

CHAPTER 1

RAPHAEL LEMKIN, CULTURE, AND THE CONCEPT OF GENOCIDE

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INTRODUCTION

‘In the beginning was Raphael Lemkin’ is effectively how the conventional accounts of the genocide concept begin. As the coiner of the word and ‘father of the genocide convention’, his person is held to be coeval with the concept, so that biography replaces intellectual history. That biography is written teleologically as a heroic struggle against the odds, consummated in the ‘United Nations Convention on the Punishment and Prevention of Genocide’ in 1948, and invested with poignancy after his death, alone and exhausted in 1959, a martyr to the cause. His subsequent obscurity intensified the hagiographical imperative in the recent accounts to revive his memory and honor his achievement.¹ Enthusiasts have now devoted plays to Lemkin, and a book prize is given in his name. Reclaiming the lost son, the Polish

¹ Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York: Basic Books, 2002); William Korey, *An Epitaph for Raphael Lemkin* (New York: Blaustein Institute for the Advancement of Human Rights, 2002); John Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention* (Houndmills: Palgrave MacMillan, 2008).

state named a conference room at the Ministry of Foreign Affairs after him in 2005, and then mounted a commemorative plaque on the house in which he had lived in Warsaw.²

For all that, a critical literature is still in its infancy. Lemkin remains obscure in the history of international law. The conferences dedicated to his memory invite the usual suspects, and mainstream journals of history and international relations generally eschew his term. To a great extent, ‘genocide studies’ has yet to break out of its self-imposed isolation.³ Part of the problem is that Lemkin’s revealing correspondence and invaluable unpublished manuscripts languish in archives in New York and Cincinnati, despite assurances that they will be made available to the public.⁴ This problem is compounded by the priorities of the self-proclaimed ‘pioneers of genocide studies’—those social scientists writing about genocide in the 1980s and 1990s—who paid Lemkin lip service for ‘discovering’ genocide but presumed to improve his definition without undertaking the necessary systematic reconstruction and explication of his ideas. Conceiving of themselves as activist-scholars on a mission to interdict genocide in the contemporary world, they were more interested in, say, penning crusading letters to the *New York Times* than embarking on the history of ideas.⁵

² In his speech dedicating the conference room in 2005, the Polish academic representing the Foreign Ministry identified Lemkin as a Pole and an American, but did not mention his Jewish identity: http://poland.usembassy.gov/poland/rotfeld_hall.html; [http://www.ms.gov.pl/Address_by_Profesor_Adam_Daniel_Rotfeld_the_Ministry_of_Foreign_Affairs_in_honor_of_Raphael_Lemkin_\(Warsaw,_October_18,_2005\)_2410.html](http://www.ms.gov.pl/Address_by_Profesor_Adam_Daniel_Rotfeld_the_Ministry_of_Foreign_Affairs_in_honor_of_Raphael_Lemkin_(Warsaw,_October_18,_2005)_2410.html). The plays are Catherine Filloux, *Lemkin’s House* (New York: Playscripts, 2005), and Robert Skloot, *If the Whole Body Dies: Raphael Lemkin and the Treaty against Genocide* (Madison, WI: Parallel Press, 2006).

³ The only critical examinations of his work are Jürgen Zimmerer and Dominik Schaller (eds), *The Origins of Genocide: Raphael Lemkin as a Historian of Mass Violence* (London: Routledge, 2009); Bartolomé Clavero, *Genocide or Ethnocide, 1933–2007: How to Mark, Unmake and Remake Law with Words* (Milan: Giuffrè Editore, 2008); Ann Curthoys and John Docker, ‘Defining Genocide’, in Dan Stone (ed.), *The Historiography of Genocide* (Houndmills: Palgrave MacMillan, 2008), 9–41; Martin Shaw, *What is Genocide?* (Cambridge: Polity, 2007); Anson Rabinbach, ‘The Challenge of the Unprecedented: Raphael Lemkin and the Concept of Genocide’, *Simon Dubnow Institute Yearbook 4* (2005), 397–420. The German historian of Polish legal thought, Claudia Kraft, has also written lucidly about Lemkin; see note 45 below. In terms of international law scholarship, there is no mention of Lemkin in the much-cited Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law* (Cambridge: Cambridge University Press, 2002).

⁴ Steven L. Jacobs of the University of Alabama has been cataloguing and editing 20,000 pages of Lemkin’s papers for decades, but hardly any of it has been published. Most of Lemkin’s papers are contained in three places: the Manuscripts and Archive Division of the New York Public Library (NYPL), 42nd Street, New York; the American Jewish Historical Society (AHJS), 15 West 16th Street, New York; and the Jacob Rader Marcus Center of the American Jewish Archives (JRMCAJA), 3101 Clifton Avenue, Cincinnati, Ohio. I have corrected his spelling in the quotations from the unpublished manuscripts.

⁵ 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 important exception is Leo Kuper, who took Lemkin seriously in his *Genocide: Its Political Use in the Twentieth Century* (New Haven: Yale University Press, 1981).

Accordingly, Lemkin's ideas are not always well understood, whether by those who invoke him or by his critics. For some Holocaust specialists, his definition of genocide is too broad, illegitimately associating the Holocaust with other crimes by trivializing the former and miscategorizing the latter. For others, paradoxically, Lemkin's new word was modelled foursquare on the Holocaust, presuming, inaccurately, that he must have been referring exclusively to the Nazi extermination of Jews when he coined it during the Second World War.⁶ Either way, the—upon reflection, extraordinary—assumption is that Lemkin did not properly understand genocide, despite the fact that he invented the term and went to great trouble to explain its meaning. Instead, most scholars presume to instruct Lemkin, retrospectively, about his concept, although they are in fact proposing a different concept, usually mass murder. To that end, even his texts have been bowdlerized to make genocide mean mass killing and/or resemble the Holocaust. Thus a rising star in the field quoted Lemkin as writing that the essence of genocide was the '*aim of annihilating the groups completely*', when Lemkin actually wrote '*of annihilating the groups themselves*.'⁷ The mix-up was all the more inexplicable because, on the same page as that from which this quotation is drawn, Lemkin made clear that total extermination was *not* necessary for genocide to occur:

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.⁸

For this reason, Lemkin tended to associate 'destruction'—a word he preferred to 'extermination'—with what he called 'crippling' a group: genocide, he wrote in 1946, is 'the criminal intent to destroy or cripple permanently a human group'.⁹

The lesson to be drawn from this persistent misquotation and misinterpretation of Lemkin is that his ideas, rather than solely his career, need to be studied carefully. For the fact is that genocide is a curious anomaly in the post-war regime

⁶ Yehuda Bauer, 'The Place of the Holocaust in History', *Holocaust and Genocide Studies* 2 (1987), 211–15. According to Anton Weiss-Wendt, Lemkin 'incorporated a great many of offences in his, rather inclusive, interpretation of genocide' (personal communication, 20 November 2007).

⁷ Scott Straus, 'Contested Meanings and Conflicting Imperatives: A Conceptual Analysis of Genocide', *Journal of Genocide Research* 3:3 (2001), 360. Emphasis in original. I am not suggesting such mistranscriptions are consciously committed. I am suggesting that they occur unconsciously because Lemkin's (mis)interpreters think that he *must* have intended genocide to mean total mass murder of an ethnic group.

