

# Raphael Lemkin as historian of genocide in the Americas

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## Introduction

That Raphael Lemkin (1900–1959) was keenly interested in colonial genocides is virtually unknown. Most commonly, and erroneously, he is understood as coining the term genocide in the wake of the Holocaust of European Jewry in order to reflect its features as a state-organized and ideologically-driven program of mass murder.<sup>1</sup> An inspection of his unpublished writings in New York and Cincinnati reveals that this is a gross distortion of his thinking.<sup>2</sup> In fact, the intellectual breakthrough that led to the concept of genocide occurred well before the Holocaust. Already in the 1920s and early 1930s, he had begun formulating the concepts and laws that would culminate in his founding text, *Axis Rule in Occupied Europe* (1944), and in the United Nations convention on genocide four years later.<sup>3</sup> It is a signal failure of genocide studies scholars in North America in particular, where the field has been primarily based until recently, that they have neglected his manuscripts sitting on their doorstep, preferring to regard themselves as fellow “pioneers of genocide studies,” although there is surely one pioneer, namely, Raphael Lemkin.<sup>4</sup> Rather than investigate what he actually meant by the term and its place in world history, the field has rejected or misunderstood his complex definition and engaged instead in comparative study of twentieth century mass killing and totalitarianism, all the while claiming Lemkin as a legitimating authority.<sup>5</sup>

Contrary to the weight of this scholarship, what Lemkin’s manuscripts reveal is that early modern and modern colonialism was central to his conception of genocide. Indeed, the very notion is colonial in nature because it entails occupation and settlement. The link is made plain by Lemkin in his description of genocide on the first page of the salient chapter of *Axis Rule*:

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. This imposition, in turn, may be made upon the oppressed population which is allowed to remain, or upon the territory alone, after removal of the population and the *colonization* of the area by the oppressor’s own nationals.<sup>6</sup>

Mass killing, by contrast, is *not* intrinsic to genocide; it can occur without executions or gassings.<sup>7</sup> The proposition that scholars who think that genocide is a synonym for the Holocaust need to entertain is that Lemkin regarded the latter as a consequence of Nazi imperialism and colonialism in Europe. The Holocaust and German *imperium* between 1939 and 1945 was for him a continuation of the genocidal occupations that have characterized colonialism through the ages—to be sure, in an extremely radicalized, bureaucratic mode.<sup>8</sup> This viewpoint, reinforced by renewed attention to the section on imperialism in Hannah Arendt's *Origins of Totalitarianism*, is now finding support in the literature.<sup>9</sup> To be sure, Lemkin conducted his systematic studies of colonial genocides in the later 1940s and 1950s, that is, after he had articulated the concept of genocide in 1944, but in all likelihood he was well aware of colonialism and critiques of it well before World War II.<sup>10</sup> What is important to note, however, is that although Lemkin probably regarded the genocide of European Jewry as the most extreme genocide in history, he assessed the extra-European cases of colonial genocide in terms of that concept's *generic* attributes rather than project the Holocaust back into history as the ideal type with which to categorize previous genocides.<sup>11</sup>

If Lemkin's definition of genocide as colonial has been studiously ignored by the literature, Australian, German, and English scholars interested in imperial history have now begun to implement it in their research on the destructive dimensions of colonialism.<sup>12</sup> But Lemkin not only provided conceptual guidance to later scholars; he wrote about these colonial cases himself. In "Part III: modern times" of a projected global history of genocide from antiquity to the present, he wrote, *inter alia*, on the following cases: "1. Genocide by the Germans against the Native Africans"; "3. "Belgian Congo"; "11. Hereros"; "13. Hottentots"; "16. Genocide against the American Indians"; "25. Latin America"; "26. Genocide against the Aztecs"; "27. Yucatan"; "28. Genocide against the Incas"; "29: Genocide against the Maoris of New Zealand"; "38. Tasmanians"; "40. S.W. Africa"; and finally, "41. Natives of Australia."<sup>13</sup> Then, in a "Report on the preparation of a volume on genocide," dated March–May 1948, a less ambitious project comprising ten chapters, two of which covered extra-European colonial cases: "2. The Indians in Latin America" and "10. The Indians in North America (in part)." The Holocaust, a term Lemkin never used, was not included, although the Armenians and Greeks in Turkey were, as well as the Early Christians, and the Jews of the Middle Ages and Tsarist Russia.<sup>14</sup> To continue to deny, as many "founders of genocide studies" deny, that he regarded colonialism as an integral part of a world history of genocide is to ignore the written record.

Unfortunately, this written record is incomplete. Although the unpublished manuscript that lists the 41 cases Lemkin examined contains handwritten notes indicating a "good," "fair," and sometimes even "duplicate" copy of the chapters listed above, only some of them are contained in the three Lemkin collections. Thus we only have the notes of Lemkin (or, rather, of his research assistant) on the "American Indians," and the chapters on the New Zealand Maoris and Natives of Australia are nowhere to be found as yet.<sup>15</sup> But we do have copies of his chapters, ranging between 17 and 32 double-spaced typed, unnumbered

pages, on the Incas of Peru, the Mayas of the Yucatan peninsula, and the Aztecs of Mexico, as well as a general analysis he called “Spain colonial genocide.” We are in a position, then, to investigate how Lemkin worked as a historian for some of the Americas. What we find is that he regarded the concept of genocide as perfectly adequate to analyse the complex processes of colonialism, but that his adherence to certain sources and perspectives blinded him to aspects of the Spanish case. We conclude by highlighting the tension between genocide scholarship and modern historiography of Native Americans generally, and propose that the former learn from the latter’s insights.

### *Lemkin’s research*

The notes Lemkin and/or his research assistant took—at least those that are extant—are uneven, even anecdotal, and drawn from a disparate and limited range of popular and scholarly sources. They follow no clearly discernible methodology. For North America, there are only note cards, which are scattered, and episodic—ranging from King Philip’s War in Massachusetts in 1676, to the battle of Wounded Knee on the Plains in the 1870s. For the most part, the notes are drawn from Edward Channing’s monumental, though very general work, *A History of the United States*, Vols I–V (New York: Macmillan, 1929). He also used John Halkett, *Historical Notes Respecting the Indians of North America* (London: A Constable, 1825) to compare British and French policies, Grant Foreman, *Indian Removal: The Emigration of the Five Civilized Tribes of Indians* (Norman: University of Oklahoma Press, 1932) for Indian removal, and John Collier, *The Indians of the Americas* (New York: W. W. Norton, 1947) on the nineteenth century Plains Indians Wars and on the treatment of California Indians. For primary sources, he drew on the extensive appendix of official documents in Charles J. Brill, *Conquest of the Southern Plains* (Oklahoma City: Golden Saga, 1938), as well as the treaties listed in James Truslow Adams, *Dictionary of American History*, five volumes (New York: C. Scribner’s Sons, 1940) and Charles C. Royce, comp., *Indian Land Cessions in the US* (Washington, DC: Government Printing Office, 1899). Significantly, Lemkin and/or his research assistant took many notes from J. Clarence Webster, ed., *The Journal of Jeffery Amherst: Recording the Military Career of General Amherst in America from 1758 to 1763* (Toronto: Ryerson Press, 1931). Like contemporary scholars, Lemkin was clearly intrigued by reports that Amherst had authorized the deliberate distribution of smallpox infested blankets among Indians.<sup>16</sup>

For the Aztecs and New Spain, Lemkin took most of his notes from F. A. MacNutt, *Fernando Cortes and the Conquest of Mexico, 1485–1507* (New York: Putnam, 1909), George C. Vaillant, *Aztecs of Mexico* (Garden City, NY: Doubleday, Doran, 1941), and Collier’s *Indians of the Americas*. For the Yucatan Peninsula and the Maya, Lemkin mainly consulted Arnold Channing and F. J. Tabor Frost, *The American Egypt* (New York: Doubleday, Page, 1909), and Frans Blom, *The Conquest of Yucatan* (Boston: Houghton Mifflin, 1936). For the Incas and Peru, Lemkin notes that his chief source was William H. Prescott,

*History of the Conquest of Peru* (London: Dent, 1916; originally published 1847), and again, Collier's more general work, *The Indians of the Americas*.

For the essays he wrote on Spanish America, however, Lemkin drew mainly upon the work of Spanish witness Bartolomé de las Casas, derived mainly from Marcel Brion's, *Bartolomé de las Casas: "Father of the Indians"* (New York: E. P. Dutton, 1929), which Lemkin notes was his chief source for Spanish colonial genocide, and Francis Augustus MacNutt, *Bartholomew de las Casas: His Life, His Apostolate, and his Writings* (New York: Putnam, 1909). Indeed, for the bulk of his text on Spanish America in general, and the Incas, Aztecs, and Maya in particular, Lemkin cites Las Casas. For Lemkin, Las Casas was one of the few heroes of American colonialism and the sole authority on Spanish cruelties. As he wrote, Las Casas' "name has lived on through the centuries as one of the most admirable and courageous crusaders for humanity the world has ever known." "And in his famous work on conditions in the Indies," Lemkin concluded, "he has collected all the gruesome facts of genocide which he met with and bitterly indicted the vicious Spanish colonial administration." Lemkin let Las Casas speak for him: "[Las Casas' account] has come down to us as one of the most shocking monographs on genocide." His text thus follows Las Casas closely both in tone and evidence, although the structure and analysis is, in the last instance, his own.<sup>17</sup>

### *Lemkin's method and analyses*

Because Lemkin regarded genocide as "an organic concept of multiple influences and consequences," he did not limit his investigation to "one branch of science."<sup>18</sup> He proceeded interdisciplinarily, utilizing categories from sociology, political science, demography, economics, psychology, and law. Accordingly, the chapters are not descriptive narratives, but tightly structured analyses organized under the following headings. Here is Lemkin's outline of the template he used in each chapter. These are his words:

1. Background-historical.
2. Conditions leading to the genocide: fanaticism (religious, racial), irredentism (national aspirations), social or political crisis and change, economic exploitation (e.g. slavery), colonial expansion or military conquest, accessibility [sic.] of victim group, evolution of genocidal values in genocidist group (contempt for the alien, etc.), factors weakening victim groups.
3. Methods and techniques of genocide:
  - physical—massacre and mutilation, deprivation of livelihood (starvation, exposure, etc. often by deportation), slavery—exposure to death.
  - biological—separation of families, sterilization, destruction of foetus.
  - cultural—desecration and destruction of cultural symbols (books, objects of art, loot, religious relics, etc.), destruction of cultural leadership, destruction of cultural centers (cities, churches, monasteries, schools, libraries),

- prohibition of cultural activities or codes of behavior, forceful conversion, demoralization.
4. The genocidists: responsibility, intent, motivation, feelings of guilt, demoralization, attitude towards victims, opposition to genocide within genocidist group.
  5. Propaganda: rationalization of crime, appeal to popular beliefs and intolerance, sowing discord (divide and rule), misrepresentation and deceit, intimidation.
  6. Responses of victims:
    - active: submission (suicide, hiding, etc), escape, disguise, (planned) emigration, political subordination, assimilation, resistance, demoralization
    - passive (emotional mental): terror, conceptions of genocidist and his crimes. submission, escape, resistance, attitude towards genocidists; disguise, demoralization.
  7. Responses of outsider groups: opposition to genocide, indifference to genocide, condonement [sic.] of genocide, collaboration in genocide, demoralization (exploitation of genocide situation), fear as potential victims.
  8. Aftermath: cultural losses, population changes, economic dislocations, material and moral deterioration, political consequences, social and cultural changes.<sup>19</sup>

### *The lead-up to genocide*

In the event, Lemkin did not utilize every heading in each chapter he wrote, attending first and foremost to the historical evidence he found. He commenced each chapter with a brief survey of the indigenous peoples, describing their culture, society, and vulnerability to European penetration. Although not blind to their faults—“Mexico was ruled by a covetous and tyrannical conqueror, Montezuma . . . [who] . . . had subjected many formerly independent people who served as oppressed vassals to the Aztec”<sup>20</sup>—Lemkin generally praised the virtues of these American civilizations. Despite tyranny, the Aztecs possessed a “fairly democratic government,” “Commerce was highly developed,” “Much land had been reclaimed from the sea by careful water controls,” they “were highly skilled in arts and crafts,” and so on.<sup>21</sup> The Incas received still further praise: their culture “is one of the most remarkable in history, both for artistic as well as socio-political achievement.”<sup>22</sup> For all that, the Mayas stood “on a higher plane culturally” because of their “picture writing which was highly stylized.”<sup>23</sup> In the narrative structure of these chapters, these halcyon, introductory depictions are meant to stand in stark contrast to the abject condition of the surviving indigenous people in the sombre concluding section, the “Aftermath.”

