense, it serves as yet another proof that no goal, whatever noble, can justify the means.

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\textsuperscript{78} Weiss-Wendt, *Hostage of Politics*, 556.


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When the End Justifies the Means: Raphaël Lemkin and the Shaping of a Popular Discourse on Genocide


Order of Sons of Italy. “Letter to US President Harry Truman.” August 1, 1951. Raphaël Lemkin Papers, Manuscript Collection 60, American Jewish Archives, Cincinnati, United States. Box 2, Folder 1.


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“Promise me. Promise me you will never be just a bystander.” Thus begins this work on the most famous aid organization in the world, on an unnumbered page immediately preceding the table of contents. The words are those not of the author, but of a Dutch Holocaust survivor, Lou Leviticus (memoirs published under the pseudonym “Ben Wajikra” – “son of Leviticus”), who lived in the same small city in Nebraska, Lincoln, where the author of this book is a professor of history. And the words were spoken not to representatives of the Red Cross, though they most certainly could have been, but rather, to a group of students gathered to hear Leviticus share his story of survival. Lou Leviticus spent the last two decades of his life sharing his story of survival with students across the state of Nebraska, his message never straying far from the role he hoped young people would play in preventing future atrocities. His parents, Max and Sara, had been murdered in Auschwitz. Leviticus passed away in 2015, but not before he and Gerald Steinacher became well acquainted.

Such a quotation is a fitting start for a work about an organization whose failures during the Holocaust are well-documented, authored by one of the finest scholars of our time for an audience far more broad in scope than many academics endeavor to approach. Humanitarians at War: The Red Cross in the Shadow of the Holocaust is an important book for its well-researched and highly nuanced examination of the role that the Red Cross, which is often rightfully criticized for being complicit or, in the very least, complacent, during World War II, played during and, far more so, immediately after the era of the Holocaust. It is a text that is equally intricate and accessible, a well-written chronology that flows seamlessly through the first half of the twentieth century, year to year and page to page, providing necessary back story about the founding of the Red Cross and the organization’s role in The Great War, and introducing the reader to central figures in the Red Cross such as Max Huber, who was the president of the International Committee of the Red Cross (ICRC) from 1928 to 1944, and Huber’s successor, Jacob Burckhardt, who served as president until 1948, shortly prior to the most recent Geneva Conventions.

It is to the post-war legacy of the Red Cross that Steinacher’s work is most deeply devoted. The bulk of the book focuses not on the relatively well-known and for the most part undisputed acquiescence of the ICRC to Nazi wishes during the reign of the Third Reich in Europe, the failures of the world’s farthest reaching aid organization to prevent “man’s inhumanity toward man,” but on the aftermath of the war once the Nazis were out of power and, as Steinacher frames it, the big questions of 1945, “would the humanitarianism of the 19th century still have a place in the postwar world? Would the ‘moral conscience’ of the world have a future after Auschwitz?” Steinacher explains that the atrocities of the Nazis were as much a challenge to the philosophical foundations of the Red Cross as they were a shocking realization to the world. Could the Red Cross have a future in the world after Nazi barbarism, was a very real question complicated by the role of the German Red Cross, whose president was SS Oberguppenführer Ernst Robert Grawitz, and the extreme lack of credibility that now plagued the organization.

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Throughout the pages of the book a picture unfolds that helps the reader to understand how the ICRC navigated infighting and division in the aftermath of a genocide during which their leadership remained notoriously silent and inactive. Moreover, with skillful work in multiple languages, Steinacher is able to convey to readers how various branches of the Red Cross maneuvered and, at times, careened through this tumultuous period differently in different places in the world. The international dialogue that sprung from this struggle, as well as the limits and possibilities of humanitarian intervention in times of war and genocide, becomes central to the text. Steinacher seemingly also draws on his experience writing *Nazis on the Run*, a previous work, in examining the further potential damage to the reputation of the ICRC and the Vatican as Nazi war criminals fled Europe via Italy, and the desire of the United States to focus instead on other issues, not least the Cold War and the reform of the Geneva Conventions.