⁸ Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals of Redress* (Washington, DC: Carnegie Endowment for International Peace, 1944), 79. Emphasis added.

⁹ Raphael Lemkin, 'Genocide as a Crime under International Law', *American Journal of International Law* 41:1 (1947), 147; cf. Caroline Fournet, *The Crime of Destruction and the Law of Genocide: Their Impact on Collective Memory* (Aldershot: Ashgate, 2007).

of international humanitarian law, which is dominated by the discourse of human rights with its emphasis on individuals, rather than the interwar focus on group rights manifested in the politically contentious minority rights protection provisions of the League of Nations.¹⁰ As we will see below, it embodies the social ontology of ‘groupism’, because genocide is about the destruction of groups per se, not individuals per se. We have, then, the uneasy coexistence of rival languages of humanitarianism, though they are often conflated. To understand the language of group rights, we need to reconstruct Lemkin’s thinking about genocide by placing it in various historical contexts.

TWO CONTEXTUAL ORIGINS

As is well known, the Polish-Jewish jurist Raphael Lemkin (1900–59) invented the term genocide in 1943 for his book on Nazi imperialism, *Axis Rule in Occupied Europe*.¹¹ Its origins, however, go back much further. Three discourses, I suggest, were formative for the evolution of the concept. One was the social ontology of ‘groupism’ prevalent in the Eastern European context in which Lemkin was raised. The second was the Western legal tradition of international law critical of conquest, exploitative occupations, and aggressive wars that target civilians.

‘Groupism’

Lemkin was a proponent of what the sociologist Rogers Brubaker calls ‘groupism’: ‘the tendency to treat ethnic groups, nations, and races as substantial entities to which interests and agency can be attributed’, that is, to regard them as ‘internally homogeneous, external bounded groups, even unitary collective actors with common purposes’.¹² Others might say that he was a ‘primordialist’ who reified groups as ‘given entities that are held constant throughout the analysis’.¹³ This commitment baffles American liberals who can see in Lemkin’s national cosmopolitanism

¹⁰ Mark Mazower, ‘The Strange Triumph of Human Rights, 1933–1950’, *Historical Journal* 47:2 (2004), 379–98.

¹¹ Lemkin, *Axis Rule*. He coined the term in 1943, but the book was delayed for a year by contractual negotiations with the publisher.

¹² Rogers Brubaker, ‘Ethnicity without Groups’, in Andreas Wimmer et al (eds), *Facing Ethnic Conflicts: Towards a New Realism* (Lanham, MD, 2004), 35.

¹³ Lars Cederman, ‘Nationalism and Ethnicity’, in Walte Carlnaes, Thomas Risse, and Beth A. Simmons (eds), *Handbook of International Relations* (London: Sage, 2002), 412.

only an anachronistic return to ‘medieval organic imagery’ or fundamental confusion.¹⁴ Closer inspection reveals a coherent worldview.

What is the source of this worldview? As a boy, Lemkin reports, he had been first awakened to the persecution of human cultural groups by the story of the attempted extermination of Christians by the Roman emperor Nero. By learning about the travails of ethnic groups through the centuries—the Huguenots of France, Catholics in Japan, Muslims in Spain—he concluded that ethnic destruction was a universal and enduring problem. The persecution of Jews was part of this sorry tale, and he was well aware of their suffering; the Jews of his region near Bialystok had suffered pogroms in 1906. But his sympathies were for people everywhere.

Why did Lemkin’s sense of solidarity lead him to defend group rights as opposed to individual or human rights? Growing up in the multinational world of Eastern Europe, his cultural imaginary was irreducibly particular. Like the Polish romantic nationalists of the nineteenth century, he shared the national cosmopolitanism of Herder’s adherence to the individuality principle and Mazzini’s belief in the unique role of each people in the ‘symphony of nations’:¹⁵

The philosophy of the Genocide Convention is based on the formula of the human cosmos. This cosmos consists of four basic groups: national, racial, religious and ethnic. The groups are protected not only by reason of human compassion but also to prevent draining the spiritual resources of mankind.¹⁶

Undergirding the protection of group existence against extermination, then, is the communitarian assumption that nations and nationhood are intrinsically valuable because, unlike other human collectives such as political parties, they produce culture, endow individual life with meaning, and comprise the building blocks of human civilization.

It goes without saying that Lemkin’s upbringing as a religiously conversant Jew flowed into his thinking. But how exactly? Did common Yiddish phrases form his social imaginary? ‘May his name and memory be blotted out’ was the standard saying about an enemy, itself derivative of the Biblical verse, ‘I will utterly blot out the remembrance of Amalek’ (Exodus 17:14; cf. Deuteronomy 25:19), the Amelek being the congenital enemy of ancient Jews. The Jewish festivals of Passover and Purim commemorate escapes from slavery and genocide, respectively; during the latter the name of the Persian king, Haman, a descendant of the Amelek, is met

¹⁴ Steven Holmes, ‘Looking Away’, *London Review of Books*, 14 November 2002, and Michael Ignatieff, ‘The Danger of a World without Enemies: Lemkin’s Word’, *The New Republic*, 21 February 2001.

¹⁵ Andrzej Walicki, *Philosophy and Romantic Nationalism: The Case of Poland* (Oxford: Clarendon Press, 1982).

¹⁶ Raphael Lemkin, ‘Description of the Project’, NYPL, Reel 3, Box 2, Folder 1.

with booing and other noise in order to ‘blot’ it out. We can only speculate exactly how these rituals impacted on Lemkin, but this background cannot be ignored in accounting for his worldview. The survival of Jews over the millennia, the maintenance of their traditions, their cultural flourishing in the lands of the former Polish-Lithuanian Commonwealth, where the vast majority of world Jewry lived and, equally, the intense consciousness that peoples and their memories could be entirely erased—these were the cultural milieu and drama in which Lemkin was steeped.

Interestingly, though, he was never a Zionist. Lemkin was drawn to Bundist notions of cultural autonomy because, like the Bundists, who were especially strong in Poland, he believed in multiethnic states with minority protection rather than monocultural states tied to specific plots of land that oppressed minorities. If he was attracted to Herder’s romantic notion of cultural individuality, he was also wary of integral nationalism. Lemkin was likely influenced by Karl Renner, the non-Jewish Austro-Marxist, whom Lemkin wrote an effusive letter of praise as an inspiration for his ideas. Bundism drew heavily on Renner’s thinking.¹⁷

Lemkin’s was an ecumenical cosmopolitanism. Being a Polish patriot and advocate for all cultures never entailed renouncing his Jewish heritage or cultural rooting. His Jewish identity was not structured like a zero sum game. He always mentioned the genocidal persecution of the Jews by the Nazis in the same breath as the mass murder of Polish Christians, Roma, and other victims. Central was his attachment to the notion of ‘spiritual nationality’, a concept that most likely can be traced to Jewish sources as well as to Herder. Here are possible connections with the ‘autonomism’ of Russian-Jewish historian Simon Dubnow, who wrote of Jewish nationality that as ‘a spiritual or historical-cultural nation, deprived of any possibility of aspiring to political triumph, of seizing territory by force or of subjecting other nations to cultural domination, it is concerned only with one thing: protecting its national individuality and safeguarding its autonomous development in all states everywhere in the Diaspora.’¹⁸ Lemkin met the great historian during his flight from Poland; unlike Lemkin, he did not escape the Nazis.