The attention then shifts to the Spanish conquerors. Lemkin described the sixteenth century expeditions in a page or two before proceeding to analyse the “Conditions leading to genocide.” Lemkin himself generalized about them:

As for the conditions leading to the discovery and conquest of Yucatan by the Spanish, they are more or less identical with those leading to Spanish conquest elsewhere after Columbus.

Desire for the riches of the new continent, for glory and adventure drew the conquistadors to the American shores.<sup>24</sup>

The situation was exacerbated in Peru, “Because of the many hardships of the expedition and the unsurpassed riches which were eventually found.”<sup>25</sup> Another common feature was the Spanish assumption that they had a right to the territory and its riches, so much so that resistance by the Indians was regarded as treacherous and thus crushed with brutal force. As we will see, the quelling of resistance was a major feature of what Lemkin called “physical genocide.” Another feature that led to a radicalization of the Spanish was an honour code that did not countenance failure, and a “necessity to hold out despite almost insurpassable [sic.] difficulties”: the conquerors exhibited “rapacity and ruthlessness against kindly natives” once they were “within reach of what they had striven for.”<sup>26</sup>

The Indians were no match for the conquistadors. The Aztecs had made themselves so unpopular by their tyranny that the Spanish—“after all a small troop of worn-out strangers in a rugged country full of enemy peoples”—could enlist the “active cooperation of Indian vassal tribes” against them.<sup>27</sup> More generally, superstition and religion issued in a dangerously welcoming attitude to the Europeans. Awe was inspired by their strange mode of transport (horses), steel armour, and arabesques. “Later this awe increased to stupefied subjection when the violation of the idols and the emperor’s person did not bring down the wrath of the gods.”<sup>28</sup> The Mayan civilization was already in decline when the Spanish arrived, riven by civil war and economic difficulties, but Lemkin did not regard this weakness as decisive.

While conquest by the small Spanish forces was usually difficult and dangerous, it is most likely that the Spanish with their horses and superior weapons would eventually have conquered the country, whether it had been internally weak or not.<sup>29</sup>

### *The genocides*

Lemkin then laid out the “methods of genocide.” The first was physical, typically massacres. These were of three sorts. Preemptive strikes were carried out by Pizarro in 1532 after he entered the city of Caxamalca, and by Cortes in Cholula, in order to intimidate the locals, and to forestall attack by them. Fear of being overwhelmed by the far more numerous Indian forces was an important factor, Lemkin observed.<sup>30</sup> The second sort of massacre was the putting down of rebellions. Killing took the form of reprisal actions: “For every Christian killed during the fighting brutal reprisals were taken and many hundreds of Indians were massacred. Some governors and captains simply had populations massacred without ceremony.” Captured locals suffered a worse fate: “Indian captives of the Spanish were frequently tortured and killed. This was not the exception among the cruder soldiers but was looked upon as a matter of course by soldiers and officers alike.”<sup>31</sup> In form, such massacres resembled the third type: gratuitous exhibitions of violence for their own sake.

Massacre of defenseless Indians did not stop with the completion of the conquest. During the bloody days of Spanish colonial rule, Spaniards used to amuse themselves by hunting down the natives with bloodhounds for sport or to train their dogs for game.<sup>32</sup>

Outright killing or murder was not the only physical method of genocide. Lemkin also counted the “deprivation of livelihood,” by which he meant “genocidal slavery.” In the case of the Incas, he identified the Spanish instrumentalization of indigenous practices of labour service to effectively work the locals to death. Or they taxed “the strength of the Indians to the utmost and beyond, and they did not afford them any protection whatsoever.”<sup>33</sup> He was aware that the Spanish crown had attempted to protect the Indians by instituting a system of “encomiendas,” but they became “a cloak for continual exploitation and slavery” because the stipulated conditions were ignored by colonial authorities.<sup>34</sup> Lemkin was appalled by the loss of life:

The population of San Juan and Jamaica fell from 600,000 to 200 in 40 years (op. cit. 118). In the Bahamas the population fell from 50,000 to nearly zero. The population of Nicaragua was almost entirely wiped out; In 14 years more than 600,000 had died as beasts of burden (op. cit. 121). The supposedly impartial historian Jomara claims that by 1553 there was not a single Indian left in Cuba. Another authority claims that 20,000 were wiped out there (op. cit. 23) Just within a few months, 7,000 children died of hunger. Las Casas claim the total Indians killed in Spanish America as more than 20 million (op. cit. 26). This number does not include those that died from overwork, the slaves who were killed in the mines, or the Indians killed during active combat, nor the caciques or prisoners who were executed (Ibid.).<sup>35</sup>

The second method of genocide was biological. This is the method that had the most direct implications for women because it bore on the natural reproduction of family and therefore group life. Mass rapes and the separation of children from their parents fell under this rubric.

Indian women were not only violated indiscriminately but also carried off to fill the harems of the Spanish colonists (Brion, 39). The fact the exhausted slave mothers were often unable to nurse their babies, also contributed to the death of the race (Ibid). Children were not infrequently carried off by the Spanish (25).<sup>36</sup>

Slavery also affected procreation and so was included as a form of biological genocide. “As the men were slaves were used as porters and miners, and the female ones as cooks and mistresses (op. cit. 54), the separation of families was concomitant with slavehunting.”<sup>37</sup> The harems affected the Incas’ ability to reproduce. “Between this forceful removal of Indian girls and the undermining of the health of the male slave, the biological continuity of the Peruvian people must have been greatly jeopardized.”<sup>38</sup>

Lemkin had more to say about the cultural genocide of the Indigenous peoples of Latin America. Since his thinking of this method of genocide has been widely misunderstood, it is worth attending to closely.<sup>39</sup> He identified six forms of cultural genocide: destruction of leadership, forced conversion, prohibition of cultural activities, destruction of religious and cultural symbols, destruction of cultural centres, and looting. The destruction of local elites, and indeed leaders like Montezuma, was designed to decapitate the enemy in order to render it

more easily conquerable. The humiliating execution of such political rulers, such as the Inca emperor, “revealed to the people that a power stronger than that of the Incas had now control of their country and that the dynasty of the Children of the Sun with all its cultural and religious implications had now passed away for ever (op. cit. 302).”<sup>40</sup> Lemkin summarized the situation by relying on Las Casas: “According to Las Casas, one chief after the other, one kind after the other was killed by the Spanish. Caciques were burned everywhere; the kings of Mabua, Buacagar and Darien, of Maguana, Xaragua and Higuey perished as a result of the Spanish genocide (120, Brion).”<sup>41</sup> Religious leaders were also targeted: “In order to prevent the maintenance of tribal religion and culture, the Mayan nobles and priests were either killed outright by the Spanish military or forced to flee (Blum 83).”<sup>42</sup>

Although Lemkin praised the efforts of the clergy to learn the locals’ languages and protect them from the depredations of the Spanish soldiers, he held the latter responsible for “A subtle kind of cultural genocide” in the “Spanish missions which abounded in Mexico, California, Louisiana and elsewhere.” Indians may not have been converted by force—conversion by coercion was a clear case of cultural genocide—but by virtue of baptism belonged to the Church and thereby became “virtual prisoners” of the missions and the violence enforcement of their discipline.<sup>43</sup> They were separated from their people and its culture. With the same logic, Lemkin suggested that Cortes’ refusal to accept unbaptized girls as gifts by the Spanish was tantamount to cultural genocide because “Indian etiquette required the acceptance of gifts offered. The Indians could not take back the girls they offered as gifts without seeming offensive [sic.] according to their customs; thus they were obliged to consent to their baptism,” although Lemkin speculated that Cortes may not have intended this outcome, concerned as he may have been with the Christian purity of this men.<sup>44</sup> Clearly, the intention rather than simply the effect mattered for Lemkin.

Closely related to forced conversion was the prohibition of cultural activities. In his only discussion of the method, Lemkin is not entirely clear on whether its effects must be physical to qualify as genocidal. Thus the substitution of the healthy Maya drink, the *balche*, with “Spanish intoxicants,” which had the predictable effects on the health of the Indians, is a case of cultural policies having a biological consequence. No such effect was immediately obvious, although in retrospect predictable, from the manifold restrictive measures imposed by the friars on their unhappy “converts.” Because these kind of regulations are so common in colonial contexts around the world, the proclamation of Tomas Lopez warrants reproduction in full. If they were culturally genocidal in nature, as Lemkin suggested, then many of the heavy handed assimilation policies of policies of colonizing powers fall under this rubric.