It is in the most recent iteration of the Geneva Conventions where *Humanitarians at War* reaches a crescendo of sorts, a point at which without showing unfair and unnecessary favoritisms Steinacher lays out an historical narrative that puts the aftermath of WWII into new light. The positive results of the 1949 conferences in Geneva, Steinacher points out, could not defend against the new threat of nuclear war, but were instead “a reaction to past shortcomings and omissions.” Regardless, as residents of 2019, it should be difficult not to marvel at the fact that there has been no nuclear war since WWII, and no World War III to date, and this is surely due at least in part to the efforts of those in Geneva at this time, the ICRC, and to the recognition by the rest of the world of the failures of the Second World War. For all of our shortcomings and rifts, there seems to be some degree of human solidarity nevertheless, even betwixt mortal enemies. Steinacher mentions that the new Geneva Conventions took effect in 1950, and that the Soviets ratified them in 1954, followed closely in 1955 by the United States. Then, perhaps with a note of pride, he adds that “As of the writing of this book, 194 countries have ratified the Geneva Conventions, in other words, all states on this planet.” Perhaps the greatest victory of this book is its factual impartiality; Steinacher neither excuses the Red Cross for its failures during WWII nor downplays the immense importance of the organization’s contributions to the world in which we all now live.

In an earlier section of the book titled “The Guardians of Humanity Had Failed,” Steinacher fittingly quotes a letter by a Viennese Jewish Lawyer named Siegfried Kantor, published in a timely manner in *Jewish Frontier* in May of 1945. In this letter, Kantor leads with an almost prophetic right hook to the jaw of the ICRC:

> “When future historians are able to analyze the circumstances which made possible the annihilation of one-third of the Jewish people—the bulk of European Jewry—as well as the barbarous slaughter of untold masses of other civilians during the Second World War, there is one set of problems which will give them the greatest difficulty: Where was the enlightened, civilized world, particularly the humane, neutral influences, while all this was going on? Where above all, was the International Red Cross Committee?”

Gerald Steinacher is clearly one of those future historians Kantor was envisioning, and *Humanitarians at War* is as well done an analysis as Kantor could ever have hoped for. Steinacher’s new book is easily the most direct, fair, and thorough treatment of this topic to date. This is a book that the armchair historian will enjoy just as much as the one in the ivory towers of academia, an important text that contributes much-needed research and far better-nuanced understandings of the reformation of the ICRC and its contributions to the post Second World War era than any had previously endeavored to write.

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3 Ibid., 210.
4 Ibid., 234.
5 Steinacher, *Humanitarians at War*, 234.
6 Ibid., 90.
Book Review: *Forced Confrontation: The Politics of Dead Bodies in Germany at the End of World War II*

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*Forced Confrontation: The Politics of Dead Bodies in Germany at the End of World War II*
Christopher Mauriello
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This book is the stuff of nightmares: Nazi concentration camp victims on their death march in the last days of World War II, beaten, tortured, mutilated, shot, then hastily hidden along the roads of Bavarian towns or tossed into mass graves in surrounding forests and fields. The closer the enemy armies came, the more brutally SS officers and camp guards attacked their charges, hitting them with rifle butts, kicking them with their leather boots, smashing them with their spades, and shooting them once, twice, or many times. If the German townspeople witnessed these atrocities, they did not admit to it. Instead they claimed they had never been Nazis, had never even known any, had been victims themselves—refusing responsibility for the atrocities discovered in and around their towns.

For a second-generation German like me, this brings up painful personal questions. I look at my pencil marks on the pages of this book, testimony to my struggles to stay focused. I turn the page. My eyes fixate on one of the many photographs reproduced in this historical study. It shows women in the midst of a dense forest carrying an open casket on two wooden bars. Sunlight falls on the face of the woman on the left, exposing the pain she feels at the weight of her burden, a victim of Nazi terror. The woman on the right, however, un-illuminated by beams of sunlight, has a rigid expression. The number 57 has been engraved on the front of the casket. It is open. I can see a hat but no face, an elbow sticking out on the left side of the coffin. Are the legs crossed? The boots visible at the end of the coffin hint as much—the left is on the right side and vice versa—or perhaps something worse.

For the author of this historical study, Christopher Mauriello, a professor of history and the director of the Center for Holocaust and Genocide Studies at Salem State University in Massachusetts, these nightmare scenarios are personal too. His father was part of the advancing U.S. army, yet his letters home to his family “reflected no hostility towards the German civilians […] no accusations of collective guilt for Nazi crimes.”

What to make, then, of the fact that the American troops did carry out this punishment of forced confrontation against the local people: forcing them to dig up and reinter the bodies buried along the roads and in mass graves around little towns in the hills and mountains of Eastern Bavaria close to the border to Czechoslovakia?

