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The Holocaust, Genocide, and the Origins of the Commensurability Problem

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INTRODUCTION

The relationship between the Holocaust and genocide, both as concepts and as historiographical praxes, is unstable and contentious.[1] Whereas the Holocaust is particular, genocide is universal. Does this "generic" notion, as Raphael Lemkin called his invention, efface the Holocaust's particularities as "just another case of genocide"? Or, conversely, does the Holocaust distort the universality of genocide's applicability by serving as its ideal type to which aspirant cases must "measure up"?[2] The sociologist Nathan Glazer asked both questions in his critique of the Holocaust–genocide relationship. He bemoaned the fact that Jewish Americans sought to advance their interests "by hanging on to the coattails of the reinterpretation of the Holocaust as a generic possibility that any nation or power can perpetrate and of which any group can become the victim."[3] The danger was that the subsumption of the Holocaust under genocide has "the capacity to reduce the distinctiveness and weight of the Jewish genocide in response to genocide in general." For other genocides were "sideshows" compared with the scale of the Holocaust, reducing "all comparable genocides to lesser representatives of the genre –

[1] A. D. Moses, 'The Holocaust and genocide', in D. Stone (ed.), *The Historiography of the Holocaust* (Basingstoke, Palgrave Macmillan, 2004), pp. 533–55.

[2] On the first fear, see A. D. Moses, 'Anxieties in Holocaust and Genocide Studies', in C. Fogu, W. Kansteiner, and T. Presner (eds.), *Probing the Ethics of Holocaust Culture* (Cambridge, MA, Harvard University Press, 2016), pp. 332–54, 474–83.

[3] N. Glazer, 'Jeffrey Alexander on the response to the Holocaust', in J. C. Alexander, with M. Jay, B. Giesen, M. Rothberg et al, *Remembering the Holocaust: A Debate* (Oxford, Oxford University Press, 2009), p. 153. See also S. Magid, 'The Holocaust and Jewish identity in America: Memory, the unique, and the universal', *Jewish Social Studies* 18 (2012), 100–35.

indeed, so much lesser as to raise the question of whether the same term should apply to all."[4] The vast differences between cases rendered useless the concept of genocide, he concluded:

> The Jews ... played a much, much larger role in European and modern society, and in its distinctive achievements than the other targets who the Nazis believed consisted of unworthy life. Finally and most markedly, the extermination of the Jews was carried out by the most advanced representatives of Western civilization, using its most advanced technologies. The contrast with other genocides, carried out by societies considered backward or deficient from the point of view of advanced Western civilization – the Ottoman Turks, the Hutus of Rwanda, the Sudanese Arabs – is so marked as to suggest that these other genocides are of a different order of significance altogether. The destruction of the Jews has to raise the most serious and the deepest questions of its meaning, not only to Jews but also for the entire Western world they have so signally influenced.[5]

Leaving aside the chauvinism of his elaboration, Glazer pointed to a real problem of commensurability: what do these – and other – disparate cases of mass death really have in common? In effect, he was saying that the concept of genocide equates apples and oranges by overemphasizing similarities at the expense of differences, thereby distorting the meaning all cases.

This chapter takes a historical approach by reconstructing how and why the problem of commensurability developed in the first place. It argues that Lemkin formulated a broad concept to encompass the experiences of Jews and non-Jewish victims of Nazi occupation in his book *Axis Rule in Occupied Europe* (1944) for contingent political reasons. This conflation was subsequently reduced in the United National Convention on the Punishment and Prevention of Genocide in 1948 by redefining genocide to more closely resemble the Holocaust. With the Holocaust now serving as genocide's ideal type, Lemkin popularized the new international law as universally applicable, and it soon became a new keyword for naming atrocity, surpassing "crimes against humanity," the term of art at the Nuremberg Trials.

Henceforth, advocates claimed the mass violence of decolonization and postcolonial states was genocidal by trying to depict particular cases as Holocaustal. In rejecting these claims, perpetrator states argued that "genocide" was not applicable because they were not killing civilians for the same reasons that Germans killed Jews during the Second World War. The logics differed, they insisted: these states were unleashing political violence in

[4] Glazer, 'Jeffrey Alexander on the response to the Holocaust', p. 154. [5] Ibid.

putting down rebellions or preventing secession whereas, by contrast, the Holocaust was driven solely by the non-pragmatic and unpolitical goal of exterminating European Jewry as an end in itself. This distinction has become foundational for both fields of Holocaust and Genocide Studies.[6]

The burgeoning scholarship on genocide in the last thirty years likewise has had to wrestle with the definitional dilemmas of utilizing a concept in circumstances not envisaged by Lemkin when he formulated it with reference to a totalitarian state engaged in total war. And yet, because his original definition in *Axis Rule* presented genocide as a "technique of occupation," it has proven a source of inspiration for those researching, say, the frontier violence of settler-colonial expansion. To understand the confusion and tensions in Holocaust and Genocide Studies, then, it is necessary to return to their source: Lemkin's formulation of "genocide" during the war and the debate about Nazi criminality.