The control of residence and travel (to facilitate indoctrination)

Prohibition of native rites and assemblies

Establishment of one church in each town within 2 years

Establishment of a school for the teaching of the catechism and the necessity for baptism to



be built by the town; attendance required  
 The punishment of the relapsed converts  
 The control of marriages (none to marry more than once; no native marriage customs, no secret marriages, monogamy)  
 Children not be given heathen names  
 All to attend church regularly and to follow all Christian rites  
 No tattooing, devination  
 Command to care for the sick, "so lacking in charity are the Indians"  
 No slavery allowed for the Indians; caciques (chiefs) may have accredited servants  
 No banquets to be held of more than 12 persons and then only on special occasions such as weddings  
 Dancing only in the daytime  
 Ancient drinks prohibited  
 Towns to be built in Spanish style with a market place and racial segregation  
 Dress regulated  
 All bow and arrows burnt to prevent hunting; caciques were allowed some for emergencies.<sup>45</sup>

The next method of cultural genocide was the Spanish violation of cultural symbols, by which he meant the plundering of sacred sites out of greed. "In the capital of Peru, Cuzco, the Spanish soldiers stripped off the rich ornaments from the royal mummies in the temple of Corichancha. They even violated the sepulchres and deprived them of their dead and their wealth (Prescott, 316)."<sup>46</sup> Christian outrage at heathen practices was also a factor. Thus

Cortes was the idol smasher par excellence. He ordered crosses to be erected in the villages. In one city he commanded his soldiers to ascend the temples and cast down the idols [sic.] which were then burned in the public square under protest of the governor (MacNutt, 100, also 30).<sup>47</sup>

The destruction of cultural centres entailed both the laying waste of villages, towns and cities, as well as the despoliation of temples and pyramids. "At Kalisco, the Spanish boasted of having burned 300 villages to the glory of God and kind (op. cit. 123)." In both cases, he emphasized that Spanish institutions replaced the Indigenous ones. They destroyed Aztec cities "and built Spanish cities on their ruins." In Peru, "The Spanish friar of the expedition, Father Valverde, began his career as Bishop of Cuzco by erecting a monastery on the ruins of the House of the Sun, the great temple." With perhaps unintended irony, he observed that "The former House of the Virgins of the Sun was transformed into a Catholic nunnery."<sup>48</sup>

Only the Incas receive a separate section on loot. Lemkin appeared to want to make two points; that the looting impoverished the country and that it destroyed unique material culture. Thus "The Indian goldsmiths were required to melt down all the previous and bejewelled [sic.] articles of gold that poured into Spanish headquarters." Generalizing for the Spanish colonial genocide, he wrote, "Looting and pillaging of Indian wealth was so general that it seems almost banal to mention it. Frequently the Indians would be threatened with violence lest they [not?] reveal their treasure to the Spanish. Usually, the conquerors took the treasures and then the lives of the Indian owners (Brion, 33)."<sup>49</sup> We revisit

the issue of cultural destruction when we discuss his discussions of the “Aftermath” of the genocide below.

### *The genocidists*

Lemkin’s attempt to attribute responsibility for these crimes presents the scholar with an important insight into how he reasoned about colonial genocides. After all, the cases he was covering here were not centrally controlled instances of focused extermination like the Holocaust. How does he deal with the key category of intent in such a diffuse and uncoordinated process? His approach was to focus directly on what he called the specific “genocidists” and to discuss them in terms of their “responsibility,” “intent,” “motivation,” and “demoralization,” as well as their “attitude towards the victim,” and any “opposition from within.” Generally, the colonists were to blame:

With few exceptions . . . the colonists of New Spain were guilty of genocide and firmly resolved to frustrate all efforts at stopping it. They profited by the ownership of slaves and since even the governors were slave-holders they could not be induced to enforce the royal orders against slavery and other abuses . . . the colonists were guilty on all counts.<sup>50</sup>

The military officers and their troops were “the enforcers of genocide” by virtue of “the brutal reprisals against rebellious Indians.” Even here, though, Lemkin was careful to differentiate. Writing of the massacre of the Cochuah and Chemtual in Yucatan, he noted, “To what extent higher military or governmental authorities sanctioned this genocide is difficult to say; Don Francisco de Montejo, at least, was not involved in the above atrocities, but condemned them in vain (25).”<sup>51</sup> Non-state actors were also guilty. The colonists “endorsed and commanded such action,” Lemkin observed of the killing. Sometimes, they “perpetrated massacre themselves.”<sup>52</sup> Indigenous collaborators with the Spanish in Mexico were likewise guilty: “The allied Indians helped in the massacre and general pillage at Chochula; they could not be restrained by the Spanish though apparently this was attempted (Bonte, 58).”<sup>53</sup>

A striking feature of the analysis is the distinction Lemkin draws between the Spanish king in Madrid and the “wealthy colonists” who intrigued at court in order to prevent any humanitarian interference in their exploitation of the “new world.” Their greed, he is effectively arguing, corrupted all involved in the governance of the colonies. He reserves particular opprobrium for those who should have intervened on behalf of the Indians.

The royal administrators of the Spanish colonies were perhaps the most responsible for the crimes, since they had the power and duty to interfere on the basis of royal orders. However, they were slaveholders themselves and thus did more than merely condone genocide.<sup>54</sup>

Responsibility could be vicarious. Thus Pizarro, a commander in Peru under Cortes, had forbidden his soldiers from violating buildings and the population of Cuzco; but they did so anyway. Afterwards, Pizarro supervised the division of the spoils, whose theft he ultimately sanctioned. “While it seems from the

evidence, that certain of the most scandalous acts of genocide were not immediately traceable to Pizarro's initiative, the commander of the Peruvian expedition has received the blame, which of course is his due by virtue of his position."<sup>55</sup>

Lemkin also identified those responsible for cultural genocide. Clergy who had imposed forced conversion were guilty of cultural genocide. Father Valverde's inducement to the Inca monarch to convert before execution was regarded by Lemkin in these terms. The inquisitorial actions of Church figures in removing Indians from towns and destroying their religious icons in *auto de fes* was roundly condemned.<sup>56</sup> He was certainly aware that many clergy had protected Indians against the soldiers, but his point was that different techniques of genocide—physical/biological and genocide—need not be perpetrated by the same agents or with the same motives.

So much for responsibility; what about "intent," and how did it differ from the next section called "motivation"? This is how Lemkin put it:

Just as in all cases of Spanish colonial genocide, we might correlate certain motives with certain intent. When the intent was wilfull destruction of the group of the culture, as in the Caxamalca massacre of the destruction of the emperor, expedience (as in these two cases) or religious fanaticism are often the motives involved. When, however, the intent was merely self-gratification with complete disregard for the group or culture thus victimized, as in the slaughter of the llamas or the widespread loot, greed or the desire for power is often the main motive.<sup>57</sup>

This statement is not very helpful because it borders on circularity; if the intent is self-gratification, the motivation must be greed or power. In his other examples, he tries to distinguish between the two more sharply. Thus fear, religious fanaticism, or "the craze for gold," motivated certain massacres, but the intent was to "take possession of it ['the empire of Peru'] as their lawful territory and to convert the Peruvians to the true faith (214)."<sup>58</sup> The intent, then, was the officially proclaimed will of the Spanish crown such as the proclamation to the Mayans about the Spanish right to their country. "If you do not ['recognize the Church and his Majesty the king as your rulers'], we will war on you, take your wives and children away, dispose of your property and harm you as much as we can 'as to vassals who will not obey and refuse to receive their lord . . .' (160)."<sup>59</sup> But Lemkin was not naïve. He regarded the stated intentions of the Spanish as "a mere fiction" because the pre-emptive massacres committed by Cortes were obviously "intended."<sup>60</sup> Seemingly inconsistent, he wrote that the "motivation" of the Spanish in killing "rebellious Indians," was the "self-righteous attitude towards the Indians as Spanish property."<sup>61</sup> So were their actions intended or motivated? It is unclear, but it probably does not matter.

What was clear is the depravity of the Spanish, above all, the soldiery. Lemkin discussed them in the sections entitled "Demoralization," by which he meant their moral degeneration. As adventurers, these men probably possessed few ethical scruples to begin with, and the "moral standards of Europe and more especially of Spain in the 16th century were not high in comparison with contemporary ones," but the circumstances in the colonies, above all, the prospect of enormous

riches and Eurocentric contempt for the indigenous culture, led them to atrocities.<sup>62</sup>

Long after the conquest demoralization not only persisted but became part of the conqueror's and colonists [sic.] behavior. In his eyes, what he did had probably ceased to be anything dishonorable. Only in that way can we comprehend the blood-thirstiness of the Spaniards who amused themselves by hunting Indians with dogs, or their licentiousness as they collected harems of Indian girls . . .<sup>63</sup>

The great distance from Spain made restraint of the colonists all but impossible. "The restricting influence of church, family, community, crown were absent and they could for once revel in feelings of omnipotence."<sup>64</sup> Not that the Church in the "new world" was able to successfully resist corruption either. "The religious foundations and fraternities . . . were often more interested in their exploitation of the Indians than their conversion (466)."<sup>65</sup>

What about those Spanish who opposed the treatment of the Indians? The Spanish government, Lemkin noted, never authorized general slavery, and tried to ameliorate the conditions of the indigenous peoples by a system of "encomiendas" that would aid in their protection and conversion to Christianity. Pope Paul II promulgated bulls against slaveholders. Like Queen Isabella, King Charles V sympathized with the plight of the Indians. He also sided with Las Casas, who became his chaplain. A court faction backed "the humane crusader," but equally the "Council of the Indies" thwarted him.<sup>66</sup> Such tension was evident in the colonies themselves. Thus the friars often inveighed against the treatment of the Indians by the colonists, and took pains to learn their languages, thereby gaining their trust. The Church's insistence that the Indians observe religious services and receive religious instruction earned the ire of the Spanish secular authorities. Padre Olmedo apparently chastised Cortes for forced conversions from the first. The judicial murder of the Inca monarch was similarly opposed by a number of officers.<sup>67</sup> In the end, however, the efforts of Las Casas, who was defamed as an "enemy of Spain," and his supporters amounted to little in the face of the "the general corruption and demoralization at court and in the colonies."<sup>68</sup>

Lemkin was particularly interested in the Spanish rationalizations of their policies and behaviour. In the main, they pointed to the barbarism and savagery of the Indians to justify their rule: human sacrifice, cannibalism, the bloody tactics of battle, their supposed stupidity, superstition, and so on. Explicitly following Las Casas in his controversy with the "pro-genocide historian," Sepulveda, Lemkin doubted the credibility of such claims. Were European claims of cultural superiority sustainable in any event? "Ignored in all these stories is the fact that the Indians possessed a high degree of culture themselves in such places as Yucatan, Mexico and Peru; and that among them vice was not greater perhaps even smaller than in Spain (op. cit. 16)."<sup>69</sup> The barbarians were the Spanish, he wanted the reader to believe.

Perhaps the most significant rationalization of the Spanish colonial genocide was the Spanish claim, based on the theory of universal monarchy, that they were legally entitled to the Americas, and therefore resistance to them was

illegitimate, indeed, that it was rebellion that could be violently quashed. Unlike uncritical supporters of western expansion, he did not take this claim on face value. How were the natives to understand the Spanish arrogation of their land? Lemkin was asking. The reading of the Spanish proclamation of sovereignty, whether natives were present or understood it, “seemed quite sufficient, in the eyes of the Spaniards, to produce obedience and justify genocide (see Intro. xi).”<sup>70</sup> The Spanish assumption was ultimately a pretext to kill, a posture inherited by subsequent English thinkers such as John Locke, who wrote that rebellious natives had

declared war against all mankind, and therefore may be *destroyed as a lion or tiger, one of those wild savage beasts with whom men can have no society or security*. And upon this is grounded that great law of Nature, “Whoso sheddeth man’s blood by man shall his blood be shed.” Also Cain was so fully convinced that every one had a right to destroy such a criminal, that, after the murder of his brother, he cries out, “Every one that findeth me shall slay me,” so plain was it writ in the hearts of all mankind.<sup>71</sup>

Lemkin was effectively arguing that occupations and settlements conducted on such terms—that is, without recognition of indigenous rights and subsequent negotiations—were bound to issue in genocide because resistance was as inevitable as its brutal suppression.<sup>72</sup> In this regard, it may be significant that many of his research notes taken on Native North American conflicts and massacres begin with some kind of Indian uprising. More noteworthy still is that he observed that Hitler regarded the Russian partisan warfare as but a pretext to “eradicate everyone who opposes us.”<sup>73</sup>

### *The victims*

As to the victims, despite violent resistance by some, like the Yucatan, the Incas, who put up “heroic resistance” and even once defeated the Spanish, and also the Aztecs, who “revealed the fearlessness and tenacity of the Mexicans,”<sup>74</sup> submission was the prevalent response. Basing his explanation on the testimony of Columbus and Las Casas, Lemkin remarked of the indigenous peoples that their behaviour could be explained “partly because of the typically gentle personality and partly because the Indians were too defenseless to resist the Spanish conqueror and slave-holder.”<sup>75</sup> Their belief in the quasi-divine status of the Europeans was a particular impediment to military preparedness. All too often, the outsiders were feted and invited into the heart of the polities where they could decapitate the indigenous regime.