Why was culture so central to Lemkin’s conception of genocide? After the war, Lemkin drew on the anthropology of Sir James Frazer and Bronislaw Malinowski to flesh out his thinking. Malinowski represented a special affinity. A fellow Pole, his brand of functionalist anthropology, so revolutionary and influential in Britain, was actually repackaging what Ernst Gellner calls ‘East European populist

¹⁷ Cooper thinks Lemkin was a Zionist, but the evidence he presents suggests he was a Bundist: Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention*, 93.

¹⁸ Simon Dubnow, *Nationalism and History: Essays on Old and New Judaism*, ed. and intro Koppel S. Pinson (Philadelphia: Jewish Publication Society of America, 1958), 97; Simon Rabinovitch, ‘The Dawn of a New Diaspora: Simon Dubnow’s Autonomism, from St. Petersburg to Berlin’, *Leo Baeck Institute Yearbook* 50 (2005), 267–88.

ethnography invented in the service of nationalism, which had practised “going to the people” more as a moral and political, rather than methodological, principle.¹⁹ Malinowski’s theory of culture allowed Lemkin to cast his Eastern European primordialist intuitions in the language of modern social science.

From Frazer and Malinowski, he took the proposition that culture derived from the precultural needs of a biological life. He called it ‘derived needs’ or ‘cultural imperatives’, but it was as constitutive for human group life as individual physical well being (i.e., ‘basic needs’). Culture integrated society and enabled the fulfilment of individual basic needs because it constituted the systematic totality of a variety of interrelated institutions, practices, and beliefs. Culture ensured an internal equilibrium and stability. These ‘so-called derived needs’, Lemkin wrote, ‘are just as necessary to their existence as the basic physiological needs.’ He elaborated the point thus:

These needs find expression in social institutions or, to use an anthropological term, the culture ethos. If the culture of a group is violently undermined, the group itself disintegrates and its members must either become absorbed in other cultures which is a wasteful and painful process or succumb to personal disorganization and, perhaps, physical destruction.²⁰

Consequently, he concluded, ‘the destruction of cultural symbols is genocide.’ To destroy their function ‘menaces the existence of the social group which exists by virtue of its common culture.’ This is pure Malinowski.²¹

Because culture incarnated the identity of peoples, Lemkin was a supporter of the national minority treaties of the League of Nations. Minorities should not be forcibly assimilated. As we will now see, the question of culture was also central to how Lemkin related to the second influential context, colonialism and imperialism.

Conquest, Occupation, and Cultural Change

The genocide concept is also the culmination of a long tradition of European legal and political critique of imperialism and warfare against civilians. All of the instances about which he wrote for his projected world history of genocide occurred in imperial contexts or involved warfare against civilian populations. Most of his case studies from the Eurasian land mass were taken from continental empires: the Roman Empire, the Mongols, the Ottoman Empire, Charlemagne and

¹⁹ Ernst Gellner, *Language and Solitude: Wittgenstein, Malinowski and the Habsburg Dilemma* (Cambridge: Cambridge University Press, 1998), 120.

²⁰ Raphael Lemkin, ‘The Concept of Genocide in Anthropology’, NYPL, Box 2, Folder 2.

²¹ *Ibid.*; Bronislaw Malinowski, *The Scientific Theory of Culture and Other Essays* (Chapel Hill: University of North Carolina Press, 1944), 36, 72–3.

the spread of German peoples eastwards since the Middle Ages.²² Here is a typical statement from an article in the *Christian Science Monitor* in 1948:

The destruction of Carthage, the destruction of the Albigenses and Waldenses, the Crusades, the march of the Teutonic Knights, the destruction of the Christians under the Ottoman Empire, the massacres of the Herero in Africa, the extermination of the Armenians, the slaughter of the Christian Assyrians in Iraq in 1933, the destruction of the Maronites, the pogroms of Jews in Tsarist Russia and Romania—all these are classical genocide cases.²³

Because genocide so often occurred in contexts of conquest and occupation, Lemkin was naturally drawn to the jurisprudence on this question.

This jurisprudence had a long pedigree. As the historian Andrew Fitzmaurice has shown, European theologians, philosophers, and lawyers have been debating the morality of foreign occupation since the Spanish conquest of the Americas in the sixteenth century. These Spanish intellectuals—above all, Bartolomé de Las Casas and Francesco de Vitoria—based their case on natural law that invested rights in Indigenous peoples. Hugo Grotius, Samuel Pufendorf, Emeric de Vattel, and Christian Wolff continued this line of critique. Nineteenth- and twentieth-century humanitarians who assailed the mistreatment of ‘native peoples’ by colonial authorities and settlers stood in this tradition.²⁴

Twentieth-century jurists who defended indigenous rights, like Charles Solomon and Gaston Jèze, studied Vitoria carefully in making out their views. So did Lemkin, who likely knew Jèze in the 1920s. But Las Casas was his hero: his ‘name has lived on through the centuries as one of the most admirable and courageous crusaders for humanity the world has ever known.’²⁵ Lemkin explicitly appropriated Las Casas’ viewpoint in his study of the ‘Spanish Colonial Genocide’, a chapter in his projected world history of genocide. He called his book on the Nazi empire *Axis Rule in Occupied Europe* in order to place it in the tradition of criticizing brutal conquests. Genocide for Lemkin, then, was a special form of foreign conquest, occupation, and often warfare. It was necessarily imperial and colonial in nature. In particular, genocide aimed to permanently tip the demographic balance in favour of the occupier. In relation to the Nazi case, he wrote that ‘in this respect genocide is a new technique of occupation aimed at winning the peace even though the war itself is lost.’²⁶ Any doubt that the roots of the genocide concept lie in the five-hundred-year

²² E.g. Raphael Lemkin, ‘Charlemagne’, AJHS, P-154, Box 8, Folder 6. On the Mongols: JRMCAJA, Collection 60, Box 7, Folder 6. On Pan-German interest in colonizing Poland in the nineteenth century: JRMCAJA, Collection 60, Box 6, Folder 13.

²³ Raphael Lemkin, ‘War against Genocide’, *Christian Science Monitor*, 31 January 1948, 2. On the relationship between genocide and warfare, see Shaw, *What is Genocide?*.

²⁴ Andrew Fitzmaurice, ‘Anti-Colonialism in Western Political Thought: The Colonial Origins of the Concept of Genocide’, in A. Dirk Moses (ed.), *Empire, Colony, Genocide: Conquest, Occupation and Subaltern Resistance in World History* (New York: Berghahn Books, 2008), 55–80.

²⁵ Raphael Lemkin, ‘Spain Colonial Genocide’, AJHS, P-154, Box 8, Folder 12.

²⁶ Lemkin, *Axis Rule*, 81.

tradition of natural law-based critique of imperialism rather than solely in Lemkin's reaction to the Armenian genocide or Holocaust can be dispelled by his own words:

The history of genocide provides examples of the awakening of humanitarian feelings which gradually have been crystallized in formulae of international law. The awakening of the world conscience is traced to the times when the world community took an affirmative stand to protect human groups from extinction. Bartolomé de las Casas, Vitoria, and humanitarian interventions, are all links in one chain leading to the proclamation of genocide as an international crime by the United Nations.²⁷

Lemkin, like Las Casas, did not oppose colonization or empire as such. He was typical of liberals in the first half of the twentieth century like J. A. Hobson and supporters of the League of Nations mandate system. Empire could be supported on humanitarian grounds if it served the interests of 'civilization'. After all, imperialism, however brutal at times, had also brought the spread of international law that Lemkin regarded as the central civilizational instrument to combat genocide.