LEMKIN'S CONFLATION

The immediate context for Lemkin's conceptual innovation was the allied debate about postwar trials of Nazis and their accomplices. The representatives of occupied or invaded states convened at the Inter-Allied Conference in St. James's Palace in London on 13 January 1942, at which they condemned the German "policy of aggression" and "regime of terror."[7] Consisting of "imprisonments, mass expulsions, execution of hostages and massacres," the German actions violated "the convention signed at The Hague in 1907 regarding laws and customs of land warfare."[8] Hague law, that is war crimes, was the legal category required to understand and prosecute Nazi criminality in other countries.[9]

[6] I examine the history and function of this distinction in Moses, *The Problems of Genocide*. The present chapter draws on this book.

[7] They were Belgium, the Free French National Committee, Greece, Luxemburg, Poland, Norway, the Netherlands, Czechoslovakia, and Yugoslavia. See 'The Inter-Allied Conference, January 13, 1942', *Bulletin of International News* 19 (1942), 50–3. Great Britain and its Dominions, the USA, the Soviet Union, China, and India were observers.

[8] Ibid., 50–1. [9] *Punishment for War Crimes: The Inter-Allied Declaration Signed at St James Palace, London, on 13th January, 1942 and Relative Documents* (London, HMSO, 1942).

The state leaders also signaled an expansive agenda at St. James's Palace: reforming international law by broadening the definition of war crimes. Conventional notions of war crimes did not fully cover the German mode of occupation that was bent on destroying their nations. The Czechs insisted that this process began with the German annexation of the Sudetenland territory of their country in 1938. Already in 1941, its government-in-exile had published an account of the German occupation that detailed "Germanization," the persecution of the Christian Churches and Jews, "economic enslavement and robbery," and the "destruction of Czech schools and persecution of Czechoslovak cultural life."[10] In a phrase that would appear in Lemkin's writings, the St. James's Declaration noted that Nazi "crimes intended to cripple the vital forces of the nations they have temporarily subjugated."[11] Consequently, stated the state leaders, international law needed to be reformed. Aggression, crippling, enslavement, destruction, and extermination joined terrorism and war crimes as the terms for a prospective expansion of international law to cover German policies.

In likewise arguing for amendments of the Hague Conventions, Lemkin was also seeking to deal with the destruction of nations, which he called the "problem of genocide . . . as a whole." He did so by inventing a new "generic notion": genocide:[12]

> . . . [the Nazi] techniques of genocide represent an elaborate, almost scientific, system developed to an extent never before achieved by any nation. Hence the significance of genocide and the need to review international law in the light of the German practices of the present war. These practices have surpassed in their unscrupulous character any procedures or methods imagined a few decades ago by the framers of the Hague Regulations. Nobody at that time could conceive that an occupant would resort to the destruction of nations by barbarous practices reminiscent of the darkest pages of history.[13]

He was aware of the distinctive Jewish experience. Despite fleeing his native Poland in 1939, he was broadly informed about subsequent Nazi rule, devoting a separate chapter (Chapter VIII) to the Nazi treatment of Jews in *Axis Rule* that outlined the "special status" for them in every conquered

[10] Czechoslovak Ministry of Foreign Affairs, Department of Information, *Two Years of German Oppression in Czechoslovakia*, with preface by Edvard Beneš (London, Unwin, 1941).
[11] *Punishment for War Crimes*, p. 3.
[12] Lemkin, *Axis Rule*, pp. 80, 92–3. On Lemkin, see Irvin-Erickson, *Raphaël Lemkin and the Concept of Genocide*.
[13] Lemkin, *Axis Rule*, p. 90.

country; they were "one of the main objects of German genocide policy"; indeed, they were "to be destroyed completely" in extermination camps and by other means.[14] And yet he formulated an extraordinarily broad definition of genocide in recommending changes to the Hague Regulations:

> in the first should be included every action infringing upon the life, liberty, health, corporal integrity, economic existence, and the honor of the inhabitants when committed because they belong to a national, religious, or racial group; and in the second, every policy aiming at the destruction or the aggrandizement of one such group to the prejudice or detriment of another.[15]

When the immediate context of the writing of *Axis Rule* is understood, it is apparent that Lemkin felt he had little choice but to proceed in this generalizing manner. He was shocked by western public apathy about the Nazis' murderous persecution of Jews in Poland. If Allied leaders were not blind to the specific Nazi targeting of Jews, they did little beyond issue declarations. Despite the widespread knowledge about the Nazis' attack on the Jews, the majority of people, including political and military leaders, were not particularly concerned. Western publics understood Nazi criminality as visited upon all the occupied nations of Europe, with their majority Christian populations.[16] Until the US War Rescue Board published its report *German Extermination Camps* in November 1944 – the same month as Lemkin's *Axis Rule* – journalists and the US public, jaded by First World War atrocity propaganda, were largely skeptical about the systematic nature of the atrocities and the extent of Jewish mortality. Just because the Allies and press reported Nazi persecution and atrocities did not mean the public believed them. Moreover, such reports were rarely front-page news.[17]

Widespread antisemitism, among other factors, led to US opposition to accepting Jewish refugees or aiding Jews in Europe, whether by sending food or bombing Auschwitz. As in Great Britain, the authorities worried about Nazi propaganda that claimed the war was waged on behalf of Jewish interests.[18] The British followed the exiled governments of occupied states