These troops had been trained to expect heavy combat. Yet when they occupied the region, they encountered no overt resistance, only a passive, compliant population. April rains had turned the grounds into mud, exposing dead bodies along the roads and in mass graves in the surrounding fields and forests. The smell of decay hung in the air. The troops realized with horror that just before they had been approaching, atrocities had been committed everywhere, while they “were powerless to stop it.” And no sooner had the Americans arrived than the SS murderers had shed their uniforms to hide their identities, while local politicians hastily destroyed evidence of the towns peoples’ complicity with the Nazi regime. Who was to blame? Without waiting for

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2 Ibid., 183.
criminal investigations, court hearings or decisions from politicians, the U.S. officers and soldiers became judges, juries and executioners assigning collective guilt and handing down sentences of forced confrontation. They could do so because in the midst of the confusion of fighting a war and administering an occupation, American field commanders and the military government had been given extraordinary autonomy to act. Although these confrontations varied slightly at the four different sites on which the author focuses his investigation, all of them had these elements:

- ordering German townspeople to dig out the corpses along the roads or in mass graves;
- building individual coffins for the victims;
- forced spectatorship of lines of open caskets or open graves; forced processions of coffins through town;
- burials in town cemeteries or in town centers organized and attended by the American Forces, American clergy, local clergy and survivors of the death marches.

Funerals for the victims became the occasions for insisting on collective guilt. In one town, Ludwigslust in Mecklenburg, an American chaplain put it this way:

Though you claim no knowledge of these acts you are still individually and collectively responsible for these atrocities, for they were committed by a government elected to office by yourself in 1933 and continued in office by your indifference to organized brutality.\(^3\)

Mauriello relies on primary and secondary sources from official civilian and military archival materials in the United States and Germany, on his own and other scholars’ oral histories, on documents from private collections, on photographs, on published and unpublished accounts, and on newspaper clippings, as well as materials from reputable websites. The author weaves together these manifold details using Clifford Geertz’ thick description, a methodology, in which scientific observations of human behavior get embedded in the context in which they take place considering the subjective explanations and the meaning-making by those involved. The study is based on two theoretical frameworks: Victor Turner’s concept of liminality refers to fluid, ambiguous situations that are experienced as profoundly disorienting and threatening to the point that they can almost dissolve identity, but also as impetuses for those affected to change their outlooks and behavior; Katharine Verdery studied the politics of dead bodies in postwar Europe. Further elaborations on the author’s understanding und use of this methodology and the concept of liminality would have been helpful.

In six chapters this book describes the American military’s reactions to the discovery of the dead bodies and scattered mass graves in the Bavarian towns of Nordhausen, Schwarzenfeld, and Neunburg vorm Wald, as well as to those of the victims at the Wöbbelin concentration camp near the town of Ludwigslust, some 300 miles north in Mecklenburg. While the killings at concentration camps had taken place in a fixed location, those that took place during the death marches resulted in scattered, non-linear zones of death. The author’s descriptions embed each forced confrontation and assignment of collective guilt in the context of its physical site, the social conditions, the local politics and the characters emerging as agents of the situation. The chaos, violence and tragedies seemed to increase with each newly discovered site. Death marches had intersected and thousands of starving, beaten, and exhausted death-march prisoners had joined thousands of other displaced persons ahead of the approaching U.S. armored and infantry divisions.\(^4\) Every new event drew more and more arriving war correspondents, signal corps photographers and film crews. As occurred in other post-war reckoning scenarios,\(^5\) here too the community’s women became the

\(^3\) Ibid., 182.
\(^4\) Ibid., 88.
\(^5\) Keith Lowe describes the public shaming, extraordinary violence, torture, and in some cases murder, men in various European countries inflicted on those women who had had sexual relationships with a German occupier in his chapter "Revenge on Women and Children" within Savage Continent: Europe in the Aftermath of World War II 1943-1950 (New York: St. Martin’s Press, 2012).
objects of scorn. They were made to carry the open caskets through the town under the eyes of former victims of various national, ethnic, religious, and political background. As Mauriello puts it: “The gendered ideal of women as maternal receptacles for reproduction of new life was inverted through the perverse ideology of Nazism into a new representation of woman as culpable carriers of death.”