Malinowski was useful here, too, because he offered a theory of cultural change that justified liberal imperial rule. Empires, humanely governed, contributed to human progress through 'diffusion', he implied. Diffusion amounted to intercultural exchange and was indentured to a theory of progress. It comprised

gradual changes occur[ing] by means of the continuous and slow adaptation of the culture to new situations. The new situations arise from physical changes, creative energies within the culture and the impact of outside influences. Without them the culture becomes static; if they appear but are not met with adaptation of the whole culture pattern, the culture becomes less integrated. In either case, it becomes weaker and may disintegrate entirely when exposed to strong outside influences. The rise and fall of civilizations have been explained on this general basis.²⁸

Following Malinowski, Lemkin thought that cultural change was induced by exogenous influences, as weaker societies adopt the institutions of more efficient ones or become absorbed by them because they better fulfil basic needs.²⁹ An empire that promoted diffusion governed by 'indirect rule', Malinowski argued, because it supposedly enabled the autonomous indigenous acquisition of European institutions.³⁰

²⁷ Raphael Lemkin, 'Proposal for Introduction to the Study of Genocide', NYPL, Reel 3, Box 2, Folder 1.

²⁸ Lemkin, 'The Concept of Genocide in Anthropology'. He cites Malinowski, *A Scientific Theory of Culture and Other Essays*; Arthur Toynbee, *A Study of History* (London: Oxford University Press, 1947); Ruth Benedict, *Patterns of Culture* (London: Routledge and Kegan Paul, 1935); Leo Louis Snyder, *Race: A History of Modern Ethnic Theories* (New York: Longmans, Green, 1939); Herbert Seligmann, *Race against Man* (New York: G. P. Putnam's Sons, 1939).

²⁹ Malinowski, *A Scientific Theory of Culture and Other Essays*, 61: 'the conveyance of a cultural reality from one culture to another' means that 'new needs are created' in the subject society.

³⁰ Paul T. Cocks, 'The King and I: Bronislaw Malinowski, King Sobhuza II of Swaziland and the Vision of Culture Change in Africa', *History of the Human Sciences* 13:4 (2000), 25–47.

Diffusion was a theory of cultural learning processes that justified liberal imperial rule by European powers.

How did he square this belief with his opposition to the heavy-handed assimilation of minorities he opposed in the new central European nation-states between the wars? ‘Diffusion is gradual and relatively spontaneous,’ Lemkin wrote, ‘although it may lead to the eventual disintegration of a weak culture.’³¹ The question was one of coercion. The absorption of ‘weaker’ cultures was not genocidal, although he also thought all cultural disappearances were a tragedy of sorts:

Obviously throughout history we have witnessed decline of nations and races. We will meet this phenomenon in the future too, but there is an entirely different situation when nations or races *fade away* after having *exhausted their spiritual and physical energies*, and there is a different contingency when they are murdered on the highway of world history. Dying of age or disease is a disaster but genocide is a crime.³²

Consequently, Lemkin was disturbed by occupations like German colonial rule in Africa that ultimately culminated in genocide in German South West Africa and German East Africa between 1904 and 1907. Their culture and members were assaulted in a concerted attack rather than fading away.³³ Plainly, Lemkin was as concerned with the loss of culture as with the loss of life. Accordingly, he urged the Nuremberg prosecutors not to confuse mass murder with genocide:

It appears in light of this evidence that the term genocide is a correct one since the defendants aimed to destroy, cripple, or degrade entire nations, racial and religious groups. The terms mass-murder or mass-extermination in the light of hitherto produced evidence seems to be inadequate since they do not convey the racial and national motivation of the crime. [M]ass-murder or extermination do not convey the elements of selection and do not indicate the losses in terms of culture represented by the nation’s victims.³⁴

Criticisms that Lemkin’s conception is imprecise or incoherent, and that therefore mass murder should be the definitional core of genocide, miss his point entirely.³⁵ Understanding Lemkin’s assumptions, however, should not blind us to their problems. These primordialist assumptions meant that he had difficulties in conceiving of cultural hybridity and adaptation. The cultural options he envisaged in any encounter seemed to have been either genocide or total assimilation.³⁶ In keeping

³¹ Lemkin, ‘The Concept of Genocide in Anthropology’.

³² Raphael Lemkin, ‘The Principle of Diversity of Cultures’, JRMCAJA, Collection 60, Box 7, Folder 7/12. Part 1, Chapter 2, Sec. I. II, II, 3. Emphasis added.

³³ Raphael Lemkin, ‘The Germans in Africa’, JRMCAJA, Collection 60, Box 6, Folder 9.

³⁴ Memorandum from Raphael Lemkin to R. Kempner, 5 June 1946. United States Holocaust Memorial Museum, R. Kempner Papers (RS 71.001).

³⁵ E.g. Stuart D. Stein, ‘Conceptions and Terms: Templates for Analysis of Holocausts and Genocide’, *Journal of Genocide Research* 7:2 (2005), 171.

³⁶ A cognitive theory of ethnicity, by contrast, would show how that category is a perspective on the world rather than a primordial, fixed, entity that engages in zero-sum relations with other ethnicities:

with this view, he tended to regard the encounter between European and Indigene as grossly asymmetric, thereby playing down both indigenous agency and the often-tenuous European grip on power, particularly in the initial stages of colonization. In German South West Africa, for instance, he did not see that the German governor was initially reliant on local chiefs. In fact, such reliance was most likely the norm, because collaboration with indigenous elites made imperial rule both cheap and efficient. In such cases, the imperial overlords cooperated with these elites rather than trying to Europeanize local culture. In the event, indirect rule, far from being a benign regime, often disrupted indigenous polities by promoting chiefly authority at the expense of other social actors or by fetishizing ethnic differences ('tribes'), which programmed these societies for genocidal conflict after decolonization.³⁷

Lemkin's blindness to the question of survival and adaptation was rooted in his particular concept of culture. Despite his Eastern European preoccupation with peasant cultures (which Malinoswki had converted into anthropological 'field-work' among the natives), he seems to have equated national culture with high culture. Consider how he regarded the matter in this quotation:

All our cultural heritage is a product of the contribution of all nations. We can best understand this when we realize how impoverished our culture would be if the people doomed by Germany such as the Jews had not been permitted to create the Bible or give birth to an Einstein, a Spinoza; if the Poles had not had the opportunity to give the world a Copernicus, a Chopin, a Curie; the Greeks a Plato and a Socrates, the English a Shakespeare, the Russians a Tolstoy and a Shostakovich, the Americans an Emerson and a Jefferson, the Frenchmen a Renan and a Rodin.³⁸

In this statement, the value of culture inhered in its elites who made contributions valuable for humanity as a whole. Genocide could occur when they were exterminated, and when libraries, houses of religious worship, and other elite institutions of cultural transmission were destroyed, even if the mass of the population survived and continued some hybrid popular culture. Here is what Lemkin wrote about the Maya in twentieth-century Mexico, centuries after their ravaging at the hands of the Spanish:

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*. One million 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.³⁹

Rogers Brubaker, Mara Loveman, and Peter Stamatov, 'Ethnicity as Cognition', *Theory and Society* 33:1 (2004), 31–64; Henry E. Hale, 'Explaining Ethnicity', *Comparative Political Studies* 37:4 (2004), 458–85.