[14] Ibid., pp. 89, 81; cf. pp. 21–2, 77, 249–50. [15] Ibid., p. 93.
[16] Typical is R. Kraus, *Europe in Revolt* (London, Jarrolds, 1942).
[17] Critical of the press coverage for underplaying Nazi persecution are D. E. Lipstadt, *Beyond Belief: The American Press and the Coming of the Holocaust, 1933–1945* (New York, Simon & Schuster, 1993); L. Leff, *Buried by the Times: The Holocaust and America's Most Important Newspaper* (Cambridge, Cambridge University Press, 2005).
[18] S. S. Friedman, *No Haven for the Oppressed: United States Policy toward Jewish Refugees, 1938–1945* (Detroit, Wayne State University Press, 2017); J. W. Bendersky, 'Dissension in the face of the Holocaust: The 1941 American debate over antisemitism', *Holocaust and*

in not naming Jews as a distinct nationality, and did not want to provide propaganda material for Zionist claims to independent statehood in Palestine. Until December 1942, the British and US foreign policy establishments also doubted the extent of the Nazi campaign against Jews, discounting the August 1942 telegram from the WJC Geneva office about Nazi aims, although it was based on reliable German sources. Where the WJC saw a systematic extermination campaign, they perceived piecemeal ghettoization and starvation. The US State Department even withheld reports about mass murder of Jews.[19]

Lemkin absorbed this atmosphere when he arrived in the USA and made his way to an externally (and poorly) funded two-year appointment at Duke University School of Law in April 1941.[20] He was dismayed by the lack of government reaction to these accounts, even if he was too diplomatic to say so outright. Instead, he decried what he called the "tremendous conspiracy of silence" about the Nazi "execution of races," shocked as he was by the silence that greeted reports about the mass murder of Jews between late 1942 and late 1943, when he finished his book (it was published a year later due to a contractual dispute). Without mentioning Jews by name, he made it clear what he meant: "No acknowledgement was made of the death of a nation that had given the world the belief in God, whose Bible was read every Sunday in the Allies' churches."[21] Instead, when Roosevelt announced the intention to punish "the ringleaders responsible for the organized murder of thousands of innocent persons and the commission of atrocities," he referred to their violation of "every tenet of the Christian faith."[22]

Observing the Christianization of Nazi oppression, Lemkin concluded that appealing to the Christian majority was essential for helping Jews. A broad, generic conception of group destruction would simultaneously unite Jewish and non-Jewish experiences as well as reflect the cultural sensibilities of small

Genocide Studies 24 (2010), 85–116; T. Kushner, *The Persistence of Prejudice: Antisemitism in British Society during the Second World War* (Manchester, Manchester University Press, 1989).

[19] J. P. Fox, 'The Jewish factor in British war crimes policy in 1942', *English Historical Review* 92 (1977), 82–106; D. S. Wyman, *The Abandonment of the Jews* (New York, Pantheon Books, 1984), pp. 44–5, 65, 73–4, 81, 113–7, 179, 186.

[20] On US public opinion regarding Jews, see S. Welch, 'American opinion toward Jews during the Nazi era: Results from quota sample polling during the 1930s and 1940s', *Social Science Quarterly* 95 (2014), 615–35.

[21] R. Lemkin, *Totally Unofficial: The Autobiography of Raphael Lemkin*, ed. D.-L. Frieze (New Haven, Yale University Press, 2013), p. 117.

[22] White House News Release, *Department of State Bulletin*, October 10, 1942, p. 797. Quoted in C. Cheney Hyde and E. D. Dickinson, 'Punishment of war criminals', *Proceedings of the American Society of International Law at Its Annual Meeting* 37 (1943), 39.

nations for which there were many types of destruction. He even construed antisemitic persecution to appeal to Christians: "The extremely inhuman treatment of Jews (Chapter VIII) serves as a propaganda device for the promotion of the anti-Christian idea of the inequality of human beings and of German racial superiority."[23] To mobilize action about Jews, then, it made strategic sense to link the fate of Jewish and non-Jewish victims of Nazis under a single conceptual umbrella. This is the task that Lemkin's genocide concept was designed to perform. Far from unthinkingly eliding the differences between Jewish and non-Jewish victims as supposed by Lemkin's critics decades later, uniting them was the point of the concept.[24]

"ONE LONG CHAIN": MAKING COMMENSURABILITY

In setting out on this course, Lemkin was following in the footsteps of others. There were, to begin with, other exiled central European scholars – all around Lemkin's age – who wrote about their occupied homelands for English-speaking audiences. They shared a basic, and accurate, understanding of Nazism as radical Pan-Germanism that, in the name of *Lebensraum* (living space), colonized and exploited their nations by largely replacing Christian populations with German settlers who would rule over an enslaved class of helot-workers. Nazism was thus a "racial imperialism" that imported extra-European colonial techniques into Europe while eliminating the Jewish population altogether.[25]

[23] Lemkin, *Axis Rule*, p. xi.

[24] For these misplaced criticisms, see U. Tal, 'On the study of the Holocaust and genocide', *YVS* 13 (1979), 24–46; Y. Bauer, 'The place of the Holocaust in history', *HGS* 2 (1987), 209–20; S. T. Katz, *The Holocaust in Historical Context* (Oxford, Oxford University Press, 1994), Vol. I, pp. 129–30; D. Michman, 'The Jewish dimension of the Holocaust in dire straits? Current challenges of interpretation and scope', in N. J. W. Goda (ed.), *Jewish Histories of the Holocaust: New Transnational Approaches* (New York, Berghahn Books, 2014), pp. 17–38.