Such a posture did not preclude strategies of escape, such as later absconding from missions, but sometimes they evinced hopelessness, like the collective suicides of villages as the conquistadors approached. Other communities rose in rebellion upon “severe and brutal provocation,” but invariably they were “brutally suppressed.”<sup>76</sup> Despite such acts of defiance, Lemkin’s view was that the Indians were doomed. By quoting at length his bleak summaries of what he called the

“Aftermath” of colonialism, we can see how he viewed the relationship between genocide and culture, and the nature of culture itself.

The long range after math [sic.] of Spanish conquest was the enslavement of the native population and the *supplantation* of Spanish Christian culture on the ruins of the once high Maya culture. During the long centuries of Spanish exploitation and cruelty the Maya Indians lost their old vitality and personal qualities. The noble character to which even Spanish historians have paid tribute (Arnold and Frost, 331) was crushed out of the Mayas under the oppressive system of “haciendas” (slavery). The Indians gradually became so cowed that they lost all sense of discontent and all desire for resistance (ibid.) Their lives were a long drudgery and humiliation. Sexual abuse of even the youngest girls by the boys of the masters and the master themselves became a matter of course. The Indians even forgot how to object to this supreme insult (op. cit. 332). They have learned how to creep up to their masters after being whipped and to kiss their hand in slavery subservience (op. cit. 333) . . . While the condition of the Indians has been improving since then, under a more progressive Mexican administration, their lot is still hard and their *cultural heritage has been irrevocably lost*. 1,000,000 Indians still speak Maya dialect today. They still till the land as their forefathers had done but they have lost their civilized habits, their remarkable skills and knowledge long ago. (Blom, 83–8)<sup>77</sup>

After the conquest, Aztec civilization was dead (Vaillant, 265). While at first the conversion of the Indians had only been intended, the colonial exploiters followed on the heels of the conquistadors to exploit and enslave the Indians (ibid.) The death of Indian Mexican culture was gradual but sure (op. cit. 267). Crushed under their labor on the haciendas and in the mines, the Indians, their customs and beliefs, their whole way of life [sic.]. Only the Indian racial type persevered until this day (op. cit. 269).<sup>78</sup>

These quotations reveal three significant features of Lemkin’s thinking on genocide and colonialism. The first is that he regarded the extinction of the culture as genocide. It did not require the entire physical extermination of the victims, only the elimination of the culture-bearing strata. As he wrote elsewhere, the “permanent crippling” of a people was tantamount to genocide.<sup>79</sup> The second feature is that he equated culture with high culture, because it is synonymous with national, as opposed to local, peasant, consciousness. In this regard, his comments are reminiscent of his observations about the Nazi attacks on the culture of the victims during the Second World War. “Side by side with the extermination of ‘undesirables’ went a systematic looting of artworks, books, the closing of universities and other places of learning, the destruction of national monuments.”<sup>80</sup> For him, they were part and parcel of the Germans’ genocidal policies. (We consider the problem of focusing on high culture as the bearer of group consciousness in the final section.) Finally, Lemkin wanted to show that the conquerors not only destroyed the indigenous culture but replaced it with their own, just as he postulated in *Axis Rule* in relation to the German wartime occupation of Europe. There, we recall, he posited 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.” In fact, what the manuscripts of Spanish Latin America reveal is that he regarded genocide as comprising an ensemble of policies

and practices that attack the “foundations of national life,” as he did in relation to the Nazis. The crucial difference between the two cases, however, is that there can be no question of a “coordinated plan” in the American instance. But for Lemkin, genocide had taken place there all the same. Such a plan was actually unnecessary to establish in premodern colonial contexts. Destruction occurred without one. The intention to destroy was evident in particular situations at the local and regional level. Genocide could be said to have occurred there and then, perpetrated by identifiable Spaniards.

### **Lemkin as researcher**

Lemkin’s account of the Spanish colonial genocide is problematic. Indeed, we need to stress here that Lemkin’s account, based so heavily on Las Casas, cannot be taken at face value. Anthony Pagden, in an introduction to one of the more recent editions of Las Casas’ *A Short Account of the Destruction of the Indies*, reminds us that Las Casas wrote to inform, but also to persuade: “It was in the most immediate, most transparent sense of the word, an exercise in propaganda.” His account was above all, a petition—a petition for justice. It was also part of a formal debate in the early sixteenth century over the legitimacy of Spanish claims to Indian labour—a debate of which Lemkin was aware.<sup>81</sup> Thus while many of the stories Las Casas told may have been true, others had clear classical antecedents and were part of a “recognizable rhetorical strategy for arousing wonder in the reader.” As were the numbers he so often cites, which often ran into the indeterminate but impressive sounding “teeming millions.” As Pagden quite conclusively shows, the exaggerated and horrific tales of destruction, and constant inflation of numbers was meant “only to impress upon the reader the literal magnitude of the event.” Las Casas, the witness, wanted to unveil the “truth” about what was happening in the New World. Given this context, Las Casas has to be used in a more critical fashion.<sup>82</sup>

Though Lemkin’s uncritical over-reliance on Las Casas might make him a poor social historian, his rehabilitation of Las Casas in the aftermath of the Second World War was not, it turns out, unusual. For while Las Casas’ account of the Spanish in the Americas may have originally fuelled the rise of the “Black Legend”—a Protestant-inspired distortion of Spanish imperial ventures—from the sixteenth to the eighteenth centuries, an antithetical, equally polemical “White Legend” had taken deep root by the mid-twentieth century. The turn away from the “Black Legend” began in the second half of the nineteenth century. Though as always there was considerable diversity and ambivalence in English scholarship on the Spanish colonial empire, the monumental histories written by the gentlemen-scholars of nineteenth century America began to move away from a general emphasis on Spanish atrocities and ferocious conquests to take a more romantic view of Spanish imperialism. Though the literature still reflected strong anti-Spanish, anti-Catholic prejudices, the influence of Social Darwinism towards the end of the nineteenth century also meant that “even the inferior Spanish variant of white civilization had a role in the [civilizing]

mission” of the “superior white race among the lesser breeds.” In this scholarship, Las Casas was often depicted, at best, as a well-meaning but misguided and naïve figure. At worst, he was accused of purposefully and wilfully distorting and exaggerating the facts of Spanish imperialism.<sup>83</sup>

The historical debate over the Spanish colonial system and Las Casas grew more intense in the first few decades of the twentieth century. His controversial status was inspired in part by social and political upheavals in both Spain and Spanish America, but also resulted from a more heated discussion of imperialism in general. Interestingly, the rise of America’s own empire in the Caribbean and the Pacific (including a victory against Spain, and the violent suppression of native rebels in the Philippines) helped ensure a prominent place for American scholars in rehabilitating Spain’s colonial reputation, which reached its height in the aftermath of Franco’s victory in Spain. The proponents of the new “White Legend” brought a professionalism to their studies of the Spanish colonial experience, and a relativism that tended to shy away from overt moral judgments (at least of condemnation). As one chronicler of the historiography has put it, Spanish and American historians after 1898 took a “hardboiled” approach that regarded colonial conquest and exploitation as unfortunate but inevitable, and a tendency to assess Spanish colonial policy and practice from the standpoint of Spanish rather than Indian interests. Instead of ignoring Las Casas’ over-inflated claims, more confident scholars of the inter-war period took them on and even justified Spanish atrocities. One reputable scholar, Arthur S. Aiton, went so far as to defend reports that Antonio de Mendoza, the first Viceroy of New Spain, had punished Indians during the Mixton War by blowing them from cannons and setting dogs upon them. Aiton, assuming a relativist posture reflecting the mood of the 1920s and 1930s, argued that it was after all “a matter of opinion, admirably expressed by Mendoza,” when he claimed that the punishments were necessary as “a lesson in order to strike fear into the Indians.”<sup>84</sup>

Significantly, Lemkin may have written in deliberate reaction to this drift in historical scholarship. Though there is no clear evidence that Lemkin read any of the new professional historians (such as Aiton, Bernard Moses, Edward Gaylord Bourne, and Lesley B. Simpson), he did read and rely on one of the older, more romantic proponents of the White Legend, William H. Prescott. Prescott’s monumental *History of the Conquest of Peru* (1916; originally published 1847) was Lemkin’s chief source for his work on the Incas. But though Prescott assumed a tone of “judicious impartiality,” his pro-Spanish leanings were clear. And like other romantic historians such as Parkman, his work asserted a triumphant Christianity and civilization over Indian heathenism and savagery. Though he often gave his Indian subjects a romantic, even heroic character, it was clear that he believed they were doomed to extinction in the face of an expanding superior white civilization. Prescott, then, was neither sympathetic to Las Casas nor the Black Legend. Lemkin, however, plundered his work for evidence while challenging his condemnation of Las Casas.<sup>85</sup>



If this was Lemkin's intention, he was not alone. Lemkin's work was part of a more general post-Second World War historiographic turn away from apologetic and pragmatic interpretations of colonialism and empire, and back towards a more explicit critique of Spanish policy and a more favourable orientation toward Las Casas in particular.<sup>86</sup> Such a movement was evident in the rapid rehabilitation of Las Casas and his reputation. Ironically, White Legend revisionists such as Bailey W. Diffie and Lewis Hanke began this trend when they co-opted Las Casas as representative of Spanish benevolence in their imperial endeavours. The resurrection of Las Casas, however, reached its apotheosis in a very different postwar climate with critical reappraisals such as Juan Friede and Benjamin Keen's edited collection, *Bartolomé de las Casas in History: Toward an Understanding of the Man and His Work* (Dekalb, IL: Northern Illinois University Press, 1971). In a celebratory preface, they noted that in the post-Second World War period, Las Casas' reputation stood higher than ever before, mainly because of his teachings on the unity of mankind, the principle of self-determination, and the right of men to the satisfaction of their elementary and cultural needs—all of which, they asserted, had acquired a new relevance with the defeat of fascism, and the liquidation of colonialism which was predicated on “anti-Lascasian” principles of racism and the right of the strong to dominate the weak. “It is, therefore, a time of full vindication of Las Casas and his ideals,” they concluded.<sup>87</sup>