³⁷ Mahmood Mamdani, 'Historicizing Power and Responses to Power: Indirect Rule and Its Reform', *Social Research* 66:3 (1999), 859–86.

³⁸ Memorandum from Lemkin to Kempner, 5 June 1946. See fn. 34.

³⁹ Raphael Lemkin, 'Yucatan', AJHS, P-154, Box 8, Folder 12. Emphasis added.

Clearly, this view is untenable today. Only white perceptions that ‘real’ Indians must be ‘pure’ prevented Europeans seeing that ‘Indianness’ was retained even while Indians adapted their culture and intermarried with others. Lemkin does not seem to have considered the possibility that genocide could be attempted, that much destruction could take place, and that cultural adaptation occurred nonetheless.

Formulating Genocide

Before he embarked on his world history of genocide after the Second World War, Lemkin was a lecturer in comparative law at the Free University of Poland and the Deputy Prosecutor of the District Court of Warsaw. In the late 1920s, he had become involved in the Polish Commission for International Juridical Cooperation, whose leading member, Emil S. Rappaport, was proposing that the League of Nations criminalize aggressive wars. Through this senior colleague, Lemkin was influenced by the proposal to make a certain class of crimes *delicta juris gentium*—offences against the law of nations, meaning grave threats to public international order that could be prosecuted anywhere under the principle of universal jurisdiction. At the first international conference for the unification of international law in Warsaw in 1927, these proposed crimes were piracy, counterfeiting of coins, producing a public danger, trade in women and children, trade in narcotics, and traffic in obscene publications. In subsequent years, the question of terrorism in relation to endangering public order was debated, and Lemkin was included in a commission to consider the matter and report at the Madrid meeting in 1933. He did not think the terrorism was a distinct crime, but rather comprised various criminal acts that individually constituted a public danger. To that list, he proposed to add barbarity, acts of vandalism, interrupting international communication, and propagating contagions.⁴⁰ He also wanted to expand the remit of the law from mere ‘public danger’, which ‘threatens personally indeterminate individuals or an indeterminate quantity of the goods on a given territory’. In its stead, he suggested a ‘general (transnational) danger [that] threatens the interests of several States and their inhabitants.’⁴¹ In future decades, he advocated the genocide concept in these terms, namely that its elements were already crimes but that, taken together, it constituted a transnational danger.

‘Barbarity’ and ‘Vandalism’ are of relevance for genocide because of their focus on group protection. He had been indignant that the Turkish perpetrators of the Armenian deportations and massacres were able largely to escape prosecution, and

⁴⁰ Marc Segesser and Myriam Gessler, ‘Raphael Lemkin and the International Debate on the Punishment of War Crimes, (1919–1948)’, *Journal of Genocide Research* 7:4 (2005), 456–7.

⁴¹ Raphael Lemkin, ‘Acts Constituting a General (Transnational) Danger Considered as Offences against the Law of Nations’, 1933: <http://www.preventgenocide.org/lemkin/madrid1933-english.htm>

appalled by the massacres of the Assyrian Christians in Iraq. Now it was time to criminalize them. ‘Barbarity’ combined acts against individuals and collectivities and thereby exceeded the concept of human rights:

In particular, these are attacks carried out against an individual as a member of a collectivity. The goal of the author [of the crime] is not only to harm an individual, but also to cause damage to the collectivity to which the later belongs. Offenses of this type bring harm not only to human rights, but also and most especially they undermine the fundamental basis of the social order.⁴²

Such acts comprised ‘massacres, pogroms, actions undertaken to ruin the economic existence of the members of a collectivity, etc.’ He added other acts that linked the individual to the group, namely ‘all sorts of brutalities which attack the dignity of the individual in cases where these acts of humiliation have their source in a campaign of extermination directed against the collectivity in which the victim is a member.’ Individually, they violated the criminal codes of civilized nations, but taken together they endangered ‘the entire social order’ and therefore ‘shake the very basis of harmony in social relations between particular collectivities’. For this reason, they were a transnational danger.⁴³

This reasoning was also deployed for the other suggested crime of ‘Acts of Vandalism’. It too was an ‘attack targeting a collectivity’ in ‘the form of systematic and organized destruction of the art and cultural heritage in which the unique genius and achievement of a collectivity are revealed in fields of science, arts and literature’. He made the suffering of a particular people a transnational danger by the postulate that ‘The contribution of any particular collectivity to world culture as a whole forms the wealth of all of humanity,’ such that vandalism was tantamount to an assault on ‘world culture’. Revealing his perspective on civilizational progress, he noted that vandalism ‘throws the evolution of ideas back to the bleak period of the Middle Ages’ and ‘shock[s] the conscience of all humanity’.⁴⁴ Remarkably early in his career, then, Lemkin highlighted the importance of culture to group life, but always in relation to a cosmopolitan vision of world civilization.

Ultimately, his report was not even considered at the Madrid meeting, which was preoccupied with terrorism, and his proposals were quickly forgotten.⁴⁵ They would become relevant ten years later when he adapted them in his famous book, *Axis Rule in Occupied Europe*. Why did he write it? When in exile in the United States as an academic and government advisor after 1941, he spread the word among his colleagues and superiors about the Nazis’ exterminatory intentions toward European Jewry. Receiving a scant hearing, he resolved to publish the

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Claudia Kraft, ‘Völkermord als *delictum iuris gentium*: Raphael Lemkins Vorarbeiten für eine Genozidkonvention’, *Simon Dubnow Institute Yearbook* 4 (2005), 79–98.

records of the German occupation he had been collecting, and devise a term for what Winston Churchill, soon after the German invasion of the Soviet Union, had called 'a crime without a name', namely, the 'extermination' of 'whole districts'. Like Lemkin, Churchill compared the Nazis 'to the Mongol invasions of Europe in the sixteenth century'. Nazism was a reversion to barbaric warfare.⁴⁶ Contrary to customary opinion, then, neither Lemkin nor Churchill were referring solely to the Holocaust of European Jewry; they meant the totality of the German campaign.

Completed in 1943 but published in November 1944, *Axis Rule* is a massive, 674-page book in which he first used and explained the meaning of genocide. What precisely he meant, however, has been a subject of some controversy. Is mass killing intrinsic to genocide? Indeed it is, many have asserted, and the Holocaust is prototypical of genocide.⁴⁷ Or is genocide a much broader term not conceptually indented to the Holocaust, as others insist?⁴⁸ To elucidate Lemkin's intentions, we must consider this text as well as articles he wrote soon thereafter.