With each site, the assigned collective guilt expanded in scope to “all Germans in a vast murderous conspiracy that included the use of forced labor for the benefit of Germans and Germany.” In Nammering, where the sheer number of dead bodies made for the largest forced confrontation by the American military, the troops tried to use forced confrontation to educate hundreds or even thousands of German civilians at the point of a gun. They compelled German children, women and the elderly, as representatives of the perpetrators, to read their sign: “Here lies [sic] 800 murdered bodies killed by the Nazis of Namering [sic], Germany in April 1945.” They made them walk barefoot past partially covered dead bodies, some bloated from decomposition, faces, legs and feet exposed. The residents had to heave the dead bodies into the caskets with bare hands — the use of gloves was explicitly forbidden — and carry them on oxen transports over potholed dirt roads. During the postwar years that followed, Jewish committees and other victim groups, as well as local and national politicians in the newly established Federal Republic of Germany, initiated the reburials of victims at various sites, while emerging postwar narratives changed the understanding, use, abuse, and rejection of the concept of collective guilt.

The violent events this book describes, and the complexity of the forces at play tend at times to overwhelm the narrative. The point of view changes frequently, while different sources develop their own plotlines. While the account derives much of its power and conviction from its painstaking attention to detail, that same detail sometimes threatens to overwhelm the larger picture, defeating the purpose of thick description. Mauriello’s central point seems to be that the policy of forced confrontation was the spontaneous, on-the-ground response of American military commanders to the liminal situation they found themselves and their troops in at the discovery of the atrocities that had taken place. The policy was not ordered by the president or by any other governmental institutions or military headquarters. Mauriello’s research succeeds in capturing the U.S. soldiers’ urgent need to process and make meaning of atrocities of unknown scale and proportion. In the presence of both living and dead victims, and in the absence of identifiable perpetrators, these soldiers attributed responsibility to all those who did nothing to prevent the crimes. Their attempt at meaning making led them to assign the binary order of fighting for the good (the U.S. military forces) versus condemning evil (all Germans); and to try to reverse the dehumanization caused by the Nazi terror by re-individualizing the victims. In the hope of re-establishing the American values of democracy and freedom they decided to punish and re-educate the German townspeople by staging forced confrontation and assigning guilt.

However, because the American forces were unable to ascertain individual levels of engagement in the Nazi terror regime, their efforts also had the effect of dehumanizing the Germans by assigning collective guilt to everyone. Their forced confrontations must have created an experience of liminality in the German townspeople just as the American troops experienced in discovering the atrocities. But unfortunately, the author’s attempts at capturing the reactions of German civilians fall short of his ambitions. German civilian responses are only hinted at and sparsely

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6 Mauriello, Confrontation, 103.
7 Ibid., 110.
8 At the time the sign was composed Americans weren’t yet aware that the dead bodies they had discovered were victims from Buchenwald, nor did they know the specifics of the killings in Nammering. They conceived of the atrocities as local expressions of Nazi fanaticism (Ibid., 130).
9 As in the other cases of forced confrontation, the victims were given Christian, mostly Catholic burials. In later years local Jewish Communities initiated re-burials along Jewish rituals.
10 The subchapter “Burying the Nazi Past: Schwarzenfeld on the Eve of Liberation” within Chapter 3 or the subchapter “Postwar Forced Confrontations and the Ghosts of Neunburg Vorm Wald” within Chapter 6 shall serve as examples in Mauriello, Confrontation.
11 Ibid., 182.
documented. In part, Mauriello says, this imbalance is due to a lack of sources and “to the futility and basic unfairness of asking any surviving witnesses to relate their feelings or thoughts from over seventy-five years ago when most were still children.” Yet the reader is left to wonder: don’t thin description and historiography always have to take the partiality and the special circumstances of oral history and witness accounts into consideration? Christopher Mauriello himself expertly documents the value of such oral history when documenting the reactions of military forces to their discoveries. And even though Mauriello did not include the German townspeople’s reactions, he could have considered other major and successful efforts among historians and other social scientists to capture Germans’ experiences and interpretations of the war and the Holocaust.13