[25] On these policies, see A. Stiller, *Völkische Politik: Praktiken der Exklusion und Inklusion in polnischen, französischen und slowenischen Annexionsgebieten 1939–1945* (Göttingen, Wallstein Verlag, 2020); G. Wolf, *Ideology and the Rationality of Domination: Nazi Germanization Policies in Poland* (Bloomington, Indiana University Press, 2020); W. Gruner and J. Osterloh (eds.), *The Greater German Reich and the Jews: Nazi Persecution Policies in the Annexed Territories 1935–1945* (New York, Berghahn Books, 2015).

Lemkin thus cited extensive reports of exiled governments and diaspora organizations in the late 1930s and early 1940s that documented their homeland's experience of Nazi occupation.[26] These publications highlighted the multidimensional nature of Axis rule: the Germans took over the economy, banned local languages, deported populations, imported German settlers, transferred to German families those foreign children considered "racially valuable," arrested and murdered cultural elites, plundered forests, and so forth. Their nations were being destroyed in a variety of ways; massacres were but one element of the ordeal.[27] In November 1940, for instance, the Polish government and Provisional Czechoslovak Government issued a declaration that condemned the "destruction of our two ancient nations" for the following crimes:

> the expulsions of the native population from large areas of its secular homelands, the banishing of hundreds of thousands of men and women to the interior of Germany as forced labour, mass executions and deportations to the concentration camps, the plundering of public and private properties, the extermination of the intellectual class and of all manifestation of the culture life, the spoliation of the treasure of science and art and the persecution of all religious beliefs – are unparalleled in all human history.[28]

Lemkin adapted a central idea from his own Polish exile government in London, whose many publications he read. Already in December 1940 it issued a public statement about "German Crimes in Poland" that detailed infractions of the Hague Conventions. Significantly, the statement interpreted non-violent violations, such as canceling the Polish citizenship of Poles in German-annexed Poland and forcing Poles to vitiate their oath of loyalty to the Polish state, as part of "one long chain of physical and moral violence directed towards the destruction of the Polish nation."[29] This style of reasoning linked comparatively anodyne measures to mass atrocities by virtue of their shared intention: national destruction. Many publications by the Polish Ministry of Information expressed this approach, most

[26] E. Beneš, *Nazi Barbarism in Czechoslovakia* (London, Allen & Unwin, 1940).

[27] For example, Polish Ministry of Information, *German Occupation of Poland* (*Polish White Book*) (New York, Greystone Press, 1941); Polish Ministry of Information, *The German New Order in Poland* (London, Hutchinson, 1942); Polish Ministry of Information, *The Quest for German Blood: Policy of Germanization in Poland* (London, Polish Ministry of Information, 1943). Lemkin, *Axis Rule*, p. 84 n23.

[28] 'Declaration issued by the Polish Government and the Provisional Czechoslovak Government, November 1940', Robert H. Jackson Papers, Library of Congress, Nuremberg War Crimes Trial, Pre-Trial Material, Declarations of Intent to Punish War Criminals.

[29] 'German crimes in Poland', *The Times*, 21 December 1943, 3.

prominently two so-called Black Books ("the black record of German barbarism"): *The German Invasion of Poland*, a collection of documents with commentary on the atrocities of the German invasion (1939), and *The German New Order in Poland*, a 586-page analysis of the German occupation (1942).[30] The second book was organized under four general headings, nine sections, and forty-four chapters, whose themes preempt Lemkin's eight "techniques of genocide" (political, social, cultural, economic, biological, physical, religious, and moral) in *Axis Rule*:

Persecutions, Murders, Expulsions

Part 1: Massacres and Tortures
Part 2: The Expulsion of the Polish Population from Its Lands
Part 3: The Persecution of the Jews and the Ghettoes

Pillage and Economic Exploitation

Part 4: The Robbery of Public and Private Property
Part 5: The Economic Exploitation of Polish Territories under German Occupation

Struggle against the Polish Spirit

Part 6: Religious Persecutions
Part 7: Humiliation and Degradation of the Polish Nation
Part 8: The Destruction of Polish Culture

German Lawlessness

Part 9: The Violation by the Reich of International Law

Particular phrases and concepts from this literature made their way into *Axis Rule*, for example, referring to Hitler's aim to "Germanize the soil" by first replacing the Polish population with German settlers; or unmasking the "German policy . . . to destroy the Polish nation as an independent political and cultural unit, and even more, to destroy its biological force."[31] And Jewish Poles appeared there alongside their Christian compatriots, with their distinctive experience, yet as part of the Polish nation. This mode of analysis was so common at the time that a minor academic could publish

[30] Republic of Poland, Ministry of Foreign Affairs, *The German Invasion of Poland: Polish Black Book Containing Documents, Authenticated Reports and Photographs*, with a preface by the Archbishop of York (London, Hutchinson & Co., 1940).
[31] Ibid., pp. 144, 565. Cf. Lemkin, *Axis Rule*, pp. 80, 81.

a short article based on these sources in early 1944 that is an anticipatory summary of *Axis Rule*.[32]