It is important to note that Lemkin devotes only one of twenty-six chapters in Parts One and Two of *Axis Rule* to genocide. Part Three, which comprises more than half the book, reproduces the German occupation decrees across Europe. The nine chapters of Part One are each devoted to a technique of occupation: administration, police, law, courts, property, finance, labour, legal status of the Jews, and genocide. This structure suggests that the book is not an analysis of genocide per se, but a study of German occupation in which genocide is a particular tool of conquest. Indeed, he writes, 'genocide is a new technique of occupation aimed at winning the peace even though the war itself is lost'.⁴⁹ Yet in the preface, he implies that all of the techniques were aspects of genocide, such that it forms the conceptual core of his book:

The picture of coordinated German techniques of occupation must lead to the conclusion that the German occupant has embarked upon a gigantic scheme to change, in favor of Germany, the balance of biological forces between it and the captive nations for many years to come. The objective of this scheme is to *destroy or to cripple* the subjugated people in their development so that, even in the case of Germany's military defeat, it will be in a position to deal with other European nations from the vantage point of numerical, physical, and economic superiority.⁵⁰

A sentence later, however, he seems to restrict genocide to extermination, thereby distinguishing it from other techniques.

⁴⁶ Winston Churchill, *Winston S. Churchill: His Complete Speeches, 1897–1963*, ed. R. R. James, vol. 6 (New York/London: R. R. Bowker, 1974), 6474.

⁴⁷ Steven T. Katz, *Holocaust in Historical Context* (Oxford: Oxford University Press, 1994), 129; Yves Ternon, 'Reflections on Genocide', in Gerard Chaliand (ed.), *Minority Peoples in the Age of Nation-States* (London: Pluto Press, 1989), 127.

⁴⁸ Ward Churchill, *A Little Matter of Genocide* (San Francisco: City Lights Books, 1997), 67–75.

⁴⁹ Lemkin, *Axis Rule*, 81.

⁵⁰ *Ibid.* xi. Emphasis added.

The practice of extermination of nations and ethnic groups as carried out by the invaders is called by the author 'genocide,' a term deriving from the Greek word *genos* (tribe, race) and the Latin *cide* (by way of analogy, see homicide [*sic*], fratricide) and is treated in a chapter under the same name (Chapter IX).

So does genocide mean exterminating or 'crippling' a people? He begins Chapter Nine by declaring that genocide is 'the destruction of a nation or of an ethnic group'. But what does destruction mean? We know that he did not think it is consubstantial with the total disappearance of a people as a biological entity. Destruction can mean crippling, an interpretation supported by the references scattered throughout the book to non-murderous genocidal policies directed towards other peoples occupied by the Nazis.⁵¹

Plainly, he combined his original formulations, barbarity and vandalism, to form a new, more comprehensive concept. Vandalism—the destruction of cultural works—was now a technique of group destruction.⁵² But is genocide a synonym for the forced assimilation of the conquered people? Apparently not. Terms like 'denationalization' or 'Germanization'—the imposition of the conqueror's 'national pattern' on the conquered people—were unsatisfactory, he continued, because 'they do not convey the common elements of one generic notion and they treat mainly the cultural, economic, and social aspects of genocide, *leaving out the biological aspects, such as causing the physical decline and even destruction of the population involved*.'⁵³ Was he hopelessly confused?

We need to recall Lemkin's conception of nationhood. Nations comprise various dimensions: political, social, cultural, linguistic, religious, economic, and physical/biological. Genocide is a 'coordinated plan of different actions' that attacks them 'with the aim of annihilating the groups themselves'. Annihilation cannot be reduced to mass killing, however. 'Generally speaking, genocide does not entail the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation.'⁵⁴ And yet an essential aspect of nationhood is the physical/biological one. He thought the term 'Germanization' of the Poles inadequate, for example, because

it means that the Poles, as human beings, are preserved and that only the national pattern of the Germans is imposed upon them. Such a term is much too restricted to apply to a process in which the population is attacked, *in a physical sense*, and is removed and supplanted by populations of the oppressor nations.⁵⁵

We do not seem closer to a clear answer.

⁵¹ Ibid. 138–9, 196, 236–7.

⁵² He referred explicitly to his 1933 proposals in *ibid.* 91.

⁵³ Ibid. 80. Emphasis added.

⁵⁴ Ibid. 79.

⁵⁵ Ibid. 80. Emphasis added.

Careful inspection of his writings reveals that, true to his concept of group life, he did not consider cultural destruction in isolation from attacks on the physical and biological elements of a group. Culture was inextricably interwoven with a broader assault encompassing the totality of group existence: ‘Physical and biological genocide are always preceded by cultural genocide or by an attack on the symbols of the group or by violent interference with religious or cultural activities. In order to deal effectively with the crime of Genocide one must intervene at the very inception of the crime.’⁵⁶ Nazi mass murder, for instance, could not be separated from their attack on culture. ‘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.’⁵⁷

In Lemkin’s conception of it genocide affected all aspects of group life. ‘Like all social phenomena,’ he wrote later, ‘it represents a complex synthesis of a diversity of factors.’⁵⁸ It was, therefore, ‘an organic concept of multiple influences and consequences.’⁵⁹ As a total social practice, genocide comprised various techniques of group destruction. In *Axis Rule*, he outlined eight techniques used by the Nazis. They warrant listing in full because they illustrate his holistic conception of genocide, and demonstrate that mass killing was only one of a number of methods of group destruction. They are discussed here briefly in the order given by Lemkin.⁶⁰

Political techniques refer to the cessation of self-government and local rule, and their replacement by that of the occupier. ‘Every reminder of former national character was obliterated.’

Social techniques entail attacking the intelligentsia, ‘because this group largely provides the national leadership and organizes resistance against Nazification.’ The point of such attacks is to ‘weaken the national, spiritual resources.’

Cultural techniques ban the use of native language in education, and inculcate youth with propaganda.

Economic techniques shift economic resources from the occupied to the occupier. Peoples the Germans regarded as of ‘related blood’, like those of Luxembourg and Alsace-Lorraine, were given incentives to recognize this kinship. There were also disincentives: ‘If they do not take advantage of this “opportunity” their properties are taken from them and given to others who are eager to promote Germanism.’

⁵⁶ Raphael Lemkin, ‘Memorandum on the Genocide Convention’, AHJS, P-154, Box 6, Folder 5. Because attacks on cultural symbols were embedded in a general attack ‘where cultural genocide appears to be merely a step towards physical extermination, there will certainly be no difficulty in distinguishing it from diffusion’: Lemkin, ‘The Concept of Genocide in Anthropology’.

⁵⁷ Raphael Lemkin, *Raphael Lemkin’s Thoughts on Nazi Genocide: Not Guilty?*, ed. Steven L. Jacobs (Lewiston, NY, 1990), 299, 303.

⁵⁸ Raphael Lemkin, ‘The Concept of Genocide in Sociology’, JRMCAJA, Collection 60, Box 6, Folder 13, 1.

⁵⁹ Raphael Lemkin ‘Description of the Project’, NYPL, Reel 3, Box 2, Folder 1.

⁶⁰ This discussion of the eight techniques is taken from Lemkin, *Axis Rule*, 82–90.

Biological techniques decrease the birth rate of occupied people. 'Thus in incorporated Poland marriages between Poles are forbidden without special permission of the Governor . . . of the district; the latter, as a matter of principle, does not permit marriages between Poles.'

Physical techniques mean the rationing of food, endangering of health, and mass killing in order to accomplish the 'physical debilitation and even annihilation of national groups in occupied countries'.

Religious techniques try to disrupt the national and religious influences of the occupied people. In Luxembourg, the method entailed enrolling children in 'pro-Nazi youth organizations' so as to loosen the grip of Roman Catholic culture. Alternatively, in Poland, where no such assimilation was possible, the Germans conducted 'the systematic pillage and destruction of church property and persecution of the clergy,' in order to 'destroy the religious leadership of the Polish nation.'