On a national level, the reactions to collective guilt are no less complex. While, as Mauriello states, Germans resisted the attribution of collective guilt, he does not acknowledge their sense of general responsibility, even though to a degree it is evident in some of his own sources, and has been extensively documented in the discussions and publications of postwar German intellectuals like Karl Jaspers and Hannah Arendt.14 This German sense of guilt explains, at least in part, why for decades the social, emotional and physical consequences of the Allied air raids and the displacement of millions of Europeans were buried in the German collective consciousness.15 And while initiatives such as the “Stolpersteine”—small bronze stumble-stones stamped with the names of victims embedded in the sidewalks outside their former residences—individualize victims of Nazi terror who were abducted to concentration camps and other sites of mass murder, nevertheless, when a photo exhibition in the 1990s documented the genocidal atrocities committed by ordinary German Wehrmacht soldiers,16 the myth of the SS as the major agent of evil was still so prevalent that the exhibition ignited vehement protest and renewed denial in segments of the German population. Mauriello concludes that the politics of dead bodies may have been local in the last months of the war but became national and global in the postwar years. Yet his account of these developments becomes murky at times, overgeneralizing and leaving out the efforts of other key players of the postwar era like the British, French, and Soviet occupying forces.

This historical study expertly captures a phenomenon of significant importance to all genocide researchers: the struggles of those who discover genocidal atrocities and are left (in the absence of more formal systems of justice) to attribute guilt and to exact retribution. In this case, the spontaneously emerging policy of forced confrontation demonstrated the American troops’ efforts at making meaning by re-establishing a sense of individuality for the Holocaust victims while, in the absence of identifiable perpetrators, assigning collective guilt. Mauriello’s book suggests the value of such efforts while bearing witness to their complex results.

12 Ibid., 186.
13 Although not originating in the towns the author investigates, the memoirs of the U.S. intelligence officer, psychologist and historian, Saul K. Padover provides vivid descriptions of German civilians’ responses to the war and the atrocities: Experiment in Germany: The Story of an American Intelligence Officer (New York: Duell, Sloan & Pearce, 1946). As for a contemporary account, see Nicholas Stargardt’s The German War. A Nation Under Arms, 1939-1945 (New York: Basic Books, 2015).
In *Concentration Camps: A Short History*, Dan Stone discusses the different concentration camps of the modern world. There are few books that combine the early colonial concentration camps, the Nazi concentration camps, the Soviet Gulag, the American internment camps for Japanese citizens, and the postwar Soviet camps all together under the same term: concentration camp. Stone does so cautiously, taking care not to claim that all these camps were the same. Instead, he looks at the different concentration camps over time to show that, whether one wishes to accept it or not, concentration camps have been an ever-present reality throughout all political systems of modernity. The discussion and comparison of the different camp systems he places together throughout the book is very thought-provoking, forcing the reader to question for himself the nature of concentration camps and the role they played and continue to play in society.

The book begins with a discussion of the term concentration camp. For this, Stone looks to the definition given in 1945 by journalist Patrick Gordon Walker that he finds limiting. This first chapter is a critique of this understanding of a concentration camp. Unlike Gordon Walker, Stone claims a concentration camp does not have to look like those of the National Socialists. This point is built upon the various examples of concentration camps throughout modern history both inside and outside of Nazi Germany in the following chapters. Alongside Gordon Walker, Stone looks to Hannah Arendt to define what can be called a concentration camp, critiquing the distinction she makes between the Nazi and Soviet camps. Stone presents his own working definition of concentration camps that he will refer to and challenge throughout the book.

After challenging these distinct definitions of concentration camps and offering a broader understanding of the term, Stone uses concrete historical examples to support his broader definition of a concentration camp that suggests such camps do not have to be surrounded by barbed wire to fall under this category. He looks first at what he calls, proto-concentration camps, in America and Australia designed to segregate the indigenous population. These early camps, according to Stone, are the beginning of the development of modern concentration camps. The first of these concentration camps he addresses are those set up in Cuba and South Africa as well as concentration camps developed in colonial settings. Throughout the discussion of the conditions of these early camps, he includes critique of historians’ understanding of the term concentration camp.

In order to define what can be considered a concentration camp, Stone includes a discussion of internment camps that are not concentration camps. The only reason Stone claims why these camps cannot be considered concentration camps is because they held soldiers instead of civilians, not because the conditions were better than the other camps mentioned in the book. Despite this difference, the POW camps added to the development of concentration camps. Along with the POW camps during WWI, the internment of civilians during this war was widespread and shaped the concentration camps that would exist during the next war. He presents the concentration camps of the Ottoman Empire through the eyes of historians as an example of the connection concentration camps can have to genocide.