Another major source for Lemkin consisted of books published by the Institute for Jewish Affairs, a research unit founded by the WJC in February 1941. It too utilized the "one long chain" reasoning, though in relation to the persecution of Jews. For instance, in *Racial State: German Nationalities Policy in the Protectorate of Bohemia–Moravia*, the Jewish-German lawyer Gerhard Jacoby examined Germans' legal measures to supplant Czechoslovaks with Germans, particularly in the economy and institutions of cultural transmission, thereby turning the locals into "helots" and the colonists into "masters."[33]

Whereas the national exiled governments folded the experience of their Jewish citizens into the national ordeal, the Institute for Jewish Affairs and the WJC advanced the case for the distinctiveness of the Nazi treatment of Jews. Although the Germans often had to compromise with puppet and collaborationist governments that were prepared to yield up foreign Jews on their soil but not their own Jewish citizens, Nazis conceived of Jews as a single people and aimed, ultimately, to exterminate them all. The Nazi regime was thus committing a "united crime," insisted the Institute's director, Jacob Robinson.[34] Other WJC personalities accordingly argued for a special Jewish indictment and representation in the unfolding Allied debate about war crimes trials. A statement by WJC founders Nahum Goldman and Steven S. Wise in July 1942 on the "Nazi Massacres of Jews in Europe" averred the primacy of Jewish suffering thus: "The whole long history of man's inhumanity to man holds no record of persecutions more charged with brutality and horror. In the hierarchy of suffering which Nazi brutality has created they have the melancholy of occupying the first place."[35] Whereas non-Jews could escape extermination by complying with the occupiers, explained Robinson, Jews were killed simply for being Jews: "by the very fact of their birth, designated for

[32] F. A. Cave, 'Axis domination in central and eastern Europe', *Annals of the American Academy of Political and Social Science* 232 (March 1944), 116–25.

[33] G. Jacoby, *Racial State: German Nationalities Policy in the Protectorate of Bohemia-Moravia* (New York, Institute for Jewish Affairs of the American Jewish Congress and World Jewish Congress, 1944), pp. 5–6, 43, 110, 126, 199.

[34] Address given by Dr. Jacob Robison (Director of the Institute of Jewish Affairs in New York) on 'The Jewish International Political Agenda', at the Conference held on 10 October 1945, at Friends House, Euston Road, London. AJA/WJC, C14-21 Meeting Minutes, Speeches, Correspondence, London, October 1945.

[35] N. Goldman and S. S. Wise, 'Statement of World Jewish Congress on Nazi Massacre of Jews in Europe'. AJA/WJC, C174-07 Extermination of Jews and Punishment of War Criminals Correspondence 1942–1944.

extermination."[36] He later itemized the particularity of the Jewish experience in four elements that, together, constituted a "specific crime," namely the "avowed sin of wholesale destruction of the Jewish people":

1. The "wholesale systematic murder of the Jews of Europe" – "one of the blackest crimes of all history";
2. The crime is being committed *all over* Europe;
3. This crime has been going on at even increasing rate and scope *since the advent of Nazis to power*;
4. This crime is a deliberate carrying into effect of Hitler's oft-repeated *intention* to exterminate the Jewish people in Europe.[37]

The WJC also distinguished between Jews and non-Jews in terms of a non-political/political binary:

(a) All other crimes have some reason behind them (even crimes committed against hostages), but in the case of crimes against Jews, the only reason is the fact that they are Jews.
(b) Crimes against Jews are committed as part of a war of extermination against a whole people and there is no precedent in history of such a war against any other people.[38]

Herewith, the WJC encapsulated the case for the uniqueness of the Holocaust long before it became a subject of intense academic debate. Here, too, is the origin of the constitutive distinction between political and non-political criminality in Holocaust and Genocide Studies.

INVENTING GENOCIDE

In the meantime, we know that Lemkin branded that united crime as the "generic notion" of genocide in an expansive way: by conjoining the

[36] J. Robinson, 'Comments on "Memorandum on the Necessity of a Jewish Representative on the International Committee for Penal Reconstruction and Development"', 8 January 1943. AJA/WJC, C174-07 Extermination of Jews and Punishment of War Criminals Correspondence 1942–1944.
[37] J. Robinson, 'Memorandum on Definition of War Crimes', 22 July 1943. AJA/WJC, C174-07 Extermination of Jews and Punishment of War Criminals Correspondence 1942–1944.
[38] 'Note of Conversation between Sir Cecil Hurst and a Delegation of the World Jewish Congress, 20/7/1944'. AJA/WJC, C174-07 Extermination of Jews and Punishment of War Criminals Correspondence 1942–1944.

Holocaust (though that term was not used then) to the crippling of Europe's Christian nations.[39] To retain the necessary distinctions, however, he distinguished between the logics of destruction of Jews and non-Jews *within* his genocide concept: Jews (and Roma) were attacked on racial grounds alone, that is, for non-political reasons of identity; whereas the genocide of the other "small nations" of Christian Poles, Serbs, and so forth was driven by Nazi security and resource extraction imperatives, namely for political reasons:

> The case against the Jews and the Gypsies was not based upon colonisatery [sic] but upon racial considerations. . . . The case against the Jews and Gypsies was of a purely racial rather than emotional political nature. The race theory served the purpose of consolidating internally the German people. The Germans had to be shown that they are racially valuable Nordics. Their favorable racial classifications could be understood better by comparing them with those who were called and classified as vermin of the earth – the Jews and the Gypsies.[40]