Moral techniques are policies 'to weaken the spiritual resistance of the national group'. This technique of moral debasement entails diverting the 'mental energy of the group' from 'moral and national thinking' to 'base instincts'. The aim is that 'the desire for cheap individual pleasure be substituted for the desire for collective feelings and ideals based upon a higher morality.' Lemkin mentioned the encouragement of pornography and alcoholism in Poland as an example.⁶¹

What was the place of the persecution of Jews in this schema? This is an important question, because some scholars contend that when Lemkin wrote his book he 'did not yet fully comprehend the total planned annihilation of the Jewish people in Europe'.⁶² Consequently, they maintain, Lemkin conflated the fate of Jews, whose total physical extermination the Nazis intended, with that of other nationalities, who were subject to violent denationalization. The latter is genocide but must be distinguished from the Jewish experience, which is a Holocaust. Lemkin's text reveals, however, that he was acutely conscious of the Nazis' radical plans for Jews. He devoted a specific chapter to Jews, outlining the 'special status' the occupiers created for them in every country they conquered. Nor was he unaware of the extermination camps: 'The Jewish population in the occupied countries is undergoing a process of liquidation (1) by debilitation and starvation; and (2) by massacres in the ghettos.' 'The Jews for the most part are liquidated within the ghettos, or in special trains in which they are transported to a so-called

⁶¹ In a remarkable coincidence, Malinowski's adumbration of culture approximates almost exactly to Lemkin's facets of national life in his *Axis Rule*, published in the same year, 1944. 'From the dynamic point of view . . . as regards the type of activity, culture can be analyzed into a number of aspects such as education, social control, economics, systems of knowledge, belief, and morality, and also modes of creative and artistic expression' (*The Scientific Theory of Culture and Other Essays*, 150).

⁶² Yehuda Bauer, 'The Place of the Holocaust in Contemporary History', in Jonathan Frankel (ed.), *Studies in Contemporary Jewry*, vol. 1 (Bloomington: University of Indiana Press, 1984), 204–5; Katz, *Holocaust in Historical Context*, 129–30 n 15.

“unknown” destination.’ He was, in other words, well aware that the Jews were ‘to be destroyed completely’.⁶³

And yet, he included their experience in his ‘one generic notion’ of genocide. Why did he not distinguish the Jewish case from that of other victims of the Germans? Because he thought the various techniques of genocide issued in the same catastrophic end: the destruction of nationhood or group culture, one way or the other. Even if the Poles were not totally exterminated, Polish culture would be, and that fact represented as grave a loss to humanity as the loss of Jewish culture. That is what Lemkin meant by genocide.

FROM THE NUREMBERG TRIALS TO THE GENOCIDE CONVENTION

The moral shock of Nazi policies led to celebrated developments in international law relevant to genocide, but the Nuremberg Trials were a diversion rather than a stepping stone. In 1945, the Americans favoured prosecuting war crimes and ‘crimes against humanity’, which included ‘murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population’. Thanks to the relentless lobbying of Lemkin, the indictment of the International Military Tribunal included ‘deliberate and systematic genocide, viz., the extermination of racial and national groups . . . particularly Jews, Poles, and Gypsies’. The British prosecutor, Sir Hartley Shawcross, added, seemingly following Lemkin, that ‘Genocide was not restricted to extermination of the Jewish people or of the gypsies. It was applied in different forms to Yugoslavia, to the non-German inhabitants of Alsace-Lorraine, to the people of the Low Countries and of Norway.’⁶⁴ But, as Donald Bloxham has shown, the basic orientation of the Allies, particularly the British, was to play down as much as possible the racially specific dimension of Nazi crimes.⁶⁵ The priority was prosecuting the German leaders for waging an aggressive war (‘crimes against peace’); persecutions of their own population were only salient insofar as they were connected to waging war.⁶⁶ Genocide was deployed as rhetorical flourish, and consequently none of the

⁶³ Lemkin, *Axis Rule*, 81.

⁶⁴ William A. Schabas, *Genocide in International Law: The Crime of Crimes* (Cambridge: Cambridge University Press, 2000), 36–8.

⁶⁵ Donald Bloxham, *Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory* (Oxford: Oxford University Press, 2001).

⁶⁶ Yves Beigbeder, *Judging War Criminals: The Politics of International Justice* (Houndmills: Palgrave MacMillan, 1999), 48.

Nazis was convicted of genocide, let alone for pre-war crimes, as a dismayed Lemkin noted.⁶⁷ For this reason, the United Nations, which was meeting in its first session when the first Nuremberg judgment was issued on 30 September/1 October 1946, decided that its definition of genocide should cover crimes committed during peacetime, and rejected the British suggestion that genocide be based on the 'Nuremberg Principles'.⁶⁸

In December 1946, the General Assembly of the UN adopted a resolution affirming genocide as a crime denying 'the right of existence of entire human groups' that issued in 'great losses to humanity in the form of cultural and other contributions'.⁶⁹ This is pure Lemkin, and it comes as no surprise that he was a tireless lobbyist of UN delegates, many of whom had contact with him and his ideas. His reputation stood high. Britain's representative reminded all that, had his proposals been accepted in Madrid in 1933, the Nuremberg prosecutors would have been in a legally stronger position. Significantly, the term genocide was preferred to extermination so as to ensure that national destruction was not limited to mass killing.⁷⁰ He was then appointed as an expert to help formulate a draft convention (the 'Secretariat's Draft' of 1947). It defined genocide very broadly as acts committed with the 'purpose of destroying [a human group] in whole or in part, or of preventing its preservation or development'.⁷¹ Lemkin is recorded as supporting the inclusion of this phrase against objections that it was not an essential component of genocide.⁷² He wrote: 'Cultural Genocide is the most important part of the Convention.'⁷³ The term 'cultural genocide' was also included in the subsequent Ad Hoc Committee's draft genocide convention.⁷⁴

Lemkin has been fundamentally misunderstood by scholars of genocide who contend that he did not support the concept of cultural genocide.⁷⁵ But he was also a pragmatist and was prepared to compromise. In a letter to the *New York Times* as early as November 1946, he saw that cultural genocide would encounter strong objections from many UN delegates, for whom only mass murder 'shocked the conscience of mankind', as the General Assembly resolution on genocide put it a month later. Although he insisted that human groups 'can be destroyed through . . . disintegration of its spiritual resources', he added that,

⁶⁷ Power, 'A Problem from Hell', 49–50; Bloxham, *Genocide on Trial*, 67.

⁶⁸ Schabas, *Genocide in International Law*, 42.

⁶⁹ Lippman, 'The Drafting of the 1928 Convention', 7.

⁷⁰ Power, 'A Problem from Hell', 51–4.

⁷¹ Neremiah Robinson, *The Genocide Convention: A Commentary* (New York: Institute of Jewish Affairs, 1960), 123.

⁷² Schabas, *Genocide in International Law*, 179–80.

⁷³ Lemkin, 'Memorandum on the Genocide Convention'.

⁷⁴ Matthew Lippman, 'The Drafting of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide', *Boston University International Law Journal* 3:1 (1985), 31.