After establishing the origins of concentration camps, the book continues to discuss the camps that come to mind most often when using the term. What makes this discussion of the Nazi
concentration camps unique is Stone’s use of early accounts of the concentration camps, such as the book published by German journalist Stefen Lorent, published in the UK in 1940 about his experience of Nazi persecution in 1933. He also discusses the importance of camps in general to the Nazi society. The following chapter discusses the Soviet concentration camps. This chapter focuses on the differences amongst the different types of these camps. Unlike the Nazi camps, there is no single image that comes into mind when one thinks about the Gulag. This is one reason why it is so difficult to use the term concentration camp for such camps because this creates a misleading idea of what the Soviet camps were. Yet, Stone continues to use the term in order to argue that concentration camps are a defining element of modern society, regardless of the political order.

Chapter 5 places the Nazi camps in comparison to other concentration camps that existed throughout the war, albeit somewhat provocatively. He never settles on a position whether these other camps should be considered also under the term concentration camps. Here, he discusses the camps in Italy under Mussolini and in Spain under Franco. Perhaps the most provocative accounts mentioned in this chapter refer to the internment camps in the United States and Britain. While explicitly stating that these camps differed greatly from the others mentioned in the book, Stone places these camps alongside the others mentioned in the book to show that even democratic nations were not unwilling to turn to such internment of civilians during wartime and even after the war through the establishment of Displaced Person (DP) camps. Here, it seems that Stone draws the line in his broader understanding of the term concentration camp. He would not consider the DP camps existing following the war as concentration camps. This is, according to Stone, because the people interned in these camps, unlike in those mentioned in the other chapters throughout the book, still had legal representation and rights. The chapter continues to look at other camps existing after the war that can be considered concentration camps to show the continued development of this concept of concentration camps even after the liberation of Auschwitz. The camps mentioned here are the Communist concentration camps, Latin American camps, and Bosnian.

The final chapter is where Stone moves on to discuss what the diversity of these concentration camps that exist throughout the world in all modern political contexts tells us, if anything, about the nature of modernity itself. In order to answer this question, he looks to the theories of both sociologists and philosophers to analyze their understanding of what modern concentration camps mean for society. This discussion is left open-ended, provoking the reader to question the nature of modernity for himself with the idea of concentration camps in mind. Taking a somewhat pessimistic stance, Stone presents the concentration camps as an element of modernity that cannot be escaped. Though he admits that more people around the world are not interned in camps, he also suggests that it could be the case that one may fall into such a camp. Overall, Stone raises more questions with this book than he answers, but this, it seems is exactly his intent. Students will read this book and be left to question the nature of a concentration camp and what the existence of such camps around the world under differing political systems can say about modernity. For Stone, the exact terminology is less important than the development of such camps and showing that this development did not end after WWII, but continues today. Along with provoking questions regarding the nature of modernity, Stone’s book presents a very scary point: concentration camps can exist anywhere under any type of political society and anyone can become the target of such a camp.
Film Review: 1945

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1945
Director: Ferenc Török
Hungary, 2017

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In the same way that Margaret Bourke-White’s arresting black and white stills of Buchenwald called out for the story of evil behind them in May 1945, the eye of the camera in Ferenc Török’s black and white film 1945 lingers on powerfully framed captures of European postwar life before drawing closer and closer to the disturbing stories behind them. Török’s setting is Hungary rather than the liberated camps of Germany, and it is August 12, four months and one week after German and pro-fascist Hungarian troops were driven out of the country by the Soviets. The year is made clear as the film opens with the screen-filled numbers, the windows through which a rural Hungarian landscape of trees, fields, and clustered buildings comes into view. As the camera rests and peers, first through the outline of the numbers, then incrementally closer to the lives of the Hungarian Christian residents who had experienced the war as it had just played out, the hidden relations and war-time bonds that hold the postwar village together are brought into focus.

The viewer of 1945 sees through the eye of the probing lens, through lacy curtains, around corners, through openings in gates, doorways, and windows, looking for what might be hidden, and from this perspective every resting pause of Török’s directed camera becomes a subject of study. In this unobserved-observer sense, the camera and hence the viewer take on the role of a Törökian-guided bystander who watches the bystanders that watched as Hungarian Jews were disenfranchised and deported in the last years of the war. The deliberate unpeeling of the story through this perspective is the studied result of more than ten years of collaboration between Hungarian director Török and Gábor Szántó, the Jewish Hungarian author of ‘The Homecoming’, on which the film is based, and co-writer with Török of the expanded script. Along with Hungarian cinematographer Elemér Ragályi, an all Hungarian cast, and a hovering awareness of current post-Holocaust research, Török and Szántó use this approach to examine the collective behavior of a country who, although aligned with Nazi Germany, developed the postwar narrative “the Nazis did it.”