At the same time, however, Lewis Hanke also precipitated a broader movement to put Las Casas and his life and work into historical context, as well as to trace Las Casas' contributions to anthropology, political science, and other fields outside of history. Today, Las Casas is still a popular historical figure for analysis, but few scholars use Las Casas as a primary source for accounts of the Spanish conquest, at least not without careful qualification and corroboration. Most commentators would agree with Pagden's assessment of Las Casas, and recognize that his work was a polemic, written as part of a dialogue among Spanish Colonial administrators and missionaries, and as an early contribution to an ongoing western critique of and debate over colonialism.<sup>88</sup>

### **Lemkin, Disease, and “biological genocide”**

Significantly, Lemkin's reliance on Las Casas blinded him to one of the most significant findings emerging in the 1930s and 1940s—that the population of Indians in the Americas declined precipitously after contact with Europeans because of newly introduced diseases.<sup>89</sup> In Lemkin's account, based on Las Casas, “biological genocide” consisted of exhausted slave mothers not able to nurse their children, and the separation of families by slavehunters. And yet it was not as if he was unaware of the impact of disease in colonial contexts. Writing on Tasmania, he observed that “Many natives died of the white men's diseases. A great many deaths may be laid to the door of the civilizing process which clothed these people of the outdoors who had grown hardy and strong living a life in the open and were suddenly deprived of their physical exercise, and made to live in

houses.”<sup>90</sup> But only in one place in the American writings, in his discussion of the demographic decline of the Mayans, does he mention disease, observing that “The losses in population were attributable to smallpox, and cruelties to ‘reduce revolts.’”<sup>91</sup>

This neglect is puzzling. Though historians were certainly not conscious of the immense magnitude of the death toll caused by diseases that most accept today, most historians were at least dimly aware that diseases had taken some kind of heavy toll. As early as 1883, Hubert H. Bancroft had downplayed the numbers of Indians lost to Spanish cruelties, and even forced removals, but stressed “the effect of climatic changes on persons suddenly transferred from a warm district to cold and rugged mountain regions.” And even deaths from these climatic changes, he asserted, were comparatively small when juxtaposed with the “great ravages” that resulted from “diseases following the new civilization, such as small-pox, measles, and probably syphilis.”<sup>92</sup>

As Lemkin wrote, scholars were introducing more precision in their calculations and, perhaps more importantly, beginning to challenge the early low estimates of the numbers of Indians in the Americas. Until the mid-1940s, the Indian population of the Americas, north and south, was estimated from the accounts of early colonists and officials and most scholars believed them to be very low. Disputes centred on which reports to regard most, until at the University of California, Berkeley, Sherburne F. Cook began a collaboration with Lesley Byrd Simpson and then Woodrow Borah and developed more reliable calculations both of native populations at the time of the arrival of Europeans and subsequent depopulation rates. Cook, for example, wrote in 1946 of the “Incidence and significance of disease among the Aztecs and related tribes” and acknowledged even then that “for many years students of epidemiology and sociology have recognized the importance of diseases introduced from Europe in the New World,” and that the “profound dislocations in population and in economic life caused by smallpox, measles, and similar maladies can scarcely be overestimated.” Eventually, Cook, along with others, including Woodrow W. Borah and Lesley B. Simpson, dramatically confirmed the general claims of Las Casas of large pre-conquest Indian populations and catastrophic population decline after the conquest. But whereas Las Casas was all too ready to attribute this decline to Spanish atrocities, the new studies that suggested up to perhaps 90% of many indigenous populations were wiped out by newly introduced European diseases within the first decades after contact. Such claims have so far withstood the test of time.<sup>93</sup>

Given these conclusions, we are left with the question: what would Lemkin have made of the relationship between disease and genocide had he known what we now know about disease and demography? In view of the centrality of intention to genocide, we would expect him to fasten on instances of deliberate infection, like that of Amherst, and to ascribe the balance of cases to the regrettable though non-genocidal consequences of human contact. Certainly, that is the view of some historians who deny a genocidal character to colonialism and western expansion. Steven T. Katz, for instance, is prepared to acknowledge that “sheerly as a matter of quantity the Indian catastrophe [between the sixteenth

and nineteenth centuries] is unparalleled.”<sup>94</sup> But, in Katz’s view, there was nothing that could be done to save the hapless natives, vulnerable as they were to the new pathogens. In fact, the Europeans, like missionaries, did much to keep them alive. There can be no question of genocide.

When mass death occurred among the Indians of America, and it did occur, it was almost without exception caused by microbes, not militia . . . that is, this depopulation happened unwittingly rather than by design, even transpiring in direct opposition to the expressed and self-interested will of the white empire-builder or settler.<sup>95</sup>

This kind of reading is wont to blame the indigenous peoples for their own demise and to regard them as victims of an inevitable process for which no one is responsible: “by being unable to unwilling to change their mores,” opined a medical historian in one case, “Hawaiians committed themselves to continuing mortality.”<sup>96</sup>

It is highly doubtful that Lemkin would have agreed with this viewpoint because of its undifferentiated approach to the evidence of agency on the part of the Europeans. Given what he wrote about “biological genocide”—the interdiction of procreation by slavery, harems, and so on—he would concur with those who see greater complexity in the causes of the demographic catastrophe. Indeed, it is really the degree to which Europeans exacerbated the spread of deadly diseases that is perhaps the key issue at stake. An initial problem is that, despite extensive research, we do not know for certain how much destruction disease wrought in particular places, and exactly how and why they did so. The evidence simply does not always exist.<sup>97</sup> What we do know is that diseases often struck in certain circumstances created by the European invaders, making its impact far greater than it would have been otherwise. Slave labour camps, for instance, were particularly lethal sites of contagion, as were missions.<sup>98</sup> Disease and “purposeful genocide” cannot be separated so neatly.

Then there was the fact that European action—massacres, expropriation of land, and the like—radically inhibited population recovery after the ravaging of disease.<sup>99</sup> The demographic disaster cannot just be attributed to smallpox and outright killing at “first contact,” but also to the subsequent stifling of opportunities for indigenous reproduction. Consequently, as David E. Stannard insists, “the near-total destruction of the Western Hemisphere’s native people was neither inadvertent nor inevitable.” The picture that emerges is that population decline issued from an ensemble of causes in which human agency was a key component.

Although at times operating independently, for most of the long centuries of devastation that followed 1492, disease and genocide were interdependent forces acting dynamically—whipsawing their victims between plague and violence, each one feeding upon the other, and together driving countless numbers of entire ancient societies to the brink—and often over the brink—of total extermination.<sup>100</sup>

Without active European intervention, then, the impact of disease would have been far less. This is a proposition that extends rather than negates the

Las Casasian account, and is one, the evidence suggests, with which Lemkin would have concurred.

### **Genocide and historiography**

The stakes are high among those scholars interested in the issue of genocide in the Americas. On the one hand, many regard the application of the term to a case where the major cause of death is largely unintentional (disease) as misleading and mischievous. On the other, historians and social scientists like Stannard and Russell Thornton go so far as to deploy the loaded term “holocaust.”<sup>101</sup> So do Native American activists and those who write in their name.<sup>102</sup> Indeed, they counter the claim of uniqueness of the Jewish Holocaust, such as that made by Steven T. Katz, by invoking that privileged status for the American experience: “The destruction of the Indians of the Americas was, far and away, the most massive act of genocide in the history of the world,” insists Stannard, while Ward Churchill avers that “The American holocaust was and remains unparalleled, both in terms of its magnitude and the degree to which its goals were met, and in terms of the extent to which its ferocity was sustained over time by not one but several participating groups.”<sup>103</sup> Weighing up genocides against another in this way was not how Lemkin proceeded.<sup>104</sup> Given these polemics, it is not surprising that very few practicing historians working on Native American history use the concept of genocide to further their work.

That is not the only reason why the concept is not prevalent in the historiography. 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. For Lemkin, and indeed many others who have followed him in attempting to categorize European–Native relations as genocidal, Indians in the Americas could only be victims of European imperialism.<sup>105</sup> While Lemkin and the Berkeley School reflected a more critical stance towards Spain’s Indian policies, the Indians themselves for the most part remained passive objects, viewed through the eyes of those that punished, enslaved, or killed them. Indeed, Lemkin and other post-Second World War scholars who were sympathetic to the Indians generally practiced a “victim” history that emphasized the “death” of native cultures, whether through outright physical destruction, or overwhelming acculturation to European “civilization.” If Lemkin’s work reflected a general postwar disillusionment with self-reinforcing justifications of colonialism, past and present, his aims and interpretive strategy prevented him from fully embracing another emerging historiographical trajectory in the postwar period: towards Indians of the Americas as subjects of historical study, as dynamic historical actors and participants, and as highly adaptive and syncretic peoples.

Even as Lemkin wrote, serious work on Indians in the Spanish colonial period as a distinct unit of study had been underway for at least a few years. Such studies have often been said to have begun with Charles Gibson’s *Tlaxcala in the Sixteenth Century*, published in 1952. But several other interesting studies were

also available to Lemkin, though not, it seems, taken up. These include the seven volume *Handbook of South American Indians* by Julian H. Steward *et al.*, eds (Washington, DC, 1946–1959), in which Volume II, published in 1946, contains long essays by John Howland Rowe and George Kubler on Inca society on the arrival of Europeans and through the colonial period, based on Indian chronicles, early Spanish accounts, and some archaeological findings. Also neglected by Lemkin were the pioneering works by Ralph L. Roys, *The Indian Background of Colonial Yucatan* (Washington, DC, 1943), and France V. Scholes *et al.*, *The Maya Chontal Indians of Acalan-Tixchel: A Contribution to the History and Ethnography of the Yucatan Peninsula* (Washington, DC, 1948). Significantly, works such as Gibson's *The Aztecs under Spanish Rule* (1964) that took an Indian perspective often vindicated Las Casas' views as they explored in more systematic detail the harshly exploitative Spanish labour and tribute systems. But taking an Indian perspective has also forced scholars to recognize and explore Native American strategies of survival and ultimately, their persistence.<sup>106</sup>

In the years since Lemkin wrote, Gibson's pioneering work especially, but also the influence of anthropologists in the post-Second World War period, has helped radically revise the history of Indians in the Americas. Interdisciplinary approaches, most significantly the combination of historical and anthropological approaches in the newly created field of "ethnohistory," have flourished, and native American historiography has exploded in all kinds of different directions. Most notably for our purposes, however, this trend has included a tendency to adopt a pro-Indian stance, viewing Indians as dynamic agents of history rather than as passive victims of Spanish rule or even a wider and inevitable acculturation process. For example, historians are much more likely now to distinguish between the many different Native American groups that Europeans encountered (rather than "Indians"), to portray the European invasion in terms of small groups of difficult-to-control ethnic European groups inserting themselves into dynamic power struggles and complex relationships between many small groups of difficult-to-control ethnic Indian groups, and to portray the conquest of the Aztec and Inca civilizations as the substitution of one aggressive, expanding, exploitative imperial elite for another.<sup>107</sup> Moreover, though much of this literature has stressed Indian resistance to Spanish and European pressures, scholars have also begun to recognize the degree to which Indians creatively adapted to the arrival of newcomers on their shores, noting the marked continuity and persistence in adaptive strategies between pre- and post-1492 native communities and from there throughout the long encounter with Europeans.<sup>108</sup> Lemkin's single-minded focus on high or elite culture blinded him to the continuity of folk cultures that persisted just as they changed.