This nuance in his thinking has been unrecognized to date, leading to considerable misunderstanding about the concept. His challenge was to define the vague phrase "the destruction of nations," given the belief that they were both "spiritual" and "biological" entities. He had to reconcile the differences between smaller Christian nations and the WJC, namely the tension between a conception of nation as cultural as well as biological, between incremental partial destruction ("crippling") and total destruction, between deportation for displacement and deportation for murder. Certainly, nationalists agreed that attacks on culture alone destroyed their nations. The Polish government-in-exile, for example, declared that the Germans' violation of Poles' "conscience" in forcing them to relinquish their citizenship "is even worse than physical terror."[41] Lemkin did not agree. While he referred to the persecution of various nations throughout *Axis Rule*, "genocide" retained an irreducible biological dimension, signaled here by the word "annihilation":[42]

> Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves.[43]

[39] Lemkin, *Axis Rule*, pp. 92, 80.
[40] R. Lemkin, 'Hitler Case-Outline'. AJA, Collection 60, Box 7, Folders 12 and 13.
[41] 'German crimes in Poland', 3 [42] Lemkin, *Axis Rule*, pp. 77, 89, 137–9, 152.
[43] Ibid., p. 79.

Lemkin thus included biological destruction as the last or most extreme example of genocidal policy:

> The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and *even the lives of the individuals belonging to such groups*. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group.[44]

In an article in April 1945, he underlined the physical dimension of genocide by declaring that the minority protection treaties were unsatisfactory because they protected "political and civil rights, rather than the biological structure of the groups involved."[45] Although Lemkin observed that Nazi rule attacked the nationality of most European peoples, he also shared the WJC view about the distinctive Jewish experience, devoting Chapter VIII to the subject, as noted above.[46] At the same time, he departed from the WJC view by coupling Jews and "Gypsies," much to Robinson's disgust, as targets of racial hatred, while other Europeans were deported and/or reduced in number to make way for German colonists.[47]

This synthesis, or sublation, remained unstable in Lemkin's exposition of cases in *Axis Rule*. Confusion resided in his subtle point that non-lethal measures can be genocidal if they affect the biological viability of a people. For example, he argued that the genocide of Greeks in the Aegean region by Bulgarians was caused by closing Greek schools, imposing the Bulgarian language, expelling Greek refugees from Turkey, freezing bank accounts, instituting disadvantageous exchange rates, expropriating property and giving it to Bulgarian colonists, invalidating the licenses for Greek artisans and professionals so they could not support their families, and so on.[48] These policies thus affected the capacity of Greeks to reproduce themselves biologically.

But could genocide occur without mass killing? Lemkin seemed to imply as much. In Luxembourg, for example, the method entailed enrolling children in "pro-Nazi youth organizations" in order 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

[44] Ibid. Emphasis added.
[45] R. Lemkin, 'Genocide: A modern crime', *American Scholar* 4 (1945), 39–43.
[46] Lemkin, *Axis Rule*, pp. 89, 81. Cf. pp. 21–22, 77, 249–50.
[47] Lemkin, 'Hitler Case-Outline'. [48] Lemkin, *Axis Rule*, pp. 188–90.

church property and persecution of the clergy" to "destroy the religious leadership of the Polish nation."[49] The genocide of Serbs took place "mainly in political and cultural aspects," for example. "Its national pattern is being destroyed by genocide legislation," mainly by prohibiting Cyrillic. However, he then concluded by mentioning "massacres and tortures" of "several hundred thousands" by the Croatian Ustaša, thereby introducing doubt about whether cultural repression could be genocidal without physical destruction.[50] The relationship between persecution and the cultural and the biological in the destruction of nations was thus always unclear. For all that, genocide's conceptual incoherence was also its political genius; because it covered each link in the chain of destruction, genocide could operate as a bridging concept to attract support both from Christian "small nations" and from the WJC in reforming international law.

WHAT IS GENOCIDE?

Both the incoherence and the political utility of "genocide" were not lost on contemporaries. Did genocide mean the less-lethal links on the long chain of destruction as well as mass murder? Was "extermination" restricted to Jews? Was the genocide a political or a non-political crime? The editorial of the *Washington Post* thought the latter but generalized beyond Jews: "Thus Jews were gassed at Birkenau and Aryan Poles and Russians and Slovenes were otherwise butchered, not for any crime or any resistance to Axis authority but because the Nazis wished to exterminate ethnic groups to which they belonged."[51] The reviewer in the *New York Times* agreed that genocide was a "war of extermination" driven by "racial fanaticism," meaning "outright extermination" especially "of the Jews, but also of Poles and Russians." But such a war included those non-lethal links in the chain mentioned by Lemkin and his contemporaries. Many reviewers simply reproduced rather than interrogated Lemkin's studied ambiguity.[52] The famous jurist Hersh

[49] Ibid., p. 90. [50] Ibid., pp. 259–60.
[51] Editorial, 'Genocide', *Washington Post*, 3 December 1944, B4.
[52] O. D. Tolischus, 'Twentieth-Century Moloch', *New York Times*, 21 January 1945. This approach is shared by H. Kelsen, 'Review of Lemkin, *Axis Rule*', *California Law Review* 34 (1946), 271–2; A. Kuhn, 'Review of Lemkin, *Axis Rule*', *American Journal of International Law* 39 (1945), 360–2; R. Moran, 'Review of Lemkin, *Axis Rule*', *Virginia Law Review* 31 (1945),