While true that the Hungarian state resisted German urging to deport its Jews, that 760,000 Hungarian Jews were still alive when Germany invaded Hungary in March 1944, and that under occupation as many as 440,000 Jews were deported to Auschwitz-Birkenau and elsewhere by 9 July, the far more fleshed-out story from scholarship is that the Hungarian state and broad swaths of Hungarian society were not only involved in the deportations but profited from them. As summarized by historian Peter Hayes and substantiated by a long line of European, British, Israeli, and American scholarship, “even though most of the victims died at the hands of Germans, not Hungarians, the thoroughness of this operation...was largely homegrown.” The scheme for concentrating Hungarian Jews in ghettos was based on a Hungarian military plan drawn two years prior to the German occupation, and the post-occupation revision of the plan was a collaborative effort between the Hungarian Ministry of the Interior and Adolf Eichmann. Moreover, as evidenced by multiple micro studies, implementation and enforcement of the plan was “left primarily to

1 Life Magazine, 7 May 1945, 32-37.
Hungarian civil authorities and the Hungarian Arrow Cross with very limited help from the Nazi SS.\footnote{Ibid., 231-234.}

In one case study, for example, which is representative of many, the mayor of a city of 55,000 was responsible for carrying out the Hungarian ghetto decree in his vicinity, and under his auspices members of primary and secondary school faculties, city tax officials, police, and rural gendarmerie decided together where the ghetto would be located in the city.\footnote{Anders Bloomqvist, “Local Motives for Deporting Jews: Economic Nationalizing in Szatmárnméti in 1944,” The Hungarian Historical Review, 4, no. 3 (2015), 673-704.} The roundup itself was conducted by units composed of the same spheres of ordinary citizenry. Local newspapers reported on the process of ghettoizing Jews as it was carried out, making clear to the public that all personal property over and above that which Jews were allowed to take with them was to be requisitioned and treated as national Hungarian property. The expectation of the public was that it would benefit from those acquisitions. Citizens who had been involved in the roundups of Jews applied for confiscated Jewish property on the grounds that, for two weeks from five in the morning until eight at night, they had performed “not only administrative work but also hard physical labor.”\footnote{Ibid., 690-698.} Other groups of Hungarian society who applied for confiscated Jewish property included disabled veterans, journalists, teachers, railway workers, civil defense, the local Red Cross, and Catholic and Calvinist Churches.\footnote{Ibid. See also Borbála Klacsmann, “Abandoned, Confiscated, and Stolen property: Jewish-Gentile Relations in Hungary as Reflected in Restitution Letters,” Holocaust Studies: A Journal of Culture and History, 23, nos. 1-2 (2017), 133-148; Ferenc Laczó, ed., Special Edition: The Holocaust in Hungary in Contexts: New Perspectives and Research Results, The Hungarian Historical Review Jews in the Age of Genocide: An Intellectual History, 1929-1948, 4, no. 3 (2015); Tatjána Tönsmeyer, “The Robbery of Jewish Property in Eastern European States Allied with Nazi Germany,” in Robbery and Restitution, ed. Martin Dean (Berghahn Books, 2007), 81-98; Krisztian Ungváry, “Robbing the Dead: The Hungarian Contribution to the Holocaust,” Facing the Nazi Genocide: Non-Jews and Jews in Europe, ed. Beate Kosmala and Feliks Tych (Berlin: Metropol, 2004), 231-261.}

The rural aspects of this collective eagerness to share in the material spoils of Hungarian nationalization of Jewish property - which is the focus of 1945 - are critically important because the majority of Hungarian Jews whose deaths were a result of deportation were first taken from Hungary’s outlying provinces. Rural Jews were rounded up and transported by local units under the direction of local officials, first to ghettos in larger cities and then to ejection sites within six designated deportation zones. That the roundups were accomplished with such efficiency as to reap the deportation of some 440,000 Hungarian Jews within a fifty-five day period between 15 May and 9 July 1944 is a feat which still astounds.