This new scholarship highlights an inner tension or dilemma within the field (and perhaps a tension between the focus of those interested in Native American social history, and scholars interested in the history of genocide): whether to focus on and emphasize Indian agency, adaptation, resistance, persistence, and continuity, *or* to highlight the undeniable magnitude of the physical and cultural destruction of Native peoples. By fixating on the genocidal dimensions of the

European invasion, we are forced—like Lemkin—to take a more European-centred approach to indigenous history. We follow the story over the shoulders of European conquistadors, settlers, and soldiers who brought disease, dislocation, and death. We focus on the numbers killed, the cultures destroyed, and the tragedy of contact, colonization, and conflict between different peoples. What we lose in this story is a much richer and nuanced tale of Indian agency and dynamism as diverse groups reacted in different and creative ways to the new challenges presented by the arrival of Europeans. We lose focus on those who individually and collectively adapted to the new circumstances, exploited new opportunities, and ultimately survived. And yet by stressing successful “adaptations” and “negotiations” are we not thereby losing a sense of the human tragedy that accompanied European settlement in the Americas?

A closer look at the chronology reveals that this may only be a question of emphasis and narrative strategy, and not an either/or situation. During the long colonial period, at least, Europeans were rarely able to impose themselves so wholeheartedly on Native Americans in a one-sided way. In the most (in)famous example of European penetration, the conquest of New Spain, the Spanish essentially did what the previous Mexican people had done: inserted themselves at the top of an imperial hierarchy and tried to manipulate it to their advantage. They were supported by some constituent parts of that empire, and opposed by others. Even where they “dominated” there was still much room for “negotiations” because numerically the Spanish could never impose their full will on such vast numbers. Moreover, despite initial losses from the brutality of the Spanish conquest, and despite much larger losses in population due to diseases, the cultural and social history of New Spain and the racial politics of Mexico today would simply not support the genocide thesis, at least not for the whole population and whole historical experience.<sup>109</sup>

The situation was not qualitatively different in North America. As Richard White shows in his book *The Middle Ground*, the vast majority of Native Americans before 1800 were not subject to “European domination,” whether physical or cultural. In the colonial period in North America, “negotiations” between Indian tribes and different European groups took place all of the time, indeed in all instances where there was not outright conflict—which was relatively and surprisingly small—or deaths from diseases. Many Native Americans became particularly adept at playing off different imperial powers, and threatening military and trade alliances when they could not get what they wanted from one power. After 200 years of settlement, Europeans “dominated” only a tiny area along the eastern seaboard extending into the continent about 200 miles, and not from want of trying. Of course, some Indian groups had been conquered, or worse, but often even these, we are now learning, were dispersed, integrated into other communities, and are now re-emerging, a process that had been underway among Indians well before the Europeans arrived.<sup>110</sup>

Thus while recognizing the destructive nature of many European–Indian relations, to apply the label of genocide to *all* European–Indian interactions, at least before 1800, is to deny the historical experience of perhaps the majority of

indigenous peoples living in North America. The “New Indian history” has taught us that we need to take into account a great deal more nuance and subtlety when thinking about “the” Native American experience in the Americas. After all, the “Indian” in the Americas was a fictional European construction. Ignoring the diversity of historical experiences among different Native American groups is to perpetuate this fiction and commit another kind of destructive act.

Even as he regarded European history as spreading humanistic norms of international law around the globe, Lemkin urged his contemporaries not to regard western expansion in uncritical terms. Occupations of foreign peoples often destroyed or permanently crippled them, that is, they were genocidal. And yet, today it is difficult to follow him in every respect. His equation of culture with high culture meant that he saw its extinction where we can see creative cultural adaptations, if under difficult circumstances. Genocide scholarship needs to pay heed to the extraordinary insights won by modern historiography. Survival and renewal are also part of the story. This does not mean abandoning the Lemkian viewpoint that the terms and structure of European occupation were often arrogant and genocidal. Nor does it mean abandoning the idea that the new settler societies in the Americas gave rise to new nations that often and at different times exacerbated, sanctioned, and legitimated the “eliminationist logic” of these settler democracies.<sup>111</sup> If the Indigenous people possessed agency, so surely did the Europeans, and historians are entitled to identify those responsible for destructive policies and practices.

## Notes and References

- 1 This misunderstanding of Lemkin and his definition is pervasive. It is evident regularly even on the pages of this journal, e.g. Stuart D. Stein, “Conceptions and terms: templates for analysis of holocausts and genocide,” *Journal of Genocide Research*, Vol 7, No 2, 2005, p 171.
- 2 Most of Lemkin’s papers are contained in three places: the Manuscripts and Archive Division of the New York Public Library, 42nd Street, Manhattan, New York; the American Jewish Historical Association, 15 West 16th Street, Manhattan, New York 10011; and the Jacob Rader Marcus Center of the American Jewish Archives, 3101 Clifton Avenue, Cincinnati, Ohio 45220-2488. Lemkin’s writings discussed in this article are drawn from all three institutions. A number of files pertaining to the Genocide Convention and Lemkin are contained National Conference of Christians and Jews collection held at the Social Welfare History Archives, University of Minnesota. Steven L. Jacobs of the University of Alabama reports that he has been cataloguing and editing 20,000 pages of Lemkin’s papers for imminent publication: Jacobs, “Afraid to call genocide genocide? Reflections on Rwanda and beyond,” in Robert S. Frey, ed., *The Genocidal Temptation* (Dallas: University Press of America, 2004), p 69. See also his Introduction to Raphael Lemkin, *Raphael Lemkin’s Thoughts on Nazi Genocide: Not Guilty?*, Steven L. Jacobs, ed. (Lewiston: Edwin Mellen Press, 1990), pp xv–xvii.
- 3 He had been fascinated and disturbed by the persecution of human cultural groups since boyhood, and had been indignant that the great powers had not persecuted the architects of the Armenian genocide. See A. Dirk Moses, “The Holocaust and genocide,” in Dan Stone, ed., *The Historiography of the Holocaust* (Houndsmills: Palgrave Macmillan, 2004), pp 533–555.
- 4 Samuel Totten and Steven L. Jacobs, eds, *Pioneers of Genocide Studies: Confronting Mass Death in the Century of Genocide* (Westport, CT: Greenwood Press, 2002). An autobiographical fragment of Lemkin is reproduced as Chapter 19. Incredibly, he appears as just one among 25 other “pioneers.” Here the complaint of Israel Charny is apposite: “Even more regrettable are those scholars who, patently, are more concerned with *their* ideas and with *their* political standing in academia or the community than with a commitment to all human lives.” Charny, “Foreword,” in Alan S. Rosenbaum, ed., *Is the Holocaust Unique? Perspectives on Comparative Genocide* (Boulder, CO: Westview Press, 1996), p xi.

- 5 For example, Frank Chalk and Kurt Jonassohn, eds, *The History and Sociology of Genocide* (New Haven: Yale University Press, 1990); Helen Fein, "Revolutionary and antirevolutionary genocides: a comparison of state murders in democratic Kampuchea, 1975 to 1979, and in Indonesia, 1965 to 1966," *Comparative Studies in Society and History*, Vol 34, No 4, 1993, pp 796–823; Barbara Harff, "Genocide as state terrorism," in Michael Stohl and George A. Lopez, eds, *Government Violence and Repression* (Westport, CT: Greenwood Press, 1986), pp 166–187; idem, "No lessons learned from the Holocaust? Assessing risks of genocide and political mass murder since 1955," *American Political Science Review*, Vol 97, 2003, pp 57–73.
- 6 Raphael Lemkin, *Axis Rule in Occupied Europe* (Washington, DC: Carnegie Council, 1944), p 79. Emphasis added.
- 7 Ibid. emphasis added: "Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, *except when* accomplished by mass killing of all the members of the nation. It is intended *rather* to signify a coordinated plan of different actions aimed at destruction of the essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objective of such a plan would be the disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of personal security, liberty, health, dignity, and the lives of individuals belonging to such groups." Israel Charny's understandable plea that all mass murders must be genocide has no foundations in Lemkin's thought: Charny, "Toward a generic definition of genocide," in George Andreopolous, ed., *Genocide: Conceptual and Historical Dimensions* (Philadelphia: University of Pennsylvania Press, 1994), pp 64–94.
- 8 The view that the Holocaust can only be understood in the context of the German occupation of Europe as a whole has been enjoined by German scholarship on the basis of massive archival research. See Ulrich Herbert, "Extermination policy: new answers and questions about the history of the 'Holocaust' in German historiography," in Herbert, ed., *National Socialist Extermination Policies* (New York and Oxford: Berghahn Books, 2000), pp 1–52; Christian Gerlach, "Some recent trends in German Holocaust research," in Jeffrey M. Diefendorf, ed., *Lessons and Legacies: New Currents in Holocaust Research*, Vol VI (Evanston: Northwestern University Press, 2004), pp 285–299.
- 9 Jürgen Zimmerer, "Kolonialer Genozid? Vom Nutzen und Nachteil einer historischen Kategorie für eine Globalgeschichte des Völkermordes," in Dominik J. Schaller *et al.*, eds, *Enteignet, Vertrieben, Ermordet: Beiträge zur Genozidforschung* (Zürich: Chronos, 2004), pp 109–129; idem, "The birth of the *Ostland* out of the spirit of colonialism: a postcolonial perspective on the Nazi policy of conquest and extermination," *Patterns of Prejudice*, Vol 39, No 2, 2005, pp 202–224; A. Dirk Moses, "Conceptual blockages and definitional dilemmas in the 'racial century': genocides of indigenous people and the Holocaust," *Patterns of Prejudice*, Vol 36, No 4, 2002, pp 7–36; Enzo Traverso, *The Origins of Nazi Violence* (New York and London: The Free Press, 2003); Benjamin Madley, "From Africa to Auschwitz: how German South West Africa included ideas and methods adopted and developed by the Nazis in Eastern Europe," *European History Quarterly*, Vol 33, No 3, 2005, pp 429–464. In an independent line of research, the German scholars Götz Aly and Susanne Heim have been arguing the Holocaust had its origins in a "territorial solution" to the "Jewish question" in east-central Europe in the context of Nazi plans for a more general "ethnic reordering" of the region for German settlers: Aly and Heim, *Architects of Annihilation: Auschwitz and the Logic of Destruction* (London: Phoenix, 2002). See now David Furber, "Near as far in the colonies: the Nazi occupation of Poland," *International History Review*, Vol 26, No 3, 2004, pp 541–579; an overview of the Nazi occupation and the Holocaust in Poland is Dieter Pohl, "War, occupation, and the Holocaust in Poland," in Stone, ed., *The Historiography of the Holocaust*, pp 88–119.
- 10 The critiques of colonialism by Francesco de Vitoria were well known to international lawyers in this period. See Andrew Fitzmaurice, "Anti-colonialism in western political thought: the colonial origins of the concept of genocide," in Moses, ed., *Genocide and Colonialism*.
- 11 Lemkin wrote of the "common elements of one generic notion" of the concept: Lemkin, *Axis Rule in Occupied Europe*, p 80. A striking case of such a retrospective projection is Steven T. Katz, *The Holocaust in Historical Context* (Oxford: Oxford University Press, 1994).
- 12 Tony Barta, "Relations of genocide: land and lives in the colonization of Australia," in Isidor Wallimann and Michael Dobkowski, eds, *Genocide and the Modern Age* (Westport, CT: Greenwood Press, 1987), pp 237–252; idem, "Discourses of genocide in Germany and Australia: a linked history," *Aboriginal History*, Vol 25, 2001, pp 37–56; idem, "Mr. Darwin's shooters: on natural selection and the naturalizing of genocide," *Patterns of Prejudice*, Vol 39, No 2, 2005, pp 116–137; Norbert Finzsch, "'It is scarcely possible to conceive that human beings could be so hideous and loathsome': discourses of genocide in eighteenth- and nineteenth-century America and Australia," *ibid.*, pp 97–115; Jürgen Zimmerer and Joachim Zeller, eds, *Völkermord in Deutsch-Südwestafrika: Der Kolonialkrieg (1904–1908) in Namibia und seine Folgen* (Berlin: Links Verlag, 2003); Dominik Schaller "'Ich glaube, dass die Nation als solche vernichtet