Lauterpacht took genocide to mean "the physical destruction of nations and ethnic groups," though it was unclear whether he intended to refer to non-lethal policies.[53] Other reviewers equated genocide with extermination against "the Jews, and to a lesser extent the Slavic people of the East," again conflating total and partial destruction. This was also the meaning in many newspaper editorials: genocide entailed mass murder of an ethnic or national group such as Jews.[54] The first book to discuss Lemkin's neologism likewise maintained the conflation of complete destruction and permanent crippling by systematically discussing the Germans' colonization and exploitation plans in eastern Europe that affected millions of "civilian Poles, Letts, Estonians, Czechs, Frenchmen, Ukrainians and Russians" in the same breath as "the policy of exterminating whole races, tribes and nations of people."[55]

This conceptual ambiguity was partially removed at the UN by associating genocide solely with the Holocaust, namely as a non-political crime of racial hatred. The UN committees debating draft conventions removed political groups and political motivations and added the stipulation that national, ethnical (sic), racial, and religious groups were to be destroyed "as such," meaning simply by virtue of individuals' membership of them; in other words, because of their identity.[56] That means political enemies like, say, communists, are not covered by the Convention, leading scholars to engage in conceptual innovation to subsume political violence in the genocide category.[57] What is more, contemporaries conceived of national, racial, and ethnic groups as fixed or innate when in fact they are not – they are malleable and constructed – like political identities. Lemkin participated in this conceptual narrowing by playing down his concern with cultural genocide after the

730–3; "J. M. J.", 'Review of Lemkin, *Axis Rule*', *British Yearbook of International Law* 22 (1945), 313–14.

[53] H. Lauterpacht, 'Review of Lemkin, *Axis Rule*'. *Cambridge Law Journal* 9 (1945–7), 140.

[54] M. Fainsod, 'Review of Lemkin, *Axis Rule*', *Harvard Law Review* 58 (1945), 745.

[55] M. Sayers and A. E. Kahn, *The Plot against the Peace: A Warning to the Nation!* (New York, Dial Press, 1945), pp. 108, 114–15.

[56] Convention on the Punishment and Prevention of Genocide, Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948, www.hrweb.org/legal/genocide.html.

[57] On genocide of political groups, see B. van Schaak, 'The crime of political genocide: Repairing the Genocide Convention's blind spot', *Yale Law Journal* 106 (1996), 2259–91; A. Gomez-Suarez, 'Perpetrator blocs, genocidal mentalities and geographies: The destruction of the Union Patriotica in Colombia and its lessons for genocide studies', *JGR* 9 (2007), 637–60; R. Cribb, 'Political genocides in postcolonial Asia', in D. Bloxham and A. Dirk Moses (eds.), *The Oxford Handbook of Genocide Studies* (Oxford, Oxford University Press, 2010), pp. 445–66; D. L. Nersessian, *Genocide and Political Groups* (Oxford, Oxford University Press, 2010); J. Melvin, *The Army and the Indonesian Genocide: Mechanics of Mass Murder* (London, Routledge, 2018).

war, in other words attenuating his very broad definition of genocide in *Axis Rule*, which included all "links" and the long chain. Accordingly, in the early 1950s, he disputed the claims of some communist African-American advocates who claimed that Blacks were victims of genocide in the USA much in terms of the one-long-chain argument. Genocide in these reduced terms – the "crime of crimes" as Lemkin proclaimed – then became that which "shocks the conscience of mankind." Whereas Jews had to resemble Christians to gain attention via genocide claims until the 1940s, now the reverse obtains: non-Jews need to resemble Jews because of the force of the Holocaust archetype.

Since its appearance in international law in the late 1940s, genocide has been conceived as a crime committed by one state's or para-state's forces against another's civilians or against an ethnic minority within its own borders. Although there are no legal barriers to identifying genocide within civil wars – in fact, genocidal violence is most likely during and immediately after civil wars[58] – political discourse commonly distinguishes between them because armed conflict suggests belligerent symmetry, whereas genocide is imagined as asymmetrical violence against civilians. Thus the governments of Nigeria and Pakistan rejected the genocide claim, insisting that they were confronting internal rebellions that was no business of the international community. Most members of the UN agreed, and also rejected Biafran and East Pakistani claims that they were victims of genocide despite widespread public support for their cause and genocide interpretation. So did Genocide Studies, which excluded both cases from its founding canon.[59]

The distinction between genocide and political violence blinds us to violence against all civilians and the circumstances that produce it. To ensure that the Hutu killed by Hutu extremists are downgraded in status, the Rwandan government pushed through a UN resolution in 2018 that changed the title of the UN commemoration day from "International Day of Reflection on the 1994 Genocide in Rwanda" to "International Day of Reflection on the 1994 Genocide against the Tutsi in Rwanda." In doing so, the government claims it is combating negationist and revisionist arguments

[58] M. Krain, 'State-sponsored mass murder: The onset and severity of genocides and politicides', *Journal of Conflict Resolution* 41:3 (1997), 331–60; H. N. Brehm, 'Re-examining risk factors of genocide', *JGR* 19 (2017), 61–87; D. Krcmaric, 'Varieties of civil war and mass killing: Reassessing the relationship between guerrilla warfare and civilian victimization', *Journal of Peace Research* 55 (2018), 18–31.