As an inquest into the historical reality of what lay behind that extraordinary “accomplishment,” 1945 explores the thorny question of homecoming, by which is meant the post-Holocaust return of surviving Jews to the European countries from which they were deported.\footnote{David Bankier, ed., The Jews Are Coming Back: The Return of the Jews to Their Countries of Origin after World War II (New York, Jerusalem, 2005). László Karsai, “Shylock is Whetting His Blade”: Fear of the Jews’ Revenge in Hungary during World War II,” in The Jews are Coming Back: The Return of the Jews to Their Countries of Origin after WWII, ed. David Bankier (Jerusalem: Yad Vashem, 2005).} Török and Szántó’s intention is to refute the collective Hungarian memory of what happened during the war by disembarking two black-hatted Orthodox Jews from an arriving train a few months after the close of the war. Through the directorial use of a series of iconic images, which collectively mount and intensify as the film unfolds, the everyday banality of the destination village is peeled away.\footnote{Oren Stier, Holocaust Icons: Symbolizing the Shoah in History and Memory (Rutgers University Press, 2015).} The use of numbers for the film’s title is an obvious one, as is the repetitive appearance of trains, smoke, and fire, but one of the most powerfully repeated symbols of reality, which is not so iconically familiar, is taken from the little known facts that local Hungarian owners of horse-drawn carts were hired at fixed daily rates to transport Jews to ghettos and deportation sites, and that thousands of individual cart-owners were involved in the transport process.\footnote{Ibid., 231-234.} Under Török’s direction and
Ragályi’s camera, those obscure historical facts are transformed into a centralizing force: starkly framed black and white images of a horse-drawn wagon, transporting two casket-like crates, with two uninvited Jews walking silently behind it.

While the dialogue in 1945 is intentionally spare, with thunderous bursts of words - *The Jews are coming, Jews are in the village, Go warn the others* - it is by no means a more or less silent film. Like the repetitious images of horse-drawn cart, sealed coffin-like boxes, and the portentous ongoing walking of two Orthodox Jews, repeated iconic sounds are used to move the film along from start to finish. The click klopping of hooves striking a road, the tick tocking of clocks in sundry places, the characteristic rip of dirt from the earth, all of these play atmospheric roles of continuity from the time the Jews arrive until they leave some four hours later. Even the score itself, a sophisticated composition of often discordant notes, makes use of church bells and unoiled machinery to remind that this is a Christian village, and that what happened there in the summer of 1944 was but part of a broader state-mechanized collaboration with Nazi Germany, in which ordinary Hungarian citizens were complicit.

Yet, replete as the film is with fractured dialogue and discordant sounds, it is at times characteristic of a silent film whose melodrama is needed to capture the ways in which human deceit plays out in a conspiracy of silence as it implodes. The spirits of the past are thick and daunting, driving the guilty to measures that otherwise would not have been taken, each of which offers an unsettling juxtaposition to the steady-walking Jews who are on an undeterred religious mission. Stark, lean, uncomfortably clear and grim at times, 1945 offers a needed story about those who were forced to leave, those who stayed, those who return, and those who voluntarily leave, a story more or less ended in ashes, like the lives of some 500,000 Hungarian Jews. The film is an indicting examination of one slice of what happened in Hungary, but it is also a disturbing fictional reflection of what is now a consensus of Holocaust historiography: that the genocide could not have happened without the complicity and passivity of bystanders. The collective village portrait that is brought into bold relief by Török’s use of repetitiveness, contrasts, and juxtapositions lays bare all notions of “the Nazis did it” and reveals layer by layer the choices, decisions, and ways in which ordinary Hungarians involved themselves in the destruction process.

Title of the Film: 1945; Director: Ferenc Török; Producers: Iván Angelusz, Péter Reich, Ferenc Török; Screenplay: Gábor Szántó and Ferenc Török; Cinematography: Elemér Ragályi; Film Editor: Béla Barsi; Sound Designer: Tibor Szemző; Country: Hungary; Year of Release: 2017; Production Company: Katapult Film; Duration: 91 minutes.

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* Tim Cole, *Traces of the Holocaust: Journeying in and out of the Ghettos* (London: Continuum Books, 2011), 28-40. In one rural area alone, more than 1,000 Hungarian cart owners transported Jews to and from ghettos for deportation in the six week period between the end of April and early June, 32.