- werden muss': Kolonialkrieg und Völkermord in 'Deutsch Südwest Afrika', 1904–1907," *Journal of Genocide Research*, Vol 6, No 3, 2004, pp 395–430; Ann Curthoys and John Docker, "Introduction—genocide: definitions, questions, settler colonies," *Aboriginal History*, Vol 25, 2002, pp 1–15; A. Dirk Moses, ed., *Genocide and Settler Society: Frontier Violence and Stolen Indigenous Children in Australian History* (New York and Oxford: Berghahn Books, 2004); idem, ed., *Genocide and Colonialism* (New York and Oxford: Berghahn, forthcoming); Dan Stone, "White men with low moral standards? German anthropology and the Herero genocide," *Patterns of Prejudice*, Vol 35, No 2, 2001, pp 33–45; Richard H. King and Dan Stone, eds, *Imperialism, Slavery, Race, and Genocide: The Legacy of Hannah Arendt* (Oxford and New York: Berghahn Books, forthcoming). The American Ward Churchill's publications, such as *A Little Matter of Genocide* (San Francisco: City Light Books, 1997), seem to us to be anything but dispassionate and sober considerations of the salient issues, and are not part of this recent research trend.
- 13 Raphael Lemkin "Description of the project," Lemkin Collection, New York Public Library, Reel 3, Box 2, Folder 1. The chapter on Tasmania has been edited and commentated by Ann Curthoys: Raphael Lemkin, "Tasmania," *Patterns of Prejudice*, Vol 39, No 2, 2005, pp 170–196; Ann Curthoys, "Raphael Lemkin's 'Tasmania': an introduction," *ibid*, pp 162–169.
  - 14 American Jewish Historical Association, Raphael Lemkin Papers, P-154, Box 10, Folder 8.
  - 15 John Docker analyses these notes and argues that Lemkin extended his definition of genocide in light of his postwar studies of colonialism in "Are settler societies inherently genocidal? Rereading Lemkin," in Moses, ed. *Genocide and Colonialism*.
  - 16 Lemkin and/or his research assistant consulted a greater range of sources for North America than Spanish America and wrote more notes. They are contained at the American Jewish Historical Association, P-154, Box 8, Folder 12. Lemkin may have worked up the North American notes in an essay, but so far, no such text has surfaced. If he did not in the end summarize his thoughts on North American Natives, it may have been because he had no contemporary chronicler (such as Las Casas, see below) to sum up the historical experience of what amounted to several hundred nations over three hundred years. Other sources that Lemkin used to different degrees include S. F. Cook, *The Conflict Between California Indians and White Civilization* (Berkeley and Los Angeles: University of California Press, 1943); Clark Wissler, *Indians of the United States* (New York: Doubleday, Doran, 1940); Clark Wissler, "Population changes among the Northern Plains Indians," *Yale University Publications in Anthropology*, No 1, 1936; Almon Wheeler Lauber, *Indian Slavery in Colonial Times within the Present Limits of the United States* (New York: Columbia University, 1913); F. H. Hodge, ed., *Handbook of American Indians* (Washington, DC: Bureau of American Ethnology, 1907–1910); C. Hale Sipe, *The Indian Wars of Pennsylvania* (Harrisburg, PA: Telegraph Press, 1929); Lewis Merian *et al.*, *The Problem of Indian Administration* (Baltimore: Institute for Government Research, Johns Hopkins University Press, 1928). For the most recent evaluation of Amherst and the smallpox debate, see Elizabeth A. Fenn, "Biological warfare in eighteenth-century North America: beyond Jeffrey Amherst," *Journal of American History*, Vol 86, No 4, 2000, pp 1552–1580.
  - 17 Raphael Lemkin, "Spain colonial genocide," AJHS, P-154, Box 8, Folder 12.
  - 18 Raphael Lemkin "Description of the project," Lemkin Collection, New York Public Library, Reel 3, Box 2, Folder 1.
  - 19 Raphael Lemkin, "Revised outline for genocide cases," AJHS, P-154, Box 8, Folder 11.
  - 20 Raphael Lemkin, "Aztecs," AJHS, P-154, Box 8, Folder 12.
  - 21 *Ibid*.
  - 22 Raphael Lemkin, "Incas," Jacob Rader Marcus Center of the American Jewish Archives, Collection 60, Box 7, Folder 7/1.
  - 23 Raphael Lemkin, "Yucatan," AJHS, P-154, Box 8, Folder 12. Plainly, Lemkin subscribed to notions of civilization development common among European intellectuals at the time, although it is important to recall his firm commitment to the inherent value of all cultures and civilizations. The purpose of his activism was to protect them from destruction.
  - 24 *Ibid*.
  - 25 Lemkin, "Incas."
  - 26 *Ibid*.
  - 27 Lemkin, "Aztecs."
  - 28 Lemkin, "Incas."
  - 29 Lemkin, "Yucatan."
  - 30 Lemkin, "Aztecs."
  - 31 Lemkin, "Spain colonial genocide."
  - 32 Lemkin, "Incas."
  - 33 *Ibid*.
  - 34 Lemkin, "Spain colonial genocide."

- 35 Ibid.  
36 Ibid.  
37 Ibid.  
38 Lemkin, "Incas."  
39 William A. Schabas, *Genocide in International Law: The Crime of Crimes* (Cambridge: Cambridge University Press, 2000), pp 179f.  
40 Lemkin, "Incas."  
41 Lemkin, "Spain colonial genocide."  
42 Lemkin, "Yucatan."  
43 Lemkin, "Spain colonial genocide."  
44 Lemkin, "Incas."  
45 Lemkin, "Yucatan."  
46 Lemkin, "Incas."  
47 Lemkin, "Aztecs."  
48 Lemkin, "Spain colonial genocide"; "Aztecs"; "Incas."  
49 Lemkin, "Incas"; "Spain colonial genocide."  
50 Lemkin, "Spain colonial genocide."  
51 Lemkin, "Yucatan."  
52 Lemkin, "Spain colonial genocide."  
53 Lemkin, "Aztecs."  
54 Lemkin, "Spain colonial genocide."  
55 Lemkin, "Incas."  
56 Ibid; Lemkin, "Yucatan."  
57 Lemkin, "Incas."  
58 Ibid;  
59 Lemkin, "Yucatan."  
60 Lemkin "Aztecs."  
61 Lemkin, "Yucatan."  
62 Lemkin, "Spain colonial genocide."  
63 Lemkin, "Incas."  
64 Lemkin, "Spain colonial genocide."  
65 Ibid.  
66 Ibid.  
67 Lemkin, "Yucatan"; idem, "Aztecs"; idem, "Incas."  
68 Lemkin, "Spain colonial genocide."  
69 Ibid.  
70 Lemkin, "Yucatan." On the theory of universal monarchy, see Anthony Pagden, *Lords of All the Worlds: Ideologies of Empire in Spain, Britain, and France, c. 1500–1800* (New Haven: Yale University Press, 1995), Chapter 2.  
71 John Locke, *Two Treatises on Civil Government* (London: Routledge, 1884), p 196f; emphasis added. For an analysis of the English reception of the Spanish debates on colonialism, see Andrew Fitzmaurice, *Humanism and America* (Cambridge: Cambridge University Press, 2003).  
72 Lemkin, "Aztecs."  
73 Lemkin, *Raphael Lemkin's Thoughts on Nazi Genocide*, pp 196f.  
74 Lemkin, "Incas"; idem, "Aztecs."  
75 Lemkin, "Spain colonial genocide."  
76 Ibid.  
77 Lemkin, "Yucatan." Emphasis added.  
78 Lemkin, "Aztecs."  
79 Raphael Lemkin, "Genocide as crime under international law," *American Journal of International Law*, Vol 41, No 1, 1947, p 147.  
80 Lemkin, *Raphael Lemkin's Thoughts on Nazi Genocide*, pp 299, 303.  
81 Lemkin, "Spain colonial genocide."  
82 See Anthony Pagden, "Introduction," in Nigel Griffin, ed., *A Short Account of the Destruction of the Indies* (London: Penguin Books, 1992), pp xxxi–xxxii.  
83 See Keen, "Approaches to Las Casas," pp 33–34, 34–35. Cf. Marshall C. Eakin, "Latin American history in the United States: from gentlemen scholars to academic specialists," *The History Teacher*, Vol 31, No 4, 1998, pp 539–561, who notes that scholars of this ilk at the end of the nineteenth century were trying to move away from the general emphasis on the black legend, i.e. that the Spanish had systematically