[59] A. D. Moses and L. Heerten (eds.), *Postcolonial Conflict and the Question of Genocide: The Nigeria–Biafra War, 1967–1970* (Abingdon, Routledge, 2018); A. D. Moses, 'Civil war or genocide? Britain and the secession of East Pakistan in 1971', in A. Sundar and N. Sundar (eds.), *Civil Wars in South Asia: State, Sovereignty, Development* (New Delhi, Sage India, 2014), pp. 142–64.

that suggest a symmetry of civil war violence (a "double genocide"), but what is striking is how this presentation of the conflict tries to copy the common understanding of the Holocaust as a non-political crime driven only by race hatred: Tutsis murdered solely for being Tutsis. By fixating on the genocidal features of the conflict in Rwanda and surrounding countries in 1994, the approach occludes the mass violence against Hutu civilians as well as the broader civil war context in which all civilian destruction took place.[60]

To avoid the charge of genocide, states present their violence as legitimately political – that is, motivated by security concerns – rather than illegitimately ethnic in motivation. In response to the accusation that Myanmar is committing genocide by driving some 730,000 Rohingya into Bangladesh with wanton violence, its leaders denounce them as "Bengali terrorists" because of the Arakan Rohingya Salvation Army's attacks on thirty police stations. (The Turkish government proceeds in this manner in dismissing claims of an Armenian genocide.) On the basis of a government-commissioned report into the violence, issued in January 2020, the Myanmar state concluded that no genocidal intent could be discerned: "The ICOE has not found any evidence suggesting that these killings or acts of displacement were committed pursuant to an intent or plan to destroy the Muslim or any other community in northern Rakhine State." On the contrary, the Rohingya had provoked the state into an "internal armed conflict."[61] Some Western commentators effectively agreed with the Myanmar state by insisting on the purity of the genocide concept – meaning its approximation to the Holocaust. It was wrong to pin the genocide label on the campaign against the Rohingya, declared the former *New York Times* journalist and foreign policy pundit Stephen Kinzer: "Not all atrocities are genocide."[62] This was a civil war-like rather than genocidal conjuncture, these commentators imply.

These cases pertain to public claim-making. Scholars operate in their own domain. Since the beginning of the twenty-first century, some contributors to Genocide Studies, including the present author, have advocated for a "colonial turn" by drawing on Lemkin's broad definition of genocide

[60] S. Straus, 'The limits of a genocide lens: Violence against Rwandans in the 1990s', *JGR* 21 (2019), 504–24.

[61] 'Bangladesh FM: Violence against Rohingya "is Genocide"', Al Jazeera, 11 September 2017, www.aljazeera.com/news/2017/09/bangladesh-fm-violence-rohingya-genocide-170911023429604.html; M. Safi, 'Myanmar treatment of Rohingya looks like "textbook ethnic cleansing", says UN', *The Guardian*, 12 September 2017.

[62] S. Kinzer, 'Not all atrocities are genocide', *Boston Globe*, 19 January 2017.

in *Axis Rule*. "Genocide has two phases," he wrote, "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."[63] This settler-colonial definition has inspired many historians to conceive of genocide – including the Holocaust – in colonial and imperial terms.[64] In doing so, they also invoke earlier conceptualizations of Nazism as a form of "racial imperialism" (Franz Neumann) or, as Hannah Arendt put it, one of the "origins of totalitarianism."[65] And, in turn, other scholars have questioned whether such contextualization makes sense by referring back to the founding distinction in Holocaust and Genocide Studies, as Dan Stone elaborates in Chapter 7 in this volume.[66]

CONCLUSION

Like Lemkin, Arendt also believed in this distinction. Unlike Lemkin, she rejected his version of commensurability as well as the radical particularism of the Israeli court prosecuting Adolf Eichmann in 1961. In the tradition of the WJC, it charged him with crimes against the Jewish people. Arendt's preferred mediation of the universal and the particular was neither genocide nor crimes against humanity, but a "crime against humanity, perpetrated upon the body of the Jewish people."[67] This solution may have been a conceptually and historiographically more satisfactory outcome for political claim-making and historical scholarship than the incoherent notion of genocide. But, for contingent reasons, genocide broke through as a global keyword of atrocity in the late 1940s, and scholarship has been stuck with it ever since. Even so, it is not surprising that social scientists distinguish between genocide and

[63] Lemkin, *Axis Rule*, p. 79. [64] Moses (ed.), *Empire, Colony, Genocide*.
[65] F. Neumann, *Behemoth: The Structure and Practice of National Socialism* (New York, Ivan Dee, 2009 [1942]), pp. 150, 193; H. Arendt, *The Origins of Totalitarianism* (New York, Henry Holt 1951).
[66] Pergher and Roseman, 'Holocaust, an imperial genocide'; Westerman, *Hitler's Ostkrieg and the Indian Wars*.
[67] H. Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York, Penguin, 1963), p. 269.

politicide (or political violence), thereby buying into the foundational distinction. Because they see that mass violence virtually always contains political dimensions, they reserve "genocide" for just a few cases.[68]

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[68] G. Uzonyi, 'Civil war victory and the onset of genocide and politicide', *International Interactions* 41:2 (2015), 365–91; G. Uzonyi and V. Asai, 'Discrimination, genocide, and politicide', *Political Research Quarterly* 73 (2020), 352–65.