⁷⁵ Representative of this misunderstanding is Helen Fein, *Genocide: A Sociological Perspective* (London: Sage, 1993), 9–11.

for the purposes of international legislation the definition must be limited to more basic elements, such as killing, mayhem, and biological devices, as, for example, sterilization. One should also limit oneself to such acts which are serious enough to be of international concern. Only acts undertaken habitually and systematically and deriving from an organized plan or conspiracy should be included.⁷⁶

Legal assimilation was not cultural genocide, then, a conclusion that advantaged states which sought to assimilate their indigenous populations and other minorities after World War II. Lemkin's residual faith in Western civilization as the source of international humanitarian law may also have encouraged this narrower reading of cultural genocide. But in the end, even this restriction of cultural genocide's meaning was unsatisfactory for most UN delegates, who understood the Secretariat's Draft convention as equating the closing of libraries with mass murder. Many delegates were convinced by the Danish complaint that it showed 'a lack of logic and of a sense of proportion to include in the same convention both mass murder in gas chambers and the closing of libraries.'⁷⁷ Cultural genocide was eventually dropped from the final version of the convention.

Even so, the UN did not embrace mass murder as the primary mode of group destruction. In fact, it largely retained Article II of the Ad Hoc Committee Draft, which listed four genocidal techniques: (1) killing members of a group; (2) impairing their physical integrity; (3) inflicting measures and conditions aimed at causing their death; and (4) imposing measures intended to prevent births within the group.⁷⁸ The final convention includes a fifth element: the forced transfer of children from one group to another, originally in the subsection on cultural policies in the Secretariat's Draft, but now intended to complement the emphasis on the physical/biological consequences of genocidal techniques.⁷⁹ Mass murder, then, is only one of five techniques. Moreover, by stipulating an intention to destroy a group 'in whole or in part', the General Assembly affirmed Lemkin's argument that permanently crippling a group was genocidal. Clearly, what the UN defined as genocide was the first part of Lemkin's proposal in 1933, namely, barbarity. It excluded the equivalent of the second part, vandalism.

⁷⁶ Raphael Lemkin, Letter to the Editor, *New York Times*, 8 November 1946.

⁷⁷ Lippman, 'The Drafting of the 1948 Convention', 45.

⁷⁸ Robinson, *The Genocide Convention*, 132.

⁷⁹ Matthew Lippman, 'Genocide: The Crime of the Century: The Jurisprudence of Death at the Dawn of the Millennium', *Houston Journal of International Law* 23:3 (2001), 477.

CONCLUSION

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Lemkin thought that the Nazi policies were radically new, but only in the context of modern civilization. Wars of extermination had marked human society from antiquity until the religious conflagrations of early modern Europe, after which the doctrine became normative that war is conducted against states rather than populations.⁸⁰ The Nazis, then, were at once an irruption of barbarism into civilization and ‘the most striking and the most deliberate and thorough’ of genocidal imperialists. ‘They almost achieved their goal in exterminating the Jews and Gypsies in Europe.’⁸¹ The Jewish experience is both distinctive in its extremity and part of a broader pattern. Given that forty-nine members of his family died in the Holocaust, his ecumenical approach to human suffering was at once astonishing and exemplary.

What of his legacy in relation to culture, so central to his concept of genocide generally? Briefly surveying the post-war legal regime reveals an ambiguous legacy. Although indigenous people often regard assimilation and development policies as genocidal or at least culturally genocidal, we know that they have no legal protection from the UN Genocide Convention. ‘Cultural genocide’ is of rhetorical effect only.⁸²

Other legal instruments fill some of the gap. The International Labor Organization ‘Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries’ protects the individual and collective rights of such people. So does Article 27 of International Covenant on Civil and Political Rights (1966), which protects minority groups against assimilation:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

And although the reference to ‘ethnocide’ in the ‘United Nations Declaration on the Rights of Indigenous Peoples’ (2007) was removed, a number of articles in there still offer protection against those policies that an explicit article on cultural genocide would cover. Article 7 declares that

- 1) Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

⁸⁰ Lemkin, *Axis Rule*, 80.

⁸¹ Raphael Lemkin, ‘Genocide’, *American Scholar* 15:2 (1946), 227–30.

⁸² Alexandra Xanthaki, *Indigenous Rights and United Nations Standards: Self-Determination, Culture and Land* (Cambridge: Cambridge University Press, 2007), 114.

- 2) Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8 lists very specific acts that are prohibited, such as forced population transfer, ethnic discrimination, forced assimilation, and land dispossession.⁸³

And yet, while the UN described the new Declaration as ‘an important standard for the treatment of indigenous peoples that will undoubtedly be a significant tool towards eliminating human rights violations against the planet’s 370 million indigenous people and assisting them in combating discrimination and marginalization,’ it is not a legally binding instrument, and it was objected to by the USA, New Zealand, Australia, and Canada, while many other countries abstained from the vote.⁸⁴ These classical settler societies with significant indigenous minorities could not accede to the articles on self-determination, control of resources on traditional land, including the right of veto against the state, the seeming uncertain definition of ‘indigenous’, the status of indigenous customary law, and the principle of special provisions for indigenous sections of the population. The United Kingdom spoke for many when it objected to the ‘groupism’ of the Declaration, and foregrounded the individualism of human rights.

The United Kingdom fully supported the provisions in the Declaration which recognized that indigenous individuals were entitled to the full protection of their human rights and fundamental freedoms in international law, on an equal basis to all other individuals. Human rights were universal and equal to all. The United Kingdom did not accept that some groups in society should benefit from human rights that were not available to others.⁸⁵

What is more, the United Kingdom affirmed that it ‘had long provided political and financial support to the socio-economic and political development of indigenous peoples around the world.’⁸⁶ The modern state is by definition a developmental one, and indigenous people can stand in the way of ‘progress’ and ‘modernity’. They may claim that development, at least in some circumstances, is tantamount to cultural genocide and the state will deny it.

⁸³ United Nations Declaration on the Rights of Indigenous Peoples, Adopted by the General Assembly 13 September 2007: <http://www.un.org/esa/socdev/unpfii/en/declaration.html>

⁸⁴ United Nations Permanent Forum on Indigenous People, Frequently Asked Questions, United Nations Declaration on the Rights of Indigenous Peoples: http://www.un.org/esa/socdev/unpfii/documents/dec_faq.pdf

⁸⁵ United Nations General Assembly, GA/10612, press release on the Declaration: <http://www.un.org/News/Press/docs/2007/ga10612.doc.htm>

⁸⁶ *Ibid.*

It is unlikely that these legal instruments and declarations will protect indigenous people against development. Since the ‘gold standard’ of humanitarian emergencies is genocide, anything that does not resemble it falls beneath the radar of international public opinion. What is more, the general commitment to ‘development’, which appears in this declaration as well—of course, with the qualification that indigenous people should codetermine it—is hardly likely to ‘shock the conscience of mankind’ as legally defined genocide does or is supposed to. Lemkin might well consider indigenous people as weaker cultures who might be ‘absorbed’ by ‘cultural diffusion’. He was not opposed to the spread of Western civilization; in fact, he saw the field of international law that he championed as the antidote to genocide, which he coded as barbarism. If his language now seems archaic, though, the tenacity of the indigenous identity claims and assertions shows that the language of individual human rights does not suffice for many people(s) since 1948.

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