- annihilated native populations through a cruel and ferocious conquest in the sixteenth century. Among the revisionists were Edward Gaylord Bourne (1860–1908) who taught at Yale and wrote *Spain in America* (1904), as well as Lesley Byrd Simpson, at Berkeley, who wrote *The Encomienda in New Spain: Forced Native Labor in the Spanish Colonies, 1492–1550* (Berkeley: University of California Press, 1950). Such scholars (Eakin, “Latin American History,” p 541) downplayed by the Black Legend by taking a pragmatic approach to colonial conquest and exploitation that saw it as inevitable. The revisionist program continued well into the 1950s. Cf. Benjamin Keen, “The Black Legend revisited: assumptions and realities,” *Hispanic American Historical Review*, Vol 49, 1969, pp 703–719.
- 84 See Keen, “Approaches to Las Casas,” p 40; Arthur S. Aiton, *Antonio de Mendoza, First Viceroy of New Spain* (Durham: Duke University Press, 1927), pp 85, 158n. Keen notes that the revisionist movement in the US was paralleled in Spain and Spanish America, and the three movements reinforced each other. Spanish revisionist historians, for example, repeatedly acknowledged their North American colleagues for their help in undermining the Black Legend. Two years after Franco’s victory in Spain had helped enshrine the White Legend as the official version of Spanish colonialism, P. Alvarez Rubiano noted the pioneering efforts of the “North American historical school” in tearing down the “weak foundations of the ‘Black Legend’” in his article “Importancia político-social de las mercedes de 1549 concedidas a los labradores de Tierra Firme,” *Revista de Indias*, Vol 2, No 5, 1941, p 133; see Benjamin Keen, “Main currents in United States writings on colonial Spanish America, 1884–1984,” *Hispanic American Historical Review*, Vol 65, No 4, 1985, p 663. Keen (p 662) also points to Herbert E. Bolton’s role in sustaining the “White Legend”: “Bolton ignored or minimized the negative, coercive aspects of mission activity just as he ignored the predatory aspect of military conquest. In effect, he offered a ‘white man’s burden’ defense of Spanish colonialism.”
- 85 J. F. Kirk, ed., 3 vols (Philadelphia, 1873), I: pp 375–378. In his *History of the Conquest of Mexico*, Prescott even asserted that Las Casas exaggerated and distorted his accounts, and that his statistics “came from Las Casas’s heart rather than his head.” Prescott thought it would have been better had Las Casas’ *Brief Account* never been written. Prescott was, it seems, engaged in some distortions himself. See James D. Cockcroft, “Prescott and his sources: a critical appraisal,” *Hispanic American Historical Review*, Vol 48, 1968, pp 59–74. Prescott thought Las Casas was misguided and too fixed on the idea of the Indian as a persecuted victim. Critical views of Prescott were emerging even as Lemkin wrote. As early as 1959 David Levin included him as a main protagonist in an analysis and critique of nineteenth century romantic historians. See David Levin, *History as Romantic Art: Bancroft, Prescott, Motley, and Parkman* (Stanford: Stanford University Press, 1959). Lemkin also used the work of F. A. MacNutt, who, like Prescott, thought Las Casas was naïve, and who praised Spanish monarchs for their good intentions and “wise laws.” MacNutt, *Bartholomé de Las Casas* (New York: Putnam, 1909), pp 172–173. Most major scholars that Lemkin might have drawn from were highly critical of Las Casas. See, for example, Lesley B. Simpson, *The Encomienda in New Spain: Forced Indian Labor in the Spanish Colonies, 1492–1550* (Berkeley: University of California Press, 1929), p x. Though Simpson (*ibid*, p x; cf. Keen, “Main currents,” pp 664–665) would later soften toward Las Casas in his 1929 monograph, like Bourne he blamed Las Casas for having led astray whole generations of historians with distorted and exaggerated accounts of Spanish cruelties.
- 86 See Keen, “Main currents.”
- 87 Juan Friede and Benjamin Keen, *Bartolomé de las Casas in History: Toward an Understanding of the Man and His Work* (Dekalb, IL: Northern Illinois University Press, 1971), p xii; cf. Keen, “Introduction: approaches to Las Casas, 1535–1970,” p 3; Bailey W. Diffie, *Latin American Civilization: Colonial Period* (Harrisburg, PA: Stackpole, 1947); Lewis Hanke, *The Spanish Struggle for Justice in the Conquest of America* (Philadelphia: University of Pennsylvania Press, 1949); *idem*, *Aristotle and the American Indians* (Chicago: H. Regnery, 1959).
- 88 Lewis Hanke, *The Spanish Struggle for Justice in the Conquest of America* (Philadelphia, PA: University of Pennsylvania Press, 1949); Fitzmaurice, “Anti-colonialism in western political thought.” The Black Legend and Las Casas still have admirers and proponents. See, for example, Wilbur R. Jacobs, “Columbus, Indians, and the Black Legend hocus pocus,” *American Indian Culture and Research Journal*, Vol 17, No 2, 1993, pp 175–187.
- 89 Las Casas’ neglect of disease has also been noted by David Noble Cook and W. George Lovell, eds, “*Secret Judgments of God*”: *Old World Disease in Colonial Spanish America* (Norman, OK: University of Oklahoma Press, 1991), p 241.
- 90 Lemkin, “Tasmania,” p 188.
- 91 Lemkin, “Yucatans.”
- 92 Hubert H. Bancroft, *The History of Mexico*, 6 vols (San Francisco: History Co., 1883–1888), Vol 3: p 738.
- 93 Sherburne F. Cook, “Incidence and significance of disease among the Aztecs and related tribes,” *Hispanic American Historical Review*, Vol 26, 1946, p 320; John Kicza, “The social and ethnic historiography of

- colonial Latin America: the last twenty years," *William and Mary Quarterly*, Vol 45, 1988, pp 470–471; Sherburne F. Cook and Leslie Byrd Simpson, *The Population of Central Mexico in the Sixteenth Century* (Berkeley: University of California Press, 1948); Woodrow Borah and Sherburne F. Cook, *The Population of Central Mexico in 1548: An Analysis of the Suma de Visitas de pueblos* (Berkeley: University of California Press, 1960); idem, *The Indian Population of Central Mexico, 1531–1610* (1960); idem, *The Aboriginal Population of Central Mexico on the Eve of the Spanish Conquest* (Berkeley: University of California Press, 1963); Woodrow W. Borah, *New Spain's Century of Depression* (Berkeley: University of California Press, 1951). The extensive literature is registered by Kenneth F. Kiple and Stephen V. Beck, "Introduction," in idem, eds, *Biological Consequences of European Expansion, 1450–1800* (Aldershot: Ashgate Varorium, 1997), xv–xxix.
- 94 Katz, *The Holocaust in Historical Context*, p 91.
- 95 Steven T. Katz, "The uniqueness of the Holocaust: the historical dimension," in Alan S. Rosenbaum, ed., *Is the Holocaust Unique? Perspectives on Comparative Genocide* (Boulder, CO: Westview Press, 1996), p 21.
- 96 O. A. Bushnell, *The Gifts of Civilization: Germs and Genocide in Hawai'i* (Honolulu: University of Hawaii Press, 1993), p 270.
- 97 Francis J. Brooks, "Revising the conquest of Mexico: smallpox, sources, and populations," *Journal of Interdisciplinary History*, Vol 24, No 1, 1993, pp 1–29; Alfred W. Crosby, "Hawaiian depopulation as a model for the Amerindian experience," in Terence Ranger and Paul Slack, eds, *Epidemics and Ideas: Essays on the Historical Perception of Pestilence* (Cambridge: Cambridge University Press, 1992), p 175; idem, *The Columbian Exchange: Biological and Cultural Consequences of 1492* (Westport, CT: Greenwood, 1972); idem, *Ecological Imperialism: The Biological Expansion of Europe, 900–1900* (New York and Cambridge: Cambridge University Press, 1986).
- 98 Sheldon Watts, *Epidemics and History: Disease, Power and Imperialism* (New Haven and London: Yale University Press, 1997), pp 84, 91; David E. Stannard, "The politics of genocide scholarship," in Rosenberg, ed., *Is the Holocaust Unique?* p 179.
- 99 David E. Stannard, "Disease and infertility: a new look at the demographic collapse of native populations in the wake of western contact," *Journal of American Studies*, Vol 24, No 3, 1990, pp 325–350.
- 100 David E. Stannard, *American Holocaust* (New York and Oxford: Oxford University Press, 1992), p xii.
- 101 Katz, *The Holocaust in Historical Context*; Stannard, *American Holocaust*; Russell Thornton, *American Indian Holocaust and Survival: A Population History Since 1492* (Norman, OK: University of Oklahoma Press, 1987). An insightful analysis of the uniqueness claims of the Holocaust is Dan Stone, *Constructing the Holocaust* (London: Vallentine Mitchell, 2003).
- 102 Churchill, *A Little Matter of Genocide*; M. Annette Jaimes, "Sand Creek: the morning after," in M. Annette Jaimes, ed., *The State of Native America* (Boston: South End Press, 1992), 1–12.
- 103 Stannard, *American Holocaust*, p x; Churchill, *A Little Matter of Genocide*, p 4; cf. Thornton, *American Indian Holocaust and Survival*, p xvi.
- 104 A non-polemical comparison of the evils involved in the Holocaust, slavery and experience of the Native Americans written in the spirit of Lemkin is James P. Sterba, "Understanding evil: American slavery, the Holocaust, and the conquest of the American Indians," *Ethics*, Vol 106, 1996, pp 424–448.
- 105 For example, Benjamin Madley, "Patterns of frontier genocide, 1803–1910: the Aboriginal Tasmanians, the Yuki of California, and the Herero of Namibia," *Journal of Genocide Research*, Vol 6, No 2, 2004, pp 167–192.
- 106 See James Lockhart, "The social history of colonial Spanish America: evolution and potential," *Latin American Research Review*, Vol 7, No 1, 1972, pp 6–45. Lockhart (pp 24f.) notes that such was the impoverished state of knowledge about Indian social history in the 1950s that Gibson had to start from scratch, took methods and sources from Latin American history as it had developed, and ended up writing an institutional-jurisdictional history, with economic overtones.
- 107 See especially Keen, "Main currents," pp 671–673; Neal Salisbury, "The Indians' old world: Native Americans and the coming of Europeans," *William and Mary Quarterly*, Vol 53, 1996, pp 435–458; Claudio Saunt, *A New Order of Things: Property, Power, and the Transformation of the Creek Indian, 1733–1816* (New York and Cambridge: Cambridge University Press, 1999); Karen Spalding, "Social climbers: changing patterns of mobility among the Indians of colonial Peru," *Hispanic American Historical Review*, Vol 50, 1970, pp 645–664; William B. Taylor, *Drinking, Homicide, and Rebellion in Colonial Mexican Villages* (Stanford: Stanford University Press, 1979); Karen Spalding, *Huarochirí: An Andean Society under Inca and Spanish Rule* (Stanford: Stanford University Press, 1984); Steven Stern, *Peru's Indian Peoples and the Challenge of Spanish Conquest: Huamanga to 1640* (Madison: University of Wisconsin Press, 1983); Camilla Townsend, "Burying the white gods: new perspectives on the conquest of Mexico," *American Historical Review*, Vol 108, No 3, 2003, pp 659–687. For a recent review of some of the general contours of these histories, see Philip J. Deloria, "Historiography," in Philip J. Deloria and Neal Salisbury, eds, *A Companion to North American Indian History* (Oxford: Blackwell, 2002).

- 108 See especially Neal Salisbury, "The Indians' old world," and Philip J. Deloria, "Historiography," in Philip J. Deloria and Neal Salisbury, eds, *A Companion to North American Indian History* (Oxford: Blackwell, 2002). Cf. Peter Iverson, "American Indian history as a continuing story," *The Historian*, Vol 66, No 3, 2004, pp 524–531.
- 109 See, for example, Michael Mann's account of Spanish–Mexican relations in *The Dark Side of Democracy: Explaining Ethnic Cleansing* (Cambridge: Cambridge University Press, 2005), pp 76–78.
- 110 Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650–1815* (Cambridge: Cambridge University Press, 1991). Cf. Salisbury, "The Indians' old world," and especially Daniel Richter, *Facing East from Indian Country: A Native History of Early America* (Cambridge, MA: Harvard University Press, 2002).
- 111 Patrick Wolfe, *Settler Colonialism and the Transformation of Anthropology* (London: Cassell, 1999); Mann, *The Dark Side of Democracy*, pp 83–98.

